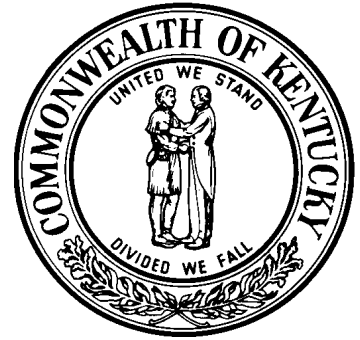


ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 43, NUMBER 8
WEDNESDAY, FEBRUARY 1, 2017

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, January 13, 2017.

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MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet February 10, 2017, thirty (30) minutes after adjournment of both the House and Senate, in room 149 Capitol Annex. See **tentative agenda** on pages 1361-1364 of this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2016 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE**.

HOW TO CITE: Cite all material in the **ADMINISTRATIVE REGISTER OF KENTUCKY** by Volume number and Page number. Example: Volume 43, Kentucky Register, page 318 (short form: 43 Ky.R. 318).

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

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

ADMINISTRATIVE REGISTER OF KENTUCKY

(ISSN 0096-1493)

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

POSTMASTER: Send address changes to Administrative Register of Kentucky, 700 Capitol Avenue, Room 64, State Capitol, Frankfort, Kentucky 40601.

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VOLUME 43, NUMBER 8 – FEBRUARY 1, 2017

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA, FEBRUARY 10, 2017, thirty (30) minutes after adjournment of
both the House and Senate, 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. (Amended After Comments)

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education Professional Standards Board**

General Administration

16 KAR 1:010. Standards for certified teachers.

Certification Procedures

16 KAR 4:040. Certification fees.

16 KAR 4:080. Out-of-state recency.

16 KAR 4:090. Reissuance.

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue**

Ad Valorem Tax; Administration

103 KAR 5:121. Repeal of 103 KAR 5:120.

Income Tax; General Administration

103 KAR 15:021. Repeal of 103 KAR 15:020, 103 KAR 15:080, and 103 KAR 15:100.

Income Tax; Corporations

103 KAR 16:031. Repeal of 103 KAR 16:030.

103 KAR 16:221. Repeal of 103 KAR 16:220 and 103 KAR 16:300.

Income Tax; Miscellaneous

103 KAR 19:031. Repeal of 103 KAR 19:030

Corporation License Tax

103 KAR 20:011. Repeal of 103 KAR 20:010, 103 KAR 20:020, and 103 KAR 20:035.

**DEPARTMENT OF MILITARY AFFAIRS
Division of Emergency Management**

Disaster and Emergency Services

106 KAR 1:081. Kentucky Emergency Response Commission Tier 2 reporting and fee schedule requirements - EHS facility planning participation requirements.

106 KAR 1:091. Kentucky Emergency Response Commission fee account grant requirements for local emergency planning committees.

106 KAR 1:101. Kentucky Emergency Response Commission fee grant requirements for state agencies.

106 KAR 1:111. Kentucky Emergency Response Commission Fee Account Grant Review Committee.

106 KAR 1:121. Kentucky Emergency Response Commission fee account grant distribution formula.

106 KAR 1:131. Kentucky Emergency Response Commission civil penalty assessment and hearings procedure.

**GENERAL GOVERNMENT CABINET
Board of Physical Therapy**

Board

201 KAR 22:020. Eligibility and credentialing procedure.

201 KAR 22:053. Code of ethical standards and standards of practice for physical therapists and physical therapist assistants.

Board of Licensure for Occupational Therapy

Board

201 KAR 28:090. Renewals. (Deferred from January)

201 KAR 28:200. Continuing competence. (Deferred from January)

Board of Alcohol and Drug Counselors

Board

201 KAR 35:016. Repeal of 201 KAR 35:015.

201 KAR 35:020. Fees.

201 KAR 35:025. Examinations.

201 KAR 35:030. Code of Ethics.

201 KAR 35:050. Curriculum of study.

201 KAR 35:070. Supervision experience.

Board of Licensed Professional Counselors

Board

201 KAR 36:005. Definitions for 201 KAR Chapter 36. (Not Amended After Comments)

201 KAR 36:020. Fees. (Amended After Comments)

201 KAR 36:030. Continuing education requirements. (Not Amended After Comments)

201 KAR 36:040. Code of ethics. (Amended After Comments)

201 KAR 36:045. Distance counseling. (Deferred from January)

201 KAR 36:050. Complaint management process. (Amended After Comments)

201 KAR 36:055. Administrative subpoena. (Deferred from January)

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201 KAR 36:060. Qualifying experience under supervision. (Amended After Comments)
201 KAR 36:065. Licensed professional clinical counselor supervisor. (Amended After Comments)
201 KAR 36:070. Application, education, and examination requirements. (Amended After Comments)
201 KAR 36:075. Renewal, late renewal, and reinstatement of license. (Amended After Comments)
201 KAR 36:090. Administrative hearings for denials and revocation of probation. (Amended After Comments)

Board of Licensure for Pastoral Counselors

Board

201 KAR 38:020. Application.
201 KAR 38:030. Equivalent course of study.
201 KAR 38:070. Renewal of licenses and continuing education.

Board of Licensure for Massage Therapy

Board

201 KAR 42:020. Fees. (Not Amended After Comments)(Deferred from January)
201 KAR 42:040. Renewal. (Not Amended After Comments) (Deferred from January)

Board Of Emergency Medical Services

Board

202 KAR 7:810. Survivor benefits for death of emergency medical services personnel. (Deferred from January)

Public Transportation Infrastructure Authority

Authority

202 KAR 10:010. Unsolicited proposals. (Amended After Comments) (Deferred from January)
202 KAR 10:020. Public-private partnerships. (Not Amended After Comments) (Deferred from January)
202 KAR 10:030 & E. Tolling projects. ("E" expires 5/13/2017)(Not Amended After Comments)

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Hunting and Fishing

301 KAR 3:015. Shooting ranges on department-owned or managed lands.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Water

Water Resources

401 KAR 4:070. Coal combustion residuals surface impoundments. (Not Amended After Comments)

Division of Waste Management

Special Waste

401 KAR 45:010. Definitions for 401 KAR Chapter 45. (Not Amended After Comments)
401 KAR 45:060. Special waste permit-by-rule. (Not Amended After Comments)

Coal Combustion Residuals (CCR)

401 KAR 46:101. Definitions for 401 KAR Chapter 46. (Amended After Comments)
401 KAR 46:110. Standards for the disposal of coal combustion residuals (CCR) in CCR units. (Not Amended After Comments)
401 KAR 46:120. Coal combustion residuals (CCR) permit-by-rule. (Amended After Comments)

TRANSPORTATION CABINET Department of Vehicle Regulation Division of Driver Licensing

Administration

601 KAR 2:030 & E. Ignition interlock. ("E" expires 4/25/2017) (Not Amended After Comments)

Department of Highways

Preconstruction

603 KAR 2:020. Public-private partnerships. (Amended After Comments)

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. (Not Amended After Comments) (Deferred from January)

LABOR CABINET Department of Workplace Standards Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training

Occupational Safety and Health

803 KAR 2:300. General.
803 KAR 2:303. Walking-working surfaces.
803 KAR 2:305. Powered platforms, manlifts, and vehicle-mounted work platforms.
803 KAR 2:308. Personal protective equipment.
803 KAR 2:313. Materials handling and storage.
803 KAR 2:317. Special industries.

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

Local Administrators

804 KAR 10:010. Appointment notification of local alcoholic beverage administrator.
804 KAR 10:021. Repeal of 804 KAR 10:020 and 804 KAR 10:025.

**Department of Insurance
Commissioner's Office**

Administration

806 KAR 2:011. Repeal of 806 KAR 2:010, 806 KAR 2:020, 806 KAR 2:030, 806 KAR 2:040, and 806 KAR 2:050.
806 KAR 2:097. Filing of local government premium tax ordinances; notification to insurers.

Authorization of Insurers and General Requirements

806 KAR 3:210. Privacy of consumer financial information.

Agent Licensing Division

Group and Blanket Health Insurance

806 KAR 18:020. Preferred and exclusive provider arrangements.

**Department of Financial Institutions
Division of Depository Institutions**

Administration

808 KAR 1:111. Repeal of 808 KAR 1:110.

Credit Unions

808 KAR 3:020. Recordkeeping requirements.
808 KAR 3:031. Repeal of 808 KAR 3:030.

Industrial Loans

808 KAR 5:011. Repeal of 808 KAR 5:010, 808 KAR 5:020, and 808 KAR 5:030.

Savings and Loans

808 KAR 7:031. Repeal of 808 KAR 7:030 and 808 KAR 7:040.

Kentucky Horse Racing Commission

Harness Racing

811 KAR 1:215. Kentucky Standardbred Development Fund and Kentucky Standardbred Breeders' Incentive Fund.
811 KAR 1:220. Harness racing at county fairs.

**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 4/24/2017)(Amended After Comments)

Certificate of Need

900 KAR 6:055. Certificate of need forms.
900 KAR 6:060. Timetable for submission of certificate of need applications.
900 KAR 6:065. Certificate of need application process.
900 KAR 6:095. Certificate of need administrative escalations.

**Office of Inspector General
Division of Health Care**

Health Services and Facilities

902 KAR 20:008. License procedures and fee schedule. (Amended After Comments)
902 KAR 20:013. Repeal of 902 KAR 20:014. (Deferred from January)
902 KAR 20:081. Operations and services; home health agencies.

Division of Prevention and Quality Improvement

Programs for the Underserved

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Division of Health Care

Office of Inspector General

906 KAR 1:151. Repeal of 906 KAR 1:150. (Deferred from January)
906 KAR 1:190. Kentucky National Background Check Program. (Amended After Comments)

**Department for Medicaid Services
Commissioner's Office**

Managed Care

907 KAR 17:015 & E. Managed care organization requirements and policies relating to providers. ("E" Expires 5/30/2017)
907 KAR 17:035 & E. External independent third-party review. ("E" Expires 5/30/2017)
907 KAR 17:040 & E. Appeal and administrative hearing post external independent third-party review. ("E" Expires 5/30/2017)

**Department for Community Based Services
Division of Family Support**

K-TAP, Kentucky Works, Welfare to Work, State Supplementation

921 KAR 2:015 & E. Supplemental programs for persons who are aged, blind, or have a disability. ("E" Expires 6/12/2017)

Division of Protection and Permanency

Block Grants

922 KAR 3:011. Repeal of 922 KAR 3:010 and 922 KAR 3:020.

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Adult Services

922 KAR 5:120. Caregiver misconduct registry and appeals.

REGULATIONS REMOVED FROM FEBRUARY AGENDA

GENERAL GOVERNMENT CABINET Board of Social Work

Board

201 KAR 23:075. Continuing education for renewal. (Comments Received; SOC ext. due 2/15/2017)

Board of Licensure for Occupational Therapy

Board

201 KAR 28:230. Telehealth occupational therapy services. (Comments Received; SOC ext. due 2/15/2017)

PUBLIC PROTECTION CABINET Department of Insurance Agent Licensing Division

Agents, Consultants, Solicitors, and Adjusters

806 KAR 9:360 & E. Pharmacy benefit manager license. ("E" expires 5/26/2017)(Comments Received; SOC ext. due 2/15/2017)(Deferred from February)

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

Health Services and Facilities

902 KAR 20:091 & E. Facilities specifications, operation and services; community mental health center. ("E" expires 6/2/2017)(Comments Received; SOC ext. due 2/15/2017)

Department for Medicaid Services Division of Community Alternatives

Medicaid Services

907 KAR 1:045 & E. Reimbursement provisions and requirements regarding community mental health center services. ("E" expires 6/2/2017)(Comments Received; SOC ext. due 2/15/2017)

907 KAR 1:047 & E. Community mental health center primary care services. ("E" expires 6/2/2017)(Comments Received; SOC ext. due 2/15/2017)

Commissioner's Office

Kentucky Children's Health Insurance Program

907 KAR 4:020. Kentucky Children's Health Insurance Program Medicaid Expansion Title XXI of the Social Security Act. (Comments Received; SOC ext. due 2/15/2017)

907 KAR 4:030. Kentucky Children's Health Insurance Program Phase III Title XXI of the Social Security Act. (Comments Received; SOC ext. due 2/15/2017)

Division of Community Alternatives

Behavioral Health

907 KAR 15:005 & E. Definitions for 907 KAR Chapter 15. ("E" expires 6/2/2017)(Comments Received; SOC ext. due 2/15/2017)

907 KAR 15:010 & E. Coverage provisions and requirements regarding behavioral health services provided by individual behavioral health providers, behavioral health provider groups, and behavioral health multi-specialty groups. ("E" expires 6/2/2017)(Comments Received; SOC ext. due 2/15/2017)

907 KAR 15:015 & E. Reimbursement provisions and requirements for behavioral health services provided by individual behavioral health providers, behavioral health provider groups, or behavioral health multi-specialty groups. ("E" expires 6/2/2017)(Comments Received; SOC ext. due 2/15/2017)

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.

VOLUME 43, NUMBER 8 – FEBRUARY 1, 2017
EMERGENCY ADMINISTRATIVE REGULATIONS

None

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

FINANCE AND ADMINISTRATION CABINET
Executive Branch Ethics Commission
(As Amended at ARRS, January 17, 2017)

9 KAR 1:010. Statement of financial disclosure.

RELATES TO: KRS 11A.010(7), (9), (13), 11A.050(2), (3)
STATUTORY AUTHORITY: KRS 11A.050(2), 11A.110(3), (4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 11A.110(3) and (4) require the Executive Branch Ethics Commission to promulgate administrative regulations to implement KRS Chapter 11A and to prescribe forms for statements required by this chapter~~[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.

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.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education Professional Standards Board
(As Amended at ARRS, January 17, 2017)

16 KAR 1:030. Procedures for educator certificate surrender, revocation, suspension, reinstatement, and reissuance, and for application denial.

RELATES TO: KRS Chapter 13B, 160.380, 161.010-161.100~~[161.028(1)], 161.120, 218A.010~~(6)]~~(5)]~~

STATUTORY AUTHORITY: KRS 161.028(1), 161.120(1), 161.175(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining an educator's~~a teaching~~ certificate. The EPSB is authorized to revoke, suspend, or refuse to issue or renew; impose probationary or supervisory conditions upon; issue a written reprimand or admonishment; or any combination of those actions regarding any certificate issued to Kentucky certified educators for reasons delineated in KRS 161.120(1). KRS 161.175(2) authorizes the Education Professional Standards Board to promulgate administrative regulations requiring an educator~~a teacher~~ whose certificate has been suspended or revoked by the Education Professional Standards Board because the educator~~teacher~~ engaged in misconduct involving the illegal use of controlled substances to submit to drug testing. This administrative regulation identifies the conditions for initiating a disciplinary action against an educator's~~a teaching or administrative~~ certificate and establishes procedures for certificate reinstatement, reissuance, and application denial.

Section 1. Purpose. (1) In order to support the mission of the Education Professional Standards Board (EPSB), the board~~[EPSB]~~ may take action against an educator's certificate in an effort:

(a) To ensure that an educator has an understanding of an educator's professional duties and responsibilities; and

(b) To protect students, parents of students, school personnel, or school officials.

(2) The board may take action against any certificate issued under KRS 161.010 to 161.100 for any of the reasons set forth in KRS 161.120(1).

Section 2. Complaints and Reports. (1) A complaint may be made by any person, organization, or entity. The complaint shall be in writing and shall be signed by the person offering the complaint. The complaint shall be sent to the offices of the EPSB. The complaint shall contain:

(a) The name, phone number, and address of the person making the complaint, and the name of the educator against whom the complaint is made. If known, the person making the complaint shall include the address of the school district where the educator works; and

(b) A clear and concise description of the issues of fact.

(2) A report shall be sent to the EPSB by superintendents of local school districts pursuant to KRS 161.120(2)(a).

(a) A superintendent's duty to report shall include the reporting of criminal convictions discovered by the district pursuant to KRS 160.380, even if the conviction occurred prior to the date the educator's certification was issued.

(b) The superintendent or the superintendent's designee shall have thirty (30) days from the date that superintendent receives notice of the criminal conviction to report that criminal conviction to the EPSB pursuant to KRS 161.120(2)(a).

(3) EPSB staff shall do an initial review of all complaints and reports to determine whether there is sufficient credible evidence

that a violation of KRS 161.120(1) may have occurred. If the report or complaint contains sufficient credible evidence that a violation of KRS 161.120(1) may have occurred, EPSB staff shall open a file and assign that file a number.

(a) The EPSB staff shall send a copy of these complaints and reports by certified mail to the educator's address on file with EPSB.

(b) The educator shall have the right to file a rebuttal with the EPSB within thirty (30) calendar days from the date the educator receives the complaint or report from the EPSB **unless the parties agree to extend that deadline.**

(c) ***EPSB staff shall add the case to the EPSB's docket and prepare the file for board review by redacting all educator's identifiers if one (1) of the following occurs:***

1. The educator's rebuttal is received;

2. The notice is returned as undeliverable; or

3. The educator:

a. Fails to file a rebuttal with the EPSB; and

b. Has not requested to extend the thirty (30) day deadline[Upon receipt of the educator's rebuttal or return of the notice as undeliverable, EPSB staff shall add the case to the EPSB's docket and prepare the file for board review by redacting all educator's identifiers].

(d) The board shall determine whether the nature and quality of the alleged violation warrants dismissal, training, admonishment, further investigation, or initiation of a hearing.

(e) In making its determination, the board shall consider if the allegation, if proven, would warrant sanction by the board.

(f) When making a determination as to the level of sanctions warranted, the board shall consider the following factors:

1. The seriousness of the alleged violation;

2. Whether the alleged violation was premeditated or intentional;

3. Whether an attempt to conceal the alleged violation was made;

4. Whether there were any prior violations;

5. Whether training is appropriate to prevent further violations;

6. Whether the sanction is necessary to deter future violations;

or

7. Other relevant circumstances or facts.

(4)(a) If the board determines that sanctions are warranted, the board shall refer the matter to hearing.

(b) If the board refers the matter to hearing, the board shall, by majority vote, approve the issuance of a notice of hearing and the statement of charges. The statement of charges shall include specific reasons for the board's proposed action, including the:

1. Statutory or regulatory violation;

2. Factual basis on which the disciplinary action is based; and

3. Penalty sought.

(c) The parties may agree to resolve the matter informally at any time. Any agreement to resolve the matter informally shall be memorialized in an agreed order. ***To be valid, the agreement shall be[and] approved by the board. The agreed order shall be signed by the educator, the educator's attorney, if any, and the board chair.***

(d) The EPSB staff shall initiate the hearing process, ***in accordance with KRS Chapter 13B,*** within thirty (30) days after the board refers the matter to hearing.

Section 3. (1) The hearing shall be held in accordance with KRS Chapter 13B.

(2) Either party may be entitled to a reasonable continuance of the hearing date for good cause.

(3) The educator has the right to request a private in-person hearing.

(a) The educator shall waive the right to ***a private[an]*** in-person hearing if the educator fails to specifically make the request for ***a private in-person[an in person]*** hearing in writing.

(b) Even if the educator elects to proceed with a private, ***in-person*** hearing, the hearing transcript for that ***[private]*** hearing shall be subject to disclosure after the board issues its final decision unless exempt from disclosure by law.

(c) All hearings shall be conducted in the office of the

Education Professional Standards Board, 100 Airport Road, Frankfort, Kentucky 40601 unless a new location is agreed upon by the parties.

(4) The hearing officer's recommended order shall include a discussion of the factors set forth in Section 2(3)(f) of this administrative regulation ***if[when]*** recommending sanctions.

(5) A party may file any exceptions to the recommended order within fifteen (15) calendar days after receiving the recommended order.

(a) This time limit shall not be extended, and responses to exceptions shall not be considered by the board.

(b) Any disagreement with a factual finding or conclusion of law in the recommended order not contained in the exceptions shall be waived.

Section 4. Final Decision. (1) In making its final decision, the board shall consider the record including the recommended order and any exceptions filed.

(2) After the board chair certifies that a quorum is present, a majority of the voting members present shall be required to make a final decision on the recommended order, agreed order, or request for the issuance of an order of default judgment.

(3) The board may delegate to the board chair the authority to sign a decision made or order issued under this section on behalf of a majority of the board members.

Section 5. Procedure for Suspension, Surrender, or Revocation of a Certificate. (1) When the board issues a final decision ***in accordance with KRS 13B.120,*** the EPSB staff shall mail a copy of the final decision to the educator ***by certified mail*** using the address the educator provided to the Education Professional Standards Board.

(2) A record of board action shall become part of the educator's official records maintained by EPSB staff.

(3) Immediately following the issuance of the board's final decision, the EPSB staff shall notify the reporting parties of the action taken.

(4) EPSB staff shall also ensure that the suspension, surrender, or revocation is noted on EPSB's Web site.

(5) EPSB staff shall also ensure that the information is provided to the National Association of State Directors of Teacher Education and Certification (NASDTEC) for inclusion in the NASDTEC Clearinghouse. The clearinghouse is a searchable database administered by NASDTEC relating to educator certification and discipline.

Section 6. Procedure for Reinstatement of a Suspended Certificate. (1) Reinstatement of a suspended certificate for reasons other than misconduct involving the illegal use of controlled substance as defined in KRS 218A.010(6)(5).

(a) A certificate that has been suspended by the EPSB shall not be reinstated until the certificate holder has met all conditions and requirements ordered by the EPSB.

(b) If a certificate lapses during a period of suspension, the certificate holder shall apply for renewal of the certificate at the end of the suspension period. The board shall renew the certification if the certificate holder has met all educational requirements for renewal and has completed all of the conditions and requirements ordered by the board.

(c) The burden to initiate the process to reinstate a suspended certificate shall be on the certificate holder.

1. ***If[When]*** the suspension does not include conditions, the EPSB staff shall remove all references of the suspension from the Web site at the conclusion of the suspension period.

2. ***If[When]*** the suspension includes conditions, the certificate holder shall provide the EPSB proof that all conditions have been met.

a. The EPSB shall reinstate the certificate at the conclusion of the suspension period once the EPSB receives evidence from the certificate holder demonstrating that the conditions of suspension were met.

b. The EPSB shall remove from its Web site any reference to the suspension once the certificate holder has provided evidence

that the conditions of suspension have been met.

(d) The record of suspension as well as reinstatement of the certification shall become part of the educator's official certification records, but the record of suspension shall not be referenced on any certificate subsequently issued to the certificate holder.

(2) Reinstatement of a suspended certificate for misconduct involving the illegal use of controlled substance as defined in KRS 218A.010(6)(5).

(a) In addition to conditions for reinstatement of a suspended certificate established in subsection (1) of this section, the certificate holder shall provide written evidence that the certificate holder has submitted to a drug test at the certificate holder's own expense administered by a drug testing facility approved by the board within thirty (30) days of reinstatement or submission of an application for reissuance of the certificate.

(b) The certificate holder shall arrange for the drug testing facility to send the results of the drug test directly to the EPSB.

(c) A certificate holder subject to the terms of this subsection may petition the EPSB to approve a drug testing facility of the certificate holder's choice.

1. Petition to Approve Drug Testing Facility. The petition shall contain the following information:

a. The drug testing facility's name and location;

b. The name and telephone number for the director of the facility;

c. The method of test specimen collection;

d. The drug testing facility's method of assuring identity of the test subject;

e. Procedures for testing specimens, including forensic testing methods; and

f. Chain of custody protocols.

2. The drug testing facility shall test at a minimum for the following named controlled substances:

a. Marijuana;

b. Cocaine;

c. Opiates;

d. Amphetamines;

e. Phencyclidine;

f. Morphine;

g. MDMA (Ecstasy);

h. Methadone;

i. Benzodiazepines;

j. Barbiturates; and

k. Oxycodone.

(d) If the results of the drug test indicate illegal drug use by the certificate holder, the certificate shall not be reinstated or reissued.

Section 7. Procedure for Reissuance of a Certificate after Revocation. (1) ~~If/When~~ revocation was for reasons other than misconduct involving the illegal use of controlled substance as defined in KRS 218A.010(6)(5), the conditions established in this subsection shall apply.

(a) The former certificate holder shall complete the same application that all educators in Kentucky shall complete to obtain certification.

(b) The former certificate holder shall bear the burden of proving that the certificate holder is fit for practice.

(c) The former certificate holder shall satisfy all current educational requirements for the certificate sought.

(d) The Education Professional Standards Board may include terms and conditions that the board reasonably deems appropriate as a condition of reissuance in accordance with KRS 161.120(11)(b) if reissuing the certificate.

(2) If revocation was for misconduct involving the illegal use of controlled substance as defined in KRS 218A.010(6)(5), the former certificate holder shall:

(a) Comply with the requirements established in Section 6(1) of this administrative regulation for reissuance of certification after revocation for all other offenses; and

(b) Submit to drug testing as established in Section 6(2) of this administrative regulation for the suspension resulting from illegal use of controlled substances.

(3) Regardless of the reason for the revocation, the revocation

shall be noted on the certificate that is issued and shall remain on the EPSB Web site.

~~Section 8. Initiating Disciplinary Action Against a Certificate. The Education Professional Standards Board may initiate disciplinary action against a Kentucky teaching or administrative certificate upon receipt from any source of a report or complaint which contains allegations that an individual who holds a Kentucky teaching or administrative certificate has engaged in conduct listed in KRS 161.120(1).~~

~~Section 2. Reinstatement and Reissuance of Certificate. (1)(a) A certificate that has been suspended by the Education Professional Standards Board shall not be reinstated until the certificate holder has met all conditions and requirements ordered by the Education Professional Standards Board.~~

~~(b) If a certificate lapses during a period of suspension, at the end of the suspension period and upon completion of all conditions and requirements ordered by the Education Professional Standards Board, the certificate holder shall apply for renewal of the certificate and shall meet all educational requirements for renewal of the certificate.~~

~~(2) An individual whose certificate has been revoked shall complete the "Application for Kentucky Certification or Change in Salary Rank", Form TC-1, incorporated by reference in 16 KAR 2:010, prior to the reissuance of the certificate.~~

~~(3) The burden of proving suitability for reissuance of a revoked certificate shall rest on the applicant seeking reinstatement.~~

~~(4) If reissuing a certificate, the Education Professional Standards Board may include terms and conditions that the board reasonably deems appropriate as a condition of reissuance in accordance with KRS 161.120(11)(b).~~

~~(5) An applicant for reissuance of a revoked certificate shall satisfy all current educational requirements for the certificate.~~

~~(6)(a) If a certificate is suspended or revoked because the certificate holder engaged in misconduct involving the illegal use of a controlled substance as defined in KRS 218A.010(5), in addition to conditions for reinstatement or reissuance, the certificate holder shall at the certificate holder's own expense provide written evidence that the certificate holder has submitted to a drug test administered by a drug testing facility approved by the Education Professional Standards Board within thirty (30) days of reinstatement or submission of an application for reissuance of the certificate.~~

~~(b) If the results of the drug test indicate drug use by the certificate holder, the certificate shall not be reinstated or reissued.~~

~~(c) The certificate holder shall arrange for the drug testing facility to send the results of the drug test directly to the Education Professional Standards Board.~~

~~(d) A drug test conducted under this subsection shall at a minimum test for the following controlled substances:~~

~~1. Marijuana;~~

~~2. Cocaine;~~

~~3. Opiates;~~

~~4. Amphetamines;~~

~~5. Phencyclidine;~~

~~6. Morphine;~~

~~7. MDMA (Ecstasy);~~

~~8. Methadone;~~

~~9. Benzodiazepines;~~

~~10. Barbiturates; and~~

~~11. Oxycodone.~~

~~(e) 1. A certificate holder subject to the terms of this subsection may petition the Education Professional Standards Board to approve a drug testing facility of the certificate holder's choice.~~

~~2. The petition shall contain the following information:~~

~~a. The drug testing facility's name and location;~~

~~b. The name and telephone number for the director of the facility;~~

~~c. The method of test specimen collection;~~

~~d. The drug testing facility's method of assuring identity of the test subject;~~

- e. Procedures for testing specimens, including forensic testing methods; and
- f. Chain of custody protocols.

Section 3.] Denial of Application for a Certificate. If the Education Professional Standards Board denies an individual's application for a Kentucky[teaching or administrative] certificate pursuant to this administrative regulation, the applicant[individual] may file an appeal in accordance with KRS 161.120(5)(a)2.

DAVID WHALEY, Board Chair

APPROVED BY AGENCY: December 12, 2016

FILED WITH LRC: December 14, 2016 at 1 p.m.

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EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education Professional Standards Board
(As Amended at ARRS, January 17, 2017)

16 KAR 7:010. Kentucky Teacher Internship Program.

RELATES TO: KRS Chapter 13B, 156.101, 161.020, 161.028, 161.030, 161.048, 161.100, 161.122[, 161.095]

STATUTORY AUTHORITY: KRS 161.028(1)(a), 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS

161.028(1)(a) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030(5) requires that all new teachers and out-of-state teachers with less than two (2) years of successful teaching experience who are seeking initial certification in Kentucky shall serve a one (1) year internship. This administrative regulation establishes the requirements for the Kentucky Teacher Internship Program.

Section 1. Definitions. (1)[~~"Confirmation of Employment"~~ means the electronic document or a hardcopy of the same name that is submitted to the Education Professional Standards Board by the employing school district or nonpublic school to document employment of a teacher intern.

(2) "Half-time basis" means teaching fifteen (15) hours per week in the teacher intern's area of certification.

(2)[(3)] "Instructional day" means a day that:

(a) The teacher intern is performing regular teaching responsibilities in an instructional setting, or is completing professional development for compensation from the district or employing school; and

(b) is not part of[~~Does not include~~] annual leave, sick leave, or other authorized or unauthorized leave time.

(3) "Resource teacher" means the classroom teacher that serves on a beginning teacher committee.

(4)[~~"Resource Teacher Time Sheet"~~ means the electronic document or a hardcopy of the same name that is submitted to the Education Professional Standards Board and is used by resource teachers to record in-class hours and, for compensation, resource teacher out-of-class hours.

(5) "Teacher intern" means any new teacher or out-of-state teacher with less than two (2) years of successful teaching experience, preschool through grade twelve (12), who has obtained a provisional certificate and is seeking initial certification in Kentucky.

(5) "Teaching standards" means the standards set forth in 16 KAR 1:010.

Section 2. Basis for Professional Judgment by the Beginning Teacher Committee. (1) A teacher intern and the beginning teacher committee shall follow the requirements established in this administrative regulation.

[(a)1. The teacher intern shall successfully complete a KTIP Teacher Performance Assessment.

2. The assessment shall be organized according to three

~~cycles of the internship year and shall be a set of twelve (12) teaching tasks designed to provide interns the opportunity to demonstrate performance of the Kentucky Teacher Standards established by the Education Professional Standards Board in 16 KAR 1:010.~~

(b) ~~The twelve (12) teaching tasks shall be grouped into three (3) components as follows:~~

1. ~~Component I: Classroom Teaching, which shall include:~~

a. ~~Task A-1: Teaching and Learning Context;~~

b. ~~Task A-2: Lesson Plan;~~

c. ~~Task B: Classroom Observation; and~~

d. ~~Task C: Lesson Analysis and Reflection;~~

2. ~~Component II: Professional Responsibilities, which shall include:~~

a. ~~Task D: Collaborate to Address Special Learning Needs;~~

b. ~~Task E: Assess and Manage Professional Growth; and~~

c. ~~Task F: Leadership; and~~

3. ~~Component III: Instructional Unit, which shall include:~~

a. ~~Task G: Designing the Instructional Unit;~~

b. ~~Task H: The Assessment Plan;~~

c. ~~Task I: Designing Instructional Strategies and Activities;~~

d. ~~Task J-1: Organizing and Analyzing the Results Reflecting on the Impact of Instruction; and~~

e. ~~Task J-2: Communication and Follow-Up.]~~

(2)[~~In arriving at its professional judgment, the beginning teacher committee shall utilize the scoring rubrics contained within the KTIP Intern Performance Record, and take into consideration the progress of the teacher intern throughout the school year and, particularly, the level of performance that has been achieved near the end of the internship.]~~ The beginning teacher committee shall determine the progress and improvement of the teacher intern, pursuant to KRS 161.030, by:

(a) A systematic observation of classroom performance;

(b) An ongoing review of documented evidence developed by the teacher intern of progress toward demonstration of the applicable teaching standards; and

(c) A review of the teacher intern's response to the suggestions and recommendations made by the beginning teacher committee during its meetings with the teacher intern throughout the internship.

(3) Throughout the internship, the teacher intern and the beginning teacher committee shall utilize the teaching[~~Kentucky Teacher~~] standards established by the Education Professional Standards Board in 16 KAR 1:010.

(4) The assessment shall be organized according to three (3) cycles of the internship designed to provide teacher interns the opportunity to demonstrate performance of the teaching standards established in 16 KAR 1:010[~~Teacher Interns and their committees shall use the indicators for each standard as outlined in the KTIP Intern Performance Record~~].

Section 3. Beginning Teacher Committee Membership Appointment. (1)(a) Each beginning teacher committee shall be composed of three (3) persons who have been appointed pursuant to KRS 161.030(6).

(b) School districts shall maintain a pool of resource teachers and principals who have successfully completed the beginning teacher[~~Kentucky Teacher Internship Program~~] committee training in order to assure eligibility for appointment to beginning teacher committees.

(c)[(b)] The beginning teacher[~~Kentucky Teacher Internship Program~~] committee training may be approved for up to six (6)[~~twelve (12)~~] hours of professional development credit[toward the continuing education requirements] for resource teachers[pursuant to KRS 161.095] and Effective Instructional Leadership Act (EILA) credit for administrators pursuant to KRS 156.101.

(2) The employing school district shall recommend principals and resource teachers for appointments by the Education Professional Standards Board to beginning teacher committees.

(3) If the teacher intern is teaching at a nationally or regionally accredited nonpublic school without a principal, the accrediting organization's guidelines for designating the school head or school

leader shall be used by the employing school in making the recommendation for appointment of the principal member. If no guidelines exist, the school shall provide a written rationale for the appointment to the Education Professional Standards Board ~~[for approval]~~.

(4) Representatives of the teacher training institutions shall consult the Education Professional Standards Board with respect to the school districts and the geographical area to be served by teacher educator members on beginning teacher committees. All teacher educators shall have completed the beginning teacher ~~[Kentucky Teacher Internship Program]~~ committee training in order to assure eligibility for appointment to beginning teacher committees.

(5) The teacher training institution shall appoint a teacher educator no later than thirty (30) calendar days after being notified by the district or nonpublic school of the need for a teacher educator. ~~[If the teacher intern is employed after the date required to submit the Confirmation of Employment in accordance with Section 4(3)(a) of this administrative regulation, the teacher training institution shall appoint a teacher educator no later than ten (10) days after being notified by the district or nonpublic school of the need for a teacher educator.]~~

(6) If the superintendent or designated nonpublic school head or leader determines that a teacher educator is unsuitable for appointment, the superintendent or designated nonpublic school head or leader shall submit a written request for removal to the Education Professional Standards Board. The request shall contain the following:

(a) The facts and circumstances that form the basis for removal for cause; and

(b) The name of a qualified replacement submitted after consultation with the principal of the employing school and the Kentucky Teacher Internship Program university and district coordinators for that school district.

~~[(7) The Education Professional Standards Board shall send written notification to the teacher intern, the beginning teacher committee, the superintendent or designated nonpublic school head or leader, and the teacher training institution of its decision regarding the request for removal.]~~

Section 4. Requirements for Time in the Internship and Classroom Assignment. (1) The one (1) year internship shall be completed during one (1) of the following:

(a) No less than 140 instructional days of employment in a certified position in the teacher intern's area of certification for which the teacher intern receives compensation during one (1) school year; or

(b) Two (2) semesters totaling at least 140 instructional days of employment in a certified position in the teacher intern's area of certification for which the teacher intern receives compensation in two (2) consecutive school years.

(2) The internship shall be established for each teacher intern whose initial employment begins at any time during the school term except if the date of employment does not allow for completion of at least seventy (70) instructional days of employment during the school year.

(a) If the period of employment is less than seventy (70) instructional days in a school year, the local school district shall declare an emergency as provided in KRS 161.100, authorizing the superintendent to request an emergency teaching certificate.

(b) The employing school district shall be responsible for providing assistance and supervision to the new teacher during the period of employment under an emergency certificate.

(3)(a) The school district or nonpublic school shall ~~complete and~~ submit to the Education Professional Standards Board ~~a[the]~~ confirmation of employment ~~[in electronic form or in hard copy if the electronic submission system is unavailable]~~.

~~1.-] within thirty (30) calendar days from the teacher intern's first instructional day [date of hire or on or before October 15, whichever occurs first, for a teacher intern participating in the internship for the fall semester or full year; or~~

~~2. Within thirty (30) days from the date of hire or On or before February 15, whichever comes first, for a teacher intern~~

~~participating in the internship for the spring semester].~~

~~(b) [If the teacher intern begins employment after the dates established for submission of the Confirmation of Employment in paragraph (a) of this subsection, the school district or employing school shall submit the Confirmation of Employment in electronic form or in hard copy if the electronic submission system is unavailable within ten (10) days of the date of hire.] A one (1) year internship certificate shall be issued in accordance with the provisions of 16 KAR 2:010 and 16 KAR 4:050.~~

(c) If the district or employing school fails to report verification of enrollment in the internship by the applicable timeline ~~[date]~~ established in paragraph (a) ~~[or (b)]~~ of this subsection, and there is insufficient time remaining for the teacher intern to complete the number of days required under subsection (1) of this section, the district or employing school shall declare an emergency as provided in KRS 161.100, and the teacher intern shall enroll in the internship in the next semester of employment when at least seventy (70) instructional days are available.

(d) Failure to confirm employment ~~[submit the completed Confirmation of Employment]~~ or declare an emergency in accordance with paragraph (a), (b), or (c) of this subsection shall:

1. Be a violation of KRS 161.020; and

2. Result in the number of days the teacher intern taught without a valid certificate being included in the out of field report submitted to the Commissioner of the Department of Education in accordance with KRS 161.1221.

(4) A teacher intern may participate in the internship if the intern is teaching in the intern's area of certification on at least a half-time basis. A school district or nonpublic school offering employment to a new teacher for part-time services which do not conform to the definition of half-time basis shall request a waiver from the Education Professional Standards Board staff for the new teacher to participate in the Kentucky Teacher Internship Program. The waiver request shall detail how the part-time employment offered by the district or nonpublic school is commensurate with the half-time basis requirement of this administrative regulation.

(5)(a) **An intern shall be prohibited from discontinuing an internship [Termination or resignation of the internship shall be prohibited]** unless a written resignation **of the position** detailing the facts surrounding the resignation is received and approved by:

1. The superintendent or designated nonpublic school head or leader; and

2. The Education Professional Standards Board staff.

(b) A teacher intern who **discontinues [terminates or resigns]** the internship without the approval of the Education Professional Standards Board staff shall be recorded as unsuccessfully completing the internship for that school year.

(6) The internship shall be established in a classroom which corresponds to the certificate of the teacher intern. An internship shall not be established in a classroom designated as an alternative school, classroom, or program unless the district superintendent or designated nonpublic school head or leader submits a written request for a waiver to the staff of the Education Professional Standards Board. The request shall include the following:

(a) The type of students that attend the alternative school, classroom, or program;

(b) The student selection and placement process;

(c) The level of support for students and faculty provided by the district or nonpublic school;

(d) The degree of administrative support within the school, classroom, or program;

(e) The location and facility that houses the school, classroom, or program;

(f) The instructional resources available to the faculty;

(g) The curriculum used by the school, classroom, or program;

(h) The manner in which the school, classroom, or program collaborates with other schools within the district;

(i) The current faculty and staff positions assigned to the school, classroom, or program;

(j) A brief description of how a teacher intern placed in the alternative school, classroom, or program could demonstrate that

the teacher intern has met all of the applicable standards;

(k) Contact information for an individual who could provide additional information about the request; and

(l) A signed affidavit by the superintendent, the superintendent's designee, or the designated nonpublic school head or leader confirming the information.

(7) The Education Professional Standards Board staff shall grant the waiver if there is a determination that the request and accompanying documentation sufficiently demonstrate that:

(a) The level of support and services provided to the teacher intern assigned to an alternative school, classroom, or program is equivalent to that provided to a teacher intern placed in a nonalternative setting; and

(b) The teacher intern assigned to the alternative school, classroom, or program shall be provided the opportunity to successfully demonstrate all teaching[Kentucky—Teacher] standards.

(8) If the waiver is granted, it shall remain in effect for the duration of the internship.

Section 5. Designation and Duties of Chair; Responsibilities of Resource Teacher, Teacher Intern, and Teacher Educator; Requirements for Timing and Content of Beginning Teacher Committee Meetings. (1) The principal member of the three (3) person beginning teacher committee shall serve as chair and shall be responsible for convening the committee and coordinating its efforts[by scheduling observations and committee meetings]. The chair shall be responsible for the timely submission of all documents and reports of the beginning teacher committee to the Education Professional Standards Board as required by this administrative regulation.[All documents and reports shall be submitted through the electronic reporting system, or by hard copy if the electronic reporting system is unavailable.] In addition, the chair shall:

(a)1. Make three (3) official observation visits to the teacher intern's classroom with each observation lasting one (1) hour in duration or one (1) class period; or

2. Make two (2) one (1) hour or one (1) class period observation visits followed by an observation of the teacher intern's one (1) hour or one (1) class period videotaped classroom lesson;

(b) Conduct a lesson plan review prior to each of the three (3) observations and a post-observation[postobservation] conference after each observation;

(c) Report progress observed and concerns to the committee at the scheduled committee meetings;

(d) Track and verify[Monitor] the time that the resource teacher spends with the teacher intern both in and out of class[and sign the electronic version of the resource teacher time sheets or the hard copy of the resource teacher time sheets if the electronic reporting system is unavailable]; and

(e) Ensure that all program policies and procedures are followed.

(2) The resource teacher shall be a mentor to the teacher intern and assess the teacher intern's progress in the internship.

(a) The resource teacher,[upon completion of Kentucky Teacher Internship Program Committee Training and,] upon appointment, shall begin to assist the teacher intern.

(b) The resource teacher shall spend the required amount of hours working with the teacher intern in the classroom setting as specified in KRS 161.030(7).

1. As a portion of the hours, the resource teacher shall conduct:

a. Three (3) official observations with each observation lasting one (1) hour in duration or one (1) class period; or

b. Two (2) observations lasting one (1) hour in duration or one (1) class period followed by an observation of the teacher intern's one (1) hour or one (1) class period videotaped classroom lesson.

2. The observations shall be preceded by[a preobservation conference and] lesson plan review and shall be concluded with a post-observation[post-observation] conference.

(c) Pursuant to the resource teacher requirements established in KRS 161.030(7), a resource teacher shall complete out-of-class time identified in KRS 161.030 in consultation with the teacher

intern to:

1. Assist the teacher intern in the development of the professional growth plan;

2. Assist the teacher intern in areas identified in the professional growth plan;

3. Assist the teacher intern with instructional activities such as planning, management techniques, assessment, and parent conferences;

4. Assist the teacher intern in arranging to attend seminars, conferences, or lectures offering educational assistance commensurate with the teacher intern's professional growth plan;

5. Continually assess the teacher intern's progress in the internship in relation to each of the applicable teaching[Kentucky Teacher] standards;

6. Provide the opportunity for the teacher intern to receive mentoring in a collaborative setting if the collaboration meets the needs of the teacher intern as defined in the professional growth plan. Mentoring in a collaborative setting shall be documented[on the Resource Teacher Time Sheet; and

7. Enter and submit data into the online Resource Teacher Time Sheet or the hard copy of that document if the electronic reporting system is unavailable].

(d) The resource teacher shall divide the consultation time required in paragraphs (b) and (c) of this subsection into appropriate increments that provide support for the teacher intern throughout the internship. The resource teacher shall not spend this required consultation time with the teacher intern at required in-school or district-wide meetings, or any other activity for which the resource teacher receives compensation from the district or employing school, to include a professional development activity.

(3) The teacher intern shall:

(a) Complete all requirements of the Kentucky Teacher Internship Program as established in KRS 161.030 and this administrative regulation, including compliance with the applicable teaching[Kentucky Teacher] standards;

(b) Attend the orientation[, pre-observation,] and post-observation conferences with individual committee members, and all beginning teacher committee meetings;

(c) Participate with the resource teacher in consultation time to be spent outside of an instructional setting in the amount of time specified in KRS 161.030;

(d) Cooperate with the resource teacher in completing the instructional observations;

(e) Complete a professional growth plan[PGP];

(f) Prepare for three (3) official one (1) hour observations by each committee member during the internship, including submitting a written lesson plan to the observer in a timely fashion prior to each visit. Each observation shall be one (1) hour in duration or one (1) class period;

(g) Develop documentary evidence of progress toward demonstration of the applicable standards for presentation and review at committee meetings; and

(h) Review all[electronic] documents completed by the beginning teacher committee and affix a[an electronic] signature if required.[If the electronic version of a document is unavailable through the electronic reporting system, the teacher intern shall review and sign a hard copy version of the document.]

(4) The teacher educator shall:

(a)1. Make three (3) official observations of the teacher intern with each observation lasting one (1) hour in duration or one (1) class period; or

2. Make two (2) observations of one (1) hour in duration or one (1) class period, followed by an observation of the teacher intern's one (1) hour or one (1) class period videotaped classroom lesson;

(b) Conduct a lesson plan review prior to each of the three (3) observations and a post-observation[postobservation] conference after each observation; and

(c) Report progress observed and concerns to the committee at the scheduled committee meetings.

(5) Observations and committee meetings shall be scheduled in accordance with the following:

(a) The orientation meeting shall be held prior to the conduct of any formal classroom observations of the teacher intern;

(b) The classroom observations by all committee members shall occur prior to the corresponding committee meeting;

(c) The Cycle 1 classroom observations and ~~second~~ committee meeting shall be held between one (1) and sixty (60) instructional days following the orientation meeting;

(d) The Cycle 2 classroom observations and ~~third~~ committee meeting shall be held between sixty-one (61) and 110 instructional days following the orientation meeting; and

(e) The Cycle 3 taping and reviews of the video or classroom observations and ~~fourth~~ committee meeting shall be held between 111 instructional days after the orientation meeting and by the closing day of the school year ~~140 instructional days following the orientation meeting~~].

(6) Committees formed during the spring semester shall establish a meeting schedule that observes the time sequences established in subsection (5) of this section for the full-year teacher interns but which shall span the spring and fall semesters of two (2) consecutive school years.

(7)(a) Classroom observations conducted by committee members shall be:

1. Of at least one (1) hour or one (1) class period in duration; and

2. In the classroom or at the work station of the teacher intern.

(b) Additional classroom observations may be conducted at the option of the committee.

(c) All classroom observations shall be scheduled in advance in order to provide adequate time for preparation by the teacher intern.

(8) All members of the committee shall attend all four (4) meetings of the committee.

(9) At the orientation meeting of the beginning teacher committee, the following items shall be addressed:

(a) Expectations on the part of the teacher intern and each committee member;

(b) Procedures and materials for classroom observations;

(c) Use of classroom observation data in designing the teacher intern's professional growth plan;

(d) Requirements for the teacher intern for compiling documentary evidence of progress toward demonstration of the applicable teaching standards;

(e) General schedule for the events to take place during the internship program; and

(f) Work of the resource teacher with the teacher intern.

(10)(a) The primary purpose of the Cycle 1 and Cycle 2 ~~second and third~~ committee meetings shall be to provide the teacher intern with information based on classroom observations, review of the teacher intern's documented evidence of progress toward demonstration of the applicable teaching standards, and reports of the resource teacher that shall support the growth of the teacher intern.

(b) The committee shall provide the teacher intern at the cycle committee ~~second, third, and fourth~~ meetings with ~~a consensus assessment of~~ the teacher intern's progress in the internship in relation to the applicable teaching ~~each of the Kentucky Teacher~~ standards.

(11) The professional growth plan ~~(PGP)~~ shall be initiated at the Cycle 1 ~~second~~ committee meeting.

(12) The Cycle 2 committee ~~third~~ meeting shall include a review of expectations for the performance of the teacher intern, taking into account the reflections of the teacher intern and the committee members, and incorporating these expectations and reflections into the professional growth plan ~~(PGP)~~.

(13) The Cycle 3 committee ~~fourth~~ meeting shall include a professional judgment by the committee members on the satisfactory completion of the one (1) year internship. This judgment shall be based upon the teacher intern's ability to meet the requirements of the Kentucky Teacher Internship Program ~~all Kentucky Teacher Standards~~].

(14) If all committee members believe that more time would allow for improved demonstration of the teaching standards, a fourth cycle may be conducted.

(15) Cycle 4 may include additional observations or a review of the teaching standards.

(16) Cycle 4 shall fall within the timelines of Cycle 3 and shall include a committee meeting. Upon completion of Cycle 4, the Cycle 4 results shall replace the Cycle 3 results.

Section 6. Decision by the Beginning Teacher Committee, Reporting, and Certification Actions. (1)(a) The decision of the beginning teacher committee as to satisfactory completion of the internship for all ~~full-year~~ teacher interns shall be reported by the chair to the local school superintendent or other employer and to the Education Professional Standards Board ~~by May 1 or~~ no later than two (2) weeks following the final committee meeting ~~whichever occurs first~~].

(b) ~~For teacher interns completing the internship in December, the final report shall be submitted by December 15.~~

(e) If a teacher intern's performance is judged by the majority of the committee to be unsuccessful, the school district or employing school shall submit all [relevant] ~~the following~~ documentation to the Education Professional Standards Board by the deadline ~~deadlines~~ established in paragraph (a) ~~paragraphs (a) and (b)~~ of this subsection:

1. Record of Teacher Internship Year;

2. Resource Teacher Time Sheets;

3. All Teacher Performance Assessment documents created in compliance with Section 2 of this administrative regulation;

4. School Calendar;

5. Video if available;

6. Any electronic communications that relate to any aspect of the internship sent to the teacher intern along with read receipts and responses back from the teacher intern if available; and

7. ~~The KTIP Intern Performance Record or the KTIP IECE Intern Performance Record~~].

(c) ~~(d)~~ All materials submitted shall become the property of the Education Professional Standards Board and shall not be returned to the teacher intern.

(2) Failure to meet the deadlines established in subsection (1) of this section may warrant action against the District Superintendent's or employing school head or leader's certification.

(3) If a teacher intern's performance is judged by the committee to be unsatisfactory, the teacher intern shall have the opportunity to repeat the internship during one (1) additional school year ~~[contingent upon employment within the period of validity of the statement of eligibility for internship]~~. If the teacher intern does not successfully complete the internship ~~during the period of validity of the statement of eligibility~~, the teacher intern shall requalify for admission to the remaining one (1) year of internship by meeting the requirements in effect at the time of reapplication for certification.

(4)(a) If the teacher intern is unable to complete the internship within one (1) school year in accordance with the requirements of Section 5 of this administrative regulation, an interim report shall be submitted to the Education Professional Standards Board ~~(EPSB)~~ through the electronic system, or by hard copy if the electronic system is unavailable within ten (10) calendar days of the date the internship ceases.

(b) Under extraordinary circumstances and with the approval of the Education Professional Standards Board ~~(EPSB)~~, the teacher intern may continue the internship during a subsequent school year if employed in a public or nonpublic accredited school. Extraordinary circumstances shall include:

1. Medical condition ~~Serious medical conditions~~];

2. Temporary disability; or

3. Military deployment.

(c) The provisions of Section 4(1)(a) or (b) of this administrative regulation shall not apply if the Education Professional Standards Board ~~(EPSB)~~ approves the request for an exception based on extraordinary circumstances in this situation.

Section 7. Payments to Committee Members. (1) The Education Professional Standards Board shall contract with the local school district, or make other appropriate arrangements, for the direct service of a resource teacher to each teacher intern.

(2) A resource teacher shall:

(a) Not serve as a resource teacher for more than two (2)

teacher interns concurrently; and

(b) Be paid a stipend in accordance with subsection (3) of this section.

(3)(a) Contingent upon funding, the Education Professional Standards Board shall provide a stipend ~~in an amount not to exceed \$1,400 per teacher intern~~ to each resource teacher as compensation for out-of-class time spent with the teacher intern.

(b) The stipend shall be prorated if the required number of hours are not performed and documented pursuant to the requirements of Section 5(2) of this administrative regulation.

(c) The stipend shall be disbursed in accordance with KRS 161.030(6)(f) on a biannual basis corresponding to the semester in which the mentoring occurred or on an annual basis for full-year interns with payment being disbursed at the end of the one (1) year internship.

~~1. The frequency of the disbursement shall be at the option of the district if the resource teacher is serving in a public school district.~~

~~2. If the resource teacher is serving in a nonpublic school, the frequency of the disbursement shall be determined by the submission of the resource teacher time sheets.]~~

Section 8. Appeals. (1)(a) If a Beginning Teacher Committee finds that a teacher intern was unsuccessful, the Education Professional Standards Board shall notify the teacher intern by certified mail to the last known address of the teacher intern on file with the Education Professional Standards Board. Service of the notice shall be ~~deemed~~ complete on the day the teacher intern receives the notice or on the day the Education Professional Standards Board receives the returned notice. The teacher intern may inspect the documentation submitted by the beginning teacher committee to the Education Professional Standards Board.

(b) To appeal the decision, the teacher intern shall file a written notice of appeal along with any additional documentation the teacher intern would like the appeals committee to consider within thirty (30) calendar days of the date service was ~~deemed~~ complete ~~the written notice of finding of unsuccessful completion of the internship is received by the teacher intern. If the teacher intern fails to maintain a current address with the Education Professional Standards Board or refuses to claim the certified mail, the teacher intern shall file a written notice of appeal within thirty-five (35) days of the date the notice is mailed to the teacher intern's last known address].~~

(c) If a written notice of appeal is not received within the timeline established in paragraph (b) of this subsection, the Beginning Teacher Committee's decision shall be final.

(2)(a) Appeals by teacher interns shall be reviewed by a committee of four (4) persons. The appeals committee shall include:

1. One (1) teacher;
2. One (1) principal;
3. One (1) teacher educator; and

4. The Executive Director of the Education ~~Education~~ Professional Standards Board, or his or her designee.

~~(b) The appeals committee members shall be chosen from a pool of committee candidates appointed annually by the Education Professional Standards Board.~~

~~(c) An appeals committee member shall not take part in a decision in which the member has an interest or is biased.~~

(3)(a) The appeals committee shall review the written appeal by the teacher intern, any documentation submitted by the teacher intern, all beginning teacher committee reports, any additional documentation that accompanied the final report, and any written responses from the members of the beginning teacher committee.

(b) The appeals committee shall review all of the documentation listed in paragraph (a) of this subsection to determine if the evidence supports the findings of ~~provide~~ deference to the beginning teacher committee and base its recommendation upon the following requirements:

1. Evidence of the teacher intern's ability to meet the requirements of 16 KAR 1:010 ~~the applicable teaching~~ Kentucky

~~Teacher~~ standards;

2. Appropriate Documentation of the instructional setting and outside normal working hours spent by the resource teacher in assisting the teacher intern as specified in KRS 161.030(7);

3. Assignment of beginning teacher committee members in accordance with Section 3 of this administrative regulation ~~legal requirements~~;

4. Compliance with the requirements for the timing, content, reporting, and signing of teacher intern performance records, meeting and observation forms, and resource teacher time sheets; and

5. Agreement between teacher intern performance records, professional growth plans, beginning teacher committee meeting reports, the ~~teacher performance~~ assessment, and the final decision of the committee.

(4) The appeals committee shall make a recommendation to the Education Professional Standards Board on the appeal within sixty (60) calendar days following the receipt of the appeal, unless good cause exists for additional time.

(5) The Education Professional Standards Board shall issue a final decision in each appeal reviewed by the appeals committee. When making its final decision, the Education Professional Standards Board shall ~~may~~ consider only the appeals committee recommendation and the records reviewed by the appeals committee ~~in issuing its decision~~.

~~(6) If the decision of the beginning teacher committee is not upheld, the Education Professional Standards Board shall issue the appropriate certificate to the teacher intern.~~

~~(6) If the decision of the beginning teacher committee is upheld, the Education Professional Standards Board shall issue another Statement of Eligibility for Internship, unless:~~

~~(a) The teacher intern has exhausted the two (2) year provision for participation in the Kentucky Teacher Internship Program; or~~

~~(b) The period of validity of the statement of eligibility has expired.~~

~~(7) If the Education Professional Standards Board determines that there is sufficient credible evidence, during the appeal process, it becomes evident that the beginning teacher committee has committed some procedural violation during the internship that which makes it impossible to determine if the teacher intern has in fact been unsuccessful, the Education Professional Standards Board may nullify the internship and allow the teacher intern to repeat the internship without penalty.~~

(7) After reviewing the appeals committee recommendation, the Education Professional Standards Board shall issue a final order stating whether the teacher internship was successful, not successful, or nullified ~~In its final decision, the Education Professional Standards Board shall make a determination as to whether or not a certification shall be issued.~~

~~(8) If the teacher intern is not satisfied with the decision of the board based on the recommendation of the appeals committee, the teacher intern may request a formal hearing under the provisions of KRS Chapter 13B. The request shall be filed in writing with the Executive Director of the Education Professional Standards Board within fifteen (15) calendar days of the date the board's decision is received by the teacher intern.~~

~~(9) In notifying the teacher intern of the board's decision, the Education Professional Standards Board shall send its decision the decision of the board by certified mail to the address of the teacher intern on file with the EPSB last known address of the teacher intern. Service shall be effective when the teacher intern receives the notice or when the Education Professional Standards Board receives the notice of return. If the teacher intern fails to maintain a current address with the Education Professional Standards Board, or refuses to claim the certified mail, the request for a hearing shall be filed in writing with the Executive Director of the Education Professional Standards Board within (20) calendar days of the date the board's decision is mailed to the teacher intern by certified mail.~~

(9) If the teacher intern is not satisfied with the decision of the Education Professional Standards Board based on the recommendation of the appeals committee, the teacher intern may

request a formal hearing under the provisions of KRS Chapter 13B. The request shall be filed in writing with the Executive Director of the Education Professional Standards Board within fifteen (15) calendar days of the date the board's decision is served on the teacher intern.

Section 9. A teacher intern who has not successfully completed the internship and has exhausted the two (2) year provision for participation in the Kentucky Teacher Internship Program shall not be eligible for a Kentucky teaching certificate under this administrative regulation.

~~[Section 10. A teacher intern serving the internship in Interdisciplinary Early Childhood Education (IECE) shall successfully demonstrate the Kentucky Teacher Standards as adapted to the IECE standards and shall utilize the KTIP IECE Intern Performance Record.~~

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Confirmation of Employment", November 2004;
- (b) "KTIP Intern Performance Record", March 2008;
- (c) "KTIP IECE Intern Performance Record", March 2008;
- (d) "Record of Teacher Internship Year", March 2008; and
- (e) "Resource Teacher Time Sheet", March 2008.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

DAVID WHALEY, Board Chair

APPROVED BY AGENCY: December 12, 2016

FILED WITH LRC: December 14, 2016 at 1 p.m.

CONTACT PERSON: Lisa K. Lang, General Counsel, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 782-2147, fax (502) 564-7080, email LisaK.Lang@ky.gov.

KENTUCKY STATE BOARD OF ELECTIONS (As Amended at ARRS, January 17, 2017)

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)(c); ~~117.236~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 117.235(3)(c) authorizes the board [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, in the voting room 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.

CONTACT PERSON: Lindsay Hughes Thurston, Assistant Secretary of State, 700 Capital Ave., Ste. 152, Frankfort, Kentucky 40601, phone (502) 564-3490, fax (502) 564-5687, email Lindsay.Thurston@ky.gov.

GENERAL GOVERNMENT CABINET Board of Nursing (As Amended at ARRS, January 17, 2017)

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].[(4)] "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(1)(a)(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", ~~1/2017/6/2016~~~~[10/2012]~~, Kentucky Board of Nursing; and

(b) "Application for Provider Renewal", ~~1/2017/6/2016~~~~[10/2012]~~, 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.

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

email nathan.goldman@ky.gov.

GENERAL GOVERNMENT CABINET
Department of Agriculture
Office of Agriculture Marketing and Product Promotion
(As Amended at ARRS, January 17, 2017)

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 established by~~[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~~["]~~ and receive written confirmation of receipt from the KGWC 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 "Expenditure Report" / "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.[-]

(c) Expenditures shall not be reimbursed unless the applicant submits a copy of the receipts for the expenditures and a copy or photo of the expenditures.

(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 by mail or electronically 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[40/09].

(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[400 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.

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.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended at ARRS, January 17, 2017)

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 1]. 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, 2016;

(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;

(ggg)(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;

(hhh)(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;

(iii)(iii) 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;

(iii)(kkk) 40 C.F.R. 60.590a to 60.593a (Subpart GGa), 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;

(kkk)(iii) 40 C.F.R. 60.600 to 60.604 (Subpart HHH), Standards of Performance for Synthetic Fiber Production Facilities, as published July 1, 2016;

(iii)(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;

(mmm)(nnn) 40 C.F.R. 60.620 to 60.625 (Subpart JJJ), Standards of Performance for Petroleum Dry Cleaners, as published July 1, 2016;

(nnn)(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;

(ooo)(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;

(ppp)(ggg) 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;

(ggg)(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;

(rrr)(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;

(sss)(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;

(ttt)(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;

(uuu)(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;

(vvv)(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:

~~(www)(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;

~~(xx)(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;

~~(vv)(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;

~~(zz)(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;

~~(aaaa)(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;

~~(bbbb)(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;

~~(cccc)(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;

~~(dddd)(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;

~~(eeee)(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;

~~(ffff)(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;

~~(gggg)(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;

~~(hhhh)(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 **for which Construction, Modification or Reconstruction Commenced after August 23, 2011, and on or before September 18, 2015, as published July 1, 2016;**

~~(iiii)(jjjj)~~ 40 C.F.R. 60.5360a to 60.5432a, **Tables/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; or**

~~(jjjj)(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**

~~(kkkk)~~ 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.

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.Job@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Audits and Investigations

(As Amended at ARRS, January 17, 2017)

902 KAR 55:015. Schedule I substances.

RELATES TO: KRS 218A.010-218A.050, 21 C.F.R. 1308.11, **21 U.S.C. 801-971**

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) Alphacetylmethadol (except Levo-alphacetylmethadol LAAM);

(2) Acetyl-alpha-methylfentanyl, N-1-(1-methyl-2-phenethyl)-4-piperidinyl-N-phenylacetamide;

(3) Alpha-methylfentanyl, N-1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl propionanilide, 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);

(4) Alpha-methylthiofentanyl, N-1-methyl-2-(2-thienyl) ethyl-4-piperidinyl-N-phenylpropanamide;

(5) Benzylfentanyl, N-1-benzyl-4-piperidyl-N-phenylpropanamide;

(6) Beta-hydroxyfentanyl, N-1-(2-hydroxy-2-phenethyl)-4-piperidinyl-N-phenylpropanamide;

(7) Beta-hydroxy-3-methylfentanyl, N-1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl-N-phenylpropanamide;

(8) Difenoxy;

(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, 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-methylenedioxyamphetamine (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-methylaminopropiofe-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, 21 U.S.C. 801-971, or 21 C.F.R. 1308.11, 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.
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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(As Amended at ARRS, January 17, 2017)

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;

(a) Defined within the operating policies of the center; and
(b) That details how services required by Section 4 of this administrative regulation are established for the center's clients if the center does not have the capacity to provide these services~~(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~~^{caregiver} written instructions that include:^[7]

(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~~^[Any designation as a regional 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. ~~This type of[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

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: November 9, 2016

FILED WITH LRC: November 15, 2016 at 9 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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(As Amended at ARRS, January 17, 2017)

922 KAR 6:010. Standards for community action agencies.

RELATES TO: KRS 45.357, 45A.455, 61.800-61.850, 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 necessary 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:

~~(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.

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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.

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

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

FINANCE AND ADMINISTRATION CABINET
Executive Branch Ethics Commission
(Amended After Comments)

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

RELATES TO: KRS 11A.010, 11A.045, 11A.055

STATUTORY AUTHORITY: KRS 11A.055, 11A.110(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 11A.110(3) authorizes the Executive Branch Ethics Commission to promulgate administrative regulations to implement KRS Chapter 11A. KRS 11A.055 authorizes state agencies or public servants to solicit and accept donations for charitable nonprofit organizations or for programs for crime prevention, drug and alcohol abuse prevention, or traffic safety. This administrative regulation establishes requirements relating to those fundraising activities and provides guidance related to the creation of charitable nonprofit organizations ensuring compliance with KRS 11A.045.

Section 1. Definitions. (1) "Affiliated" means a charitable nonprofit organization that:

- (a) Engages in activities for the benefit of an agency; or
 - 2. Furthers the statutory or regulatory mandates of the agency through the use of contributions solicited from the public; and
 - (b) Is not established, created, or controlled by the agency.
- (2) "Agency" is defined by KRS 11A.010(10).
- (3) "Charitable nonprofit organization" means an entity or corporation:

- (a) **Described in 26 U.S.C. 501(c)(3);**
- (b) **Granted tax exempt status under 26 U.S.C. 501(a); and**
- (c) **Accepts charitable contributions[501(c); and**
- (b) **That may accept charitable contributions as defined by 26 U.S.C. 170(c)].**

(4) "Commission" is defined by KRS 11A.010(2).

(5) "Controlled" means that an agency or a public servant maintains control of a charitable nonprofit organization if at least one (1) of the following apply:

(a) **Public servants of the agency serve as a majority of the officers for or represent a majority of the voting members[The public servant of the agency serves as an officer for or is a voting member]** of the governing board of the charitable nonprofit organization:

(b) The agency or the public servant selects, elects, appoints, or removes **a majority of the officers or voting members** of the governing board of the charitable nonprofit organization or a portion thereof;

(c) The agency provides on an ongoing basis staff, resources, or office space with no recompense from the charitable nonprofit organization to the agency unless **otherwise authorized by statute or** the staff, resources, or office space are provided pursuant to an agreement made in accordance with the provisions of KRS Chapter 45A; or

(d) The public servant directs the use of the funds of the charitable nonprofit organization or has signatory authority of the charitable nonprofit organization's accounts.

(6) "Created" means an agency or a public servant has filed articles of incorporation with the office of the Secretary of State to form the **charitable nonprofit[charitable]** organization.

(7) "Established" means an agency or a public servant:

(a) Files documentation with the Internal Revenue Service to create the charitable nonprofit organization pursuant 26 U.S.C. 501(c); or

(b) Drafts bylaws or other governing documents under which a charitable nonprofit organization operates.

(8) **"Operating expenses" means the basic costs of an agency to function according to its statutory or regulatory mandates;**

(a) Such as costs associated with rental of facilities, utilities, computing services, janitorial, security guard,

postage, office supplies, dues, subscriptions, and copier and printing services; and

(b) With the exception of costs associated with programs and services provided to the public or extraordinary costs associated with these programs or services.

(9) **"Personnel costs" means the baseline salary costs of an agency as determined through the budgetary process for personnel;**

(a) Such as travel expenses, per diem payments, FICA, retirement, health insurance premiums, life insurance premiums, and worker's compensation payments; and

(b) With the exception of personnel costs associated with programs and services provided to the public or extraordinary costs associated with these programs or services.

(10) "Public servant" is defined by KRS 11A.010(9).

(9)[(11)] "Recompense" means payment by a charitable nonprofit organization to an agency either through monetary compensation or **non-monetary consideration given in[like-kind] exchange for the value of rental or use of state-owned facilities, agency personnel, goods, resources, or services.**

Section 2. For the purposes of this administrative regulation:

(1)[.] A public servant shall be limited to an individual who is acting on behalf of a state agency in the course and scope of his or her state employment; and

(2) **Unless otherwise authorized by statute.**

Section 3. Category I. (1) A charitable nonprofit organization~~[established, created, and]~~ controlled by an agency shall constitute a part of that agency.

(2) A charitable nonprofit organization under subsection (1) of this section shall be subject to the Executive Branch Code of Ethics, pursuant to KRS Chapter 11A.

(3) To ensure compliance with KRS 11A.045, a charitable nonprofit organization under subsection (1) of this section shall not accept confidential contributions.

(4) Public servants of an agency shall not solicit contributions to the charitable nonprofit organization under subsection (1) of this section if the agency is prohibited from accepting these contributions under KRS 11A.045.

Section 4. Category II. (1) A Category II charitable nonprofit organization shall be an entity that:

(a) is created or established, but not controlled, by an agency; and

(b) **Does not have as one (1) of its purposes or functions to serve the agency, the agency's statutory or regulatory mandates, or the agency's programs].**

(2) A Category II charitable nonprofit organization may support similar goals of the agency and shall not be subject to the provisions of Section 3 of this administrative regulation if it does not provide funding directly or indirectly to the agency **unless otherwise authorized by statute.**

Section 5. Category III. (1) A Category III charitable nonprofit organization shall be an entity that is not created, established, or controlled by an agency, but may be affiliated with an agency.

(2) A Category III charitable nonprofit organization shall not be subject to the provisions of Section 3 of this administrative regulation.

Section 6. (1) Pursuant to KRS 11A.055, all funds raised by an agency or a public servant on behalf of a Category II or III charitable nonprofit organization shall be delivered to the charitable nonprofit organization or other statutorily authorized program. An[Any] agency [or other entity] involved in the fundraising effort shall not retain any funds.

(2) An[Section 2. A state] agency or public servant shall not enter into a contract with an entity to raise funds for a Category II or III charitable nonprofit organization or program pursuant to KRS

11A.055 if the contract provides that ~~the~~:

(1) ~~The fundraising~~ agency shall:

(a) Be paid out of the funds raised; ~~or~~

(b) Receive a commission based on funds raised; or

(c) ~~Receive~~(2) any portion of the funds ~~to~~~~shall not~~ be delivered to the charitable organization or program.

(3) Except as provided in Section 7 of this administrative regulation, an agency may assign or permit a public servant to work on behalf of a Category II or III charitable nonprofit organization if:

(a) The public servant does not devote more than 100 hours per calendar year working on behalf of a Category II or III charitable nonprofit organization unless otherwise authorized by statute; and

(b) The agency determines in writing that these working hours are necessary to fulfill the statutory, regulatory, or programmatic mandates of the agency.

Section 7. An agency may devote state time and resources to any category charitable nonprofit organization without recompense from the charitable nonprofit organization if:

(1) These activities are conducted for a cooperatively sponsored event; and

(2) The event is conducted to further the statutory, regulatory, or programmatic mandates of the agency.

WILLIAM DAVID DENTON, Chair

APPROVED BY AGENCY: January 13, 2017

FILED WITH LRC: January 13, 2017 at 9 a.m.

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 Branch agencies and public servants concerning fundraising activities related to charitable nonprofit organizations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to interpret the application of KRS 11A.055 to the conduct of Executive Branch agencies that fundraise for charitable purposes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides guidance as dictated by KRS 11A.055 and provides guidance pursuant to KRS 11A.110(3) for the implementation of KRS Chapter 11A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently provides guidance for the implementation of KRS 11A.055 in relation to fundraising activities of Executive Branch agencies.

(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 to provide guidance to those Executive Branch agencies that have established, created, or control charitable nonprofit organizations to ensure that these agencies are not violating KRS 11A.045.

(b) The necessity of the amendment to this administrative regulation: This amendment to the administrative regulation is required because Executive Branch agencies have been increasingly establishing, creating, and controlling charitable nonprofit organizations under the allowances provided in KRS 11A.055, but without taking into account the necessity of following KRS 11A.045. KRS 11A.055 allows public servants and state agencies to fundraise for charities when all of the funds raised are given to the charity. However, this regulation addresses when the

funds raised are given to the state agency to ensure compliance with KRS 11A.045, the gift prohibition.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment to the administrative regulation conforms to the provisions established by KRS 11A.055 that allow public servants and agencies to fundraise for charitable purposes and provides guidance for agencies that create such nonprofit charitable organizations with the purpose of supporting the agencies own mandates, but ensuring such agencies do not violate the gift prohibitions provided in KRS 11A.045.

(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.055 and ensuring agencies do not violate KRS 11A.045 when the funds are to be given to a state agency.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Executive Branch Agencies, public servants, and charitable nonprofit organizations.

(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 Branch Agencies and public servants will have to ensure that they follow the guidance when conducting fundraising activities for charitable purposes or when establishing, creating, and controlling charitable nonprofit organizations to benefit the state agency.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to follow the guidance when conducting fundraising activities for charitable purposes or when establishing, creating, and controlling charitable nonprofit organizations to benefit the agency.

(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 Agencies and public servants will have guidance and clarity to the provisions of KRS 11A.055 and KRS 11A.045 when conducting fundraising activities for charitable purposes or when establishing, creating, and controlling charitable nonprofit organizations.

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

(a) Initially: Minimal costs to the Executive Branch Ethics Commission associated with the publication of training materials and conducting education already provided in the Commission's budget.

(b) On a continuing basis: Minimal costs to the Executive Branch Ethics Commission associated with the ongoing publication of training materials and conducting education already provided in the Commission's budget.

(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.110(3), 11A.045, and 11A.055.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? This administrative regulation will not generate any revenue? 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? \$500 for publications and training; funds already included in the Executive Branch Ethics Commission's budget.

(d) How much will it cost to administer this program for subsequent years? \$500 for publication and training; funds already included in the Executive Branch Ethics 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:

**GENERAL GOVERNMENT CABINET
Board of Licensed Professional Counselors
(Amended After Comments)**

201 KAR 36:020. Fees[renewal date].

RELATES TO: KRS 335.525(6), 335.535(1), (2), (4)

STATUTORY AUTHORITY: KRS 335.515(3), 335.525(6), 335.535(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(3) and 335.525(6), and 335.535(2) require the board to promulgate administrative regulations relating to the establishment of fees. This administrative regulation establishes the application, renewal, and reinstatement fees for a professional counselor and a professional counselor associate and the date a licensure shall~~must~~ be renewed.

Section 1. Application Fee. (1) The application fee for licensure as a professional counselor shall be \$150.

~~(2) If the application is denied, \$125 of the application fee shall be refunded.~~

~~(3) The application fee for licensure as a professional counselor associate shall be fifty (50) dollars.~~

~~(4) If an applicant for a professional counselor associate is denied, twenty-five (25) dollars of the application fee shall be refunded.~~

Section 2. Renewal Fees and Penalties. (1)(a) The annual renewal fee for licensure as a professional counselor shall be \$150.;

(b) The annual renewal fee for licensure as a professional counselor associate shall be fifty (50) dollars.

(2) The late renewal fee for late renewal during the sixty (60) day grace period shall be:

(a) Twenty-five (25) dollars for licensure as a professional counselor; and

(b) Ten (10) dollars for licensure as a professional counselor associate.

(3) The reinstatement fee for licensure renewal after the end of the sixty (60) day grace period shall be:

(a) ~~\$100[Fifty (50) dollars]~~ for licensure as a professional counselor; and

(b) ~~Forty (40)[Twenty (20)]~~ dollars for licensure as a professional counselor associate.

~~[(4) Renewal and reinstatement fees shall not be refundable.]~~

Section 3. ~~All fees shall be non-refundable~~~~[Renewal Date. (1) The renewal date for licensure shall be October 31.~~

~~(2) The renewal fee for the first renewal shall be waived for a person receiving licensure within 120 days prior to the renewal date].~~

MARTIN C. WESLEY, Chairperson

APPROVED BY AGENCY: January 13, 2017

FILED WITH LRC: January 13, 2017 at 11 a.m.

CONTACT PERSON: Kayla Mann, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8803, fax (502) 696-5836, email Kayla.Mann@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kayla Mann

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation established the application, renewal, and reinstatement fees and penalties associated with filing a late renewal application.

(b) The necessity of this administrative regulation: This regulation is necessary to establish fees required by the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation informs applicants and licensees the fees required to obtain and maintain a 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: The amendment makes the fees non-refundable. Presently, the board reimburses all but \$25.00 of an application fee if the application is denied.

(b) The necessity of the amendment to this administrative regulation: The board is receiving numerous applications from unqualified applicants who requests administrative proceeding which increases the board costs to operation.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding fees.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will hopefully limit the number of unqualified applicants who not faces a minimal cost associated with filing an application.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. There are presently 1534 licensed professional clinical counselors and 911 licensed professional clinical counselor associates.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no actions needed to be taken for compliance 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): There is no cost associated with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants and licensees are informed that the fees are non-refundable.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 335.515(3), 335.525(6), and 335.535.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The Board refunded \$1,925 for the fiscal year of July 1, 2015 to June 30, 2016.

(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: The Board refunded \$1,925 for the fiscal year of July 1, 2015 to June 30, 2016. Many of these refunds was collateral with an expense associated with a KRS Chapter 13B hearing from the denial of an application. Under the amendment, the board would retain those funds under this amendment.

GENERAL GOVERNMENT CABINET Board of Licensed Professional Counselors (Amended After Comments)

201 KAR 36:040. Code of ethics.

RELATES TO: KRS 335.540(1)(g)

STATUTORY AUTHORITY: KRS 335.515(3), (7), (11)

NECESSITY AND FUNCTION: KRS 335.515(11) requires the board to promulgate a code of ethics for licensed professional counselors and licensed professional counselor associates. This administrative regulation establishes the required code of ethics.

Section 1.[Definitions. (1) "Client" means:

(a) ~~An individual, family, or group for whom the licensee provides services within the context of the licensee's practice of professional counseling;~~

(b) ~~A corporate entity or other organization if the licensee provides a service of benefit directly to the corporate entity or organization; or~~

(c) ~~A legal guardian who is responsible for making decisions relative to the provision of services for a minor or legally incompetent adult.~~

(2) ~~"Dual relationship" means a social, business, or personal relationship between a licensee and a client that coexists with the professional-client relationship between the licensee and the client.~~

Section 2.] Responsibility to Clients. (1) A professional counselor shall:

(a) Advance and protect the welfare of his client;

(b) Respect the rights of a person seeking his assistance; and

(c) Make reasonable efforts to ensure that his services are used appropriately.

(2) A professional counselor shall not:

(a) Discriminate against or refuse professional service to anyone on the basis of race, gender, religion, or national origin;

(b) Exploit the trust and dependency of a client;

(c) 1. Engage in a dual relationship with a client that might:

a. Impair professional judgment;

b. Incur a risk of exploitation of the client; or

c. Otherwise violate a provision of this administrative regulation.

2. If a dual relationship cannot be avoided, and does not impair professional judgment, incur a risk of exploitation of the client, or otherwise violate a provision of this administrative regulation, a professional counselor shall take appropriate professional precautions to ensure that judgment is not impaired and exploitation of the client does not occur, which shall include:

a. Written informed consent by the client of the client's understanding of the general prohibitions against dual relationships:

b. Peer consultation by a licensed professional~~[listed in 201 KAR 36:060, Section 3]; and~~

c. Proper documentation of the precautions taken by the professional counselor~~[licensee]~~.

(d) Engage in a sexual, romantic interaction, or an intimate relationship with a current client or with a former client for five (5) years following the termination of counseling. This prohibition shall apply to both in-person and electronic interactions or relationships;

(e) Use his professional relationship with a client to further his own interests;

(f) Continue therapeutic relationships unless it is reasonably clear that the client is benefiting from the relationship;

(g) Fail to assist a person in obtaining other therapeutic services if the professional counselor is unable or unwilling, for appropriate reasons, to provide professional help;

(h) Abandon or neglect a client in treatment without making reasonable arrangements for the continuation of treatment;

(i) Videotape, record, or permit third-party observation of counseling sessions without having first obtained written informed consent from the client;

(j) Engage in sexual or other harassment or exploitation of his client, student, trainee, supervisee, employee, colleague, research

subject, or actual or potential witness or complainant in investigations and ethical proceedings; or

(k) Diagnose, treat, or advise on problems outside the recognized boundaries of his competence.

Section 2. Professional Counselors' Obligations and Duties. (1)

A professional counselor shall safeguard and maintain documentation necessary for rendering professional services.

(2) Regardless of the medium, a professional counselor shall include sufficient and timely documentation to facilitate the delivery and continuity of services. The documentation shall accurately reflect client progress and services provided.

(3) If an amendment is made to a record or documentation, a professional counselor shall properly note the amendment in the client's record.

(4) A professional counselor and the client shall work jointly in devising a counseling plan that offers a reasonable promise of success and is consistent with the abilities, temperament, developmental level, and circumstances of the client.

(5) A professional counselor and the client shall regularly review and revise the **client's** counseling plan[plans] to assess the plan's continued viability and effectiveness, respecting **the** client's freedom of choice.

(6) A professional counselor shall review in writing and verbally with a client the rights and responsibilities of a professional counselor and a client.

(7) A professional counselor shall provide adequate information about the client's freedom of choice, the counseling process, and the professional counselor so a client may make an educated decision whether to enter into or remain in a counseling relationship.

(8) Informed consent shall be an ongoing part of the counseling process, and a professional counselor shall appropriately document discussions of informed consent throughout the counseling relationship.

(9) A professional counselor shall explicitly explain to a client the nature of all services provided. The information shall include the purposes, goals, techniques, procedures, limitations, potential risks, and benefits of services; the counselor's qualifications, credentials, relevant experience, and approach to counseling; continuation of services upon the incapacitation or death of the counselor; the role of technology; and other pertinent information.

(10) A professional counselor shall take steps to ensure that clients understand the implications of diagnosis and the intended use of tests and reports.

(11) A professional counselor shall inform a client about fees and billing arrangements, including procedures for nonpayment of fees.

(12) A professional counselor shall communicate information in ways that are both developmentally and culturally appropriate.

(13) A professional counselor shall use clear and understandable language when discussing issues related to informed consent.

(14) When counseling minors, incapacitated adults, or other persons unable to give voluntary consent, a professional counselor shall seek the assent of the client to services and include them in decision making as appropriate.

(15) A professional counselor shall recognize the need to balance the ethical rights of clients to make choices, their capacity to give consent or assent to receive services, and parental or familial legal rights and responsibilities to protect these clients and make decisions on their behalf.

(16) A professional counselor shall discuss the required limitations to confidentiality when working with clients who have been mandated for counseling services.

(17) A professional counselor shall explain what type of information and with whom that information is shared prior to the beginning of counseling. The client may choose to refuse services. In this case, a professional counselor shall, to the best of their ability, discuss with the client the potential consequences of refusing counseling services.

(18) When a professional counselor learns that a client is in a professional relationship with another mental health professional,

the professional counselor shall request release from the client to inform the other mental health professional and strive to establish a positive and collaborative professional relationship.

(19) A professional relationship shall avoid harming a client, supervisee, trainee, **or[and]** research participant and shall minimize or remedy unavoidable or unanticipated harm.

(20) A professional **counselor[relationship]** shall be aware of and avoid imposing the professional counselor's values, attitudes, beliefs, **or[and]** behaviors on a client.

(21) A professional counselor shall respect the diversity of clients, trainees, and research participants and seek training in areas in which they are at risk of imposing their values onto clients, especially when the professional counselor's values are inconsistent with the client's goals or are discriminatory in nature.

(22) A professional counselor shall refrain from referring prospective and current clients based solely on the counselor's personally held values, attitudes, beliefs, and behaviors.

(23) A professional counselor shall seek training in areas in which a professional counselor is at risk of imposing his or her values onto clients, especially when the professional counselor's values are inconsistent with the client's goals or are discriminatory in nature.

(24) A professional counselor shall not engage in a counseling relationship with a person with whom the professional counselor has had a previous sexual or romantic relationship.

(25) A professional counselor shall not engage in a counseling relationship with friends or family members with whom the professional counselor has an inability to remain objective.

(26) A professional counselor shall consider the risks and benefits of accepting as clients those with whom the professional counselor has had a previous relationship. These potential clients may include individuals with whom the counselor has had a casual, distant, or past relationship. Examples include mutual or past membership in a professional association, organization, or community.

(27) When a professional counselor accepts a client with whom the professional counselor has had a previous relationship, the professional counselor shall take the appropriate professional precautions such as informed consent, consultation, supervision, and documentation to ensure that judgment is not impaired and no exploitation occurs.

(28) A professional counselor shall consider the risks and benefits of extending current counseling relationships beyond conventional parameters. Examples of extending these boundaries of the counseling relationship include attending a client's wedding or commitment ceremony or graduation; purchasing a service or product provided by a client, excepting unrestricted bartering; and visiting a client's ill family member in the hospital.

(29) A professional counselor shall take appropriate professional precautions such as informed consent, consultation, supervision, and documentation to ensure that **the client's or supervisee's** judgment is not impaired and no harm occurs.

(30) When a professional counselor changes a role from the original or most recent contracted relationship, a professional counselor shall obtain informed consent from the client and explain the client's right to refuse services related to the change.

(31) A professional counselor shall fully inform a client of any anticipated consequences including financial, legal, personal, or therapeutic if the professional counselor role changes. Examples of role changes include changing from:

(a) Individual to relationship or family counseling, or vice versa;

(b) An evaluative role to a therapeutic role, or vice versa; or

(c) A counselor to a mediator role, or vice versa.

(32) A professional counselor shall not enter into non-professional relationships with a former client, the client's romantic partners, or the client's family members when the interaction is potentially harmful to the client. This applies to both in-person and electronic interactions or relationships.

(33) When a professional counselor agrees to provide counseling services to two (2) or more persons who have a relationship, the professional counselor shall clarify at the outset which person or persons are the client or clients and the nature of the relationships the professional counselor shall have with each

involved person. If it becomes apparent that the professional counselor may be called upon to perform potentially conflicting roles, the professional counselor shall clarify, adjust, or withdraw from roles appropriately.

(34) A professional counselor shall screen prospective group counseling or therapy participants.

(35) To the extent possible, a professional counselor shall select members whose needs and goals are compatible with the goals of the group, who will not impede the group process, and whose well-being will not be jeopardized by the group experience.

(36) In a group setting, a professional counselor shall take reasonable precautions to protect clients from physical, emotional, or psychological trauma.

(37) A professional counselor may barter only if the client requests and the bartering **for services** does not result in exploitation or harm to the client.

(38) A professional counselor shall consider the cultural implications of bartering **for services** and discuss relevant concerns with the client and document any agreed upon bartering agreements in a written contract.

(39) A professional counselor shall understand the challenges of accepting gifts from clients and recognize that in some cultures, small gifts are a token of respect and gratitude. When determining whether to accept a gift from a client, a professional counselor shall take into account the therapeutic relationship, the monetary value of the gift, the client's motivation for giving the gift, and the counselor's motivation for wanting to accept or decline the gift.

(40) If a professional counselor lacks the competence to be of professional assistance to a client, the professional counselor shall not enter or continue a counseling relationship.

(41) A professional counselor shall terminate a counseling relationship when it becomes reasonably apparent that the client no longer needs assistance, is not likely to benefit, or is being harmed by continued counseling.

(42) A professional counselor may terminate counseling when in jeopardy of harm by the client or by another person with whom the client has a relationship, or when clients do not pay fees as agreed upon.

(43) A professional counselor shall provide pretermination counseling and recommend other service providers when necessary, **unless counseling was terminated in accordance with subsection (42) of this section.**

Section 3. Evaluation, Assessment, and Interpretation. (1) A professional counselor shall not misuse assessment results **or[and]** interpretations, and a professional counselor shall take reasonable steps to prevent others from misusing the information provided.

(2) A professional counselor shall respect a client's right to know the results, the interpretations made, and the bases for the professional counselor's conclusions and recommendations.

(3) A professional counselor shall use only those testing and assessment services for which the professional counselor has been trained and is competent. A professional counselor using technology-assisted test interpretations shall be trained in the construct being measured and the specific instrument being used prior to using its technology-based application. A professional counselor shall take reasonable measures to ensure the proper use of assessment techniques by persons under their supervision.

(4) A professional counselor shall be responsible for the appropriate application, scoring, interpretation, and use of assessment instruments relevant to the needs of the client, whether they score and interpret the assessments themselves or use technology or other services.

(5) A professional counselor shall be responsible for decisions involving individuals or policies that are based on assessment results and have a thorough understanding of psychometrics.

(6) Prior to an assessment, a professional counselor shall explain the nature and purposes of assessment and the specific use of results by potential recipients. The explanation shall be given in terms and language that the client or other legally authorized person on behalf of the client can understand.

(7) A professional counselor shall consider the client's welfare,

explicit understandings, and prior agreements in determining who receives the assessment results.

(8) A professional counselor shall include accurate and appropriate interpretations with any release of individual or group assessment results.

(9) A professional counselor shall release assessment data in which the client is identified only with the consent of the client or the client's legal representative. Data shall be released only to persons recognized by the professional counselor as qualified to interpret the data.

(10) A professional counselor shall take special care to provide proper diagnosis of mental disorders. Assessment techniques, including personal interviews, used to determine client care which includes locus of treatment, type of treatment, recommended follow-up, shall be appropriate for the client and appropriately used.

(11) A professional counselor may refrain from making a diagnosis if the professional counselor believes that the diagnosis would cause harm to the client or others. A professional counselor shall carefully consider both the positive and negative implications of a diagnosis.

(12) If a client is referred to a third party for assessment, the professional counselor shall provide specific referral questions and sufficient objective data about the client to ensure that appropriate assessment instruments are utilized.

(13) When assessments are not administered under standard conditions, as may be necessary to accommodate clients with disabilities, or when unusual behavior or irregularities occur during the administration, those conditions shall be noted in interpretation, and the results may be designated as invalid or of questionable validity.

(14) A professional counselor shall provide an appropriate environment for the administration of assessments. The appropriate environment shall include privacy, comfort, and freedom from distraction.

(15) A professional counselor shall ensure that technologically administered assessments function properly and provide a client with accurate results.

(16) Unless the assessment instrument is designed, intended, and validated for self-administration or scoring, a professional counselor shall not permit unsupervised use.

(17) A professional counselor shall select and use with caution assessment techniques normed on populations other than that of the client. A professional counselor shall recognize the effects of age, color, culture, disability, ethnic group, gender, race, language preference, religion, spirituality, sexual orientation, and socioeconomic status on test administration and interpretation, and place test results in proper perspective with other relevant factors.

(18) A professional counselor shall accurately describe the purpose, norms, validity, reliability, and applications of the procedures and any special qualifications applicable to their use.

(19) A professional counselor shall maintain the integrity and security of tests and assessments consistent with legal and contractual obligations. A professional counselor shall not appropriate, reproduce, or modify published assessments or parts thereof without acknowledgment and permission from the publisher.

(20) A professional counselor shall use established scientific procedures, relevant standards, and current professional knowledge for assessment design in the development, publication, and utilization of assessment techniques.

(21) When providing forensic evaluations, the primary obligation of a professional counselor shall be unbiased and produce objective findings that can be substantiated based on information and techniques appropriate to the evaluation, which may include examination of the individual or review of records.

(22) A professional counselor shall form his or her professional opinions based on the counselor's professional knowledge and expertise that can be supported by the data gathered in evaluations.

(23) A professional counselor shall define the limits of their reports or testimony, especially when an examination of the individual has not been conducted.

(24)(a) A professional counselor shall inform an individual who is the subject of a forensic evaluation, in writing, that the relationship:

1. Is for the purposes of an evaluation;
2. Is not therapeutic in nature; and
3. Identifies the entities or individuals who will receive the evaluation report.

(b) A professional counselor who ~~performs~~**[perform]** forensic evaluations shall obtain written consent from those being evaluated or from their legal representative unless a court orders evaluations to be conducted without the written consent of the individuals being evaluated or the individual's parent or guardian.

(25) A professional counselor shall not evaluate current or former clients, clients' romantic partners, or clients' family members forensically.

Section 4[3]. Confidentiality. (1) A professional counselor shall respect and guard the confidences of each individual client.

(2) A professional counselor shall protect the confidential information of prospective, current, and former clients.

(3) A professional counselor shall disclose information only with appropriate consent or with sound legal or ethical justification.

(4) A professional counselor~~[counselors]~~ shall not disclose a client confidence except:

(a) Pursuant to KRS 202A.400, 620.030, or 645.270 or as otherwise mandated, or permitted by law;

(b) To prevent a clear and immediate danger to a person;

(c) During the course of a civil, criminal, or disciplinary action arising from the therapy, at which the professional counselor is a defendant; or

(d) In accordance with the terms of a written waiver. If more than one (1) person in a family receives counseling, a professional counselor shall not disclose information from a particular family member unless he has obtained a waiver from that individual family member. If the family member is a minor, a custodial parent or legal guardian may provide a waiver.

(5)~~(3)~~ A professional counselor may use client or clinical materials in teaching, writing, and public presentations if:

(a) A written waiver has been obtained in accordance with subsection ~~(4)(d)~~~~(2)(d)~~ of this section; or

(b) Appropriate steps have been taken to protect client identity and confidentiality.

~~(6)(4)~~ A professional counselor shall ensure that **client** records and documentation kept in any medium are:

(a) Secure and that only authorized persons have access to them;~~;~~~~]~~ and~~[shall store or]~~

(b) ~~Disposed~~**[dispose]** of client records so~~[as to maintain]~~ confidentiality **is maintained**.

(7)(a) The requirement that a professional counselor shall keep information confidential shall not apply when disclosure is required to protect a client or identified others from serious and foreseeable harm or when legal requirements demand that confidential information shall be revealed.

(b) A professional counselor may consult with other professionals when in doubt as to the validity of an exception.

(8) A professional counselor who provides services to a terminally-ill individual who is considering hastening the individual's death may maintain confidentiality, depending on applicable laws and the specific circumstances of the situation and after seeking consultation or supervision from appropriate professional and legal parties.

(9)(a) A professional counselor shall adhere to relevant state laws concerning disclosure about disease status.

(b) When a client discloses that the client has a disease commonly known to be both communicable and life threatening, a professional counselor shall be justified in disclosing information to identifiable third parties, if the parties are known to be at serious and foreseeable risk of contracting the disease.

(c) Prior to making a disclosure, a professional counselor shall assess the intent of the client to inform the third party about the client's disease or to engage in any behaviors that may be harmful to an identifiable third party.~~[A professional counselor shall adhere to relevant state laws concerning disclosure about~~

disease status.]

(10) A professional counselor shall make every effort to ensure that privacy and confidentiality of a client is maintained by subordinates, including employees, supervisees, students, clerical assistants, and volunteers.

(11) When services provided to a client involve participation by an interdisciplinary or treatment team, a professional counselor shall inform the client of the team's existence and composition, information being shared, and the purposes of sharing the information.

(12) A professional counselor shall take precautions to ensure the confidentiality of all information transmitted through the use of any medium.

(13) A professional counselor shall protect the confidentiality of a deceased client, consistent with legal requirements and the documented preferences of the client.

(14) In group work, a professional counselor shall clearly explain the importance and parameters of confidentiality for the specific group.

(15) In couples and family counseling, a professional counselor shall clearly define who is considered the client, and discuss expectations and limitations of confidentiality. A professional counselor shall obtain an agreement and document in writing the agreement among all involved parties regarding the confidentiality of information. In the absence of an agreement to the contrary, the couple or family shall be considered to be the client.

(16) When counseling minor clients or adult clients who lack the capacity to give voluntary informed consent, a professional counselor shall protect the confidentiality of information received in the counseling relationship as specified by federal and state laws, written policies, and applicable ethical standards.

(17) A professional counselor shall inform parents and legal guardians about the role of professional counselor and the confidential nature of the counseling relationship, consistent with current legal and custodial arrangements. A professional counselor shall work to establish, as appropriate, collaborative relationships with parents or guardians to best serve the client.

(18) When counseling minor clients or adult clients who lack the capacity to give voluntary consent to release confidential information, a professional counselor shall obtain written permission from an appropriate third party to disclose information. In these instances, a professional counselor shall inform clients consistent with their level of understanding and take appropriate measures to safeguard client confidentiality.

(19) A professional counselor shall obtain written permission from a client prior to allowing any person to observe counseling sessions, review session transcripts, or view recordings of sessions with supervisors, faculty, peers, or others within the training environment.

(20) A professional counselor shall provide reasonable access to records and copies of records when requested by a competent client.

(21) A professional counselor shall limit the access of a client to a client's records, or portions of a client's records, only when there is compelling evidence that the access would cause harm to the client.

(22) A professional counselor shall document the request of a client and the rationale for withholding some or all of the records in the files of clients.

(23) In situations involving multiple clients, a professional counselor shall provide an individual client with only those parts of records that relate directly to that client and do not include confidential information related to any other client.

(24) When clients request access to their records, a professional counselor shall provide assistance and consultation in interpreting counseling records.

(25) Unless exceptions to confidentiality exist, a professional counselor shall obtain written permission from clients to disclose or transfer records to legitimate third parties.

(26) A professional counselor shall store records following termination of services to ensure reasonable future access, maintain records in accordance with federal and state laws and statutes such as licensure laws and policies governing records.

and dispose of client records and other sensitive materials in a manner that protects client confidentiality for a period of not less than seven (7) years after the last date that services were rendered.

(27) Information shared in a consulting relationship shall be discussed for professional purposes only. Written and oral reports present only data germane to the purposes of the consultation, and every effort shall be made to protect client identity and to avoid undue invasion of privacy.

(28) When consulting with colleagues, a professional counselor shall not disclose confidential information that reasonably could lead to the identification of a client or other person or organization with whom the professional counselor has a confidential relationship unless the professional counselor has obtained the prior consent of the person or organization or the disclosure cannot be avoided. A professional counselor shall disclose information only to the extent necessary to achieve the purposes of the consultation.

Section 5[4]. Professional Competence and Integrity. (1) A professional counselor shall maintain standards of professional competence and integrity and shall be subject to disciplinary action in accordance with KRS 335.540:

[(1)](a)1. Upon conviction of a felony, or a misdemeanor related to his practice as a professional counselor; and

2. [(b)] Conviction shall include adjudication based on:

a. [(1-)] A plea of no contest or an "[Alford Plea]"; or

b. [(2-)] The suspension or deferral of a sentence;

[(b)](2) If his license or certificate is subject to disciplinary action by another state's regulatory agency that the board determines violates applicable Kentucky state law or administrative regulation;

[(c)](3) Upon a showing of impairment due to mental incapacity or the abuse of alcohol or other substances ~~that[which]~~ could reasonably be expected to negatively impact the practice of professional counseling; or

(d) If [(4)] he has failed to cooperate with the board by not:

1. [(a)] Furnishing in writing a complete explanation to a complaint filed with the board;

2. [(b)] Appearing before the board at the time and place designated; or

3. [(e)] Properly responding to subpoenas issued by the board.

(2) A professional counselor shall practice only within the boundaries of their competence, based on their education, training, supervised experience, state and national professional credentials, and appropriate professional experience.

(3) While developing skills in new specialty areas, a professional counselor shall take steps to ensure the competence of their work and protect others from possible harm.

(4) A professional counselor shall monitor oneself for signs of impairment from his or her own physical, mental, or emotional problems and refrain from offering or providing professional services when impaired. A professional counselor shall seek assistance for problems that reach the level of professional impairment, and, if necessary, the professional counselor shall limit, suspend, or terminate his or her professional responsibilities until it is determined that he or she may safely resume professional counseling.

~~[(5)] A professional counselor may assist colleagues or supervisors in recognizing their own professional impairment and provide consultation and assistance when warranted with colleagues or supervisors showing signs of impairment and intervene as appropriate to prevent imminent harm to clients.~~

[(6)] When advertising or otherwise representing services to the public, a professional counselor shall identify the professional counselor's credentials in an accurate manner that is not false, misleading, deceptive, or fraudulent.

[(6)](7) A professional counselor shall accurately represent the professional counselor's qualifications.

[(7)](8) A professional counselor shall clearly distinguish between paid and volunteer work experience and accurately describe the professional counselor's continuing education and specialized training.

~~[(8)](9) A professional counselor shall correct any known misrepresentations of his or her qualifications by another.~~

~~[(9)](10) A professional counselor shall truthfully represent the qualifications of a professional colleague.~~

~~[(10)](11) A professional counselor shall only claim licenses or certifications that are current and in good standing.~~

~~[(11)](12) A professional counselor shall clearly differentiate between earned and honorary degrees.~~

~~[(12)](13) A professional counselor shall clearly state the professional counselor's highest earned degree in counseling or a closely related field.~~

~~[(13)](14) A professional counselor shall not imply doctoral-level competence when possessing a master's degree in counseling or a related field by referring to oneself as a doctor in a counseling context when their doctorate is not in counseling or a related field.~~

~~[(14)](15) A professional counselor shall not use all but dissertation (ABD) or other similar terms to imply competency.~~

~~[(15)](16) A professional counselor shall not condone or engage in discrimination against prospective or current clients, students, employees, supervisees, or research participants based on age, culture, disability, ethnicity, race, religion, spirituality, gender, gender identity, sexual orientation, marital or partnership status, language preference, socioeconomic status, immigration status, or any basis proscribed by law.~~

~~[(16)](17) A professional counselor shall not engage in or condone sexual harassment. Sexual harassment may consist of a single intense or severe act, or multiple persistent or pervasive acts.~~

~~[(17)](18) A professional counselor shall accurately and objectively report the professional counselor's professional activities and judgments to appropriate third parties, including courts, health insurance companies, those who are the recipients of evaluation reports, and others.~~

~~[(18)](19) When a professional counselor provides advice or comment by means of public lectures, demonstrations, radio or television programs, recordings, technology-based applications, printed articles, mailed material, or other media, the professional counselor shall take reasonable precautions to ensure that:~~

~~(a) The statements are based on appropriate professional counseling literature and practice; and~~

~~(b) The recipients of the information are not encouraged to infer that a professional counseling relationship has been established.~~

~~[(19)](20) When providing services, a professional counselor shall only use techniques, procedures, or modalities that are grounded in theory or have an empirical or scientific foundation.~~

~~[(20)](21) When a professional counselor uses a developing or innovative technique, procedure, or modality, the professional counselor shall explain the potential risks, benefits, and ethical considerations of using the technique, procedure, or modality.~~

~~[(21)](22) A professional counselor shall minimize any potential risks or harm when using these techniques, procedures, or modalities.~~

~~[(22)](23) A professional counselor shall not provide a professional counseling service if under the influence of alcohol, another mind-altering or mood-altering drug, or physical or psychological illness that impairs delivery of the services.~~

~~[(23)](24) A professional counselor shall not possess or distribute the board's examination material without authorization by the board.~~

~~[(24)](25) A professional counselor shall not interfere with a board investigation of a professional counselor through a willful means including:~~

~~(a) Misrepresentation of a fact;~~

~~(b) Undue influence of a witness;~~

~~(c) A threat toward a person; or~~

~~(d) Harassing communication toward a person.~~

~~[(25)](26) A professional counselor shall not verbally abuse or harass or physically threaten or assault a client, supervisee, employee, board member, or agent of the board.~~

~~[(26)](27) A professional counselor shall not lack good moral character.~~

Section 6. Distance Counseling, Technology, and Social Media. (1) A professional counselor who engages in the use of distance counseling, technology, or social media shall develop knowledge and skills regarding related technical, ethical, and legal considerations.

(2) Clients shall have the freedom to choose whether to use distance counseling, social media, or technology within the counseling process.

(3) In addition to the information documented in an informed consent for face-to-face counseling as required under Sections 1(2)(c)2.a. and 2(8) of this administrative regulation, the following issues unique to the use of distance counseling, technology, or social media shall be discussed, and verification of the discussion shall be documented in the informed consent form:

(a) Distance counseling credentials, physical location of practice, and contact information;

(b) Risks and benefits of engaging in the use of distance counseling, technology, or social media;

(c) Possibility of technology failure and alternate methods of service delivery;

(d) Anticipated response time;

(e) Emergency procedures to follow when the counselor is not available;

(f) Time zone differences;

(g) Cultural or language differences that may affect delivery of services;

(h) Possible denial of insurance benefits; and

(i) Social media policy.

(4) A professional counselor shall inform a client, in writing, of any breach of the confidentiality of electronic records and transmissions within seventy-two (72) hours of knowledge of the breach.

(5) A professional counselor shall inform a client about the inherent limits of confidentiality when using technology.

(6) A professional counselor shall inform a client of authorized or unauthorized access to information disclosed using this medium in the counseling process.

(7) A professional counselor shall use current encryption standards within their Web sites or technology-based communications that meet applicable legal requirements **for information that is required to be kept confidential**. A professional counselor shall take reasonable precautions to ensure the confidentiality of information transmitted through any electronic means **when the information is required to be kept confidential**.

(8) A professional counselor who engages in the use of distance counseling, technology, or social media to interact with clients shall take steps to verify the client's identity at the beginning and throughout the therapeutic process. Verification shall include using code words, numbers, graphics, or other nondescript identifiers.

(9) A professional counselor shall inform a client of the benefits and limitations of using technology applications in the provision of counseling services. The technologies may include computer hardware or software, telephones and applications, social media and Internet-based applications and other audio or video communication, or data storage devices or media.

(10) A professional counselor shall discuss and establish professional boundaries with clients regarding the appropriate use or application of technology and the limitations of its use within the counseling relationship, which include the lack of confidentiality and times when not appropriate to use.

(11) When providing technology-assisted services, a professional counselor shall make reasonable efforts to determine that clients are intellectually, emotionally, physically, linguistically, and functionally capable of using the application and that the application is appropriate for the needs of the client. A professional counselor shall verify that clients understand the purpose and operation of technology applications and follow up with clients to correct possible misconceptions, discover appropriate use, and assess subsequent steps.

(12) When distance counseling services are deemed

ineffective by the counselor or client, a professional counselor shall consider delivering services **in the same physical space[face-to-face]**. If a professional counselor is not able to provide **face-to-face** services **in the same physical space** (e.g., lives in another state), the professional counselor shall assist the client in identifying appropriate services.

(13) A professional counselor shall provide information to clients regarding reasonable access to pertinent applications when providing technology-assisted services.

(14) A professional counselor shall consider the differences between face-to-face and electronic communication (nonverbal and verbal cues) and how these may affect the counseling process. A professional counselor shall educate a client on how to prevent and address potential misunderstandings arising from the lack of visual cues and voice intonations when communicating electronically.

(15) A professional counselor shall inform a client on how records are maintained electronically. This includes the type of encryption and security assigned to the records, and for how long archival storage of transaction records is maintained.

(16) A professional counselor who offers distance counseling services or maintains a professional Web site that provides electronic links to relevant licensure and professional certification boards to protect consumer and client rights and address ethical concerns shall ensure that distance counseling services or electronic links are working and are professionally appropriate.

(17) A professional counselor shall clearly explain to a client, as part of the informed consent procedure, the benefits, limitations, and boundaries of the use of social media.

(18) A professional counselor shall avoid disclosing confidential information through public social media.

Section 7[5]. Responsibility to Supervisor's[His] Student or Supervisee. (1) A professional clinical counselor supervisor shall monitor the services provided by supervisees.

(2) A professional counselor shall:

(a)[(1)] Be aware of his influential position with respect to a student or supervisee;

(b)[(2)] Avoid exploiting the trust and dependency of a student or supervisee;

(c)[(3)] Try to avoid a social, business, personal, or other dual relationship that could:

1.[(a)] Impair professional judgment; and

2.[(b)] Increase the risk of exploitation;

(d)[(4)] Take appropriate precautions to ensure that judgment is not impaired and to prevent exploitation if a dual relationship cannot be avoided;

(e)[(5)] Not provide counseling to a:

1.[(a)] Student;

2.[(b)] Employee; or

3.[(c)] Supervisee;

(f)[(6)] Not engage in sexual intimacy or contact with a:

1.[(a)] Student; or

2.[(b)] Supervisee;

(g)[(7)] Not permit a student or supervisee to perform or represent himself as competent to perform a professional service beyond his level of:

1.[(a)] Training;

2.[(b)] Experience; or

3.[(c)] Competence; and

(h)[(8)] Not disclose the confidence of a student or supervisee unless:

1.[(a)] Pursuant to KRS 202A.400, 620.030, or 645.270 or as otherwise permitted or mandated by law;

2.[(b)] It is necessary to prevent a clear and immediate danger to a person;

3.[(c)] During the course of a civil, criminal, or disciplinary action arising from the supervision, at which the professional counselor is a defendant;

4.[(d)] In an educational or training setting, of which there are multiple supervisors or professional colleagues who share responsibility for the training of the student or supervisee; or

5.[(e)] In accordance with the terms of a written informed

consent agreement.

(3) A professional clinical counselor supervisor shall monitor client welfare and supervisee performance and professional development. To fulfill these obligations, a professional clinical counselor supervisor shall meet regularly with supervisees to review the supervisees' work and help them become prepared to serve a range of diverse clients as required by 201 KAR 36:060.

(4) A professional clinical counselor supervisor shall work to ensure that a supervisee communicates the supervisee's qualifications to render services to a client.

(5) A professional clinical counselor supervisor shall make supervisees aware of client rights, including the protection of client privacy and confidentiality in the counseling relationship. Supervisees shall provide clients with professional disclosure information and inform them of how the supervision process influences the limits of confidentiality. Supervisees shall make clients aware of who will have access to records of the counseling relationship and how these records will be stored, transmitted, or otherwise reviewed.

(6) A professional clinical counselor supervisor shall not engage in a sexual or romantic interaction or relationship with current supervisees. This prohibition shall apply to both in-person and electronic interactions or relationships.

(7) A professional clinical counselor supervisor shall not engage in supervisory relationships with individuals with whom they have an inability to remain objective.

(8) A professional clinical counselor supervisor shall establish and communicate to a supervisee procedures for contacting supervisors or, in their absence, alternative on-call supervisors to assist in handling crises.

(9) A professional clinical counselor supervisor shall make their supervisees aware of professional and ethical standards and legal responsibilities.

(10) A professional clinical counselor supervisor or supervisees shall have the right to terminate the supervisory relationship with adequate notice to the other party. When termination is warranted, supervisors shall make appropriate referrals to possible alternative supervisors.

(11) Before providing counseling services, a supervisee shall disclose their status as a supervisee and explain how this status affects the limits of confidentiality. Supervisors shall ensure that a client is aware of the services rendered and the qualifications of the supervisee rendering those services.

(12) Students and supervisees shall obtain client permission before they use any information concerning the counseling relationship in the training process.

(13) A professional clinical counselor supervisor shall document and provide supervisees with ongoing feedback regarding their performance and schedule periodic formal evaluative sessions throughout the supervisory relationship.

Section 8[6]. Financial Arrangements. A professional counselor shall:

- (1) Not charge an excessive fee for service;
- (2) Disclose his fees to a client and supervisee at the beginning of service;
- (3) Make financial arrangements with a patient, third-party payor, or supervisee that:
 - (a) Are reasonably understandable; and
 - (b) Conform to accepted professional practices;
- (4) Not offer or accept payment for a referral; and
- (5) Represent facts truthfully to a client, third-party payor, or supervisee regarding services rendered.

Section 9[7]. Advertising. (1) A professional counselor shall:

- (a) Accurately represent education, training, and experience relevant to the practice of professional counseling; and
- (b) Not use professional identification that includes a statement or claim that is false, fraudulent, misleading, or deceptive, including the following:
 1. A business card;
 2. An office sign;
 3. Letterhead; and

4. Telephone or association directory listing.

(2) A statement shall be considered false, fraudulent, misleading, or deceptive if it:

- (a) Contains a material misrepresentation of fact;
- (b) Is intended to or likely to create an unjustified expectation;

or

- (c) Deletes a material fact or information.

Section 10[8]. Referral and Termination. (1) A professional counselor shall not abandon or neglect a client in professional counseling.

(2) A professional counselor[A-licensee] shall make a timely and appropriate referral of a client if:

(a) The professional counselor[licensee] is unable to provide the work or service; or

(b) The client's need exceeds the competency of the professional counselor[licensee].

(3)[(2)] A professional counselor[licensee] shall terminate a professional counseling service if a client:

(a) Has attained his stated goal or objective; or

(b) Fails to benefit from the counseling service.

(4)[(3)] A professional counselor[licensee] shall communicate the referral or the termination of counseling service to a client.

(5)[(4)] A professional counselor[licensee] shall not terminate counseling service or refer a client for the purpose of entering into a personal relationship with the client, including:

(a) A sexual or an intimate relationship;

(b) A financial or business relationship; or

(c) Other activity that might serve a personal interest of the professional counselor.

(6) A professional counselor shall assist in making appropriate arrangements for the continuation of treatment, when necessary, during interruptions such as vacations, illness, and following termination.

(7) When a professional counselor transfers or refers a client[shall transfer or refer clients] to other practitioners, a professional counselor shall ensure that appropriate clinical and administrative processes are completed and open communication is maintained with both the client and the practitioner[clients and practitioners][licensee].

MARTIN C. WESLEY, Chairperson

APPROVED BY AGENCY: January 13, 2017

FILED WITH LRC: January 13, 2017 at 11 a.m.

CONTACT PERSON: Kayla Mann, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8803, fax (502) 696-5836, email Kayla.Mann@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kayla Mann

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the code of ethics for a credential holder.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish a general code of ethics to govern the behavior of credential holders.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the code of ethics for a credential holder.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in establishing the expected ethical behavior of a credential holder and protect the public seeking alcohol and drug related services.

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

(a) How the amendment will change this existing administrative regulation: The amendment expands the code of ethics to ensure greater protection to the public.

(b) The necessity of the amendment to this administrative regulation: The board has been faced with several complaints where the code of ethics weren't clear on whether a violation occurred. The amendment expands and cures these issues.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the code of ethics for a credential holder.

(d) How the amendment will assist in the effective administration of the statutes: The regulation will allow the Board to better protect the general public.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently 1534 licensed professional clinical counselors, 911 licensed professional clinical counselor associates, and currently 450 supervisors.

(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 does not require any action to be taken to be in compliance.

(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.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These individuals have an more definite understanding of their ethical obligations and duties.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: None

(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: 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 fee increase is necessary to implement this amendment.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 335.515(3), (7), (11).

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

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

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

(c) How much will it cost to administer this program for the first

year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Licensed Professional Counselors (Amended After Comments)

201 KAR 36:050. Complaint management process.

RELATES TO: KRS 335.540, 335.545

STATUTORY AUTHORITY: KRS 335.515(3), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(3) requires the board to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS 335.500 to 335.599. This administrative regulation establishes the procedures for filing, investigating, and addressing a complaint filed against a professional counselor.

Section 1.[Definitions. (1) "Chairman" means the chairman or vice-chairman of the board.

(2) "Charge" means a specific allegation contained in a formal complaint, as established in subsection (4) of this section, issued by the board alleging a violation of a specified provision of KRS 335.500 to 335.599; the administrative regulations promulgated thereunder; or any other state or federal statute or regulation.

(3) "Complaint" means any written allegation of misconduct by a credentialed individual or other person which might constitute a violation of KRS 335.500 to 335.599, the administrative regulations promulgated thereunder, or any other state or federal statute or regulation.

(4) "Complaint screening committee" means a committee consisting of three (3) persons appointed by the chairman of the board to review complaints, investigative reports, and to participate in informal proceedings to resolve a formal complaint. The executive director of the board or another staff member may be appointed to serve on this committee.

(5) "Formal complaint" means a formal administrative pleading authorized by the board which sets forth charges against a licensed individual or other person and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B or requests the court to take criminal or civil action.

(6) "Informal proceedings" means the proceedings instituted at any stage of the disciplinary process with the intent of reaching a dispensation of any matter without further recourse to formal disciplinary procedures under KRS Chapter 13B.

(7) "Investigator" means an individual designated by the board to assist the board in the investigation of a complaint or an investigator employed by the Attorney General or the board.

Section 2.] Receipt of Complaints. (1) A complaint:

(a) May be submitted by an:

1. Individual;

2. Organization; or

3. Entity;[.]

(b) Shall be:

1. In writing; and

2. Signed by the person offering the complaint; and[.]

(c) May be filed by the board based upon information in its possession.

(2)(a) Upon receipt of a complaint[.]

(a) a copy of the complaint shall be sent to the individual named in the complaint along with a request for that individual's response to the complaint.

(b) The individual shall be allowed a period of twenty (20) days from the date of receipt to submit a written response.

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(3)(a)(b) Upon receipt of the written response of the individual named in the complaint, a copy of his response shall be sent to the complainant.

(b) The complainant shall have seven (7) days from the receipt to submit a written reply to the response.

Section 2[3]. Initial Review. (1) After the receipt of a complaint and the expiration of the period for the individual's response, the complaint screening committee shall consider the individual's response, complainant's reply to the response, and any other relevant material available, and make a recommendation to the board. The board shall determine whether there is enough evidence to warrant a formal investigation of the complaint.

(2) If the board determines before formal investigation that a complaint is without merit, it shall:

(a) Dismiss the complaint; and

(b) Notify the complainant and respondent of the board's decision.

(3) If the board determines that a complaint warrants a formal investigation, it shall:

(a) Authorize an investigation into the matter; and

(b) Order a report to be made to the complaint screening committee at the earliest opportunity.

Section 3[4]. Results of Formal Investigation; Board Decision on Hearing. (1) Upon completion of the formal investigation, the investigator shall submit a report to the complaint screening committee of the facts regarding the complaint. The committee shall review the investigative report and make a recommendation to the board. The board shall determine whether there has been a prima facie violation of KRS 335.500 to 335.599 or the administrative regulations promulgated thereunder and a complaint should be filed.

(2) If the board determines that a complaint does not warrant issuance of a formal complaint, it shall:

(a) Dismiss the complaint or take action pursuant to KRS 335.540(3); and

(b) Notify the complainant and respondent of the board's decision.

(3) If the board determines that a complaint warrants the issuance of a formal complaint against a respondent, the complaint screening committee shall prepare a formal complaint, which states clearly the charge or charges to be considered at the hearing. The formal complaint shall be reviewed by the board and, if approved, signed by the chairman and served upon the individual as required by KRS Chapter 13B.

(4) If the board determines that a person may be in violation, it shall:

(a) Order the individual to cease and desist from further violations of KRS 335.505;

(b) Forward information to the county attorney of the county of residence of the person allegedly violating KRS 335.505 with a request that appropriate action be taken under KRS 335.599; or

(c) Initiate action in Franklin Circuit Court for injunctive relief to stop the violation of KRS 335.505.

Section 4[5]. Settlement by Informal Proceedings. (1) The board, through counsel and the complaint screening committee, may, at any time during this process, enter into informal proceedings with the individual who is the subject of the complaint for the purpose of appropriately dispensing with the matter.

(2) An agreed order or settlement reached through this process shall be approved by the board and signed by the individual who is the subject of the complaint and the chairman.

(3) The board may employ mediation as a method of resolving the matter informally.

Section 5. If the board determines that there is reasonable cause to believe that a license holder or applicant for a license is physically or mentally incapable of practicing professional counseling with reasonable skill and safety to clients, the board may order the license holder or applicant to submit to an examination by a mental health professional or a physician

designated by the board to determine the license holder's or applicant's mental health or physical status to practice professional counseling.

Section 6. Notice and Service Process. A notice required by KRS 335.500 to 335.599 or this administrative regulation shall be issued pursuant to KRS Chapter 13B and 201 KAR 36:090.

Section 7. Notification. The board shall make public:

(1) Its final order in a disciplinary action under KRS 335.540 with the exception of a written admonishment issued pursuant to KRS 335.540(3); and

(2) An action to restrain or enjoin a violation of KRS 335.505.

MARTIN C. WESLEY, Chairperson

APPROVED BY AGENCY: January 13, 2017

FILED WITH LRC: January 13, 2017 at 11 a.m.

CONTACT PERSON: Kayla Mann, Board Administrator, Division of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky 40602, phone (502) 782-8803, fax (502) 696-5836, email Kayla.Mann@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kayla Mann

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the complaint and administrative hearing process to address alleged violations brought before the board.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish a complaint and administrative hearing process to address alleged violations brought before the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for the administrative hearing process to address alleged violations brought before the board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in establishing the complaint, investigation, and administrative hearing process of alleged violations brought before the board.

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

(a) How the amendment will change this existing administrative regulation: The amendment authorizes the board to order a mental evaluation if there is a reasonable basis to believe an applicant or licensee may have a mental or physical impairment that affects the practice professional counseling.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to address applicants and licensees who may have a mental or physical impairment that affects the practice professional counseling to ensure the applicant or licensee is competent to practice.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements discipline and investigation by the board.

(d) How the amendment will assist in the effective administration of the statutes: This amendment establishes the procedure for the board to require a license holder or applicant to submit to an examination by a mental health professional or a physician designated by the board to determine the license holder's or applicant's mental health or physical status to practice professional counseling.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation

since the applications vary from month to month. There are presently 1534 licensed professional clinical counselors and 911 licensed professional clinical counselor associates.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: An applicant or licensee would have to submit to an mental or physical examination if there is a reasonable basis to believe an applicant or licensee may have a mental or physical impairment that affects the practice professional counseling.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An applicant or licensee does not incur the cost of the mental or physical impairment.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no new fees or fee increases associated with the amendments.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 335.515(3), (7).

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

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

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Licensed Professional Counselors (Amended After Comments)

201 KAR 36:060. Qualifying experience under supervision.

RELATES TO: KRS 335.500(4), 335.505(4), 335.525(1)(e)

STATUTORY AUTHORITY: KRS 335.515(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.505(4) allows a student intern or trainee in professional counseling to use the title of "professional counselor intern" or "student in training" if the activities are performed under the supervision or direction of an approved supervisor and the activities are a part of a supervised program of study. KRS 335.525(1)(e) provides that an applicant for a professional clinical counselor license shall have acquired 4,000 hours of experience in the practice of counseling under approved supervision. KRS 335.515(3) requires the board to promulgate administrative regulations to implement KRS 335.500 to 335.599, relating to licensed professional counselors. This administrative regulation establishes the requirements relating to supervision and the requirements for experience under supervision.

~~Section 1.[Definitions. (1) "Face-to-face" means supervision that may include interactive, simultaneous video and audio media with a minimum of one (1) direct meeting per month that is in person where the supervisor and supervisee are physically present in the same room.~~

~~(2) "Individual supervision" means supervision of one (1) or two (2) supervisees with the supervisor.~~

~~(3) "Practice of professional counseling" means professional counseling services within the scope of Section 2 of this administrative regulation and which involve the application of mental health and development principals, methods or procedures, including assessment, evaluation, diagnosis, and treatment of emotional disorders or mental illnesses, to assist individuals to achieve more effective personal, social, educational, or career development and adjustment.~~

~~(4) "Supervisee" means a licensed professional counselor associate who works with clients under supervision.~~

~~(5) "Supervision" means the educational process of utilizing a partnership between a supervisor and a supervisee aimed at enhancing the professional development of the supervisee in providing professional counseling services to meet the requirements of KRS 335.525(1)(e).~~

~~(6) "Supervisor" means a member of a mental health or behavioral services profession listed in Section 3(1) of this administrative regulation who controls, oversees, guides, and takes responsibility for the professional clinical counseling practice of a supervisee in accordance with this administrative regulation.~~

~~(7) "Supervisor of record" means the person listed on the supervisory agreement and approved by the board in accordance with Section 4 of this administrative regulation.~~

~~Section 2.] Requirements for the Practice of Professional Counseling. (1) The practice of professional counseling shall be based on knowledge of areas including interpersonal, cognitive, cognitive behavioral, psychodynamics, human relations, crisis intervention, psychopathology, group dynamics, and effective methods and strategies necessary to help the client achieve mental, vocational, emotional, physical, social, moral, and spiritual development and adjustment throughout the client's life span.~~

~~(2) In providing counseling services, a licensee shall possess and utilize skills in the following areas:~~

~~(a) The helping relationship, including counseling theory and practice;~~

~~(b) Human growth and development;~~

- (c) Lifestyle and career development;
- (d) Group dynamics, process, counseling, and consulting;
- (e) Assessment, appraisal, and testing of individuals;
- (f) Social and cultural foundation, including multicultural issues;
- (g) Principles of etiology, diagnosis, treatment planning, and prevention of mental and emotional disorders and dysfunctional behavior;
- (h) Research and evaluation; and
- (i) Professional orientation and ethics.

Section 2[3]. Supervision. (1)[A supervisor shall be properly credentialed under Kentucky law as a member of one (1) of the following professions:

- (a) A licensed professional clinical counselor;
 - (b) A licensed psychologist, licensed psychological practitioner, or a certified psychologist with autonomous functioning;
 - (c) A licensed clinical social worker;
 - (d) A licensed psychiatrist;
 - (e) A nurse with a master's degree and psychiatric certification;
- or
- (f) A licensed marriage and family therapist.

(2) The supervisor shall:

- (a) Provide supervision to a person obtaining the experience required under KRS 335.525(1)(e);
- (b) Not have:

- 1. An unresolved citation filed against the supervisor by the board that licenses or certifies that profession;
- 2. A suspended or probated license or certificate;
- 3. An order from the board under which the supervisor is licensed or certified prohibiting the supervisor from providing supervision; or

- 4. A previous or existing dual relationship or other personal relationship with a supervisee;

- (c) Have been in the practice of his or her profession for two (2) years following licensure or certification in that profession; and

- (d) Have completed the supervisor training required by subsection (3) of this section. Experience acquired under the supervision of an individual who has not completed the supervisor training shall not count toward the requirements of KRS 335.525(1)(e).

- (3) In order to obtain board-approved supervisor status, a supervisor shall complete three (3) hours of board-approved supervisor training.

- (a) The board-approved supervisor training shall cover Kentucky law governing the practice of professional counseling, both administrative regulations and statutes, theories of supervision, ethical issues involved in supervision, and supervisor responsibilities such as logs, treatment, planning, recording, and proper documentation.

- (b) Supervisor training shall be conducted by an instructor who is a Licensed Professional Clinical Counselor and who has demonstrated proficiency in the curriculum established in paragraph (a) of this subsection.

- (c) To maintain board-approved supervisor status, a supervisor shall retake the board-approved supervisor training every three (3) years.

- (4) A supervisor of record shall assume responsibility for the practice of the supervisee. A supervisor shall not serve as a supervisor of record for more than twelve (12) persons obtaining experience for certification or licensure at the same time.

- (5) After January 1, 2016,] A supervisor of record shall be licensed by the board as a licensed professional clinical counselor supervisor, except as established in this section[subsection].

(2) An LPCA Supervision[(a) A supervisory] Agreement that has been approved prior to the effective date[January 1, 2016] that involves other licensees listed in Section 3(1)] of this administrative regulation may continue to be in effect until termination.

(3)(a)[(b)] An applicant may submit a hardship request for the ability to utilize one (1) of the licensees listed in paragraph (b)[in Section 3(1)] of this subsection[administrative regulation] if the nature of the circumstances shows that the ability to obtain supervision from a licensed professional clinical counselor is prohibited by the difficulty to do so. Circumstances showing

difficulty in obtaining supervision may include engaging in the practice of counseling in a rural area where there is not a licensed professional clinical counselor within a fifty (50) mile radius, or active-duty military deployment[working within an agency where no licensed professional clinical counselor is available to supervise]. The submittal for a hardship exemption shall be accompanied by the LPCA Supervision[supervisory] Agreement.

(b) An applicant who demonstrates a hardship may request a supervisor who is properly credentialed under Kentucky law as a member of one (1) of the following professions:

- 1. A licensed professional clinical counselor that does not qualify as a supervisor under 201 KAR 36:065;
- 2. A licensed psychologist, licensed psychological practitioner, or a certified psychologist with autonomous functioning;
- 3. A licensed clinical social worker; or
- 4. A licensed marriage and family therapist.

Section 3[4]. LPCA Supervision[supervisory] Agreement. (1) A supervisee shall enter into a written supervision[supervisory] agreement with an approved supervisor. The supervision[supervisory] agreement shall contain:

- (a) The name and address of the supervisee;
- (b) The name, address, license or certification number, and number of years of practice of the supervisor of record;
- (c) The name, address, license or certification number, and number of years of practice of other supervisors;
- (d) The agency, institution, or organization where the experience will be received;
- (e) A detailed description of the nature of the practice including the type of:

- 1. Clients that[which] will be seen;
- 2. Therapies and treatment modalities that[which] will be used including the prospective length of treatment; and
- 3. Problems that[which] will be treated;
- (f) The nature, duration, and frequency of the supervision, including the:

- 1. Number of hours of supervision per week;
- 2. Number of hours of individual supervision;
- 3. Methodology for transmission of case information; and
- 4. Number of hours of face-to-face supervision that[which] meet the requirements of KRS 335.525(1)(e);

- (g) A statement that supervision;

- 1. Shall occur a minimum of:

- a.[1. Occur a minimum of] Three (3) times per month and one (1) hour per meeting for a full time practice that[which] consists of twenty-five (25) clock hours or greater per week; or

- b.[2. Occur a minimum of] One (1) hour for every thirty (30) hours of client contact for a part time practice that[which] consists of less than twenty-five (25) clock hours per week; and

- 2. May include interactive, simultaneous video and audio media with a minimum of one (1) direct meeting per month that is in person where the supervisor and supervisee are physically present in the same room;

- (h) The conditions or procedures for termination of the supervision;

- (i) A statement that:

- 1. The supervisor of record understands that the supervisor shall be held accountable to the board for the care given to the supervisee's clients; and

- 2. The supervisor of record meets the criteria established in Section 2[3] of this administrative regulation; and

- (j) The signatures of both the supervisor and the supervisee. If a supervisee changes his or her supervisor of record as identified in the supervision[supervisory] agreement, the supervisee shall submit a new supervision[supervisory] agreement, which sets forth the information required by this subsection[(1) of this section] and~~[which]~~ identifies the new supervisor of record.

(2) The supervision[supervisory] agreement shall be approved by the board before the licensed professional counselor associate begins the practice of professional counseling.

Section 4[5]. Experience Under Supervision. (1) Experience under supervision shall consist of:

(a) Direct responsibility for a specific individual or group of clients; and

(b) Broad exposure and opportunity for skill enhancement with a variety of developmental issues, dysfunctions, diagnoses, acuity levels, and population groups.

(2) The board may, for extenuating circumstances beyond the supervisor's or supervisee's control, grant a limited waiver from the requirement of one (1) monthly direct in person meeting to satisfy the face-to-face supervision requirements upon written request by the supervisor and supervisee. Extenuating circumstances include situations such as death or serious illness of the board-approved supervisor, a leave of absence by the supervisor, or the termination of the supervisor's employment.

Section 5[6]. Supervision Requirements. (1) Supervision shall relate specifically to the qualifying experience and shall focus on:

(a) The appropriate diagnosis of a client problem leading to proficiency in applying professionally recognized clinical nomenclature;

(b) The development and modification of the treatment plan;

(c) The development of treatment skills suitable to each phase of the therapeutic process;

(d) Ethical problems in the practice of professional counseling; and

(e) The development and use of the professional self in the therapeutic process.

(2) A supervisee shall not continue to practice professional counseling if:

(a) The conditions for supervision set forth in the LPCA Supervision[supervisory] Agreement required by Section 3[4] of this administrative regulation are not followed; or

(b) The supervision[supervisory] agreement is terminated for any reason.

(3) If the terms of the supervision[supervisory] agreement are not being met by the supervisee, the supervisor shall immediately notify this board in writing.

~~[(4) The supervisor and supervisee shall sign and file with the board a Counseling Associate Semi-Annual Report Form][with their renewal application and][by April 1st of each year.]~~

Section 6[7]. Evaluation by Board. The period of supervised experience required by KRS 335.525(1)(e) shall be evaluated by the board according to one (1) of the following methods:

(1) A candidate who seeks to obtain experience in the Commonwealth of Kentucky shall submit the supervision[supervisory] agreement required by Section 3[4] of this administrative regulation for the experience prior to beginning to accrue the required experience; or

(2) A candidate who obtained the experience in another state shall submit documentation of the hours of supervision with the Application for Licensed Professional Clinical Counselor and Licensing Via Endorsement for Reciprocity required by 201 KAR 36:070. The documentation shall also:

(a) Provide information that verifies that the requirements for the license or certificate of the supervisor from the state in which the license or certificate was held are substantially equivalent to the requirements for that license or certificate in Kentucky;

(b) Provide information that verifies that the supervisor is in good standing with the certifying or licensing state; and

(c) Demonstrate that the practice and supervision requirements in the state from which the candidate is applying are substantially equivalent to the requirements established under this administrative regulation.

Section 7[8]. Temporary Supervision. (1) In extenuating circumstances, if a licensed professional counselor associate is without supervision, the associate may continue working up to sixty (60) calendar days under the temporary supervision of a qualified mental health provider as defined by KRS 202A.011(12) while an appropriate board-approved supervisor is sought and a new supervision[supervisory] agreement is submitted to the board. Extenuating circumstances include situations such as death or

serious illness of the board-approved supervisor, a leave of absence by the supervisor, or the termination of the supervisor's employment.

(2)(a) Within ten (10) days of the occurrence, the supervisee shall notify the board of the extenuating circumstances ~~that~~^{which} have caused the supervisee to require temporary supervision.

(b) The supervisee shall submit, in writing, a plan for resolution of the situation within thirty (30) calendar days of the change in status of board-approved supervision.

(c) The written plan shall include:

1. The name of the temporary supervisor;

2. Verification of the credential held by the temporary supervisor;

3. An email address and a postal address for the temporary supervisor and the supervisee; and

4. A telephone number for the temporary supervisor.

(d) The temporary supervision arrangement shall expire after sixty (60) days of the establishment of the temporary supervision arrangement with a qualified mental health provider. The temporary supervision arrangement shall not be extended beyond the sixty (60) days.

Section 8[9]. Incorporation by Reference.~~[(1)]~~ The~~following material is incorporated by reference:~~

~~(a) "LPCA Supervision[supervisory] Agreement", September, 2016, is incorporated by reference[2014]; and~~

~~(b) "Counseling Associate Semi-Annual Report", October 2011].~~

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

MARTIN C. WESLEY, Chairperson

APPROVED BY AGENCY: January 13, 2017

FILED WITH LRC: January 13, 2017 at 11 a.m.

CONTACT PERSON: Kayla Mann, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8803, fax (502) 696-5836, email Kayla.Mann@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kayla Mann

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the supervision requirements to qualify for licensure.

(b) The necessity of this administrative regulation: This administrative regulation enables the board to evaluate applications by establishing the supervision experience requirements for licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.525(1)(e) provides that an applicant for a professional counselor license must have acquired 4000 hours of experience in the practice of counseling under the general supervision of an approved supervisor. This administrative regulation establishes the requirements relating to supervision and the requirements for experience under supervision.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation specifies the types of experience that is acceptable for licensure.

(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 clarifies and establishes the parameters for supervision and obtaining a hardship exemption for supervision.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify issues regarding interactive supervision and obtaining a hardship exemption for supervision.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is in conformity with the delegated authority of the board..

(d) How the amendment will assist in the effective administration of the statutes: The regulation clarifies and establishes the parameters for supervision and obtaining a hardship exemption for supervision. The amendment will also allow the board discretion to approve an individual who is not a Licensed Professional Clinical Counselors as a supervisor under extenuating circumstances.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently 1534 licensed professional clinical counselors, 911 licensed professional clinical counselor associates, and currently 450 supervisors.

(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 does not require supervisors or supervisees to take any action to be in compliance.

(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.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Supervisees will have the opportunity to have a supervisor who is not a Licensed Professional Counselor under extenuating circumstances.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: None

(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: 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 fee increase is necessary to implement this amendment.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 335.515(1), (3).

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

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

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

(c) How much will it cost to administer this program for the first

year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Licensed Professional Counselors (Amended After Comments)

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

RELATES TO: KRS 335.500(4), 335.505(4), 335.525(1)(e)

STATUTORY AUTHORITY: KRS 335.515(1), (3), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.505(4) allows a student intern or trainee in professional counseling to use the title of "professional counselor intern" or "student in training" if the activities are performed under the supervision or direction of an approved supervisor and the activities are a part of a supervised program of study. KRS 335.525(1)(e) provides that an applicant for a professional clinical counselor license shall have acquired 4,000 hours of experience in the practice of counseling under approved supervision. KRS 335.515(3) requires the board to promulgate administrative regulations to implement KRS 335.500 to 335.599, relating to licensed professional counselors. This administrative regulation establishes the requirements relating to who may provide qualifying supervision.

Section 1. Supervisor Qualifications. (1) To be a supervisor of a licensed professional clinical counselor or licensed professional counselor associate, an applicant shall:

(a) Be licensed by the board as a licensed professional clinical counselor;

(b) Not have:

1. An unresolved citation filed against the applicant by the board that licenses or certifies that profession;

2. A suspended or probated license or certificate; or

3. An order from the board under which the applicant is licensed or certified prohibiting the applicant from providing supervision;

(c) Have been in the practice of his or her profession for at least two (2) years following licensure as a professional clinical counselor or its licensure equivalent issued by another state's regulatory professional counseling board; and

(d) Have taught or completed a three (3) hour graduate level course in counseling supervision or a fifteen (15) hour board-approved supervisor training course required by subsection (3) of this section.

(2) Any supervisor who is a clinical counseling supervisor as a part of a board-approved supervisory agreement or a supervisor of a graduate-level counseling student who is providing services in a mental health setting with five (5) years of experience shall be deemed to satisfy the requirement of subsection (1)(d) of this section.

(3) The board-approved supervisor training course shall:

(a) Cover:

1. Assessment, evaluation, and remediation, which includes initial, formative, and summative assessment of supervisee knowledge, skills, and self-awareness; components of evaluation, e.g. evaluation criteria and expectations, supervisory procedures, methods for monitoring (both direct and indirect observation), supervisee performance, formal and informal feedback mechanisms, and evaluation processes (both summative and formative), and processes and procedures for remediation of supervisee skills, knowledge, and personal effectiveness and self-awareness;

2. Counselor development, which includes models of supervision, learning models, stages of development and transitions in supervisee-supervisor development, knowledge and skills related to supervision intervention options, awareness of individual differences and learning styles of supervisor and supervisee, awareness and acknowledgement of cultural differences and multicultural competencies needed by supervisors, recognition of relational dynamics in the supervisory relationship, and awareness of the developmental process of the supervisory relationship itself;

3. Management and administration, which includes organizational processes and procedures for recordkeeping, reporting, monitoring of supervisee's cases, collaboration, research and evaluation; agency or institutional policies and procedures for handling emergencies, case assignment and case management, roles and responsibilities of supervisors and supervisees, and expectations of supervisory process within the institution or agency; institutional processes for managing multiple roles of supervisors, and summative and formative evaluation processes; and

4. Professional responsibilities, which includes ethical and legal issues in supervision including dual relationships, competence, due process in evaluation, informed consent, types of supervisor liability, privileged communication, and consultation; regulatory issues including Kentucky laws governing the practice of counseling and counseling supervision, professional standards and credentialing processes in counseling, reimbursement eligibility and procedures, and related institutional or agency procedures; and

(b) Be conducted by an instructor who is a licensed professional clinical counselor and who has demonstrated proficiency in the curriculum established in paragraph (a) of this subsection.

(4) Licensed professional clinical counselors engaged in training supervision shall be called a "licensed professional clinical counselor supervisor" and may use the acronym "LPCC-S".

Section 2. A supervisor of record shall assume responsibility for the practice of the supervisee. A supervisor shall not serve as a supervisor of record for more than twelve (12) persons obtaining experience for ~~[certification or]~~ licensure at the same time.

MARTIN C. WESLEY, Chairperson

APPROVED BY AGENCY: January 13, 2017

FILED WITH LRC: January 13, 2017 at 11 a.m.

CONTACT PERSON: Kayla Mann, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8803, fax (502) 696-5836, email Kayla.Mann@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kayla Mann

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements to be a board-approved supervisor.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements to be a board-approved supervisor.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with the board's delegated authority.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation specifies the requirements to be a board-approved supervisor.

(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: There are presently 1534 licensed professional clinical counselors, 911 licensed professional clinical counselor associates, and currently 450 supervisors.

(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 does not require supervisors or supervisees to take any action to be in compliance.

(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.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit is that a supervisor is properly trained and may designate a license with a LPCC-S to clearly designate that the individual is a board-approved supervisor.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: None

(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: 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 fee increase is necessary to implement this amendment.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 335.515(1), (3), and (5).

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

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

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET
Board of Licensed Professional Counselors
(Amended After Comments)**

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

RELATES TO: KRS 335.500, 335.525(1)(c), (d), (f), 335.527(1)(a)

STATUTORY AUTHORITY: KRS 335.515(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(3) requires the board to promulgate administrative regulations to carry out and enforce the provisions of KRS 335.500 to 335.599. KRS 335.525(1)(c) requires that applicants for licensure shall have received a master's or doctoral degree in counseling or a related field from a regionally-accredited institution. KRS 335.525(1)(d) requires that applicants for licensure shall have sixty (60) graduate semester hours in specified areas. KRS 335.527(1)(a) requires that applicants for licensure shall have received a master's or doctoral degree in counseling or a related field from a regionally-accredited institution and sixty (60) graduate hours in specified areas. KRS 335.525(1)(f) requires that applicants achieve passing scores on the examination required by the board. This administrative regulation establishes the application, education[educational], and examination requirements for licensure.

Section 1. (1) Degree in counseling. To qualify as a degree in counseling under KRS 335.525(1)(c) or KRS 335.527(1)(a), a degree shall:

(a) Clearly indicate that it is a degree in counseling from a counseling program as evidenced by the description in the program's catalogues and brochures outlining the intent to educate and train the individual for the practice of professional counseling as defined in KRS 335.500(5);

(b) Include the word "counseling" in the name of the degree, the academic program of study, or the major field of study;

(c) Be from a counseling program that stands as a recognizable organizational entity within the institution and has a counseling faculty who identify with the professional counseling profession; and

(d) Include practicum or internship experience of at least 600 hours in a counseling program that stands as a recognizable organizational entity within the institution and that[which] has a counseling faculty who identify with the professional counseling profession.

(2) Degree in a related field.

(a) To qualify as a degree in a related field under KRS 335.525(1)(c) or KRS 335.527(1)(a), a degree shall:

1. Be awarded from an academic program of study for the degree that follows an organized sequence of graduate coursework with at least one (1) course in a minimum of seven (7) of the nine (9) content areas established in KRS 335.525(1)(d) or KRS 335.527(1)(a);

2. Include[a] three (3) semester hours or four and one-half (4.5) quarter hours[hour-course], at the minimum, on professional orientation and ethics with the[that has as its] concentration on the American Counseling Association Code of Ethics; and

3. Include practicum or internship experience of at least 600 hours in a counseling program that stands as a recognizable organizational entity within the institution and that[which] has a counseling faculty who identify with the professional counseling profession.

(b) The degree shall be designed to educate and train the individual for the practice of professional counseling as defined by KRS 335.500(5).

(3) Examples of degrees that shall not be accepted as a

degree in counseling or a degree in a related field for purposes of licensure include a degree in clinical psychology, forensic psychology, psychology, Christian psychology, biblical counseling, pastoral counseling, marriage and family therapy, art or dance therapy, social work, criminal justice, or special education.

(4) If an applicant proffers a degree in a related field, the applicant shall also provide evidence of additional graduate coursework in each area listed in KRS 335.525(1)(d)1-9 or, if that applicant is applying for endorsement, KRS 335.527(1)(a)1-9 that is not included in the applicant's degree. The coursework in the degree program, in addition to the other coursework, shall demonstrate that the applicant has documented coursework in all nine (9) of the content areas listed in KRS 335.525(1)(d) or, if that applicant is applying for endorsement, KRS 335.527(1)(a).

(5) The graduate hour requirement of KRS 335.525(1)(d) and KRS 335.527(1)(a) shall be semester hours. A minimum of ninety (90) quarter hours shall be equivalent to sixty (60) graduate semester hours.

Section 2. Accreditation. (1)(a) All coursework submitted for licensure shall be from a regionally accredited educational institution, which is accredited by any one (1) of the following: Southern Association of Colleges and Schools, Middle States Association of Colleges and Schools, New England Association of Colleges and Schools, North Central Association of Colleges and Schools, North Western Association of Schools and Colleges, or[and] Western Association of Schools and Colleges.

(b) All coursework submitted for licensure from an international educational institution shall be accredited by the International Registry of Counseling Education Programs or reviewed by the World Education Services.

(2) An applicant shall have a degree from a program that is accredited by the Council on Accreditation of Counseling and Related Programs (CACREP) or its affiliates. This requirement shall not apply to an applicant who:

(a) Is enrolled in a counseling or a related field program on or before January 15, 2015;

(b) Maintains continuous enrollment; and

(c) Receives a degree in the counseling or a related field program no later than May 31, 2020.

Section 3. Examination. An applicant[Applicants] for licensure as a licensed professional clinical counselor shall obtain a passing score on the National Counselor Examination for Licensure and Certification (NCE) or the National Clinical Mental Health Counseling Examination (NCMHCE).

Section 4. Application for Licensure. (1)(a) Each applicant for licensure as a licensed professional clinical counselor shall:

1. Submit an Application for Licensed Professional Clinical Counselor~~[and Licensing Via Endorsement for Reciprocity]~~ to the board;

2. Pay the fee as established in 201 KAR 36:020;~~[and]~~

3. Submit proof of passage of one (1) of the examinations required under Section 3 of this administrative regulation;

4. Complete at least three (3) semester hours or four and one[a] half[hour] (4.5) quarter hours for each of the following curriculum content areas as:

a. The helping relationship, including theory and practice, which provides an understanding of counseling and consultation processes, and includes the following:

(i) Counseling and consultation theories including both individual and systems perspectives as well as coverage of relevant research and factors considered in applications;

(ii) Basic interviewing, assessment, and counseling skills;

(iii) Counselor or consultant characteristics and behaviors that influence professional counseling relationships, including age, gender, and ethnic differences; verbal and nonverbal behaviors; and personal characteristics, orientations, and skills;

(iv) Client or consultee characteristics and behaviors that influence professional counseling relationships, including age, gender, ethnic differences, verbal and nonverbal behaviors, and personal characteristics, orientations, and skills; and

(v) Ethical considerations:

b. Human Growth and Development provides an understanding of the nature and needs of individuals at all developmental levels, and includes:

(i) Theories of individual and family development and transitions across the life span;

(ii) Theories of learning and personality development;

(iii) Human behavior, including an understanding of developmental crises, disability, addictive behavior, psychopathology and environmental factors, normal and abnormal behavior;

(iv) Counseling strategies for facilitating development over the life span; and

(v) Ethical considerations:

c. Lifestyle and career development provides an understanding of career counseling, development and related factors. Coursework includes the following:

(i) Career-counseling theories and decision-making models;

(ii) Career, vocational educational and labor market information resources; visual and print media and computer-based career information systems;

(iii) Career-counseling program planning, organization, implementation, administration, and evaluation;

(iv) Interrelationships among work, family, and other life roles and factors, including multicultural and gender issues as related to career counseling;

(v) Career and educational placement counseling, follow-up and evaluation; assessment instruments and techniques relevant to career counseling;

(vi) Computer-based career-development applications and strategies, including computer-assisted career-counseling systems;

(vii) Career-counseling processes, techniques, and resources, including those applicable to specific populations; and

(viii) Ethical considerations;

d. Group dynamics, process, counseling, and consulting provides an understanding of group development, dynamics, and counseling theories; group counseling methods and skills; and other group work approaches, and includes the following:

(i) Principles of group dynamics, including group counseling components, developmental stage theories, and group members' roles and behaviors;

(ii) Group leadership styles and approaches, including characteristics of various types of group leaders and leadership styles;

(iii) Theories of group counseling, including commonalities, distinguishing characteristics, and pertinent research and literature;

(iv) Group counseling methods, including group counselor orientations and behaviors, ethical standards, appropriate selection criteria and methods of evaluation of effectiveness;

(v) Approaches used for other types of group work in counseling, including task groups, prevention groups, support groups, and therapy groups; and

(vi) Ethical considerations;

e. Assessment, appraisal, and testing of individuals provides an understanding of individual and group approaches to assessment and evaluation in counseling practice. Coursework includes the following:

(i) Theoretical and historical bases for assessment techniques in counseling;

(ii) Validity, including evidence for establishing content, construct, and empirical validity;

(iii) Reliability, including methods of establishing stability, internal, and equivalence reliability;

(iv) Appraisal methods, including environmental assessment, performance assessment, individual and group test and inventory methods, behavioral observations, and computer-managed and computer-assisted methods;

(v) Psychometric statistics, including types of assessment scores, measures of central tendency, indices of variability, standard errors, and correlations;

(vi) Age, gender, ethnicity, language, disability, and cultural factors assessment and evaluation in counseling services;

(vii) Strategies for selecting, administering, interpreting, and

using assessment and evaluation instruments and techniques in counseling; and

(viii) Ethical considerations:

f. Social and cultural foundations, including multicultural issues that provide an understanding of issues and trends in a multicultural and diverse society that impact professional counselors and the counseling profession, and includes the following:

(i) Multicultural and pluralistic trends, including characteristics and concerns of counseling individuals from diverse groups;

(ii) Attitudes and behavior based on factors such as age, race, religious preferences, physical disability, sexual orientation, ethnicity, culture, family patterns, gender, socioeconomic status, and intellectual ability;

(iii) Individual, family, and group counseling strategies with diverse populations; and

(iv) Ethical considerations;

g. Principles of etiology, diagnosis, treatment planning, and prevention of mental and emotional disorders and dysfunctional behavior provides an understanding of etiology, diagnosis, treatment planning, and prevention of mental and emotional disorders and dysfunctional behavior. Coursework includes the following:

(i) Principles of the diagnostic process, including differential diagnosis, and the use of current diagnostic tools, such as the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM);

(ii) Established diagnostic criteria for mental and emotional disorders, and treatment modalities and placement criteria within the continuum of care;

(iii) Etiology of addiction and co-occurring disorders and the impact of co-occurring substance use disorders on medical and psychological disorders;

(iv) Etiology, the diagnostic process and nomenclature, treatment, referral, and prevention of mental and emotional disorders; and

(v) Principles, models, and documentation formats of biopsychosocial case conceptualization and treatment planning;

h. Research and evaluation is a course that provides an understanding of types of research methods, basic statistics, and ethical and legal consideration in research. Coursework includes the following:

(i) Basic types of research methods to include qualitative and quantitative research designs;

(ii) Basic parametric and nonparametric statistics;

(iii) Principles, practices, and applications of needs assessment and program evaluation;

(iv) Uses of computers for data management and analysis; and

(v) Ethical and legal considerations;

i. Professional orientation to counseling is a course that provides an understanding of the professional counselor profession and provides an understanding of all aspects of professional functioning, including history, roles, organizational structures, ethics, standards, and credentialing. Coursework includes the following:

(i) History of the counseling profession, including significant factors and events;

(ii) Professional roles and functions of counselors, including similarities and differences with other types of professionals;

(iii) Professional organizations (primarily ACA, its divisions, branches, and affiliates), including membership benefits, activities, services to members, and current emphases;

(iv) Ethical standards of NBCC or ACA and related ethical and legal issues, and their applications to various professional activities (e.g., appraisal, group work);

(v) Professional counselor preparation standards, their evolution and current applications;

(vi) Professional counselor credentialing, including counselor certification, licensure, and accreditation practices and standards, and the effects of public policy on these issues; and

(vii) Public policy processes, including the role of the professional counselor in advocating on behalf of the profession and its clientele; and

i. Practicum or internship experiences shall be for a minimum of two (2) semester courses and provide supervised counseling experience in an appropriate clinical setting, which includes the following:

- (i) 600 clock hours of total experience;
- (ii) At least 240 clock hours of direct service, including experience leading groups;
- (iii) Weekly interaction that averages one (1) hour per week of individual or triadic supervision throughout the internship, usually performed by the onsite supervisor;
- (iv) An average of one and one-half (1 1/2) hours per week of group supervision provided on a regular schedule throughout the internship and performed by a licensed program faculty member;
- (v) The opportunity for the student to become familiar with a variety of professional activities and resources in addition to direct service (e.g., record keeping, assessment instruments, supervision, information and referral, in-service and staff meetings);
- (vi) The opportunity for the student to develop program-appropriate audio or video recordings for use in supervision or to receive live supervision of his or her interactions with clients; and
- (vii) Evaluation of the student's counseling performance throughout the internship, including documentation of a formal evaluation after the student completes the internship by a program faculty member in consultation with the site supervisor;

5. Submit the results of a background check performed within the last three (3) months by the Kentucky State Police and a criminal background check performed by the Federal Bureau of Investigation; and

6. Submit a copy of the course description or syllabi for the courses taken to satisfy KRS 335.525(1)(d) or KRS 335.527(1)(c) if the degree in counseling or the degree in a related field is not from a CACREP accredited institution.

(b) If applying for licensure via endorsement for reciprocity, an applicant shall:

- 1. Meet the requirements in paragraph (a)1₂ and 2₂ of this subsection; and
 - 2. Submit an official transcript.
- (2) Each applicant for licensure as a licensed professional counselor associate shall:

(a) Submit a Licensed Professional Counselor Associate Application[an Application for Licensed Professional Counselor Associate] to the board;

(b) Pay the fee as established in 201 KAR 36:020;[and]

(c) Submit an official transcript;

(d) Satisfy the requirements of subsection (1)(a)4. of this section;

(e) Submit the results of a background check performed within the last three (3) months by the Kentucky State Police and a criminal background check performed by the Federal Bureau of Investigation; and

(f) Submit a copy of each syllabi for the courses taken to satisfy KRS 335.525(1)(d) or KRS 335.527(1)(a) if the degree in counseling or degree in a related field is not from a CACREP accredited institution.

Section 5. An applicant for licensure shall be of good moral character. If an applicant lacks[In order to establish] good moral character, the applicant or licensee has the duty to provide available evidence relative of rehabilitation.

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

(a) "Application for Licensed Professional Clinical Counselor[and Licensing Via Endorsement for Reciprocity]", January 2017[September 2016][October 2014]; and

(b) "Licensed Professional Counselor Associate Application[for Licensed Professional Counselor Associate]", January 2017[September 2016][October 2014].

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

MARTIN C. WESLEY, Chairperson

APPROVED BY AGENCY: January 13, 2017

FILED WITH LRC: January 13, 2017 at 10 a.m.

CONTACT PERSON: Kayla Mann, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8803, fax (502) 696-5836, email Kayla.Mann@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kayla Mann

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the educational and examination requirements to qualify for licensure.

(b) The necessity of this administrative regulation: This administrative regulation enables the board to evaluate an applicant's qualifications by establishing the educational and examination requirements for licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.525(1)(c) requires that applicants for licensure shall have received a master's or doctoral degree in counseling or a related field from a regionally-accredited institution. KRS 335.525(1)(d) requires that applicants for licensure shall have sixty (60) graduate semester hours in specified areas. KRS 335.525(1)(f) requires that applicants achieve passing scores on the examination required by the Board. KRS 335.515(3) authorizes the board to promulgate administrative regulations necessary to carry out the provisions of KRS 335.500 to 335.599.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation specifies the types of education and examination that are acceptable for licensure.

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

(a) How the amendment will change this existing administrative regulation: The amendments establishes: (1) the requirements for a degree in counseling and a degree in a related field for KRS 335.527(1)(a); (2) establishes the number of semester and quarter hours to satisfy the professional orientation and ethics requirements to be considered an acceptable degree; (3) the graduate hour requirements of KRS 335.525(1)(d) and KRS 335.527(1)(a) as semester hours; (4) the number of quarter hours that is an equivalent to sixty (60) semester hours; (5) the course descriptions for the nine areas listed in KRS 335.525(1)(d) and KRS 335.527(1)(a); (6) a requirement for a criminal background for new applicants and individuals seeking reinstatement; and (7) the requirement for a new applicant to submit a syllabi for each course if not from a CACREP accredited institution.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the differences between the language in KRS 335.525(1)(d) and KRS 335.527(1)(a); inform applicants the calculations from quarter hours to semester hours; and advise what documents should be provided to the board as part of the application process.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is in conformity with KRS 335.515(1), (3), 335.500, 335.525(1)(c), (d), (f), 335.527(1)(a).

(d) How the amendment will assist in the effective administration of the statutes: The amendment will eliminate is uncertainty an questions regarding the differences between the language in KRS 335.525(1)(d) and KRS 335.527(1)(a); inform applicants the calculations from quarter hours to semester hours; and advise what documents should be provided to the board as part of the application process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board receives approximately 100 applications for licensure yearly.

(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: An applicant will have to submit a criminal background check and syllabi.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be a cost of obtaining a criminal background check, which the board understands to be between \$10 and \$50.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit will be expediting application decisions without the need to defer to the next month so the board can obtain additional information.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: None

(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: 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 fee increase 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 was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 335.515(1), (3).

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

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

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Licensed Professional Counselors (Amended After Comments)

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

RELATES TO: KRS 335.535

STATUTORY AUTHORITY: KRS 335.515(1), (3), (6), 335.535

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(3) authorizes the Board of Licensed Professional Counselors to promulgate administrative regulations necessary for the proper performance of its duties. KRS 335.515(6) and KRS 335.535 require the holder of a license to renew that license annually. This administrative regulation establishes the requirements for renewal, late renewal, and reinstatement of a license.

Section 1. (1) A license shall be renewed by October 31 of each year.

(2) A person receiving an initial license within 120 days prior to the renewal date shall not be required to renew until October 31 of the following year.

Section 2. (1) To apply for renewal, a licensed professional clinical counselor shall:

(a) Submit a completed LPCC Renewal Application to the board; and

(b) Pay to the board the appropriate renewal fee established in 201 KAR 36:020, Section 2(1)(a), for the renewal of a license.

(2) After the sixty (60) day grace period, in order to apply for reinstatement, an individual who has a terminated license as a licensed professional clinical counselor shall:

(a) Submit a completed Reinstatement Application for Licensed Professional Clinical Counselors;

(b) Submit proof of completing ten (10) hours of board-approved continuing education within one (1) year of the filing for reinstatement;

(c) Complete three (3) hours of continuing education on the law for regulating professional counseling, KRS Chapter 335.500 to 335.990 and 201 KAR Chapter 36 within one (1) year of the filing for reinstatement;

(d) Submit a background check performed within the last ninety (90) days~~[three (3) months]~~ by the Kentucky State Police and a criminal background check performed by the Federal Bureau of Investigation;

(e) Pay the renewal fee established in 201 KAR 36:020, Section 2(1)(a); and

(f) Pay the reinstatement fee established in 201 KAR 36:020, Section 2(3)(a).

Section 3. (1) To apply for renewal, a licensed professional counselor associate shall:

(a) Submit a completed LPCA Renewal Application to the board; and

~~(b) [Submit a supervision agreement or a copy of a previously approved supervision agreement; and~~

~~(e)]~~ Pay to the board the appropriate renewal fee established in 201 KAR 36:020, Section 2(1)(b), for the renewal of a license.

(2)(a) After the sixty (60) day grace period or revocation of a license, in order to apply for reinstatement, an individual who has a terminated license as a professional clinical counselor associate shall:

1. Submit a completed Reinstatement Application for Licensed Professional Clinical Counselors;

2. Submit a background check performed within the last ninety (90) days~~[three (3) months]~~ by the Kentucky State Police and a criminal background check performed by the Federal Bureau of Investigation;

3. Submit proof of completing ten (10) hours of board-approved continuing education completed within one (1) year of the filing for reinstatement;

4. Complete three (3) hours of continuing education on the law

for regulating professional counseling, KRS Chapter 335.500 to 335.990 and 201 KAR Chapter 36, within one (1) year of the filing for reinstatement;

5. Pay the renewal fee established in 201 KAR 36:020, Section 2(1)(b); and

6. Pay the reinstatement fee established in 201 KAR 36:020, Section 2(3)(b).

(b) A person who applies for reinstatement within three (3) years of termination or revocation of the license shall be required to meet current continuing education/licensure requirements established in 201 KAR 36:030.

(c) A person who fails to apply for reinstatement within three (3) years of termination or revocation of the license shall be required to meet current licensure requirements.

Section 4. (1) A person shall not engage in the practice of professional counseling after a license has been terminated.

(2) The ten (10) hours of continuing education completed within one (1) year of the filing of reinstatement shall not count towards the applicant's continuing education requirement under 201 KAR 36:030, Section 1(1).

Section 5. (1) A licensee for renewal or applicant for reinstatement shall maintain good moral character.

(2) ~~If an applicant lacks~~~~[In order to establish]~~ good moral character ~~and the incident that resulted in the lack of good moral character occurred since issuance of the initial license or last renewal date~~~~[despite a criminal conviction]~~, the applicant or licensee has the duty to provide available evidence relative of rehabilitation.

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

(a) "LPCC Renewal Application", January 2017~~[September, 2016]~~;

(b) "LPCA Renewal Application", January 2017~~[September, 2016]~~;

(c) "LPCC Reinstatement Application", January 2017~~[September, 2016]~~; and

(d) "LPCA Reinstatement Application", January 2017~~[September, 2016]~~.

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

MARTIN C. WESLEY, Chairperson

APPROVED BY AGENCY: January 13, 2017

FILED WITH LRC: January 13, 2017 at 10 a.m.

CONTACT PERSON: Kayla Mann, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8803, fax (502) 696-5836, email Kayla.Mann@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kayla Mann

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the procedure and requirements for the renewal, reinstatement, and reactivation of a license.

(b) The necessity of this administrative regulation: The necessity of this regulation is to inform a licensee of the procedure and requirements for the renewal, reinstatement, and reactivation of a license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the renewal, reinstatement, and reactivation of a license.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation

will assist in establishing and clarifying the procedure and requirements for the renewal, reinstatement, and reactivation of a 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: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. There are presently 1534 licensed professional clinical counselors and 911 licensed professional clinical counselor associates.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either

the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A licensee will have to take no additional action to comply with the regulation. The processes were currently being implemented.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no new cost associated to the amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation clarifies and notifies licensees of the specific requirements for the renewal, reinstatement, and reactivation of a license.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no new fees or fee increases associated with the amendments.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 335.515(1), (3), (6), 335.535.

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

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

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET
Board of Licensed Professional Counselors
(Amended After Comments)**

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

RELATES TO: KRS 335.515(3), 335.515(4), 335.545

STATUTORY AUTHORITY: KRS 335.515(3), (4), (7)

NECESSITY, FUNCTION AND CONFORMITY: KRS 335.515(3) authorizes the board to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS 335.500 to 335.599. KRS 335.515(4) authorizes the board to conduct administrative hearings as necessary pursuant to KRS Chapter 13B. This administrative regulation establishes the procedures for an individual to request an administrative hearing from the denial of or refusal to renew or reinstate a license, or revocation of a probated sanction.

Section 1. Right of Administrative Hearing from a Denial of or Refusal to Renew or Reinstate a License. (1) The board shall issue written notice of the denial informing the applicant:

(a) Of the specific reason for the board's action, including:

1. The statutory or regulatory violation; and

2. The factual basis on which the denial is based; and

(b) That the applicant may appeal the pending denial to the board within twenty (20) calendar days after receipt of this notification, excluding the day he or she receives notice, or the date that the notification is returned to the board as unclaimed.

(2) A written request for an administrative hearing shall be filed with the board within twenty (20) calendar days after receipt of this notification, excluding the day he receives notice, or the date that the notification is returned to the board as unclaimed[of the date of the board's notice.] The request shall identify the specific issues in dispute and the legal basis on which the board's decision on each issue is believed to be erroneous.

(3) If the request for an appeal is not timely filed, the notice of denial shall be effective upon the expiration of the time for the certificate holder to request an appeal.

(4) The documentary evidence shall be limited to the application and supporting documents submitted to the board during the application process and that was considered as part of the denial of the application.

(5) A renewal applicant may petition the board, in writing, for a stay of the denial of the license until completion of the administrative hearing process.

Section 2. Revocation of Probation. (1) If the board moves to revoke probation, the board shall issue written notice of the revocation and inform the probationee:

(a) Of the factual basis on which the revocation is based;

(b) Of each probation term violated;

(c) Of the sanction to be imposed; and

(d) That the probationee may appeal the revocation to the board within twenty (20) calendar days after receipt of this notification, excluding the day he receives notice, or the date that the notification is returned to the board as unclaimed[of the date of notification of revocation]. The notification shall be sent to the last known address on file with the board for the certificate holder.

(2) A written request for an administrative hearing shall be filed with the board within twenty (20) calendar days after receipt of this notification, excluding the day he receives notice, or the date that the notification is returned to the board as unclaimed[of the date of the board's notice]. The request shall identify the specific issues in dispute and the legal basis on which the board's decision on each issue is believed to be erroneous.

(3) If the request for an administrative hearing is not timely filed, the revocation shall be effective upon the expiration date for the certificate holder to request an appeal.

Section 3. A request for an administrative hearing shall be sent to the Kentucky Board of Licensed Professional Counselors by mail to P.O. Box 1360, Frankfort, Kentucky 40602 or by hand-delivery to 911 Leawood Drive, Frankfort, Kentucky 40601.

Section 4. An administrative hearing shall be governed in accordance with KRS Chapter 13B.

Section 5. If the final order of the board is adverse to a licensee or applicant, or if the hearing is scheduled at the request of a licensee or applicant for relief from sanctions previously imposed by the board, the costs in an amount equal to the cost of stenographic services, the cost of the hearing officer, and the board's attorney fees shall be assessed against the licensee or applicant. In a case of financial hardship, the board may waive all or part of the fee.

MARTIN C. WESLEY, Chairperson

APPROVED BY AGENCY: January 13, 2017

FILED WITH LRC: January 13, 2017 at 11 a.m.

CONTACT PERSON: Kayla Mann, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8803, fax (502) 696-5836, email Kayla.Mann@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kayla Mann

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the due process procedures for a denial of, refusal to renew, or reinstate a license and revocation of probation. It also sets out the scope of what a hearing officer may consider and imposes costs on an individual who fails to reverse the decision of the board on a denial of, refusal to renew, or reinstate a license and revocation of probation.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish due process procedures.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the denial, renewal, reinstatement, and revocation of a probation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in establishing and clarifying the procedure and requirements for the denial, renewal, reinstatement, and revocation of a probation.

(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 board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. There are presently 1534 licensed professional clinical counselors and 911 licensed professional clinical counselor associates.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A licensee will have to take no additional action to comply with the regulation. The processes were currently being implemented.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no new cost associated to the amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation clarifies and notifies licensees of the specific requirements for the renewal, reinstatement, and reactivation of a license.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no new fees or fee increases associated with the amendments.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 335.515 (3), (4), and (7).

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 fiscal year ending June 30, 2016, the board spent approximately \$10,500.00 in costs associated with litigation arising from a denial of application.

(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: For fiscal year ending June 30, 2016, the board spent approximately \$10,500.00 in costs associated with litigation arising from a denial of application. None of the appellants has been successful on an appeal of denial.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (Amended After Comments)

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

RELATES TO: KRS 224.1, 224.10, 224.50, 224.70, 224.99, 16 U.S.C. 1531, 33 U.S.C. 1251, 42 U.S.C. 82, 40 C.F.R. 257.53

STATUTORY AUTHORITY: KRS 224.10-100, 224.50-760

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.50-760(1)(d) authorizes the cabinet to promulgate administrative regulations for the management of special wastes. This administrative regulation defines terms used in 401 KAR Chapter 46. Some federal terms have been replaced with the definitions established in KRS Chapter 224. Definitions contained in KRS Chapter 224 have been referenced to the appropriate statutory citation. Some terms do not have a federal counterpart and have been added to clarify requirements and provisions of KRS Chapter 224 and 401 KAR Chapter 46.

Section 1. Definitions. Except as provided in this section, the definitions shall be as established in 40 C.F.R. 257.53. (1) "Cabinet" is defined by KRS 224.1-010(9).

(2) "Coal combustion residuals (CCR) permit-by-rule" or "CCR permit-by-rule" means ~~the authorization allowing the management, disposal, or~~ beneficial use of CCR, consistent with this chapter, without the submission of an application to the cabinet by:

~~(a) An owner or operator of a CCR unit; or~~

~~(b) a beneficial use of CCR user.~~

(3) "Coal combustion residuals registered permit-by-rule" or "CCR registered permit-by-rule" means authorization allowing the management, or disposal, upon notification as established in 401 KAR 46:120, Section 1(1)(c)1.

~~(4) "Disposal" is defined by KRS 224.1-010(10).~~

~~(5) [(4)] "Person" is defined by KRS 224.1-010(17).~~

~~(6) [(5)] "Secretary" is defined by KRS 224.1-010(24).~~

~~(7) [(6)] "Solid waste" is defined by KRS 224.1-010(31)(a).~~

~~(8) [(7)] "Solid waste management" is defined by KRS 224.1-010(39).~~

~~(9) [(8)] "Special waste" is defined by KRS 224.50-760(1)(a).~~

~~(10) [(9)] "State" means the Commonwealth of Kentucky.~~

~~(11) [(10)] "State director" means the secretary as defined by KRS 224.1-010(24).~~

~~(12) [(11)] "User" means the person beneficially using CCR in the Commonwealth of Kentucky.~~

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: January 13, 2017

FILED WITH LRC: January 13, 2017 at noon

CONTACT PERSON: Louanna Aldridge, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone (502)782-6538, fax (502) 564-4245, email Louanna.Aldridge@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Louanna Aldridge

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines terms used in 401 KAR Chapter 46 for the management of coal combustion residuals.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define the terms necessary to administer the management of coal combustion residuals.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 224.50-760 by defining terms for 401 KAR Chapter 46 for the management of coal combustion residuals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the management of coal combustion residuals as established by KRS 224.50-760 by defining the terms necessary to administer the program.

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

(a) How the amendment will change this existing administrative regulation: The definition for a CCR registered permit-by-rule was added as this type of permit was added to 401 KAR 46:120. As a result, the CCR permit-by-rule definition was changed to reflect that only a beneficial use of CCR will be included for a permit-by-rule.

(b) The necessity of the amendment to this administrative regulation: The change to the CCR permit-by-rule definition and addition of the CCR registered permit-by-rule definition are necessary as an additional type of permit was added to 401 KAR 46:120 to apply to owners and operators of CCR units.

(c) How the amendment conforms to the content of the authorizing statutes: This definition conforms to KRS 224.50-760 by defining a term used in 401 KAR Chapter 46 for the management of coal combustion residuals.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist by defining all terms used in 401 KAR Chapter 46.

(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 electric generating utilities that manage coal combustion residuals by providing definitions of terms used in 401 KAR Chapter 46. There are currently eight electric generating utilities that will be affected 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: This administrative regulation provides definitions of terms and will require no action on the part 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): This administrative regulation will have no costs associated as it only provides definitions of terms for 401 KAR Chapter 46.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation has no compliance benefits as it only provides definitions of terms.

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

(a) Initially: This administrative regulation will not cost the administrative body to implement as it only provides definitions of terms.

(b) On a continuing basis: This administrative regulation will not cause the administrative body to incur any continuing costs as it only provides definitions of terms.

(6) What is the source of the funding to be used for the

implementation and enforcement of this administrative regulation: This administrative regulation will not require a funding source as it only provides definitions of terms.

(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 fees or funding to implement as it only provides definitions of terms.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not directly establish any new fees. Fees are established in 401 KAR 46:120.

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation defines terms that are applicable to the program.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 257.53

2. State compliance standards. KRS 224.50-760

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. 257.53

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 defines terms used in 401 KAR Chapter 46. This administrative regulation does not impose stricter or different responsibilities or requirements. Some federal terms have been replaced with the definitions established in KRS Chapter 224. Definitions contained in KRS Chapter 224 have been referenced to the appropriate statutory citation. Some terms do not have a federal counterpart and have been added to clarify requirements and provisions of KRS Chapter 224 and 401 KAR Chapter 46.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation replaced some federal terms with the definitions established in KRS Chapter 224. Definitions contained in KRS Chapter 224 have been referenced to the appropriate statutory citation. Some terms do not have a federal counterpart and have been added to clarify requirements and provisions of KRS Chapter 224 and 401 KAR Chapter 46.

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 Division of Waste Management as the definitions established will be used when implementing the administrative regulation in 401 KAR Chapter 46.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.50-760, 40 C.F.R. 257.53

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue as it only provides definitions of terms.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue as it only provides definitions of terms.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not have costs associated with the administration of the program as it only provides definitions of terms. Costs for administering the program will be addressed in 401 KAR 46:120.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not have costs associated with the administration of the program as it only provides definitions of terms. Costs for administering the program in subsequent years will be addressed by a fee in 401 KAR 46:120.

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: This administrative regulation will have no fiscal impact as it only provides definitions of terms.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amended After Comments)**

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

RELATES TO: KRS 224.1, 224.10, 224.50, 224.70, 224.99, Chapter 322, Chapter 322A, 16 U.S.C. 1531, 33 U.S.C. 1251, 42 U.S.C. 82, 40 C.F.R. 257.50-257.106

STATUTORY AUTHORITY: KRS 224.10-100, 224.50-760

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.50-760(1)(d) authorizes the cabinet to promulgate administrative regulations for the management of special wastes. This administrative regulation establishes the requirements for a CCR permit-by-rule and registered permit-by-rule.

Section 1. CCR Permits. Any person engaged in the operation of a CCR unit shall comply with this administrative regulation[Permit-by-rule].

(1)(a) An owner or operator of a CCR unit shall complete and submit the following to obtain[be deemed to have] a registered permit-by-rule;

1. Registered Permit-by-Rule for CCR Facility, DWM 4600, incorporated by reference in this administrative regulation; and

2. In accordance with Section 7 of this administrative regulation, established financial assurance and proof of publication of a public notice.

(b) Within thirty (30) days of the receipt, as evidenced by the date stamped by the Division of Waste Management, the cabinet shall review the registration information submitted in accordance with paragraph (a) of this subsection.

(c) After review of the registration information submitted in accordance with paragraph (a) of this subsection, the cabinet shall notify the applicant in writing;

1. The applicant completed and submitted all registration information and is deemed to have a registered permit-by-rule; or

2. The registration information is deficient, and require the owner or operator to submit the required information to the cabinet.

(d)1. The owner or operator of a registered permit-by-rule shall submit revised registration information pursuant to paragraph (a) of this subsection if any information changes.

2. Within thirty (30) days of receipt, the cabinet shall review the revised registration information in accordance with paragraphs (b) and (c) of this subsection[without the owner or operator having made application with the cabinet].

(2) A beneficial use of CCR user shall be deemed to have a permit-by-rule without having made application with the cabinet, if:

(a) The user is not in violation of 401 KAR Chapter 46 or 401 KAR 30:031;

(b) The beneficial use of CCR does not present a threat or potential threat to human health or the environment;

(c) The beneficial use of CCR does not result in a nuisance condition created by the fugitive emissions of CCR;

(d) The user characterized the nonhazardous nature of the CCR in accordance with 401 KAR 31:030; and

(e) The user submits an annual report to the cabinet pursuant to Section 5 of this administrative regulation.

Section 2. Notice of Concurrence. (1)(a) A permittee who has a permit-by-rule or a registered permit-by-rule as established in Section 1 of this administrative regulation may request a Notice of Concurrence from the cabinet.

(b) A person, who does not have a registered permit-by-rule as established in Section 1(1) of this administrative regulation, and intends to construct a CCR unit, may request a Notice of Concurrence from the cabinet prior to beginning construction.

(c) A person who intends to beneficially use CCR may request a Notice of Concurrence from the cabinet prior to beginning beneficial use.

(2) A person requesting to obtain a Notice of Concurrence shall complete and submit the following information, if applicable:

(a) CCR[Permit-by-rule] Notice of Concurrence Request, DWM 4610, incorporated by reference in this administrative regulation;

(b) For a seismic hazard analysis of a new CCR landfill or lateral expansion of an existing CCR landfill, a site-specific, scenario-based, deterministic, seismic hazard assessment;

(c) For a stability analysis of a new CCR landfill or lateral expansion of an existing CCR landfill, the landfill design demonstrating the following:

1. For subgrade, the factor of safety shall be a minimum of two and zero-tenths (2.0);

2. For the liner components, the factor of safety shall be a minimum of one and one-fourth (1.25);

3. For the final cover system, the factor of safety shall be a minimum of one and one-half (1.5);

4. For the synthetic liner material and structural synthetic materials, a maximum elongation of ten (10) percent; and

5. A minimum seismic factor of safety of one and zero-tenths (1.0);

(d) Additional information necessary to enable the cabinet to make a determination on the issuance of the Notice of Concurrence;

(e)1. If for the unencapsulated beneficial use of CCR involving placement on the land of 12,400 tons or more in non-roadway applications, a check or money order made payable to the Kentucky State Treasurer in the amount of \$2,500; or

2. If for a person, who has not obtained a registered permit-by-rule as established in Section 1(1) of this administrative regulation, and intends to construct a CCR unit, a check or money order made payable to the Kentucky State Treasurer in the amount of \$5,000; and

(f) A narrative with supporting documentation, a certification statement, and seal, from a professional engineer or professional geologist, licensed in accordance with KRS Chapter 322 or KRS Chapter 322A, that the information prepared by the professional engineer or professional geologist, and submitted with the notice of concurrence request, meets the applicable portions of 401 KAR 46:110 and paragraphs (b) and (c) of this subsection.

(3) The cabinet shall review the submittal request for a Notice of Concurrence within 365 days of receipt and issue in writing to the applicant a:

(a) Notice of Concurrence stating the cabinet concurs that the information submitted in accordance with this section is determined to meet applicable criteria in 401 KAR Chapter 46;

(b) Deficiency letter from the cabinet that the submittal is incomplete or that additional information is necessary to enable the cabinet to issue the Notice of Concurrence; or

(c) Notice that the cabinet does not concur that the information submitted in accordance with this section meets the applicable criteria in 401 KAR Chapter 46.

(4)(a) Failure by the applicant to provide the requested information and documentation within ninety (90) days of issuance of a deficiency letter established in subsection (3)(b) of this section

~~shall cause the CCR~~~~[If the submittal is incomplete or additional information is needed after the second deficiency letter, the CCR Permit-by-rule]~~ Notice of Concurrence Request, DWM 4610, ~~to~~~~[shall]~~ expire.

(b) More than two (2) deficiency letters shall not be issued in accordance with subsection (3)(b) of this section, after which the CCR~~[Permit-by-rule]~~ Notice of Concurrence Request, DWM 4610, shall expire.

(c) Expiration of the CCR~~[Permit-by-rule]~~ Notice of Concurrence Request, DWM 4610, shall not prevent the applicant from reapplying if the requested documentation becomes available.

(5)(a) The cabinet may rescind or modify in writing the Notice of Concurrence if the applicant or permittee is not in compliance with 401 KAR Chapter 46.

(b) The cabinet shall rescind the Notice of Concurrence in writing if the cabinet determines that the applicant submitted a false certification.

Section 3. Transition of a Permit Issued in Accordance with 401 KAR Chapter 45. (1) A permittee who is subject to 401 KAR Chapter 46 shall notify the cabinet in writing of its intent to meet the requirements of 401 KAR Chapter 46 by no later than May 1[January 15], 2017, if the permittee possesses a:

(a) Special waste permit-by-rule in accordance with 401 KAR 45:060;

(b) Special waste registered permit-by-rule in accordance with 401 KAR 45:070; or

(c) Formal permit for special waste in accordance with 401 KAR 45:030.

(2) Upon issuance by the cabinet of a registered permit-by-rule~~[As of January 15, 2017]~~, a permit issued pursuant to 401 KAR Chapter 45 for management, disposal, or beneficial reuse of CCR shall terminate if the permittee is subject to 401 KAR Chapter 46.

Section 4. Annual Fees. (1)(a) The owner or operator of a CCR unit shall pay a \$15,000 annual fee for each facility in operation or post-closure.

(b) An owner or operator of a CCR unit shall notify the cabinet in writing upon completion of post-closure activities as established in 401 KAR 46:110, Section 6, and shall no longer be subject to annual fees established in this section.

(2) Payment shall be submitted to the Solid Waste Branch of the Division of Waste Management no later than July 31 of each year.

(3) The owner or operator shall complete and submit with the payment the CCR Annual Fee Form, DWM 4620, incorporated by reference in this administrative regulation.

(4) A check or money order shall be made payable to the Kentucky State Treasurer.

(5) The annual fee shall be due July 31, 2017, and every year after.

(6)(a) The owner or operator of a CCR unit may request an extension to the deadline not to exceed thirty (30) days.

(b) The extension request shall be in writing and shall be received by the Solid Waste Branch of the Division of Waste Management prior to the deadline.

Section 5. Beneficial Use of CCR Reporting Requirements. The user shall submit to the cabinet an annual report of the beneficial use activity undertaken in the previous calendar year by March 31 that identifies the:

- (1) Name and address of the CCR generator;
- (2) Tonnage of CCR beneficially used;
- (3) Name and address of each user of CCR; and
- (4) Specific use of the CCR.

Section 6. Noncompliances. (1) The cabinet may take any appropriate enforcement action, including corrective action, pursuant to 401 KAR Chapter 40, KRS 224.10-410, or 224.10-420, if the permittee is not operating in compliance with 401 KAR Chapter 46.

(2) The cabinet may revoke, modify, or suspend~~[invalidate]~~

a CCR permit-by-rule or registered permit-by-rule upon a final determination of noncompliance.

(3) The cabinet shall follow the procedures in 401 KAR 40:040 in taking action to revoke, modify, or suspend~~[invalidate]~~ any permit-by-rule or registered permit-by-rule pursuant to this section.

Section 7. Financial Assurance and Public Notice Requirements. (1) Owners and operators shall maintain financial assurance sufficient to complete closure and post-closure requirements established in 401 KAR 46:110:

(a) For new CCR units; and

(b) Existing CCR units that were required to establish financial assurance in accordance with 401 KAR 45:080.

(2) Financial assurance requirements shall be in accordance with 401 KAR 45:080, Sections 4, 7, 9, and 10.

(3) The cabinet shall release the financial assurance mechanism required by this section upon notification of completion of post-closure requirements referenced in 40 C.F.R. 257.104(e) as established in 401 KAR 46:110.

(4)(a) A public notice shall be published in a daily or weekly newspaper of major circulation located in the county or counties where the property where the proposed CCR unit is located. If there is no daily or weekly newspaper of major circulation in the county or counties where the proposed CCR unit is located, public notice shall mean publication of required information in a daily or weekly newspaper of major circulation in a county adjacent to the county or counties where the property is located.

(b) Public notice shall include the information contained on the form incorporated by reference in Section 8(1)(f) of this administrative regulation.

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

(a) "CCR~~[Permit-by-rule]~~ Notice of Concurrence Request", DWM 4610, January 2017~~[September 2016]~~; and

(b) "CCR Annual Fee Form", DWM 4620, September 2016; and

(c) "Registered Permit-by-Rule for CCR Facility", DWM 4600, January 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 300 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(3) This material may also be obtained on the division's Web site at waste.ky.gov.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: January 13, 2017

FILED WITH LRC: January 13, 2017 at noon

CONTACT PERSON: Louanna Aldridge, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone (502)782-6538, fax (502) 564-4245, email Louanna.Aldridge@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Louanna Aldridge

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for a CCR permit-by-rule and registered permit-by-rule, the transition of permits for facilities previously regulated by 401 KAR Chapter 45, reporting requirements for the beneficial use of CCR, procedures for which a regulated entity may request a concurrence from the cabinet for compliance, financial assurance requirements, public notice and fees associated with the implementation of the program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements for a CCR permit-by-rule and registered permit-by-rule, the transition of permits for facilities previously regulated by 401 KAR Chapter 45, reporting requirements for the beneficial use of CCR, financial assurance, public notice and procedures for

which a regulated entity may request a concurrence from the cabinet for compliance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 224.50-760 by establishing compliance requirements for the management of coal combustion residuals. This administrative regulation conforms to KRS 224.10-100(20) by exempting publicly-owned facilities from the fees established.

(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 requirements for the management of coal combustion residuals as required by KRS 224.50-760.

(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 following amendments were made to this regulation:

The Cabinet amended the title of regulation to reflect multiple types of permits; Added language imposing a duty to comply with regulation; Amended CCR permits to require a registered permit-by-rule for CCR units; A registration form for registered permit-by-rule was added; Required owners and operators of CCR units to complete registration, establish financial assurance (if applicable) & submit proof public notice prior to receiving a registered permit-by-rule; Cabinet review added for CCR unit registration information within 30 days and would require a notification to applicant when they have registered permit-by-rule, or issue the applicant a deficiency letter; Cabinet would also review revised registrations within 30 days; Financial assurance for closure and post-closure added for new CCR units and existing CCR units which were required to establish financial assurance under 401 KAR 45:080 already; Added a provision for Cabinet to release financial assurance upon notification of completion of post-closure requirements; Added a public notice to be published in the newspaper of major circulation where CCR unit is located, proof of which is required with registration; Changed name of CCR Registered Notice of Concurrence Request form to allow either permit-by rule or registered permit-by-rule applicants to apply; Clarified language in Section 2(4)(a) and (b) that the Notice of Concurrence request would expire if applicant fails to submit information and documentation required by deficiency letter; Extended notification required from permittees transitioning from 401 KAR Chapter 45 to 401 KAR Chapter 46 from January 2017 to May 2017; Modified the termination of a permit under 401 KAR Chapter 45 to 401 KAR Chapter 46 from occurring on January 2017 until the Cabinet issues the new registered permit-by-rule; Modified noncompliance language from "invalidate" to "revoke, modify, or suspend" to be consistent with 401 KAR Chapter 40.

(b) The necessity of the amendment to this administrative regulation: The amendment requiring CCR units to obtain a registered permit-by-rule will allow for the prior review of registration information by the Cabinet. The financial assurance will ensure sufficient funding for closure and post-closure of new CCR units and CCR units that were previously required to have financial assurance under 401 KAR Chapter 45. In addition, the Cabinet provision for when the financial assurance would be released is necessary to establish an end date. A public notice publication was necessary to alert local residents of CCR units. Language clarification in Section 2(4)(a) and (b) of this administrative regulation was necessary as the Cabinet had an incomplete sentence and it was unclear as to when the Notice of Concurrence request would expire. The extension from January 2017 to May 2017 for notification from owners of operators transitioning from 401 KAR Chapter 45 was necessary as the January 2017 date will be passed by the time the regulation is effective. The January 2017 date for the termination of permits transitioning would also be passed by the time the regulation is effective and to prevent a lapse in permit coverage, the date was replaced with the issuance of the new registered permit-by-rule. Noncompliance language was amended to be consistent with KRS 224 terms.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to the content of

KRS 224.50-760 by establishing compliance requirements for the management of coal combustion residuals.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will administration of the statutes by establishing requirements for the management of coal combustion residuals as required by KRS 224.50-760.

(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 electric generating utilities that manage coal combustion residuals by establishing the requirements for a CCR permit-by-rule. There are currently eight electric generating utilities that will be affected in Kentucky. This administrative regulation will affect the Division of Waste Management and the Division of Water as it establishes requirements for entities regulated by the divisions.

(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 will require a utility previously regulated by 401 KAR Chapter 45 to notify the cabinet by May 15, 2017 of their intent to comply with this chapter. Facilities operating CCR units will be required to pay an annual fee. A person conducting beneficial use of CCR will be required to report annually. Owners and operators of CCR units will be required to register with the cabinet and post financial assurance for closure and post-closure as well as to maintain financial assurance for closure and post-closure if previously required by 401 KAR Chapter 45. In addition, owners and operators of CCR units will be required to submit a registration and obtain a CCR registered permit-by-rule, and publish a public notice in the county where the CCR unit is located.

(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 cost each facility \$15,000 annually. In addition, the owners and operators of CCR units required to maintain financial assurance will have the costs of maintaining that bond. In addition, owners and operators of CCR units would have the costs of a public notice in the county newspaper where the CCR unit is located. The Division of Waste Management and the Division of Water will have personnel costs associated with the implementation of this administrative regulation related to registration review, investigation of complaints for noncompliance of the regulated entities, processing the notifications required in the federal regulation, reviewing annual reports for the beneficial use of CCR, processing of fees, and evaluation of the criteria established in this regulation upon request by the regulated entities. The Division of Waste Management anticipates the need for an additional 2.25 personnel positions to administer the coal combustion residual program at a cost of \$225,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will benefit the regulated entities by providing a permit-by-rule or registered permit-by rule for compliance with this chapter. The regulated entity may request a notice of concurrence from the cabinet on whether they are complying with the requirements established in 401 KAR 46:110 which may provide some protectiveness. In addition, the criteria for the disposal of coal combustion residuals established in this administrative regulation will increase the protectiveness of human health and the environment.

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

(a) Initially: The administrative body will have personnel costs associated with the implementation of this administrative regulation related to registration review for registered permit-by-rules, handling of financial assurance mechanisms provided, verification of public notice, investigation of complaints for noncompliance of the regulated entities, processing the notifications required in the federal regulation, reviewing annual reports for the beneficial use

of CCR, processing of fees, and evaluation of the criteria established in this regulation upon request by the regulated entities. The Division of Waste Management anticipates the need for an additional 2.25 personnel positions to administer the coal combustion residual program at a cost of \$225,000.

(b) On a continuing basis: This administrative regulation will cost \$225,000 on an annual basis to administer.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding source for this administrative regulation is established by an annual fee per facility, and a fee for concurrence if requested.

(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 require an increase in funding to implement. The implementation of this administrative regulation will be funded by the annual fee and the fee for a concurrence request.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes an annual fee of \$15,000 for facilities with CCR units, with the exception of publicly-owned facilities which are exempt. In addition, if a new utility company requests a notice of concurrence, a \$5,000 fee is required. If a request for a notice of concurrence for the unencapsulated beneficial use of CCR involving placement on the land of 12,400 tons or more in non-roadway applications, a fee of \$2,500 is required.

(9) TIERING: Is tiering applied? Tiering is not applied in this administrative regulation. All facilities and notice of concurrence requests are charged the same annual fee.

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 Division of Waste Management and Division of Water.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.50-760

(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 an annual revenue of \$225,000 in annual fees. In addition, this administrative regulation will generate \$2,500 or \$5,000, if applicable, per notification of concurrence request for the Division of Waste Management. The amount of revenues that will be generated for concurrence requests will depend on the number received and cannot be determined at this time.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate an annual revenue of \$225,000 in annual fees for subsequent years. In addition, this administrative regulation will generate \$2,500 or \$5,000, if applicable, per notification of concurrence request for the Division of Waste Management. The amount of revenues that will be generated for concurrence requests will depend on the number received and cannot be determined at this time.

(c) How much will it cost to administer this program for the first year? This administrative regulation will have personnel costs associated with the implementation of this administrative regulation related to registration review for registered permit-by-rules, handling of financial assurance mechanisms provided, verification of public notice, investigation of complaints for noncompliance of the regulated entities, processing the notifications required in the

federal regulation, reviewing annual reports for the beneficial use of CCR, processing of fees, and evaluation of the criteria established in this regulation upon request by the regulated entities. The Division of Waste Management anticipates the need for an additional 2.25 personnel positions to administer the coal combustion residual program at a cost of \$225,000.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will have continued personnel costs for subsequent years associated with registration review for registered permit-by-rules, handling of financial assurance mechanisms provided, verification of public notice investigation of complaints for noncompliance of the regulated entities, processing the notifications required in the federal regulation, reviewing annual reports for the beneficial use of CCR, processing of fees, and evaluation of the criteria established in this regulation upon request by the regulated entities. The Division of Waste Management anticipates the need for an additional 2.25 personnel positions to administer the coal combustion residual program at a cost of \$225,000.

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

Revenues (+/-): 15 facilities x \$15,000/annual fee = \$225,000 generated.

Expenditures (+/-): \$225,000 for the implementation of this administrative regulation on 2.25 additional personnel.

Other Explanation: The revenue generated for processing the notification of concurrence requests will be \$2,500 or \$5,000, whichever is applicable. The amount of revenues that will be generated for concurrence requests will depend on the number received and cannot be determined at this time.

TRANSPORTATION CABINET Department of Highways (Amended after Comments)

603 KAR 2:020. Public-private partnerships.

RELATES TO: 45A.070, 45A.077, 45A.085, 45A.494, 175B.005, 175B.010, 175B.020, 175B.030, 175B.035, 175B.037, 176.080, 176.140

STATUTORY AUTHORITY: KRS 175B.037(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 175B.037(7) requires the Transportation Cabinet to promulgate administrative regulations establishing the procurement and proposal review processes for a public-private partnership related to a project undertaken by the state authority. This administrative regulation establishes the requirements for a private business or entity to submit a proposal to the Transportation Cabinet and the review processes for the proposal.

Section 1. Definitions. (1) "Best value" is defined by KRS 45A.070.

(2) "Cabinet" is defined by KRS 175B.010(3).

(3) "Evaluation committee" means a committee designated by the secretary to review and evaluate proposals.

(4) "Financial plan" means a plan submitted to, or proposed by, the state authority pursuant to KRS 175B.030 or KRS 175B.035.

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

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

(7) "Request for proposals" is defined by KRS 45A.070(5).

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

Section 2. Procurement Process. (1) If a public-private partnership is included in an approved or recommended financial plan, and the project is contained in the Enacted Biennial Highway Plan and the State Transportation Improvement Program, the cabinet, the state authority, and another state if involved in the project shall undertake a competitive, best value procurement to obtain a private partner.

(2) A request for proposals shall be issued by the cabinet

pursuant to KRS 45A.085.

(3) A proposal submitted in response to the cabinet's request for proposals shall include:

(a) The name, address, telephone number, and electronic mail address of the contact person for the proposing entity;

(b) A demonstration of financial responsibility for the proposing entity or, if the proposing entity is made up of more than one (1) legal entity, a demonstration of financial responsibility for each member of the proposing team;

(c) A copy of a current insurance policy indicating all coverage including Kentucky workers' compensation for the type of work described in the request for proposals;

(d) Information indicating work on similar projects and resumes of principal officers and key personnel; and

(e) Evidence by the response due date that the proposing entity, or that each member of the proposing team, is registered as a business and in good standing with the Kentucky Secretary of State, and is prequalified with the cabinet pursuant to KRS 176.140.

(4) A bond or check shall accompany each bid pursuant to KRS 176.080(1) and (3).

(5) A proposal shall be forwarded to the Kentucky Transportation Cabinet, Division of Construction Procurement. A proposal shall be addressed to the attention of the director.

(6) A proposal received outside of the time designated in the request for proposal shall be rejected.

Section 3. Proposal Review. (1) The secretary of the cabinet shall designate a committee of engineers and cabinet professionals to review and evaluate proposals based on a qualification basis selection, on specifications that are unique to the proposal, or on a combination of both~~[the specifications of the project]~~.

(2) The director and the evaluation committee may conduct meetings or accept written questions from a potential proposing entity to ask for clarification.

(3) A written confirmation of the questions from the proposing entity and the answers of the director and evaluation committee shall become an official addendum to the request for proposals and shall be provided to potential proposing entities.

(4) Written proposals received in response to a solicitation shall be kept secure and unopened until the date and hour established for opening proposals. If a proposal is not clearly marked, it shall be deemed nonresponsive~~[may be opened for identification purposes and shall be appropriately identified with reference to a particular procurement and resealed until the time for opening proposals]~~.

(5) At the close of the proposal submission deadline, a proposal received by the director shall be examined for general conformity with the terms of the procurement.

(6) If acceptable proposals are not submitted:

(a) New proposals may be solicited based on the same or revised terms; or

(b) The procurement may be canceled.

(7)(a) If, after solicitation of proposals to enter into competitive negotiations, only one (1) proposal responsive to the solicitation is received, the director may commence negotiations with the single offeror and a contract entered into with that offeror shall be valid.

(b) The terms and conditions of the contract with a single offeror shall not deviate from the terms and conditions established in the solicitation for proposals.

(c) Subject to the requirements and conditions of the request for proposal, if a non-selected submitted response to a request for proposal is retained by the cabinet, a stipend shall be paid to an unsuccessful bidder. The amount of the stipend shall be based upon:

1. Project complexity;
2. Estimated proposal costs; and
3. The anticipated degree of competition.

(8) The pricing information and financing terms and conditions shall be kept separate and secure until they are combined with the evaluation committee aggregate qualitative scoring to achieve the final score for the procurement process as established in the

request for proposals.

(9) A contract shall be awarded to the highest scoring entity submitting a responsive proposal based upon the pricing and qualitative evaluation factors established in the request for proposals.

(10)(a) Discussions with proposing entities by a member of the evaluation committee regarding the procurement shall be prohibited except during the selection committee interview process.

The evaluation committee may meet with proposers to discuss the technical aspects of the project in greater detail prior to submission by the proposers.

~~(b)[Ex parte communication between a proposing entity and a member of the evaluation committee shall be prohibited.]~~ If an ex parte communication occurs, the proposing entity shall be disqualified if the ex parte communication creates an unfair advantage or an appearance of impropriety.

(c) Each ex parte communication shall be documented with a written summary that shall become part of the procurement file. The documentation shall include the date and general substance of the communication.

GREG THOMAS, Secretary

PATTY DUNAWAY, State Highway Engineer

D. ANN DANVELO, Office of Legal Services

APPROVED BY AGENCY: January 4, 2017

FILED WITH LRC: January 6, 2017 at 2 p.m.

CONTACT PERSON: D. Ann Dangelo, Assistant 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 a private business or entity to submit a proposal to the Transportation Cabinet and the review processes for the proposal.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procurement and proposal processes for a public-private partnership.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 175B.037(7) requires the cabinet to promulgate administrative regulations establishing the procurement and proposal review processes for a public-private partnership related to a project undertaken by the state authority.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will establish the process for private entities to submit proposals with the cabinet as required by KRS 175B.037(7).

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies the use of the term "highway plan"; ensures that a proposal that is not clearly marked is deemed nonresponsive; and further clarifies ex parte communication and the use of technical reviews.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that the public understands the proposal and procurement process.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 175B.037(7) requires the cabinet to promulgate administrative regulations establishing the procurement and proposal review processes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will further clarify the procurement and proposal review processes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects the Kentucky Transportation Cabinet, Kentucky Public Transportation

Infrastructure Authority, contractors, design professionals, and financial institutions that provide funding for projects.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A private entity desiring to enter into a public-private partnership with the commonwealth will be required to submit a proposal for review pursuant to a request for proposal issued by the cabinet. A private entity must register as a business in good standing with the Kentucky Secretary of State and be prequalified with the Kentucky Transportation Cabinet.

(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 involved in this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question 3): The proposal of the private entity will be considered during the proposal review process with the possibility of selection.

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

(a) Initially: There are no costs involved with this administrative regulation.

(b) On a continuing basis: There are no costs involved with this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There are no costs involved with 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: Fees are not necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Fees are not established by this administrative regulation.

(9) TIERING: Is tiering applied? No. Proposals submitted in response to a request for proposal will be considered by the cabinet without tiering.

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?

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 175B.037

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation is not expedited to effect expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation 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? No costs are expected as a result of this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No costs are expected as a result of 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 Office of Health Policy (Amended After Comments)

900 KAR 5:020. State Health Plan for facilities and services.

RELATES TO: KRS 216B.010-216B.130

STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), 216B.040(2)(a)2.a.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)2.a requires the cabinet to promulgate an administrative regulation, updated annually, to establish the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.

Section 1. The 2017[2016] Update to the 2015-2017 State Health Plan shall be used to:

(1) Review a certificate of need application pursuant to KRS 216B.040; and

(2) Determine whether a substantial change to a health service has occurred pursuant to KRS 216B.015(29)(a) and 216B.061(1)(d).

Section 2. Incorporation by Reference. (1) The "2017[2016] Update to the 2015-2017 State Health Plan", January 2017[September 2016][August 2015], is incorporated by reference.

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

~~[Section 3. This administrative regulation was found deficient by the Administrative Regulation Review Subcommittee on September 8, 2015.]~~

VICKIE YATES BROWN GLISSON, Secretary
PAUL A. COOMES, PH.D., Executive Director

APPROVED BY AGENCY: January 10, 2017

FILED WITH LRC: January 12, 2017 at 3 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Diona Mullins, Office of Health Policy, phone (502) 564-9592, email Diona.mullins@ky.gov, and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the 2017 Update to the 2015-2017 State Health Plan which shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040(2)(a)2.a.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), and 216B.040(2)(a)2.a.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation revises the 2013-2015 State Health Plan to address the technical notes and ambulatory surgical center and acute care beds review criteria.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The

amendment of the State Health Plan will assist in the effective administration of KRS 216B.040(2)(a)2.a. The plan shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040(2)(a)2.a.

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

(a) How the amendment will change this existing administrative regulation: The amendment will revise the technical notes and ambulatory surgical center and acute care beds review criteria in the State Health Plan.

(b) The necessity of the amendment to this administrative regulation: The administrative regulation is necessary to comply with the content of the authorizing statutes as the present and future needs of the population are to be addressed in the State Health Plan.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by incorporating by reference the revised criteria of the 2017 Update to the 2015-2017 State Health Plan.

(d) How the amendment will assist in the effective administration of the statutes: This amendment to the ambulatory surgical center review criteria of the State Health Plan will address the needs of the population and assist in the effective administration of KRS 216B.040(2)(a)2.a.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Annually, approximately 150 CON applications are filed.

(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 which submit certificate of need applications for formal review will be subject to the revised criteria set forth in the 2017 Update to the 2015-2017 State Health Plan.

(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 entities to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities which submit certificate of need applications for formal review will be subject to the revised criteria set forth in the 2017 Update to the 2015-2017 State Health Plan.

(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 necessary since there is no cost to implementing 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.

(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 and does not increase any fees either directly or indirectly.

(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 amendment may impact any government owned, controlled or proposed health

care facilities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The authorizing statutes are KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), and 216B.040(2)(a)2.a.

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

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

(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 revenues will be generated for state or local government.

(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 (+/-): None

Expenditures (+/-): None

Other Explanation: None

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Health Care

(Amended After Comments)

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

RELATES TO: KRS 216.2925, 216.530, 216B.010, 216B.015, 216B.040, 216B.042, 216B.045-216B.055, 216B.075, 216B.105-216B.131, 216B.185, 216B.990

STATUTORY AUTHORITY: KRS 216.530, 216B.042(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function and establish reasonable application fees for licenses. This administrative regulation establishes the fee schedule and requirements for obtaining a license to operate a health facility and establishes the procedure for obtaining a variance.

Section 1. Definitions. (1) "Adverse action" means action taken by the Cabinet for Health and Family Services, Office of Inspector General to deny, suspend, or revoke a health facility's license to operate.

(2) "Cabinet" is defined by KRS 216B.015(6).

~~(3) "Change of ownership" means any change in ownership interest of an entity that holds a license as a health facility defined pursuant to subsection (5) of this section, including any change with respect to a:~~

~~(a) Person or entity with ownership interest in the facility;~~

~~(b) Person who is an officer or director of the entity, if the entity is organized as a corporation; or~~

~~(c) Person or entity responsible for the management, if the entity is organized as a limited liability company not managed by the members of the company.~~

~~(4) "Deemed hospital" means a hospital that has had its accreditation accepted by the Office of Inspector General pursuant to KRS 216B.185(1) as evidence that the hospital demonstrates compliance with the licensure requirements of KRS Chapter 216B.~~

~~(4) [(5)] "Health facility" is defined by KRS 216B.015(13).~~

~~(5) "Health services" is defined by KRS 216B.015(14).~~

~~(6) [(4)] "Inspector General" means the Inspector General of~~

the Cabinet for Health and Family Services or designee.

(7) "Significant financial interest" means lawful ownership of a health facility or health service, whether by share, contribution, or otherwise in an amount equal to or greater than twenty-five (25) percent of total ownership of the health facility.

(8)[(5)] "Variance" means the written approval of the Inspector General authorizing a health[care] facility to depart from a required facility specification, upon meeting the conditions established in Sections 4 and 5 of this administrative regulation.

Section 2. Licenses. (1) Any person or entity, in order to lawfully operate a health facility or health service[provide health services as defined by KRS 216B.015(14)], shall first obtain a provisional license[prior to operating a health facility].

(2) A license required by KRS 216B.105(1), including a provisional license, shall be conspicuously posted in a public area of the health facility.

(3)[(2)] An applicant for provisional licensure or annual renewal of licensure as a health facility[or-service] shall complete and submit to the Office of the Inspector General the appropriate application[for licensure] as follows:

(a) Application for License to Operate a Health Facility or Health Service;

(b) Application for License to Operate a Chemical Dependency Treatment Service, Group Home, Psychiatric Residential Treatment Facility, or Residential Hospice Facility;

(c) Application for License to Operate a Hospital;

(d) Application for License to Operate a Home Health Agency, Non-residential Hospice, or Private Duty Nursing Agency;

(e) Application for License to Operate a Renal Dialysis Facility, Mobile Health Service, Special Health Clinic, or Specialized Medical Technological Service;

(f) Application for License to Operate a Long Term Care Facility; or

(g) Application for License to Operate a Family Care Home.

(4) Provisional License. Upon receipt of an application for a license and appropriate licensure fee as established in Section 3 of this administrative regulation, the Office of Inspector General shall:

(a) Review the application for completeness, including documentation[and any supporting information] related to:

1. Ownership;

2. Personnel[Staffing];

3. Operations and administrative policies;

4. The type of services to be provided applicable to the license requested; and

5. if appropriate, plans and specifications for construction or renovation; and

(b) Return the application and accompanying licensure fee if:

1. An individual having a significant financial[an ownership] interest in the health facility or health service has, within the seven (7) year period prior to the application date, had significant financial[previous ownership] interest in a facility or service that was licensed or certified by the cabinet, and the license or certificate to operate was denied, suspended, revoked, or voluntarily relinquished as the result of an investigation or adverse action that placed patients, residents, or clients at risk of death or serious harm; or

2. The cabinet finds that the applicant misrepresented or submitted false information on the application.

(5)[If an application and accompanying licensure fee is not returned pursuant to subsection (4) of this section, the Office of Inspector General shall conduct:

(a) An initial, on-site inspection of the health facility; or

(b) A desk review of a practice that is acquired by a hospital licensed under 902 KAR Chapter 20 if the practice:

1. Qualified for the exemption described in KRS 216B.020(5) prior to acquisition; and

2. Is not contiguous to the hospital campus;

(6) If an application is determined complete and no statutory or regulatory deficiencies are identified[no facility deficiencies are found during the initial on-site inspection or desk review described by subsection (5) of this section], the

Office of Inspector General shall issue a provisional license to remain in effect until:

(a) Completion of the on-site inspection established in subsection (7) of this section; and

(b) Verification of compliance with each statute and administrative regulation applicable to the license requested[effective for a period not to exceed six (6) months].

(6)(a)(7) Upon receipt of a provisional license, the licensee shall begin providing health services as designated on the licensure application.

(b) If a provisional licensee does not begin providing services within ten (10) business days after receipt of the provisional license, the licensee shall provide written notification to the cabinet of the following:

1. The reason the licensee has not yet begun providing services; and

2. The anticipated date the licensee will begin operating.

(c) The licensee shall notify the cabinet within three (3) business days after the licensee begins providing services.

(7)(8)(a) Within three (3)[six (6)] months from the effective date of a provisional license, the Office of Inspector General shall conduct an unannounced, on-site inspection of the health facility or health service to verify compliance with each statute and administrative regulation applicable to the license requested.

(b) If the Office of Inspector General identifies a statutory or regulatory violation or multiple violations during the provisional licensure period, the health facility or health service shall be subject to the correction process[may continue to provide services under the provisional license pending completion of the plan of correction process] established in subsection (13)(14) of this section.

(8)(9) A provisional license shall expire on the date the Office of Inspector General grants approval of or denies a license following the inspection[or desk review] described in subsection (7)(5) of this section.

(9)(10) If a provisional licensee receives notice from the Office of Inspector General that a license is denied, the licensee shall cease providing services immediately.

(10)(11) Written notice denying a license shall explain the reason for the denial, including:

(a) Substantial failure, as described by KRS 216B.105(2), to comply with the provisions of KRS Chapter 216B or any administrative regulation applicable to the regular license;

(b) Substandard care that places patients, residents, or clients at risk of death or serious harm; or

(c) Denial of access to the Office of Inspector General as described in subsection (13) of this section.

(11)(12) The effective date of the[an initial] license shall be backdated to the issuance[effective] date of the provisional license and be subject to annual renewal within one (1) year from the effective date.

(12)(13)(3) An applicant for an initial license shall, as a condition precedent to licensure be in compliance with each administrative regulation applicable to the license requested, which shall be determined through an on-site inspection of the health facility. (4) Licensure inspections.

(a) Except for a health facility subject to KRS 216.530, a licensure inspection may be unannounced.

(b) 1. A representative of the Office of Inspector General shall have access to the health facility pursuant to KRS 216B.042(2).

2. An applicant for licensure or a current licensee shall not deny access to a representative of the Office of Inspector General, after proper identification, to make an inspection for determining compliance with the requirements of each applicable administrative regulation for which the health facility or health service is licensed under 902 KAR Chapter 20 or 906 KAR Chapter 1.

3.a. Denial of access, including any effort to delay, interfere with, or obstruct an effort by a representative of the Office of Inspector General to enter the health facility or health service, or deny access to records relevant to the inspection, unless deemed confidential by 42 U.S.C. 299b-22(a), shall result in disciplinary action, including denial, revocation, modification, or suspension of the facility's license.

b. Denial, revocation, modification, or suspension of a health facility's or health service's license shall be subject to appeal pursuant to KRS 216B.105.

(c) An inspection of a health facility or health service[or service] licensed under 902 KAR Chapter 20 or 906 KAR Chapter 1 shall comply as follows:

1. The inspection shall be made at any time during the licensee's hours of operation;

2. The inspection shall be limited to ensure compliance with the standards set forth in 902 KAR Chapter 20, 906 KAR Chapter 1, KRS Chapter 216, or KRS Chapter 216B; and

3. The inspection of a health facility or health service[or service] based on a complaint or a follow-up visit shall not limit the scope of the inspection to the basis of the complaint or the implementation of a plan of correction.

(13)(14)(5) Violations.

(a) The Office of Inspector General shall notify a[the] health facility or health service in writing of a regulatory violation identified during an inspection.

(b) The health facility shall submit to the Office of Inspector General, within ten (10) days of the notice, a written plan for the correction of the regulatory violation.

1. The plan shall be signed by the health facility's or health service's administrator, the licensee, or a person designated by the licensee and shall specify:

- The date by which the violation shall be corrected;
- The specific measures utilized to correct the violation; and
- The specific measures utilized to ensure the violation will not recur.

2. The Office of Inspector General shall review the plan and notify the health facility or health service in writing of the decision to:

- Accept the plan;
- Not accept the plan; or
- Deny, suspend, or revoke the license for a substantial regulatory violation in accordance with KRS 216B.105(2).

3. The notice specified in subparagraph 2.b. of this paragraph shall:

- State the specific reasons the plan is unacceptable; and
- Require an amended plan of correction within ten (10) days of receipt of the notice.

4. The Office of Inspector General shall review the amended plan of correction and notify the health facility or health service in writing of the decision to:

- Accept the plan;
- Deny, suspend, or revoke the license for a substantial regulatory violation in accordance with KRS 216B.105(2); or
- Require the health facility or health service to submit an acceptable plan of correction.

5. A health facility or health service that fails to submit an acceptable amended plan of correction may be notified that the license will be denied, suspended, or revoked in accordance with KRS 216B.105(2).

(14)(15)(6) A license shall:

(a) Expire one (1) year from the effective date[of issuance], unless otherwise expressly provided in the license certificate; and

(b) Be renewed in the form of a validation letter if the licensee:

- Submits a completed licensure application;
- Pays the prescribed fee;
- Has no pending adverse action; and
- Unless exempted, has responded to requests from the cabinet for:

- Annual utilization surveys; and
- Requests for information regarding health services provided.

(15)(16)(7) Except for a Level I psychiatric residential treatment facility licensed pursuant to the exception established in 902 KAR 20:320, Section 3(2), more than one (1) license shall not be issued or renewed for a particular licensure category at a specific location.

(16)(17) Written notice[(8) A new licensure application] shall be filed with the Office of Inspector General within thirty (30) calendar days of the effective date of a change of ownership. A change of ownership for a license shall:

(a) Be deemed to occur if more than twenty-five (25) percent of an existing health facility or health service or capital stock or voting rights of a corporation is purchased, leased, or otherwise acquired by one (1) or more persons or legal entity from another; and

(b) Not require the issuance of a provisional license[defined by Section 1(3) of this administrative regulation][A change of ownership for a license shall be deemed to occur if more than twenty-five (25) percent of an existing facility or capital stock or voting rights of a corporation is purchased, leased, or otherwise acquired by one (1) person from another].

(17)(18)(9) The licensee shall fully disclose to the cabinet the name, mailing address, email address, and phone number, or a change in the name, mailing address, email address, or phone number of:

(a) Each person or legal entity having an ownership interest[of twenty-five (25) percent or more] in the health facility or health service; and

(b)1. Each officer or director[of the corporation], if[a facility is] organized as a corporation; or

2. Each partner[,], if[a facility is] organized as a partnership.

(18) An individual, shareholder, or legal entity shall not acquire a significant financial interest in any licensed health facility or health service if that individual, shareholder or legal entity previously held a significant financial interest in a licensed facility that had its license or certificate to operate denied, suspended, revoked, or voluntarily relinquished as the result of an investigation or adverse action that placed patients, residents, or clients at risk of death or serious harm within the preceding seven (7) years.

(19)(20) An unannounced inspection shall be conducted:

(a) In response to a[credible], relevant complaint or allegation; and

(b) According to procedures established in subsection **(12)(13)(4)** of this section.

(20)(21) A licensee that does not have a pending adverse action[,] but fails to submit a completed licensure application annually shall cease operating the health facility unless:

(a) The items required under subsection **(14)(15)(6)**(b) of this section have been tendered; and

(b) The Office of Inspector General has provided the health facility or health service with a notice granting temporary authority to operate pending submission of the application.

(21) Credentialing and Re-credentialing. A licensed health facility that is required by KRS 216B.155(2) to assess the credentials of health care professionals applying for privileges shall use Form KAPER-1, Part B, incorporated by reference in 806 KAR 17:480.

Section 3. Fee Schedule. (1)(a) Fees for review of plans and specifications for construction or renovation of health facilities shall be as follows:

License Type	Rate
(a) Hospitals plans and specifications review	\$.10 per sq. ft.
(initial through final)	\$200 minimum
(b) All other health facilities plans and specifications review	\$.10 per sq. ft.
(initial through final)	\$200 minimum

(b) A request for review of plans and specifications shall be submitted on the Program Review Fee – Worksheet Health Facility Identification form, accompanied by payment described in paragraph (a) of this subsection.

(2) Initial and Annual fees. The initial and annual licensure fee for health facilities and services shall be as follows:

License Type	Rate
(a) Freestanding birth center	\$500

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(b) Alzheimer's nursing home	For Alzheimer's nursing facilities with 50 beds or less, \$750 + \$25 per bed; For Alzheimer's nursing facilities with 51 or more beds, \$1,000 + \$25 per bed
(c) Ambulatory surgical center	\$750
(d) Chemical dependency treatment service	\$1,000 + \$25 per bed
(e) Community mental health center	\$1,500
(f) Day health care	\$170
(g) Family care home	\$42
(h) Group home for individuals with an intellectual or developmental disability	\$100
(i) Health maintenance organization	\$12 per 100 patients
(j) Home health agency	\$500
(k) Hospice	\$500
(l) Hospital	
1. Deemed hospital	For deemed hospitals with 25 beds or less, \$750 + \$25 per bed; For deemed hospitals with 26 or more beds, \$1,000 + \$25 per bed
2. Non-deemed hospital	For non-deemed hospitals with 25 beds or less, \$750 + \$25 per bed; For non-deemed hospitals with 26 or more beds, \$1,000 + \$25 per bed
(m) Intermediate care facility	For intermediate care facilities with 50 beds or less, \$750 + \$25 per bed; For intermediate care facilities with 51 or more beds, \$1,000 + \$25 per bed
(n) ICF/IID facility	For ICFs/IID with 50 beds or less, \$750 + \$25 per bed; For ICFs/IID with 51 or more beds, \$1,000 + \$25 per bed
(o) Network	\$500
(p) Nursing facility	For nursing facilities with 50 beds or less, \$750 + \$25 per bed; For nursing facilities with 51 or more beds, \$1,000 + \$25 per bed
(q) Nursing home	For nursing homes with 50 beds or less, \$750 + \$25 per bed; For nursing homes with 51 or more beds, \$1,000 + \$25 per bed
(r) Ambulatory care clinic	\$500
(s) Personal care home	\$100 + \$5 per bed
(t) Primary care center	\$500 + \$50 per extension
(u) Psychiatric hospital	
1. Deemed hospital	For deemed psychiatric hospitals with 25 beds or less, \$750 + \$25 per bed; For deemed psychiatric hospitals with 26 or more beds, \$1,000 + \$25 per bed
2. Non-deemed hospital	For non-deemed psychiatric hospitals with 25 beds or less, \$750 + \$25 per bed; For non-deemed psychiatric hospitals with 26 or more beds, \$1,000 + \$25 per bed

(v) Psychiatric residential treatment facility	\$500
(w) Rehabilitation agency	\$300
(x) Renal dialysis facility	\$35 \$350 per station ± \$350 per facility
(y) Rural health clinic	\$500
(z) Special health clinic	\$500
(aa) Specialized medical technology service	\$500
(bb) Mobile health service	\$500
(cc) Comprehensive physical rehabilitation hospital	
1. Deemed hospital	For deemed hospitals with 25 beds or less, \$750 + \$25 per bed; For deemed hospitals with 26 or more beds, \$1,000 + \$25 per bed
2. Non-deemed	For non-deemed hospitals with 25 beds or less, \$750 + \$25 per bed; For non-deemed hospitals with 26 or more beds, \$1,000 + \$25 per bed
(dd) Critical access hospital	\$750 + \$25 per bed
(ee) Private duty nursing agency	\$500
(ff) Residential hospice facility	\$500
(gg) Prescribed Pediatric Extended Care Facility	\$500
(hh) Outpatient health care center	\$500

(3) Change in status of a licensed health facility.

(a) Name change or change of facility administrator. If a health facility changes the name of the facility as set forth on its license or the facility administrator changes, the licensee shall notify the Office of Inspector General of the facility's new name or new administrator within ten (10) calendar days of the effective date of the name change or administrator change.

(b) Change of location.

1. If a health facility or one (1) of its extensions or satellites changes location and certificate of need approval is not required prior to relocation, the licensee shall notify the Office of Inspector General of the new location within ten (10) calendar days of the effective date of the change.

2. The Office of Inspector General shall conduct an on-site inspection for a change of location if the facility is one (1) of the following levels of care:

- a. Freestanding birth center;
- b. Alzheimer's nursing home;
- c. Ambulatory surgical center;
- d. Chemical dependency treatment service;
- e. Group home;
- f. Non-deemed hospital;
- g. Intermediate care facility;
- h. Intermediate care facility for individuals with an intellectual or developmental disability (ICF/IID);
- i. Nursing facility;
- j. Nursing home;
- k. Personal care home;
- l. Psychiatric residential treatment facility;
- m. Renal dialysis facility;
- n. Residential hospice facility;**[or]**
- o. Outpatient health care clinic;**or**
- p. Abortion facility.**

Section 4. Existing Facilities With Waivers. (1) The Inspector General shall deem an existing health[care] facility to be in compliance with a facility specification requirement, even though the health facility does not meet fully the applicable requirement, if:

- (a) The Inspector General has previously granted, to the health facility, a waiver for the requirement;
- (b) The health facility is licensed by the cabinet;
- (c) The health facility is in good standing as of the effective date of this administrative regulation; and
- (d) The waived requirement does not adversely affect the health, safety, or welfare of a resident or patient.

(2) If the Inspector General determines that the waived requirement has adversely affected patient or resident health, safety or welfare, then:

(a) The Inspector General shall notify the health facility by certified mail or other method of delivery, which may include electronic service, of the findings and the need to comply with the applicable administrative regulations; and

(b) The health facility shall submit a written plan to ensure compliance, pursuant to Section 2(13)(12)(5)(b) of this administrative regulation.

Section 5. Variances. (1) The Inspector General may grant a health[care] facility a variance from a facility specification requirement if the facility establishes that the variance will:

- (a) Improve the health, safety, or welfare of a resident or patient; or
- (b) Promote the same degree of health, safety, or welfare of a resident or patient as would prevail without the variance.

(2) A health facility shall submit a request for a variance, in writing, to the Office of Inspector General. The request shall include:

- (a) All pertinent information about the facility;
- (b) The specific provision of the administrative regulation affected;
- (c) The specific reason for the request; and
- (d) Evidence in support of the request.

(3) The Inspector General shall review and approve or deny the request for variance. The Inspector General may request additional information from the health facility as is necessary to render a decision. A variance may be granted with or without a stipulation or restriction.

(4) The Inspector General shall revoke a variance previously granted if the Inspector General determines the variance has not:

- (a) Improved the health, safety, or welfare of a patient or resident; or
- (b) Promoted the same degree of health, safety, or welfare of a patient or resident that would prevail without the variance.

1. The Inspector General shall notify the health facility, by certified mail or other method of delivery, which may include electronic service, of a decision to revoke a variance and the need to comply with the applicable regulatory requirement.

2. The health facility shall submit a written plan to ensure compliance, pursuant to Section 2(13)(12)(5)(b) of this administrative regulation.

Section 6. Variance Hearings. (1)(a) A health[care] facility dissatisfied with a decision to deny, modify, or revoke a variance or a request for a variance may file a written request for a hearing with the Secretary of the Cabinet for Health and Family Services.

(b) The request shall be received by the secretary within twenty (20) days of the date the health[care] facility receives notice of the decision to deny, modify, or revoke the variance or request for a variance.

(2) An administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 7. Adverse Action Procedures. (1) A health facility or health service that has received a preliminary order to close or other notice of adverse action:

(a) Shall receive a duplicate license from the Office of Inspector General indicating that the health facility or health service has an adverse action pending;

(b) Shall post the duplicate license in place of the original license;

(c) Shall be subject to periodic inspections by the inspecting agency to investigate complaints and ensure patient safety; and

(d) May continue to operate under duplicate license pending completion of the adverse action process, if patients and residents are not subjected to risk of death or serious harm.

(2) Until all appeals pursuant to KRS 216B.105 of the pending adverse action have been exhausted, the health facility or health service shall not have its:

- (a) License renewed; or
- (b) Duplicate license replaced.

Section 8. Denial and Revocation. (1) The cabinet shall deny or revoke a license if it finds that:

(a) In accordance with KRS 216B.105(2), there has been a substantial failure by the health facility or health service to comply with the provisions of:

- 1. KRS Chapter 216B; or
- 2. The administrative regulations applicable to the health facility's or health service's license;

(b) The health facility or health service fails to submit an acceptable plan of correction or fails to submit an acceptable amended plan of correction within the timeframes required by Section 2(13)(14) of this administrative regulation;

(c) The health facility or health service fails to comply with the annual renewal process described by Section 2(14)(15) of this administrative regulation; or

(d) The health facility or health service denies access to the Office of Inspector General pursuant to Section 2(12)(13)(b) of this administrative regulation.

(2) The denial or revocation of a health facility's or health service's license shall be issued pursuant to mailed to the applicant or licensee by certified mail, return receipt requested, or by personal service or other method of delivery in accordance with KRS 216B.105(2).

(3) Notice of the denial or revocation shall set forth the particular reasons for the action.

(4) In accordance with KRS 216B.105(2), the denial or revocation shall become final and conclusive thirty (30) days after notice is given, unless the applicant or licensee, within the thirty (30) day period, files a request in writing for a hearing with the cabinet.

(5) Pursuant to KRS 216B.050, the cabinet may compel obedience to its lawful orders.

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

(a) Form OIG 001, "Application for License to Operate a Health Facility or Health Service[er-Service]", January 2017[September 2016][June 2014];

(b) Form OIG 002, "Application for License to Operate a Chemical Dependency Treatment Service, Group Home, Psychiatric Residential Treatment Facility, or Residential Hospice Facility", January 2017[September 2016][June 2014];

(c) Form OIG 003, "Application for License to Operate a Hospital", January 2017[September 2016][June 2014];

(d) Form OIG 004, "Application for License to Operate a Home Health Agency, Non-Residential Hospice, or Private Duty Nursing Agency", January 2017[September 2016][June 2014];

(e) Form OIG 005, "Application for License to Operate a Renal Dialysis Facility, Mobile Health Service, Special Health Clinic, or Specialized Medical Technology Service", January 2017[September 2016][June 2014];

(f) Form OIG 006, "Application for License to Operate a Long Term Care Facility", January 2017[September 2016][June 2014];

(g) Form OIG 007, "Application for License to Operate a Family Care Home", January 2017[September 2016][June 2014]; and

(h) Form OIG PR-1, "Program Review Fee – Worksheet Health Facility Identification Form", June 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Inspector General, 275 East Main Street, Frankfort, Kentucky 40621,

Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT S. SILVERTHORN, JR., Inspector General

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: January 13, 2017

FILED WITH LRC: January 13, 2017 at 11 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, Office of Inspector General, phone 502-564-2888, email stephanie.brammer@ky.gov, and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for obtaining a license to operate a health facility, the fees for initial and annual licensure, the procedure for obtaining a variance from a facility specification requirement, and the process for adverse actions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.042(1) which requires the Cabinet for Health and Family Services to establish reasonable application fees for licenses and promulgate administrative regulations necessary for proper administration of the licensure function.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042(1) by establishing the requirements for obtaining a license to operate a health facility and fees for licensure.

(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 requirements for obtaining a license to operate a health facility, the fee for initial and annual licensure, the procedure for obtaining a variance from a facility specification requirement, and the process for adverse actions.

(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 the process for issuing a provisional license and clarifies the process for denial or revocation of a license pursuant to KRS 216B.042(1)(b). In response to comments received during the public comment period, this amended after comments regulation:

Streamlines and expedites the provisional licensure process by deleting Section 2(5), thereby eliminating the initial on-site inspection of a facility prior to issuing the provisional license;

Amends all licensure applications incorporated by reference to include the following statement: I understand that as a condition precedent to provisional licensure, this facility/service shall be in compliance with all state and federal statutes and administrative regulations applicable to the license requested;

Requires the OIG to conduct the unannounced, on-site inspection of a health facility or health service within three (3) months from the effective date of a provisional license;

Requires a provisional licensee to notify the OIG if services are not provided during the provisional licensure period as well as requires notification to the OIG upon providing services;

Restores the previous language related to change of ownership as well as deletes the proposed definition of "change of ownership" in Section 1(3); and

Corrects a typographical error in the fee schedule for renal dialysis facilities.

In addition, we have added a definition of the term "significant financial interest" identical to how the term is defined in 902 KAR 20:014, Section 1(4) as well as modified 902 KAR 20:008, Section 2(4) to clarify that an application and accompanying licensure fee will be returned if any individual, partnership, corporation, or legal entity has, within the seven (7) year period prior to the application date, had a significant financial interest in a facility or service that

was licensed or certified by the cabinet, and the license or certificate to operate was denied, suspended, revoked, or voluntarily relinquished as the result of an investigation or adverse action that placed patients, residents, or clients at risk of death or serious harm. Because the substantive provisions of 902 KAR 20:014 have been included in the amendment for 902 KAR 20:008, the OIG will move forward with the proposed repeal of 902 KAR 20:014.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with KRS 216B.042(1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216B.042(1)(b) by establishing a process for provisional licensure and clarifying the process for denial or revocation of a license pursuant to KRS 216B.042(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of KRS 216B.042(1)(b) by establishing a process for provisional licensure and clarifying the process for denial or revocation of a license pursuant to KRS 216B.042(1)(b).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts health facilities and health services required by KRS Chapter 216B to be licensed.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: New applicants for licensure as a health facility must comply with the requirements for obtaining a provisional license as established by this administrative regulation and authorized by KRS 216B.042(1)(b).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment does not impose additional costs to entities seeking provisional licensure as a health facility or health service.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment establishes the process for obtaining a provisional license to operate a health facility or health service so that services may be provided.

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

(a) Initially: The Office of Inspector General does not anticipate additional costs to implement the changes within this amended after comments regulation.

(b) On a continuing basis: The Office of Inspector General does not anticipate additional costs to implement the changes within this amended after comments regulation on an on-going 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 the licensure function is from federal and state matching funds of general and agency 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: This administrative regulation does not increase current health facility or health service licensure fees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not increase current health facility or health service licensure 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? This amendment impacts new applicants that must comply with the requirements for obtaining a provisional license to operate a health facility or health service as established by this administrative regulation and as authorized by KRS 216B.042(1)(b).

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042

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

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

(c) How much will it cost to administer this program for the first year? The Office of Inspector General does not anticipate additional costs to implement the changes within this amended after comments regulation.

(d) How much will it cost to administer this program for subsequent years? The Office of Inspector General does not anticipate additional costs to implement the changes within this amended after comments regulation on an on-going basis.

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 Health Care

(Amended After Comments)

906 KAR 1:190. Kentucky National Background Check[Applicant Registry and Employment Screening] Program.

RELATES TO: KRS Chapter 13B, 42 U.S.C. 1320 a-7I, 42 U.S.C. 5119a(a)(1), 42 U.S.C. 5119c

STATUTORY AUTHORITY: KRS 194A.050(1), 42 U.S.C. 1320a-7I 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 operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 42 U.S.C. 1320a-7I directs the secretary of the United States Department of Health and Human Services to establish a program to identify efficient, effective, and economical procedures for long-term care facilities or providers to conduct background checks on prospective direct patient access employees on a nationwide basis. On May 20, 2011, the Commonwealth of Kentucky was the twelfth state to receive a National Background Check Program (NBCP) grant awarded by the Centers for Medicare and Medicaid Services under 42 U.S.C. 1320a-7I. On the date this ~~amendment~~~~[amended after comments administrative regulation]~~ was filed with the Legislative Research Commission, ~~twenty-six (26)~~~~[twenty-four]~~ states and territories had received an NBCP grant. The Cabinet for Health and Family

Services, Office of Inspector General is charged with responsibility to oversee and coordinate Kentucky's fingerprint-supported NBCP grant initiative~~[- called the KARES "Kentucky Applicant Registry and Employment Screening" Program]~~. This administrative regulation establishes procedures for the implementation of Kentucky's NBCP[KARES] as a voluntary program. ~~[A key component of the Kentucky NBCP is a secure, web-based system called the KARES system, which is used to facilitate registry and fingerprint-supported state and national criminal background checks.]~~~~[The Cabinet for Health and Family Services encourages long-term care facilities and providers to participate in KARES as the grant program provides employers with an enhanced pre-employment screening mechanism intended to help protect elderly and vulnerable adults from potential abuse, neglect, and exploitation.]~~ The conditions set forth in this administrative regulation for voluntary KARES ~~system~~~~[program]~~ participants are in addition to the name-based, state only background check requirements of KRS 216.533, 216.712(2), 216.787, and 216.789.

Section 1. Definitions. (1) "Applicant" means an individual who:

(a) Applies for employment with an employer identified in subsection (6) of this section; ~~or~~

(b) ~~Is subject to background screening by a professional licensing board that enrolls contingent upon approval by the Federal Bureau of Investigation and Department of Kentucky State Police in the Kentucky NBCP.~~

(2) "Cabinet" means the Cabinet for Health and Family Services.

(3) "Criminal background check" means a state and national fingerprint-supported criminal history background check performed by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI) and includes a comparison of the applicant's fingerprints with any fingerprints that may be on file with KSP or the FBI.

(4) "Disqualifying offense" means:

(a) A conviction of, or a plea of guilty, an Alford plea, or a plea of nolo contendere to:

1. A misdemeanor offense related to:

a. Abuse, neglect, or exploitation of an adult as defined by KRS 209.020(4);

b. Abuse, neglect, or exploitation of a~~[or]~~ child;

c.~~[-or]~~ A sexual offense;

d. Assault occurring less than seven (7) years from the date of the criminal background check;

e. Stalking occurring less than seven (7) years from the date of the criminal background check;

f.~~[Domestic violence occurring less than seven (7) years from the date of the criminal background check;~~

g.~~] Theft occurring less than seven (7) years from the date of the criminal background check;~~

g.~~[h-] Fraud occurring less than seven (7) years from the date of the criminal background check;~~

h.~~[i-] Possessing or trafficking in a controlled substance occurring less than seven (7) years from the date of the criminal background check; or~~

i.~~[j-] Any other misdemeanor offense relating to abuse, neglect, or exploitation that is not listed in this subsection and occurred less than seven (7) years from the date of the criminal background check;~~

2. A criminal offense against a victim who is a minor, as defined in KRS 17.500;

3. A felony offense involving a child victim;

4. A felony offense under:

a. KRS Chapter 209, protection of adults;

b. KRS Chapter 218A, controlled substances;

c. KRS Chapter 434, offenses against property by fraud~~[507.020];~~

d. KRS Chapter 507, criminal homicide~~[507.030];~~

e. KRS Chapter 507A, fetal homicide~~[507.040];~~

f. KRS Chapter 508, assault and related offenses;

g. KRS Chapter 509, kidnapping and related offenses;

h. KRS Chapter 510, sexual offenses;

i. KRS Chapter 511, burglary and related offenses;

j. KRS Chapter 512, criminal damage to property;
 k. KRS Chapter 513, arson and related offenses;
 l.~~[k-]~~ KRS Chapter 514, theft and related offenses[514.030];
 m.~~[l-]~~ KRS Chapter 515, robbery;
 n.~~[m-]~~ KRS Chapter 516, forgery and related offenses[529.100];

o. KRS Chapter 517, business and commercial frauds[n- KRS 529.110];

p. KRS Chapter 520, escape and other offenses related to custody;

q.~~[o-]~~ KRS Chapter 525, riot, disorderly conduct, and related offenses;

r. KRS Chapter 527, offenses relating to firearms and weapons;

s. KRS Chapter 529, prostitution offenses;

t. KRS Chapter 530, family offense, excluding KRS 530.050;

u.~~[and p-]~~ KRS Chapter 531, pornography; or

v. Any other felony offense relating to abuse, neglect, exploitation, drugs, theft, or fraud not listed in this subsection;

5. An offense under a criminal statute of the United States or of another state similar to an offense specified in this paragraph; or

6. A crime described in 42 U.S.C. 1320a-7;

(b) A substantiated finding of neglect, abuse, or misappropriation of property by a state or federal agency pursuant to an investigation conducted in accordance with 42 U.S.C. 1395i-3 or 1396r;

(c) Registration as a sex offender under federal law or under the law of any state; or

(d) Being listed on a registry as defined in subsection (9) of this section.

(5) "Employee" means an individual who:

(a)1. Is hired directly or through contract by an employer defined in subsection (6) of this section, and has duties that involve or may involve one-on-one contact with a patient, resident, or client; or

2. Unless excluded pursuant to Section 2(3)(c) through (e) of this administrative regulation, is a volunteer who has duties that are equivalent to the duties of an employee providing direct services and the duties involve, or may involve, one-on-one contact with a patient, resident, or client; and

(b) Has access to the personal belongings or funds of a patient, resident, or client.

(6) "Employer" means:

___(a) A long-term care facility as defined in KRS 216.510;

___(b) A nursing pool as defined in subsection (8)~~[(7)]~~ of this section providing staff to a long-term care facility or provider;

___(c) An adult day health care program as defined in KRS 216B.0441;

___(d) An assisted living-community as defined in KRS 194A.700;

___(e) A home health agency as defined in KRS 216.935;

___(f) A provider of hospice care as defined in 42 U.S.C. 1395x(dd)(1) and licensed pursuant to KRS Chapter 216B;

___(g) A personal services agency as defined in KRS 216.710;

___(h) A long-term care hospital as defined in 42 U.S.C. 1395ww(d)(1)(B)(iv);

___(i) A provider of home and community-based services authorized under KRS Chapter 205;

___(j) A staffing agency with a contracted relationship to provide one (1) or more employers as listed in this subsection with staff whose duties are equivalent to duties performed by an employee pursuant to subsection (5) of this section;~~[or]~~

___(k) Any other health facility or service licensed pursuant to KRS Chapter 216B that applies to participate voluntarily in Kentucky's National Background Check[the KARES] Program; or

(l) Any other provider licensed by the cabinet for which a state and national background check is required as a condition of employment.

___(7) "KARES system" means the cabinet's secure, web-based application used to facilitate abuse registry and fingerprint-supported state and national criminal background checks for authorized users of the system.

(8) "Kentucky National Background Check Program" or "NBCP" means a background screening program administered by

the Cabinet for Health and Family Services, Office of Inspector General to facilitate registry and fingerprint-supported state and national criminal history background checks conducted by the Department of Kentucky State Police and the Federal Bureau of Investigation for the following:

(a) Prospective employees of any employer identified in subsection (6)(a) through (k) of this section that participates voluntarily in the Kentucky National Background Check Program;

(b) Any other individuals required by state law or administrative regulation to submit to a state and national background check as a condition of:

1. Employment; or

2. Licensure, certification, or registration by a professional licensing board that enrolls contingent upon approval by the Federal Bureau of Investigation and Department of Kentucky State Police in the Kentucky NBCP; and

(c) May include individuals seeking approval as a kinship caregiver or foster or adoptive parent.

(9)~~[(8)]~~ "Nursing pool" means a person, firm, corporation, partnership, or association engaged for hire in the business of providing or procuring temporary employment in or with a long-term care facility or provider for medical personnel, including nurses, nursing assistants, nursing aides, and orderlies.

(10)~~[(9)]~~[(8)] "Registry" means the:

(a) Nurse aide abuse registry maintained pursuant to 906 KAR 1:100 and 42 C.F.R. 483.156;

(b) Child abuse and neglect registry maintained pursuant to 922 KAR 1:470 and required by 42 U.S.C. 671(a)(20);

(c) List of Excluded Individuals and Entities maintained by the United States Department of Health and Human Services, Office of Inspector General pursuant to 42 U.S.C. 1320a-7;~~[and]~~

(d) Caregiver misconduct registry required by KRS 209.032; and

(e) Any available abuse registry, including the abuse and neglect registries of another state if an applicant resided or worked in that state.

(11)~~[(10)]~~[(9)] "State" is defined by KRS 446.010(40).

(12)~~[(11)]~~[(10)] "Violent offender" is defined by KRS 439.3401(1) ~~(crime" means a conviction of, or a plea of guilty, an Alford plea, or a plea of nolo contendere to a capital offense, Class A felony, or Class B felony involving the death of the victim, rape in the first degree or sodomy in the first degree of the victim, sexual abuse in the first degree, or serious physical injury to a victim).~~

Section 2. Applicability and Exceptions. (1) This administrative regulation shall apply to:

(a) Prospective cabinet staff~~[hired on or after the effective date of this administrative regulation]~~ whose duties include conducting inspections of:

1. Health facilities and services licensed pursuant to KRS Chapter 216B; or

2. Services regulated pursuant to KRS 194A.700 through 194A.729, or KRS 216.710 through 216.714;

(b) Prospective employees~~[hired on or after the effective date of this administrative regulation]~~ of state-owned or operated health facilities licensed pursuant to KRS Chapter 216B;

(c) Prospective cabinet staff~~[hired on or after the effective date of this administrative regulation]~~ who have or may have one-on-one contact with a patient or resident of an employer defined by Section 1(6) of this administrative regulation; and

(d) Prospective employees seeking employment with a private employer that participates voluntarily in the Kentucky National Background Check[KARES] Program[hired on or after the effective date of this administrative regulation].

(2) This administrative regulation shall not apply to current cabinet staff or current employees of any employer that participates voluntarily in the Kentucky National Background Check[KARES] program[that are employed before the effective date of this administrative regulation].

(3) A prospective employee shall not include:

(a) An individual who independently contracts with a KARES-participating employer to provide utility, construction, communications, or other services if the contracted services are

not directly related to the provision of services to a resident, patient, or client of the employer;[or]

(b) A[~~board-certified~~] physician, surgeon,[or] dentist, psychologist, psychiatrist, podiatrist, audiologist, ophthalmologist, optometrist, dietician, therapist, phlebotomist, or any health care practitioner who is licensed to practice in Kentucky and is under contract with a participating employer in which a background check is required as a condition of professional licensure;

(c) A member of a community-based or faith-based organization that provides volunteer services that do not involve unsupervised interaction with a patient or resident;

(d) A student participating in an internship program; or

(e) A family member or friend visiting a patient or resident[KARES-participating-employer].

Section 3. Continuous Assessment. (1) To ensure that the information remains current in the KARES system, the cabinet shall collaborate with the Department of Kentucky State Police (KSP) to implement a mechanism for continuous assessment in which KSP:

(a) Retains the fingerprints of an individual screened under the Kentucky NBCP:

1. For a minimum period of five (5) years from the date of fingerprint submission; and

2. On a five (5) year renewal basis thereafter; and

(b) Facilitates the retention of the fingerprints by the FBI upon approval to participate in the FBI's Next Generation Identification (NGI) rap back service.

(2) Upon implementation of the process for continuous assessment, the Department of Kentucky State Police may provide notification to the cabinet of triggering events for each applicant after initial processing of the applicant's criminal background check, subject to any applicable administrative regulations of the Department of Kentucky State Police and the FBI.

Section 4. Enrolling in the Kentucky NBCP. To enroll in the Kentucky NBCP, an employer or a participating professional licensing board shall:

(1) Log on to the KARES portal; and

(2) Confirm acceptance of the terms and conditions for using the KARES system[Agreement to Participate. An employer that elects to participate in KARES voluntarily shall complete and submit an Agreement to Participate in the KARES Program].

Section 5[4]. Registry and Criminal Background Checks: Procedures and Payment.

(1) To initiate the process for obtaining a background check on a prospective employee or licensee, the employer or participating professional licensing board shall:

(a) Request that the applicant provide a copy of his or her driver's license or other government-issued photo identification and verify that the photograph clearly matches the applicant;

(b) Request that the applicant sign the OIG 1:190-1, Disclosures to be Provided to and Signed by Applicant for Employment or Licensure;[complete a: 1. Disclosure Form; and 2. Consent and Release Form; and]

(c) Request that the applicant complete the OIG 1:190-2, Waiver Agreement and Statement; and

(d) Log on to the KARES portal, which shall be a secure web-based system maintained by the cabinet, and enter the applicant's demographic information for a check of:

1. Each registry as defined by Section 1(9)[(8)] of this administrative regulation; and

2. Available databases maintained separately by the Kentucky Board of Medical Licensure, Kentucky Board of Nursing,[and] Kentucky Board of Physical Therapy, and any other available professional licensing board with oversight of health care professionals, including behavioral health professionals, to validate the applicant's professional licensure status, if applicable.

(2)[An applicant who is found on the child abuse and neglect central registry maintained pursuant to 922 KAR 1:470 may request a rehabilitation review pursuant to Section 9 of this administrative regulation.

(3)(a)] If an applicant is cleared for hire after a check of the registries and databases identified in subsection (1)(d)[(e)] of this section, the participating entity[employer] shall submit payment via credit or debit card for the criminal background check.

(3)(a)[(b)1-. Effective until May 19, 2014, or] Until NBCP grant funds are depleted, employers identified in Section 1(6)(a) through (j) of this administrative regulation shall pay a fee of twenty (20) dollars for a fingerprint-supported state and national criminal background check, which includes the cost of the Kentucky NBCP and the fees of the Department of Kentucky State Police and the FBI.

(b) A participating entity enrolled in the Kentucky NBCP and not identified in Section 1(6)(a) through (j) of this administrative regulation shall pay a fee not to exceed twenty-five (25) dollars in addition to any fees charged by the Department of Kentucky State Police and the FBI for the actual cost of processing a fingerprint-supported state and national criminal background check and for providing continuous assessment services as described in Section 3(2) of this administrative regulation.

(c) If an applicant's continuous assessment period identified under Section 3 of this administrative regulation has not expired, a fee of twenty (20) dollars shall be charged to view the applicant's current fitness determination and process a new application, in which case a new fingerprint check is not needed.

(d)1. After NBCP grant funds are depleted, the total cost of a fingerprint-supported state and national criminal background check charged to an employer identified in Section 1(6) of this administrative regulation shall not exceed actual costs of the Kentucky NBCP and the fees charged by the Department of Kentucky State Police and the FBI for the actual cost of processing criminal background checks and for continuous assessments.

2. If an applicant has not been previously fingerprinted under the Kentucky NBCP or if the applicant's continuous assessment period has expired, a fee not to exceed twenty-five (25) dollars shall be charged to the employer to cover the cabinet's administrative cost for facilitating a criminal background check in addition to any fees charged by the Department of Kentucky State Police and the FBI for a fingerprint-supported state and national criminal background check and for continuous assessment services as described in Section 3(2) of this administrative regulation[whichever date is later, employers shall pay the twenty (20) dollar fee charged by the Justice and Public Safety Cabinet pursuant to paragraph (d)1. of this subsection.

2. Effective until May 19, 2014, or until NBCP grant funds are depleted, whichever date is later, grant monies shall be used to subsidize:

a. The cost of the national criminal background check charged by the Federal Bureau of Investigation pursuant to paragraph (d)2. of this subsection; and

b. The administrative cost charged by the cabinet pursuant to paragraph (d)3. of this subsection.

(c) Effective until May 19, 2014, or until NBCP grant funds are depleted, whichever date is later, the cabinet shall pay all costs identified in paragraph (d) of this subsection if a criminal background check is conducted on behalf of a prospective provider of home and community-based services authorized under KRS Chapter 205. This exemption for providers of home and community-based services is a condition of the NBCP grant.

(d) After May 19, 2014, or after NBCP grant funds are depleted, whichever date is later, the total cost of a criminal background check charged to employers shall be sixty-three (63) dollars, divided into the following components:

1. A fee of twenty (20) dollars charged by the Justice and Public Safety Cabinet;

2. A fee of sixteen (16) dollars and fifty (50) cents charged by the Federal Bureau of Investigation; and

3. A fee of twenty-six (26) dollars and fifty (50) cents charged by the cabinet to cover the cost of facilitating the criminal background check].

(4)(a) Upon submission of payment pursuant to subsection (3) of this section, the employer or other participating entity shall print a copy of the Live Scan Fingerprinting Form from the KARES portal and provide the form to the applicant.

(b) The applicant shall:

1. Have thirty (30) calendar days from the date of payment pursuant to subsection (2)(3) of this section to submit his or her fingerprints at an authorized collection site; and

2. Present the Live Scan Fingerprinting Form and driver's license or other government-issued photo identification to the designated agent at an authorized collection site prior to fingerprint submission.

(5) Upon completion of a criminal background check, the cabinet shall:

(a) Shall provide notice to the employer that the applicant is:

1. Eligible for hire; or

2. Not eligible for hire if the applicant is found by the cabinet to have a disqualifying offense as identified in Section 1(4) of this administrative regulation; and

(b) May release any record of state criminal history found in the files of the Kentucky centralized criminal history record information system to the employer or entity listed on the OIG 1:190-2, Waiver Agreement and Statement incorporated by reference in Section 14 of this administrative regulation; and

(c) Shall, upon receipt of a written request from an applicant, send a copy of any of a KSP or FBI criminal history report to the applicant by certified mail, restricted delivery service. The applicant shall show proof of identity and sign to receive his or her criminal history report from the local post office.

(6) An employer shall not be obligated to employ or offer employment to an individual who has been found by the cabinet to be eligible for hire pursuant to subsection (5)(a) of this section.

Section 6[5]. Provisional Employment. (1) If an applicant is not found on a registry and the individual's license has been validated, if applicable, an employer may hire the applicant for a period of provisional employment pending completion of the criminal background check.

(2) The period of provisional employment shall:

(a) Not commence prior to the date the applicant submitted his or her fingerprints; and

(b) Not exceed sixty (60) calendar days from the date of fingerprint collection.

(3) During the period of provisional employment, the individual shall not have supervisory or disciplinary power or routine contact with patients, residents, or clients without supervision on-site and immediately available to the individual.

Section 7[6]. Individuals Ineligible to be Hired. An employer participating in the KARES program, an agency within the cabinet responsible for conducting inspections of any employer, or a state-owned or operated health facility shall not employ, contract with, or permit to work as an employee any applicant that submits to a background check if one (1) or more of the following are met:

(1) The applicant refuses to provide photo identification or complete the Disclosures Form or Waiver Agreement and Statement Form required by Section 5(4)(a) and (b) and (c) of this administrative regulation;

(2) The applicant is found on a registry as defined by Section 1(9)(8) of this administrative regulation;

(3) The applicant's professional license is not in good standing, if applicable;

(4) The applicant fails to submit his or her fingerprints at an authorized collection site within thirty (30) calendar days of payment submitted pursuant to Section 5(4)(3) of this administrative regulation; or

(5) Upon completion of the initial criminal background check for an applicant, or subsequent to the initial fingerprint check on a current employee, the employer, cabinet agency, or state-owned or operated health facility receives notice from the cabinet that the applicant is not eligible for hire based on a cabinet determination that the individual has been found to have a disqualifying offense; or

(6) Final disposition of a criminal charge related to a disqualifying offense is not provided to the cabinet within sixty (60) days of fingerprint submission.

Section 8[7]. Notice of a Disqualifying Offense and Appeals. (1) The cabinet shall notify each applicant or current employee determined to have a disqualifying offense.

(2) In addition to the cabinet's notification required by subsection (1) of this section, an employer that receives notice from the cabinet that an individual has been determined to have a disqualifying offense shall notify the individual of the cabinet's determination within three (3) business days of receipt of the notice.

(3) An applicant or current employee who receives notice of a disqualifying offense may:

(a) Challenge the accuracy of the cabinet's determination regarding a disqualifying offense by submitting a written request for informal review, including any information the applicant wishes to be considered, to the Office of Inspector General, Cabinet for Health and Family Services, 275 East Main Street, 5E-A, Frankfort, Kentucky 40621, within ten (10) calendar days of the date of notice of the disqualifying offense; or

(b) Request a rehabilitation review pursuant to Section 10(2) of this administrative regulation.

(4) Upon completion of an informal review if requested pursuant to subsection (3)(a) of this section, the Office of Inspector General shall within ten (10) calendar days of receipt of the request provide written notice to the applicant or employee of the cabinet's decision to uphold or rescind the notice of the disqualifying offense.

(5) Request a rehabilitation review pursuant to Section 9 of this administrative regulation; or

(b) Challenge the accuracy of the cabinet's determination regarding a disqualifying offense by submitting a written request to the cabinet for an informal review of the cabinet's determination or file an appeal under KRS Chapter 13B within ten (10) days of the date of the notice of the disqualifying offense. An applicant or current employee may appeal the results of an informal review or a rehabilitation review conducted in accordance with Section 10 of this administrative regulation by submitting a written request for an administrative hearing within thirty (30) calendar days from the date to the cabinet for appeal under KRS Chapter 13B within five (5) days of notice of the decision from an informal review or rehabilitation review.

(6)(a) A written request for an administrative hearing shall be mailed to the Office of Ombudsman, Cabinet for Health and Family Services, 275 East Main Street, 1E-B, Frankfort, Kentucky 40621.

(b) The administrative hearing shall be held no later than forty-five (45) calendar days from the date that the request is received by the Office of Ombudsman unless the applicant or employee agrees to a later date.

(c) The issues considered at the hearing shall be limited to the issues directly raised and considered during the informal review or rehabilitation review.

(d) The administrative hearing shall be conducted pursuant to KRS 13B.080.

(e) The hearing officer shall issue a recommended order pursuant to KRS 13B.110.

(f) The secretary or designee shall issue a final order pursuant to KRS 13B.120.

(7)(4) If an applicant or current employee wishes to obtain information concerning the disqualifying offense or challenge the accuracy of a criminal background check, the cabinet shall refer the individual to the appropriate state or federal law enforcement agency.

(8)(5) If an applicant or current employee challenges the finding that he or she is the true subject of the results from a registry check, the cabinet shall refer the individual to the agency responsible for maintaining the registry.

Section 9[8]. Termination of an [Provisional] Employee Upon Receipt of Notice of a Disqualifying Offense. (1) If a provisional employee or current employee has not requested an informal review or a rehabilitation review [an appeal] pursuant to Section 8(3)(7)(b) of this administrative regulation, the employer shall:

(a) Terminate the employee no later than fifteen (15) calendar [six (6) business] days after receipt of notice of the disqualifying offense; and

(b) Use the KARES system to provide electronic notification[Submit a written attestation statement] to the cabinet affirming the employee's dismissal within three (3) business days of termination.

(2)(a) If a provisional employee or current employee requests an informal review or a rehabilitation review[an appeal] pursuant to Section 8(3)[7(3)(b)] of this administrative regulation, the employer:

1. May retain the employee pending resolution of the employee's informal review or rehabilitation review; and

2. Shall ensure that[appeal under the following conditions: (a)] the employee is:

a.[shall be] Subject to direct, on-site supervision;[.] or

b. Reassigned to duties that do not involve one-on-one contact with a resident, patient, or client of the employer.

(b) An employer shall terminate the employee if the:

1. Informal review upholds the cabinet's determination of a disqualifying offense or the rehabilitation review committee does not grant a waiver; and

2. The employee does not request an administrative hearing in accordance with Section 8(5) of this administrative regulation, in which case the employer shall terminate the employee no later than the thirty-first calendar day following written notice of the results of the informal review or rehabilitation review.

(c) If an employee requests an administrative hearing to appeal the decision from an informal review or rehabilitation review, the employer:

1. May retain the employee pending resolution of the appeal if the employee:

a. Remains subject to direct, on-site supervision; or

b. Is reassigned to duties that do not involve one-on-one contact with a resident, patient, or client; and

2. Shall terminate the employee as soon as practicable upon issuance of a final order if the employee does not prevail.

(d) Using the KARES system, the employer shall provide electronic notification to the cabinet affirming the individual's dismissal within three (3) business days of termination;]

(b) The employer shall inform the employee that termination shall be immediate if the informal review upholds the cabinet's determination regarding a disqualifying offense, or the employee does not prevail in an appeal requested pursuant to Section 7(3)(b) of this administrative regulation;

(c) The employer shall immediately terminate an employee if the informal review upholds the accuracy of the cabinet's determination regarding a disqualifying offense or the employee does not prevail in an appeal requested pursuant to Section 7(3)(b) of this administrative regulation upon completion of the appeal; and

(d) The employer shall submit a written attestation statement to the cabinet affirming the individual's dismissal within three (3) business days of termination].

Section 10[9]. Rehabilitation Review. (1)(a) An applicant or employee found[on the child abuse and neglect central registry maintained pursuant to 922 KAR 1:470, or found] to have a disqualifying offense upon completion of the criminal background check shall be eligible for consideration of rehabilitation under an independent review process.

(b) Consideration of a disqualifying offense under the rehabilitation review process described in this section shall not apply to:

1. A disqualifying felony offense that occurred less than seven (7)[ten (10)][seven (7)] years prior to the date of the criminal background check;

2. A disqualifying misdemeanor offense related to assault, domestic violence, theft, fraud, or possessing or trafficking in a controlled substance that occurred less than seven (7) years prior to the date of the criminal background check;

3. Any disqualifying felony or misdemeanor offense[A criminal conviction] related to abuse, neglect, or exploitation of an adult defined by KRS 209.020(4) or child, or a sexual offense;

3.[4.] Registration as a sex offender under federal law or under the law of any state; or

4.[5.] Any person who is a violent offender as defined by Section 1(11) of this administrative regulation[4. A conviction for a

violent crime].

(2)(a) An applicant or employee may submit a written request for a rehabilitation review to the cabinet no later than fourteen (14) calendar days from the date of the notice of the cabinet's determination issued pursuant to Section 8[7](1) of this administrative regulation regarding a[finding on the child abuse and neglect central registry or] determination of a disqualifying offense.

(b) If an applicant or employee requests a rehabilitation review, the employee may be retained on staff and shall be subject to termination in accordance with Section 9(2) of this administrative regulation.

(3) The request for a rehabilitation review shall include the following information:

(a) A written explanation of each[finding on the child abuse and neglect central registry or each] disqualifying offense, including:

1. A description of the events related to the[registry finding or] disqualifying offense;

2. The number of years since the occurrence of the[registry finding or] disqualifying offense;

3.[The identification of any other individuals involved in the offense;

4.] The age of the offender at the time of the[registry finding or] disqualifying offense; and

4.[5.] Any other circumstances surrounding the[registry finding or] offense;

(b) Official documentation showing that all fines, including court-imposed fines or restitution, have been paid or documentation showing adherence to a payment schedule, if applicable;

(c) The date probation or parole was satisfactorily completed, if applicable; and

(d) Employment and character references, including any other evidence demonstrating the ability of the individual to perform the employment responsibilities and duties competently.

(4) A rehabilitation review shall be conducted by a committee of three (3) employees of the cabinet, none of whom:

(a) Is an employee of the Office of Inspector General; or

(b) Was responsible for determining[each of whom was not responsible for determining:

(a) The finding of child abuse or neglect that placed the individual on the central registry; or

(b)] that the individual has a disqualifying offense.

(5) The committee shall consider the information required under subsection (3) of this section, and shall also consider mitigating circumstances including:

(a) The amount of time that has elapsed since the[child abuse and neglect central registry finding or] disqualifying offense[, which shall not be less than seven (7) years in the case of a disqualifying offense];

(b) The lack of a relationship between the[registry finding or] disqualifying offense and the position for which the individual has applied; and

(c) Evidence that the applicant has pursued or achieved rehabilitation with regard to the[registry finding or] disqualifying offense. [The committee shall make a recommendation to the secretary or designee, who shall be responsible for making the final decision.]

(6)[The secretary or designee may grant a waiver from the prohibition against employment of an applicant with a child abuse and neglect finding or a disqualifying offense upon consideration of the information required under subsection (3) of this section and the committee's recommendation of subsection (5) of this section.

(7)] No later than thirty (30) calendar days from receipt of the written request for the rehabilitation review, the Office of Inspector General[secretary or designee] shall send the committee's[a written] determination on the rehabilitation waiver to the applicant.

(7)[(8)] The decision of the committee[secretary or designee pursuant to subsection (7) of this section] shall be subject to appeal in accordance with Section 8(5) and (6) of this administrative regulation[under KRS Chapter 13B].

(8)[(9)] An individual with a finding on the child abuse and neglect central registry or a disqualifying offense shall not be employed by an employer until the employer receives notification

from the cabinet that the individual has been granted a waiver. (10) An employer shall not be obligated to employ or offer employment to an individual who is granted a waiver pursuant to this section.

Section 11[40]. Pardons and Expungement. An applicant who has received a pardon for a disqualifying offense or has had the record expunged may be employed.

Section 12[44]. Status of Employment. An employer participating in KARES shall maintain the employment status of each employee who has submitted to a fingerprint-supported criminal background check by reporting the status using the KARES web-based system.

Section 13[42]. Kentucky National Background Check[Applicant Registry and Employment Screening] Fund. (1)(a) The cabinet shall establish a trust and agency fund called the Kentucky National Background Check[Applicant Registry and Employment Screening] fund to be administered by the Finance and Administration Cabinet.

(b) The fund shall be funded with moneys collected under Section 5[4](3) of this administrative regulation.

(2) Moneys in the fund shall be used solely to operate the Kentucky National Background Check[KARES] program.

Section 14[43]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) OIG 1:190-1, "Disclosures to be Provided to and Signed by Applicant for Employment or Licensure", September 2016;

(b) OIG 1:190-2, "Waiver Agreement and Statement", September 2016; [OIG 1:190-A, "Agreement to Participate in the KARES Program", May 2013;

(b) OIG 1:190-B, "Disclosure Form", May 2013;

(c) OIG 1:190-C, "Consent and Release Form", May 2013; and

(c)[(d)] OIG 1:190-D, "Live Scan Fingerprinting Form", May 2013.

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

ROBERT S. SILVERTHORN, JR., Inspector General

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: January 3, 2017

FILED WITH LRC: January 4, 2017 at noon

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Stephanie Brammer-Barnes, Office of Inspector General, email stephanie.brammer@ky.gov, phone 502-564-2888, and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures and requirements for implementation of the Kentucky National Background Check Program (NBCP). Under Kentucky's NBCP, a secure, web-based application called the KARES system is used to facilitate abuse registry and fingerprint-supported State and FBI criminal background checks for authorized users.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures and requirements for implementation of Kentucky's NBCP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: As stated in the Necessity, Function, and Conformity paragraph of this administrative regulation, 42 U.S.C. 1320a-7l directs the secretary of the United States Department of Health and Human Services to establish a program to identify efficient, effective, and economical procedures for long-

term care facilities or providers to conduct background checks on prospective direct patient access employees on a nationwide basis. KRS 216.789, KRS 216.787, and KRS 216.712 authorize the secretary of the Cabinet for Health and Family Services to establish procedures for criminal background checks for employees of certain entities which provide direct services to the elderly or individuals with disabilities. Therefore, this administrative regulation conforms to the content of the authorizing statutes by establishing procedures and requirements for implementation of a comprehensive, Cabinet-administered state and national background check program called the Kentucky NBCP.

(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 procedures and requirements for implementation of Kentucky's NBCP.

(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 a new Section 3 to authorize implementation of a mechanism for continuous assessment, often referred to as "rap back". The continuous assessment service, which is a requirement of the federal NBCP grant, is a process in which notification will be sent by the Kentucky State Police (KSP) to the Cabinet of any criminal activity that occurs after an applicant's initial fingerprint check, thereby reducing the need for duplicative fingerprinting. This amendment further clarifies that the fee charged for facilitating fingerprint checks upon expiration of the federal NBCP grant will be adjusted in an amount not to exceed actual costs. This amendment also clarifies that an applicant or employee may submit a written request for a copy of his or her criminal history report; makes technical changes to the section on appeals under which an applicant or employee may challenge the cabinet's determination of a disqualifying offense; and allows the cabinet to release any record of State criminal history found in the files of the Kentucky centralized criminal history record information system to an employer upon written consent by the prospective or current employee. In addition, the amended after comments regulation strikes the language of Section 1(4)(a)1.f. to avoid duplicative language; adds a definition for "KARES system" to Section 1; permits misdemeanor assault, theft, fraud, or a misdemeanor drug crime to be eligible for rehabilitation review; and restores previous language that permits certain disqualifying felony offenses that occurred less than seven (7) years prior to the background check to be eligible for rehabilitation review.

(b) The necessity of the amendment to this administrative regulation: This amended after comments regulation is necessary primarily to implement the process for continuous assessment as well as make revisions as described in (2)(a).

(c) How the amendment conforms to the content of the authorizing statutes: This amended after comments regulation conforms to the content of the authorizing statutes by establishing procedures and requirements for implementation of Kentucky's NBCP.

(d) How the amendment will assist in the effective administration of the statutes: This amended after comments regulation will assist in the effective administration of the statutes by establishing procedures and requirements to facilitate fingerprint-supported state and national background checks requested under Kentucky's NBCP.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amended after comments regulation impacts authorized users of the KARES system.

(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: With the exception of using new forms incorporated by reference, authorized users will not be required to take any additional action beyond compliance with the current

procedures for requesting fingerprint-supported State and FBI background checks under the KARES system.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Authorized users will not incur additional costs at this time.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amended after comments regulation will benefit participating employers by reducing the need for duplicative fingerprint checks upon implementation of continuous assessment as employees who remain enrolled in the continuous assessment service will not be subject to additional fingerprint checks if they transfer to another employer using the KARES system. In addition, this amendment will allow an applicant or employee who has submitted to a fingerprint check under the KARES system to submit a written request to the cabinet for a copy of his or her criminal history report. Moreover, employers using the KARES system are currently provided with a "clear for hire" or "not clear for hire" notice upon cabinet review of a prospective or current employee's criminal history results. This amendment will allow the cabinet to release any record of State criminal history found in the files of the Kentucky centralized criminal history record information system to the employer upon the written consent of the prospective or current employee.

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

(a) Initially: This administrative regulation is funded by monies from the NBCP grant until May 2017.

(b) On a continuing basis: Upon depletion of grant monies currently used to support program operations, Kentucky's NBCP will be sustained by background check fees not to exceed actual costs. After the federal NBCP grant expires, administering the program on an ongoing basis is estimated to cost about \$4,183,076 annually. It is important to note that 85% of the program's costs are passed through the Office of Inspector General to: KSP and the FBI for the actual cost of processing criminal background checks and continuous assessment; The Office of Employment and Training and the Department for Community Based Services for rolling applicant fingerprints in designated field offices; and Kentucky Interactive for the payment transaction fee. The Office of Inspector General's annual costs, which are estimated at approximately \$647,875, will cover personnel including IT support, maintenance and repairs on equipment, and other administrative costs necessary to maintain Kentucky's NBCP.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal NBCP grant funds are currently used to implement this administrative regulation. Upon expiration of the grant, continued funding to support Kentucky's NBCP will be from background check fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The current cost of the fingerprint-supported State and FBI criminal background checks is subsidized by NBCP grant monies at \$20 per fingerprint check. Upon expiration of the grant, the Cabinet anticipates that the cost of the fingerprint check will increase to \$58.99 per check to support program operations on a continuing basis. It is important to note that if an applicant has been fingerprinted under Kentucky's NBCP and is enrolled in the continuous assessment service implemented in accordance with this amendment, the applicant is not subject to additional fingerprinting. Instead, an employer participating in Kentucky's NBCP may query the KARES system for a \$20 fee to view the applicant's fitness determination and confirm the applicant is eligible for hire, thereby avoiding the cost of a new fingerprint check.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes fees necessary to sustain program operations.

(9) TIERING: Is tiering applied? Tiering is not applicable as

compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment impacts authorized users of the KARES system.

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. 1320a-7I, 42 U.S.C. 5119a(a)(1), KRS 216.712, KRS 216.787, KRS 216.789

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 current fee for a fingerprint-supported State and FBI criminal background check is \$20 for authorized KARES system users. However, upon depletion of NBCP grant funds, the revenue generated in background check fees is intended to support program operations on a continuing basis.

(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? During subsequent years, revenue will be based on background check fees collected from authorized KARES system users to support program operations on an ongoing basis.

(c) How much will it cost to administer this program for the first year? This administrative regulation is funded by NBCP grant monies until May 2017.

(d) How much will it cost to administer this program for subsequent years? After expiration of the NBCP grant, the cost to administer this program is about \$4,183,076 annually as described in more detail in the regulatory impact analysis.

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. 1320 a-7I and 42 U.S.C. 5119a(a)(1)

2. State compliance standards. KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 216.789, KRS 216.787, and KRS 216.712 authorizes the secretary of the Cabinet for Health and Family Services to establish procedures for criminal background checks for employees of certain entities which provide direct services to the elderly or individuals with disabilities.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1320 a-7I directs the Secretary of the United States Department of Health and Human Services to establish a program to identify efficient, effective, and economical procedures for long-term care facilities or providers to conduct background checks on prospective direct patient access employees on a nationwide basis. As of this date, Kentucky is one of 26 states to receive a National Background Check Program (NBCP) grant awarded by the Centers for Medicare and Medicaid Services under 42 U.S.C. 1320 a-7I. Under 42 U.S.C. 5119a(a)(1), a State may have in effect procedures (established by State statute or regulation) that require qualified entities designated by the State to contact an authorized agency of the State to request a nationwide

background check for the purpose of determining whether an individual has been convicted of a crime that bears upon the individual's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities.

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

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

PROPOSED AMENDMENTS

**GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(Amendment)**

201 KAR 9:270. Professional standards for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone.

RELATES TO: KRS 311.530-311.620, 311.990

STATUTORY AUTHORITY: KRS 311.565(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the board to promulgate administrative regulations to regulate the conduct of its licensees. This administrative regulation establishes the professional standards for physicians practicing in Kentucky who prescribe or dispense Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone.

Section 1. Minimum Qualifications for Prescribing or Dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone. A licensed physician shall not prescribe or dispense Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone unless that physician possesses the minimum qualifications established in this section. (1) The physician shall obtain and maintain in good standing a waiver and license as issued by the Drug Enforcement Administration (DEA) to prescribe Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for the treatment of opioid dependence in the Commonwealth of Kentucky.

(2) The physician shall successfully complete the approved educational programs required by this subsection.

(a) The prescribing physician shall be a DEA-licensed prescriber of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone and shall have obtained Buprenorphine certification through completion of a Substance Abuse and Mental Health Services Administration ("SAMHSA") certified course.

(b) For each three (3) year continuing education cycle, each DEA-licensed prescriber of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone shall complete at least twelve (12) hours of continuing medical education certified in Category I specific to addiction medicine as part of the required continuing medical education hours set forth in 201 KAR 9:310.

(3) The physician shall enroll in the Kentucky Health Information Exchange to the extent necessary to query and pull information from the Kentucky Health Information Exchange. The physician shall not report the prescribing or dispensing of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for medically-supervised withdrawal or as maintenance treatment for a patient diagnosed with opioid dependence into the Kentucky Health Information Exchange unless otherwise required by law.

Section 2. Professional Standards for Prescribing or Dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for Medically-Supervised Withdrawal or the Treatment of Opioid Dependency. (1)(a) Except as provided in paragraph (b) of this subsection, Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone shall only be prescribed or dispensed for medically-supervised withdrawal or as a maintenance treatment for a patient diagnosed with opioid dependence.

(b) Transdermal delivery and buccal film delivery of Buprenorphine-Mono-Product may be used for treatment of pain in patients with pain severe enough to require daily, around-the-clock, long-term opioid treatment and for whom alternative treatment options are ineffective, not tolerated, or would be otherwise inadequate to provide sufficient management of pain. Transdermal delivery and buccal film delivery of Buprenorphine-Mono-Product shall not be prescribed or dispensed as an as-needed (prn) analgesic.

(2) Buprenorphine-Mono-Product shall not be prescribed or

dispensed, except:

(a) To a pregnant patient;
(b) To a patient with demonstrated hypersensitivity to naloxone; or

(c) As an injectable treatment in a physician's office or other healthcare facility.

(3)(a) Except as provided in paragraph (b) of this section, Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone shall not be prescribed or dispensed to a patient who is also being prescribed benzodiazepines, other sedative hypnotics, stimulants or other opioids, without consultation of a physician who is certified by the American Board of Addiction Medicine, the American Board of Medical Specialties (ABMS) in psychiatry, or an American Osteopathic Association (AOA) certifying board in addiction medicine or psychiatry.

(b) A physician may prescribe or dispense Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone to a patient who is also being prescribed benzodiazepines, other sedative hypnotics, stimulants, or other opioids, without consultation in order to address an extraordinary and acute medical need not to exceed a combined period of thirty (30) days.

(4) Each licensed physician who prescribes or dispenses Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for medically-supervised withdrawal or for the treatment of Opioid dependence shall fully comply with the professional standards established in this subsection.

(a) Prior to initiating treatment, the prescribing or dispensing physician shall:

1. Obtain and record a complete and appropriate evaluation of the patient which shall at a minimum include:

- a. The patient's history of present illness;
- b. The patient's history of substance use;
- c. The patient's social and family history;
- d. The patient's past medical and psychiatric histories;
- e. A physical examination of the patient;
- f. The patient's injection use history, which shall include screening for HIV and hepatitis serology; and
- g. Appropriate laboratory tests, which shall include a CBC, a drug screen, and a CMP;

2. Obtain the patient's consent and authorizations in order to obtain the patient's prior medical records.

a. Upon receipt of the medical records, the prescribing or dispensing physician shall review and incorporate the information from the records into the evaluation and treatment of the patient.

b. If the prescribing or dispensing physician is unable, despite best efforts, to obtain the patient's prior medical records, the physician shall document those efforts in the patient's chart;

3. Obtain and review a KASPER report for that patient for the twelve (12) month period immediately preceding the initial patient encounter and appropriately utilize that information in the evaluation and treatment of the patient;

4. Explain treatment alternatives and the risks and the benefits of treatment with Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone to the patient;

5. Obtain written informed consent from the patient in a manner that meets professional standards; and

6. If the patient is a female of child-bearing age and ability, meet the requirements of paragraph (b) of this subsection.

(b) The requirements of this paragraph shall apply to the treatment of a female of child-bearing age and ability.

1. Prior to initiating treatment, the physician shall require that the patient first submit to a pregnancy test and the physician shall provide counseling as to the risk of neonatal abstinence syndrome which shall be consistent with patient education material on neonatal abstinence syndrome from the American Congress of Obstetricians and Gynecologists, American Academy of Pediatrics, American Society of Addiction Medicine (ASAM) and the Kentucky Department for Public Health, and offer means to prevent pregnancy.

2.a. A physician shall not prescribe or dispense Buprenorphine-Mono-Product or Buprenorphine-Combined-with-

Naloxone to a patient who is pregnant or breastfeeding unless the prescribing physician first obtains and documents consultation with another physician for an opinion as to whether the potential benefit of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone use outweighs the potential risk of use.

b. The consultation shall be obtained from a physician who is certified by the American Board of Addiction Medicine, the American Board of Medical Specialties (ABMS) in psychiatry, or an American Osteopathic Association (AOA) certifying board in addiction medicine or psychiatry or from an obstetrician or maternal-fetal medicine specialist who is also qualified to prescribe buprenorphine.

(c) Except as provided by paragraph (d) of this subsection, while initiating treatment with Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone, the prescribing or dispensing physician shall comply with the requirements of this paragraph.

1. The prescribing or dispensing physician shall recommend to the patient an in-office observed induction protocol.

a. Except as provided in clause b. of this subparagraph, the prescribing or dispensing physician shall conduct the in-office observed induction protocol.

b. If an in-office observed induction does not occur, the prescribing or dispensing physician shall appropriately record the circumstances in the patient chart and shall implement a SAMHSA-recognized or ASAM-recognized home-based induction protocol.

2. The prescribing or dispensing physician shall document the presence of opioid withdrawal before the first dose is given by using a standardized instrument, such as the clinic opioid withdrawal scale (COWS) or other similarly recognized instrument.

3. The prescribing or dispensing physician shall initiate treatment with a dose not to exceed the dose equivalency of four (4) milligrams buprenorphine generic tablet, which:

a. May be followed by subsequent doses if withdrawal persists and is not improving; and

b. Shall not exceed the dose equivalency of sixteen (16) milligrams buprenorphine generic tablet on the first day of treatment.

(d) If the patient is transferred from another treatment provider and has previously experienced withdrawal without a relapse, the prescribing or dispensing physician shall:

1. Document that fact;

2. Educate the patient about the potential for precipitated withdrawal; and

3. Continue maintenance treatment of the patient on the same dosage as established by the previous treatment provider and then as provided in paragraph (e) of this subsection.

(e) After initial induction of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone, the prescribing or dispensing physician shall meet the requirements established in this paragraph.

1. If the physician prescribes or dispenses Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone medication, the physician shall implement a treatment plan that requires objective behavioral modification by the patient. The behavioral modification shall include the patient's participation in a behavioral modification program that may include counseling or a twelve (12) step facilitation.

2. The physician shall prescribe or dispense to the patient an amount of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone that:

a. Is necessary to minimize craving and opiate withdrawal;

b. Does not produce opiate sedation;

c. Is to be taken no more frequently than once daily; and

d. Is able only to supply the patient until the next physician visit, which shall be scheduled as required by subparagraph 3. of this paragraph.

3.a. The prescribing or dispensing physician shall ensure that the patient is seen by the physician:

(i) No later than ten (10) days after induction and then at intervals of no more than ten (10) days for the first month after induction; and

(ii) At intervals of no more than fourteen (14) days for the

second month after induction.

b.(i) If the patient demonstrates objective signs of positive treatment progress, the prescribing or dispensing physician shall ensure that the patient is seen at least once monthly thereafter.

(ii) If two (2) years after initiation of treatment, the patient is being prescribed Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for opioid dependence and the patient has demonstrated objective signs of positive treatment progress, including documented evidence that the patient has been compliant with the treatment plan and all treatment directives for at least two (2) years, then the prescribing or dispensing physician may require that the patient be seen only by the prescribing or dispensing physician at least once every three (3) months.

(iii) The prescribing or dispensing physician shall see the patient in shorter intervals if the patient demonstrates any noncompliance with the treatment plan.

c. If extenuating circumstances arise that require a patient to unexpectedly reschedule a physician visit, the prescribing or dispensing physician shall make best efforts to see the patient as soon as possible and document the circumstances in the patient chart.

4. Every three (3) months after initiation of treatment, the prescribing or dispensing physician shall evaluate the patient to determine whether the patient's dosage should be continued or modified and shall appropriately document that evaluation and clinical reasoning in the patient's chart.

5. At least once every three (3) months, the prescribing or dispensing physician shall obtain KASPER reports to help guide the treatment plan.

a. If the KASPER indicates any abnormal findings, the prescribing or dispensing physician shall incorporate those findings into appropriate clinical reasoning to support the continuation or modification of treatment and shall accurately document the same in the patient record.

b. Appropriate clinical reasoning may include adjustment of dose strength or frequency of visits, increased screening, a consultation with a specialist, or an alternative treatment.

c. Every twelve (12) months following initiation of treatment, if a patient's prescribed daily therapeutic dosage exceeds the dose equivalency of sixteen (16) milligrams buprenorphine generic tablet per day and the prescribing or dispensing physician is not certified by the American Board of Addiction Medicine, the American Board of Medical Specialties (ABMS) in psychiatry, or an American Osteopathic Association (AOA) certifying board in addiction medicine or psychiatry, then the prescribing or dispensing physician shall refer the patient for consultation by a physician who is certified by the American Board of Addiction Medicine, the American Board of Medical Specialties (ABMS) in psychiatry, or an American Osteopathic Association (AOA) certifying board in addiction medicine or psychiatry for an opinion as to whether continued treatment and dosage is appropriate and shall accurately document the results of that consultation in the patient chart.

d. The prescribing or dispensing physician shall adjust dosages according to the individual patient's condition and within acceptable and prevailing medical standards, with the goal of improving the patient's quality of life and ability to function in the community.

e. Every twelve (12) months following initiation of treatment, the prescribing or dispensing physician shall evaluate for and document the medical necessity for continued treatment at the established dose.

f. The prescribing or dispensing physician shall obtain at least eight (8) drug screens from the patient within each twelve (12) month period of treatment in order to help guide the treatment plan. For patients who have demonstrated objective signs of positive treatment progress for at least two (2) years from the date of initiation of treatment, including documented evidence that the patient has been compliant with the treatment plan and all treatment directives, the prescribing or dispensing physician shall obtain at least six (6) drug screens from the patient within each twelve (12) month period of treatment in order to help guide the treatment plan.

(i) At least two (2) of the drug screens shall be random and shall be coupled with a pill count.

(ii) Each drug screen shall at a minimum screen for buprenorphine, methadone, oxycodone, other opioids, THC, benzodiazepines, amphetamines, and cocaine.

(iii) If a drug screen indicates any abnormal findings, the prescribing or dispensing physician shall incorporate those findings into appropriate clinical reasoning to support the continuation or modification of treatment and shall accurately document the same in the patient record.

(iv) Appropriate clinical reasoning may include adjustment of dose strength or frequency of visits, increased screening, a consultation with a specialist, or an alternative treatment.

6. The prescribing or dispensing physician shall document a plan for handling any lost or stolen medication, which:

a. Shall not provide for the automatic replacement of medication prior to the specified interval date; and

b. If the prescribing or dispensing physician determines that it is necessary to minimize improper or illegal diversion of medications under the circumstances, shall require the patient to first report the lost or stolen medications to police or other law enforcement agencies.

Section 3. Violations. Failure to comply with or a violation of the professional standards established in Section 2 of this administrative regulation shall constitute a "departure from, or failure to conform to the standards of acceptable and prevailing medical practice within the Commonwealth of Kentucky," in violation of KRS 311.595(12) and (9), as illustrated by KRS 311.597(4) and may constitute a violation of KRS 311.595(9), as illustrated by KRS 311.597(3), subjecting the licensed physician to sanctions authorized by KRS 311.595.

RANDEL C. GIBSON, D.O., President

APPROVED BY AGENCY: January 10, 2017

FILED WITH LRC: January 11, 2017 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 23, 2017 at 9:00 a.m. at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by February 16, 2017, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through February 28, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Leanne K. Diakov, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax (502) 429-7118, email Leanne.diakov@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leanne K. Diakov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: It was necessary to promulgate this regulation to establish the requirements for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish the requirements for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish the requirements for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

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

(a) How the amendment will change this existing administrative regulation: As originally promulgated, the regulation allowed for the transdermal delivery of Buprenorphine-Mono-Product for treatment of pain. Since promulgation a new product has come into existence which provides for buccal film delivery of Buprenorphine-Mono-Product for treatment of pain. The amendment accommodates the new product and now allows for both transdermal delivery and buccal film delivery of Buprenorphine-Mono-Product and also clarifies that such methods are limited to treatment of pain in patients with pain severe enough to require daily, around-the-clock, long-term opioid treatment for whom alternative treatment options are ineffective, not tolerated, or would be otherwise inadequate to provide sufficient management of pain.

(b) The necessity of the amendment to this administrative regulation: It is necessary to amend the regulation in order to include buccal film delivery of Buprenorphine-Mono-Product.

(c) How the amendment conforms to the content of the authorizing statutes: The amended regulation acts specifically to further clarify the acceptable and prevailing medical practices for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: This amended regulation acts specifically to further clarify the acceptable and prevailing medical practices for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect all physicians licensed in the Commonwealth of Kentucky who prescribe or dispense Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Physicians do not have to take any actions to comply with the amendments.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits to the physician include having professional standards for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone which will help curb the prescription drug epidemic in the Commonwealth of Kentucky.

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

(a) Initially: There are no costs associated with the amendments.

(b) On a continuing basis: There are no costs associated with the amendments.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: There are no costs associated with the amendments.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311.565(1)(a)

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

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

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT

Kentucky Board of Prosthetics, Orthotics and Pedorthics (Amendment)

201 KAR 44:040. Professional Conduct and Code of Ethics.

RELATES TO: KRS 319B.030, 319B.140

STATUTORY AUTHORITY: KRS 319B.030 (1)(h), 319B.140 (1)(b), (d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319B.030(1)(h) requires the board to establish standards of practice for person licensed pursuant to KRS Chapter 319B. This administrative regulation defines unprofessional conduct and sets forth a code of ethics for persons licensed under KRS Chapter 319B.

Section 1. Failure to comply with any of the provisions in this section shall constitute unprofessional conduct in the practice of Licensed Prosthetist, Licensed Orthotist, Licensed Prosthetist/Orthotist, Licensed Pedorthist, or Licensed Orthotic Fitter.

Section 2. Responsibilities to Other Licensed Healthcare Practitioner or Provider. The licensee shall:

(1) Receive and document a prescription or other valid referral,

authorization, hospital or skilled nursing facility order from a licensed healthcare practitioner or provider:

(a) Authorized by law to provide those prescriptions; and

(b) Which is consistent with the standards of the healthcare practitioner or provider;

(2) Consult and coordinate with the licensed healthcare practitioner or provider to determine and to document the medical appropriateness of the orthotic, prosthetic, or pedorthic device;

(3) Notify the licensed healthcare practitioner or provider of changes in the patient's condition that may affect the patient's orthotic, prosthetic or pedorthic treatment plan; and

(4) Notify and obtain authorization from the licensed healthcare practitioner or provider prior to repair or adjustment of an orthotic, prosthetic, or pedorthic device if:

(a) The repairs or adjustments do not conform to the original prescription; or

(b) The repairs or adjustments substantially alter the design or function of the originally prescribed device.

Section 3. Responsibilities to the Patient. (1) The licensee shall:

(a) Monitor and observe the patient's physical condition regarding the orthotic, prosthetic, or pedorthic care and the prescribed device;

(b) Ensure the orthotic, prosthetic, or pedorthic device is functioning appropriately to implement the patient's treatment plan;

(c) Maintain as confidential all information relating to a patient's identity, background, condition, treatment or management plan, or any other private information relating to the patient;

(d) Not communicate any confidential information to any person or entity who is not providing direct medical care to the patient:

1. Without the prior written consent of the patient or patient's legal guardian; or

2. Unless required by a court order or other applicable legal requirements;

(e) Comply with KRS 422.317;

(f) Complete all patient care documentation within a reasonable time from date of service;

(g) Submit all insurance requirements necessary for billing within a reasonable time from the date of service;

(h) Accept a patient regardless of race, gender, color, religion or national origin or on any basis that would constitute illegal discrimination under state or federal law;

(i) Refer a patient to another licensed healthcare practitioner or provider if the nature and extent of a problem of the patient exceeds the scope of competence of the licensee;

(j) Inform the patient of the patient's right to seek orthotic, prosthetic, or pedorthic services from any qualified healthcare practitioner or provider; and

(k) Consult the patient's parent, legal guardian, or other third party who has decision-making authority for the patient when the patient's personal judgment to make decisions concerning the device or services being offered may be impaired.

(2) The licensee shall not:

(a) Engage in false, misleading, or deceptive acts related to the cost of the services provided or recommended;

(b) Utilize or continue orthotic, prosthetic or pedorthic services beyond the point of reasonable benefit or by providing services more frequently than medically necessary unless consented to in writing by the patient;

(c) Submit false, misleading, or deceptive information regarding payment or reimbursement;

(d) Engage in the excessive use of alcoholic beverages or the abusive use of controlled substances;

(e) Verbally or physically abuse a client;

(f) Delegate to an unlicensed employee or person a service which requires the skill, knowledge, or judgment of a licensee under KRS Chapter 319B;

(g) Aid or abet an unlicensed person to practice when a license is required; or

(h) Exercise undue influence in a manner as to exploit the patient for financial or other personal advantage to the licensee or

a third party.

Section 4. Patient Documentation. A licensee shall complete all documentation as follows:

- (1) A patient assessment to include:
 - (a) The documentation required by Section 2(1)(a) of this administrative regulation;
 - (b) Physical evaluation; and
 - (c) Patient's written and informed consent;
- (2) A treatment plan to include:
 - (a) Documentation of subjective, objective, assessment, and plan of care;
 - (b) Applicable documentation to support treatment modality; and
 - (c) Follow-up and evaluation of clinical outcomes; and
- (3) Practice management to include:
 - (a) Documented L coding for prescribed orthotic or prosthetic device; and
 - (b) Billing, fee, and insurance arrangements.

Section 5. Responsibilities to Research Subjects. The licensee, if engaged in a research project or study, shall:

- (1) Ensure that all patients affiliated with those projects or studies consent in writing to the use of the results of the study;
- (2) Maintain as confidential all information relating to a patient's identity, background, condition, treatment or management plan, or any other information relating to the patient;
- (3) Maintain patient dignity and well-being;
- (4) Ensure the research is conducted in accordance with all federal and state laws;
- (5) Take reasonable steps to prevent false, misleading, or deceptive acts and practices relating to the research project or study; and
- (6) Immediately report, in writing, unethical or illegal conduct to the board or appropriate law enforcement authority, if the licensee has reason to believe that any unethical or illegal conduct has occurred or is likely to occur.

Section 6. Responsibilities to the Kentucky Board of Prosthetics, Orthotics and Pedorthics. (1) The licensee shall:

- (a) Comply with the reporting requirements of KRS 319B.050(1) and (4);
- (b) Notify the board, in writing, within thirty (30) days after the date upon which:
 1. A payment is made by the licensee, or on the licensee's behalf, to settle a claim of professional negligence;
 2. Conviction of a felony in any court;
 3. A disciplinary action against the licensee by any other governmental licensing authority of this state or any other state; or
 4. Suspension or cessation of participation of any federal or state reimbursement program;
- (c) File an initiating complaint with the board if the licensee has actual knowledge, which may be inferred from the circumstances, that another licensee has committed a violation of KRS Chapter 319B or the administrative regulations;
- (d) Use the correct designation following the licensee's name on any patient record or advertising as follows:
 1. If the licensee is an Orthotist, "LO";
 2. If the licensee is a Prosthetist, "LP";
 3. If the licensee is a Prosthetist/Orthotist, "LPO";
 4. If the licensee is a Pedorthist, "LPed";
 5. If the licensee is an Orthotic Fitter, "LOF"; or
 6. Appropriate designations for advanced academic degrees or bona fide certifications, if any, following the above designations; and
- (e) Supervise any American Board of Certification for Orthotics, Prosthetics and Pedorthics (ABC) certified or its equivalent orthotic or prosthetic assistants in their charge following all current guidelines set forth by ABC or its equivalent.
- (2) The licensee shall not:
 - (a) Fail to cooperate with the board by:
 1. Not furnishing any papers or documents requested by the board;

2. Not furnishing in writing a complete explanation covering the matter contained in a complaint filed with the board;

3. Not appearing before the board at a time and place designated; or

4. Not properly responding to subpoenas issued by the board;

(b) Pay any financial interest, compensation, or other value to be received by a referral source for:

1. Services provided by the licensee;
2. Prosthetic, orthotic, pedorthic devices; or
3. Other services the licensee may recommend for the patient;
- (c) Have, or attempt to have, sexual relations with:
 1. An active patient of record, unless a consensual sexual relationship existed between them before the licensee-patient relationship commenced;
 2. A patient of record for a period of ninety (90) days from the last date of service rendered to the patient or;
 3. A parent, legal guardian, or other third party, who has decision-making authority for:
 - a. An active patient of record; or
 - b. For a period of ninety (90) days from the last date of service rendered to the patient whichever is longer;
- (d) Use any advertising material, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation however disseminated or published which is false, misleading, deceptive, or untruthful; or
- (e) Commit or attempt to commit any unfair, false, misleading, or deceptive act or practice.

PAUL HATCHER, Chair

APPROVED BY AGENCY: January 12, 2017

FILED WITH LRC: January 12, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 24, 2017, at 1:30 p.m., in the office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of day on February 28, 2017. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Megan Woodson, Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, phone 502-782-8807, fax 502-696-3853, email Megan.Woodson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Megan Woodson

(1) Provide a brief summary of
 (a) What this administrative regulation does: This administrative regulation requires the board establish standards of practice for a person licensed pursuant to KRS Chapter 319B.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the standards of practice for a person licensed pursuant to KRS Chapter 319B.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute requiring that the board establish standards of practice.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation will assist by establishing and clarifying standards of practice for those licensed under KRS 319B.

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

(a) How the amendment will change this existing administrative regulation: This amendment expands a licensee's responsibilities to include supervision of certified assistants as defined above.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify that the supervision of patient care and certified assistants is an established standard of practice.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 319B.030 and 319B.140 require the board to establish a professional code of conduct and a Code of ethics.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides the licensee's with clear guidance regarding the responsibilities of a licensee.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Board of Prosthetics, Orthotics and Pedorthics currently has approximately 590 licensees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no additional actions required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The board is identifying a licensee practice responsibility.

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

(a) Initially: N/A

(b) On a continuing basis: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as this amendment applies to all licensees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319B.030, KRS 319B.140

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? N/A

(d) How much will it cost to administer this program for subsequent years? N/A

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

301 KAR 1:152. Asian Carp and Scaled Rough Fish Harvest Program.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.445, 150.450(2), (3), 150.990

STATUTORY AUTHORITY: KRS 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area. This administrative regulation establishes the requirements for the department's Asian Carp and Scaled Rough Fish Harvest Program.

Section 1. Definitions. (1) "Asian carp" means:

(a) Bighead carp;

(b) Black carp;

(c) Grass carp; or

(d) Silver carp.

(2) "By-catch" means any fish that is not an Asian carp or scaled rough fish.

(3) "Program participant" means a commercial fisherman who is:

(a) Enrolled in the Asian carp and scaled rough fish harvest program; and

(b) Fishing in restricted water.

(4) "Restricted water" means those areas, pursuant to 301 KAR 1:140, 1:150, and 1:155, where:

(a) Commercial fishing is prohibited; or

(b) Commercial fishing with gill or trammel nets is prohibited.

(5) "Scaled rough fish" means any scaled fish that is not an Asian carp or sport fish pursuant to 301 KAR 1:060.

(6) "Whip net set" means a gill or trammel net that is[

(a)] set to encircle and harvest Asian carp and scaled rough fish[; and

(b) Always tended by a program participant while in the water].

Section 2. Qualifications. A commercial fisherman shall:

(1) Contact the department and request to be included in the program; and

(2) Possess a valid Kentucky commercial fishing license.

Section 3. Program Participant Requirements. A program participant shall:

(1) Call the department at 800-858-1549 prior to the requested fishing date and provide the information established in paragraphs (a) through (e) of this subsection:

(a) The participant's name;

(b) The fish buyer's name and phone number;

(c) Date requested;

(d) The location in the restricted water to be fished; and

(e) The name or location of the boat ramp that will be used;

(2) Harvest a weight ratio of at least sixty-five (65)~~seventy-five (75)~~ percent Asian carp to thirty-five (35)~~twenty-five (25)~~ percent scaled rough fish over a one (1) month period;

(3) Only fish:

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- (a) On dates approved by the department; and
- (b) At a location approved by the department;
- (4) Immediately notify the department if the participant changes the:
 - (a) Fishing location in the restricted water body; or
 - (b) Boat ramp being used;
 - (5) Only use a whip net set;
 - (a) With a minimum bar mesh size of three and one-quarter (3.25) inches;
 - (b) That is always tended by a program participant when set less than three (3) feet below the surface of the water;
 - (c) That is not left unattended by a program participant for more than six (6) hours when set at least three (3) feet below the surface of the water from April 1 through September 30; and
 - (d) That is not left unattended by a program participant for more than eight (8) hours when set at least three (3) feet below the surface of the water from October 1 through March 31;
 - (6) Complete and submit to the department a Daily Harvest and Release Summary Card immediately after each day's fishing;
 - (7) Be allowed to sell all harvested Asian carp and scaled rough fish as established in Section 2 of this administrative regulation;
 - (8) Immediately release all by-catch;
 - (9) Report all harvest on a Monthly Report of Commercial Fish Harvest form, pursuant to the requirements of 301 KAR 1:155; and
 - (10) Be suspended from the program:
 - (a) For a three (3) month period beginning on the first day of the next month if the minimum requirements established in subsection (2) of this section are not met; and
 - (b) For a period of one (1) year beginning on the first day of the next month if the requirements are not met a second time.

Section 4. Department Requirements. (1) The department shall:

- (a) Maintain a list of program participants and their contact information, which shall be:
 - 1. Provided to known fish buyers; and
 - 2. Updated at least weekly; and
- (b) Review all restricted water fishing requests as established in Section 3 of this administrative regulation.
- (2) The department shall approve a qualified fishing request by assigning:
 - (a) A fishing location and boat ramp to a program participant, except that no more than two (2) program participants shall be assigned to the same one-half (1/2) mile section of water; and
 - (b) The time period when fishing may occur, not to exceed a three (3) consecutive day period.
- (3) The department shall not approve a fishing request for reasons established in paragraphs (a) through (c) of this subsection:
 - (a) Higher than normal by-catch is likely to occur at that location and time;
 - (b) Two (2) program participants have already been approved for the same one-half (1/2) mile section of water at the same time; or
 - (c) A requested date falls on:
 - 1. Memorial Day;
 - 2. Labor Day;
 - 3. July 4; or
 - 4. A Saturday or prior to sunset on a Sunday from April 1 through September 30.

Section 5. Program disqualification. (1) A program participant whose commercial fishing license becomes revoked or suspended pursuant to 301 KAR 1:155 shall be disqualified from participating in the Asian Carp and Scaled Rough Fish Harvest Program while that license is revoked or suspended.

(2) Any participant who is disqualified from participation in the program may appeal the decision in accordance with KRS Chapter 13B.

Section 6. Incorporation by Reference. (1) "Daily Harvest and Release Summary Card", 2011 Edition, is incorporated by

reference.

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

GREGORY K. JOHNSON, Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY: January 9, 2017

FILED WITH LRC: January 12, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 23, 2017 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through February 28, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Cramer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the Asian Carp and Scaled Rough Fish Harvest Program, which allows commercial harvest of Asian carp and scaled rough fish in waters currently restricted to commercial fishing.

(b) The necessity of this administrative regulation: The regulation is necessary to provide an important mechanism for the removal of invasive and exotic Asian carp from waters critical to sport fishing and recreational boating.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to set seasons, establish bag or creel limits, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist the purpose of the statute by establishing a process for nuisance fish removal from waters of the Commonwealth.

(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 Asian carp harvest weight ratio from 75 percent to 65 percent, allowing commercial fishermen fishing under the Asian Carp and Scaled Rough Fish Harvest Program to harvest a greater percentage of scaled rough fish while targeting Asian carp. This amendment will also allow program participants to start fishing at sunset on Sundays from April 1 through September 30, instead of waiting until midnight. Finally, this amendment will allow program participants to leave their nets unattended for specified periods of time as long as the nets are set at least three feet below the surface. From April 1 through September 30, nets can be left unattended for six hours and during other months, nets can be left unattended for 8 hours.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to make it easier for

commercial fishermen to harvest Asian carp from restricted waters and to allow them to better utilize scaled rough fish caught in their nets.

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c) above.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all commercial fishermen participating under the Asian Carp and Scaled Rough Fish Harvest Program. Additionally, this regulation may positively affect all anglers and recreational boaters in the Mississippi and Ohio rivers, their tributaries, and in Kentucky and Barkley lakes.

(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: Commercial fishermen participating in the program will now be allowed to harvest a greater percentage of scaled rough fish, will be able to start fishing earlier on Sundays from April 1 through September 30, and will be able to leave their nets unattended for a period of time when necessary as long as nets are set at least three feet below the surface.

(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 commercial fishermen to participate in this program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Commercial fishermen participating in the Asian Carp and Scaled Rough Fish Harvest Program will benefit from this amendment because they will now be allowed to harvest and sell a greater percentage of scaled rough fish and will have reduced restrictions on time and method of commercial fishing.

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

(a) Initially: There will be no cost to the department to implement this administrative regulation.

(b) On a continuing basis: There now will be no continual cost to the Department.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees were established for this program.

(9) TIERING: Is tiering applied? No. Tiering was not applied to this regulation because all commercial fishermen who are program participants will be regulated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to promulgate administrative regulations to set seasons, establish bag or creel limits, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area.

(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 directly generate revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not directly generate revenue for state or local government, but local economies could be positively impacted in the future through removal of Asian carp species.

(c) How much will it cost to administer this program for the first year? There will be a minimal cost to the department to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? There will be a minimal cost to the department to administer this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

301 KAR 2:172. Deer hunting seasons, zones, and requirements.

RELATES TO: KRS 150.010, 150.177, 150.180, 150.411(3), 150.990, 237.110

STATUTORY AUTHORITY: KRS 150.025(1), 150.170, 150.175, 150.390(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.170 authorizes exemptions for certain people from hunting license and permit requirements. KRS 150.175 authorizes the kinds of licenses and permits to be issued by the department. KRS 150.390(1) prohibits the taking of deer in any manner contrary to any provisions of KRS Chapter 150 or Title 301 KAR. This administrative regulation establishes deer hunting seasons and zones, legal methods of taking, and checking and recording requirements for deer hunting.

Section 1. Definitions. (1) "Additional deer permit" means a permit that allows the holder to take up to two (2) additional deer beyond those allowed by the statewide permit in the following combinations:

(a) One (1) antlered deer and one (1) antlerless deer; or

(b) Two (2) antlerless deer.

(2) "Adult" means a person who is at least eighteen (18) years of age.

(3) "Air gun" means a pneumatic gun fired by a charge of compressed air.

(4) "Antlered deer" means a male or female deer, excluding male fawns, with a visible antler protruding above the hairline.

(5)[(4)] "Antlerless deer" means a male or female deer with no visible antler protruding above the hairline.

(6)[(5)] "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.

(7)[(6)] "Arrow" means the projectile fired from a bow or crossbow.

[(7)] "Barbed broadhead" means ~~a point or portion of a blade projecting backward from a broadhead designed to hold an arrow within an animal.~~

(8) "Centerfire" means a type of gun that detonates a cartridge by the firing pin striking a primer in the middle of the end of the cartridge casing.

(9) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without aid from the archer.

(10)(9) "Deer" means a member of the species *Odocoileus virginianus*.

(11)(10) "Firearm" means a breech or muzzle-loading rifle, shotgun, or handgun.

(11) "Fully automatic firearm" means a firearm that fires more than one (1) time with a single pull of the trigger.

(12) "License year" means the period from March 1 through the following last day of February.

(13) "Modern gun" means an air gun, a rifle, handgun, or shotgun that is loaded from the rear of the barrel.

(14) "Muzzle-loading gun" means a rifle, shotgun, or handgun that is loaded from the discharging end of the barrel or discharging end of the cylinder.

(15) "Shotshell" means ammunition containing more than one (1) projectile.

(16) "Statewide deer permit" means a permit, which, in conjunction with appropriate licenses, seasons, and methods, allows the holder to take:

- (a) One (1) antlered deer and one (1) antlerless deer; or
- (b) Two (2) antlerless deer.

(16)(17) "Statewide deer hunting requirements" means the season dates, zone descriptions, bag limits, and other requirements and restrictions for deer hunting established in this administrative regulation.

(17)(18) "Youth" means a person under the age of sixteen (16) by the date of the hunt.

(18)(19) "Zone" means an area consisting of counties designated by the department within which deer hunting season dates and limits are set for the management and conservation of deer in Kentucky.

Section 2. License and Deer Permit Requirements. (1) Unless exempted by KRS 150.170, a person shall carry proof of purchase of a valid Kentucky hunting license and valid deer permit while hunting.

(2) In lieu of a statewide deer permit or a license or permit that grants statewide deer hunting privileges, a person possessing a valid junior statewide hunting license shall not use more than two (2) junior deer hunting permits.

(3) An additional deer permit shall not be valid unless accompanied by a valid Kentucky hunting license and a statewide deer permit or a license or permit that grants statewide deer hunting privileges.

Section 3. Hunter Restrictions. (1) A deer hunter shall not:

- (a) Take a deer except during daylight hours;
- (b) Use dogs, except leashed tracking dogs to recover a wounded deer;
- (c) Take a deer that is swimming;
- (d) From a vehicle, boat, or on horseback, take a deer, except that a hunter with a disabled hunting exemption permit issued by the department may use a stationary vehicle as a hunting platform; and
- (e) Possess or use a decoy or call powered by electricity from any source.

(2) A person [deer hunter] shall only use the equipment established in paragraphs (a) through (e) of this subsection to take a deer:

(a) A crossbow or archery equipment loaded with a broadhead of seven-eighths (7/8) inch or wider upon expansion;

(b) A firearm:

1. With an action that fires a single round of ammunition upon each manipulation of the trigger; and

2. Loaded with centerfire, single projectile ammunition designed to expand upon impact;

(c) A muzzle-loading gun;

(d) A shotgun loaded with a shell containing single projectile ammunition designed to expand upon impact; or

(e) An air gun:

1. Of .35 caliber or larger;

2. Charged by an external tank; and

3. Loaded with single projectile ammunition designed to expand upon impact.

(3) A person shall only use a weapon that complies with the appropriate season established in Section 5 of this administrative regulation to take a deer.

(4) A crossbow shall contain a working safety device.

(5) A person shall not use a magazine capable of holding more than ten (10) rounds to take a deer [not take a deer with any device except a firearm, crossbow, or archery equipment as authorized by Section 5 of this administrative regulation].

(3) A person shall not use any of the following items to take a deer:

(a) Rimfire ammunition;

(b) A fully automatic firearm;

(c) A firearm with a magazine capacity greater than ten (10) rounds;

(d) Full metal jacketed ammunition;

(e) Tracer bullet ammunition;

(f) A shotshell containing more than one (1) projectile;

(g) An arrow or crossbow bolt without a broadhead;

(h) A broadhead smaller than seven-eighths (7/8) inch wide;

(i) A barbed broadhead;

(j) A crossbow without a working safety device;

(k) A chemically treated arrow;

(l) An arrow with a chemical attachment;

(m) Multiple projectile ammunition; or

(n) Any weapon that is not consistent with the appropriate season established in Section 5 of this administrative regulation].

Section 4. Hunter Orange Clothing Requirements. (1) During the modern gun deer season, muzzle-loader season, and any youth gun [firearm] season, a person hunting any species during daylight hours and any person accompanying a hunter, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest except while hunting waterfowl.

(2) During an elk firearm season as established in 301 KAR 2:132, a person hunting any species and any person accompanying a hunter within the elk restoration zone, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest except while hunting waterfowl.

(3) The hunter orange portions of a garment worn to fulfill the requirements of this section:

(a) May display a small section of another color; and

(b) Shall not have mesh weave openings exceeding one-fourth (1/4) inch by any measurement.

(4) A camouflage-pattern hunter orange garment worn without additional solid hunter orange on the head, back, and chest shall not meet the requirements of this section.

Section 5. Statewide Season Dates. (1) A deer hunter may use archery equipment to hunt deer statewide from the first Saturday in September through the third Monday in January.

(2) A deer hunter may take deer with a modern gun [firearm] statewide beginning the second Saturday in November for:

(a) Sixteen (16) consecutive days in Zones 1 and 2; and

(b) Ten (10) consecutive days in Zones 3 and 4.

(3) A deer hunter may use a muzzle-loading gun to hunt deer statewide:

(a) For two (2) consecutive days beginning the third Saturday in October;

(b) For nine (9) consecutive days beginning the second Saturday in December; and

(c) During any season in which a modern gun may be used to take deer.

(4) A deer hunter may use a crossbow to hunt deer statewide:

(a) From October 1 through the end of the third full weekend in October;

(b) From the second Saturday in November through December 31; and

(c) During any season in which a gun [firearm] may be used to

take deer.

(5) A legal resident hunter sixty-five (65) years or older may hunt with a crossbow from the first Saturday in September through the third Monday in January.

(6) Youth ~~gun[firearm]~~ season. For two (2) consecutive days beginning on the second Saturday in October, a youth deer hunter:

(a) May take antlered or antlerless deer and shall use a legal method to do so; and

(b) Shall comply with this administrative regulation and all other statewide deer hunting requirements.

(7) There shall be a free youth weekend for two (2) consecutive days beginning on the Saturday after Christmas during which a youth:

(a) Shall not be required to have a hunting license or deer permit;

(b) May take antlered or antlerless deer and shall use a legal method to do so; and

(c) Shall comply with this administrative regulation and all other statewide deer hunting requirements.

Section 6. Zones. (1) Zone 1 shall consist of Anderson, Ballard, Boone, Bracken, Bullitt, Caldwell, Calloway, Campbell, Carlisle, Carroll, Christian, Crittenden, Franklin, Fulton, Gallatin, Grant, Graves, Green, Hardin, Harrison, Henry, Hickman, Hopkins, Jefferson, Kenton, Larue, Livingston, Lyon, Marshall, McCracken, Nelson, Oldham, Owen, Pendleton, Robertson, Scott, Shelby, Spencer, Trigg, Trimble, Washington, Webster, and Woodford Counties.

(2) Zone 2 shall consist of Bourbon, Boyd, Carter, Fayette, Fleming, Grayson, Greenup, Hart, Henderson, Jessamine, Lawrence, Lewis, Logan, Marion, Mason, McLean, Mercer, Muhlenberg, Nicholas, Ohio, Todd, and Union Counties.

(3) Zone 3 shall consist of Adair, Allen, Barren, Bath, Boyle, Breckinridge, Butler, Casey, Clark, Cumberland, Daviess, Edmondson, Elliott, Estill, Hancock, Johnson, Lincoln, Madison, Meade, Metcalf, Monroe, Montgomery, Morgan, Powell, Rowan, Simpson, Taylor, Warren, and Wolfe Counties.

(4) Zone 4 shall consist of Bell, Breathitt, Clay, Clinton, Floyd, Garrard, Harlan, Jackson, Knott, Knox, Laurel, Lee, Leslie, Letcher, Magoffin, Martin, McCreary, Menifee, Owsley, Perry, Pike, Pulaski, Rockcastle, Russell, Wayne, and Whitley Counties.

Section 7. Season and Zone Limits. (1) A person shall not take more than four (4) deer statewide in a license year except:

(a) As authorized in 301 KAR 2:111, 2:176, 2:178, and 3:100; and

(b) A person may take an unlimited number of antlerless deer in Zone 1 if the person has purchased the appropriate additional deer permits.

(2) A person shall not take more than one (1) antlered deer per license year, regardless of the permit type used, except as established in 301 KAR 2:111, 2:178, and 3:100.

(3) In Zone 3, a person may take two (2) deer with a ~~gun[firearm]~~.

(4) In Zone 4, a person may take:

(a) Only two (2) deer with a ~~gun[firearm]~~; and

(b) Only antlered deer during:

1. Modern ~~gun[firearm]~~ season;

2. Early muzzleloader season; and

3. The first six (6) days of the December muzzleloader season.

(5) The aggregate bag limit for Zones, 2, 3, and 4 shall be four (4) deer per hunter.

Section 8. Supervision of Youth ~~Gun[Firearm]~~ Deer Hunters.

(1) An adult shall:

(a) Accompany a person under sixteen (16) years old; and

(b) Remain in a position to take immediate control of the youth's ~~gun[firearm]~~.

(2) An adult accompanying a youth hunter shall not be required to possess a hunting license or deer permit if the adult is not hunting.

Section 9. Harvest Recording. (1) Immediately after taking a

deer, and prior to moving the carcass, a person shall record, in writing:

(a) The species taken;

(b) The date taken;

(c) The county where taken; and

(d) The sex of the deer taken on one (1) of the following:

1. The hunter's log section on the reverse side of a license or permit;

2. The hunter's log produced in a hunting guide;

3. A hunter's log printed from the Internet;

4. A hunter's log available from any KDSS agent; or

5. An index or similar card.

(2) The person shall retain and possess the completed hunter's log while the person is in the field during the current hunting season.

Section 10. Checking a Deer. (1) A person shall check a harvested deer before midnight on the day the deer is recovered by:

(a) Calling~~[the toll-free telecheck number at]~~ (800) 245-4263 and providing the requested information; or

(b) Completing the online check-in process at fw.ky.gov.

(2) A person who has checked in a deer shall record the confirmation number on a hunter's log.

(3) If a hunter removes the hide or head of a harvested deer before the deer is checked in, then the hunter shall retain the deer parts established in paragraphs (a) and (b) of this subsection:

(a) For antlered deer, the:

1. Head with antlers; or

2. Testicles, scrotum, or penis attached to the carcass; or

(b) For antlerless deer, the:

1. Head; or

2. Udder or vulva attached to the carcass~~or on the department's Web site at fw.ky.gov:~~

1. Before midnight on the day the deer is recovered; and

2. Prior to processing or removing the hide or head from the carcass;

(b) Providing the information requested by the automated check-in system; and

(c) Writing the confirmation number given by the system on the hunter's log authorized in Section 9 of this administrative regulation].

(4) [(2)] If a hunter transfers possession of a harvested deer, the hunter shall attach to the carcass a hand-made tag that contains the following information:

(a) The confirmation number;

(b) The hunter's name; and

(c) The hunter's telephone number.

(5) [(3)] A person shall not provide false information while:

(a) Completing the hunter's log;

(b) Checking a deer; or

(c) Creating a carcass tag.

Section 11. Transporting and Processing Deer. (1) A person shall:

(a) Not transport an unchecked deer out of Kentucky;

(b) Have proof that a deer or parts of deer brought into Kentucky were legally taken;

(c) Not sell deer hides except to a licensed:

1. Fur buyer;

2. Fur processor; or

3. Taxidermist.

(2) A taxidermist or an individual who commercially butchers deer shall not accept a deer carcass or any part of a deer without a valid disposal permit issued by the department pursuant to KRS 150.411(3) or a proper carcass tag as established in Section 10 of this administrative regulation.

(3) An individual who commercially butchers deer shall keep accurate records of the hunter's name, address, confirmation number, and date received for each deer in possession and retain the records for a period of one (1) year.

GREGORY K. JOHNSON, Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: January 9, 2017

FILED WITH LRC: January 12, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 23, 2017 at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through February 28, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Cramer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes deer hunting seasons and zones, methods of take, bag limits, harvest recording procedures, and checking requirements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to properly manage for a long-term, sustainable, and healthy deer population in Kentucky while providing reasonable and ample recreational opportunity for deer hunters.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish hunting seasons, bag limits, and the methods of taking wildlife. KRS 150.170 exempts certain people from hunting license and permit requirements. KRS 150.175 authorizes the kinds of licenses and permits that are issued by the department. KRS 150.390 prohibits the taking of deer in any manner contrary to any provisions of Chapter 150 and Title 301 KAR.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing the seasons, zones, limits, and other requirements authorized by the statutes.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies the legal equipment to be used by deer hunters, adds air rifles to the list of modern guns, and requires hunters who remove the hide or head of a deer prior to checking the deer in to retain certain parts of the deer for proof of sex.

(b) The necessity of the amendment to this administrative regulation: See 1 (b) above.

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c) above.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: For the 2016-17 deer season, there were approximately 269,315 resident and 25,991 non-resident Kentucky deer hunters.

(4) Provide an analysis of how the entities identified in question

(3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Deer hunters will be required to comply with the weapon, ammunition, and equipment requirements, and will be required to retain certain parts of a harvested deer until the deer is checked in.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment does not change any costs to the entities identified in 3.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will clarify legal weaponry, ammunition, and equipment that can be used to harvest deer, and will allow more flexibility for removing harvested deer from the field.

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

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

(b) On a continuing basis: There will not be an additional cost to the agency on a continuing basis.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? No. All deer hunters are subject to the same seasons, bag limits, and zone requirements for hunting.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1), KRS 150.170, KRS 150.175, KRS 150.390(1).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Direct revenue from the sale of deer permits is estimated to be between \$3.5 and \$4.0 million based on recent years' sales.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Revenue during subsequent years is dependent on the number of permits sold, which has been stable to slightly decreasing in recent years.

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

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

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

regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

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," January 12, 2017[November 7, 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 (Amended 11/7/16)
- 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 1/12/17[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)
- 8.2 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 1/12/17[2/26/16])
- 10.3 Safekeepers and Contract Prisoners (Amended 9/15/04)
- 11.2 Dietary Procedures and Compliance (Amended 1/12/17[3/14/14])
- 11.4 Alternative Dietary Patterns (Amended 1/12/17[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)
- 13.6 Sex Offender Treatment Program (Amended 11/7/16)
- 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 Health Services (Amended 11/7/16)
- 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 1/12/17[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 1/12/17[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)
- 15.2 Rule Violations and Penalties (Amended 8/12/16)
- 15.3 Meritorious Good Time (Amended 11/7/16)
- 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)
- 15.7 Inmate Accounts (Amended 10/14/16)
- 15.8 Possession or Use of Unauthorized Substance and Substance Abuse Testing (Amended 1/12/17[10/14/05])
- 16.1 Inmate Visits (Amended 1/12/17[10/12/12])
- 16.2 Inmate Correspondence (Amended 11/7/16)
- 16.3 Inmate Access to Telephones (Amended 10/12/12)
- 16.4 Inmate Packages (Amended 8/12/16)
- 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)
- 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 (Amended[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)
- 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)
- 25.10 Administrative Release of Inmates (Amended 8/12/16)
- 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)

VOLUME 43, NUMBER 8 – FEBRUARY 1, 2017

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RODNEY BALLARD, Commissioner

APPROVED BY AGENCY: December 14, 2016

FILED WITH LRC: January 12, 2017

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 21, 2017, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, 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 February 28, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Kentucky Department of Corrections (DOC) including the rights and responsibilities of employees and the inmate population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035, 197.020, 439.470, 439.590, 439.640, and 532.260 and to meet American Correctional Association (ACA) standards requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of the Kentucky Department of Corrections. The authorizing statutes permit the Secretary of the Cabinet or his delegate and the Commissioner to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky Department of Corrections.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference establish the policies and procedures that govern the operations of the Department of Corrections and its institutions. It provides direction and information to Corrections employees and inmates concerning the operations of the department.

(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 maintains the Kentucky Department of Corrections compliance with ACA standards and updates practices for the department and its institutions.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020 and update practices for the department and its institutions.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes permit the Secretary of the Cabinet or his delegate and the Commissioner to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky Department of Corrections.

(d) How the amendment will assist in the effective

administration of the statutes: The amendment provides staff and inmates information concerning the effective and orderly management of the state correctional institutions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Kentucky Department of Corrections, 3,992 employees, 24,154 inmates, visitors, volunteers, and others who enter state correctional institutions.

(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: Staff and inmates will have to follow the changes made in the policies and procedures. The institutional employees and inmates of the Department of Corrections will have to change their actions to comply with any operational changes made by this amendment. Others who enter correctional institutions will have to comply with policies and procedures concerning entry, search, contraband and others when they enter an institution.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that the amendment to this administrative regulation will increase current costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the state correctional institutions.

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

(a) Initially: CPP 3.17 changes causing the DOC and American Flag patches to be on each side of the jacket and the uniform. Initial costs are expected to increase by approximately \$50,000. No increase in funding is anticipated to cover this cost.

(b) On a continuing basis: These patches will cost approximately \$5,000 to \$10,000 at the most on an annual basis after the first year. No increase in funding is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Corrections budgeted funds for the biennium.

(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 anticipated.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The regulation establishes fees for inmates, e.g. health services co-pays, photo ID fee, etc. The amendment does not increase any fees.

(9) TIERING: Is tiering applied? No. 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? The amendments to this regulation impact the operation of the Kentucky Department of Corrections and each state correctional institution.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020, 439.470, 439.590, 439.640, and 532.260 and to meet American Correctional Association (ACA) standards requirements.

(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?

(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 regulations involves limited fees for medical co-pays, replacement id cards, and other similar items. The revenue is very minimal in comparison to the funds budgeted to the department.

(c) How much will it cost to administer this program for the first year? The amendments to this regulation impact how the Kentucky Department of Corrections and state correctional institutions operate. The costs for the amendments are not expected to increase the Kentucky Department of Corrections budgeted funds for the biennium. The uniform patch change to include both the DOC patch and American Flag patch on the jacket and the uniform is expected to increase costs by approximately \$50,000 for the initial set up.

(d) How much will it cost to administer this program for subsequent years? The amendments to this regulation impact how the Kentucky Department of Corrections and state correctional institutions operate. The costs for the amendment are not expected to increase costs for the Kentucky Department of Corrections budgeted funds for the biennium. The costs for the patches are expected to be approximately \$5,000 to \$10,000 at the most on an annual basis after the first year.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 6:030. Kentucky State Reformatory.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Kentucky State Reformatory.

Section 1. Incorporation by Reference. (1) "Kentucky State Reformatory policies and procedures", January 12, 2017~~[April 11, 2016]~~, are incorporated by reference. Kentucky State Reformatory policies and procedures include:

KSR 01-00-08 Communication Among the Warden, Management Staff, Department Heads and Inmates (Added 4/11/16)
KSR 02-00-01 Inmate Canteen (Amended 1/12/17~~[4/11/16]~~)
KSR 02-00-03 Screening Disbursements from Inmate Accounts (Amended 1/12/17~~[4/11/16]~~)
KSR 02-00-11 Inmate Accounts (Amended 1/12/17~~[4/11/16]~~)
KSR 02-00-13 Inmate Canteen Committee (Amended 4/11/16)
KSR 06-00-03 Kentucky Open Records Law and Release of Institutional and Medical Information (Amended 1/12/17~~[4/11/16]~~)
KSR 09-00-28 Restricted Areas (Amended 12/14/15)
KSR 09-00-30 Parole Board (Amended 1/12/17~~[12/14/15]~~)
KSR 10-01-02 Restrictive Housing~~[Special Management]~~ Unit

General Operational Procedures (Amended 1/12/17~~[4/11/16]~~)
KSR 10-01-03 Restrictive Housing~~[Special Management]~~ Unit - Inmate Tracking System and Record System (Amended 1/12/17~~[12/14/15]~~)
KSR 10-01-09 Hold Ticket Inmates (Amended 3/11/16)
~~[KSR 10-02-08 Corrections Psychiatric Treatment Unit (Amended 4/11/16)]~~
KSR 11-00-01 Meal Planning and Procedure (Amended 1/12/17~~[4/11/16]~~)
KSR 11-00-05 Food Service Department Clothing Issuance, Laundry and Sanitation (Amended 12/14/15)
KSR 11-00-06 Health Standards for Food Service Employees (Amended 1/12/17~~[4/11/16]~~)
KSR 12-00-03 State and Personal Hygiene Items Issued to Inmates (Amended 12/14/15)
KSR 12-00-07 Inmate Barbershop (Amended 4/11/16)
KSR 12-00-09 Treatment of Inmates with Body Lice (Amended 12/14/15)
KSR 13-00-03 Medication for Inmates Leaving Institutional Grounds (Amended 12/14/15)
KSR 13-00-04 Medical and Dental Care (Amended 1/12/17~~[4/11/16]~~)
KSR 13-00-05 Medical Records (Amended 4/11/16)
KSR 13-00-09 Institutional Pharmacy Procedures (Amended 1/12/17~~[4/11/16]~~)
KSR 13-00-10 Requirements for Medical Personnel (Amended 12/14/15)
KSR 13-00-17 Special Care (Amended 12/14/15)
KSR 13-01-01 Death of an Inmate and Notification of Inmate Family About a Critical Medical Emergency (Added 12/14/15)
KSR 13-02-01 Mental Health Services (Amended 12/14/15)
KSR 13-02-03 Suicide Prevention and Intervention Program (Amended 4/11/16)
KSR 13-02-08 Inmate Observer Program (Amended 1/12/17~~[12/14/15]~~)
KSR 14-00-02 Americans with Disabilities Act and Inmate Program Access (Amended 12/14/15)
KSR 15-00-06 Inmate Identification Cards (Amended 12/14/15)
~~[KSR 15-00-08 Minimum Security Unit (Amended 4/11/16)]~~
KSR 15-00-09 Tobacco Free Environment (Amended 12/14/15)
KSR 15-00-10 Program Services for Special Housing Placement (Amended 4/11/16)
KSR 15-01-01 Responsibilities of Staff Assigned to Units A, B & C (Amended 4/11/16)
KSR 15-01-02 Staff Operational Procedures for Units A, B, & C (Amended 1/12/17~~[12/14/15]~~)
KSR 15-01-03 Inmate Rules for General Population Living Areas (Amended 1/12/17~~[4/11/16]~~)
KSR 15-01-06 Honor Housing Criteria and Rules (Amended 1/12/17~~[12/14/15]~~)
KSR 15-01-07 Nursing Care Facility Operational Procedures and Rules (Amended 1/12/17~~[4/11/16]~~)
KSR 15-01-08 Outside Detail (Added 1/12/17)
KSR 16-00-02 Inmate Correspondence and Mailroom Operations (Amended 1/12/17~~[12/14/15]~~)
KSR 16-00-03 Inmate Access to Telephones (Amended 12/14/15)
KSR 16-01-01 Inmate Visiting (Amended 1/12/17~~[4/11/16]~~)
KSR 17-00-05 Inmate Reception and Orientation (Amended 1/12/17~~[12/14/15]~~)
KSR 17-00-07 Inmate Personal Property (Amended 12/14/15)
KSR 18-00-04 Inmate Transfers, Admission, and Discharge Procedures (Amended 12/14/15)
KSR 18-00-06 Classification (Amended 12/14/15)
KSR 18-00-07 Kentucky State Reformatory Placement Committee (Amended 12/14/15)
KSR 18-01-00 Youthful Offenders (Amended 1/12/17~~[Added 12/14/15]~~)
KSR 18-02-01 Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) (Amended 1/12/17~~[Added 12/14/15]~~)
KSR 19-00-02 Inmate Work Programs (Amended 1/12/17~~[12/14/15]~~)

KSR 19-00-03	Safety Inspections of Inmate Work Assignment Locations (Amended 12/14/15)
KSR 20-00-01	LaGrange Education Center Programming (Amended 1/12/17[12/44/45])
KSR 20-00-06	English as a Second Language (Amended 12/14/15)
KSR 21-00-01	Legal Aide Office and Inmate Law Library Services and Supervision (Amended 1/12/17[4/44/46])
KSR 21-00-02	Library Services (Amended 4/11/16)
KSR 22-00-03	Inmate Organizations (Amended 1/12/17[12/44/45])
KSR 22-00-07	Inmate Magazine (Amended 1/12/17[12/44/45])
KSR 23-00-03	Religious Programming (Added 1/12/17)
KSR 24-00-01	Social Services Staff (Added 12/14/15)
KSR 24-00-02	Substance Abuse and Chemical Dependency Program (Amended 1/12/17[12/44/45])
KSR 24-00-03	Social Services Program (Amended 1/12/17[Added 12/44/45])
KSR 25-00-01	Discharge of an Inmate to Hospital or Nursing Home (Amended 12/14/15)
KSR 26-00-01	Volunteer Services Program (Amended 1/12/17[12/44/45])

(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: December 14, 2016

FILED WITH LRC: January 12, 2017 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 21, 2017, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, 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 February 28, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686 email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the operation of the Kentucky State Reformatory.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020 and to meet American Correctional Association (ACA) standard requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operation of the Kentucky State Reformatory.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear and concise direction and information to Kentucky State Reformatory employees and the inmate population as to their duties, rights, privileges and responsibilities.

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

(a) How the amendment will change this existing administrative regulation: The amendments bring the policies and procedures in

compliance with state and federal law, ACA Standards and updates current practices for the institution.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020.

(c) How the amendment conforms to the content of the authorizing statutes: It permits the commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of Kentucky State Reformatory.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff, inmates and visitors information concerning the effective and orderly management of the institution.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 650 employees of the Kentucky State Reformatory and 1,946 inmates and all visitors to Kentucky State Reformatory.

(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: Staff and inmates will have to follow the changes made in the policies and procedures. The institution, employees, and inmates of the Department of Corrections will have to change their actions to comply with any operational changes made by this regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the institution.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment does not increase or decrease any fee.

(9) TIERING: Is tiering applied? No, tiering was not appropriate in this administrative regulation because the administrative regulations 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? The amendment to this regulation impacts the operation of Kentucky State Reformatory.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.870 – 61.884, 196.035, 197.020, 422.317, 439.510

(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 amendments to this regulation do not create any revenue for the Kentucky State Reformatory.

(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 amendments to this regulation do not create any revenue for the Kentucky State Reformatory.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 6:170. Green River Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or 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 Green River Correctional Complex.

Section 1. Incorporation by Reference. (1) "Green River Correctional Complex Policies and Procedures", January 12, 2017~~[May 10, 2016]~~, is incorporated by reference. Green River Correctional Complex Policies and Procedures include:

GRCC 01-06-01 Inmate Access to and Communication with GRCC Staff (Amended 11/15/07)
GRCC 01-07-01 Institutional Tours of GRCC (Amended 11/15/07)
GRCC 01-08-01 GRCC Cooperation with Outside Bodies Including Courts, Governmental, Legislative, Executive, and Community Agencies (Amended 11/15/07)
GRCC 01-12-01 Public Information and Media Communication (Amended 11/15/07)
GRCC 01-13-01 Tobacco Free (Amended 4/14/14)
GRCC 02-01-02 Fiscal Management: Accounting Procedures (Amended 11/15/07)
GRCC 02-01-03 Fiscal Management: Agency Funds (Amended 11/15/07)
GRCC 02-06-01 Inmate Canteen (Amended 11/15/07)
~~GRCC 02-06-02 Inmate Canteen Committee (Amended 11/15/07)~~
GRCC 02-07-01 Inmate Personal Funds (Amended 11/15/07)
GRCC 03-12-01 Confidentiality of Information, Roles and Services of Consultants, Contract Personnel, Volunteers, and Student Interns (Amended 11/15/07)
GRCC 05-02-01 Outside Consultation and Research (Amended 11/15/07)
GRCC 06-01-01 Offender Records (Amended 4/14/14)
GRCC 08-02-01 Fire Safety (Amended 4/14/14)
GRCC 09-01-01 Inmate Counts (Amended 4/14/14)
GRCC 09-02-01 Inmate Unauthorized Substance Abuse Testing (Amended 2/13/14)
GRCC 09-04-01 Inmate Death (Amended 2/13/14)

GRCC 10-01-01 ~~Restrictive Housing~~~~[Special Management] Unit (Amended 1/12/17~~~~[5/10/16])~~
GRCC 11-01-01 Food Service: General Guidelines (Amended 4/14/14)
GRCC 11-02-01 Food Service: Security (Amended 2/13/14)
GRCC 11-03-01 Dining Room Guidelines (Amended 2/13/14)
GRCC 11-04-01 Food Service: Meals (Amended 2/13/14)
GRCC 11-04-02 Food Service: Menu, Nutrition and Restricted Diets (Amended 2/13/14)
GRCC 11-06-01 Health Requirements of Food Handlers (Amended 11/15/07)
GRCC 11-07-01 Food Service: Inspections and Sanitation (Amended 2/13/14)
GRCC 12-01-01 Clothing, Bedding, Hygiene Supplies, and Barber Shop (Amended 4/14/14)
GRCC 13-02-01 Medical Services: Sick Call, Physician's Clinics and Pill Call (Amended 9/14/2005)
GRCC 13-02-02 Medical Services: Copayment (Amended 9/14/2005)
GRCC 13-02-03 Continuing of Care: Health Evaluations, Intrasystem Transfer, Individual Treatment Plans (Amended 9/14/2005)
GRCC 13-03-01 Use of Pharmaceutical Products (Amended 9/14/2005)
GRCC 13-04-01 Health Records (Amended 9/14/2005)
GRCC 13-04-02 Psychological and Psychiatric Reports (Amended 11/8/2005)
GRCC 13-05-01 Management of Serious and Infectious Diseases (Amended 9/14/2005)
GRCC 13-06-01 Mental Health Services (Amended 2/26/16)
GRCC 13-08-01 Eye Care (Amended 5/10/16)
GRCC 13-09-01 Dental Care (Amended 9/14/2005)
GRCC 13-10-01 Transfers and Medical Profiles (Amended 2/26/16)
GRCC 13-11-01 Informed Consent (Amended 2/26/16)
GRCC 13-12-01 Infirmary Care (Amended 9/14/2005)
GRCC 13-13-01 Inmate Self-administration of Medication (Amended 2/26/16)
GRCC 13-15-01 Health Education Program and Detoxification (Amended 9/14/2005)
GRCC 14-01-01 Inmate Rights and Responsibilities (Amended 11/15/07)
GRCC 14-02-01 Legal Services Program (Amended 1/12/17~~[11/15/07]~~)
GRCC 16-01-01 Inmate Visiting (Amended 1/12/17~~[4/14/14]~~)
GRCC 16-02-02 Inmate Correspondence and Privileged Mail (Amended 2/13/14)
GRCC 16-03-01 Inmate Telephone Communications (Amended 1/12/17~~[11/15/07]~~)
GRCC 16-04-01 Inmate Packages (Amended 11/15/07)
GRCC 17-01-01 Inmate Property Control (Amended 2/13/14)
GRCC 17-02-01 GRCC Inmate Receiving and Orientation Process (Amended 11/15/07)
GRCC 17-03-01 Procedure for Sending Televisions to Outside Dealer for Repair (Amended 11/15/07)
GRCC 18-01-01 Inmate Classification (Amended 1/12/17~~[11/15/07]~~)
GRCC 18-02-01 Meritorious Housing (Amended 1/12/17~~[2/13/14]~~)
GRCC 18-02-02 Meritorious Visitation Program (Amended 2/13/14)
GRCC 18-03-01 Minimum Security Unit: Operating Procedures and Living Conditions (Added 11/15/07)
GRCC 18-04-01 Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) (Added 5/10/16)
GRCC 19-01-01 Inmate Work Program (Amended 11/15/07)
GRCC 19-01-02 90-Day Unassigned Status (Amended 2/13/14)
GRCC 20-01-01 Educational Programs (Amended 2/26/16)
GRCC 21-01-01 Library Services (Amended 2/13/14)
GRCC 22-01-01 Recreation Programs (Amended 11/15/07)
GRCC 22-02-01 Inmate Clubs and Organizations (Amended 2/13/14)
GRCC 22-04-01 Arts and Crafts Projects (Amended 11/15/07)
GRCC 22-05-01 Inmate Photo Project (Amended 2/13/14)

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- GRCC 23-01-01 Religious Programs (Amended 11/15/07)
GRCC 23-02-01 Death or Hospitalization of an Inmate's Family Member and Notification of Inmates (Amended 2/13/14)
GRCC 24-01-01 Social Services and Counseling Program (Amended 11/15/07)
GRCC 25-01-01 Prerelease Program (Amended 1/12/17[14/15/07])
GRCC 25-01-02 Inmate Release Process (Amended 5/10/16)
GRCC 25-02-01 Parole Hearing Procedure (Amended 2/26/16)
GRCC 26-01-01 Citizen Involvement and Volunteer Services Program (Amended 2/13/14)

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RODNEY BALLARD, Commissioner

APPROVED BY AGENCY: December 14, 2016

FILED WITH LRC: January 12, 2017 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 21, 2017, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, 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 February 28, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Green River Correctional Complex including the rights and responsibilities of employees and the inmate population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020 and to meet ACA requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of the Green River Correctional Complex.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to employees concerning employee duties, inmate responsibilities, and the procedures that govern operations of the institution.

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

(a) How the amendment will change this existing administrative regulation: The amendment brings the Green River Correctional Complex into compliance with ACA Standards and updates current practices for the institution.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020.

(c) How the amendment conforms to the content of the authorizing statutes: The Commissioner or his authorized representative is permitted to implement or amend practices or

procedures to ensure the safe and efficient operation of the Green River Correctional Complex.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and inmates information concerning the effective and orderly management of this institution.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Green River Correctional Complex 230 employees, 969 inmates, and all volunteers and visitors to the institution.

(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: Staff and inmates will have to follow the changes made in the policies and procedures. The institution, employees, and inmates will have to change their actions to comply with any operational changes made by this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An increase in cost is not anticipated to the entities from the changes in operations made in the amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of this institution.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Green River Correctional Complex budgeted funds

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment does not increase or decrease any fee.

(9) TIERING: Is tiering applied? No. 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? The amendment to this regulation impacts the operation of Green River Correctional Complex.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035 and 197.020

(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? The amendments to this regulation will not create 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 amendments to this regulation will not create any revenue.

(c) How much will it cost to administer this program for the first year? The amendments to this regulation impact how GRCC operates but do not increase cost from what was previously

budgeted.

(d) How much will it cost to administer this program for subsequent years? The amendments to this regulation impact how GRCC operates but do not increase cost from what was previously budgeted.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(Amendment)

804 KAR 4:370. Entertainment destination center license.

RELATES TO: KRS 148.853(2)(b), 241.060(1), 243.030(21), (35)[(34)], 243.040, 243.050

STATUTORY AUTHORITY: KRS 241.060(1), 243.030(21), (35)[(34)], 243.040

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060 authorizes the board to promulgate administrative regulations regarding matters over which the board has jurisdiction. KRS 243.030(21) and (35)[(34)] authorizes the department[of Alcoholic Beverage Control] to issue an entertainment destination center license. This administrative regulation defines the term entertainment destination center and establishes the privileges and responsibilities of an entertainment destination center license.

Section 1. Definition.[Definitions.—(1)] "Entertainment destination center" or "EDC" means premises:

(1) That meet the incentive qualifications for an entertainment destination center project as set forth in KRS 148.853(2)(b)(1);

(2) Located in a wet county or city that has enacted an ordinance that:

(a) Determines an entertainment destination center licensed premises would aid economic growth and tourism in the county or city; and

(b) Defines the geographic boundaries of the EDC; or

(3) That contain a minimum of 100,000 square feet of building space, located within one (1) mile of:

(a) An existing tourism attraction; or

(b) A convention center.

Section 2. Sales by EDC Licensee. An EDC licensee may sell alcoholic beverages by the drink at one (1) or more nonpermanent locations within any common area of the EDC.

Section 3. Sales by Other Licensed Businesses. (1) Each business located within an EDC that sells alcoholic beverages shall hold the necessary alcoholic beverage license or licenses for its premises.

(2) A licensee within or adjacent to the EDC may sell alcoholic beverages from one (1) or more nonpermanent locations within any common area of the EDC if:

(a) The licensee holds a supplemental bar license for each nonpermanent location; and

(b) The licensee holds written permission for these sales by the EDC licensee.

Section 4. Drink Consumption in Common Areas and Other Licensed Premises. (1) A licensee located in or adjacent to the EDC may allow patrons to leave its premises with alcoholic beverage drinks and consume those drinks at other licensed premises or any EDC common area if the EDC licensee:

(a) Possesses the common area by deed, lease, or permit;

(b) Provides adequate security for the common area;

(c) Ensures that any portion of a public thoroughfare included in a common area is controlled in a manner that ensures public safety and pedestrian protection from vehicular traffic; and

(d) Has granted written permission for this conduct.

(2) The EDC licensee shall prohibit patrons from taking alcoholic beverages outside the physical boundaries of the EDC.

(3) If the board suspends or revokes the EDC license, all retail drink sales and consumption in any EDC common area shall be prohibited.

Section 5. Minors in the Common Area. In addition to authorized businesses listed in KRS 244.085(6) and (7), minors shall be permitted in EDC common areas if allowed by the EDC licensee.

Section 6. Additional Storage Location. As permitted by the EDC licensee in a written agreement, a licensee located in the EDC may store alcoholic beverages at an identified storage location in the EDC separate from its licensed premises[a facility:

(a)1. Located in a city of the first class or in a county containing a city of the first class;

2. Located within an urban-county government under KRS Chapter 67A;

3. Located within a city with a population of 20,000 or greater based on the most recent federal decennial census and meeting the incentive qualifications for an entertainment destination center project as set forth in KRS 148.853(2)(b)(1); or

4. Located within a county containing a city with a population equal to or greater than 20,000 based on the most recent federal decennial census and meeting the incentive qualifications for an entertainment destination center project as set forth in KRS 148.853(2)(b)(1);

(b) Containing a minimum of 100,000 square feet of building space located within 2,000 feet of:

1. An existing tourism attraction; or

2. A major convention facility measured from closest property line to closest property line; and

(c) Containing a combination of entertainment destination venues including:

1. Nightclubs;

2. Restaurants;

3. Leisure time activities; or

4. Specialty retail stores.

(2) "Major convention facility" means an establishment licensed under KRS 243.082 as a convention center.

(3) "Physical confines of the center" means:

(a) A portion of a public thoroughfare that is:

1. Adjacent to or within the entertainment destination center; and

2. Closed to vehicular traffic;

(b) An area designated by the lease as a common area; or

(c) An area included in the leased space or common areas and defined by a physical barrier, which would preclude motor vehicle traffic and limit pedestrian accessibility, as approved by the Department of Alcoholic Beverage Control.

Section 2. An entertainment destination center license shall authorize the licensee to sell alcoholic beverages by the drink at one (1) or more nonpermanent locations within common areas of the entertainment destination center over which the licensee, by lease or ownership, has exclusive control.

Section 3. (1) Each lessee of premises located within an entertainment destination center that intends to sell alcoholic beverages by the drink at retail shall apply for and obtain the necessary on-premises licenses under KRS 243.030 and 243.040.

(2) If permitted by the owner or lessee of the entertainment destination center in the lease, a licensed retail drink licensee may also sell alcoholic beverages from one (1) nonpermanent facility located within the boundaries of the entertainment destination center's licensed premises.

(3) Each retail drink licensee shall obtain a supplemental bar license for the nonpermanent facility.

Section 4. (1) On Thursday, Friday, and Saturday of each week, between the hours of 6 p.m. and up to 4 a.m., and during

~~any other days and times as the owner or lessee of the entertainment destination center may determine and which are permitted by local ordinance and state statute, a licensee within the entertainment destination center may allow patrons to leave the individually licensed premises with an alcoholic beverage drink and enter other licensed premises and the common areas of the center, if adequate security is provided by the entertainment destination center licensee at each point of ingress and egress.~~

~~(2) Each licensee shall serve all alcoholic beverages in containers bearing the licensee's trademark, trade name, logo, or other identifying markings unique to that licensee.~~

~~(3) Each licensee, including the entertainment destination center licensee, shall prohibit patrons from taking alcoholic beverages outside the physical confines of the center.~~

~~(4) At times other than those specified in subsection (1) of this section, and in accordance with local ordinance and state statute, the entertainment destination center licensee may permit alcoholic beverages to be consumed in nonpermanent locations and common areas if it provides adequate security at each point of ingress and egress.~~

~~(5) During those times the entertainment destination center is operating pursuant to subsection (1) or (4) of this section, the entertainment destination center licensee shall ensure that minors can be easily distinguished from other patrons through use of identity bracelets, hand stamps, badges, or other visible means.~~

~~(6) Each licensee of the center shall cause to be posted signs indicating the hours and days when alcoholic beverages may be consumed in the common areas pursuant to subsection (1) of this section and times when that consumption is prohibited.~~

~~(7) The entertainment destination center licensee shall be solely responsible for notifying the department of the dates and times during which alcoholic beverages shall be sold in the nonpermanent retail locations and common areas pursuant to subsections (1) and (4) of this section.~~

~~Section 5. The holder of the entertainment destination center license shall be subject to the restrictions and prohibitions established in KRS Chapters 243 and 244.~~

~~Section 6. (1) The entertainment destination center license shall not be a quota license and shall not be transferable to any other premises.~~

~~(2) A licensee who obtains an alcoholic beverage license for permanent premises within the center shall not be prohibited from holding a retail drink quota license.~~

~~(3)(a) Except as provided in paragraph (b) of this subsection, a licensee in the center shall not hold a retail package alcoholic beverage license.~~

~~(b) A liquor package licensee with an existing contractual commitment may remain at its licensed premises after the entertainment destination center license is issued.~~

~~Section 7. (1) Except as provided in this administrative regulation, all statutes and administrative regulations governing the retail sale of alcoholic beverages by the drink and the consumption of alcohol by patrons shall be applicable to all retail establishments contained within the physical confines of the center.~~

~~(2)(a) A licensee shall be solely responsible for alcohol violations occurring on its licensed premises, including its nonpermanent location.~~

~~(b) The entertainment destination center licensee shall be solely responsible for alcohol violations occurring at its nonpermanent locations, kiosks, or in the common areas.~~

~~(3) Proceedings relating to applications, renewals, suspensions, or revocations of the license created by this administrative regulation shall be conducted in the same manner as for any retail licensee, in accordance with the provisions of KRS Chapters 243 and 13B.~~

~~(4) If the board suspends the entertainment destination center license, all retail drink sales at its nonpermanent locations, kiosks, or common areas shall be suspended.~~

~~(5) If the alcoholic beverage license of an individual tenant of the center is suspended, the retail licensee shall not sell alcoholic~~

~~beverages for the duration of the suspension from either its permanent or nonpermanent locations].~~

CHRISTINE TROUT, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: January 13, 2017

FILED WITH LRC: January 13, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 27, 2017 at 10:00 a.m. 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 11:59 p.m. on February 28, 2017. 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 regulation defines the term entertainment destination center and establishes what criteria are necessary to qualify for that license.

(b) The necessity of this administrative regulation: This regulation is necessary to establish what criteria shall be met to qualify for the entertainment destination center license and activities authorized by this license type.

(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 243.030(21) sets a fee for the entertainment destination center license.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation defines the term entertainment destination center, establishes the criteria needed to hold the entertainment destination center license, and establishes the activities permitted under this 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: This amendment broadens the criteria for creating an entertainment destination center, which many businesses will find helpful to their business models. This will also allow state and local governments to increase tourism and economic activity.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to increase tourism and economic development.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 241.060 allows the Board to promulgate regulations for matters over which the Board has jurisdiction.

(d) How the amendment will assist in the effective administration of the statutes: The amendment establishes the criteria for obtaining a licensee and the activities permitted on the licensed premises.

(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 and local governments will be affected by this regulation. Additionally, any licensee who wishes to hold an entertainment destination center license or a licensee who is located within an

entertainment destination center will be affected by this 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: To comply with the regulation the regulated entities will have to ensure they follow the parameters for an entertainment destination center. Local governments would have the option of enacting ordinances to designate geographic areas that meet the qualifications for an entertainment destination center if they choose to do so. Individual licensees within the entertainment destination center will have to ensure that they have obtained all necessary licenses.

(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 associated with complying with this administrative regulation amendment. If a local government chooses to enact a local ordinance it will have to draft it. Any person or entity seeking to obtain an EDC license will have to pay the state licensing fees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Local governments may see a boost in tourism dollars and sales taxes. Regulated licensees may find it is easier to operate their business models under this regulation amendment.

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

(a) Initially: There are no costs to implement this administrative regulation amendment.

(b) On a continuing basis: There are no continuing costs to implement this administrative regulation amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There are no costs associated with implementing 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 amend this administrative regulation.

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

(9) TIERING: Is tiering applied? No. The regulation amendment applies to all entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments or school districts) will be impacted by this administrative regulation? The Department of Alcoholic Beverage Control and local governments 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 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 is expected to be generated by this administrative regulation itself. However, with the expansion of the terms of the entertainment center destination license, more facilities will be able to qualify for this license type. The Department of Alcoholic Beverage Control will receive revenues from the EDC license

(current fee is \$7,730 per year) and local governments may see an increase in tourism revenue as well as increased sales tax 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? No revenue is expected to be generated by this administrative regulation itself. However, with the expansion of the terms of the entertainment center destination license, more facilities will be able to qualify for this license type. The Department of Alcoholic Beverage Control will receive revenues from the EDC license (current fee is \$7,730 per year) and local governments may see an increase in tourism revenue as well as increased sales tax revenue.

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

(d) How much will it cost to administer this program for subsequent years? There are no costs to administer this amendment for each subsequent year.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No revenue is expected to be generated by this administrative regulation itself. However, with the expansion of the terms of the entertainment center destination license, more facilities will be able to qualify for this license type, and the Department of Alcoholic Beverage Control will receive revenues from the EDC license (current fee is \$7,730 per year). Local governments may see an increase in tourism revenue as well as increased sales tax revenue.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Epidemiology and Health Planning (Amendment)

902 KAR 2:060. Immunization schedules for attending child day care centers, certified family child care homes, other licensed facilities which care for children, preschool programs, and public and private primary and secondary schools.

RELATES TO: KRS 158.035, 211.090, 211.220, 214.032-214.036

STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3), 211.180(1)(a), (e), 214.034(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050 requires the secretary for the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.190(3) requires the secretary to promulgate administrative regulations necessary to regulate and control all matters set forth in KRS 211.180. KRS 214.034(1) requires the cabinet to promulgate administrative regulations to establish immunization schedules. This administrative regulation establishes the mandatory immunization schedule for attendance at child day care centers, certified family child care homes, other licensed facilities which care for children, preschool programs, and public and private primary and secondary schools.

Section 1. Definitions. (1) "Advanced practice registered nurse" or "APRN" means a nurse designated to engage in advanced registered nursing as defined in KRS 314.011.

(2) "Advisory Committee on Immunization Practices" or "ACIP" [or Advisory Committee on Immunization Practices] means the United States Department of Health and Human Services (HHS) Committee that makes national immunization recommendations to the Secretary of the HHS, the Assistant Secretary for Health, and the Director of the Centers for Disease Control and Prevention or

CDC.

(3) "Child" means a person less than eighteen (18) years of age.

(4) "Commonwealth of Kentucky Parent or Guardian's Declination on Religious Grounds to Required Immunizations" means an original, written, sworn, and notarized statement of a parent or guardian's objection to medical immunization against disease of a child on religious grounds.

(5)(2) ~~"Advanced Practice Registered Nurse" or "APRN"~~ (APRN) means a nurse designated to engage in advanced registered nursing practice as defined in KRS 314.011.

(3) "Dose" means a measured quantity of vaccine, specified in the package insert provided by the manufacturer.

(6)(4) "DT" means diphtheria and tetanus toxoids~~(combined)~~.

(7)(5) "DTaP" means diphtheria and tetanus toxoids ~~and (combined with)~~ acellular pertussis vaccine.

(8)(6) "DTP" means diphtheria and tetanus toxoids ~~and (combined with)~~ pertussis vaccine.

(9)(7) "Healthcare provider" means a person licensed under KRS 311.530 to 311.620, 311.840 to 311.862, and a nurse designated to engage in advanced practice registered nursing as defined in KRS 314.011 and 314.042.

(10) "HepA" means hepatitis A vaccine.

(11)(8) "HepB" means hepatitis B vaccine.

(12)(9) "Hib" means Haemophilus influenzae type b conjugate vaccine.

(13)(10) "IPV" means inactivated polio virus vaccine.

(14)(11) "MCV" means meningococcal conjugate vaccine.

(15)(12) "MMR" means measles, mumps, and rubella virus vaccine~~(vaccines combined)~~.

(16)(13) "MPSV" means meningococcal polysaccharide vaccine.

(17)(14) "OPV" means trivalent oral poliovirus vaccine~~(Sabin)~~.

(18)(15) "PCV" means pneumococcal conjugate vaccine.

(19)(16) "Pharmacist" means a person licensed under KRS 315.002 to 315.050.

(20)(17) "Physician~~(Physicians)~~ assistant" means a person licensed under KRS 311.840 to 311.862.

(21)(18) "Td" means~~(combined)~~ tetanus and diphtheria toxoids for ~~(adult use)(type)~~.

(22)(19) "Tdap" means tetanus toxoid, ~~and~~ reduced diphtheria toxoid, ~~and (combined with)~~ acellular pertussis vaccine~~(vaccines)~~.

(23)(20) "Varicella" means varicella~~(or chickenpox)~~ vaccine.

(24) "Varicella immunity (non-vaccine)" means:

(a) Diagnosis of varicella disease by a healthcare provider;

(b) Verification of a history of varicella disease by a healthcare provider;

(c) Diagnosis of herpes zoster by a healthcare provider; or

(d) Verification of a history of herpes zoster by a healthcare provider.

Section 2. Immunization Schedules. (1) A current Commonwealth of Kentucky Certificate of Immunization Status~~(child three (3) months of age or older, without a current immunization certificate;)~~ shall be required to~~(not)~~ attend a:

(a) Child day care center, beginning at age three (3) months;

(b) Certified family child care home, beginning at three (3) months;

(c) Other Licensed facility that (which) cares for children, beginning at three (3) months;

(d) Preschool program; or

(e) Public or private primary or secondary school.

(2) A current Commonwealth of Kentucky Certificate of Immunization Status shall be required for a child that is otherwise homeschooled before they are permitted to attend one (1) or more in-school classes or to participate in sports or any school-sponsored extra-curricular activities.

(3) Except as provided in Section 3 of this administrative regulation, a Commonwealth of Kentucky Certificate of Immunization Status~~(the immunization certificate)~~ of a child shall be

considered current for age-appropriate vaccines if the child is:

(a) At least aged three (3) months and less than five (5) months~~(of age)~~ and has received at least:

1. One (1) dose of DTaP or DTP;

2. One (1) dose of IPV or OPV;

3. One (1) dose of Hib;

4. One (1) dose of HepB; and

5. One (1) dose of PCV;

(b) At least aged five (5) months and less than seven (7) months~~(of age)~~ and has received at least:

1. Two (2) doses of DTaP or DTP or combinations of the two (2) vaccines;

2. Two (2) doses of IPV or OPV or combinations of the two (2) vaccines;

3. Two (2) doses of Hib;

4. Two (2) doses of HepB; and

5. Two (2) doses of PCV;

(c) At least aged seven (7) months and less than twelve (12) months~~(of age)~~ and has received at least:

1. Three (3) doses of DTaP or DTP or combinations of the two (2) vaccines;

2. Two (2) doses of IPV or OPV or combinations of the two (2) vaccines;

3. Two (2) doses of Hib;

4. Two (2) doses of HepB; and

5.a. Three (3) doses of PCV; or

b. Two (2) ~~doses (does)~~ of PCV if ~~a child received~~ the first dose was received when aged (of PCV between) seven (7) months

through (to) eleven (11) months (of age); and

(d) At least aged twelve (12) months and less than sixteen (16) months~~(of age)~~ and has received at least:

1. Three (3) doses of DTaP or DTP or combinations of the two (2) vaccines;

2. Two (2) doses of IPV or OPV or combinations of the two (2) vaccines;

3.a. Three (3) doses of Hib; ~~or~~

b. Two (2) doses of Hib if the first dose was received when aged seven (7) months through eleven (11) months;

c. One (1) dose of Hib if the first dose was received when aged (between) twelve (12) months through fourteen (14) and fifteen (15) months (of age); or

d. One (1) dose of Hib if the first dose was received when aged fifteen (15) months;

4. One (1) dose of HepA;

5. ~~(4.)~~ Two (2) doses of HepB; and

6. ~~(5.)~~ a. Four (4) doses of PCV with one (1) dose when aged (on or after) twelve (12) months through fifteen (15) months (of age);

b. Three (3) doses of PCV if the first dose was received when aged (a child received the first dose of PCV between) seven (7) months through (to) eleven (11) months (of age), with at least one (1) dose received when aged (on or after) twelve (12) months through fifteen (15) months (of age); or

c. Two (2) doses of PCV if a child received the first dose was received when aged (of PCV between) twelve (12) months through (to) fifteen (15) months (of age);

(e) At least aged sixteen (16) months and less than nineteen (19) months~~(of age)~~ and has received at least:

1. Four (4) doses of DTaP or DTP or combinations of the two (2) vaccines;

2. Two (2) doses of IPV or OPV or combinations of the two (2) vaccines;

3.a. Four (4) doses of Hib;

b. Three (3) doses of Hib if the first dose was received before aged twelve (12) months, and the second dose was received when younger than aged fifteen (15) months;

c. Two (2) doses of Hib if the first dose was received when aged twelve (12) months through fourteen (14) months; or

d. One (1) dose of Hib if the first dose was received when aged fifteen (15) months through eighteen (18) months;

4. One (1) dose of HepA;

5. ~~(4.)~~ Two (2) doses of HepB;

6. ~~(5.)~~ a. Four (4) doses of PCV with one (1) dose when aged (on or after) twelve (12) months through eighteen (18) months (of age);

b. Three (3) doses of PCV if [a child received] the first dose was received when aged [of PCV between] seven (7) months through [to] eleven (11) months [of age], with at least one (1) dose when aged [on or after] twelve (12) months through eighteen (18) months [of age]; or

c. Two (2) doses of PCV if [a child received] the first dose was received when aged [of PCV between] twelve (12) months through eighteen (18) [to fifteen (15)] months [of age];

7.[6.] One (1) dose of MMR; and

8.a.[7.] One (1) dose of Varicella; or

b.[, unless] A healthcare provider diagnosed or verified that the child has varicella immunity (non-vaccine) [states that the child has had a diagnosis of typical varicella disease or verification of a history of varicella disease by a healthcare provider or a diagnosis of herpes zoster disease or verification of a history of herpes zoster disease by a healthcare provider];

(f) At least aged nineteen (19) months and less than forty-eight (48) months [of age] and has received at least:

1. Four (4) doses of DTaP or DTP or combinations of the two (2) vaccines;

2. Three (3) doses of IPV or OPV or combinations of the two (2) vaccines;

3.a. Four (4) doses of Hib;

b. Three (3) doses of Hib if the first dose was received before aged twelve (12) months, and the second dose was received when younger than aged fifteen (15) months;

c. Two (2) doses of Hib if the first dose was received when aged twelve (12) months through fourteen (14) months; or

d. One (1) dose of Hib if the first dose was received when aged fifteen (15) months through forty-seven (47) months;

4. Two (2) doses of HepA;

5.[4.] Three (3) doses of HepB; and

6.[5].a. Four (4) doses of PCV with one (1) dose when aged [on or after] twelve (12) months through fifteen (15) months [of age];

b. Three (3) doses of PCV if [a child received] the first dose was received when aged [of PCV between] seven (7) months through [to] eleven (11) months [of age], with at least one (1) dose when aged [on or after] twelve (12) months through forty-seven (47) months [of age];

c. Two (2) doses of PCV if [a child received] the first dose was received when aged [of PCV between] twelve (12) months through twenty-three (23) [to fifteen (15)] months [of age]; or

d. One (1) dose of PCV if [a child received] the first dose was received when aged [of PCV at] twenty-four (24) months through forty-seven (47) months [of age or older];

7.[6.] One (1) dose of MMR; and

8.a.[7.] One (1) dose of Varicella; or

b.[, unless] A healthcare provider diagnosed or verified that the child has varicella immunity (non-vaccine) [states that the child has had a diagnosis of typical varicella disease or verification of a history of varicella disease by a healthcare provider or a diagnosis of herpes zoster disease or verification of a history of herpes zoster disease by a healthcare provider];

(g) At least aged forty-eight (48) months and less than five (5) years [of age] and has received at least:

1. Four (4) doses of DTaP or DTP or combinations of the two (2) vaccines;

2. Three (3) doses of IPV or OPV or combinations of the two (2) vaccines;

3.a. Four (4) doses of Hib;

b. Three (3) doses of Hib if the first dose was received before aged twelve (12) months, and the second dose was received when younger than aged fifteen (15) months;

c. Two (2) doses of Hib if the first dose was received when aged twelve (12) months through fourteen (14) months; or

d. One (1) dose of Hib if the first dose was received when aged fifteen (15) months through fifty-nine (59) months;

4. Two (2) doses of HepA;

5.[4.] Three (3) doses of HepB;

6.[5].a. Four (4) doses of PCV with one (1) dose when aged [on or after] twelve (12) months through fifteen (15) months [of age];

b. Three (3) doses of PCV if [a child received] the first dose was received when aged [of PCV between] seven (7) months

through [to] eleven (11) months [of age], with at least one (1) dose when aged [on or after] twelve (12) months through fifty-nine (59) months [of age];

c. Two (2) doses of PCV if [a child received] the first dose was received when aged [of PCV between] twelve (12) months through [to] twenty-three (23) months [of age]; or

d. One (1) dose of PCV if [a child received] the first dose was received when aged [of PCV at age] twenty-four (24) months through fifty-nine (59) months [or older];

7.[6.] Two (2) doses of MMR; and

8.a.[7.] Two (2) doses of Varicella; or

b.[, unless] A healthcare provider diagnosed or verified that the child has varicella immunity (non-vaccine) [states that the child has had a diagnosis of typical varicella disease or verification of a history of varicella disease by a healthcare provider or a diagnosis of herpes zoster disease or verification of a history of herpes zoster disease by a healthcare provider];

(h) At least aged five (5) years and less than seven (7) years [of age] and has received at least:

1.a. Five (5) doses of DTaP or DTP or combinations of the two (2) vaccines; or

b. Four (4) doses of DTaP or DTP or combinations of the two (2) vaccines if the fourth dose was received when aged four (4) years or older and at least six (6) months after the previous dose;

2.a. Four (4) doses of IPV or OPV or combinations of the two (2) vaccines with the fourth dose received on or after the fourth birthday through age six (6) years and at least six (6) months after the previous dose;

b. Four (4) or more doses of IPV or OPV or combinations of the two (2) vaccines received before age four (4) years and an additional dose received when aged four (4) years through six (6) years and at least six (6) months after the previous dose; or

c. Three (3) doses of IPV or OPV or combinations of the two (2) vaccines if the third dose was received when aged four (4) years or older and at least six (6) months after the previous dose;

3. Two (2) doses of HepA;

4.[3.] Three (3) doses of HepB;

5.[4.] Two (2) doses of MMR; and

6.[5].a. Two (2) doses of Varicella; or

b.[, unless] A healthcare provider diagnosed or verified that the child has varicella immunity (non-vaccine) [states that the child has had a diagnosis of typical varicella disease or verification of a history of varicella disease by a healthcare provider or a diagnosis of herpes zoster disease or verification of a history of herpes zoster disease by a healthcare provider];

(i) At least aged seven (7) years [of age] and less than eleven (11) years [of age] and has received at least:

1.a. Five (5) doses of DTaP or DTP or combinations of the two (2) vaccines; or

b. Four (4) doses of DTaP or DTP or combinations of the two (2) vaccines if the fourth dose was received when aged four (4) years or older and at least six (6) months after the previous dose; or

c. A dose of Td that was preceded by two (2) doses of DTaP, DTP, [DTaP,] DT, or Td or combinations of the four (4) vaccines;

2.a. Four (4) doses of IPV or OPV or combinations of the two (2) vaccines with the fourth dose received when aged four (4) years or older and at least six (6) months after the previous dose; or

b. Three (3) doses of IPV or OPV or combinations of the two (2) vaccines if the third dose was received when aged four (4) years or older and at least six (6) months after the previous dose;

3. Two (2) doses of HepA;

4.[3.] Three (3) doses of HepB;

5.[4.] Two (2) doses of MMR; and

6.a.[5.] Two (2) doses of Varicella; or

b.[, unless] A healthcare provider diagnosed or verified that the child has varicella immunity (non-vaccine) [states that the child has had a diagnosis of typical varicella disease or verification of a history of varicella disease by a healthcare provider or a diagnosis of herpes zoster disease or verification of a history of herpes zoster disease by a healthcare provider];

(j) At least aged eleven (11) years and less than thirteen (13)

~~years[(3) For sixth grade entry, age eleven (11) or twelve (12) years or older], a child shall have received at least:~~

- ~~1. [(a)] One (1) dose of Tdap;~~
- ~~2.a. Five (5) doses of DTaP or DTP or combinations of the two (2) vaccines;~~
 - ~~b. Four (4) doses of DTaP or DTP or combinations of the two (2) vaccines if the fourth dose was received when aged four (4) years or older and at least six (6) months after the previous dose;~~
 - ~~c. A dose of Td that was preceded by two (2) doses of DTaP, DTP, DT, or Td or combinations of the four (4) vaccines; or~~
 - ~~d. Two (2) doses of Td after the dose of Tdap;~~
 - ~~3.a. [(b)] Four (4) doses of IPV or OPV or combinations of the two (2) vaccines with the fourth dose received when aged four (4) years or older and at least six (6) months after the previous dose;~~
 - ~~b. Four (4) doses of IPV or OPV or combinations of the two (2) vaccines if the fourth dose was received before August 7, 2009, with all doses separated by at least four (4) weeks; or~~
 - ~~c. Three (3) doses of IPV or OPV or combinations of the two (2) vaccines if the third dose was received when aged four (4) years or older and at least six (6) months after the previous dose;~~
- ~~4. Two (2) doses of HepA;~~
- ~~5.a. [(e)4.] Three (3) doses of HepB; or~~
- ~~b. [2.] Two (2) doses of adult HepB approved by the FDA to be used for an alternative schedule for adolescents aged eleven (11) years through fifteen (15) years[of age];~~
- ~~6. [(d)] Two (2) doses of MMR;~~
- ~~7.a. [(e)] Two (2) doses of Varicella; or~~
~~b. [unless] A healthcare provider diagnosed or verified that the child has varicella immunity (non-vaccine)[states that the child has had a diagnosis of typical varicella disease or verification of a history of varicella disease by a healthcare provider or a diagnosis of herpes zoster disease or verification of a history of herpes zoster disease by a healthcare provider]; and~~
- ~~8. [(f)] One (1) dose of MCV or MPSV;~~
- ~~(k) At least aged thirteen (13) years and less than sixteen (16) years, a child shall have received at least:~~
 - ~~1. One (1) dose of Tdap;~~
 - ~~2.a. Five (5) doses of DTaP or DTP or combinations of the two (2) vaccines;~~
 - ~~b. Four (4) doses of DTaP or DTP or combinations of the two (2) vaccines if the fourth dose was received when aged four (4) years or older and at least six (6) months after the previous dose;~~
 - ~~c. A dose of Td that was preceded by two (2) doses of DTaP, DTP, DT, or Td or combinations of the four (4) vaccines; or~~
 - ~~d. Two (2) doses of Td after the dose of Tdap;~~
 - ~~3.a. Four (4) doses of IPV or OPV or combinations of the two (2) vaccines with the fourth dose received when aged four (4) years or older and at least six (6) months after the previous dose;~~
 - ~~b. Four (4) doses of IPV or OPV or combinations of the two (2) vaccines if the fourth dose was received before August 7, 2009, with all doses separated by at least four (4) weeks; or~~
 - ~~c. Three (3) doses of IPV or OPV or combinations of the two (2) vaccines if the third dose was received when aged four (4) years or older and at least six (6) months after the previous dose;~~
 - ~~4. Two (2) doses of HepA;~~
 - ~~5.a. Three (3) doses of HepB; or~~
 - ~~b. Two (2) doses of adult HepB approved by the FDA to be used for an alternative schedule for adolescents aged eleven (11) through fifteen (15) years;~~
 - ~~6. Two (2) doses of MMR;~~
 - ~~7.a. Two (2) doses of Varicella; or~~
 - ~~b. A healthcare provider diagnosed or verified that the child has varicella immunity (non-vaccine); and~~
 - ~~8. One (1) dose of MCV or MPSV;~~
 - ~~(l) At least aged sixteen (16) years or older, a child shall have received at least:~~
 - ~~1. One (1) dose of Tdap;~~
 - ~~2.a. Five (5) doses of DTaP or DTP or combinations of the two (2) vaccines;~~
 - ~~b. Four (4) doses of DTaP or DTP or combinations of the two (2) vaccines if the fourth dose was received when aged four (4) years or older and at least six (6) months after the previous dose;~~
 - ~~c. A dose of Td that was preceded by two (2) doses of DTaP,~~

DTP, DT, or Td or combinations of the four (4) vaccines; or

- d. Two (2) doses of Td after the dose of Tdap;
 - 3.a. Four (4) doses of IPV or OPV or combinations of the two (2) vaccines with the fourth dose received when aged four (4) years or older and at least six (6) months after the previous dose;
 - b. Four (4) doses of IPV or OPV or combinations of the two (2) vaccines if the fourth dose was received before August 7, 2009, with all doses separated by at least four (4) weeks; or
 - c. Three (3) doses of IPV or OPV or combinations of the two (2) vaccines if the third dose was received when aged four (4) years or older and at least six (6) months after the previous dose;
 4. Two (2) doses of HepA;
 - 5.a. Three (3) doses of HepB; or
 - b. Two (2) doses of adult HepB approved by the FDA to be used for an alternative schedule for adolescents aged eleven (11) years through fifteen (15) years;
 6. Two (2) doses of MMR;
 - 7.a. Two (2) doses of Varicella; or
 - b. A healthcare provider diagnosed or verified that the child has varicella immunity (non-vaccine); and
 8. Two (2) doses of MCV or MPSV.
 - (4) Immunizations shall be received in accordance with [administered at least at] the minimum ages and intervals between doses recommended by the ACIP. Partial, split, half, or fractionated doses or quantities shall not be administered and shall not be counted as a valid dose.
- Section 3. Exceptions and Exemptions to the Required Immunization Schedules in Section 2. (1) If the first two (2) doses of Hib vaccine [required in Section 2(2) of this administrative regulation] were meningococcal group B outer membrane protein (PRP-OMP) vaccines, the third dose may be omitted.
- (2) [If one (1) dose of Hib vaccine has been administered to a child who is at least fifteen (15) and less than sixty (60) months of age, the child shall:
- (a) Not be required to receive further doses of Hib; and
 - (b) Be considered to have received the Hib doses required by this administrative regulation.
- (3) A child with a medical contraindication to pertussis vaccine may be given DT in lieu of DTaP or Td in lieu of Tdap [required in Section 2 of this administrative regulation].
- (3)(a) If both IPV or OPV were administered as part of a series, a total of four (4) doses shall be administered, regardless of the child's current age.
- (b) If only OPV was administered, and all doses were received prior to four (4) years of age, one (1) dose of IPV shall be administered when aged four (4) years or older and at least four (4) weeks after the last OPV dose.
- (4) A Commonwealth of Kentucky Certificate of Immunization Status marked to designate a medical exemption shall be issued for a child with a temporary or permanent medical contraindication to receiving a vaccine [If the fourth dose of DT, DTP, or DTaP was administered on or after the fourth birthday, the fifth dose shall not be required].
- (5) [If the third dose of IPV or OPV was administered on or after the fourth birthday and at least six (6) months following the previous dose, the fourth dose shall not be required.
- (6) If one (1) dose of PCV has been administered to a child who is at least age twenty-four (24) months and less than sixty (60) months of age, the child shall:
- (a) Not be required to receive further doses of PCV; and
 - (b) Be considered to have received the PCV doses required by this administrative regulation.
- (7) A child with a medical contraindication to receiving a vaccine may obtain, from the child's healthcare provider, a "Certificate of Medical Exemption" from the requirements of Section 2 of this administrative regulation, in compliance with KRS 214.036.
- (8)(a) A healthcare provider, pharmacist, local health department, or other licensed healthcare facility administering immunizations, [shall,] upon receipt of a [written-sworn] statement of objection to immunizations from a [the] parent or guardian of a child, shall:

1. Request that a parent or guardian complete the Commonwealth of Kentucky Parent or Guardian's Declination on Religious Grounds to Required Immunizations form as to the objection to medical immunization for some or all required vaccines;

2. Issue a Commonwealth of Kentucky Certificate of Immunization Status marked to designate "religious objection" to the issue a "Certificate of Religious Exemption" from the requirements of Section 2 of this administrative regulation, in compliance with KRS 214.036.

(b) A "Certificate of Religious Exemption" shall only be valid for all requirements of Section 2 of this administrative regulation, in compliance with KRS 214.036; and

3. List any previously received immunizations on the Commonwealth of Kentucky Certificate of Immunization Status.

(b) A Commonwealth of Kentucky Parent or Guardian's Declination on Religious Grounds to Required Immunizations shall:

1. Be valid for all requirements of Section 2 of this administrative regulation;

2. List the immunizations that a parent or guardian objects to being administered to a child based on religious grounds;

3. Be an original document written, sworn, and signed before a notary public;

4. Be submitted at the time of enrollment in a child care facility or school; and

5. Not be required to be separately submitted to a child care facility or school if a parent or guardian submits a Commonwealth of Kentucky Certificate of Immunization Status marked to designate "religious objection" to a child care facility or school.

(6) A Commonwealth of Kentucky Certificate of Immunization Status marked to designate "Provisional Status" shall:

(a) Be issued for a child who is behind in required immunizations listed in Section 2 of this administrative regulation;

(b) Be issued for a child who has received at least one (1) dose of each of the required vaccines but has not completed all the (9)(a) A provisional immunization certificate shall be issued for an otherwise qualified child, who is behind in required immunizations;

(c) and:

1. Who has not yet reached the required minimum age; or

2. For whom the time interval between doses has not elapsed.

(b) A provisional immunization certificate shall:

1. Permit a child to attend a child day care center, certified family child care home, or licensed facility which cares for children, preschool program, or primary or secondary school until the child reaches the appropriate age or upon passage of the time interval between required doses;

(d) Expire fourteen (14) days from the date the next dose is required to be given; and

(e) Not be valid for more than one (1) year.

Section 4. Commonwealth of Kentucky Certificate of Immunization Status [Immunization Certificates]. (1) A Commonwealth of Kentucky Certificate of Immunization Status shall [An immunization certificate may] be issued by:

(a) A physician licensed in any state;

(b) An advanced practice registered nurse licensed in any state;

(c) A physician [physician's] assistant licensed in Kentucky;

(d) A pharmacist licensed in Kentucky;

(e) A local health department in Kentucky; or

(f) A [Other] licensed healthcare facility administering immunizations in Kentucky; or

(g) An authorized user of the Kentucky Immunization Registry.

(2) Signatures on the Commonwealth of Kentucky Certificate of Immunization Status shall [An immunization certificate may be signed by]:

(a) Contain the printed name;

(b) Be in ink or an electronic signature;

(c) Be dated; and

(d) Be that of:

1. A physician;

2. (b) An advanced practice registered nurse;

3. (e) A physician [physician's] assistant;

4. (d) A pharmacist;

5. The (e) local health department administrator; or

6. (f) A registered nurse or licensed practical nurse designee of a physician, local health department administrator, or other licensed healthcare facility.

(3) A Commonwealth of Kentucky Certificate of Immunization Status printed from the Kentucky Immunization Registry shall not require a signature.

(4)(a) A [local health department,] healthcare provider, pharmacist, local health department, or other licensed healthcare facility administering immunizations may obtain a blank hard copy of the following [immunization certificates] from the Cabinet for Health and Family Services:

1. (a) Commonwealth of Kentucky [Immunization] Certificate of Immunization Status; and

2. (b) Commonwealth of Kentucky Parent or Guardian's Declination on Religious Grounds to Required Immunizations.

(b) A blank hard copy of the Commonwealth of Kentucky Certificate of Immunization Status shall not be made available on or after July 1, 2018.

(5) The Commonwealth of Kentucky Certificate of Immunization Status [Provisional Immunization Certificate];

(c) Commonwealth of Kentucky Certificate of Medical Exemption; or

(d) Commonwealth of Kentucky Certificate of Religious Exemption.

(4) If an immunization certificate that was not provided by the Cabinet for Health and Family Services is issued to a child, it shall:

(a) Be on a hard copy provided by the Cabinet for Health and Family Services; or

(b) Be a copy [an] electronically [-] produced in the size, orientation, and format printed by:

1. A Kentucky medical provider's electronic medical record system;

2. A local health department's electronic medical record system;

3. A Kentucky licensed healthcare facility administering immunizations electronic medical record system; or

4. The Kentucky Immunization Registry.

(6) An electronically produced copy of a Commonwealth of Kentucky Certificate of Immunization Status shall [copy];

(b) Be in the same size and format as a certificate provided by the Cabinet for Health and Family Services; and

(e) contain at least the following information:

(a) [1.] The name of the child;

(b) [2.] The birthdate of the child;

(c) [3.] The name of the parent or guardian of the child;

(d) [4.] The address of the child, including street, city, state, and zip code;

(e) [5.] The type(s) of vaccine(s) administered to the child;

(f) [6.] The date that each dose of each vaccine was administered;

(g) [7.] Certification that the child is current for immunizations until a specified date, including a statement that the certificate shall not be valid after the specified date;

(h) The printed name, ink or electronic signature, and date as described in subsection (2) of this section; and

(i) The name, address, and telephone number of the healthcare provider practice, pharmacy, local health department, or licensed health care facility issuing the certificate.

(7) A signed certificate or a certificate printed from the Immunization Registry may be faxed from a medical office to a:

(a) Medical office;

(b) Healthcare facility;

(c) Child care facility; or

(d) School.

(8) All immunizations required by Section 2 of this administrative regulation and received by a child shall be included on the Commonwealth of Kentucky Certificate of Immunization Status.

(9) All ACIP recommended immunizations a child has received in addition to the immunizations required by Section 2 of this

administrative regulation may be included on the Commonwealth of Kentucky Certificate of Immunization Status.

(10)[8. The signature and the date of the signature of:

- a. A physician;
- b. An advanced practice registered nurse;
- c. A physician's assistant;
- d. A pharmacist;
- e. Local health department administrator; or

f. A registered nurse designee of a physician, local health department administrator, or other licensed healthcare facility; and

9. The name of the healthcare provider practice, pharmacy, local health department, or licensed health care facility.

10. Immunizations included on the certificate shall only be those immunizations required for attending child day care centers, certified family child care homes, other licensed facilities which care for children, preschool programs, and public and private elementary or secondary schools as outlined in Section 2 of this administrative regulation. The certificate issued may have a separately titled additional page for all immunizations administered but not otherwise required for attending child day care centers, certified family child care homes, other licensed facilities which care for children, preschool programs, public and private elementary, and secondary schools.

(5)] A completed Commonwealth of Kentucky Certificate of Immunization Status[immunization certificate] shall[:

(a)] be;

(a) On file for a child:

1.[Enrolled in a public or private primary or secondary school or preschool program; or

2.] Cared for in a:

- a.[A] Child day care center;
- b.[A] Certified family child care home; or
- c.[Other] Licensed facility that cares for children; or

2. Enrolled in a:

- a. Preschool program;
- b. Public or private primary or secondary school; or
- c. Preschool program or a public or private primary or secondary school for all in-school classes or to participate in sports or any school sponsored extra-curricular activities if the child is otherwise homeschooled; and

(b)[be] Available for inspection and review by a representative of the Cabinet for Health and Family Services or a representative of a local health department.

Section 5. Out-of-State Certificate of Immunization Status (1) An Out-of-State Certificate of Immunization Status shall be accepted when completed by an out-of-state physician or advanced practice registered nurse.

(2) The out-of-state certificate shall contain at least the following information:

(a) The name of the child;

(b) The birthdate of the child;

(c) The name of the parent or guardian of the child;

(d) The address of the child, including street, city, state, and zip code;

(e) The type(s) of vaccine(s) administered to the child;

(f) The date that each dose of each vaccine was administered;

(g) All age appropriate immunizations required in Kentucky as identified in Section 2(3) of this administrative regulation;

(h) Certification that the child is current for immunizations until a specified date, including a statement that the certificate shall not be valid after the specified date;

(i) A printed name, ink or electronic signature, and date as described in Section 4(2) of this administrative regulation; and

(j) The name, address, and telephone number of the healthcare provider practice, local health department, or licensed health care facility issuing the certificate.

(3) The Out-of-State Certificate of Immunization Status may be in the size, orientation, and format required by another state.

(4) Immunizations documented on an out-of-state certificate shall be transferred to a hard copy of a Commonwealth of Kentucky Certificate of Immunization Status or shall be documented on an electronically produced Commonwealth of

Kentucky Certificate of Immunization Status when one (1) or more immunizations are administered in Kentucky.

Section 6. Review of Immunization Status. (1) A current Commonwealth of Kentucky Certificate of Immunization Status or an Out-of-State Certificate of Immunization Status for a child shall be provided by a parent or guardian:

(a) Upon enrollment in a:

- 1. Child day care center;
- 2. Certified family child care home;
- 3. Licensed facility that cares for a child; or
- 4. School at:

a. Kindergarten entry;

b. Seventh grade entry;

c. Eleventh grade entry;

d. Twelfth grade entry for the first twelve (12) months this administrative regulation is effective; and

e. New enrollment at any grade resulting from a transfer to:

(i) Kentucky from another state;

(ii) Kentucky from a country outside the United States; or

(iii) A school from another school within Kentucky;

(b) Upon legal name change; or

(c) At a school required examination pursuant to 702 KAR 1:160.

(2) Upon review of a Commonwealth of Kentucky Certificate of Immunization Status or an Out-of-State Certificate of Immunization Status:

(a) A child whose certificate has exceeded the date for the certificate to be valid shall be recommended to visit the child's medical provider or local health department to receive immunizations required by this administrative regulation; and

(b) An updated and current certificate shall be provided to the day care center, certified family child care home, other licensed facility that cares for children, or school by a parent or guardian within fourteen (14) days that certificate was found to be invalid.

(3) A Commonwealth of Kentucky Certificate of Immunization Status or an Out-of-State Certificate of Immunization Status for a child or group of children shall be reviewed upon request of a local health department as part of controlling an outbreak of a vaccine preventable disease.

Section 7. Effective Date. (1) This administrative regulation shall become effective for the school year beginning on or after July 1, 2017[2014] for all child day cares, certified family child care homes, other licensed facilities which care for children, preschool programs, public and private primary, and secondary schools.

(2) Effective July 1, 2018, a Commonwealth of Kentucky Certificate of Immunization Status shall be official only when printed from the Kentucky Immunization Registry.

Section 8[6]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form "EPID 230, Commonwealth of Kentucky Certificate of Immunization Status", 1/2017["Commonwealth of Kentucky Immunization Certificate (EPID 230)", revised 08/2010]; and

(b) Form "EPID 230A, Commonwealth of Kentucky Parent or Guardian's Declination on Religious Grounds to Required Immunizations", 1/2017["Commonwealth of Kentucky Provisional Immunization Certificate (EPID 230A)", revised 08/2010];

(c) "Commonwealth of Kentucky Certificate of Medical Exemption (EPID 230B)", revised 08/2010; and

(d) "Commonwealth of Kentucky Certificate of Religious Exemption (EPID 230C)", revised 08/2010].

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

HIRAM C. POLK, JR., MD

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: December 20, 2016

FILED WITH LRC: January 4, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall, if requested, be held on February 21, 2017, at 9:00 a.m. in Suite A & 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 February 14, 2017, 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 through February 28, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Laura Begin, Laura.Begin@ky.gov, 502-564-3970, ext. 4066, and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires all children attending child day care centers, certified family child care homes, other licensed facilities which care for children, preschool programs, and public and private primary and secondary schools to have a current immunization certificate. This regulation also contains the schedule for required immunizations and the process to go through to obtain an exemption from required immunizations.

(b) The necessity of this administrative regulation: This regulation is necessary to fulfill Kentucky law, which requires immunization. KRS 214.034 states that all children should be immunized against specific diseases in accordance with testing and immunization schedules established by regulations of the Cabinet for Health and Family Services (CHFS). All public or private primary or secondary schools, preschools, day-care centers, certified family child care homes, and any other licensed facility require a current immunization certificate as provided by regulation of CHFS. KRS 211.180 tasks CHFS with the detection, prevention, and control of communicable diseases and the protection and improvement of the health of infants, preschool, and school-age children.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) requires the Secretary of the Cabinet to adopt administrative regulations necessary to protect the health of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the Cabinet. KRS 214.034 states that all children should be immunized against specific diseases in accordance with testing and immunization schedules established by regulations of CHFS. All public or private primary or secondary schools, preschools, day-care centers, certified family child care homes, and any other licensed facility require a current immunization certificate as provided by regulation of CHFS. KRS 158.035 requires a child to present an immunization certificate in order to enroll as a student in an elementary or secondary school. KRS 211.180 tasks CHFS with the detection, prevention, and control of communicable diseases and the protection and improvement of the health of infants, preschool, and school-age children.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The statutes require immunization, this regulation clarifies the ages to be immunized, the vaccines to receive, exceptions to the requirements in special instances, and how the immunization certificate is to be used.

(2) If this is an amendment to an existing administrative

regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment requires the hepatitis A vaccine (HepA) beginning at 12 months of age through over 16 years of age as the National Immunization Survey estimates that about 75% of 19-35 month olds receive at least one dose of HepA and 47% receive two doses already. This amendment requires an immunization certificate for children that are homeschooled but attend one or more in-school or preschool classes or participate in school or preschool sports or extra-curricular activities. This amendment changes immunizations required for sixth grade entry to now be required at least at age 11. This amendment includes immunizations required at least at age 16, including a second dose of meningococcal conjugate vaccine (MCV) at age 16. This amendment revises the immunization certificate to include a provisional status and a medically exempt status instead of requiring separate forms and revises the religious exemption certificate to include educational material. This amendment requires a declination to immunizations on religious grounds be signed by a parent or guardian, notarized, and submitted to a healthcare facility in order to receive a current immunization certificate or submitted to a child care facility or school upon enrollment. This amendment requires the use of the Kentucky Immunization Registry by healthcare providers by July 1, 2018. This amendment permits the use of out-of-state certificates if requirements are met. This amendment requires that a current certificate be provided upon legal name change, a school required examination pursuant to 702 KAR 1:160, new enrollment in a school or facility that cares for children, and at the entry of kindergarten, seventh grade, eleventh grade, and twelfth grade for the first year of this amendment. This amendment revises incorporated forms. This amendment also includes changes for compliance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The Centers for Disease Control and Prevention (CDC) and the American Academy of Pediatrics recommend the immunization of children under 2 years of age for HepA (2 doses) and recommend a booster of MCV for sixteen year olds as a single dose does not assure lasting immunity. This amendment is necessary to avert the spread of vaccine-preventable diseases.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 214.034 says additional immunizations may be required if recommended by the United States Public Health Service or the American Academy of Pediatrics. KRS 214.036 allows parents who are opposed to medical immunization against a disease to object by a written sworn statement to the immunization on religious grounds. No physician's signature or approval is required. KRS 214.034 states that all children should be immunized against specific diseases in accordance with testing and immunization schedules established by regulations of CHFS. All public or private primary or secondary schools, preschools, day-care centers, certified family child care homes, and any other licensed facility require a current immunization certificate as provided by regulation of CHFS. KRS 158.035 requires a child to present an immunization certificate in order to enroll as a student in an elementary or secondary school. KRS 211.180 tasks CHFS with the detection, prevention, and control of communicable diseases and the protection and improvement of the health of infants, preschool, and school-age children.

(d) How the amendment will assist in the effective administration of the statutes: The addition of these immunizations will help keep Kentucky children well as CHFS is required to do by statute. This regulation clarifies the age at which these immunizations are required.

(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 the Kentucky Immunization Program in the Department for Public Health; the Kentucky Department of Education; local school boards; local health departments; private and public medical offices; child day care centers, certified family child care homes, other licensed facilities which care for children, preschool programs, and public and private primary and secondary schools;

and the children that enroll in or participate at these facilities.

(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 requires the hepatitis A vaccine (HepA) starting at 12 months of age through over 16 years of age as the National Immunization Survey estimates that about 75% of 19-35 month olds receive at least one dose of HepA and 47% receive two doses already. This amendment requires an immunization certificate for children that are homeschooled but attend one or more in-school or preschool classes or participate in school or preschool sports or extra-curricular activities. This amendment changes immunizations required for sixth grade entry to now be required at least at age 11. This amendment includes immunizations required at least at age 16, including a second dose of meningococcal conjugate vaccine at age 16. This amendment revises the immunization certificate to include a provisional status and a medically exempt status instead of requiring separate forms and revises the religious exemption certificate to include educational material. This amendment requires a declination to immunizations on religious grounds be signed by a parent or guardian, notarized, and submitted to a healthcare facility in order to receive a current immunization certificate or submitted to a child care facility or school upon enrollment. This amendment requires the use of the Kentucky Immunization Registry by healthcare providers by July 1, 2018. This amendment requires that a current certificate be provided upon legal name change, a school required examination pursuant to 702 KAR 1:160, new enrollment in a school or facility that cares for children, and at the entry of kindergarten, seventh grade, eleventh grade, and twelfth grade for the first year of this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): All children in Kentucky have the costs of their receiving immunization services covered. HepA and MVC immunizations are recommended by the CDC and consistent with the US Preventive Services Task Force, therefore the additional immunizations will be covered by insurance companies. If uninsured or underinsured, the CDC provides immunizations to people less than nineteen years of age. Vaccines for Children (VFC) are available at local health departments and about 600 medical providers who have been approved, with only an administration fee, which cannot exceed \$19.93. If administration fees cannot be paid, the VFC program requests this fee be waived. Health care facilities will be required to be part of the Kentucky Immunization Registry to meet this regulation and schools will have additional certificate reviews to complete as a result of this amendment. This amendment should not require additional costs to local health departments or medical providers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Vaccine preventable diseases (VPDs) should decrease as a result of compliance with this administrative regulation. There will be a net savings in health care costs and societal costs in Kentucky because of the avoidance of illnesses, disability, and deaths from these VPDs. Polio is one example of the great impact that vaccines have had in Kentucky and in the United States. Polio was once America's most feared disease, causing death and paralysis; but today, thanks to routine polio immunizations, there are no reports of polio in Kentucky or in the United States. Vaccines are among the safest medications available, but the immunizations successes for children in a particular school year have to be repeated each school year as new students are enrolled every year. Immunization of children can also provide protection for siblings, parents, and grandparents from certain VPDs, e.g., measles, hepatitis A, varicella, or pertussis. Some children, staff, and teachers in childcare settings, preschool, and schools are unable to receive some immunizations because of severe allergies or because their immunity has been impaired because of disease or medications, and they rely upon being safe from exposure to VPDs because of the widespread compliance by

parents in immunizing their healthy children to attend childcare settings, preschool, or schools. Compliance with this administrative regulation should result in a decrease in absenteeism related to illness. Children with VPDs commonly miss 3 to 10 days of school and a child with invasive meningococcal disease might not return to class in the same school year and may not survive the illness. Outbreaks of VPDs have been reported several times in the last few years in the United States. Not only do immunizations help prevent such outbreaks in Kentucky, but they protect our children traveling to other states and countries where those outbreaks occur more frequently.

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

(a) Initially: There are no costs to the administrative body associated with this amendment.

(b) On a continuing basis: There are no costs to the administrative body associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Immunization Program is almost entirely funded by federal grants. The program receives about \$200,000 in state funds annually, spent solely on purchasing vaccines.

(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 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 associated with this amendment.

(9) TIERING: Is tiering applied? No. All children attending a child-care facility, preschool, or public or private school are required by statute to be immunized.

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 health departments, Kentucky Department for Public Health, Kentucky Department of Education, school districts, and local school boards are 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.050(1) requires the Secretary of the Cabinet for Health and Family Services to adopt administrative regulations necessary to protect the health of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the Cabinet. KRS 214.034 states that all children should be immunized against specific diseases in accordance with testing and immunization schedules established by regulations of CHFS. All public or private primary or secondary schools, preschools, day-care centers, certified family child care homes, and any other licensed facility require a current immunization certificate as provided by regulation of CHFS. KRS 158.035 requires a child to present an immunization certificate in order to enroll as a student in an elementary or secondary school. KRS 211.180 tasks CHFS with the detection, prevention, and control of communicable diseases and the protection and improvement of the health of infants, preschool, and school-age children.

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 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? This Immunization Program operates almost solely on federal grant funding.

(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 Immunization Program operates almost solely on

federal grant funding.

(c) How much will it cost to administer this program for the first year? Vaccines are provided by the federal government and the cost of the Immunization Program is funded almost entirely by federal funding. The Immunization Program receives about \$200,000 in state funds annually, spent solely on purchasing additional vaccines.

(d) How much will it cost to administer this program for subsequent years? Vaccines are provided by the federal government and the cost of the Immunization Program is funded almost entirely by federal funding. The Immunization Program receives about \$200,000 in state funds annually, spent solely on purchasing additional vaccines.

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 Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 10:085. Kentucky on-site sewage disposal systems.

RELATES TO: KRS 194A.050(2), 211.015, 211.350-211.380, 211.990(2)

STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3), 211.180(1)(d), 211.350, 211.351

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.180(1)(d) requires the cabinet to regulate the construction, installation, or alteration of any on-site sewage disposal system, except for a system with a surface discharge, regulated by KRS 224.10-100(19). This administrative regulation establishes uniform standards for on-site sewage disposal systems. The function of this administrative regulation is to assure the construction, installation, or alteration of an on-site sewage disposal system is performed in such a manner as to protect public health and the environment.

Section 1. Definitions. (1) "Alter" means to make a physical change in the original design, sizing, layout, components, location, or method of operation, individually or in combination, of an existing on-site sewage disposal system, as a result of necessary repair or change in wasteload volume or characteristics.

(2) "Approved" means acceptable to the cabinet for the proposed use.

(3) "Area subject to flooding[?] damage" means an area:

(a) Subject to surface ponding of rainfall runoff one (1) or more times each year[?] for more than seven (7) consecutive days;

(b) In a floodplain or drainageway with visible evidence of stream scouring, pot-holing, gully or ravine formation; or

(c) Within a karst depression subject to backwater flooding from a subsurface conduit.

(4) "Artificial drainage system" means:

(a) A manmade system of surface ditching or berming to divert surface water run-off;

(b) A curtain or vertical drain for interception and diversion of lateral groundwater flow; or

(c) Underdrain for lowering the level of a high water table.

(5) "Blackwater" means wastewater containing liquid or[and] solid waste generated through use of a urinal, water closet, garbage disposal, or a similar sanitary fixture~~used in a residential, commercial, institutional, or recreational facility~~.

(6) "BOD-5" means five (5) day biochemical oxygen demand.

(7) "Cabinet" is defined by[at] KRS 211.015(1)(a).

(8) "Certified inspector" means an individual certified under the provisions of KRS 211.360.

(9) "Certified installer" means an individual certified under the provisions of KRS 211.357.

(10) "Clay" means a mineral soil separate consisting of particles less than 0.002 mm in equivalent diameter.

(11) "Cluster system" means a system designed to:

(a) Accept effluent from more than one (1) structure's or facility's sewage pretreatment unit; and

(b) Transport the collected effluent through a sewer system to one (1) or more common subsurface soil treatment and dispersal system of conventional, modified, or alternative design.

(12) "Effluent" means the liquid discharge of a septic tank or other sewage pretreatment unit.

(13) "Fog" means fats, oils, and grease.

(14) "Gravelless pipe" means large diameter perforated piping encased in a synthetic filter material and[;] designed for use in a lateral field trench without trench rock or gravel fill material.

(15) "Grease" is defined by[at] KRS 211.970(3).

(16) "Grease trap" is defined by[at] KRS 211.970(4).

(17) "Greywater" or "graywater" means wastewater generated by hygiene activities including wastewater from laundry, lavatory sinks, showers, bath tubs, and laundry tubs, but excluding kitchen sinks and food preparation sinks. Greywater does not include[in-a residential, commercial, institutional, or recreational facility, excluding] blackwater.

(18) "Karst" means a type of topography formed over limestone, dolomite, or other soluble rock, by dissolving or solution, and characterized by sinkholes, caves, and underground drainage. Groundwater flow in karst occurs principally in conduits and is turbulent.

(19) "Landscape position" means the location of an area on a site being evaluated for the proposed installation of an on-site sewage disposal system[;] relative to the surrounding topographic relief of the land surface. Landscape positions are defined as follows:

(a) Hill or ridge top: the relatively level area occupying the summit of a hill or ridge[;];

(b) Shoulder slope: the transitional area immediately adjacent to the hill or ridge top where the slope begins to increase downward[;];

(c) Side slope: the slightly to steeply sloping portion of a hillside lying between the shoulder and foot slopes[;];

(d) Foot slope: the slightly to steeply sloping portion of a hillside near the base or lowest point of elevation[;];

(e) Toe slope: the lowest point of elevation at the base of a hillside; generally concave in cross-sectional profile[;];

(f) Terrace, natural: a naturally occurring elevated shelf of level to slightly sloping character adjacent to current or former streams and drainageways[;];

(g) Terrace, artificial: a manmade elevated shelf or bench created by excavating into a slope[;] or placing fill[;] along the contour[;];

(h) Flood plain: level to slightly sloping areas adjacent to streams or other bodies of water subject to flooding for extended periods, or other flood-prone areas such as sinkholes or other surface depressions[;];

(i) Depressions: sinkholes or other areas with a concave or cupped cross-sectional profile and lacking surface drainage outlets[;];

(j) Drainageway: an area in the landscape with slight to steeply sloping sides which causes accumulation of surface and groundwater and channels it to surface or subsurface drainage outlets[;];

(k) Convex slope: a sloping area with a humped or upwardly bowed cross-sectional profile which promotes dispersal of surface and groundwater; and[;]

(l) Concave slope: a sloping area with a cupped or downwardly bowed cross-sectional profile which causes accumulation of surface and groundwater.

(20) "Lateral field" means that portion of an on-site sewage treatment and dispersal system which consists of subsurface trenches or beds containing materials, components, or devices for maintaining exposed soil surfaces and a means to distribute effluent to those surfaces.

(21) "Leaching chamber" means a specially designed component for use in lateral fields, which forms an open bottomed

chamber or conduit over the soil absorption surface.

(22) "Low pressure pipe system" or "LPP system" means an on-site sewage disposal system consisting of a sewage pretreatment unit, a dosing tank with pump or siphon, a pressurized supply line, manifold, lateral field, and necessary control devices and appurtenances.

~~[(22) "Leaching chamber" means a specially designed component for use in lateral fields which forms an open bottomed chamber or conduit over the soil absorption surface.]~~

(23) "Mottling" means spots or blotches of different colors or hues interspersed with the dominant color of a soil, created by three (3) basic processes:

(a) Groundwater saturation of the soil for varying periods of time, causing reducing conditions to occur which chemically bleach or fade soil colorants[,] evidenced by soft concretions or soil color of chroma two (2) or less by Munsell notation;

(b) Parent material weathering[,] evidenced by relic fragments of more durable parent material encapsulated within a mottle of weathering mineral material; or

(c) Mechanical disturbance of soils by cutting, filling, compaction, landslide, or other means[,] evidenced in commingling of soil types and destruction of original internal drainage pathways.

~~(24) "Overflow piping" means a system composed of a supported, vertically-oriented tee connected to a nonperforated gravity flow plastic pipe that conducts overflow to distribution boxes of the lateral field.~~

(25) "On-site sewage disposal system" or "on-site sewage system" or "on-site system" means a system installed on a parcel of land, under the control or ownership of a person, ~~that[which]~~ accepts sewage for treatment and ultimate disposal under the surface of the ground, including:

(a) A conventional system consisting of a sewage pretreatment unit, distribution devices, and lateral piping within rock-filled trenches or beds;

(b) A modified system consisting of a conventional system enhanced by shallow trench or bed placement, artificial drainage systems, dosing, alternating lateral fields, fill soil over the lateral field, or other necessary modifications to the site, system, or wasteload to overcome site limitations;

(c) An alternative system consisting of a sewage pretreatment unit, necessary site modifications, wasteload modifications, and a subsurface soil treatment and dispersal system using ~~either~~ methods and technologies other than a conventional or modified system to overcome site limitations;

(d) A cluster system; and

(e) A holding tank which provides limited pretreatment and storage for off-site disposal where site limitations preclude immediate installation of a subsurface soil treatment and dispersal system[,] or connection to a municipal sewer.

(25) "Overflow piping" means a system composed of a supported, vertically-oriented tee connected to a nonperforated gravity flow plastic pipe that conducts overflow to distribution boxes of the lateral field.

(26) "Parent material" means weathering fragments of bedrock underlying a soil, colluvial or alluvial deposits, loess deposits, or glacial tills from which the soil is being formed.

(27) "Perched water table" means a saturated zone as identified by free water, ~~or~~ soft concretions, or soil color of chroma 2 or less[,] overlying an impermeable horizon and generally above the permanent water table.

(28) "Permanent water table" means the zone of soil and parent material saturation by groundwater which remains relatively constant unless acted upon by artificial means of drainage or severe weather conditions. This zone is evidenced by free water or soil colors of black (due to high organic content), grays, blues, or olive greens.

(29) "Permeability test" means a scientific procedure using lysimeters and other instrumentation to determine the saturated hydraulic conductivity of site specific soil horizons.

(30) "Person" is defined by KRS 211.970(6)[at KRS 211.972(6)].

(31) "Plastic limit" means the moisture content at which a soil changes from a semisolid to plastic.

(32) "Professional engineer" means an engineer licensed under the provisions of KRS Chapter 322.

(33) "Puddling" means the creation of a thin restrictive horizon atop and within an exposed soil surface by deposition of waterborne silt or clay-sized soil particles.

(34) "Repair area" means an area, either in its natural state or ~~which is~~ capable of being modified[,] consistent with this administrative regulation ~~that[which]~~ is reserved for the installation of an additional lateral field and is not covered with permanent structures or impervious materials, consistent with this administrative regulation.

(35)(a) "Residential septic tank effluent" means the liquid discharge having the constituency and strength typical of liquid discharges from a domestic household septic tank pretreatment unit ~~that[Effluent from a residential septic tank]~~ is generally considered to have waste strength values equal to or less than the following monthly averages:

1. Twenty (20) mg/l of FOG;

2. 250 mg/l of BOD-5[,] and

3. 155 mg/l of TSS.

(b) Monthly average is equal to the sum of measurements taken over thirty (30) consecutive days, with at least six (6) measurements occurring on six (6) separate days, divided by the number of measurements taken during the thirty (30) day period.

(36) "Restrictive horizon" means a soil horizon relatively impervious to the movement of groundwater or effluent[,] and includes:

(a) Mineralogically-cemented soil aggregates such as fragipans or iron pans; ~~or~~

(b) Naturally-formed structureless soils (massive structural grade); ~~or~~

(c) Naturally-formed horizontally structured soil (platy structure); ~~or~~

(d) Claypan, a compact, slowly permeable layer in the subsoil having a much higher clay content than the overlying material[,] from which it is separated by a sharply-defined boundary. Clay pans are usually hard when dry[,] and plastic and sticky when wet; or

(e) Structurally-destroyed soils where mechanical compression forces the plastic limit of the soil to be exceeded, such as traffic pans, plow pans, and compacted fill.

(37) "Rock" means the consolidated or partially consolidated mineral matter or aggregate, including weathered rock not exhibiting soil properties, and exposed at the surface or overlain by soil.

(38) "Sand" means a mineral soil separate consisting of particles between two (2) and 0.05 mm in diameter.

(39) "Seasonal high water table" means the upper level of a zone of soil and parent material saturation over restrictive horizons or the permanent water table, which may vary with weather conditions.

~~(40) "Soil compaction" means permanent damage to, or destruction of, natural soil structural features by mechanical compression or puddling, which restricts or prevents natural air and water movement through the soil.~~

~~(41) "System replacement area" means a parcel of land, under the control of an on-site system owner, reserved for system alteration, expansion, or replacement.~~

~~(42) "Secretary" is defined by[at] KRS 211.015(1)(c).~~

~~(41) [(43)] "Sewage" means blackwater and greywater wastes generated in a residential, commercial, institutional, or recreational facility.~~

~~(42) [(44)] "Sewage pretreatment unit" is defined by[at] KRS 211.970(9).~~

~~(43) [(45)] "Silt" means a mineral soil separate consisting of particles between 0.05 mm and 0.002 mm in diameter.~~

~~(44) [(46)] "Sinkhole" means a naturally-occurring depression in soil or bedrock;~~

~~(a) Formed in a karst area by the removal of earth material from below the land surface;~~

~~(b) Circumscribed by a closed topographic contour[,] and~~

~~(c) Lacking a surface drainage outlet.~~

~~(45) [(47)] "Sinkhole sideslope midpoint" means the line of~~

equal elevation along the midpoint between the footslope and the shoulder slope.

(46) [(48)] "Sinkhole throat" means an outlet for a sinkhole allowing runoff from the drainage basin of the sinkhole to flow directly into the ground.

(47) [(49)] "Site" means an area or parcel of land, under the control of any person, on which on-site sewage disposal system(s) serving any structures or facilities are to be located.

(48) [(50)] "Slope" means the deviation of the surface of the land from true horizontal, measured as the rise or fall in feet and inches from a fixed point to another point 100 feet distant, [normally] expressed as a percentage of slope.

(49) [(51)] "Soil" means the naturally occurring unconsolidated mineral and organic material of the land surface[.] consisting of:

(a) Sand, silt, and clay minerals;

(b) [.] Variable amounts of organic materials[.]; and

(c) Void areas between mineral and organic matter particles.

(50) [(52)] "Soil absorption" means the movement of effluent into and through interconnected voids within the soil.

(51) "Soil compaction" means permanent damage to, or destruction of, natural soil structural features by mechanical compression or puddling that restricts or prevents natural air and water movement through the soil.

(52) [(53)] "Soil horizon" means a layer of soil, soil material, rock fragments, and other unconsolidated material approximately parallel to the land surface and differing from adjacent genetically related layers in:

(a) Physical, chemical, and biological properties; or

(b) Characteristics such as:

1. Color;

2. [.] Structure;

3. [.] Texture;

4. [.] Consistence; and

5. [.] pH.

(53) [(54)] "Soil map" means a map showing the distribution of soil series or other soil mapping units in relation to the prominent physical and cultural features of the earth's surface.

(54) [(55)] "Soil morphology" means the physical constitution, particularly the structural properties, of a soil profile as exhibited by the:

(a) Kinds, thickness, and the arrangement of the horizons in the profile; and

(b) [., and by the] Texture, structure, uniformity, and internal soil drainage of each horizon.

(55) [(56)] "Soil series" means a basic unit of soil classification, and consisting of soils which are essentially alike in all major profile characteristics.

(56) [(57)] "Soil structure" means the combination or arrangement of individual soil particles into definable aggregates, or peds, which are characterized and classified on the basis of size, shape, and degree of distinctness.

(57) [(58)] "Soil survey" means the systematic examination, description, classification, and mapping of soils in an area.

(58) [(59)] "Soil tests" means tests and evaluations of soil morphology and land features required to complete a site evaluation for a proposed site.

(59) [(60)] "Soil texture" means the relative proportions of sand, silt, and clay in a soil[.] and may include particles greater than two (2) mm in diameter, such as gravel, cobblestones, flagstones, and chert.

(60) [(61)] "Subdivision" means the separation of a parcel or tract of land into two (2) or more parcels or tracts for the purpose of development into residential, commercial, or public building sites.

(61) [(62)] "Subsoil" means[., in general,] that part of the soil below the A horizon.

(62) [(63)] "Subsurface soil treatment and dispersal system" means the[that] portion of an on-site sewage disposal system that[which] accepts effluent from a sewage pretreatment unit for further treatment by microbial, plant, and animal life within the soil[.] as well as treatment by filtration, chemical decomposition, and bonding within the soil[itself], and consists of:

(a) Devices, components, and piping to:

1. Transport effluent under pressure or by gravity flow; and

2. Distribute the effluent to the soil absorption surfaces;

(b) Trenches, beds, chambers, mounds, lagoons, artificial marshes, separately or in combination, that[which] form or enclose the soil absorption surfaces; and

(c) Rock, gravel, or other fill materials required within the system, including barrier materials, and fill soil within or over the system.

(63) "System replacement area" means a parcel of land under the control of an on-site system owner and reserved for system alteration, expansion, or replacement.

(64) "Textural class" means soil groupings based upon a specified range in texture.

(65) "Topsoil" means[.:

(a)] the A or Ap horizon[.] as defined in the Soil Survey Manual, 1993, Soil Survey Division Staff, USDA Handbook No. 18.

(66) "TSS" means total suspended solids or a measure of solid material, including organic and inorganic, that are suspended or dissolved in wastewater, effluent, or water bodies and related to both specific conductance and turbidity.

(67) "Variance" means a waiver of certain specified requirements of this administrative regulation granted by the cabinet.

Section 2. Site Approval Procedures. (1) Individual site approval procedures.

(a) A person seeking approval of an individual site for the installation of an on-site sewage disposal system or alteration of an existing lateral field shall submit:

1. The required fee; and

2. A completed application including a basic site plan drawing

showing the following information:

a. [(i)] Specific address or location of the site;

b. [(ii)] Site boundary lines and dimensions of the site;

c. [(iii)] Location of:

(i) Existing structures;

(ii) [.] Sewage disposal systems;

(iii) [.] Wells;

(iv) [.] Ponds;

(v) [.] Streams;

(vi) [.] Easements;

(vii) [.] Roads[.]; and

(viii) Drives; and

d. [(iv)] Proposed or existing location of the structure to be served by the system[.] and proposed system location.

(b) A person seeking approval shall establish an appointment time and date for the site evaluation[.] if the person desires to be present during the evaluation.

(c) Property boundaries shall be clearly identified.

(d) If the site evaluation reveals that the applicable requirements of this administrative regulation are met, the area designated for system installation shall be clearly marked by the certified inspector or professional engineer[by] using flags or other suitable, readily observable markers.

(e) The location of the designated area shall be recorded on a property drawing by showing distances to existing set points.

(f) The person seeking approval shall receive a copy of the:

1. [The] Site Evaluation Form including the overall evaluation rating;

2. Drawing showing the location of the designated lateral field area; and

3. Written requirements relative to site limitations.

(g) [(e)] After the site evaluation has been conducted, a permit to construct, install, or alter an on-site sewage disposal system shall be obtained prior to construction of any portion of that system.

(h) An application for a construction permit shall be submitted and accompanied by a detailed drawing of the proposed system or alteration, including all necessary specifications, and required permit fees.

(i) A permit shall be issued only by a certified inspector and only to a certified installer or homeowner as provided in 902 KAR 10:110[.] and shall expire one (1) year from date of issuance unless an extension is granted by the cabinet.

(2) Subdivision approval procedures.

(a) A person seeking approval for a subdivision developed after the effective date of this administrative regulation~~[,]~~ and for all existing subdivisions of record shall follow the procedures for approval outlined in subsection (1)(a), (b), and (c) of this section. Each individual lot or site shall be evaluated individually.

(b) If a site evaluation reveals that an individual on-site sewage disposal system is unapprovable due to site characteristics, the applicant shall be advised as to ~~to other~~ alternatives~~[,]~~ if available.

(c) If a cluster system is proposed, legal documents relative to ownership, operation, and maintenance of the system in perpetuity shall be submitted.

(d) A local health department may adopt more specific requirements for subdivision approval~~[,]~~ within its jurisdiction~~[,]~~ if not in conflict with this administrative regulation.

Section 3. Site Evaluation Standards. (1) A certified inspector or professional engineer shall evaluate each proposed site. ~~Pursuant to~~ ~~Based upon the factors contained in~~ subsections (2) through (8) of this section, an official site evaluation form shall be completed classifying each factor as:

(a) SUITABLE (S);

(b)~~[,]~~ PROVISIONALLY SUITABLE (PS)~~[,]~~ or

(c) UNSUITABLE (U).

(2) Topography.

(a) Uniform slopes fifteen (15) percent or less shall be considered SUITABLE with respect to topography.

(b) Uniform slopes ~~greater than~~ ~~between~~ fifteen (15) percent and up to and including thirty (30) percent shall be considered PROVISIONALLY SUITABLE with respect to topography. Slopes within this range may require installation of curtain drains, vertical drains, or other approved drainage methods upslope from the lateral field. Usable areas larger than normally required may be needed in this slope range.

(c) Slopes greater than thirty (30) percent shall be considered UNSUITABLE except slopes greater than thirty (30) percent may be classified as PROVISIONALLY SUITABLE if:

1. The soil characteristics are classified as either SUITABLE or PROVISIONALLY SUITABLE to a depth of at least thirty (30) inches;

2. Surface water run-off is diverted around the lateral field;

3. ~~If necessary,~~ Groundwater or perched water table flow is intercepted and diverted through:

a. Curtain drains;

b.~~[,]~~ Vertical drains~~[,]~~ or

c. Other approved drainage methods; and

4. There is sufficient ground area available to install the on-site sewage disposal system with approved modification.

(d) Complex slope patterns and slopes dissected by gullies and ravines shall be considered UNSUITABLE with respect to topography.

(3) Landscape position.

(a) Convex hill or ridge tops, shoulder slopes, and side slopes shall be considered SUITABLE with respect to landscape position.

(b) Convex foot slopes and natural terraces shall be considered PROVISIONALLY SUITABLE with respect to landscape position.

(c) Concave hill or ridge tops, shoulder, side, foot, and toe slopes, drainageways, depressions, and terraces may be considered PROVISIONALLY SUITABLE if:

1. The soil characteristics are classified as either SUITABLE or PROVISIONALLY SUITABLE;

2. Surface water run-off is diverted around the lateral field; and

3. Groundwater flow is intercepted and diverted through curtain or vertical drains.

(d) If the provisions in paragraph (c) of this subsection cannot be met, the landscape position shall be classified UNSUITABLE.

(e) An area closer than seventy (70) feet to an open sinkhole throat~~[,]~~ downslope from the sinkhole sideslope midpoint, or subject to flooding damage shall be considered UNSUITABLE with respect to landscape position.

(4) Soil characteristics~~[,]~~ or morphology.

(a) Backhoe pits may be required for site evaluation. If backhoe pits are not required, at least~~[,]~~ four (4) soil borings shall

be taken in the area to be used for lateral fields. Backhoe pits or borings shall be excavated to a depth of forty-two (42) inches or as required to determine the soil characteristics.

(b) Each excavated test hole or pit shall be backfilled to grade upon completion of the soil evaluation.

(c) Soil boring cores or exposed soil horizons in backhoe pits shall be evaluated and a determination made as to the suitability of the soil to treat and disperse effluent. Evaluation of soil characteristics shall be performed according to procedures outlined by the Soil Survey Manual, 1993, Soil Survey Division Staff, USDA Handbook No. 18, as follows:

1.~~[a-]~~ Texture. The texture of the different horizons of soils may be classified into four (4) general groups:

a.~~[1-]~~ SOIL GROUP I - sandy texture soils containing more than seventy (70) percent sand-sized particles in the soil mass. These soils are usually without sufficient clay to be cohesive. The sandy group includes the sand and loamy sand soil textural classes and shall generally be considered SUITABLE with respect to texture.

b.~~[2-]~~ SOIL GROUP II - coarse loamy texture soils containing no more than twenty-seven (27) percent clay-sized particles in the soil mass. They exhibit slight or no stickiness. The coarse loamy group includes sandy loam and loam soil textural classes and shall generally be considered SUITABLE with respect to texture.

c.~~[3-]~~ SOIL GROUP III - fine loamy texture soils containing less than forty (40) percent clay-sized particles in a soil mass. They exhibit slight to moderate stickiness. The fine loamy group includes sandy clay loam, silt, silt loam, clay loam, and silty clay loam textural classes and shall generally be considered PROVISIONALLY SUITABLE with respect to texture.

d.~~[4-]~~ SOIL GROUP IV - clayey texture soils contain forty (40) percent or more clay-sized particles and include sandy clay, silty clay, and clay.

(i)~~[a-]~~ Soil materials with 1:1 kaolinitic or mixed mineralogy clays shall generally be considered provisionally suitable as to texture.

(ii)~~[b-]~~ Soil materials with 2:1 clays and montmorillonitic mineralogy shall generally be considered unsuitable as to texture.

(iii)~~[c-]~~ Soil mineralogy information may be obtained from proper soil classification and correlation of the site or by laboratory tests listed in the Soil Survey Laboratory Methods Manual, 1996, National Soil Survey Center, NRCS-USDA, Soil Survey Investigations Report No. 42.

e.~~[5-]~~ The soil texture shall be estimated by field testing. Laboratory estimation of texture by particle-size analysis may be substituted for field testing if conducted in accordance with approved standard procedures such as those listed in the Soil Survey Laboratory Methods Manual, 1996, National Soil Survey Center, NRCS-USDA, Soil Survey Investigations Report No. 42, at the property owner's expense;

2.~~[a-]~~ Structure. The four (4) kinds of soil structure most significant in movement of sewage effluent through soils are:

a.~~[1-]~~ Block-like soil structure - block-like soil structure shall be considered PROVISIONALLY SUITABLE. Some rocks even though weathered, such as shales or creviced or fractured rocks, exhibit block-like structure. Rock shall be considered UNSUITABLE as to structure;

b.~~[2-]~~ Prismatic soil structure - prismatic soil structure is generally considered PROVISIONALLY SUITABLE unless it is associated with fragipans, which shall be considered UNSUITABLE;

c.~~[3-]~~ Platy soil structure - if Group II, III, and IV soils fall out into plate-like sheets, then the soil would have platy structure which shall be considered UNSUITABLE; and

d.~~[4-]~~ Absence of soil structure - soils which are massive or single grain and exhibit no structural aggregates shall be considered UNSUITABLE.

(5) Internal soil drainage.

(a) Internal soil drainage characteristics shall be determined by ~~the following procedures:~~

4.~~[1-]~~ comparison of moist soil samples collected throughout the soil profile~~[,]~~ to a minimum depth of forty-two (42) inches~~[,]~~ to standard Munsell notation soil color charts to establish color hue,

value₁ and chroma with:

1.[; and 2.] Observation of soil profile for evidence of chroma 2 or less, with or without mottling, characterized as to abundance and contrast; or

2.[3.] Observation of freestanding water table.

(b) Soils exhibiting colors or mottling of greater than chroma 2 with no freestanding water table to a depth of forty-two (42) inches shall be considered SUITABLE with respect to internal drainage[;] if soil texture and structure are classified as either SUITABLE or PROVISIONALLY SUITABLE.

(c) Soils exhibiting colors or mottling of chroma 2 or less or freestanding water table starting at a depth of less than forty-two (42) inches but greater than or equal to twenty-four (24) inches shall be considered PROVISIONALLY SUITABLE with respect to internal drainage[;] if soil texture and structure are classified SUITABLE or PROVISIONALLY SUITABLE.

(d) Soils exhibiting colors or mottling of chroma 2 or less or freestanding water table at a depth of less than twenty-four (24) inches may be classified as PROVISIONALLY SUITABLE, if:

1. Soil texture and structure are classified SUITABLE or PROVISIONALLY SUITABLE; and

2. Curtain drains, vertical drains, or other approved methods are installed to intercept lateral water movement, or to lower and maintain the freestanding water table level to a depth of greater than twenty-four (24) inches.

(e) Soils exhibiting colors or mottling of chroma 2 or less or freestanding water table at a depth of less than twenty-four (24) inches which cannot meet the criteria listed in paragraph (d) 1 of this subsection shall be considered UNSUITABLE.

(6) Soil depth.

(a) Presence of bedrock or large flagstones, also known as ["floaters"], shall be determined by probing the site and through direct observation of the soil profile. Soil depth shall be considered the vertical distance from the existing ground surface to:

1. Solid, fractured, or ripplable bedrock;

2. Weathered parent material; or

3. Large flagstones that[which] occupy more than thirty (30) percent of the exposed soil profile.

(b) Soil depths forty-two (42) inches or greater shall be considered SUITABLE as to depth.

(c) Soil depths less than forty-two (42) inches, but at least twenty-four (24) inches, shall be considered PROVISIONALLY SUITABLE as to depth.

(d) Soil depths less than twenty-four (24) inches shall be classified UNSUITABLE as to depth.

(e) If special system design and installation modifications can be made to provide at least eighteen (18) inches of undisturbed naturally occurring soil between the bottom of the lateral field, the soils may be reclassified PROVISIONALLY SUITABLE as to depth.

(7) Restrictive horizons.

(a) Soils in which restrictive horizons are at forty-two (42) inches in depth or greater shall be considered SUITABLE.

(b) Soils in which restrictive horizons are at depths less than forty-two (42) inches, but at least twenty-four (24) inches, shall be considered PROVISIONALLY SUITABLE.

(c) Soils in which restrictive horizons are at depths less than twenty-four (24) inches may be classified PROVISIONALLY SUITABLE[;] if special system design and installation modifications can be made to provide at least eighteen (18) inches of undisturbed naturally occurring soil between the bottom of the lateral field and the restrictive horizon.

(d) Soils in which restrictive horizons are at depths less than twenty-four (24) inches, which cannot meet the provisions in paragraph (c) of this subsection, shall be considered UNSUITABLE.

(8) Available space.

(a) Sites that[which] have two (2) times the usable land area required to permit the installation of an approved on-site sewage disposal system, in addition to the land area to be occupied by existing or proposed structures[;] or other natural or manmade features of the site which are not compatible with system installation shall be classified SUITABLE as to available space.

(b) Sites which have the usable land area required to permit

the installation of an approved on-site sewage disposal system[;] and the usable land area required to permit the installation of an equivalent approved system, in addition to the land area to be occupied by existing or proposed structures[;] or other natural or manmade features of the site which are not compatible with system installation, shall be classified PROVISIONALLY SUITABLE as to available space.

(c) All other sites shall be classified UNSUITABLE as to available space.

(9) Determination of overall site suitability. The criteria in subsections (2) through (8) of this section shall be SUITABLE, PROVISIONALLY SUITABLE, or UNSUITABLE as indicated. If all criteria are classified the same, that classification shall[will] prevail. If there is a variation in classification of the several criteria, the lowest classification shall determine the overall site classification.

(a) Topography classified as UNSUITABLE may be reclassified PROVISIONALLY SUITABLE under the provisions of subsection (2) of this section.

(b) If the landscape position, soil texture, soil structure, internal drainage, or depth to restrictive horizon is classified as UNSUITABLE[;] and cannot be reclassified as PROVISIONALLY SUITABLE through modification, the overall classification shall be UNSUITABLE regardless of the other criteria[;] unless the provisions of Section 4(6) of this administrative regulation are met.

(c) Soil depth classified as UNSUITABLE may be reclassified as PROVISIONALLY SUITABLE under the provisions of subsection (6)(e) of this section.

Section 4. Site Classification and System Restrictions. (1) Restrictions shall be placed upon on-site sewage systems approved for use due to site limitations or daily waste load volume. The restrictions shall be determined by the following conditions[;] and the modified or alternative system listed shall be considered as the minimum acceptable.

(2) A site with an overall evaluation rating of SUITABLE, a conventional subsurface soil treatment, and dispersal system twenty four (24) inches deep[;] shall not be permitted without the approval of the local health department or the Department for Public Health.

(3) A site with an overall rating of PROVISIONALLY SUITABLE due to:

(a) Depth to rock, water table, or restrictive horizon.

1. Twenty-four (24) inches but less than forty-two (42) inches - a six (6) to twenty-three (23) inch deep modified conventional trench, or other approved system with a minimum separation distance of eighteen (18) inches between trench bottoms and rock, water table, or restrictive horizon. A minimum separation distance of twelve (12) to eighteen (18) inches between trench bottoms and rock, water table, or restrictive horizon may be considered with additional approved treatment technology.

2. Eighteen (18) inches to less than twenty-four (24) inches;

a.[;] A mound system;

b. Other approved system that maintains a minimum separation distance of eighteen (18) inches between trench bottoms and rock, water table, or restrictive horizon; or

c.[;] Sufficient filling of the area with suitable soil to allow installation of a modified or alternative system after a one (1) year settling period.

3. A minimum separation distance of twelve (12) to eighteen (18) inches between trench bottoms and rock, water table, or restrictive horizon may be considered ~~on a case-by-case basis~~ with additional approved treatment technology such as:

a. Peat filter systems;

b.[;] Sand filter systems;

c.[;] Aerobic units;

d.[; and] Drip irrigation systems;

e.[;] Two (2) tanks in a series;

f.[;] Dual compartment septic tanks;

g.[;] Approved effluent filters; or

h.[; and] Constructed wetlands cells.

4.[3.] Less than eighteen (18) inches - filling of the area with suitable soil to sufficient depth to allow modified or alternative system installation after a one (1) year settling period. A minimum

separation distance of eighteen (18) inches between trench bottoms and rock, water table, or restrictive horizon shall be maintained on a fill and wait system.

(b) Soil texture or structure.

1. Soil Group III - any approved system.

2. Soil Group IV - a conventional trench system modified by the use of additional pretreatment as outlined in Section 6(2) of this administrative regulation.

a. The system may be required to be modified by:

(i) The use of alternating lateral fields;

(ii) ~~by~~ Dosing tank and pump or siphon;

(iii) ~~by~~ Dosed alternating lateral fields;

(iv) ~~by~~ Dosed automatic alternating lateral fields;

(v) ~~or by~~ The use of an LPP system; by a lagoon and lateral field system; or

(vi) ~~by~~ Other systems approved by the cabinet for use in Group IV textured soil.

b. Gravity flow distribution systems in this soil group shall use equal flow distribution boxes only.

(4) If available space for the installation of an approved system is inadequate:

(a) Installation of permanent one and six-tenths (1.6) gallon or less low-volume flush water closets or nonwater carriage toilet devices shall be required; ~~and~~[-].

(b) As much lateral footage of the most space efficient approved system, but no less than fifty (50) percent of the required minimum lateral footage for that system, discharging into a holding tank ~~that~~which is at least equal in capacity to the required pretreatment unit shall be required.

(5) If a PROVISIONALLY SUITABLE rating was obtained which may be affected by a combination of site limitations, the on-site system, whether conventional, modified, or alternative, which ~~shall~~will overcome all limitations involved shall be installed.

(6) A site classified as UNSUITABLE may be used for on-site sewage disposal systems[-] if engineering, hydrogeologic, and soil studies indicate to the cabinet that a suitable on-site sewage disposal system can reasonably be expected to function satisfactorily. The site may be reclassified as PROVISIONALLY SUITABLE upon submission to the cabinet of adequate substantiating data to indicate that:

(a) An on-site sewage disposal system ~~may~~can be installed so that the effluent ~~shall~~will receive adequate treatment and proper disposal;

(b) The effluent ~~shall~~will not contaminate any drinking water supply, groundwater, perched water, or surface water;

(c) The effluent ~~shall~~will not be exposed on the ground surface.

(7) A site originally classified as UNSUITABLE due to soils that have been structurally damaged may be upgraded to PROVISIONALLY SUITABLE if the following conditions are met:

(a) Structural damage limited to a maximum depth of six (6) inches from the original ground surface;

(b) Trench depth at least six (6) inches deeper than the damaged layer;

(c) Required vertical separation distances to rock, water table, or other restrictive horizons maintained;

(d) Soil rectification performed using one (1) of the following methods:

1. Mechanical renovation with a chisel plow or other similar device if damaged soil is adequately improved by lifting from two (2) inches below the damaged layer; or

2. Removal of damaged soil and replacement with a Group III or better soil with a SUITABLE or PROVISIONALLY SUITABLE structure; and

(e) Reevaluation by a certified inspector following soil rectification and prior to system installation.

Section 5. Approval of Consultants. (1) The cabinet may grant limited approval to an eligible individual to perform tentative site evaluations only for proposed subdivisions for which on-site sewage disposal systems are intended.

(a) Individuals eligible for approval as consultants shall include:

1. Professional engineers;

2. Registered architects;

3. Soil scientists;

4. Professional geologists; ~~and~~

5. Certified inspectors whose certifications have not been suspended or revoked.

(b) The cabinet may require attendance at training seminars and competency testing as a condition of maintaining approved status.

(2) To be eligible for approval as a consultant, the individual shall possess a valid professional registration, license, certificate, or other similar document, issued by the respective profession's registration, licensure, or certification board, agency, committee, or other body recognized by the state of Kentucky.

(3) If suspension or revocation proceedings are initiated by the cabinet[-] in accordance with KRS 211.360(3), the certified individual may request a hearing before the cabinet[-] in accordance with KRS 211.360(4)[-] to present evidence on his behalf as to why the intended action should not be taken.

(4) If the cabinet has suspended or revoked certification for cause, the cabinet shall provide notification to the appropriate professional body with which the person affected is registered, licensed, or certified.

Section 6. System Sizing Standards. (1) Design waste flows. Daily waste flow volumes for system design and sizing purposes shall be computed for each residential unit, business or commercial facility, or other public facility[-] based upon the design flow per designated flow unit listed in Table 1 multiplied by the number of flow units involved.

(a) If approved permanent nonwater carriage water closet type devices, such as composting, incinerator, or oil carriage toilets, are installed exclusively in a residence~~and if no other blackwater type wastes are created~~, the daily design waste flow unit for that specific residence may be reduced to the ~~amount~~figure given in Table 1, Column B.

(b) If an approved greywater system is installed so that all greywater is separated from the onsite sewage disposal system and no other greywater type wastes are created, the daily design waste flow for the onsite sewage disposal system for that specific residence may be reduced to the amount in Table 1, Column B.

(c) If a residence meets the criteria of paragraphs (a) and (b) of this subsection, the design daily waste flow for onsite sewage disposal system for that residence may be reduced to the amount in Table 1, Column C.

(d) A daily waste flow unit reduction shall not be granted for installation of nonpermanent flow reduction devices, such as showerheads, showerhead or faucet inserts, suds-saver type automatic washing machines, or other similar devices. Use of water saving devices, such as low-volume flush water closets, may be required by the cabinet if necessary due to site limitations.

(e) ~~(e)~~ An on-site sewage system that receives a design daily waste flow of 2,000 gallons or more shall be designed to provide dosing of the lateral field through the use of dosing tanks and pumps or siphons, or through the installation of an LPP system.

(f) ~~(d)~~ An applicant proposing to use an on-site sewage disposal system for a nonresidential source of sewage shall provide the following information to the cabinet:

1. Data to show the sewage does not contain industrial wastewater;

2. Data to establish the potential sewage strength and to identify chemicals found in the sewage that are not typically found in residential sewage; and

3. A design to provide pretreatment of the sewage to at least residential septic tank effluent quality.

(g) ~~(e)~~ The following businesses or facilities shall not be approved for disposal of waste waters into an on-site sewage disposal system due to the nature of the wastes generated or the high volume of wastewater created:

1. Laundromats, except on an experimental basis as provided under Section ~~6(16)~~8(14) of this administrative regulation;

2. Car washes;

3. Kill room wastes from livestock slaughterhouses;

4. Embalming wastes from funeral parlors or mortuaries; and

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5. Industrial or process wastes from factories.

Table 1 Design Daily Waste Flow				
		Gallons/Unit/Day		
Source of Sewage Dwelling Units	Units	Standard	Column B	Column C
Single family residences	Each bedroom	110[120]	83[90]	55
Hotels or motels	Each room	90[100]		
Apartments/condominiums/townhouses	Each bedroom	110[120]		
Rooming houses	Each bedroom	110[120]		
Mobile home parks	Space	270[300]		
Commercial/industrial:				
Retail stores	Each toilet room	180[200]		
Malls, shopping centers	Each 1000 sq. ft.	180[200]		
Offices and tattoo studios	Employee	15[20]		
Medical offices (with laboratories)	Employee	45[60]		
Dental offices (with water rinse units)	Exam chair	225[250]		
Dental offices (with suction units)	Exam chair	45[50]		
Veterinary office (add for animal grooming) (add for animal boarding)	Clinic per animal per animal	225[250] 10 10		
Dog kennels	per dog	5		
Industrial buildings	Employee/shift (does not include process water or cafeteria)	15[20]		
(Add for showers)	Employee/shift	10		
Construction site	Employee/shift	15[20]		
Visitor center	Visitor	4[5]		
Barber shops	Chair	65[75]		
Beauty shops	Chair	115[125]		
Laundromats: (experimental only)	Machine	300		
Eating and drinking establishments:				
Restaurant (does not include bar or lounge)	Meal/seat	15		
Bar or lounge	Seat	15[20]		
Drive-in (no public restrooms)	Establishment	450[500]		
Drive-in (with public restrooms)	Car stall	15[20]		
Food markets:				
Prepackaged/Catering	Store or establishment	225[250]		
Food processing/Retail/Manufacturing:	Store	900[1,000]		
(with eat-in delicatessen)	Meal/seat	15		
(with carryout delicatessen)	Store	Additional 225[250]		
Rabbit or fish processors	Employee/shift per animal or fish processed	15[20] 0.5		
(with solid waste separation)				
Institutional (includes food service):				
Hospitals and surgical centers	Each bed	270[300]		
Mental	Each bed	90[100]		
Prison or jail	Each inmate bed	90[100]		
Nursing home, rest home	Each resident bed	90[100]		
Schools and Churches (includes food service):				
Elementary, day care, kindergarten	Student	20[25]		
High school	Student	30[35]		
College	Student	30[35]		
Boarding school	Student	55[60]		
Churches: (without kitchen facilities)	Average attendance/person	3		
(with kitchen facilities)	Average attendance/person	4[5]		
Recreational:				

Recreational vehicle park (sewer hook-ups to each space) (with central bath only) Dump station only	Space Space Space	115[125] 65[75] 20[25]		
Day camp (no meals)	Person	15		
Residential camp (includes cafeteria)	Person	55[60]		
Resorts/housekeeping cabin	Bedroom	110[120]	83	55
Tent camping areas w/central bath	Space	65[75]		
Country clubs (does not include food service)	Member	10[15]		
Golf courses	Average attendance/person	8[10]		
Swimming pools	Design capacity/person	8[10]		
Picnic parks, sports facilities, ball parks: (with toilet only) (with food service)	Average attendance/person Average attendance/person	4[5] 7[8]		
Movie theaters	Seat	4[5]		
Drive-in theaters (includes food service)	Space	12[15]		
Skating rink/dance hall	Person (based on rated capacity)	8[10]		
Bowling alley	Lane	90[100]		
Transportation:				
Airport, bus or rail depot	Passenger	4[5]		
Auto service station	Each water closet or urinal	225[250]		

(2) Residential pretreatment units. A septic tank in a single-family residence on-site sewage disposal system shall meet the minimum working liquid capacities in paragraphs (a) to (c) of this subsection, based on the number of bedrooms involved. An aerobic or other type of approved pretreatment unit shall be sized according to its rated treatment capacity in gallons per day, based upon the design daily waste flow per design unit given in Table 1.

(a) On a Soil Group IV site, additional pretreatment shall be provided by use of one (1) of the following methods:

1. Installation of multiple septic tanks in series. The first tank receiving raw sewage from the residence shall be of the required minimum capacity in Table 2. Additional tanks shall be installed in series as needed to provide a total capacity equal to the required minimum plus an additional fifty (50) percent;

2. Installation of an aerobic pretreatment unit. An aerobic unit that does not include an integral trash or primary settling chamber in its construction shall be provided by the series installation of a minimum 1,000 gallon septic tank to receive raw sewage, with effluent discharging into the aerobic unit[.];

3. Installation of multiple compartment septic tanks. The first compartment[.] receiving raw sewage from the residence shall be of the required minimum capacity in Table 2. The second compartment shall have a total capacity equal to at least fifty (50) percent of the first compartment; or[.];

4. Permanent installation of effluent filters. The effluent filter shall be a maximum screen size of one-sixteenth (1/16[.]) inch and shall be installed either inside or following a properly-sized septic tank. Access to filters shall be provided to finished grade.

(b) Subsurface flow constructed wetlands on-site sewage disposal systems shall include one (1) of the following pretreatment options:

1. Two (2) septic tanks in series and an approved commercial-sized filter located at the outlet end of the second tank;

2. A two (2) compartment septic tank and an approved commercial-sized filter located at the outlet end of the second compartment; or

3. An aerobic unit and an approved commercial-sized filter installed internally or externally on the outlet pipe.

(c) A pretreatment unit for subsurface flow constructed wetlands shall be sized the same as a pretreatment unit for Group IV textured soil.

(d) If required minimum tank capacities for residential systems exceed 1,000 gallons and larger capacity tanks are unavailable,

serial installation of multiple tanks is permitted to obtain the necessary capacity. The first tank in series shall have a minimum capacity of 1,000 gallons.

Table 2 Minimum Capacity of Pretreatment Units		
Number of Bedrooms	Gallon Capacity (Without Garbage Disposal)	Gallon Capacity (With Garbage Disposal)
3 or less	1,000	1,250
4	1,250	1,500
5	1,500	1,750
Each Additional	250	250

(3) Commercial and public facility pretreatment units.

(a) Minimum working liquid capacities for a septic tank for a commercial or public facility on-site sewage disposal system shall be determined by multiplying the daily design waste flow per unit times the total number of units, plus an additional fifty (50) percent of that figure for solids storage[.]; (Gallons/unit/day X Number of Units) + 50% = MINIMUM CAPACITY REQUIRED.

(b) Commercial facility system installation shall be subject to procedures and requirements listed in subsection (2) of this section relative to:

1. Sites with soils in Soil Group IV;
2. Subsurface flow constructed wetlands;
3. Aerobic and other types of pretreatment units; and
4. Use of multiple tanks in series to obtain required capacity.

(c) An establishment with food preparation or food processing facilities shall install adequately-designed and approved pretreatment units to reduce FOG, BOD-5, and TSS to a level typically found in residential septic tank effluent. The applicant shall be required to submit data from comparable facilities to determine the establishment's potential effluent strength.

(d)1. A commercial or public facility engaged in the manufacture, processing, preparation, or service of food or food products shall use[be provided with] an approved grease trap.

2. Wastewater drain piping from food processing equipment; sinks for washing of food, equipment and utensils; dishwashers; and floor drains in food preparation and processing areas shall be separated from other wastewater piping[.] and shall discharge into a grease trap prior to entrance into an on-site sewage disposal system.

3. Grease trap capacity shall be a minimum of 500 gallons for daily waste flows of 6,000 gallons or less[.] and 1,000 gallons for daily waste flows greater than 6,000 gallons.

4. A grease trap shall be placed outside of the structure and shall be located as close as practicable to the source of the wastewater to prevent separation of grease prior to entry into the grease trap.

(4) Sizing of gravity distribution lateral fields. Gravity distribution lateral fields for an on-site sewage disposal system shall be sized based upon the design daily waste flow for the residence, commercial or public facility involved, as determined from Table 1. The total daily waste flow multiplied by the linear footage requirement per gallon found in Table 3 for the specific site soil characteristics shall determine the minimum linear footage of lateral trench required.

Table 3 Application Rates for Gravity Distribution Lateral Fields Based on Two (2) Foot Conventional Trench Width			
Soil Group	Soil Texture Classes	Application Rate Gal/Sq. Ft./Day	Linear Ft. Per Gallon
I Sands	Sand	1.2	.42
	Loamy Sand	.9	.56
II Coarse loams	Sandy Loam	.7	.72
IIIa. Fine loams (with suitable structure)	Sandy Clay Loam	.5	1.0
	Silt Loam		
	Silt		
	Clay Loam		
IIIb. Fine loams (with provisionally-suitable structure)	Silty Clay Loam	.37	1.35
	Sandy Clay Loam		
	Silt Loam		
	Silt		
IV Clays (Kaolinitic or mixed mineralogy with provisionally-suitable structure)	Clay Loam	.27	1.85
	Silty Clay Loam		
	Sandy Clay		

(5) Sizing of LPP distribution lateral fields. LPP distribution lateral fields for on-site sewage disposal systems shall be sized based upon the calculated total design daily waste flow for the residence, commercial, or public facility involved, as determined from Table 1. The total daily waste flow divided by the allowable daily loading rate found in Table 4, for the specific site soil characteristics, shall determine the minimum square footage of absorption area required.

Table 4 Application Rates for Low Pressure Pipe (LPP) Lateral Fields		
Soil Texture Group	Soil Texture Classes	Rate Gal/ Sq.Ft./Day
I Sands	Sand	0.5
	Loamy Sand	
II Coarse Loams	Sandy Loam	0.4
	Loam	
IIIa. Fine Loams (with suitable structure)	Sandy Clay Loam	0.3
	Silt Loam	
	Silt	
	Clay Loam	
IIIb. Fine Loams (with provisionally-suitable structure)	Silty Clay Loam	0.1714
	Sandy Clay Loam	
	Silt Loam	
	Silt	
IV Clays (Kaolinitic or	Clay Loam	0.1
	Silty Clay Loam	

mixed mineralogy with provisionally-suitable structure)	Clay	
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(6) Sizing of gravelless pipe systems.

(a) Gravelless pipe in eight (8) and ten (10) inch internal diameter sizes may be used in lieu of standard lateral trenches for conventional and modified conventional lateral field applications.

(b) Linear footage requirements listed in Table 3 shall apply to gravelless pipe.

(c) Gravelless pipe shall not be permitted in Group IV textured soils.

(7) Sizing of gravity distribution lateral beds. If lateral beds are permitted in lieu of standard two (2) foot wide lateral trenches, the required total length of standard lateral trench shall be calculated from Tables 1 and 3 information. That figure shall be multiplied by the percentage shown on Table 5 for the bed width intended for use. The number of linear feet resulting shall be the amount required for installation for that particular bed width.

Table 5 Lateral Bed Length Requirements for Gravity Distribution Systems Based on Bed Width	
Bed Width	Multiply Total Linear Footage of Two (2) Foot Wide Trench Required By:
3'	70%
4'	55%
5'	45%
6'	40%
7'	35%
8'	32%
9'	30%
10'	28%
11'	27%
12' or wider	26%

(8) Sizing of leaching chamber systems. Leaching chamber systems may be used in lieu of standard lateral trenches. Linear footage requirements for chambers shall be based on nominal internal chamber width as follows:

(a) In trench configuration – for nominal widths of:

1. Fifteen (15) to twenty-one (21) inches, 100 percent of Table 3;

2. Twenty-two (22) to twenty-seven (27) inches, seventy (70) percent of Table 3;

3. Twenty-eight (28) to thirty (30) inches, sixty (60) percent of Table 3;

4. Thirty-one (31) to thirty-six (36) inches, fifty-five (55) percent of Table 3;

5. Thirty-seven (37) to forty-one (41) inches, fifty (50) percent of Table 3; and

6. Forty-two (42) to forty-four (44) inches, forty-five (45) percent of Table 3; [required linear footage.]

(b) In bed configuration - for chamber widths eighty-five (85) percent of Table 5 linear footage requirements based on total bed width to nearest foot; and [.]

(c) Other chamber designs including those with nominal widths outside the ranges listed in paragraph (a) of this subsection shall be sized on a case-by-case basis.

(9) Sizing of gravity distribution alternate lateral fields or beds. If alternate gravity distribution lateral fields or beds are used, the individual alternate lateral fields or beds shall each contain one-half (1/2) of the total linear footage required for the system and shall be alternated in use on a yearly basis by use of an approved alternating valve or device.

(10) Sizing of dosed gravity distribution automatic alternating lateral fields or beds.

(a) If dosed automatic alternating lateral fields or beds are used, the individual alternating lateral fields or beds shall each contain one-half (1/2) of the total linear footage required for the system.

(b) Dosed automatic alternating lateral field or bed systems shall be designed and operated so as to alternate between lateral

fields or beds with doses of effluent, by[ef] two (2) or more dosing siphons or pumps controlled by an automatic alternating device[.] or by simultaneous dosing.

(11) Sizing of combination evaporation-absorption lagoon and lateral field systems.

(a) On sites with Group IV soils where a conventional lateral field system or alternative system cannot be installed due to heavy clay soils with poor or no structure conditions, a combination evaporation-absorption lagoon and shallow lateral field system may be considered for installation.

(b) Total daily waste flow shall be determined by using Table 1[.] and the total square footage of lagoon waste surface area shall be calculated by multiplying the total gallons of waste flow per day by five (5) square feet per gallon.

(c) Effluent entering the lagoon shall have passed through a properly sized pretreatment unit[.] according to the provisions of Table 2 and subsection (3)(a) of this section.

(d) The overflow from the lagoon shall be directed to an approved lateral field according to the provisions of Section 4 of this administrative regulation. Lagoon overflow lateral field size for two (2) foot wide gravel field trenches shall be calculated by multiplying the total daily waste flow in gallons by one-tenth (.10) linear feet per gallon.

(12) Sizing of mound systems.

(a) Mound systems shall be designed and sized based upon the information and criteria given in the United States Environmental Protection Agency publication EPA 625/1-80-012 "Design Manual, On-site Wastewater Treatment and Disposal Systems," Chapter 7.2.4 on Mound Systems.

(b) All mound systems shall use pressure distribution of effluent in the absorption area.

(c) Mound fill material shall be coarse ASTM C-33 sand that meets the following criteria:

1. Less than twenty (20) percent, by weight, greater than two (2) mm in diameter; and

2. Less than five (5) percent, by weight, less than 0.053 mm in diameter.

(d) The design loading or filtration rate shall be one (1.0) gpd/sq.ft. for residential septic tank effluent.

(e) The sand fill material shall not be included in the measurement of the vertical separation distance between the absorption area and a:

1. Restrictive horizon;

2.[.] Rock[.] or

3. Water table.

(13) Sizing of subsurface flow constructed wetlands systems.

(a) Constructed wetlands cells shall contain a minimum of one and three-tenths (1.3) cubic feet of fill material for each one (1) gallon of total daily waste flow.

(b) Total interior square footage shall be based on one and three-tenths (1.3) cubic feet per one (1) gallon of total daily design wasteflow; if twelve (12) inches of fill material is used, then the square footage equals the cubic footage.

(c) The length to width ratio of the cell shall range between three (3) to one (1) and five (5) to one (1) for gravity flow.

(d) The length to width ratio for pressure distribution shall be determined based on system size and available installation area.

(e) The overflow lateral field footage shall be calculated by using fifty (50) percent of the standard sizing for the chosen type of system and[.] all approved lateral field types shall be acceptable.

(14) Sizing of drip treatment and disposal systems. Drip treatment and disposal systems shall be:

(a) Designed and sized based upon the information contained in Drip Irrigation Treatment and Disposal System Design Standards;

(b) Installed in a location in which the county or district board of health has adopted an Operation and Maintenance Ordinance; and

(c) Approved for inspection upon receipt of a Declaration of Covenants, Conditions, and Restrictions form completed by the prospective owner and incorporated into the property deed in order to inform future owners.

(15) Sizing of residential greywater[laundry] waste systems. If greywater is to be separated from the blackwater sewer, the[ff

improved system performance may be attained by separating laundry greywater waste flows from other residential waste flow for new system installations, or as repair for existing systems.] separation shall be accomplished in the following manner:

(a) Greywater[sewer for the washing machine] shall be separated from the main house sewer;

(b) A residential[laundry] greywater waste system shall be installed according to the results of the site evaluation of the greywater installation area and the following shall apply:

1. A septic tank is not required for a greywater waste system;

2. A distribution device is not required for the greywater waste system;

3. A twelve (12) inch separation from the bottom of the greywater absorption system to rock, water table, or restrictive horizon is permitted;

4. Cover over the greywater absorption waste system shall prevent ponding or surfacing of greywater;

5. A valve shall be installed to divert greywater back into the onsite sewage disposal system, except in a laundry greywater system;

6. The system shall have 100 percent system replacement area available;

7. The minimum setback distances listed in Table 7 shall apply to the greywater absorption area;

8. The system shall accept domestic type flows with the consistency and strength typical of greywater from domestic households, the source being:

a. Bathing;

b. Showering;

c. Washing clothes; or

d. Laundry sinks;

9. The system shall not contain water used to wash materials soiled with:

a. Human excreta;

b. Infectious substances;

c. Cleaning chemicals other than soap;

d. Water softener backwash; or

e. A hazardous household product; and

10. Greywater shall not be applied directly to the surface of the ground or above grade without receiving written approval from the Energy and Environment Cabinet.

(c) Sizing of the absorption area shall be based on fifty-five (55) gallons per day per bedroom and the Application Rate in Table 3 to calculate the total area of the bottom of the absorption designs except in a laundry greywater system.

(d) For only a laundry greywater system, the sizing shall be based[calculated] on fifteen (15) percent of total daily waste flow and the Application Rate in Table 3 to calculate the total area of the bottom of the subsurface absorption designs[multiplied by the linear feet per gallon specified in Table 3 for a conventional two (2) foot wide trench].

(e)[(d)] On a new system installation permitting laundry wasteflow separation:

1. For Soil Groups I to III, a fifteen (15) percent reduction in the primary system lateral field requirement shall be allowed; and

2. For Soil Group IV, a system size reduction shall not be allowed.

(16)[(45)] The cabinet shall size an experimental or alternative system not covered by this administrative regulation, based upon:

(a) Site characteristics;

(b) Effluent characteristics;

(c) Pretreatment processes;

(d) Technology used; and

(e) Other demonstrable factors.

(17)[(46)] Sizing of dosing tanks. Dosing tanks shall be of sufficient capacity to hold:

(a) Two (2) times the total design daily waste flow calculated from Table 1; or

(b) One (1) times the total design daily waste flow calculated from Table 1 with the following requirements:

1. Dual alternating pumps shall be utilized where the pumps automatically alternate each pump cycle;

2. Dual pumps shall be controlled with an automatic override

so that in the event one (1) pump fails, the other shall automatically take over until the failed pump can be replaced; and

3. A pump failure alarm shall be installed so that in the event one (1) pump fails, the alarm is activated and the failed pump may be replaced as soon as possible.

(18)(17) Use of holding tanks.

(a) A holding tank shall be permitted only under the following conditions:

1. Written official verification is submitted to the cabinet that a municipal sewer system shall~~will~~ be available within a two (2) year period;

2. A commercial or public facility has a daily wasteflow of less than 200 gallons per day;

3. During a one (1) year waiting period for soil to settle in an area that has been filled with topsoil, in accordance with Section 7(5) of this administrative regulation;

4. To repair an existing septic system if no other means of repair is available;

5. To expand an existing system for a single family residence if no other means of expanding the system is available; or

6. In accordance with Section 4(4)(b) of this administrative regulation.

(b) If a holding tank is permitted:

1. Water closets with flush volume of one and six-tenths (1.6) gallons or less shall be installed;

2. An audible and visible alarm system shall be installed:

a. Within the structure served; or

b. In a high pedestrian traffic area~~;~~ within sight of the structure served;

3. The applicant shall submit with the permit application a copy of a contract with a licensed septic tank cleaning company~~;~~ or other management entity~~;~~ for servicing the holding tank~~;~~ and shall thereafter maintain servicing records available for cabinet inspection; and

4. The local health department may require the owner to post a cash performance bond.

(19)(18) Sizing of holding tanks. Holding tanks shall be sized as follows:

(a) Holding tanks installed to repair an existing system,~~or~~ as an addition to a new system, or added to expand an existing system~~;~~ shall be sized the same as the required pretreatment unit.

(b) All other holding tanks shall be sized to hold a minimum seven (7) days wasteflow for the structure served.

Section 7. System Installation Standards. (1) System layout standards.

(a)1. A system shall be designed, laid out, and installed in the designated area set aside during the site evaluation and~~;~~ installation of the system in any other area is prohibited without the written consent of the local health department certified inspector.

2. If the markers used to designate the system area cannot be identified, the certified inspector or professional engineer who conducted the site evaluation shall revisit the property to reestablish the original designated area and confirm that it has not been altered.

3.(b) Layout of the system on the site by the certified installer shall be accomplished by using suitable stakes or markers to locate excavation sites for system components, and shooting of surface grades to establish necessary excavation depths to assure proper elevation "fall" in the system.

4. Lateral trenches or beds shall be laid out to follow parallel to the surface contour lines of the site.

(b)(c) Maximum length for individual lateral trenches or beds for gravity distribution systems shall be no more than 200 feet. Maximum length for individual lateral trenches in LPP systems shall be seventy (70) feet.

(c)(d) Individual lateral lines or beds receiving effluent from an equal flow distribution box shall be of equivalent size within ten (10) percent of the longest line or bed.

(d)1.(e) Lateral trenches, and leaching chambers two (2) feet wide or less, for gravity distribution systems shall be spaced a minimum of eight (8) feet on centers;

2. Lateral trenches for LPP systems shall be spaced a minimum of five (5) feet on centers;

3. Lateral beds, and leaching chambers greater than two (2) feet wide, for gravity distribution systems shall be spaced a minimum of eight (8) feet from side wall to side wall;

4. Spacing shall be increased two (2) feet on all sites with slopes greater than fifteen (15) percent and up to and including twenty (20) percent; and

5. On slopes greater than twenty (20) percent, each five (5) percent increase in slope, or fraction thereof, shall require an additional spacing of two (2) feet for lateral trenches.

(e)(f) Lateral line spacing in gravity distribution bed systems shall be as follows:

1. For beds of four (4) to six (6) feet in width, one (1) lateral line placed on the centerline of the bed;

2. For beds of seven (7) to ten (10) feet in width, two (2) lateral lines, spaced two and one-half (2 1/2) feet from the side walls;

3. For beds eleven (11) feet and wider, the two (2) laterals spaced two and one-half (2 1/2) feet from the side walls, and additional lateral lines installed five (5) feet on centers, or fraction thereof, from the side wall laterals.

(2) Excavation standards.

(a) Only equipment necessary to the installation of an on-site sewage disposal system shall be permitted in the designated area set aside for that system. Equipment shall be operated so as to minimize travel over~~;~~ and compaction of~~;~~ the system area.

(b) Excavation of the lateral field, bed~~;~~ or other subsurface soil absorption system portion of the total system area shall be restricted by the soil moisture conditions of that portion of the area at the intended depth of excavation for all soil texture classes.

1. Soil moisture conditions shall be determined by test excavation to the intended depth of the lateral trenches or beds.

2. A small portion of soil excavated from that depth shall be rolled between the thumb and fingers. If the soil can be rolled into a "wire" shaped form which does not easily crumble, the soil is too wet to work and will compact and seal absorption surfaces. If a "wire" form cannot be rolled and the soil crumbles, excavation can proceed.

(c) Excavation for septic tanks or other pretreatment units, distribution boxes, alternating valves or devices, and all nonperforated piping used to conduct effluent to other components through gravity flow means~~;~~ shall be done only after shooting of grades to assure a positive gradient from the outlet of the pretreatment unit through all components to the distribution box(es) or device(s). Such determinations of grade shall take into account the intended excavation depth from grade of lateral trenches or beds.

(d)1. Excavations for placement of all components shall be made to the necessary depth for installation and shall be dug level in undisturbed earth.

2. If filling is required to level or raise components to the proper grade, except for lateral trenches or beds, tamped gravel, sand, or compacted soil shall be used for bedding purposes.

3. If~~When~~ installation occurs in stony areas, large stones, flagstones, and boulders~~;~~ shall be removed from the component placement excavations to prevent component damage~~;~~ and the cavities created by their removal shall be filled with tamped gravel, sand, or compacted soil if they are located on the bottom surface of the excavation.

(e)1. Excavations for lateral trenches or beds shall be made to the depth specified by the site evaluation results.

2. Maximum trench or bed depth from grade for an on-site sewage treatment and dispersal system shall be twenty-four (24) inches.

3. Minimum trench or bed depth for modified gravity and dosed gravity distribution systems shall be six (6) inches from grade.

4. Minimum trench depth for LPP systems shall be six (6) inches from grade.

5. Trench width for LPP systems shall be a minimum of twelve (12) inches.

6. Minimum trench width for gravelless pipe shall be eighteen (18) inches to a maximum of twenty-four (24) inches.

7. Minimum or maximum trench width shall be as per

manufacturer's specifications for leaching chambers; but in no instance shall the trench width exceed the chamber width by more than eight (8) inches.

(f) Lateral trench and bed bottom grades shall be as shown in Table 6:

Table 6 Maximum Grades for Trench and Bed Bottoms		
Distribution Method	Type	Maximum Grade inches/200 feet
Hillside or drop box [(also serial distribution)]	Trench	2"
Equal Flow Box	Trench	4"
	Bed	Level to 1" in all directions from center
Gravelless Pipe	Trench	Level
Low Pressure Pipe	Trench	Level
	Bed (Mound)	Level
Leaching Chambers (using any of the above methods except low pressure) (using low pressure pipe)	Trench layout	4"
	Bed Layout	Level
	Trench	Level

(g)1. Excavations for curtain drains[.] or vertical drains to intercept or lower groundwater tables shall be made to the depth determined by the site evaluation.

2. Curtain drain excavations shall maintain the required depth in all parts upgrade from the lowest lateral line and then be graded to drain to the surface or to a pumped catchment basin.

3. Vertical drain excavations shall encircle the entire soil absorption field area.

4. Pretreatment units may be included within the curtain drained or vertical drained area.

(h)1. Excavations for distribution leaders[.] or nonperforated pipe[.] from a distribution box on gravity distribution systems[.] shall be made so as to provide a "benched" distribution corridor above the trench or bed bottom.

2. This "benched" corridor shall be bedded in undisturbed earth, and shall be excavated so as to provide a "bench" height of six (6) inches above the elevations of the trench or bed bottoms.

3. Benching of the distribution corridor shall be used to reduce the possibility of "short circuiting" of effluent and effluent ponding around distribution boxes.

(i)1. Excavation of evaporation/absorption lagoons shall be made to provide uniformly-level lagoon bottoms and to provide a wastewater depth below the overflow outlet of four and one-half (4 1/2) feet[.] and a freeboard of two (2) feet.

2. Containment berming, dikes, dams, and liners shall be of Group IV soil texture and installed so as to provide a minimum of eighteen (18) inch separation from the inside wall and bottom of the lagoon to rock and shall be "keyed" into the original soil at least one (1) foot deep and two (2) feet wide at the base.

3. Berms, dikes or dams shall be constructed on a two (2) feet vertical to one (1) foot horizontal slope.

4. To prevent entrance by unauthorized persons, a lagoon shall be enclosed within a minimum six (6) foot high chain-link fence or equivalent (no climb) open weave designed fence with a locked gate.

(j)1. Constructed wetlands cell bottoms shall be excavated uniformly level and prepared so that no coarse materials are exposed.

2. Soil berming used for constructed wetlands shall be constructed so that the berming is stable and soil sloughing does not occur.

3. The outside walls shall have a slope of one (1) foot vertical to three (3) feet horizontal.

4. The inside walls shall have a minimum slope of one (1) foot vertical to two (2) feet horizontal.

5. Vegetation shall be established on berming as soon as possible.

(3) Component installation standards.

(a)1. Septic tanks and other pretreatment units, dosing tanks, and holding tanks shall be installed level.

2. Connections to the unit which conduct sewage or effluent[.] and unit joints or seams[.] shall be watertight.

3. Manufacturer's instructions on installation and piping and electrical connections to the unit, shall be followed by the installer.

4. A unit showing structural damage on delivery[.] or damaged in placement shall be replaced with an undamaged unit.

5. Patching of minor damage which does not affect the structural integrity, watertightness, or function of the unit may be permitted under the supervision of the certified inspector.

(b)1. The certified installer shall provide access to finished grade above the outlet end manhole on each septic tank[.] through the use of suitable manhole risers of a minimum eighteen (18) inches internal dimension to allow removal of the tank manhole lid.

2. The manhole risers shall be provided with tamper-resistant lids or covers. Lids or covers of precast concrete, cast iron, or steel shall be considered tamper-resistant if weighing sixty (60) pounds or more and require a vertical lift for removal.

3. Lids or covers of sheet metal, plastic, or fiberglass shall be attached by bolts or other suitable fastener requiring a tool for removal.

(c) An approved distribution device shall be used in a gravity flow system.

(d)1. Distribution boxes[.] and alternating valves or devices[.] shall be installed level[.] and each piping connection shall be rendered watertight.

2. A component showing structural damage on delivery[.] or damaged in placement shall be replaced with an undamaged component.

(e)1. An equal flow distribution box shall be installed on a stable base to prevent settling.

2. A plastic or fiberglass equal flow or level box shall be securely anchored to a poured concrete base a minimum of four (4) inches thick and extending on all sides of the box side walls at least four (4) inches.

(f) Outlet piping of an equal flow box shall be extended past the inside side wall of the box at least three-fourths (3/4) of an inch but no greater than one (1) inch to allow attachment of water leveling devices.

(g)1. Approved nonperforated pipe shall be used as leader piping to connect an outlet in a distribution box to each perforated lateral line in the gravity distribution system[.] and shall extend two (2) feet into all trenches or beds before connection to perforated lateral line.

2. The leader piping excavation shall be manually filled with tightly-tamped soil.

(h) Leader piping connected to equal flow boxes shall be installed at no greater than one-eighth (1/8) inch per foot slope for the first five (5) feet of run from the box to restrict the flow velocity of effluent.

(i) Lateral lines for conventional gravity distribution trenches or beds shall be laid as follows:

1. A six (6) inch deep layer of approved trench rock or other fill material is carefully placed in the trench or bed to prevent sealing of absorption surfaces from fill impact, and leveled;

2. Lateral piping is placed and leveled on the trench fill material in the center of the trench (or properly spaced in beds) [.] and retained in place to prevent movement, while additional trench fill material is added to a point two (2) inches above the top of the top of the lateral piping, for a total of twelve (12) inches of trench fill material;

3. ~~Other methods of lateral piping and trench rock placement may be approved by the cabinet upon demonstration of equivalent compliance.~~

4. ~~A four (4) inch layer of approved barrier material, whole straw, or a single layer of synthetic filter fabric[.] is then placed over the trench fill material to prevent entry of backfill soil fines; and~~

4. ~~Other methods of lateral piping and trench rock placement may be approved by the cabinet upon demonstration of equivalent compliance.~~

(j) Lateral lines for LPP systems shall be laid as follows:

1. At the beginning of each trench and at twenty (20) foot

intervals thereafter, barrier walls of undisturbed earth or compacted earthfill at least one (1) foot thick shall be placed from sidewall to sidewall of the trench to the level at which lateral piping is to be installed;

2. Six (6) inches of pea gravel or approved alternate trench rock shall be placed in the trench and leveled;

3. Lateral piping shall be laid in place and assembled, or may be preassembled, and leveled;

4. Trench earth barrier walls shall be completed to ground surface and additional pea gravel or other trench fill material carefully placed over the laterals to a height of two (2) inches over the top of the piping;

5. ~~Other methods of lateral piping and trench rock or pea gravel placement shall be approved by the cabinet upon demonstration of equivalent compliance.~~

6. A two (2) inch layer of approved barrier material, whole straw, or a single layer of synthetic filter fabric shall be placed over the pea gravel to prevent entry of backfill soil fines; and

6. Other methods of lateral piping and trench rock or pea gravel placement shall be approved by the cabinet upon demonstration of equivalent compliance.

(k) Lateral lines for gravelless pipe systems shall be installed as follows:

1. Remove plastic shipping and storage bags from pipe, but do not remove filter wrap;

2. Lay out gravelless pipe with top stripe UP. Roll filter wrap back from ends of each section of pipe to allow proper connection of pipe sections and/or reducer connectors or end caps;

3. Join pipe sections together with approved connectors, making sure top stripes are in direct alignment on both sections to be joined. Tape joint with plastic tape supplied by pipe manufacturer to seal joint. Pull filter wrap ends back over joint and tape them together;

4. Fit offset reducer connectors, of size four (4) by eight (8) inches or four (4) by ten (10) inches, to inlet ends of joined pipe sections and locate four (4) inch inlet at top of pipe in alignment with top strips; tape joints to seal. Leave filter wrap loose at this time;

5. Fit end caps on other end of joined pipe sections, seal joints with tape, pull filter wrap over end joint and tape in place;

6. Lay joined lateral pipe sections into trenches with top stripe directly UP. Connect solid smooth wall header piping from distribution box outlets to four (4) inch inlet on offset reducer connector, inserting header pipe four (4) inches into connector, and seal joint with tape. Pull filter wrap over end of reducer cap and around four (4) inches header piping and tape in place; and

7. ~~(4)~~ Center and support each pipe section with handfilled soil.

8. Installation of constructed wetland components shall be as follows:

1. Cell framing shall be structurally supported by spiking, mortaring, bolting, or other approved means;

2. A liner shall be installed in each cell and shall be watertight after installation;

3. a. A manufactured liner shall be installed to conform to the shape of the cell and wrinkles smoothed prior to the placement of fill material.

b. The certified installer shall inspect the installed liner for holes or cuts.

c. If the liner requires perforation to allow piping to pass through, the liner shall be watertight after the piping is installed.

d. A liner shall be protected from sunlight before and after installation;

4. a. A clay liner may be installed in a second cell application for residential use only if naturally-occurring Group IV textured soil is present.

b. The berming of the clay liner shall be keyed into the original soil by six (6) to twelve (12) inches.

c. The clay liner shall be compacted;

5. Cell fill material shall be installed level, at a uniform depth ranging between twelve (12) and eighteen (18) inches, based on the plant species selected;

6. The cell shall be constructed to provide a water depth equal to the cell fill material depth;

7. Two (2) inches of approved cover material shall be placed over the cell fill material;

8. Inlet and outlet headers shall be located at the bottom, center, or top of the fill material;

9. Inlet and outlet headers shall be located within one (1) foot from the cell end walls for gravity flow;

10. Inlet headers shall be located within three (3) feet from the cell end walls for pressure distribution;

11. If a header is located at an elevation that may cause siphoning of the effluent from a cell, approved antisiphon methods shall be used;

12. If perforated horizontal header piping is used, the header pipe shall be installed level with the holes located one (1) inch from the pipe bottom at the same elevation;

13. If perforated horizontal inlet header piping is used, access to cover material grade shall be provided for clean out;

14. Each header shall be covered with two (2) to four (4) inches of approved cover material;

15. Water level control devices may be installed at the ends of the cells with the design of these devices in compliance ~~comply~~ with the construction standards of 902 KAR 10:081;

16. a. At least two (2) access ports of at least four (4) inch diameter pipe shall be installed in each cell.

b. At least one (1) access port shall be located one-third (1/3) of the distance from the inlet end wall to outlet end wall.

c. At least one (1) access port shall be located within six (6) inches of the outlet header.

d. If water level control devices are not used, at least one (1) of the access ports in each cell shall be at least six (6) inches in diameter.

e. Access ports shall have holes located at the same depth as the cell fill material to allow the effluent to enter the access port.

f. Access ports shall be equipped with removable lids or caps;

17. Plants shall be installed and spaced as required for the specific plant species. The permit holder shall be responsible for the installation of suitable wetland plants with hydrophilic plants preferred; and

18. The overflow lateral field shall be installed as required for lateral trenches, beds, and components. Required vertical separation distances between overflow lateral trench or bed bottoms and any restrictive horizon, water table, or bedrock, as determined by the site evaluation results, shall be maintained.

(m) Leaching chambers shall be installed according to manufacturer's specification unless the specifications are less restrictive or conflict with ~~these~~ administrative regulations, in which case the administrative regulations shall take precedence, except that reduced backfill cover of six (6) inches or more over the leaching chamber may be permitted.

(n) Effluent piping to an evaporation/absorption lagoon and overflow piping to the lateral field system shall be installed as follows:

1. Nonperforated gravity flow or pressurized piping shall be laid in an excavated trench into the lagoon and anchored to a poured concrete, three (3) foot square, four (4) inch thick apron. The inlet shall be a tee laid on its side;

2. For overflow piping, the overflow shall be located at the point within the lagoon farthest from the inlet apron. The upper leg of the tee shall be screened and the lower leg extended downward to within three and one-half (3 1/2) feet of the lagoon bottom; and

3. Submerged piping into and out of a lagoon shall be provided with suitable water stops or leak collars with a minimum extension of twelve (12) inches on all sides of the pipe.

(4) Curtain and vertical drain installation standards.

(a) Curtain and vertical drains shall be installed as follows:

1. After excavation and grading of drain trenches to the required depth, slotted plastic drainage pipe with slots around the entire pipe circumference shall be laid in the trench. The pipe shall be bedded in two (2) to four (4) inches of leveled trench rock fill material;

2. After bedding and grading the pipe to drain, approved trench rock fill material for trenches twelve (12) inches or wider, or pea gravel for trenches narrower than twelve (12) inches, shall be

added to the trench to a point four (4) inches below grade; and[-]

3. Barrier material approved for use in lateral trenches shall be placed over the drain trench fill material.

(b) Vertical drains may be used if more permeable soil horizons exist below a restrictive horizon[-] and shall be installed as follows:

1. After excavation to the required depth the trenches shall be filled with crushed rock or pea gravel as in curtain drains, pursuant to ~~the points listed in~~ paragraph (a)2 of this subsection, as applicable;

2.[-] Drainage piping shall be unnecessary in vertical drains since drainage is encouraged downward through the restrictive horizon to more permeable soils; and

3.[-2.] Barrier material approved for use in lateral trenches shall be placed over the drain trench fill material.

(5) Filling, backfilling and finish grading standards.

(a) On a site requiring the placement of fill soil before an on-site sewage disposal system can be installed, the following requirements shall apply:

1. Surface vegetation shall be removed and the original soil surface layer tilled to a depth of two (2) inches prior to placement of fill;[-]

2. Soil fill material shall meet or exceed the textural class characteristics of Soil Group III outlined in Section 4(4)(a) of this administrative regulation and shall not be obtained from a restrictive horizon;[-]

3. Soil fill material shall be placed in the area to be filled by methods acceptable to the cabinet, to prevent stratification and unnecessary compaction;[-]

4. Soil fill shall be:

a. Protected by establishing a fast growing ground cover;

b. Allowed to settle for a period of one (1) year; and

c. Reevaluated prior to system installation; and[-]

5. Depth of soil fill required shall be determined by the site evaluation, based upon minimum separation distances between lateral trench bottoms and restrictive horizons, bedrock, or water tables.

(b)1. Backfilling around and over septic tanks and other pretreatment units, dosing tanks, holding tanks, distribution boxes, LPP manifolds, alternating valves and devices, and nonperforated effluent piping and distribution leader piping, shall be accomplished by filling and tamping by layers.

2. During filling and tamping, care shall be taken to prevent shifting, tilting, misalignment or damage to system components, watertight joints, seams, or connections.

3. The location of each component shall be clearly marked by staking or flagging after backfilling and prior to final grading.

(c)1. If manufacturer's installation instructions require specific backfilling procedures to protect component warranties, prevent damage, or prevent flotation of the component due to ground water pressure, those procedures shall be followed.

2. Soil for backfilling gravelless pipe trenches shall be loose and friable. Soil aggregates, clods or clumps, used for backfill in contact with pipe and filter wrap[-] shall be no larger than one-half (1/2) inch in any dimension large clods or clumps of soil for backfill shall not be used.

3. If soil excavated from trenches is unable to~~will not~~ meet this criteria, suitable backfill soil shall be obtained elsewhere.

(d)1. Backfilling of lateral trenches or drainage trenches shall be accomplished with minimal compaction of soil fill, and soil fill material shall be left mounded four (4) to six (6) inches above grade over trenches to allow for settling.

2. Backfilling over lateral beds shall be accomplished through the use of lightweight wheeled or crawler type tractors to minimize compaction, and soil fill material shall be left mounded four (4) to six (6) inches above grade to allow for settling.

(e) Backfilling shall not be done until after the system has been inspected and approved to that point of construction by a certified inspector.

(f) On sites where additional fill soil is required over the lateral field due to shallow depth of installation, the following procedures shall apply:

1. The requirements of paragraph (a)1 through 3 of this

subsection;

2. Fill shall be extended on all sides of the lateral field to a minimum distance of ten (10) feet, except on sloping sites where the fill on each end of the system shall expand outward to a minimum of fifteen (15) feet at the lowest point downslope, and the fill at the downslope side of the system shall be increased to a minimum of fifteen (15) feet beyond the system; and

3. Minimum depth of fill shall be as required by the site evaluation, but not less than ten (10) inches of settled soil over the trench rock fill material[-] or top of the gravelless pipe (for leaching chambers six (6) inches minimum) and that depth shall extend over the entire lateral field to a point at least two (2) feet beyond the sidewall of any trench, bed, or chamber, at which point the remainder of the fill may be tapered to original grade out to the minimum distances specified in subparagraph 2 of this paragraph.

(g)1. Finish grading over the on-site sewage system shall be performed to minimize compaction through the use of lightweight equipment.

2. Grading shall be restricted to work necessary to provide positive surface drainage away from the system, especially the lateral field.

3. Final grading over staked or flagged system components shall be accomplished manually[-] or with lightweight equipment, using extreme care to prevent damage to or misalignment of components.

(h) Finish grading work which removes soil from the system area, or which results in that area being used to dispose of excess soil graded from other areas on the site, shall be prohibited.

(i) Finish grading on other areas of the site shall be done in such a manner as to divert surface water run-off from driveways, patios, downspouts, slopes, ditches, gullies, etc., away from the area where the system is installed. If site conditions are such that normal grading procedures cannot divert the run-off, diversion ditches, swales, berms, or other diversion drainage means shall be constructed to divert run-off away from the system.

Section 8. System Setback Restrictions. (1) Minimum setback distances for installation of on-site sewage disposal systems from structures, water supplies, roads, streams, bodies of water, and other structural or topographic features are listed in Table 7.[-]

Structure or Topographic Feature	Minimum Distance (Ft.) from Pretreatment Unit, Constructed Wetland Cell, or Holding Tank	Minimum Distance (Ft.) from Side wall of Lateral Trench, Bed, or Lagoon
Property lines	5	5 (50 for lagoons)
Building foundations	10	10
Basements, cemeteries	20	20
Basements (Downslope from system)	20	30 (5-15% Slope) 40 (15-25% Slope) 50 (25% and Higher)
Wells	50	70
Wells (Properly plugged/abandoned)	20	20
Cisterns	50	70
Cisterns (Upslope from system with bottom at higher elevation than system)	10	10
Natural Lakes or Impoundments (Shoreline)	25	50
Streams	25	25

Springs (Upslope from system)	25	50
(Upslope with curtain interceptor drain)	10	20
(Downslope from system)	50	70
Drainage Ditches, Cutbanks (Downslope)	10	25
Curtain or vertical drain (Upslope and Sides) (Downslope)	10 25	10
Sinkhole Throat (Open)	70	70
Buried Water Lines or Utility Lines	10	10
Utility Easements	10	10
Driveways, parking lots, or paved areas	10	5
Geothermal Vertical	50	70
Geothermal Horizontal (Downslope)	10	10 (upslope and sides) 25
Inground swimming pools	10	20
Mine Openings and Air Shafts	50	70
Livestock pens, feed lots, corrals, etc.	10	10

(2) Lagoon setback distances shall be measured from the inside berm wall at a point four and one-half (4.5) feet vertically from the lagoon bottom.

Section 9. System Installation Inspection. (1) Every on-site sewage disposal system installed, constructed, altered, or repaired shall be inspected by a certified inspector.

(2) The inspection sequence performed shall be as follows:

(a) 1. The certified installer shall complete an installer's affidavit for every system ~~[except a subsurface flow constructed wetland system]~~, recording all grade shot readings of all excavation work and ~~[.]~~ certifying by his signature that the work has been performed in compliance with this administrative regulation, or

2. In lieu of the installer's affidavit, the certified installer shall ~~[may]~~ request an initial inspection be performed by a certified inspector.

(b) 1. An initial inspection shall consist of shooting of grades in all excavations to determine compliance with this administrative regulation;

2. ~~[-(b)]~~ For subsurface flow constructed wetland systems, an initial inspection shall be made by a certified inspector to determine compliance with excavation standards.

a. ~~[1.]~~ An installer's affidavit in lieu of the initial inspection shall not be accepted.

b. ~~[2.]~~ The liner shall be in place in the cell prior to the initial inspection unless special cell preparation is needed prior to placement of the liner; and ~~[.]~~

3. All components and the overflow lateral field shall be inspected.

(c) 1. The certified installer shall request an installation inspection ~~[to]~~ be scheduled and completed by a certified inspector ~~[.]~~ before the system is backfilled.

2. To facilitate inspection of lateral fields and constructed wetland system cells, the certified installer shall provide direct access to trench, bed, or cell bottoms to allow accurate shooting of grade and elevation.

3. Direct access shall be provided through the use of ports, piping, or other methods acceptable to the certified inspector ~~[.]~~ and at locations within the lateral field the inspector deems necessary.

(d) The installation inspection shall consist of:

1. Examination of system components, including constructed wetland systems plants, as to type, size or capacity, approved status, materials, and connections;

2. Examination of installation as to proper placement, proper grade, or level;

3. Conduct "water leveling" method on equal flow distribution boxes;

4. Testing of dosing devices, low pressure systems, and alarm systems;

5. Shooting of trench, bed, constructed wetland cell, or lagoon bottom grade and elevation;

6. Examination of installation of lateral lines, trench and constructed wetland cell fill material depth, trench barrier material, constructed wetland cell cover material depth and placement, and water depth; and

7. Perform other necessary examinations and checks to determine compliance with this administrative regulation relative to all site and system modifications required.

(e) A constructed wetland system shall not be approved before it is complete, including plant installation.

(f) An approved system shall be backfilled in accordance with this administrative regulation.

1. The certified installer shall:

a. Assure proper backfilling;

b. After completion of backfilling, perform or supervise finish grading; and

c. Request a final inspection ~~[.]~~ if additional fill soil is required after completion of finish grading.

2. The owner shall, during subsequent occupancy and system usage, protect the system from damage, disruption, or unnecessary surface water drainage.

(g) A system not meeting approval shall be reconstructed as needed to meet compliance requirements.

Section 10. Responsibilities. (1) The construction, operation, and maintenance of on-site sewage disposal systems, whether conventional, modified, or alternative systems, shall be the responsibility of the owner, developer, certified installer, or user of the system as applicable in the circumstances.

(2) Actions of the cabinet and certified inspectors ~~[.]~~ engaged in the evaluation and determination of measures required to effect compliance with the provisions of this administrative regulation shall in no way be taken as a guarantee that on-site sewage disposal systems approved and permitted shall ~~[will]~~ function in a satisfactory manner for any given period of time, or that such agents or employees assume any liability for damages, consequential or direct, which are caused ~~[.]~~ or ~~[which]~~ may be caused ~~[.]~~ by a malfunction of such systems.

Section 11. Prohibited Practices. The following practices shall be prohibited ~~[.]~~ and their use shall result in immediate voiding of permits or site evaluations:

(1) Use of unapproved system components in lieu of replacement with approved components;

(2) Except as provided in Section 13 of this administrative regulation, use of seepage pits, cesspools, and dry wells;

(3) Use of improperly constructed or designed systems ~~[.]~~ in lieu of redesign or reconstruction;

(4) Placement of lateral field within less than twelve (12) inches of, or below, the upper limits of a restrictive horizon or water table;

(5) Placement of lateral field within less than twelve (12) inches of, or into, bedrock.

(6) Dynamiting, ripping, or otherwise removing bedrock to install a lateral field;

(7) Cutting, filling, or otherwise altering the original grade or soil characteristics of the area upon a site staked or flagged off for system installation, except if the work is a requirement of this administrative regulation;

(8) Allowing use of the area staked or flagged off for system installation as a material or soil stockpile, vehicle or heavy equipment parking area or roadway, or other unauthorized use which may damage or alter the soil or site characteristics; or

(9) Construction of evapotranspiration lagoons in Group I, Group II, or Group III textured soil.

Section 12. Variances. (1) The owner of a site where an on-site sewage disposal system is proposed to be installed may request, in writing, to the local board of health ~~[.]~~ or its designated agent, a

variance to specific portions of this administrative regulation.

(2) A written request shall include:

- (a) Pertinent information about the site;
- (b) The specific portion of the administrative regulation requested for waiver;
- (c) The specific reasons for the request; and
- (d) Documented evidence justifying the granting of the variance.

(3) A request shall be acted upon by the local board of health^[,] or its designated agent as soon as practicable. A written decision, either denying the variance with reasons for denial, or granting the variance with or without stipulations or restrictions, shall be presented to the applicant within five (5) working days of the decision.

(4) An applicant for a variance may appear with counsel or expert professional witnesses^[,] or both^[,] before the local board of health or its agent^[,] for the purpose of presenting the request or to appeal a decision.

(5) If a hearing is requested, the local board of health or its agent shall:

(a) Set a time and date for the hearing, as soon as practicable; and

(b) Notify the applicant, in writing, within five (5) working days of receipt of the request and at least two (2) days prior to the date of hearing, of the time and date for the hearing.

(6) A decision regarding a variance shall be based upon evidence presented by:

- (a) The applicant;
- (b) The certified inspector for the site in question; and
- (c) Expert professional witnesses.

(7) A decision regarding a variance shall be influenced by:

(a) The requirements of the On-site Sewage Systems Law, KRS 211.350 to 211.380, and related law; and

(b) The presence or absence of reasonable assurance, derived from evidence presented, that the granting of the variance shall not result in the creation of:

- 1. Groundwater contamination;
- 2. Effluent surfacing;
- 3. A public health hazard; or
- 4. A public health nuisance.

(8) A variance shall not be granted for the following:

- (a) Waiver of site evaluation or system inspection;
- (b) Reduction of required system size if a modified or alternative system is able to provide an equivalent system in the available area on the site;

(c) If site or system modification or an alternative system can overcome a site limitation;

(d) A practice prohibited by Section 11 of this administrative regulation.

(9) A variance shall be made a permanent record^[,] and filed at the local health department in the county where the site is located.

(10) A variance request shall be acted upon and a final decision made by the local board of health^[,] or its agent^[,] prior to the issuance of a permit to install the proposed on-site sewage disposal system.

Section 13. Exemption. (1) On-site sewage systems shall be governed by the provisions of KRS 211.355(3) and this section.

(2) The repair or alteration of an on-site sewage treatment system shall be permitted if:

(a) A municipal or public sewage treatment system is not available; and

(b) Repair or alteration is required because of:

- 1. Malfunction;
- 2. Damage; or
- 3. Upgrade.

(3) In the repair or alteration of an on-site sewage system utilizing a seepage pit, an owner shall be permitted to:

- (a) Clean;
- (b) Service; and
- (c) Repair, alter, reconstruct, or replace:

1. Any system component leading to a pit, such as pipes and septic tanks;

2. Pit rings; or

3. Any other component repair which would not require the drilling of a new pit.

(4) With regard to a single-family dwelling only, if a municipal or public sewage treatment system is not available, a seepage pit may be installed as an on-site sewage disposal system in the development of a vacant lot, purchased on or before May 1, 1992, if bona fide construction began by December 25, 1992.

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Drip Irrigation Treatment and Disposal System Design Standards", 1/2017; and

(b) Form "DFS-450, Declaration of Covenants, Conditions, and Restrictions", 1/2017.

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

HIRAM C. POLK, JR., MD, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: January 9, 2017

FILED WITH LRC: January 10, 2017 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall, if requested, be held on February 21, 2017, at 9:00 a.m. in Suite A & 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 February 14, 2017, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business February 28, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Laura Begin, Laura.Begin@ky.gov, phone 502-564-3970, ext. 4066, and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for the regulation of construction, installation, or alteration of any on-site sewage disposal system, except for a system with a surface discharge, as required by KRS 211.180(1)(d).

(b) The necessity of this administrative regulation: This administrative regulation assures that the construction, installation, or alteration of any on-site sewage disposal system, except for surface discharge systems, is performed in a way that protects public health and the environment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.180(1)(d) requires the Cabinet for Health and Family Services (Department for Public Health) to regulate the construction, installation, and alteration of any on-site sewage disposal system, except for surface discharge systems. This administrative regulation contains requirements from KRS 211.350-211.351, which include site evaluations, the approval of system designs, and daily waste flow charts with conservation credits.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation ensures that on-site sewage disposal systems under the purview of the Cabinet will be constructed, installed, and altered in such a way that public health and the environment are protected.

(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 2016 General Assembly passed House Bill 431 to amend KRS 211.350 and create KRS 211.351 relating to conservation credits for greywater systems. KRS 211.351 requires the Cabinet to promulgate administrative regulations that update the daily waste flow charts to account for technological improvements in water-using fixtures and appliances and greywater systems that reduce water usage and that is what this amendment does. In addition, an approved alternative disposal system is being included in this administrative regulation as another option for use. This will ease the process for installing this proven technology, benefit single-family residences in having another approved option for sewage disposal, and reduce red tape and limitations for the manufacturers of this type of system. Changes are also being made for compliance with KRS 13A.

(b) The necessity of the amendment to this administrative: This amendment is required by the 2016 Regular Session amendment of KRS 211.350 and creation of KRS 211.351, which require the Cabinet to promulgate regulations demonstrating the updates to the water reduction capabilities of fixtures, appliances, and greywater systems.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is consistent with the authorizing statutes, amended and created in the 2016 Regular Session.

(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 daily waste flow charts and providing an additional approved system, which gives residential owners and system installers another system option to choose from and reduces the red tape involved in manufacturing and obtaining this type of system.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 8,000 on-site sewage disposal systems are permitted each year. The updated daily waste flow amounts will affect the installation of those systems and the residence owners and system installers will have the additional approved option of a drip irrigation treatment system. This amendment will have a positive effect on approximately 25 system component manufacturers and 2,500 active system installers 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 questions (3) will have to take to comply with this administrative regulation or amendment: This amendment contains no new requirements. This amendment updates the daily waste flow amounts for greywater systems if they are used in order to reduce water usage. This amendment also includes drip irrigation treatment and disposal systems as an approved system for on-site sewage disposal if that option is chosen. This gives local health departments an additional option for the sewage disposal system, may benefit single-family residences by having this additional approved option, and will reduce red tape and limitations for the manufacturers of this type of system.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): This amendment contains an alternative approved system for on-site sewage disposal and reductions in daily waste flow values, it does not include requirements.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The reduced daily waste flow values contained in this amendment will result in a reduction of the

cost of system installation. The additional approved system gives resident owners and system installers another system option to choose from and reduces the red tape involved in manufacturing and obtaining this type of system.

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

(a) Initially: There is no cost to update the daily waste flow charts to account for technological improvements in water-using fixtures and appliances and greywater systems that reduce water usage or to add an additional approved system option.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no cost.

(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 is not necessary to implement this amendment.

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

(9) TIERING: Is tiering applied? No. This administrative regulation is applicable to all affected entities in a like manner.

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 health departments will be affected as they approve the installation of on-site sewage disposal systems. This amendment gives local health departments an additional option for the sewage disposal system. The amendment will decrease administrative burdens on the Kentucky Department for Public Health by reducing red tape paperwork and the limitations placed on the manufacturers of drip treatment and disposal systems, which will now be an approved alternative system option.

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), 211.090(3), 211.180(1)(d), and 211.350-211.351.

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.

(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.

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

(d) How much will it cost to administer this program for subsequent years? The entire program operates with approximately \$370,000 from the General Fund and approximately \$750,000 from fees accrued, totally a little over \$1 million.

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 Health Care
(Amendment)

902 KAR 20:280.[Standards for] Prescribed pediatric extended care centers.

RELATES TO: KRS 198B.260, 216.875, 216.880, 216.885, 311.571, 314.041, 319.010(3), 327.010(2), 334A.020, 335.090, 620.030

STATUTORY AUTHORITY: KRS 216.042, 216.890

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services[mandates that the Kentucky Cabinet for Human Resources regulate health facilities and health services]. KRS 216.890 requires the Cabinet for Health and Family Services to promulgate administrative regulations to implement the provisions of KRS 216.875 to 216.890, which include standards related to the operation of prescribed pediatric extended care (PPEC) centers. This administrative regulation establishes the requirements for prescribed pediatric extended care centers[mandates that the Kentucky Cabinet for Human Resources promulgate standards to regulate prescribed pediatric extended care (PPEC) services].

Section 1. Definitions. (1) "Child life specialist" means an individual who has:

(a) A minimum bachelor's degree with an educational emphasis on:

1. Human growth and development;
2. Education, which may include early childhood education;
3. Psychology; or
4. A related field of study; and

(b) Current experience in planning and implementing developmental stimulation programs for children.

(2) "Developmentalist" means a master's prepared individual with current experience in:

- (a) Transdisciplinary evaluation; and
- (b) Treatment planning for children who are at risk for or experiencing developmental delay.

(3) "Medical director" means a board certified pediatrician who shall:

- (a) Serve as the liaison between the PPEC center and the medical community;
- (b) Review the quality and appropriateness of PPEC center services; and
- (c) Be available for consultation to PPEC center staff.

(4) "Medically dependent or technologically dependent child" is defined by KRS 216.875.

(5) "Nursing director" means a registered nurse who:

- (a) Is licensed pursuant to KRS 314.041;
- (b) Is responsible for providing continuous supervision of PPEC center services; and
- (c) Manages the daily operations of the facility.

(6) "Occupational therapist" is defined by KRS 319A.010(3).

(7) "Physical therapist" is defined by KRS 327.010(2).

(8) "Prescribed pediatric extended care center" or "PPEC center" is defined by KRS 216.875(1).

(9) "Prescribing physician" means a physician who:

- (a) Is licensed in Kentucky to practice medicine or osteopathy in accordance with KRS 311.571; and
- (b) Signs the order admitting a child to the PPEC center.

(10) "Primary care provider" means a health care practitioner who:

- (a) Is licensed to practice in Kentucky;
- (b) Maintains overall responsibility for a child's medical management; and
- (c) Is available for consultation and collaboration with PPEC center staff.

(11) "Protocol of care" means a comprehensive plan for implementation of the following services:

- (a) Medical;
- (b) Nursing;
- (c) Psychosocial;
- (d) Developmental; and
- (e) Educational therapies.

(12) "Social worker" means an individual who is:

- (a) Licensed pursuant to KRS 335.090; and
- (b) A graduate of a school of social work accredited by the Council on Social Worker Education.

(13) "Speech-language pathologist" is defined by KRS 334A.020["Developmentalist" is a master's prepared individual with current experience in transdisciplinary evaluation and treatment planning for children who are at risk for or experiencing developmental delay.

(2) "Protocol of care" is the comprehensive plan for implementation of medical, nursing, psychosocial, developmental, and educational therapies to be provided by the PPEC. An individualized protocol of care shall be developed upon admission and shall be revised to include recommended changes in the therapeutic plans. The disposition to be followed in the event of emergency situations shall be specified in the protocol of care.

(3) "Prescribing physician" is the physician, licensed pursuant to KRS 311.571, who signs the order admitting the child to the PPEC.

(4) "Primary physician" is the physician, licensed pursuant to KRS 311.571, who maintains overall responsibility for the child's medical management and is available for consultation and collaboration with the PPEC staff.

(5) "Medical director" is a board certified pediatrician who serves as the liaison between the PPEC and the medical community, reviews the quality and appropriateness of PPEC services, and is available for consultation to the PPEC staff.

(6) "Nursing director" is a licensed registered nurse, pursuant to KRS 314.041, responsible for providing continuous supervision of PPEC services and managing the daily operations of the facility.

(7) "Occupational therapist" means a person who is licensed pursuant to KRS 319A.080.

(8) "Speech pathologist" means a person who is licensed pursuant to KRS 334A.050.

(9) "Social worker" means a person who is licensed pursuant to KRS 335.090, if applicable, and who is a graduate of a school of social work accredited by the Council on Social Worker Education.

(10) "Physical therapist" means a person who is licensed pursuant to KRS 327.050.

(14) "Child life specialist" is an individual with baccalaureate preparation in child life, early childhood education, or a related field and current experience in planning and implementing developmental stimulation programs for children].

Section 2. Scope of Operation and Services. A PPEC center shall be[The prescribed pediatric extended care (PPEC) center is] a nonresidential health care service that provides:

(1) A[which provides an important] link in the continuum of care for medically dependent or technologically dependent children; and
 (2)[The (PPEC) center provides] The following triad of[necessary] services for[dependent] children and their parents:

- (a) Day health care;
- (b)[Developmental interventions;] and
- (c) Parent[Parental] training programs.

Section 3. Applicability. Each PPEC center[(1) All prescribed pediatric extended care facilities] shall:

(1) Be equipped and staffed to accommodate no fewer than three (3) medically dependent or technologically[medically/technologically] dependent children;

(2) Be in compliance with this administrative regulation and federal, state, and local laws and regulations pertaining to the operation of PPEC centers;

(3)[and shall meet standards established herein.

(2) All PPEC facilities shall] Have a minimum full-time equivalent staff of two (2) registered nurses and one (1) nursing

assistant; and

(4) Meet the following ratios. Thereafter, the ratio of staff to children shall be maintained at:

3-12 children	2 RNs[RN's] plus 2 others
13-18 children	2 RNs, 1 LPN,[3-RN's] plus 3 others
19-24 children	2 RNs, 2 LPNs,[4-RN's] plus 4 others

If the PPEC center has a census of more than twenty-four (24) children, the number of registered nurses and other staff shall increase by one (1) each for up to six (6) additional children enrolled.

Section 4. Criteria for Admission. Each child admitted to a PPEC center shall meet at least the following criteria:

(1) An infant or child[infants and children] considered for admission to the PPEC center[facility] shall be medically dependent or technologically dependent[those] with a complex condition[medical conditions] requiring continual care, which may include:

- (a)[including but not limited to,] Supplemental oxygen;
- (b)[,] Ventilator dependence;
- (c)[,] Cystic fibrosis;
- (d)[,] Apnea;
- (e)[,] Spinal cord injury; or
- (f)[and] Malignancy;

(2) An infant or child shall not, prior to admission, present significant[, etc.:

(2) Children with risk of infection to other children or personnel. The medical and nursing director may review, on a case-by-case basis, any child with a suspected infectious disease to determine appropriateness of admission;[shall not be admitted unless authorized by the prescribing physician.]

(3) The child shall be medically stabilized, require skilled nursing care or other interventions, and be appropriate for outpatient care; and

(4) The primary care provider[physician], in consultation with the parent or legal guardian[parent(s) or legal guardian(s)], shall be responsible for recommending[recommend] placement in a PPEC center upon[facility, taking into] consideration of[the] medical, emotional, psychosocial, and environmental factors. [(4) The child shall be medically stabilized, require ongoing nursing care, and other interventions.]

Section 5. Preadmission Conference. (1) If a[the] child meets the admission criteria established in Section 4 of this administrative regulation, the primary care provider or designee[physician or his/her designate] shall contact the medical or nursing director of the PPEC center to schedule a preadmission conference.

(2)[(a)] If a[the] child is hospitalized at the time of referral, preadmission planning shall include:

(a) The parent or legal guardian; and

(b)[parent(s) or guardian(s).] Relevant hospital medical, nursing, social services, and developmental staff to assure that the discharge plans shall be implemented upon admission to the PPEC center[accommodated following placement in the PPEC].

(3)[(b)] If a[the] child is not hospitalized at the time of referral, preadmission planning shall be conducted with the:

(a) Primary care provider;

(b) Parent or legal guardian;

(c)[physician, parent(s) or guardian(s).] PPEC center representatives; and

(d) Representatives of other relevant agencies as determined by the primary care provider[physician,] and nursing director[of the PPEC].

(4) A[(e)] preadmission planning conference shall:

(a) Be scheduled at least[within] seventy-two (72) hours prior to placement; and

(b) Allow sufficient time to assure that the therapeutic plan can be implemented upon placement in the PPEC center.

(5)[(d)] The protocol off[er] care shall:

(a) Be developed under the direction of the PPEC center's nursing director during the preadmission planning conference;

(b) Specify the treatment plan needed to accommodate the medical, nursing, psychosocial, and educational needs of the child

and family;

(c) Identify specific goals for care, including plans for achieving those goals;

(d) Include a schedule for evaluation of progress;

(e) Include procedures to follow in an emergency situation;

(f) Include[by the PPEC staff following preadmission planning-

(e) The protocol for care shall include specifications of] criteria for discharge from the PPEC center; and

(g) Be signed by the:

1. Physician;

2. Authorized representative of the PPEC center; and

3. Parent or legal guardian.

(6)[(2)] A consent form[, outlining the purpose of the PPEC center[a PPEC facility], family responsibilities, authorized treatment,[and] appropriate liability release[releases], and emergency disposition plans shall be:

(a) Signed by the parent or legal guardian:[parent(s) or guardian(s)] and

(b) Witnessed prior to admission to the PPEC center[facility].

(7) A copy of the consent form shall be:

(a) Provided to the parent or legal guardian; and

(b) Maintained in the child's medical record[The parent(s) or guardian(s) and the PPEC facility shall be provided a copy of the consent form].

Section 6. Admission Procedure. (1)[Infants and children shall be considered for admission to the PPEC facility if they have complex medical conditions requiring skilled nursing care, e.g., children with conditions including but not limited to, supplemental oxygen, ventilator dependence, cystic fibrosis, apnea, spinal cord injury and malignancy, etc.

(2) In consultation with the parent or legal guardian[parent(s) or legal guardian(s)], a child may be referred to the PPEC center medical or nursing director for determination of placement.

(2)(a) Each child admitted to a PPEC center[(3) All children placed in the PPEC facility] shall be admitted in accordance with[have documentation of] a physician's written order placed in the child's medical record.

(b) A copy of the order shall be provided to the child's parent or legal guardian[parent(s) or guardian(s)].

(4) Prior to placement, preadmission planning conferences shall be held for the purpose of developing a protocol for care.

(5) The protocol for care shall be developed under the direction of the PPEC nursing director and shall specify the treatment plan needed to accommodate the medical, nursing, psychosocial and educational needs of the child and family. Specific goals for care shall be identified. Plans for achieving the goals shall be determined and a schedule for evaluation of progress shall be established. The protocol shall include specific discharge criteria.

(6) The protocol shall be signed by the physician, authorized representative of the PPEC and parent(s) or guardian(s). Copies of the protocol shall be given to the parent(s) or guardian(s). Copies of the protocol shall be given to the parent(s) or guardian(s) primary physician, PPEC staff and other agencies as appropriate.

(7) A consent form, outlining the purpose of a PPEC facility, family responsibilities, authorized treatment, appropriate liability releases, and emergency disposition plans shall be signed by the parent(s) or guardian(s) and witnessed prior to admission to the PPEC facility. The parent(s) or guardian(s) and the facility shall be provided a copy of the consent form.]

Section 7. Provision of Services. (1) Medical staff services.

(a) Each child[Children shall be] admitted to a[the] PPEC center shall be admitted upon prescription by the:

1. Child's prescribing[primary] physician; or

2.[by the] Medical director.

(b) The child's primary care provider[physician] shall maintain responsibility for the overall medical therapeutic plan[and shall be available for consultation and collaboration with the PPEC medical and nursing personnel].

(c) The medical director shall participate in review[reviews] of the protocol off[er] care. Prescribed therapies shall be adjusted in consultation with the primary care provider[physician] to

accommodate the child's condition.

(d) The PPEC center shall coordinate the prescribed therapies for the child.

(2) Nursing staff services.

(a) A PPEC center nursing staff member shall participate in preadmission planning.

(b) Nursing personnel, under the direction of the nursing director, shall be responsible for implementing the nursing care.

(c) Nursing personnel shall be responsible for monitoring and documenting the effects of prescribed therapies.

(d) Nursing personnel shall inform the primary care provider[physician] and medical director of the results of therapeutic interventions.

(e) Nursing personnel shall participate in interdisciplinary staff meetings[staffings] regarding the child's progress.

(f) Nursing personnel shall assure that the PPEC center provides an environment conducive to the:

1. Stabilization of the child's medical condition; and

2.[the] Promotion of the child's development.

(g) Nursing personnel shall be responsible for maintaining the child's record in accordance with facility policies and procedures.

(h) Nursing personnel shall instruct the parent or legal guardian[parent(s) or guardian(s)] in how to provide the necessary therapies in the home.

(3) Developmental services.

(a) 1. Each child shall have a functional assessment and an individualized program plan to accommodate the child's developmental needs.

2. The following functional areas shall be included as appropriate:

a. Self-care;

b.[;] Communication skills;

c.[;] Social skills;

d.[;] Motor skills;

e. Cognitive[-Preacademie] areas;

f.[;] Play; and

g.[with toys/objects.] Growth and development appropriate for age.

(b) The child's program plan shall:

1. Include specific programs and action steps to facilitate developmental progress;

2.[and shall] Be reviewed at least quarterly;

3. Include[- (c) The child's developmental and educational needs shall be incorporated into the protocol for care.

(d) The child's program plan shall include:

1.-] measurable goals in need areas, or goals to enhance and normalize independent functioning in daily activities;

4. Describe the child's[- 2. A description of the patient's] strengths and present performance level with respect to each goal;

5. Document[3.-] skill areas in priority order; and

6. Include[4.-] anticipatory planning for specific areas identified as at-risk for future problems.

(c)[(e)] The child life specialist shall participate in[regularly scheduled] interdisciplinary staff meetings[staffings].

(d) Each PPEC center shall:

1. Include the parent or legal guardian[(f) A program for parent(s) or guardian(s) shall be provided to prepare parent(s) or guardian(s) to accommodate the child's developmental needs.

(g) The PPEC shall provide parent(s) or guardian(s) education services by including them] in care-related conferences; and

2. Train the parent or legal guardian on[and teaching them] how to:

a. Perform necessary therapies; and

b.[how to] Meet the developmental and psychosocial needs of their child at home.

(e)[(h)] PPEC center staff shall:

1. Make referrals to appropriate resources;

2. Refer[- Facilitate access] to community, social, educational, and financial services[;] and

3. Refer or[shall] provide counseling to enhance coping skills, interpersonal relationships, and family functioning.

(4) Nutritional services.

(a) Therapeutic diets shall be maintained in the child's[patients]

file.

(b)[The services of] A registered dietician shall be available to provide assistance with:

1.[regarding the] Nutritional needs;

2.[the] Special diets of individual children[;] and

3.[to assist in] The development of policies and procedures for the handling, serving, and storage of food.

(c) All food and formula, except for specialized formula, shall be provided by PPEC center staff under the supervision of the nursing director.

(d) Prepared foods shall be:

1. Kept under refrigeration with identifying dates; and

2. Labeled with the child's name[patient names].

Section 8. Quality Assurance. (1) Each[The] PPEC center shall have a[ensure that there is an effective,] quality assurance program to evaluate the provision of patient care.

(2) The quality assurance program shall:

(a) Be ongoing; and

(b) Have a written plan of implementation.

(3)(a) All organized services related to patient care, including services furnished by a contractor, shall be evaluated at least every six (6) months[- semiannually].

(b) Nosocomial infections and medication therapy shall be evaluated.

(c) Evidence of[parent(s) or guardian] involvement by the parent or legal guardian shall be evaluated at least every six (6) months[semiannually].

Section 9. Administration. (1) Each PPEC center shall develop, implement, and maintain written policies and procedures governing all child care and related medical or other services provided[The administrative structure of the PPEC shall include a policy and procedure manual which reveal all operational aspects of the service].

(2) Personnel policies and procedures shall specify qualifications and required ratios for staff[ef staff members] employed by the PPEC center.

(3) Each PPEC center shall:

(a) Maintain a personnel record for each employee;

(b) Develop and maintain a current job description for each employee;

(c) Provide each employee with access to written personnel policies governing conditions of employment; and

(d) Provide an[shall include: a current personnel file, positions descriptions, employee benefits, policies for overtime, compensatory time, performance evaluations, termination of employment.

(3) A formal] orientation and development program[is required] for all PPEC center employees[and staff].

(4)[The facility shall be administered on a sound financial basis consistent with good business practice. Financial records which identify all income by source and describe all expenditures by category in such a manner as to be auditable by commonly recognized procedures.

(5)[] Policies and procedures pertaining to PPEC center services shall:

(a) Be available to the public; and

(b)[shall] Include[- (a)] a procedure manual with specifications for each therapeutic intervention. The manual shall be:

1. Available for use by all staff involved in the care of the children; and

2.[the manual shall be] Reviewed every six (6) months to assure that procedures conform to prevailing and acceptable treatment modalities.

(5) Each PPEC center shall maintain[(b)] an admission and discharge register that:

(a) Lists children[- listing clients] admitted by name with identifying information about each and the source from which the child was admitted;

(b) Identifies[-] the reason for disposition; and

(c) Identifies[- adequate identifying information and] the place to which the child[individual] is to be discharged.

(6) Each PPEC center shall maintain:

- (a) ~~[(e)]~~ A daily census record;
- (b) ~~[(d)]~~ An accident and incident record; and
- (c) ~~[(e)]~~ A complete medical and nursing history ~~[shall be maintained]~~ for each child.

(7) Each PPEC center shall:

(a) Conduct ~~a~~ ~~[(f)]~~ Periodic review of each child's protocol of care ~~quarterly and revise upon a change in the child's condition;~~ and

(b) Include any recommendations or revisions to the protocol ~~based on~~ ~~[to update the protocol in]~~ consultation with other professionals involved in the child's care.

(8) Any changes in the orders shall be documented and signed by the primary ~~care provider~~.

(9) ~~physician;~~ ~~[(g)]~~ Prior to a discharge, a ~~conference~~ ~~[conferences]~~ involving PPEC center staff, the primary ~~care provider~~ ~~[physician]~~, the ~~parent or legal guardian~~ ~~[parent(s) or guardian(s)]~~ and staff of other agencies involved in the patient's care shall be held to discuss postdischarge care and follow-up.

(10) ~~[(h)]~~ A discharge order written by the primary ~~care provider~~ ~~[physician]~~ shall be documented and entered in the child's record.

(11) A discharge summary, ~~including~~ ~~[which includes]~~ the reason for discharge, shall also be included in the child's record.

(12) ~~[(i)]~~ Except in ~~an~~ emergency situation ~~[situations]~~, other agencies involved in the care of the ~~child~~ ~~[patient/family]~~ shall be notified prior to the discharge date.

(13) Each PPEC ~~[(j)]~~ The center shall have linkage agreements through written agreements with providers of other levels of care ~~that~~ ~~[which]~~ may be medically needed to supplement the services available at the center.

(14) Each PPEC ~~[(k)]~~ The center shall have written policies to ~~ensure~~ ~~[which assure]~~ the reporting of cases of abuse, neglect, or exploitation of children to the Cabinet for Health and Family Services pursuant to KRS 620.030 ~~[Human Resources pursuant to KRS 199.335]~~.

Section 10. Personnel. (1) A board certified pediatrician shall serve as the medical director for the PPEC center ~~[facility]~~. Responsibilities ~~of the medical director~~ shall include:

(a) Participation in preadmission planning to establish a protocol of care ~~as described in Section 5(5) of this administrative regulation~~ ~~[with the primary physician, parent(s) or guardian(s) and staff of the PPEC center]~~;

(b) ~~Periodic~~ Review of services to assure acceptable levels of quality of care;

(c) Maintenance of a liaison role with the medical community;

(d) Advisement on the development of new programs and modifications of existing programs; and

(e) Assurance that medical consultation shall be available ~~if the medical director is absent~~ ~~[in the event of his/her absence]~~.

(2) A nursing director shall be employed to provide continuous supervision of PPEC center services. ~~The nursing director~~ ~~[and]~~ shall be responsible for:

(a) Daily operations of the PPEC center;

(b) ~~facility~~.

(a) In addition the nursing director shall be responsible for:

1. All services rendered at the center;

2. Personnel management;

3. Organization and implementation of in-service education programs for staff;

4. Assistance to the medical director in determining patient eligibility for admission to PPEC center;

5. Assurance of adequate nursing representation at preadmission conference;

6. Supervision of all patient records; and

7. Documentation of the PPEC center's activities to assure compliance ~~with~~ ~~[to]~~ rules and administrative regulations.

(3) ~~(b)~~ Credentials and training:

1. Registered nurse with a current license in the state of Kentucky.

2. Nursing services shall be provided within the nurse's ~~[their respective]~~ scope of practice pursuant to KRS Chapter 314 and

any administrative regulations promulgated thereunder.

(4) ~~[(3)]~~ The nursing director shall have at least two (2) years nursing experience of which ~~at least~~ six (6) months shall have been spent in a pediatric intensive care, ~~or~~ neonatal intensive care setting, PPEC center, or similar care setting in which the nurse provided care to medically fragile children ~~during the previous five (5) years]~~.

(5) ~~[(3)]~~ Staffing.

(a) The PPEC center shall employ nursing and ancillary staff that are necessary to:

1. Provide the services essential to the center's operation; and

2. Meet the level of care needs of the children enrolled.

(b) There shall be an individual personnel record for each person employed by the center, which includes the following:

1. Resume with employee's training and experience;

2. Evidence of current licensure or registration;

3. Reports of all accidents occurring on duty; and

4. Current certification in basic life support.

(c) The following categories of personnel shall be available to the PPEC center on an in-house or consultant basis:

1. Developmentalist; ~~[-]~~

2. Child life specialist; ~~[-]~~

3. Occupational therapist; ~~[-]~~

4. Physical therapist; ~~[-]~~

5. Speech pathologist; ~~and~~ ~~[-]~~

6. Social worker.

Section 11. In-service Training for Staff, ~~Parents,~~ and ~~Legal Guardians~~ ~~[Guardian(s)]~~. (1) Monthly staff development programs appropriate to the category of personnel shall be conducted to maintain quality patient care.

(2) All staff development programs shall be documented.

(3) All personnel shall ~~be expected to~~ maintain current certification in basic life support.

(4) Each new employee shall participate in orientation to acquaint the employee with the philosophy, organization, program, practices, and goals of the PPEC center ~~[facility]~~.

(5) A comprehensive orientation to acquaint the ~~parent or legal guardian~~ ~~[parent(s) and/or guardian(s)]~~ with the philosophy and services shall be provided at the time of the child's placement in the PPEC center.

(6) Staff development programs shall be provided to:

(a) Facilitate the ability of the staff to function as a member of an interdisciplinary team ~~that~~ ~~[which]~~ includes health professionals and the ~~parent or legal guardian~~ ~~[parent(s) and/or guardian(s)]~~;

(b) Improve communication skills to facilitate a collaborative relationship between the ~~parent or legal guardian~~ ~~[parent(s) and/or guardian(s)]~~ and professionals; ~~[-]~~

(c) Increase understanding of the effects ~~that~~ childhood illness has on the child's development and the ~~parent or guardian~~ ~~[parent(s) and/or guardian(s)]~~;

(d) Increase understanding of ~~and how to cope~~ ~~[coping]~~ with the effects of childhood illnesses;

(e) ~~and shall~~ Cover a variety of topics including:

1. Issues of death and dying;

2. Awareness of services available at the ~~following~~:

a. Hospital;

b. ~~[-]~~ School; and

c. ~~[-]~~ Community, state, and professional organizations; ~~[-]~~ and

3. Fostering of advocacy skills; ~~and~~ ~~[-]~~

(f) ~~[(e)]~~ Develop case management skills to assist the family in:

1. Setting priorities; and

2. Planning and implementing the child's care at home.

(7) Each PPEC center shall ~~[(f)]~~ provide training in the implementation of new technology.

(g) Develop a comprehensive protocol for care which includes the medical, nutritional, developmental and psychosocial needs of medically/technologically dependent children.

(h) Prepare for management of emergency situations.

Section 12. Physical Environment. (1) The building shall:

(a) Be suitable for the purpose intended; and

(b) ~~[should]~~ Maintain a minimum of sixty (60) square feet of

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space per child, exclusive of the following:

1. Kitchen;
2. Bathroom;
3. Storage areas;
4. Stairways;
5. Unfinished basements; and
6. Attics.

(2) The PPEC center shall conform to or exceed the minimum standards for day care centers as specified in the most current version of the Kentucky Building Code.

(3) ~~ventilation system shall be designed and balanced to provide the general pressure relationships shown in Table 4, Section 14 of this administrative regulation.~~

(3) The lighting levels for the facility shall comply with the requirements in Table 2, Section 14 of this administrative regulation.

(4) Plumbing approval. Prior to licensure~~and relicensure~~, all specifications shall be approved by the Kentucky Division of Plumbing, Department of Housing, Buildings and Construction.

(4)(5) Transportation. Emergency transportation to a hospital~~(with a pediatric unit)~~ shall be achieved within twenty (20) in ten (10) minutes normal driving time or less, with a PPEC center staff member accompanying the child unless the child's parent or legal guardian is immediately available to accompany the child to the hospital.

(5)(6) Unless medically contraindicated, the PPEC center shall maintain~~facility shall be maintained as~~ a temperature range of seventy-two (72) degrees to eighty (80) degrees Fahrenheit.

(6)(7) Accessibility. Each~~The~~ PPEC center shall meet requirements for making buildings and facilities accessible to and usable by persons with a disability~~(the physically handicapped)~~ pursuant to KRS 198B.260 and administrative regulations promulgated by the Department of Housing, Buildings and Construction~~thereunder~~.

(7)(8) Fire safety. Each~~The~~ PPEC center shall:

(a) Be approved by the State Fire Marshal's office prior to~~before~~ licensure; and

(b) Retain a copy of the current fire inspection report on file~~relicensure is granted by the licensure agency~~.

(8)(9) Housekeeping and maintenance services.

(a) Housekeeping. Each PPEC~~The~~ center shall:

1. Maintain a clean and safe facility free of unpleasant odors; and

2. Ensure that~~odors are~~ are~~shall be~~ eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans, and other sources.

(b) Maintenance. The premises shall be well kept and in good repair as follows~~Requirements shall include~~:

1. The center shall insure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps, and fences are in good repair~~;~~

2. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing, and electrical fixtures shall be in good repair~~;~~

3. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly~~;~~

4. A pest control program shall be in operation in each center~~(the centers)~~. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock~~;~~

5. a. Sharp wastes, including needles, scalpels, razors, or other sharp instruments used for patient care procedures shall be segregated from other wastes and aggregated in puncture resistant containers immediately after use.

b. Needles and syringes shall not be recapped, cut, dismantled, or destroyed after use, but shall be placed intact directly into a puncture resistant container.

c. The containers of sharp wastes shall either be incinerated, on site or off site, or disposed of in a sanitary landfill approved pursuant to 401 KAR 47:080; and~~rendered nonhazardous by a technology of equal or superior efficacy, which is approved by both~~

the Cabinet for Human Resources and the Natural Resources and Environmental Protection Cabinet.]

6. The center shall establish a written policy for the handling and disposal of all infectious, pathological, and contaminated waste if the center generates them. Any incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:020 or 401 KAR 61:010.

a.(i) Infectious waste shall be placed in double impervious plastic bags and each bag shall be two (2) mils in thickness.

(ii) A bag, when full, shall not exceed twenty-five (25) pounds.

(iii) All bags shall be securely closed and a tag, which reads "INFECTIOUS WASTE" and identifies the center from which the waste is being removed, and shall be attached to the bag in a conspicuous manner.

b. The following wastes shall be disposed of by incineration~~or~~, be autoclaved before disposal, or be carefully poured down a drain connected to a sanitary sewer:

(i) Blood;

(ii) Blood specimens;

(iii) Used blood tubes~~;~~ or

(iv) Blood products.

Section 13. Emergency Procedures. (1)~~A copy of the current annual fire inspection report, shall be on file with the licensing agency.~~

(2) There shall be a working telephone, which is neither locked nor a pay station, in the center.

(2)(3) Emergency telephone numbers shall be posted on or in the immediate vicinity of all telephones.

[Section 14. Appendix:

Area Designation	Pressure Relationship to Adjacent Areas	Minimum Air Changes of Outdoor Air Per Hour	Minimum Total Air Changes Per Hour
Patient room	0	1	4
Patient area corridor	0	2	4
Treatment room	0	2	4
Physical therapy and hydrotherapy if applicable	N	2	-
Dining and recreation areas	0	2	4
Soiled workroom	N	2	4
Clean workroom	P	2	4
Toilet room	N	-	10
Bedpan room, if applicable	N	-	10
Bathroom	N	-	10
Janitor's closet	N	-	10
Linen and trash chute rooms	N	-	10
Food preparation center	0	2	10
Dishwashing area	N	-	10
Dietary day storage	0	-	2
Laundry, general	0	2	10
Soiled linen sorting and storage	N	-	10
Clean linen storage	P	2	2

P=Positive N=Negative O=Equal -=Optional

Area	Foot-candles*
Administrative and lobby areas, day	50
Administrative and lobby areas, night	20
Corridors and interior ramps	20

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Corridor night lighting	3
Dining area and kitchen	30
Doorways	10
Exit stairways and landings	5
Janitor's closet	15
Nurses' station, general, day	50
Nurses' station, general, night	20
Nurses' desk, for charts and records	70
Nurses' medicine cabinet	100
Patient care unit (or room), general	10
Patient care room, reading	30
Recreation area (floor level)	50
Stairways other than exists	30
Toilet and bathing facilities	30
Utility room, general	20
Utility room, work counter	50

*Minimum on task at any time]

ROBERT S. SILVERTHORN, JR., Inspector General

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: January 9, 2017

FILED WITH LRC: January 10, 2017 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 21, 2017, at 9:00 a.m. in Conference Suite A & 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 February 14, 2017, 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 February 28, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, 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, stephanie.brammer@ky.gov, phone 502-564-2888, and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum licensure requirements for the operation of and services provided by prescribed pediatric extended care (PPEC) centers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.042(1) which requires the Cabinet for Health and Family Services to establish licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. KRS 216.890 requires the cabinet to promulgate administrative regulations to implement the provisions of KRS 216.875 to 216.890, which include standards related to the operation of PPEC centers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042(1) and KRS 216.890 by establishing the minimum licensure requirements for the operation of and services provided by PPEC centers.

(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 for the operation of and services provided by PPEC 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 replaces "primary physician" with "primary care provider", revises the staff to child ratio requirements, updates the requirements for PPEC center nursing directors, updates obsolete language related to ventilation system requirements, eliminates the lighting levels table, and makes technical changes to comply with the drafting rules of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to make updates and revisions as identified above.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216B.042(1)(b) by establishing the minimum licensure requirements for the operation of and services provided by PPEC centers.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of KRS 216B.042(1)(b) by establishing the requirements for licensure as a PPEC center.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts licensed PPEC centers. There are currently nine (9) PPEC centers.

(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 will allow PPEC centers to use health care practitioners other than a physician to manage a child's care, use LPNs to meet staff to child ratios as identified in Section 3(4), and enhance efforts to recruit credentialed RNs for the position of nursing director.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): PPEC centers will not incur additional costs under this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As stated above, this amendment will allow PPEC centers to use health care practitioners other than a physician to manage a child's care, use LPNs to meet staff to child ratios as identified in Section 3(4), and enhance efforts to recruit credentialed RNs for the position of nursing director.

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

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

(b) On a continuing basis: No costs are necessary to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of the licensure function is from federal and state matching funds of general and agency 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: This amendment will not result in an increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not 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 that 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? This amendment impacts PPEC centers. There are currently nine (9) licensed PPEC centers.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042, KRS 216.890

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

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

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

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(Amendment)

907 KAR 1:065. Payments for price-based nursing facility services.

RELATES TO: KRS 142.361, 142.363, 42 C.F.R. Parts 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456, 483.10(i), 42 U.S.C. 1396, a, b, c, d, g, n, o, p, r, r-2, r-5

STATUTORY AUTHORITY: KRS 142.361(5), 142.363(3), 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method for determining amounts payable by the Medicaid Program for services provided by a price-based nursing facility.

Section 1. Definitions. (1) "Ancillary service" means a direct service for which a charge is customarily billed separately from the per diem rate including:

(a) Ancillary services pursuant to 907 KAR 1:023; and

(b) If ordered by a physician:

1. Laboratory procedures; and

2. X-rays.

(2) "Appraisal" means an evaluation of a price-based nursing facility building, excluding equipment and land, conducted by the department in accordance with Section 4 of this administrative regulation for the purpose of calculating the depreciated

replacement cost of a price-based nursing facility.

(3) "Appraisal base year" means a year in which the department shall conduct an appraisal of each price-based NF.

(4) "Appraisal period" means a five (5) year period beginning with an appraisal base year. For example, the appraisal period corresponding to appraisal base year 2014 is January 1, 2014, through December 31, 2018, and thereafter~~2000 is January 1, 2000 through December 31, 2004~~.

(5) "Auxiliary building" means a roofed and walled structure:

(a) Serviced by electricity, heating and cooling;

(b) Independent of an NF;

(c) Used for administrative or business purposes related to an NF; and

(d) Constructed on the same tract of ground as an NF.

(6) "Capital rate component" means a calculated per diem amount for an NF based on:

(a) The NF's appraised depreciated replacement cost;

(b) A value for land;

(c) A value for equipment;

(d) A rate of return;

(e) A risk factor;

(f) The number of calendar days in the NF's cost report year;

(g) The number of licensed NF beds in the NF; and

(h) The NF's bed occupancy percentage.

(7) "Case-mix" means the time-weighted average price-based NF acuity for Medicaid-eligible and dual-eligible Medicare and Medicaid residents under a Medicare Part A reimbursed stay in a price-based nursing facility, and is based on Minimum Data Set (MDS) 3.0[2-0] data classified through the RUG III, M3 p1, (version 5.20[5-12B]) thirty-four (34) group model resident classification system or equivalent.

(8) "Core based statistical area" or "CBSA" means the designation of metropolitan and micropolitan population centers based on the national census, as published by the Federal Office of Management and Budget.

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

(10)[(9)] "Equipment" means a depreciable tangible asset, other than land or a building, which is used in the provision of care for a resident by an NF staff person.

(11)[(40)] "Governmental entity" means a unit of government for the purposes of 42 U.S.C. 1396b(w)(6)(A).

(12)[(44)] "Hospital-based NF" means an NF that:

(a) Is separately identifiable as a distinct part of the hospital; and

(b) If separated into multiple but distinct parts of a single hospital are combined under one (1) provider number.

(13)[(42)] "Land" means a surveyed tract or tracts of ground which share a common boundary:

(a) As recorded in a county government office;

(b) Upon which a building licensed as an NF is constructed; and

(c) Including site preparation and improvements.

(14)[(43)] "Local unit of government" means a city, county, special purpose district, or other governmental unit in the state.

~~[(14)] "Metropolitan Statistical Area" or "MSA" means the designation of urban population centers based on the national census and updated on a yearly basis, as published by the Federal Office of Management and Budget.]~~

(15) "NF" or "nursing facility" means:

(a) A facility:

1. To which the state survey agency has granted an NF license;

2. For which the state survey agency has recommended to the department certification as a Medicaid provider; and

3. To which the department has granted certification for Medicaid participation; or

(b) A hospital swing bed that provides services in accordance with 42 U.S.C. 1395tt and 1396l, if the swing bed is certified to the department as meeting requirements for the provision of swing bed services in accordance with 42 U.S.C. 1396r(b), (c), (d), 42 C.F.R. 447.280 and 482.66.

(16) "NF building" means a roofed and walled structure

served by electricity, heating and cooling which is also an NF.

(17) "Nursing facility with an intellectual disability specialty" or "NF-ID" means an NF in which at least fifty-five (55) percent of the patients have demonstrated special needs relating to the diagnosis of an intellectual disability as determined by the department.

(18) "Nursing facility with Medicaid waiver" or "NF-W" means an NF to which the state survey agency has granted a waiver of the nursing staff requirement.

(19) "Provider assessment" means the assessment imposed by KRS 142.361 and 142.363.

(20) "Routine services" means the services covered by the Medicaid Program pursuant to 42 C.F.R. 483.10(c)(8)(i).

(21) "Site improvement" means a depreciable asset element, other than an NF building or auxiliary building, on NF land extending beyond an NF's foundation if used for NF-related purposes.

(22) "Standard price" means a facility-specific reimbursement that includes a case-mix adjusted component, noncase-mix adjusted component including an allowance to offset a provider assessment, noncapital-facility related component, and capital rate component.

(23) "State survey agency" means the Cabinet for Health and Family Services, Office of Inspector General, Division of Health Care[Facilities and Services].

(24) "Time-weighted" means a method of calculating case mix by determining the number of days that a minimum data set (MDS) record is active over a calendar quarter rather than captured from a single day during the calendar quarter.

Section 2. NF Reimbursement Classifications and Criteria. (1) An NF, a hospital-based NF, or an NF-ID[MRS] shall be reimbursed as a price-based NF pursuant to this administrative regulation if:

(a) It provides NF services to an individual who:

1. Is a Medicaid recipient;

2. Meets the NF patient status[level-of-care] criteria pursuant to 907 KAR 1:022; and

3. Occupies a Medicaid-certified bed; and

(b)1. It has more than ten (10) NF beds and the greater of:

a. Ten (10) of its Medicaid-certified beds participate in the Medicare Program; or

b. Twenty (20) percent of its Medicaid certified beds participate in the Medicare Program; or

2. It has less than ten (10) NF beds and all of its NF beds participate in the Medicare Program.

(2) An NF-W shall be reimbursed as a price-based NF pursuant to this administrative regulation if it meets the criteria established in subsection (1)(a) of this section.

(3) The following shall not be reimbursed as a price-based NF and shall be reimbursed pursuant to 907 KAR 1:025:

(a) An NF with a certified brain injury unit;

(b) An NF with a distinct part ventilator unit;

(c) An NF designated as an institution for mental disease;

(d) A dually-licensed pediatric facility; or

(e) An intermediate care facility for~~an individual with~~ individuals with an intellectual disability.

Section 3. Reimbursement for Federally-Defined Swing Beds and for Skilled Nursing Facility Services in a Critical Access Hospital Swing Beds. (1) The reimbursement rate for a federally-defined swing bed shall be:

(a) The average rate per patient day paid to freestanding price-based NF's for routine services furnished during the preceding calendar year, excluding any payment made pursuant to Section 14 of this administrative regulation; and

(b) Established effective January 1 of each year.

(2)(a) The department shall reimburse a critical access hospital for skilled nursing facility services in a swing bed at the same rate as established by the Centers for Medicare and Medicaid Services for Medicare.

(b) The department shall pay an interim per diem rate as established by CMS for the Medicare Program.

(c) The effective date of a rate shall be the same as used by

the Medicare Program.

(d) A critical access hospital's final reimbursement for skilled nursing facility services in a swing bed shall reflect any adjustment made by the Centers for Medicare and Medicaid Services.

(e) Total payments made to a critical access hospital for skilled nursing facility services provided in a swing bed under this section shall be subject to the payment limitation established in 42 C.F.R. 447.271.

(f) The provisions established in this subsection shall apply to a critical access hospital which complies with all requirements established in KRS 216.380.

Section 4. Price-based NF Appraisal. (1) The department shall appraise a price-based NF to determine the facility specific capital component in 2009, and every fifth year, in order to calculate the NF's depreciated replacement cost.

(2) The department shall not appraise equipment or land. A provider shall be given the following values for land and equipment:

(a) Ten (10) percent of an NF's average licensed bed value for land; and

(b) \$2,000 per licensed NF bed for equipment.

(3) The department shall utilize the following variables and fields of the nursing home or convalescent center #5200 model of the Marshall & Swift Boeckh Building Valuation System (BVS)[(#503) model of the E.H. Boeckh Commercial Building Valuation System] to appraise an NF identified in Section 2(1) of this administrative regulation:

(a) Provider number;

(b) Property owner - NF name;

(c) Address;

(d) Zip code;

(e) Section number - the lowest number shall be assigned to the oldest section and a basement, appraised as a separate section, immediately follows the section it is beneath;

(f) Occupancy code - nursing home or substructure;

(g) Average story height;

(h) Construction type;

(i) Number of stories;

(j) Gross floor area (which shall be the determination of the exterior dimensions of all interior areas including stairwells of each floor, specifically excluding outdoor patios, covered walkways, carports and similar areas). In addition, interior square footage measurements shall be reported for:

1. A non-NF area;

2. A shared service area by type of service; and

3. A revenue-generating area;

(k) Gross perimeter (common walls between sections shall be excluded from both sections);

(l) Construction quality;

(m) Year built;

(n) Building effective age;

(o) Building condition;

(p) Depreciation percent;

(q) Exterior wall material;

(r) Roof covering material and roof pitch;

(s) Heating system;

(t) Cooling system;

(u) Floor finish;

(v) Ceiling finish;

(w) Partition wall structure and finish;

(x) Passenger and freight elevators - actual number;

(y) Fire protection system (sprinklers, manual fire alarms, and automatic fire detection) - percent of gross area served. If both the floor and attic areas are protected by a sprinkler system or automatic detection, the percent of gross area served shall be twice the floor area; and

(z) Miscellaneous additional features which shall be limited to:

1. Canopies;

2. Entry foyers (sheltered entry ways):

a. The glass and aluminum standard allowance shall be thirty ~~(30)~~~~twenty (20)~~ dollars per square foot;

b. Bulkhead standard allowance shall be

(i) Seven (7)[5-(five)] dollars per square foot for a wood frame;
 (ii) Eight (8) dollars per square foot for a steel frame; or
 (iii) Twenty (20) dollars per square foot for brick masonry;
 3. Loading docks;
 4. Bay windows, if not included in the perimeter calculation[~~shall be valued at \$1,500 each~~];
 5. Code alerts, Wanderguards, or other special electronically-secured doorways, except for a door with a sound detector or sensing unit, (the standard allowance shall be \$1,500 for each fully-functioning door at the time of appraisal);
 6. A door with a sound detector or sensing unit shall have a standard allowance of \$500 per door;
 7. Automatic sliding doors (the standard allowance shall be \$17,000[\$2,700] per doorway);
 8. An automatic door opener shall have a standard allowance of \$6,500 per door;
 9.[7.] Detached garages or storage sheds (which shall have an attached reinforced concrete floor and a minimum of 200 square feet);
 10.[8.] Modular buildings or trailers, if the structure has a minimum of 200 square feet, electrical service, and heating or cooling services (the standard allowance shall be fifty-six (56) dollars[thirty-eight (38) dollars and fifty (50) cents] per square foot);
 11.[9.] Walk-in coolers or freezers;
 12.[40.] Laundry chutes (the standard allowance shall be \$2,100[\$1,000] per floor serviced);
 13.[44.] Dumb waiters (which shall have a minimum speed of fifty (50) feet per minute. The standard allowance shall be \$8,000[\$4,500] for initial two (2) stops for a manual door or \$21,000 for the initial two (2) stops for an electric door and \$7,000[; \$2,400] per additional stop;
 14.[42.] Skylights (the standard allowance shall be forty (40)[twenty-six (26)] dollars per square foot);
 15.[43.] Operable built-in oxygen delivery systems (valued at \$300[\$250] per serviced bed);[and]
 16.[44.] Carpeted wainscoting (the standard allowance shall be sixty (60) dollars per linear bed[three (3) dollars and fifty (50) cents per linear foot]);
 17. Balconies;
 18. Ceiling fans for which the standard allowance shall be \$250 for each ceiling fan without a light and \$400 for each ceiling fan with a light;
 19. Cupolas for which the standard allowance shall be \$720 each;
 20. Fireplaces;
 21. Concrete-lined utility tunnels for which the standard allowance shall be twenty-five (25) dollars per cubic foot; and
 22. Mechanical penthouses.
 (4) An item listed in subsection (3)(z) of this section shall be subject to the Marshall & Swift Boeckh BVS model #5200[Boeckh model #503] monetary limit unless a monetary limit is provided for that item in subsection (3)(z) of this section.
 (5) The department shall use the corresponding Marshall & Swift Boeckh BVS[E.H. Boeckh-System] default value for any variable listed in subsection (3) of this section if no other value is stated for that variable in subsection (3) of this section.
 (6)(a) Values from the most recent Marshall & Swift Boeckh BVS tables[E.H. Boeckh tables, as of July 1 of the year prior to the appraisal base year,] shall be used during an appraisal.
 (b) An adjustment calculation shall be performed if the most recent Marshall & Swift Boeckh BVS tables do not correspond to an appraisal base year[For example, values from the most recent 1999 E.H. Boeckh tables, as of July 1, 1999, shall be used for an appraisal conducted during the appraisal period beginning January 1, 2000].
 (7) In addition to an appraisal cited in subsection (1) of this section, the department shall appraise an NF identified in Section 2(1) of this administrative regulation if:
 (a) The NF submits written proof of construction costs to the department; and
 (b) 1. The NF undergoes renovations or additions costing a minimum of \$150,000 and the NF has more than sixty (60) licensed beds; or

2. The NF undergoes renovations or additions costing a minimum of \$75,000 and the NF has sixty (60) or fewer licensed beds.

(8) An auxiliary building shall be:

(a) Appraised if it rests on land, as defined in Section 1(12) of this administrative regulation; and

(b) Appraised separately from an NF building.

(9) To appraise an auxiliary building, the department shall utilize a Marshall & Swift Boeckh BVS[an E.H. Boeckh building] model other than the nursing home or convalescent center #5200[(#503)] model, if the model better fits the auxiliary building's use and type.

(10) If an NF building has beds licensed for non-NF purposes or a provider conducts business activities not related to the NF, the appraisal shall be adjusted between NF and non-NF activity through the use of an adjustment factor in the Marshall & Swift Boeckh BVS regardless of the occupancy factor[the appraisal shall be apportioned between NF and non-NF by dividing the number of licensed NF beds by the total number of beds, regardless of the occupancy factors].

(11)[If, in an NF building, a provider conducts business activities not related to the NF, the appraisal shall be apportioned by the percent of NF square footage relative to the square footage of non-NF related business activities.

(12)[Cost of an appraisal shall be the responsibility of the NF being appraised.

(12)[(13)] A building held for investment, future expansion, or speculation shall not be considered for appraisal purposes.

(13)[(14)] The department shall not consider the following location factors in rendering an appraisal:

- (a) Climate;
- (b) High-wind zone;
- (c) Degree of slope;
- (d) Position;
- (e) Accessibility; or
- (f) Soil condition.

Section 5. Standard Price Overview. (1) Rates shall reflect the differential in wages, property values and cost of doing business in rural and urban designated areas.

(2) The department shall utilize every four (4) years the most recent Federal Office of Management and Budget's core based statistical area (CBSA) designations to classify an NF as being in an urban or rural area, with metropolitan areas always being classified as urban. The urban and rural designations shall be based on the location of the NF under the CBSA designation[the Federal Office of Management and Budget's Metropolitan Statistical Area (MSA) urban and rural designations, in effect on January 1, 2003, to classify an NF as being in an urban or rural area].

(3) The department shall utilize an analysis of fair-market pricing and historical cost for the following data:

- (a) Staffing ratios;
- (b) Wage rates;
- (c) Cost of administration, food, professional support, consultation, and nonpersonnel operating expenses as a percentage of total cost;
- (d) Fringe benefit levels;
- (e) Capital rate component; and
- (f) Noncapital facility-related component.

(4) The following components shall comprise the case-mix adjustable portion of an NF's standard price:

- (a) The personnel cost of:
 - 1. A director of nursing;
 - 2. A registered nurse (RN);
 - 3. A licensed practical nurse (LPN);
 - 4. A nurse aid;
 - 5. An activities staff person; and
 - 6. A medical records staff person; and
- (b) Nonpersonnel operating cost including:
 - 1. Medical supplies; and
 - 2. Activity supplies.
- (5) The following components shall comprise the noncase mix

adjustable portion of an NF's standard price:

- (a) Administration to include an allowance to offset a provider assessment;
- (b) Nondirect care personnel;
- (c) Food;
- (d) Professional support; and
- (e) Consultation.

(6) The following components shall comprise the facility and capital component of an NF's standard price:

- (a) The noncapital facility-related component, which shall be a fixed, uniform amount for all price-based NF's; and
- (b) The NF's capital rate component, which shall be facility specific.

(7) Excluding ~~noncapital facility-related and~~ capital rate components, the following is an example of an urban and a rural price-based NF's standard price based on rebased wages at the 2008[2004] level:

CBSA [MSA] Designation	Case-Mix Adjustable Portion of Standard Price	Noncase-Mix Adjustable Portion of Standard Price without Capital [Cost] Rate Component	Total Standard Price Excluding [Noncapital Facility-Related and] Capital Rate Components
Urban	\$88.05 [78.24]	\$62.80[58.84]	\$150.85 [137.08]
Rural	\$74.62 [64.58]	\$55.63[52.24]	\$130.25 [116.82]

(8) A price-based NF's standard price shall be adjusted for inflation every July 1 and rebased in 2008.

(9) Effective July 1, 2004, an NF shall not receive a rate less than its standard price.

(10) The department shall adjust an NF's standard price if:

- (a) A governmental entity imposes a mandatory minimum wage or staffing ratio increase and the increase was not included in the inflation adjustment; or
- (b) A new licensure requirement or new interpretation of an existing requirement by the state survey agency results in changes that affect all facilities within the class. The provider shall document that a cost increase occurred as a result of a licensure requirement or policy interpretation.

Section 6. Standard Price Calculation. (1) Based on the classification of urban or rural, the department shall calculate an individual NF's standard price to be the sum of:

(a) The case-mix adjustable portion of the NF's standard price, adjusted by the NF's current case-mix index pursuant to Section 7 of this administrative regulation;

(b) The noncase mix adjustable portion of the NF's standard price which shall include an allowance to offset a provider assessment;

(c) The noncapital facility-related component; and

(d) Pursuant to subsection (2) of this section, the capital rate component.

(2) An NF's capital rate component shall be calculated as follows:

(a) The department shall add the total of:

1. The NF's average licensed bed value which shall:

a. Be determined by dividing the NF's depreciated replacement cost, as determined from an appraisal conducted in accordance with Section 4 of this administrative regulation, by the NF's total licensed NF beds; and

b. Not exceed \$56,003 effective July 1, 2016, which shall be adjusted every July 1 thereafter by the same value as the NF's depreciated replacement cost[40,000];

2. A value for land which shall be ten (10) percent of the NF's average licensed NF bed value, established in accordance with subparagraph 1 of this paragraph; and

3. A value for equipment which shall be \$2,000 per licensed NF bed;

(b) The department shall multiply the sum of paragraph (a) of this subsection by a rate of return factor which shall:

1. Be equal to the sum of:

- a. The yield on a twenty (20) year treasury bond as of the first business day on or after May 31 of the most recent year; and
- b. A risk factor of two (2) percent; and

2. Not be less than nine (9) percent nor exceed twelve (12) percent;

(c) The department shall determine the NF's capital cost-per-bed day by:

1. Dividing the NF's total patient days by the NF's available bed days to determine the NF's occupancy percentage;

2. If the NF's occupancy percentage is less than ninety (90) percent, multiplying ninety (90) percent by 365 days; and

3. If the NF's occupancy percentage exceeds ninety (90) percent, multiplying the NF's occupancy percentage by 365 days; and

(d) The department shall divide the sum of paragraphs (a) and (b) of this subsection by the NF's capital cost per bed day established in paragraph (c) of this subsection to determine an NF's capital rate component.

(3) If a change of ownership occurs pursuant to 42 C.F.R. 447.253(d), the new owner shall:

(a) Receive the capital cost rate of the previous owner unless the NF is eligible for a reappraisal pursuant to Section 4(7) of this administrative regulation; and

(b) File an updated provider application with the Medicaid Program pursuant to Section 3(4) of 907 KAR 1:672.

(4) A new facility shall be:

(a) Classified as a new facility if the facility does not have a July 1, of the current state fiscal year, Medicaid rate;

(b) Determined to be urban or rural; and

(c) Reimbursed at its standard price which shall:

1. Be based on a case mix of 1.0;

2. Be adjusted prospectively based upon no less than one (1) complete calendar quarter of available MDS 3.0[2.0] data following the facility's Medicaid certification;

3. Utilize \$56,003 effective July 1, 2016, as adjusted through the current state fiscal year[40,000] as the facility's average licensed NF bed value until the facility is appraised in accordance with Section 4 of this administrative regulation; and

4. Be adjusted, if necessary, following the facility's appraisal if the appraisal determines the facility's average licensed NF bed value to be less than \$56,003 effective July 1, 2016, as adjusted through the current state fiscal year[40,000].

5. Subparagraphs 3. and 4. of this paragraph shall be adjusted annually consistent with the adjustments made to the depreciated replacement cost, as described in subsection (2)(a)1.b. of this section for the capital component calculation.

Section 7. Minimum Data Set (MDS) 3.0[2.0], Resource Utilization Group (RUG) III, and Validation. (1) A price-based NF's Medicaid MDS data shall be utilized to determine its case mix index each quarter.

(2) A price-based NF's case mix index shall be applied to its case mix adjustable portion of its standard price.

(3) To determine a price-based NF's case mix index, the department shall:

(a) Calculate case mix on a time-weighted basis using MDS data:

1. Extracted on the last date of each calendar quarter from the NF's MDS item sets:

a. Incorporated by reference into 907 KAR 1:755; and

b. Transmitted by the NF to the Centers for Medicare and Medicaid Services; and

2. Which, if revised, shall be revised, no later than the last date of the quarter following the date on which MDS data was extracted. For example, MDS data submitted after September 30, 2016, for the purpose of revision to MDS data extracted June 30, 2016, shall not be utilized[Extract the required MDS data from the NF's MDS form:]

1. Incorporated by reference in 907 KAR 1:755;

2. Transmitted by the NF to the Cabinet for Health and Family Services, Office of Inspector General, Division of Health Care Facilities and Services; and

3. On the last date of each calendar quarter and revised no later than the data revision cut-off date established in subsection (7)(b) of this section;

(b) Classify the data cited in paragraph (a) of this subsection through the RUG III, (M3 p1), version five point twenty (5.20)[twelve B (5.12B)] thirty-four (34) group or equivalent model resident classification system; and

(c) Validate the data cited in paragraph (a) of this subsection as follows:

1. The department shall generate a stratified random sample of twenty-five (25) percent of the Medicaid residents in a price-based NF[price-based NF's Medicaid MDS assessments];

2. The department shall review one (1) MDS assessment from each resident in the sample referenced in subparagraph 1. of this paragraph;

3. The department shall review medical records corresponding to the individuals included in the sample identified in subparagraphs [subparagraph] 1 and 2 of this paragraph to determine if the medical records accurately support the MDS assessments submitted for the sample residents; and

4.[3.] If a review of records cited in subparagraph 3.[2] of this paragraph reveals that the price-based NF fails to meet the minimum accuracy threshold, the department shall determine if the NF fails to meet the minimum accuracy threshold by reviewing 100 percent of the price-based NF's Medicaid MDS assessments:

a. Extracted in accordance with paragraph (a) of this subsection; and

b. Selecting one (1) MDS assessment per resident[review 100 percent of the price-based NF's Medicaid MDS assessments extracted in accordance with paragraph (a)3 of this subsection to determine whether the NF fails to meet the minimum accuracy threshold].

(4) If the department's review, in accordance with subsection (3)(c)3. and 4.[2 and 3] of this section, of a price-based NF's MDS assessment data reveals that the NF fails to meet the MDS data minimum accuracy threshold, the department shall conduct another review of the same data utilizing an individual or individuals not involved in the initial validation process if the price-based NF requests a reconsideration[rereview] within ten (10) business days of being notified of the findings of the review cited in subsection (3)(c)4.[3] of this section.

(5) Only MDS data extracted in accordance with subsection (3)(a)2.[3] of this section shall be allowed during a review or reconsideration[rereview].

(6) If a reconsideration[rereview] of a price-based NF's MDS assessment data, in accordance with subsection (4) of this section, confirms that the NF fails to meet the minimum accuracy threshold, the department shall:

(a) Conduct a conference with the NF to review preliminary findings of the reconsideration[rereview]; and

(b) Send the final results of the reconsideration[rereview] to the NF within ten (10) business days of the conference.

(7) In performing validation reviews on MDS data, the department shall:

(a) Consider all MDS supporting documentation provided by an NF prior to the exit conference; and

(b) Not consider MDS supporting documentation provided by the NF after the exit conference has occurred.

(8)(a) Reconsideration of a price-based NF's MDS assessment data validation shall be provided if the NF:

1. Requests a reconsideration and clearly identifies each specific resident's review and MDS elements that are being disputed;

2. States the basis on which the department's decision on each issue is believed to be erroneous; and

3. Provides a summary supporting the NF's position.

(b) After a reconsideration of a price-based NF's MDS assessment data has been completed, the NF may appeal the department decision regarding the data in accordance with 907 KAR 1:671, Section 9.

(9)(a) The department shall refer any suspected intentional alteration of clinical documentation or creation of documentation after an MDS assessment has been transmitted to the Office of

Inspector General (OIG) for investigation of possible fraud.

(b) A fraud investigation may result in a felony or misdemeanor criminal conviction.

(10) An NF's rate shall be effective beginning on the first date of the second quarter following the MDS extraction date.

(11) An MDS validation review, if conducted, shall be initiated in the month containing the corresponding rate effective date.

(12) A rate sanction shall be applied on the rate effective date following the validation review initiation date.

(13) The following establishes the MDS assessment accuracy thresholds and corresponding rate sanctions:

(a) If a price-based NF's percentage of accurate MDS assessments is between sixty-five (65) and seventy-nine (79) percent, the price-based NF's rate shall be sanctioned by fifty (50) cents per patient day;

(b) If a price-based NF's percentage of accurate MDS assessments is between forty (40) and sixty-four (64) percent, the price-based NF's rate shall be sanctioned by sixty (60) cents per patient day; and

(c) If a price-based NF's percentage of accurate MDS assessments is below forty (40) percent, the price-based NF's rate shall be sanctioned by seventy (70) cents per patient day.[Following is a chart establishing:

(a) That an MDS extraction date shall be the last date of each quarter;

(b) That a final MDS assessment data revision cut-off date shall be the last date of the quarter following the date on which MDS data was extracted. For example, MDS data or revisions to MDS data extracted December 31, 2000 shall not be accepted after March 31, 2001;

(c) That a rate effective date shall be the first date of the second quarter following the MDS extraction date;

(d) That MDS audits shall be initiated in the same month containing the corresponding rate effective date;

(e) MDS assessment accuracy thresholds and corresponding rate sanctions. For example if a price-based NF's percentage of accurate MDS assessments is below fifty (50) percent for MDS data extracted March 31, 2002, then effective October 1, 2002, the price-based NF's rate shall be sanctioned by fifteen (15) cents per patient day; and

(f) Rate sanction effective dates:

MDS Data Extraction Date	MDS Data Revision Cut-Off Date	Rate Effective Date	Audit s Initiated	Required MDS Accuracy Threshold	Rate Sanction	Sanction Effective Date
6/30/01	9/30/01	10/1/01	10/20/01	40%	\$0.10 per patient day (ppd)	1/1/02
9/30/01	12/31/01	1/1/02	1/2002	40%	\$0.10 ppd	4/1/02
12/31/01	3/31/02	4/1/02	4/2002	50%	\$0.15 ppd	7/1/02
3/31/02	6/30/02	7/1/02	7/2002	50%	\$0.15 ppd	10/1/02
6/30/02	9/30/02	10/1/02	10/20/02	65%	\$0.20 ppd	1/1/03
9/30/02	12/31/02	1/1/03	1/2003	65%	\$0.20 ppd	4/1/03
12/31/02 and forward	3/31/03 and forward	4/1/03 and forward	4/2003 and forward	65-79% 40-64% Below 40%	\$0.50 ppd \$0.60 ppd \$0.70 ppd	7/1/03 and forward]

Section 8. Limitation on Charges to Residents. (1) Except for applicable deductible and coinsurance amounts, an NF that

receives reimbursement for a resident pursuant to Section 6 of this administrative regulation shall not charge a resident or his representative for the cost of routine or ancillary services.

(2) An NF may charge a resident or his representative for an item pursuant to 42 C.F.R. 483.10 (c)(8)(ii) if:

(a) The item is requested by the resident;
(b) The NF informs the resident in writing that there will be a charge; and

(c) Medicare, Medicaid, or another third party does not pay for the item.

(3) An NF shall:

(a) Not require a resident, or responsible representative of the resident, to request any item or services as a condition of admission or continued stay; and

(b) Inform a resident, or responsible representative of the resident, requesting an item or service for which a charge will be made in writing that there will be a charge and the amount of the charge.

(4) Reserved bed days, per resident, for an NF or an NF-W shall be:

(a) Reimbursed~~Covered~~ for a maximum of fourteen (14) days per calendar year due to hospitalization. Accumulated bed reserve days shall follow a resident if the resident relocates to another facility within a calendar year rather than starting over at zero due to relocation;

(b) Reimbursed~~Covered~~ for a maximum of ten (10) days during a calendar year for leaves of absence other than hospitalization. Accumulated bed reserve days shall follow a resident if the resident relocates to another facility within a calendar year rather than starting over at zero due to the relocation;

(c) Reimbursed at seventy-five (75) percent of a facility's rate if the facility's occupancy percent is ninety-five (95) percent or greater for the calendar quarter preceding the bed reserve day; and

(d) Reimbursed at fifty (50) percent of a facility's rate if the facility's occupancy percent is less than ninety-five (95) percent for the calendar quarter preceding the bed reserve day.

(5) Except for oxygen therapy, durable medical equipment (DME) and supplies shall:

(a) Be furnished by an NF; and

(b) Not be billed to the department under a separate DMS claim pursuant to 907 KAR 1:479, Section 6(3).

(6) Dentures, lenses, frames, and hearing aids shall be paid for through the resident's patient liability or spend down amounts and limited to one (1) replacement per item per calendar year.

Section 9. Reimbursement for Required Services Under the Preadmission Screening Resident Review (PASRR). (1) Prior to an admission of an individual, a price-based NF shall conduct a level I PASRR in accordance with 907 KAR 1:755, Section 4.

(2) The department shall reimburse an NF for services delivered to an individual if the NF complies with the requirements of 907 KAR 1:755.

(3) Failure to comply with 907 KAR 1:755 may be grounds for termination of the NF's participation in the Medicaid Program.

Section 10. Price-Based NF Protection Period and Budget Constraints. (1) A county-owned hospital-based nursing facility shall not receive a rate that is less than the rate that was in effect on June 30, 2002.

(2) For each year of the biennium, a price-based NF shall:

(a) Receive an adjustment~~increase~~ pursuant to Section 5(8) and (9) of this administrative regulation; or

(b) Except for a county-owned hospital-based nursing facility pursuant to subsection (1) of this section, not receive an increase if the price-based NF's rate is greater than its standard price.

Section 11. Cost Report. (1) A Medicare cost report and the Supplemental Medicaid Schedules shall be submitted pursuant to time frames established in the CMS~~HCFA~~ Provider Reimbursement Manual - Part 2 (Pub. 15-11) Section 102, 102.1, 102.3, and 104, incorporated by reference into this administrative

regulation; and

(2) A copy of a price-based NF's Medicare cost report shall be submitted for the most recent fiscal year end.

Section 12. Ancillary Services. (1) Except for oxygen therapy and for ancillary services provided to an individual in a critical access hospital swing bed, the department shall reimburse for an ancillary service that meets the criteria established in 907 KAR 1:023 utilizing the corresponding outpatient procedure code rate listed in the Medicaid Physician Fee Schedule established in 907 KAR 3:010, Section 3;

(2) The department shall reimburse for an oxygen therapy utilizing the Medicaid DME Program fee schedule established in 907 KAR 1:479; and

(3) Respiratory therapy and respiratory therapy supplies shall be a routine service.

(4) Reimbursement for ancillary services provided to an individual in a critical access hospital swing bed shall be included in the critical access hospital swing bed reimbursement established in Section 3(2) of this administrative regulation.

Section 13. Appeal Rights. A price-based NF may appeal a department decision as to the application of this administrative regulation in accordance with 907 KAR 1:671.

Section 14. Supplemental Payments to Nonstate Government-Owned or Operated Nursing Facilities. (1) Beginning July 1, 2001, subject to state funding made available for this provision by a transfer of funds from a governmental entity, the department shall make a supplemental payment to a qualified nursing facility.

(2) To qualify for a supplemental payment under this section, a nursing facility shall:

(a) Be owned or operated by a local unit of government pursuant to 42 C.F.R. 447.272(a)(2);

(b) Have at least 140 or more Medicaid-certified beds; and

(c) Have a Medicaid occupancy rate at or above seventy-five (75) percent.

(3) For each state fiscal year, the department shall calculate the maximum supplemental payment that it may make to qualifying nursing facilities in accordance with 42 C.F.R. 447.272.

(4) Using the data reported by a nursing facility on a Schedule NF-7 submitted to the department as of December 31, 2000, the department shall identify each nursing facility that meets the criteria established in subsection (2) of this section.

(5) The department shall determine a supplemental payment factor for a qualifying nursing facility by dividing the qualifying nursing facility's total Medicaid days by the total Medicaid days for all qualifying nursing facilities.

(6) The department shall determine a supplemental payment for a qualifying nursing facility by applying the supplemental payment factor established in subsection (5) of this section to the total amount available for funding under this section.

(7) Total payments made under this section shall not exceed the amount determined in subsection (3) of this section.

(8) Payments made under this section shall:

(a) Apply to services provided on or after April 1, 2001; and

(b) Be made on a quarterly basis.

Section 15. 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 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Medicare Provider Reimbursement Manual - Part 2 (Pub. 15-11) Chapter 1. Cost Reporting - General (15-2-102) 102 and 104. Cost Reporting Period", October 2007~~April 2000 Edition~~;

(b) The "Instructions for Completing the Medicaid Supplemental Schedules", April 2015~~November 2003 Edition~~;

and

(c) The "Supplemental Medicaid Schedules", April 2015 [November 2003 Edition]; and

(d) The "Schedule J Request for Reimbursement, November 2003 Edition".

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

STEPHEN P. MILLER, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: January 10, 2017

FILED WITH LRC: January 12, 2017 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 21, 2017 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 February 14, 2017, 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 February 28, 2017. 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 Person: Sharley Hughes (502) 564-4321, extension 2010; sharleyj.hughes@ky.gov, and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation revises reimbursement for nursing facilities participating in Kentucky Department for Medicaid Services for all non-managed care recipients.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish price-based nursing facility reimbursement provisions.

(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 price-based nursing facility reimbursement provisions.

(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 updated reimbursement rates for nursing facilities providing care to Kentucky Medicaid recipients.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes the determination of how nursing facilities are classified as urban or rural in the reimbursement methodology. The existing administrative regulation uses designations determined in 2003 and this amendment uses current designations, and establishes a method to update the designations in future years. Changes reflected in this amendment also incorporate CMS' requirement to use MDS 3.0 and additional current practices.

(b) The necessity of the amendment to this administrative regulation: This amendment updates for current requirements and methodologies.

(c) How the amendment conforms to the content of the

authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing price-based nursing facility reimbursement provisions.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing updated reimbursement rates for nursing facilities providing care to Kentucky Medicaid recipients.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All nursing facilities participating with Medicaid will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Nursing facilities will not have to take any actions to comply with this amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will receive a higher reimbursement from Medicaid.

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

(a) Initially: DMS anticipates that it will cost approximately \$9 million annually in state and federal dollars to administer the changes of the administrative regulation.

(b) On a continuing basis: DMS anticipates that it will cost approximately \$9 million annually in state and federal dollars to administer the changes of the administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act and state matching funds of general and agency 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: DMS was not allocated any funds to implement the 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 fee.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration 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? 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. KRS 194A.030(2), 194A.050(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? The Department for Medicaid Services (DMS) anticipates no revenue for state or local government will result from 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? DMS anticipates no revenue for state or local government will result from the amendment.

(c) How much will it cost to administer this program for the first year? DMS anticipates that it will cost approximately \$9 million annually in state and federal dollars to administer the changes of the administrative regulation in the first year.

(d) How much will it cost to administer this program for subsequent years? The response in (c) also applies here. DMS anticipates that it will cost approximately \$9 million in state and federal dollars to administer the changes of the administrative regulation in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

NEW ADMINISTRATIVE REGULATIONS

CABINET FOR ECONOMIC DEVELOPMENT
Kentucky Economic Development Finance Authority
(Repealer)

307 KAR 1:031. Repeal of 307 KAR 1:030, 307 KAR 1:040, 307 KAR 1:050, and 307 KAR 1:060.

RELATES TO: KRS 154.22-010-154.22-102

STATUTORY AUTHORITY: KRS 154.22-040(2)

NECESSITY, FUNCTION AND CONFORMITY: The economic development tax credits authorized by KRS 154.22-010-154.22-102, the Kentucky Rural Economic Development Act (KREDA) Tax Credit Program, are no longer offered by the Commonwealth of Kentucky. The Legislature enacted the Kentucky Business Investment (KBI) Act, KRS 154.32-010-154.32-100, in place of this program. As new applications for tax incentives under the KREDA program are no longer being accepted or considered, this administrative regulation repeals 307 KAR 1:030, as that administrative regulation is no longer necessary. 307 KAR 1:040 established the application process for economic development incentives under the Energy Independence Act (IEIA). 307 KAR 1:050 established the application process for Tax Increment Financing. 307 KAR 1:060 established the application process and related procedures for the Kentucky Small Business Investment Credit Program. These applications are now set forth in 307 KAR 1:005. Therefore, this administrative regulation repeals 307 KAR 1:040, 307 KAR 1:050, and 307 KAR 1:060, because they are redundant and are no longer necessary.

Section 1. The following administrative regulations are hereby repealed:

- (1) 307 KAR 1:030, Kentucky Rural Economic Development Act Tax Credit Program;
- (2) 307 KAR 1:040, Application process for incentives for energy independence;
- (3) 307 KAR 1:050, Application process for Tax Increment Financing; and
- (4) 307 KAR 1:060, Kentucky Small Business Investment Credit Program.

JEAN HALE, Chairman

TERRY R. GILL, JR., Secretary

APPROVED BY AGENCY: January 13, 2017

FILED WITH LRC: January 13, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing of this administrative regulation shall be held on February 22, 2017, at 10:00 a.m. at the Cabinet for Economic Development, Old Capitol Annex, 300 West Broadway, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 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 February 28, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed amended administrative regulation to the contact person.

CONTACT PERSON: Caroline Boeh Baesler, General Counsel, Cabinet for Economic Development, Old Capitol Annex, 300 West Broadway, Frankfort, Kentucky 40601, phone (502) 564-7670, fax (502) 564-1535, email caroline.baesler@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Caroline Boeh Baesler

- (1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation repeals 307 KAR 1:030, 307, KAR 1:040, 307 KAR 1:050 and 307 KAR 1:060.

(b) The necessity of this administrative regulation: The economic development tax credits authorized by KRS 154.22-010-22-102, the Kentucky Rural Economic Development Act (KREDA) Tax Credit Program, are no longer offered by the Commonwealth of Kentucky. The Legislature enacted the Kentucky Business Investment (KBI) Act, KRS 154.32-010-154.32-100, in place of this program. As tax incentives under the KREDA program are no longer available, 307 KAR 1:030 is no longer necessary. 307 KAR 1:040 established the application process for economic development incentives under the Energy Independence Act (IEIA). 307 KAR 1:050 established the application process for Tax Increment Financing. 307 KAR 1:060 established the application process and related procedures for the Kentucky Small Business Investment Credit Program. These applications are now set forth in 307 KAR 1:005. Therefore, these administrative regulations are redundant and are no longer necessary.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Since the incentives set forth in 307 KAR 1:030 are no longer offered 307 KAR 1:030 is no longer necessary. Since the applications set forth in 307 KAR 1:040, 307 KAR 1:050 and 307 KAR 1:060 are set forth in 307 KAR 1:005 these administrative regulations are redundant and are no longer necessary.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will eliminate regulations that are no longer applicable.

(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: None. Since the incentives are no longer offered, and since the applications are offered in another administrative regulation the repeal of these regulations should have no effect.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: N/A.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A.

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

(a) Initially: N/A.

(b) On a continuing basis: N/A.

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: N/A.

(9) TIERING: Is tiering applied? No, tiering was not applied

because this administrative regulation repeals administrative regulations that are no longer authorized or are redundant.

FISCAL NOTE ON STATE OF LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire department, or school districts) will be impacted by this administrative regulation? The Cabinet for Economic Development and the Kentucky Economic Development Finance Authority

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 154.22-040(2)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of 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. N/A.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? N/A.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A.

(c) How much will it cost to administer this program for the first year? N/A.

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

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

Revenues: (+/-)

Expenditures: (+/-)

Other Explanation:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of January 17, 2017

Members: Senators Julie Raque-Adams, Perry Clark, Alice Forgy Kerr, and Ernie Harris and Representatives Mary Lou Marzian, Ken Upchurch and Tommy Turner.

LRC Staff: Sarah Amburgey, Emily Caudill, Betsy Cupp, Ange Darnell, Emily Harkenrider, Karen Howard, Carrie Klaber, and Donna Little.

Guests: Kathryn Gabhart, Ethics Commission; Becky Gilpatrick, Higher Education Assistance Authority; Jimmy Adams, Donna Brockman, Lisa Lang, Cassie Trueblood, Education Professional Standards Board; Margaret McCoy, Secretary of State; Maryellen Allen, State Board of Elections; Lesley Bilby, Brian Crall, Rosemary Holbrook, Personnel Cabinet; Gary Morris, Department of Revenue; Nathan Goldman, Board of Nursing; Tyler Madison, Clint Quarles, Department of Agriculture; Sean Alteri, Aaron Keatley, Energy and Environment Cabinet; Stephen Humphress, Melissa McQueen, Department of Alcoholic Beverage Control; Melea Rivera, Chandra Venettozzi, John Watkins, Office of Health Benefit Exchange; Bob Silverthorn, Office of Inspector General; Veronica Cecil, Sharley Hughes, Department of Medicaid; Elizabeth Caywood, Department for Community Based Services; Caroline Ruschell, Children's Advocacy Centers; Mary Sparrow, Department for Income Support; Roger McCann, Community Action KY; Larry Suess.

The Administrative Regulation Review Subcommittee met on Tuesday, January 17, 2017, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

FINANCE AND ADMINISTRATION CABINET: Executive Branch Ethics Commission: Commission

9 KAR 1:010. Statement of financial disclosure. Katie Gabhart, executive director, represented the commission.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add a citation; and (2) to amend 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.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY: Division of Student and Administrative Services: Authority

11 KAR 4:080. Student aid applications. Becky Gilpatrick, director of student aid, represented the authority.

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. Jimmy Adams, executive director; Donna Brockman, director of professional learning and assessment; Lisa Lang, general counsel; and Cassie Trueblood, staff attorney, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct citations; (2) to amend Section 2 to clarify the procedure for handling a complaint or report if the educator fails to file a rebuttal and has not requested to extend the thirty (30) day deadline; and (3) to amend Sections 1, 2, 3, 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.

Assessment

16 KAR 6:010. Examination prerequisites for teacher certification.

Internship

16 KAR 7:010. Kentucky Teacher Internship Program.

In response to questions by Co-Chair Harris, Ms. Brockman stated that the teacher intern assessment process and the provisions for each of the three (3) cycles of the assessment process were established throughout this administrative regulation. The first two (2) assessment cycles were formative and primarily focused on mentoring, with the beginning teacher committee providing feedback and suggestions. The teacher intern must be rated at least as "developing" in the third assessment cycle for successful completion of the program. The teacher intern will be apprised of when the assessments will take place and what standards will be used to make the determinations. The beginning teacher committee, which consisted of the institution's principal, a teacher educator, and the mentoring teacher, was well trained and provided with guidance, including a handbook with examples of possible forms of evidence to demonstrate teacher development. Mr. Adams stated that funding constraints and statutory authority limited the program to one (1) year; however, mentors were not prohibited from continuing a professional development relationship with the teacher intern if the parties agreed. Ms. Lang stated that the handbook was no longer incorporated by reference in this administrative regulation because it was not a compliance document, but only provided examples and suggestions. A teacher intern who failed to successfully complete the program remained in the program for another year.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Section 4 to clarify that: (a) a teacher intern shall be prohibited from discontinuing an internship without submitting a written resignation detailing the facts surrounding the resignation and receiving approval from the superintendent or designated nonpublic school head and the EPSB; and (b) if the teacher intern discontinues the internship without the approval of the EPSB, the intern shall be recorded as unsuccessfully completing the internship for that school year; (4) to amend Section 8 to require that the final order of the EPSB state if the teacher internship was successful, not successful, or nullified; and (5) to amend Sections 1, 3, 4, 5, and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

SECRETARY OF STATE: Occupational License Fees

30 KAR 7:020. Standard form occupational license fee returns for dual tax districts. Margaret McKay, director of business, represented the Secretary of State.

In response to a question by Co-Chair Harris, Ms. McKay stated that a dual tax district involved one (1) office being responsible for collecting taxes for two (2) different districts. For example, there was one (1) office that collected taxes for Boyle County and for the City of Danville.

STATE BOARD OF ELECTIONS: Forms and Procedures

31 KAR 4:170. Exceptions to prohibition on electioneering. Maryellen Allen, executive director, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph 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 to clarify that the administrative regulation applies in the voting room. Without objection, and with agreement of the agency, the amendments were approved.

PERSONNEL BOARD: Board

101 KAR 1:325. Probationary periods. Brian Crall, chair, represented the board. Allen Sisk, executive director of human resources, Cabinet for Health and Family Services, appeared in support of this administrative regulation.

In response to questions by Co-Chair Harris, Mr. Sisk stated that the probationary period for a Social Service Worker I was being raised from six (6) months to nine (9) months because the initial training for a new social service worker took approximately six (6) months. Until training was complete, the worker's case load was minimal; therefore, a nine (9) month probationary period was needed to assess the employee's ability to adequately perform with a standard case load. A social service worker in the training period may have a case load of less than twelve (12) cases, while a standard Social Service Worker I case load was approximately twenty (20) to twenty-five (25) cases. A nine (9) month probationary period was sufficient to perform an assessment of the employee's capability to perform his or her duties appropriately with a full case load.

PERSONNEL CABINET: Personnel Cabinet, Classified

101 KAR 2:034 & E. Classified compensation administrative regulations. Lesley Bilby, executive director, Office of Legal Services, and Rosemary Holbrook, staff attorney, represented the cabinet.

In response to questions by Co-Chair Harris, Ms. Bilby stated that a special entrance rate was a higher-than-standard introductory rate for a position that was difficult to fill due to turnover or recruitment problems. If an agency had adequate discretionary funds, after an employee began employment at a special entrance rate, the agency often raised the rate for existing employees with that same classification in order to avoid issues of pay inequality. If the employee who filled the position at a special interest rate successfully completed the probationary period, he or she would usually be awarded a five (5) percent salary increase. That could again lead to pay inequality, and this amendment was intended to address that concern by establishing pay adjustments on the same date for the employee with the special entrance rate and for the employees receiving a commensurate adjustment.

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

Personnel Cabinet, Unclassified

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

Personnel Cabinet, General

101 KAR 5:016. Repeal of 101 KAR 5:015.

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Forms

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. Gary Morris, executive advisor, represented the department.

GENERAL GOVERNMENT CABINET: Board of Nursing: Board

201 KAR 20:215. Continuing competency requirements. Nathan Goldman, general counsel, represented the board.

201 KAR 20:220. Nursing continuing education provider approval.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 4, and 5 and the material incorporated by reference to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department of Agriculture: Marketing and Product Promotion

302 KAR 39:020. Kentucky Small Farm Wineries Support Fund. Clint Quarles, staff attorney, and Tyler Madison, program manager, represented the department.

In response to questions by Co-Chair Harris, Mr. Madison

stated that there were seventy (70) licensed vineyards in Kentucky. More information on Kentucky vineyards was located at kentuckywine.com.

In response to questions by Senator Clark, Mr. Madison stated that this administrative regulation required reporting on grape yield by variety and number of gallons of wine produced for statistical purposes. Kentucky-licensed vineyards were not required to use only Kentucky-grown grapes. Senator Clark stated that, prior to prohibition, Kentucky was one of the best wine-producing states.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 3 and 4 to clarify application procedures; and (2) to amend Sections 1, 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.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division for Air Quality: New Source Performance Standards

401 KAR 60:005. 40 C.F.R. Part 60 standards of performance for new stationary sources. Sean Alteri, executive director, and Aaron Keatley, commissioner, represented the division.

In response to questions by Co-Chair Harris, Mr. Keatley stated that these administrative regulations referenced the federal standards and were not more stringent or different than the federal counterparts. Mr. Alteri stated that the new standards were, for the most part, not more stringent than the previous requirements; however, some standards did apply to new source categories and different types of industries than previously.

A motion was made and seconded to approve the following amendments: to amend Section 2 to: (1) complete the federal title for the subject matter established in Section 2(2)(iii); (2) delete two (2) paragraphs that should not have been included; and (3) comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

General Standards of Performance

401 KAR 63:002. 40 C.F.R. Part 63 national emission standards for hazardous air pollutants.

401 KAR 63:060. List of hazardous air pollutants, petitions process, lesser quantity designations, and source category list.

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Quotas

804 KAR 9:010. Quota retail license limits for counties. Steve Humphress, general counsel, and Melissa McQueen, staff attorney, represented the department.

In response to questions by Co-Chair Harris, Mr. Humphress stated that the City of Louisville had a special quota retail license limit of one (1) to 1,500 population. That ratio was used as the starting point in determining appropriate city quota retail license limits. In addition to using the ratio as a determination starting point, this administrative regulation would require more than one (1) license per city to avoid a monopoly situation.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of the Kentucky Health Benefit and Information Exchange: Kentucky Health Benefit Exchange

900 KAR 10:200 & E. Kentucky State Based Exchange on the Federal Platform. Melea Rivera, assistant director; Chandra Venetozzi, healthcare data administrator; and John Watkins, deputy executive director, represented the exchange.

Office of Inspector General: Division of Audits and Investigations: Controlled Substances

902 KAR 55:015. Schedule I substances. Bob Silverthorn, Jr., inspector general, and Van Ingram, executive director, Kentucky Office of Drug Control Policy, represented the division.

In response to questions by Senator Clark, Mr. Ingram stated

that it was not necessary to provide the specific chemical formula for cannabinoids and cathinones to be scheduled; however, synthetic opioids were not included and did require specific scheduling. U-47700 was a U.S. patented painkiller that was never brought to market. It was now being produced in China and made available via the Internet. A Bowling Green youth died recently from use of U-47700 purchased from the Internet. U-47700 was seven and a half (7 ½) to nine (9) times more potent than morphine.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Section 7 to add citations. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 55:035. Schedule V substances.

In response to questions by Senator Clark, Mr. Ingram stated that the new drugs listed as Schedule V substances were legend drugs; therefore, they were not currently part of the KASPER system of scheduled drug tracking.

Department for Medicaid Services: Commissioner's Office: Payments and Services

907 KAR 3:031. Repeal of 907 KAR 3:030. Veronica Cecil, deputy commissioner, represented the department.

Department for Community Based Services: Division of Protection and Permanency: Violence Prevention Resources

920 KAR 2:040. Standards for children's advocacy centers. Mary Sparrow, internal policy analyst, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 4, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A and for clarity. Without objection, and with agreement of the agency, the amendments were approved.

Department for Income Support: Child Support Enforcement: Family Support

921 KAR 1:001. Definitions for 921 KAR Chapter 1. Elizabeth Caywood, executive advisor, and Caroline Ruschell, executive director, represented the department.

Department for Community Based Services: Division of Protection and Permanency: Child Welfare

922 KAR 1:140. Foster care and adoption permanency services. Elizabeth Caywood, executive advisor, represented the division. Roger McCann, executive director, Community Action Kentucky, appeared in support of this administrative regulation and 922 KAR 6:010.

Division of Family Support: Community Action Agencies

922 KAR 6:010. Standards for community action agencies.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a citation; and (2) to amend Section 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Other Business: Co-Chair Harris introduced Representative Ken Upchurch who was appointed to the Subcommittee to fill the House Co-Chair vacancy. Representative Turner made a motion, seconded by Representative Marzian, that Representative Upchurch be nominated for House Co-Chair. Representative Upchurch accepted the nomination. Representative Turner made a motion, seconded by Representative Marzian, to end House Co-Chair nominations. Representative Upchurch was unanimously endorsed as House Co-Chair by all subcommittee members present.

Co-Chair Upchurch stated that he looked forward to serving on this Subcommittee alongside Co-Chair Harris.

The following administrative regulations were deferred to the February 13, 2017, meeting of the Subcommittee:

GENERAL GOVERNMENT CABINET: Board of Licensure for Occupational Therapy: Board

201 KAR 28:090. Renewals.

201 KAR 28:200. Continuing competence.

Board of Licensed Professional Counselors: Board

201 KAR 36:045. Distance counseling.

201 KAR 36:055. Administrative subpoena.

Board of Licensure for Massage Therapy: Board

201 KAR 42:020. Fees.

201 KAR 42:040. Renewal.

BOARD OF EMERGENCY MEDICAL SERVICES: Board

202 KAR 7:810. Survivor benefits for death of emergency medical services personnel.

PUBLIC TRANSPORTATION INFRASTRUCTURE AUTHORITY: Authority

202 KAR 10:010. Unsolicited proposals.

202 KAR 10:020. Public-private partnerships.

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.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Division of Health Care: Health Services and Facilities

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

Division of Health Care: Office of Inspector General

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

The Subcommittee adjourned at 1:50 p.m. until the February meeting.

Compiler's Note: The February ARRS meeting date has been scheduled for Friday, February 10, 2017, thirty (30) minutes after adjournment of both the House and Senate, in Room 149.

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 HEALTH AND WELFARE
Meeting of December 14, 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 December 14, 2016, having been referred to the Committee on December 7, 2016, pursuant to KRS 13A.290(6):

201 KAR 2:045
201 KAR 2:050
201 KAR 2:351
921 KAR 1:410

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the December 14, 2016 meeting, which are hereby incorporated by reference.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE
Meeting of January 18, 2017

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 January 18, 2017, having been referred to the Committee on January 4, 2017, pursuant to KRS 13A.290(6):

10 KAR 6:010
201 KAR 21:025
201 KAR 21:041
908 KAR 2:040
908 KAR 3:081
921 KAR 3:030
921 KAR 3:050
922 KAR 1:360 & E

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the January 18, 2017 meeting, which are hereby incorporated by reference.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

H - 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

H - 12

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

H - 22

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

H - 25

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 42 (last year's) issues of the <i>Administrative Register of Kentucky</i> but had not yet gone into effect when the <i>2016 Kentucky Administrative Regulations Service</i> was published.					
SYMBOL KEY:			200 KAR 30:051(r)	2997	10-7-2016
* Statement of Consideration not filed by deadline			200 KAR 30:060		
** Withdrawn before being printed in Register			Repealed	2997	10-7-2016
*** Emergency expired after 180 days			200 KAR 30:070		
† Withdrawn deferred more than twelve months (KRS 13A.300(4) and 13A.315(1)(d))			Amended	2919	
(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.			Withdrawn		7-29-2016
			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		
ORDINARY ADMINISTRATIVE REGULATIONS:			Amended	2251	
9 KAR 1:040			AmComments	2591	
Amended	2911	See 43 Ky.R.	As Amended	2888	6-15-2016
11 KAR 4:080			201 KAR 23:075		
Amended	2611	7-1-2016	Amended	2812	See 43 Ky.R.
11 KAR 5:145			201 KAR 29:015		
Amended	2612	7-1-2016	Amended	2628	See 43 Ky.R.
103 KAR 3:050			201 KAR 32:030		
Amended	2614		Amended	2817	See 43 Ky.R.
As Amended	2881	7-1-2016	201 KAR 44:020		
200 KAR 30:010			Repealed	2685	7-1-2016
Amended	2913	See 43 Ky.R.	201 KAR 44:021(r)	2685	7-1-2016
200 KAR 30:020			201 KAR 44:030		
Amended	2914	See 43 Ky.R.	Repealed	2685	7-1-2016
200 KAR 30:030			201 KAR 45:110		
Amended	2916	See 43 Ky.R.	Amended	855	See 43 Ky.R.
200 KAR 30:040			201 KAR 46:020		
Amended	2918	See 43 Ky.R.	Amended	2932	See 43 Ky.R.
200 KAR 30:050			201 KAR 46:070		
Repealed	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
Amended	2933	See 43 Ky.R.	780 KAR 4:030		
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

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	42 Ky.R. Page No.	Effective Date	Regulation Number	42 Ky.R. Page No.	Effective Date
815 KAR 20:195					
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:			922 KAR 2:020E		See 42 Ky.R.
* Statement of Consideration not filed by deadline			Replaced	221	8-17-2016
** Withdrawn before being printed in Register			922 KAR 2:160E		See 42 Ky.R.
*** Emergency expired after 180 days			Replaced	225	8-17-2016
‡ Withdrawn deferred more than twelve months (KRS			922 KAR 2:260E		See 42 Ky.R.
13A.300(4) and 13A.315(1)(d))			Replaced	65	8-17-2016
(r) Repealer regulation: KRS 13A.310 - on the effective date of an			-----		
administrative regulation that repeals another, the regulations			ORDINARY ADMINISTRATIVE REGULATIONS:		
compiler shall delete the repealed administrative regulation and			2 KAR 2:010		
the repealing administrative regulation.			Amended	69	10-7-2016
-----			2 KAR 2:020		
EMERGENCY ADMINISTRATIVE REGULATIONS:			Amended	70	
(Note: Emergency regulations expire 180 days from the date filed;			AsAmended	390	10-7-2016
or 180 days from the date filed plus number of days of requested			2 KAR 2:040		
extension, or upon replacement or repeal, whichever occurs first.)			Amended	72	
9 KAR 1:040E		See 42 Ky.R.	AsAmended	390	10-7-2016
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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 to show the technical corrections in the *Administrative Register of Kentucky*. NOTE: Finalized copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at <http://www.lrc.ky.gov/KAR/frmtpage.htm>.

‡ - Pursuant to KRS 13A.320(1)(e), this symbol indicates a technical change was made to this administrative regulation during the promulgation process.

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