ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

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WEDNESDAY, MARCH 1, 2017

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, February 15, 2017.

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MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet March 6, 2017, at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages **1499-1501** of this Administrative Register.

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

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

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Education Professional Standards Board

Certification Procedures

16 KAR 4:040. Certification fees. (Not Amended After Comments)
16 KAR 4:080. Out-of-state recency. (Deferred from February)
16 KAR 4:090. Reissuance. (Deferred from February)

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Ad Valorem Tax; Administration

103 KAR 5:121. Repeal of 103 KAR 5:120. (Deferred from February)

Income Tax; General Administration

103 KAR 15:021. Repeal of 103 KAR 15:020, 103 KAR 15:080, and 103 KAR 15:100. (Deferred from February)

Income Tax; Corporations

103 KAR 16:031. Repeal of 103 KAR 16:030. (Deferred from February)
103 KAR 16:221. Repeal of 103 KAR 16:220 and 103 KAR 16:300. (Deferred from February)

Income Tax; Miscellaneous

103 KAR 19:031. Repeal of 103 KAR 19:030. (Deferred from February)

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Board

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Board of Social Work

Board

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Board of Licensure for Occupational Therapy

Board

201 KAR 28:090. Renewals. (Deferred from February)
201 KAR 28:200. Continuing competence. (Deferred from February)
201 KAR 28:230. Telehealth occupational therapy services. (Comments Received; SOC ext. due 3/15/2017)

Board of Alcohol and Drug Counselors

Board

201 KAR 35:016. Repeal of 201 KAR 35:015. (Deferred from February)
201 KAR 35:020. Fees. (Not Amended After Comments)
201 KAR 35:025. Examinations. (Not Amended After Comments)
201 KAR 35:030. Code of Ethics. (Amended After Comments)
201 KAR 35:050. Curriculum of study. (Amended After Comments)
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Board of Licensure for Massage Therapy

Board

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Board of Prosthetics, Orthotics and Pedorthics

Board

201 KAR 44:040. Professional conduct and code of ethics.

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Game

301 KAR 2:172. Deer hunting seasons, zones, and requirements.

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307 KAR 1:031. Repeal of 307 KAR 1:030, 307 KAR 1:040, 307 KAR 1:050, and 307 KAR 1:060.

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Division of Waste Management

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

Coal Combustion Residuals (CCR)

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

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Office of Employment and Training

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Department of Insurance
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Administration
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Agents, Consultants, Solicitors, and Adjusters
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Division of Epidemiology and Health Planning

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Division of Public Health Protection and Safety

Sanitation
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Office of Inspector General
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Health Services and Facilities
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902 KAR 20:280. Prescribed pediatric extended care centers.

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Programs for the Underserved
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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) (Amended After Comments)
907 KAR 1:047 & E. Community mental health center primary care services. ("E" expires 6/2/2017) (Amended After Comments)

Division of Policy and Operations

Medicaid Services
907 KAR 1:065. Payments for price-based nursing facility services.

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. (Not Amended After Comments)
907 KAR 4:030. Kentucky Children's Health Insurance Program Phase III Title XXI of the Social Security Act. (Not Amended After Comments)

Division of Community Alternatives

Behavioral Health
907 KAR 15:005 & E. Definitions for 907 KAR Chapter 15. ("E" expires 6/2/2017) (Amended After Comments)
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) (Amended After Comments)
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) (Amended After Comments)

Commissioner's Office

Managed Care

907 KAR 17:015 & E. Managed care organization requirements and policies relating to providers. ("E" Expires 5/30/2017)(Deferred from February)

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Board of Physical Therapy

Board

201 KAR 22:053. Code of ethical standards and standards of practice for physical therapists and physical therapist assistants. (Deferred from February)

~~**Board of Licensure for Occupational Therapy**~~

~~**Board**~~

~~201 KAR 28:230. Telehealth occupational therapy services.~~ (Died, SOC not filed by deadline.)

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections

Office of the Secretary

501 KAR 6:020. Corrections policies and procedures. (Comments Received, SOC due 3/15)

PUBLIC PROTECTION CABINET
Department of Insurance
Agent Licensing Division

Group and Blanket Health Insurance

806 KAR 18:020. Preferred and exclusive provider arrangements. (Comments Received; SOC ext. due 3/15/2017)

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

Health Services and Facilities

902 KAR 20:081. Operations and services; home health agencies. (Comments Received; SOC ext. due 3/15/2017)

Department for Medicaid Services
Commissioner's Office

Managed Care

907 KAR 17:035 & E. External independent third-party review. ("E" Expires 5/30/2017) (Comments Received; SOC ext. due 3/15/2017)

907 KAR 17:040 & E. Appeal and administrative hearing post external independent third-party review. ("E" Expires 5/30/2017) (Comments Received; SOC ext. due 3/15/2017)

Department for Community Based Services
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Block Grants

922 KAR 3:011. Repeal of 922 KAR 3:010 and 922 KAR 3:020. (Comments Received; SOC ext. due 3/15/2017)

Adult Services

922 KAR 5:120. Caregiver misconduct registry and appeals. (Comments Received; SOC ext. due 3/15/2017)

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.

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, February 10, 2017)

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)1. 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) ***That*** **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.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education Professional Standards Board
(As Amended at ARRS, February 10, 2017)

16 KAR 1:010. Standards for certified teachers[~~school personnel~~].

RELATES TO: KRS 161.020, 161.028[~~(1)(a)~~], 161.030, 161.048(1)(d), 161.095, 161.120

STATUTORY AUTHORITY: KRS 161.020, 161.028(1)(a), 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028[~~(1)(a)~~] requires the Education Professional Standards Board to establish standards for obtaining and maintaining certification[~~a teaching certificate~~]. This administrative regulation establishes the standards required for certified teachers[~~school personnel~~] to obtain or maintain certification.

Section 1.[~~Kentucky~~] Teacher Standards for Educator Preparation and Certification prior to July 1, 2018. The standards established in this section shall be used in the evaluation and assessment of a teacher for initial or advanced certification and for the accreditation of educator[~~teacher~~] preparation ***providers[~~programs~~]*** until June 30, 2018. (1) Standard 1. ***Content Knowledge. The teacher shall demonstrate[~~The teacher demonstrates applied content knowledge. The teacher demonstrates~~]*** a current and sufficient academic knowledge of certified content areas to develop student knowledge and performance in those areas.

(2) Standard 2. ***Planning for Instruction. The teacher shall design and plan[~~The teacher designs and plans instruction. The teacher designs and plans~~]*** instruction that develops student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge.

(3) Standard 3. ***Learning Climate. The teacher shall create and maintain[~~The teacher creates and maintains learning climate. The teacher creates~~]*** a learning climate that supports the development of student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge.

(4) Standard 4. ***Instruction. The teacher shall introduce, implement, and manage[~~The teacher implements and manages instruction. The teacher introduces, implements, and manages~~]*** instruction that develops student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge.

(5) Standard 5. ***Learning Assessment and Results. The teacher shall assess learning and shall communicate[~~The teacher assesses and communicates learning results. The teacher assesses learning and communicates~~]*** results to students and others with respect to student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge.

(6) Standard 6. ***Technology. The teacher shall demonstrate the implementation of[~~The teacher demonstrates the implementation of technology. The teacher uses~~]*** technology to support instruction; access and manipulate data; enhance professional growth and productivity; communicate and collaborate with colleagues, parents, and the community; and conduct research.

(7) Standard 7. ***Evaluation. The teacher shall reflect on and evaluate[~~The teacher reflects on and evaluates teaching and learning. The teacher reflects on and evaluates~~]*** specific teaching or learning situations or programs.

(8) Standard 8. ***Collaboration. The teacher shall collaborate[~~The teacher collaborates with colleagues, parents, and others. The teacher collaborates~~]*** with colleagues, parents, and other agencies to design, implement, and support learning programs that develop student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge.

(9) Standard 9. ***Professional development. The teacher shall evaluate[~~The teacher evaluates teaching and implements professional development. The teacher evaluates~~]*** his or her overall performance with respect to modeling and teaching Kentucky's learning goals, ***shall refine[~~refines~~]*** the skills and processes necessary, and ***shall implement[~~implements~~]*** a professional development plan.

(10) Standard 10. ***Leadership. The teacher shall provide[~~The teacher provides leadership within the school, community, and profession. The teacher provides~~]*** professional leadership within the school, community, and education profession to improve student learning and well-being.

Section 2. Teacher Standards for Educator Preparation and Certification after June 30, 2018. The standards established in this section shall be used in the evaluation and assessment of a teacher for initial or advanced certification and for the accreditation of educator preparation ***providers beginning[~~programs after~~]*** June 30, 2018.

(1) Standard 1. Learner development. The teacher ***shall understand[~~understands~~]*** how learners grow and develop, recognizing that patterns of learning and development vary individually within and across the cognitive, linguistic, social, emotional, and physical areas, and ***shall design and shall implement[~~designs and implements~~]*** developmentally appropriate and challenging learning experiences.

(2) Standard 2. Learning differences. The teacher ***shall use[~~uses~~]*** the understanding of individual differences and diverse cultures and communities to ensure inclusive learning environments that enable each learner to meet high standards.

(3) Standard 3. Learning environments. The teacher ***shall work[~~works~~]*** with others to create environments that***:***

(a) Support individual and collaborative learning***; and***

(b)[~~, and that~~] Encourage positive social interaction, active engagement in learning, and self-motivation.

(4) Standard 4. Content knowledge. The teacher ***shall:***

(a) Understand[~~understands~~] the central concepts, tools of inquiry, and structures of the discipline he or she teaches***; and***

(b) Create[~~, and creates~~] learning experiences that make these aspects of the discipline accessible and meaningful for learners to assure mastery of the content.

(5) Standard 5. Application of content. The teacher ***shall understand[~~understands~~]*** how to connect concepts and use differing perspectives to engage learners in critical thinking, creativity, and collaborative problem solving related to authentic local and global issues.

(6) Standard 6. Assessment. The teacher ***shall understand and use[~~understands and uses~~]*** multiple methods of assessment to engage learners in their own growth, to monitor learner progress, and to guide the educator's and learner's decision making.

(7) Standard 7. Planning for instruction. The teacher ***shall plan[~~plans~~]*** instruction that supports every student in meeting rigorous learning goals by drawing upon knowledge of content areas, curriculum, cross-disciplinary skills, and pedagogy, as well as knowledge of learners and the community context.

(8) Standard 8. Instructional strategies. The teacher ***shall understand and use[~~understands and uses~~]*** and uses a variety of instructional strategies to encourage learners to develop deep understanding of content areas and their connections***[;]*** and to build skills to apply knowledge in meaningful ways.

(9) Standard 9. Professional learning and ethical practice. The teacher ***shall engage[~~engages~~]*** in ongoing professional learning***, shall use[~~and uses~~]*** evidence to continually evaluate his or her practice, particularly the effects of his or her choices and actions on others***, such as[~~(~~]***learners, families, other professionals, and the community***, and shall adapt[~~), and adapts~~]*** practice to meet the needs of each learner.

(10) Standard 10. Leadership and collaboration. The teacher ***shall seek[~~seeks~~]*** appropriate leadership roles and opportunities to***:***

(a) Take responsibility for student learning***;***

(b)[~~, to~~] Collaborate with learners, families, colleagues, other school professionals, and community members to ensure learner growth***; and***

(c)[~~, and to~~] Advance the profession.

DAVID WHALEY, Board Chair

APPROVED BY AGENCY: December 12, 2016

FILED WITH LRC: December 13, 2016 at 3 p.m.

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DEPARTMENT OF MILITARY AFFAIRS
Division of Emergency Management
(As Amended at ARRS, February 10, 2017)

106 KAR 1:081. Kentucky Emergency Response Commission Tier 2 reporting and fee schedule requirements*; extremely hazardous substance (EHS)[~~ – EHS~~]* facility planning participation[~~fee system~~] requirements.

RELATES TO: KRS 39E.020, 39E.030, ***29 C.F.R. 1910.1200, 40 C.F.R. Part 355, Appendix A, Appendix B, Part 370,*** 39E.040, 39E.050, 39E.110, 39E.120, 39E.130, 39E.140, 39E.150, 39E.160, 39E.170, 39E.190, 39E.220, 39E.230[~~39.800-39.990~~], 42 U.S.C. 11001-11050

STATUTORY AUTHORITY: KRS 39E.010, 39E.040, 39E.050, 39E.120, 39E.130, 39E.210[~~39.817, 39.845, 39.850, 39.890~~], 42 U.S.C. 11002(c), 11003(c), (d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39E.040(3) requires the Kentucky Emergency Response Commission to develop reporting requirements and procedures for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances. KRS 39E.040(6) requires the commission to recommend administrative regulations to the director for issuance by the Division of Emergency Management to implement KRS Chapter 39E. This administrative regulation establishes the Tier 2 reporting and facility planning participation requirements for facilities subject to 42 U.S.C. 11001 through 42 U.S.C. 11050[~~This administrative regulation sets forth the requirements to be followed by facilities subject to paying a fee~~].

Section 1. Definitions. (1) "Category" means the five (5) types of facilities ***and applicable category numbers***, defined in paragraphs (a) through (e) of this subsection, describing individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances***[~~and the category number applicable to each~~]***.

(a) "Category one facility" means any facility owned or operated by local, state, or federal government ***that is[~~, which shall~~]***:

1.***[~~Be~~]***[~~is~~] Exempted from paying any fee in accordance with KRS 39E.050; and

2. Not***[~~be~~]*** exempt[~~39.817. This exemption applies solely to fees and does not exempt any Category One Facility~~] from reporting requirements pursuant to KRS 39E.020, 39E.030, 39E.040, 39E.050, 39E.110, 39E.120, 39E.190, 39E.220, and 39E.230[~~39.800 to 39.905~~].

(b)[~~(2)~~] "Category two facility" means any facility that has not less than 10,000 pounds and not more than 499,999 pounds of each of ten (10) or fewer hazardous substances, with[~~.~~] the combined total of all hazardous substances[~~shall~~] not exceeding[~~exceed~~] 499,999 pounds.

(c)[~~(3)~~] "Category three facility" means any facility that has 10,000 pounds or more of each of eleven (11) or more hazardous substances, with[~~.~~] the combined total of all hazardous substances[~~shall~~] not exceeding[~~exceed~~] 499,999 pounds.

(d)[~~(4)~~] Category four facility" means any facility that has a total inventory of over 499,999 pounds of hazardous substances.

(e)[~~(5)~~] "Category five facility" means any facility that has an extremely hazardous substance as defined by subsection (5) of this section[~~set out in Section 6 of this administrative regulation~~] in excess of the threshold planning quantity (TPQ).

(2) "EHS facility emergency response plan" means an emergency response plan for a facility subject to SARA Title III (Superfund Amendments and Reauthorization Act of 1986)***, 42 U.S.C. 11001 et seq.,*** that:

(a) Has in its inventory an extremely hazardous substance (EHS) above threshold planning quantity (TPQ); and

(b) Meets all required planning elements of SARA Title III***, 42 U.S.C. 11003,[~~(P.L. 99-499) Section 303~~]***; KRS 39E.110, KRS 39E.130, 39E.140, 39E.150, 39E.160, 39E.170, and 39E.220***,[~~;~~]*** and the Kentucky Emergency Response Commission's planning requirements found in the Emergency Response Planning Guide for EHS Facilities***: Self-Study Manual, KERC Document: 730-PGSS[~~(KERC Document #730-PGSS)~~]***.

(3) "***[~~Emergency Planning and Community Right-to-Know Act (~~]***EPCRA***[~~)~~]*** How to Comply Packet" or "KERC Document***: [~~#~~]***700-CP" means the packet published by Kentucky Emergency Management that describes the steps required to be compliant with all EPCRA, KRS, and KAR requirements for the current calendar year.

(4) "Emergency Response Planning Guide for EHS Facilities***: Self-Study Manual***" or "KERC Document***: [~~#~~]***730-PGSS" means the packet published by Kentucky Emergency Management, which provides instructions for the completion of each section of an EHS facility emergency response plan required to be compliant with all EPCRA, ***42 U.S.C. 11001 through 11050,*** KRS ***Chapter 39E***, and ***Title 106*** KAR requirements for the current calendar year.

(5) "Extremely hazardous substance" or "EHS" means any chemical listed on the List of Extremely Hazardous Substance and Their Threshold Planning Quantities, codified as 40 C.F.R. Part

355, Appendix A and Appendix B.

(6) "Facility annual certification letter" or "FACL" means the annual letter provided by the ***local emergency planning committee (LEPC)[~~LEPC~~]*** by any facility that has an EHS in excess of the TPQ to certify that the current EHS facility emergency response plan has been reviewed and:

(a) Is correct without changes; or

(b) Has been revised and the revisions are included with the FACL[~~(6) "DES/SARA-312" means the state annual chemical inventory reporting form due March 1 each year, covering the preceding calendar year~~].

(7) "Facility emergency coordinator" or "FEC" means the EHS facility representative, assigned by the owner or operator of the EHS facility and designated on the annual Tier2 report[~~"DES/SARA-312-C" means the confidential state annual chemical inventory reporting form due March 1 each year, covering the preceding calendar year which may be used if a facility elects to withhold location information on a specific chemical from disclosure to the public pursuant to 42 USC 11044(a)~~].

(8) "Hazardous chemical" means any chemical that is classified ***by 29 C.F.R. 1910.1200(d),*** as a physical hazard or a health hazard***;[;]*** a simple asphyxiant, combustible dust, pyrophoric gas***;[;]*** or ***a*** hazard not otherwise classified[~~substance for which a facility is required to prepare or have available a material safety data sheet under the Occupational Safety and Health Act of 1970 and federal regulations promulgated under that Act~~].

(9) "Hazardous substance" is defined by KRS 39E.020(5)[~~means any substance defined in KRS 39.805(5) and for annual inventory reporting purposes shall include hazardous chemicals~~].

(10) "KERC[~~KyERC~~]" means the Kentucky Emergency Response Commission.

(11) "Safety data sheet" or "SDS" means the safety data sheets required by the Hazard Communication Standard (HCS) as of June 1, 2015 to be ***generated[~~created~~]*** by chemical manufacturers, distributors, or importers in order to communicate the hazards of hazardous chemical products.

Section 2. Filing Requirements. (1) A facility shall file a Tier 2 report and pay all associated fees electronically as ***established [~~specified~~]*** in the***[~~Emergency Planning and Community Right-to-Know Act (~~]***EPCRA***[~~)~~]*** How to Comply Packet. A paper report or check shall not be accepted.

(2)(a) The owner or operator of a facility that is required to prepare or have available a safety data sheet for a hazardous chemical present at the facility shall submit a Tier 2 Report ***prepared in accordance with U.S. EPA's Tier2Submit 20xx Self-Study Manual, form 720A-T2SSS***.

(b) The SDS requirements shall be as ***established[~~specified~~]*** in 29 C.F.R. 1910.1200, Hazard communication.

(c) A facility subject to the annual chemical inventory reporting requirements established in KRS 39E.210 and 42 U.S.C. 11022 shall submit the completed Tier 2 Report:

1. No later than March 1 each year; and

2. To each of the following organizations:

a. The KERC;

b. The local emergency planning committee; and

c. The fire department with jurisdiction over the facility.

(3) A facility shall report hazardous chemicals that were present at the facility at any time during the previous calendar year at ***a level equal to or in exceedance of the reporting threshold[~~levels that equal or exceed reporting thresholds~~]***.

(a) The minimum reporting thresholds are established at 40 C.F.R. Part 370.

(b) The EPCRA chemical exemptions shall be those exemptions established in 40 C.F.R. Part 370.

(c) The exemptions established in 29 C.F.R. 1910.1200(b)***(5) and (6)*** shall govern the preparation and availability of a safety data sheet[~~Facility Requirements. (1) In accordance with the planning requirements of KRS 39.845 and 39.850, 42 USC 11002(c) and 11003(c)(d), no later than sixty (60) days after a facility notifies the Kentucky Emergency Response Commission that it is subject to the requirements of this section, the facility shall provide emergency response planning information to the local emergency planning committee and shall assist the local emergency planning committee develop a Tab Q-7 or commission-approved equivalent as set out in Section 6 of this administrative regulation for all extremely hazardous substances set out in Section 6 of this administrative regulation in excess of the threshold planning quantity for submission in accordance with the requirements of 106 KAR 1:091.~~

~~(2) After initial submission and approval of the Tab Q-7 or commission-approved equivalent in accordance with subsection (1) of this section, each March 1 any facility that has an extremely hazardous substance as set out in Section 6 of this administrative regulation in excess of the threshold planning quantity shall review the Tab Q-7 or commission-approved equivalent and send certification to the local emergency planning committee stating that there were no changes and therefore the plan is correct as is; or the plan has been revised and the revisions are included with the certification.~~

~~(3) A Category Five Facility which is not subject to the annual chemical inventory reporting requirement due on DES/SARA-312 and, if applicable DES/SARA-312-C shall comply with Section 2(1) and (2) of this administrative regulation and shall file the fee in accordance with Section 4 of this administrative regulation.~~

~~(4) Any facility subject to the annual chemical inventory reporting requirements contained in KRS Chapter 39.890, and 42 USC 11022 shall submit Form DES/SARA-312 and, if applicable DES/SARA-312-C as set out in Section 6 of this administrative regulation no later than March 1 each year in accordance with the filing instructions in Section 4 of this administrative regulation~~].

Section 3. Fees. (1) Except as provided in subsection (2) of this section, a facility that is not exempt shall pay the applicable fee established in this subsection.

(a) There shall not be a fee for a category one facility.

(b) The fee for a category two facility shall be forty (40) dollars.

(c) The fee for a category three facility shall be $250.

(d) The fee for a category four facility shall be $250.

(e) The fee for a category five facility shall be $250.

(2) If[~~Fees shall be payable in accordance with the schedule listed below except~~] the same owner or owners have[~~of~~] two (2) or more facilities in a single county subject to paying a fee, the owner or owners shall pay ***the fees as established in subsection (1) of this section,[~~a fee~~]*** not to exceed a total of $250 for all those facilities in that county.

(3) An owner or operator who violates this administrative regulation shall be subject to the penalties established in KRS 39E.990.

Section 4. EHS Facility Planning Participation Requirements. (1) In accordance with the planning requirements of KRS 39E.120 and KRS 39E.130, 42 U.S.C. 11002(c) and 11003(c)(d), no later than sixty (60) days after a facility notifies the Kentucky Emergency Response Commission that it is subject to the requirements of this section, the facility shall:

(a) Provide emergency response planning information to the local emergency planning committee; and

(b) Assist the local emergency planning committee in developing an EHS facility emergency response plan for all extremely hazardous substances in accordance with the Emergency Response Planning Guide for EHS Facilities***: Self-Study Manual***.

(2) After initial submission and approval of the EHS facility emergency response plan in accordance with subsection (1) of this section, each March 1 any facility that has an extremely hazardous substance in excess of the threshold planning quantity (TPQ) shall review the EHS facility emergency response plan and send a facility annual certification letter to the local emergency planning committee.***[~~(3) A facility that is exempt pursuant to 40 C.F.R. Part 370 shall comply with subsections (1) and (2) of this section and shall file the fee in accordance with Section 3 of this administrative regulation.~~]***

Section 5. Incorporation by Reference. (1) The following

material is incorporated by reference:

(a) "Emergency Response Planning Guide for EHS Facilities***: Self-Study Manual***", KERC Document***; [#]***730-PGSS,***[November]*** 2017;

(b) "***[Emergency Planning and Community Right-to-Know Act (]***EPCRA***[)]*** How to Comply Packet", KERC Document***; [#]***700-CP,***[December]*** 2017; and

(c) ***"***The EPA's Tier2Submit 20xx Self-Study Manual***", [#]***720A-T2SSS ***Course Manual,[December]*** 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601-6168, Monday through Friday, 8:00 a.m. to 4:30 p.m.[~~(1) Category One Facility fee is $0.~~

~~(2) Category Two Facility fee is $40.~~

~~(3) Category Three Facility fee is $250.~~

~~(4) Category Four Facility fee is $250.~~

~~(5) Category Five Facility fee is $250.~~

~~Section 4. Filing Requirements for Fees and Forms DES/SARA-312 and DES/SARA-312-C. A computer-generated form containing all the information in DES/SARA-312 and DES/SARA-312-C may be accepted. All fees and forms DES/SARA-312 and, if applicable DES/SARA-312-C, shall be filed simultaneously, no later than March 1 each year. Checks shall be made payable to "Kentucky State Treasurer" and shall be marked "For KyERC Fee Account". Fees and forms shall be mailed to: Chairman, Kentucky Emergency Response Commission, EOC Building-Boone National Guard Center, Frankfort, Kentucky 40601-6168.~~

~~Section 5. Penalties. Failure to comply with provisions of this administrative regulation shall result in penalties as provided in KRS 39.990(3).~~

~~Section 6. The forms referred to in Sections 1(6), (7), 2(1), (2), (3), (4) and 4 of this administrative regulation is are set out in this section. The list of extremely hazardous substances referred to in Section 2(1), (2) of this administrative regulation are set out in this section.~~

~~The List of Extremely Hazardous Substances and their Threshold Planning Quantities (Alphabetical Order)~~			
~~CAS No.~~	~~Chemical Name~~	~~Threshold~~	~~Notes Planning quantity (pounds)~~
~~75865~~	~~ACETONE CYANOHYDRIN~~	~~1000~~	
~~1752303~~	~~ACETONE THIOSEMICARBAZIDE~~	~~1000/10000~~	~~e~~
~~107028~~	~~ACROLEIN~~	~~500~~	
~~79061~~	~~ACRYLAMIDE~~	~~1000/10000~~	~~d,l~~
~~107131~~	~~ACRYLONITRILE~~	~~10000~~	~~d,l~~
~~814686~~	~~ACRYLYL CHLORIDE~~	~~100~~	~~e,h~~
~~111693~~	~~ADIPONITRILE~~	~~1000~~	~~e,l~~
~~116063~~	~~ALDICARB~~	~~100/10000~~	~~c~~
~~309002~~	~~ALDRIN~~	~~500/10000~~	~~d~~
~~107186~~	~~ALLYL ALCOHOL~~	~~1000~~	
~~107119~~	~~ALLYLAMINE~~	~~500~~	~~e~~
~~20859738~~	~~ALUMINUM PHOSPHIDE~~	~~500~~	~~b~~
~~54626~~	~~AMINOPTERIN~~	~~500/10000~~	~~e~~
~~78535~~	~~AMITON~~	~~500~~	~~e~~
~~3734972~~	~~AMITON OXALATE~~	~~100/1000~~	~~e~~
~~7664417~~	~~AMMONIA~~	~~500~~	~~1~~
~~300629~~	~~AMPHETAMINE~~	~~1000~~	~~e~~
~~62533~~	~~ANILINE~~	~~1000~~	~~d,1~~
~~88051~~	~~ANILINE,2,4,6-TRIMETHYL-~~	~~500~~	~~e~~
~~7783702~~	~~ANTIMONY PENTAFLUORIDE~~	~~500~~	~~e~~
~~1397940~~	~~ANTIMYCINA~~	~~1000/10000~~	~~c,e~~
~~86884~~	~~ANTU~~	~~500/10000~~	
~~1303282~~	~~ARSENIC PENTOXIDE~~	~~100/10000~~	~~d~~
~~1327533~~	~~ARSENOUS OXIDE~~	~~100/10000~~	~~d,h~~
~~7784341~~	~~ARSENOUS TRICHLORIDE~~	~~500~~	~~d~~
~~7784421~~	~~ARSINE~~	~~100~~	~~e~~
~~2642719~~	~~AZINPHOS-ETHYL~~	~~100/10000~~	~~e~~
~~86500~~	~~AZINPHOSMETHYL~~	~~10/10000~~	
~~98873~~	~~BENZAL CHLORIDE~~	~~500~~	~~d~~
~~98168~~	~~BENZENAMINE,3(TRIFLUOROMETHYL)-~~	~~500~~	~~e~~
~~100141~~	~~BENZENE,I(CHLOROMETHYL)-4-NITRO-~~	~~500/10000~~	~~e~~
~~98055~~	~~BENZENEARSONIC ACID~~	~~10/10000~~	~~e~~
~~3615212~~	~~BENZIMIDAZOLE,4,5-DICHOLORO-2-(TRIFLUOROMETHYL)-~~	~~500/10000~~	~~e,g~~
~~98077~~	~~BENZOTRICHLORIDE~~	~~100~~	~~d~~
~~100447~~	~~BENZYL CHLORIDE~~	~~500~~	~~d~~
~~140294~~	~~BENZYL CYANIDE~~	~~500~~	~~e,h~~
~~15271417~~	~~BICYCLO(2.2.1)HEPTANE-2-CARBONITRILE,5-CHOLORO-6((((METHYLAMINO)CARBONYL) OXY)IMMINO-,(I S-(2-ALPHA,2-BETA,4-ALPHA, 5-ALPHA,6E))-~~	~~500/10000~~	~~e~~
~~534076~~	~~BIS(CHLOROMETHYL)KETONE~~	~~10/10000~~	~~e~~
~~4044659~~	~~BITOSCANATE~~	~~500/10000~~	~~e~~
~~10294345~~	~~BORON TRICHLORIDE~~	~~500~~	~~e~~
~~7637072~~	~~BORON TRIFLUORIDE~~	~~500~~	~~e~~
~~353424~~	~~BORON TRIFLUORIDE COMPOUND WITH METHYL ETHER(1:1)~~	~~1000~~	~~e~~
~~28772567~~	~~BROMADIOLONE~~	~~100/10000~~	~~e~~
~~7726956~~	~~BROMINE~~	~~500~~	~~e,l~~
~~1306190~~	~~CADMIUM OXIDE~~	~~100/10000~~	~~e~~

~~2223930~~	~~CADMIUM STEARATE~~	~~1000/10000~~	~~c,e~~
~~7778441~~	~~CALCIUM ARSENATE~~	~~500/10000~~	~~d~~
~~8001352~~	~~CAMPHECHLOR~~	~~500/10000~~	~~d~~
~~56257~~	~~CANTHARIDIN~~	~~100/10000~~	~~e~~
~~51832~~	~~CARBACHOL CHLORIDE~~	~~500/10000~~	~~e~~
~~26419738~~	~~CARBAMIC ACID, METHYL-,O-(((2,4-DIMETHYL-1, 3-DITHIOLAN-2-yl)METHYLENE)AMINO)-~~	~~100/10000~~	~~e~~
~~1563662~~	~~CARBOFURAN~~	~~10/10000~~	
~~75150~~	~~CARBON DISULFIDE~~	~~10000~~	
~~786196~~	~~CARBOPHENOTHION~~	~~500~~	~~e~~
~~57749~~	~~CHLORDANE~~	~~1000~~	~~d~~
~~470906~~	~~CHLORFENVINFOS~~	~~500~~	~~e~~
~~7782505~~	~~CHLORINE~~	~~100~~	
~~24934916~~	~~CHLORMEPHOS~~	~~500~~	~~e~~
~~999815~~	~~CHLORMEQUAT CHLORIDE~~	~~100/10000~~	~~e,h~~
~~79118~~	~~CHLOROACETICACID~~	~~100/10000~~	~~e~~
~~107073~~	~~CHLOROETHANOL~~	~~500~~	~~e~~
~~627112~~	~~CHLOROETHYLCHLOROFORMATE~~	~~1000~~	~~e~~
~~67663~~	~~CHLORFORM~~	~~10000~~	~~d,l~~
~~542881~~	~~CHLOROMETHYL ETHER~~	~~100~~	~~d,h~~
~~107302~~	~~CHLOROMETHYL METHYL ETHER~~	~~100~~	~~c,d~~
~~3691358~~	~~CHLOROPHACINONE~~	~~100/10000~~	~~e~~
~~1982474~~	~~CHLOROXURON~~	~~500/10000~~	~~e~~
~~21923239~~	~~CHLORTHIOPHOS~~	~~500~~	~~e,h~~
~~10025737~~	~~CHROMIC CHLORIDE~~	~~1/10000~~	~~e~~
~~10210681~~	~~COBALT CARBONYL~~	~~10/10000~~	~~e,h~~
~~62207765~~	~~COBALT,((2,2'-(1,2-ETHANEDIYL-BIS(NITRILOMETHYLIDYNE)) EiIS(6-FLUOROPHENOLATO)) (2-)N,NI,O,OI~~	~~100/10000~~	~~e~~
~~64868~~	~~COLCHICINE~~	~~10/10000~~	~~e,h~~
~~56724~~	~~COUMAPHOS~~	~~100/10000~~	
~~5836293~~	~~COUMATETRALYL~~	~~500/10000~~	~~e~~
~~95487~~	~~CRESOL,O~~	~~1000/10000~~	~~d~~
~~535897~~	~~CRIMIDINE~~	~~100/10000~~	~~e~~
~~4170303~~	~~CROTONALDEHYDE~~	~~1000~~	
~~123739~~	~~CROTONALDEHYDE(E)-~~	~~1000~~	
~~506683~~	~~CYANOGEN BROMIDE~~	~~500/10000~~	
~~506785~~	~~CYANOGEN IODIDE~~	~~1000/10000~~	~~e~~
~~2636262~~	~~CYANOPHOS~~	~~1000~~	~~e~~
~~675149~~	~~CYANURIC FLUORIDE~~	~~100~~	~~e~~
~~66819~~	~~CYCLOHEXIMIDE~~	~~100/10000~~	~~e~~
~~108918~~	~~CYCLOHEXYLAMINE~~	~~10000~~	~~e,l~~
~~17702419~~	~~DECABORANE(14)~~	~~500/10000~~	~~e~~
~~8065483~~	~~DEMETON~~	~~500~~	~~e~~
~~919868~~	~~DEMETON-S-METHYL~~	~~500~~	~~e~~
~~10311849~~	~~DIALIFOR~~	~~100/10000~~	~~e~~
~~19287457~~	~~DIBORANE~~	~~100~~	~~e~~
~~111444~~	~~DICHLOROETHYL ETHER~~	~~10000~~	~~d~~
~~149746~~	~~DICHLOROMETHYLPHENYLSILANE~~	~~1000~~	~~e~~
~~62737~~	~~DICHLORVOS~~	~~1000~~	
~~141662~~	~~DICROTOPHOS~~	~~100~~	~~e~~
~~1464535~~	~~DIEPOXYBUTANE~~	~~500~~	~~d~~
~~814493~~	~~DIETHYL CHLOROPHOSPHATE~~	~~500~~	~~e,h~~
~~164254~~	~~DIETHYLCARBAMAZINE CITRATE~~	~~100/10000~~	~~e~~
~~71636~~	~~DIGITOXIN~~	~~100/10000~~	~~c,e~~
~~2238075~~	~~DIGLYCIDYL ETHER~~	~~1000~~	~~e~~
~~20830775~~	~~DIGOXIN~~	~~10/10000~~	~~e,h~~
~~115264~~	~~DIMEFOX~~	~~500~~	~~e~~
~~60515~~	~~DIMETHOATE~~	~~500/10000~~	
~~2524030~~	~~DIMETHYL PHOSPHOROCHLORIDOTHIOATE~~	~~500~~	~~e~~
~~77781~~	~~DIMETHYL SULFATE~~	~~500~~	~~d~~
~~75785~~	~~DIMETHYLDICHLOROSILANE~~	~~500~~	~~e,h~~
~~57147~~	~~DIMETHYLHYDRAZINE~~	~~1000~~	~~d~~
~~99989~~	~~DIMETHYL-P-PHENYLEDIAMINE~~	~~10/10000~~	~~e~~
~~644644~~	~~DIMETILAN~~	~~500/10000~~	~~e~~
~~534521~~	~~DINITROCRESOL~~	~~10/10000~~	
~~88857~~	~~DINOSEB~~	~~100/10000~~	
~~1420071~~	~~DINOTERB~~	~~500/10000~~	~~e~~
~~78342~~	~~DIOXATHION~~	~~500~~	~~e~~
~~82666~~	~~DIPHACINONE~~	~~10/10000~~	~~e~~

~~152169~~	~~DIPHOSPHORAMIDE, OCTAMETHYL-~~	~~100~~	
~~298044~~	~~DISULFOTON~~	~~500~~	
~~514738~~	~~DITHIAZANINE IODIDE~~	~~500/10000~~	~~e~~
~~541537~~	~~DITHIOBIURET~~	~~100/10000~~	
~~316427~~	~~EMETINE, DIHYDROCHLORIDE~~	~~1/10000~~	~~e,h~~
~~115297~~	~~ENDOSULFAN~~	~~10/10000~~	
~~2778043~~	~~ENDOTHION~~	~~500/10000~~	~~e~~
~~72208~~	~~ENDRIN~~	~~500/10000~~	
~~106898~~	~~EPICHLOROHYDRIN~~	~~1000~~	~~d,l~~
~~2104645~~	~~EPN~~	~~100/10000~~	~~e~~
~~50146~~	~~ERGOCALCIFEROL~~	~~1000/10000~~	~~c,e~~
~~379793~~	~~ERGOTAMINE TARTRATE~~	~~500/10000~~	~~e~~
~~1622328~~	~~ETHANESULFONYL CHLORIDE,2-CHLORO-~~	~~500~~	~~e~~
~~10140871~~	~~ETHANOL,1,2-DICHLORO-,ACETATE~~	~~1000~~	~~e~~
~~563122~~	~~ETHION~~	~~1000~~	
~~13194484~~	~~ETHOPROPHOS~~	~~1000~~	~~e~~
~~538078~~	~~ETHYLBIS(2-CHLOROETHYL)AMINE~~	~~500~~	~~e,h~~
~~371620~~	~~ETHYLENE FLUOROHYDRIN~~	~~10~~	~~c,e,h~~
~~75218~~	~~ETHYLENE OXIDE~~	~~1000~~	~~d,l~~
~~107153~~	~~ETHYLENEDIAMINE~~	~~10000~~	
~~151564~~	~~ETHYLENEIMINE~~	~~500~~	~~d~~
~~542905~~	~~ETHYLTHIOCYANATE~~	~~10000~~	~~e~~
~~22224926~~	~~FENAMIPHOS~~	~~10/10000~~	~~e~~
~~122145~~	~~FENITROTHION~~	~~500~~	~~e~~
~~115902~~	~~FENSULFOTHION~~	~~500~~	~~e,h~~
~~4301502~~	~~FLUENETIL~~	~~100/10000~~	~~e~~
~~7782414~~	~~FLUORINE~~	~~500~~	~~k~~
~~640197~~	~~FLUOROACETAMIDE~~	~~100/10000~~	~~i~~
~~144490~~	~~FLUOROACETIC ACID~~	~~10/10000~~	~~e~~
~~359068~~	~~FLUOROACETYL CHLORIDE~~	~~10~~	~~c,e~~
~~51218~~	~~FLOUROURACIL~~	~~500/10000~~	~~e~~
~~944229~~	~~FONOFOS~~	~~500~~	~~e~~
~~50000~~	~~FORMALDEHYDE~~	~~500~~	~~d,l~~
~~107164~~	~~FORMALDEHYDE CYANOHYDRIN~~	~~1000~~	~~e,h~~
~~23422539~~	~~FORMETANATE HYDROCHLORIDE~~	~~500/10000~~	~~e,h~~
~~2540821~~	~~FORMOTHION~~	~~100~~	~~e~~
~~17702577~~	~~FORMPARANATE~~	~~100/10000~~	~~e~~
~~21548323~~	~~FOSTHIETAN~~	~~500~~	~~e~~
~~3878191~~	~~FUBERIDAZOLE~~	~~100/10000~~	~~e~~
~~110009~~	~~FURAN~~	~~500~~	
~~13450903~~	~~GALLIUM TRICHLORIDE~~	~~500/10000~~	~~e~~
~~77474~~	~~HEXACHLOROCYCLOPENTADIENE~~	~~100~~	~~d,h~~
~~4835114~~	~~HEXAMETHYLENEDIAMINE,NIN-DIBUTYL-~~	~~500~~	~~e~~
~~302012~~	~~HYDRAZINE~~	~~1000~~	~~d~~
~~74908~~	~~HYDROCYANIC ACID~~	~~100~~	
~~7647010~~	~~HYDROGEN CHLORIDE (GAS ONLY)~~	~~500~~	~~e,l~~
~~7664393~~	~~HYDROGEN FLUORIDE~~	~~100~~	
~~7722841~~	~~HYDROGEN PEROXIDE (CONC. GREATER THAN 52%)~~		
~~7783075~~	~~HYDROGEN SELENIDE~~	~~10~~	~~e~~
~~7783064~~	~~HYDROGEN SULFIDE~~	~~500~~	
~~123319~~	~~HYDROQUINONE~~	~~500/10000~~	
~~13463406~~	~~IRON,PENTACARBONYL-~~	~~100~~	~~e~~
~~297789~~	~~ISOBENZAN~~	~~100/10000~~	~~e~~
~~78820~~	~~ISOBUTYRONITRILE~~	~~10000~~	~~e,h~~
~~102363~~	~~ISOCYANIC ACID,3,4-DICHLOROPHENYL ESTER~~	~~500/10000~~	~~e~~
~~465736~~	~~ISODRIN~~	~~100/10000~~	
~~55914~~	~~ISOFLUORPHATE~~	~~100~~	~~c~~
~~4098719~~	~~ISOPHORONE DIISOCYANATE~~	~~100~~	~~b,e~~
~~108236~~	~~ISOPROPYL CHLOROFORMATE~~	~~1000~~	~~e~~
~~119380~~	~~ISOPROPYLMETHYLPYRAZOLYL DIMETHYL CARBAMATE~~	~~500~~	~~e~~
~~78977~~	~~LACTONITRILE~~	~~1000~~	~~e~~
~~21609905~~	~~LEPTOPHOS~~	~~500/10000~~	~~e~~
~~541253~~	~~LEWISITE~~	~~10~~	~~c,e,h~~
~~58899~~	~~LINDANE~~	~~1000/10000~~	~~d~~
~~7580678~~	~~LITHIUM HYDRIDE~~	~~100~~	~~b,e~~
~~109773~~	~~MALONONITRILE~~	~~500/10000~~	
~~12108133~~	~~MANGANESE, TRICARBONYL METHYLCYCLO-PENTADIENYL~~	~~100~~	~~e~~
~~51752~~	~~MECHLORETHAMINE~~	~~10~~	~~c,e~~
~~950107~~	~~MEPHOSFOLAN~~	~~500~~	~~e~~

~~1600277~~	~~MERCURIC ACETATE~~	~~500/10000~~	~~e~~
~~7487947~~	~~MERCURIC CHLORIDE~~	~~500/10000~~	~~e~~
~~21908532~~	~~MERCURIC OXIDE~~	~~500/10000~~	~~e~~
~~10476956~~	~~METHACROLEIN DIACERATE~~	~~1000~~	~~e~~
~~760930~~	~~METHACRYLIC ANHYDRIDE~~	~~500~~	~~e~~
~~126987~~	~~METHACRYLONITRILE~~	~~500~~	~~h~~
~~920467~~	~~METHACRYLOYL CHLORIDE~~	~~100~~	~~e~~
~~30674807~~	~~METHACRYLOYLOXYETHYLISOCYANATE~~	~~100~~	~~e,h~~
~~10265926~~	~~METHAMIDOPHOS~~	~~100/10000~~	~~e~~
~~558258~~	~~METHANESULFONYL FLUORIDE~~	~~1000~~	~~e~~
~~950370~~	~~METHIDATHION~~	~~500/10000~~	~~e~~
~~2032657~~	~~METHIOCARB~~	~~500/10000~~	
~~16752775~~	~~METHOMYL~~	~~500/10000~~	~~h~~
~~151382~~	~~METHOXYETHYLMERCURIC ACETATE~~	~~500/10000~~	~~e~~
~~80637~~	~~METHYL 2-CHLOROACRYLATE~~	~~500~~	~~e~~
~~74839~~	~~METHYL BROMIDE~~	~~1000~~	~~1~~
~~79221~~	~~METHYL CHLOROFORMATE~~	~~500~~	~~d,h~~
~~60344~~	~~METHYL HYDRAZINE~~	~~500~~	
~~624839~~	~~METHYL ISOCYANATE~~	~~500~~	~~f~~
~~556616~~	~~METHYL ISOTHIOCYANATE~~	~~500~~	~~b,e~~
~~74931~~	~~METHYL MERCAPTAN~~	~~500~~	
~~3735237~~	~~METHYL PHENKAPTON~~	~~500~~	~~e~~
~~676971~~	~~METHYL PHOSPHONIC DICHLORIDE~~	~~100~~	~~b,e~~
~~556649~~	~~METHYL THIOCYANATE~~	~~10000~~	~~e~~
~~78944~~	~~METHYL VINYL KETON~~	~~10~~	~~e~~
~~502396~~	~~METHYLMERCURIC DICYANAMIDE~~	~~500/10000~~	~~e~~
~~75796~~	~~METHYLTRICHLOROSILANE~~	~~500~~	~~e,h~~
~~1129415~~	~~METOLCARB~~	~~100/10000~~	~~e~~
~~7786347~~	~~MEVINPHOS~~	~~500~~	
~~315184~~	~~MEXACARBATE~~	~~500/10000~~	
~~50077~~	~~MITOMYCIN C~~	~~500/10000~~	~~d~~
~~69232224~~	~~MONOCROTOPHOS~~	~~10/10000~~	~~e~~
~~2763964~~	~~MU.S.C.IMOL~~	~~500/10000~~	~~a,h~~
~~505602~~	~~MUSTARD GAS~~	~~500~~	~~e,h~~
~~13463393~~	~~NICKEL CARBONYL~~	~~1~~	~~d~~
~~54115~~	~~NICOTINE~~	~~100~~	~~c~~
~~65305~~	~~NICOTINE SULFATE~~	~~100/10000~~	~~e~~
~~7697372~~	~~NITRIC ACID~~	~~1000~~	
~~10102439~~	~~NITRIC OXIDE~~	~~100~~	~~c~~
~~98953~~	~~NITROBENZENE~~	~~1000~~	
~~1122607~~	~~NITROCYCLOHEXANE~~	~~500~~	~~e~~
~~10102440~~	~~NITROGEN DIOXIDE~~	~~100~~	
~~62759~~	~~NITROSDIMETHYLAMINE~~	~~1000~~	~~d,h~~
~~991424~~	~~NORBORMIDE~~	~~100/10000~~	~~e~~
~~PMN82147~~	~~ORGANORHODIUM COMPLEX (PMN-82-147)~~	~~10/10000~~	~~e~~
~~630604~~	~~OUABAIN~~	~~100/10000~~	~~c,e~~
~~23135220~~	~~OXAMYL~~	~~100/10000~~	~~e~~
~~78717~~	~~OXETANE, 3,3-BIS(CHLOROMETHYL)~~	~~500~~	~~e~~
~~2497976~~	~~OXYDISULFOTON~~	~~500~~	~~e,h~~
~~10028156~~	~~OZONE~~	~~100~~	~~e~~
~~1910425~~	~~PARAQUAT~~	~~10/10000~~	~~e~~
~~2074502~~	~~PARAQUAT METHOSULFATE~~	~~10/10000~~	~~e~~
~~56382~~	~~PARATHION~~	~~100~~	~~c,d~~
~~298000~~	~~PARATHION-METHYL~~	~~100/10000~~	~~c~~
~~12002038~~	~~PARIS GREEN~~	~~500/10000~~	~~d~~
~~19624227~~	~~PENTABORANE~~	~~500~~	~~e~~
~~2570265~~	~~PENTADECYLAMINE~~	~~100/10000~~	~~e~~
~~79210~~	~~PERACETIC ACID~~	~~500~~	~~e~~
~~594423~~	~~PERCHLOROMETHYLMERCAPTAN~~	~~500~~	
~~108952~~	~~PHENOL~~	~~500/10000~~	
~~4418660~~	~~PHENOL 2,2'-THIOBIS(4-CHLORO-6-METHYL-~~	~~100/10000~~	~~e~~
~~64006~~	~~PHENOL,3-(I-METHYLETHYL)-,METHYLCARBAMATE~~	~~500/10000~~	~~e~~
~~58366~~	~~PHENOXARSINE, 10,101-OXIDI~~	~~500/10000~~	~~e~~
~~696286~~	~~PHENYL DICHLOROARAINE~~	~~500~~	~~d,h~~
~~59881~~	~~PHENYLHYDRAZINE HYDROCHLORIDE~~	~~1000/10000~~	~~e~~
~~62384~~	~~PHENYLMERCURY ACETATE~~	~~500/10000~~	
~~2097190~~	~~PHENYLSILATRANE~~	~~100/10000~~	~~e,h~~
~~103855~~	~~PHENYLTHIOUREA~~	~~100/10000~~	

~~298022~~	~~PHORATE~~	~~10~~	
~~4104147~~	~~PHOSACETIM~~	~~100/10000~~	~~e~~
~~947024~~	~~PHOSFOLAN~~	~~100/10000~~	~~e~~
~~75445~~	~~PHOSGENE~~	~~10~~	~~1~~
~~732116~~	~~PHOSMET~~	~~10/10000~~	~~e~~
~~13171216~~	~~PHOSPHAMIDON~~	~~100~~	~~e~~
~~7803512~~	~~PHOSPHINE~~	~~500~~	
~~2703131~~	~~PHOSPHONOTHIOIC ACID, METHYL-,O-ETHYL 0- (4-(METHYLTHIO) ESTER~~	~~500~~	~~e~~
~~50782699~~	~~PHOSPHONOTHIOIC ACID, METHYL-,S-(2-(BIS (I-METHYLETHYL)AMINO)ETHYL O-ETHYL ESTER~~	~~100~~	~~e~~
~~2665307~~	~~PHOSPHONOTHIOIC ACID, METHYL-,O-(4-NITRO- PHENYL)O-PHENYL ESTER~~	~~500~~	~~e~~
~~3254635~~	~~PHOSPHORIC ACID, DIMETHYL4-(METHYLTHIO) PHENYL ESTER~~	~~500~~	~~e~~
~~2587908~~	~~PHOSPHOROTHIOIC ACID, O,O-DIMETHYL-S- (2-METHYLTHIO) ETHYL ESTER~~	~~500~~	~~c,e,g~~
~~7723140~~	~~PHOSPHORUS~~	~~100~~	~~b,h~~
~~10025873~~	~~PHOSPHORUS OXYCHLORIDE~~	~~500~~	~~d~~
~~10026138~~	~~PHOSPHORUS PENTACHLORIDE~~	~~500~~	~~b,e~~
~~1314563~~	~~PHOSPHORUS PENTOXIDE~~	~~10~~	~~b,e~~
~~7719122~~	~~PHOSPHORUS TRICHLORIDE~~	~~1000~~	
~~57476~~	~~PHYSOSTIGMINE~~	~~100/10000~~	~~e~~
~~57647~~	~~PHYSOSTIGMINE, SALICYLATE(1:1)~~	~~100/10000~~	~~e~~
~~124878~~	~~PICROTOXIN~~	~~500/10000~~	~~e~~
~~110894~~	~~PIPERIDINE~~	~~1000~~	~~e~~
~~23505411~~	~~PIRIMIFOS-ETHLY~~	~~1000~~	~~e~~
~~10124502~~	~~POTASSIUM ARSENITE~~	~~500/10000~~	~~d~~
~~151508~~	~~POTASSIUM CYANIDE~~	~~100~~	~~b~~
~~506616~~	~~POTASSIUM SILVER CYANIDE~~	~~500~~	~~b~~
~~2631370~~	~~PROMECARB~~	~~500/10000~~	~~e,h~~
~~106967~~	~~PROPARGYL BROMIDE~~	~~10~~	~~e~~
~~57578~~	~~PROPIOLACTONE, BETA-~~	~~500~~	~~e~~
~~107120~~	~~PROPIONITRILE~~	~~500~~	
~~542767~~	~~PROPIONITRILE, 3-CHLORO-~~	~~1000~~	
~~70699~~	~~PROPIOPHENONE, 41-AMINO~~	~~100/10000~~	~~e,I,g~~
~~109615~~	~~PROPYL CHLOROFORMATE~~	~~500~~	~~e~~
~~75569~~	~~PROPYLENE OXIDE~~	~~10000~~	~~1~~
~~75558~~	~~PROPYLENEIMINE~~	~~10000~~	~~d~~
~~2275185~~	~~PROTHOATE~~	~~100/10000~~	~~e~~
~~129000~~	~~PYRENE~~	~~1000/10000~~	~~c~~
~~140761~~	~~PYRIDINE, 2-METHYL-5-VINYL-~~	~~500~~	~~e~~
~~504245~~	~~PYRIDINE, 4-AMINO-~~	~~500/10000~~	~~4~~
~~1124330~~	~~PYRIDINE, 4-NITRO-,I-OXIDE~~	~~500/10000~~	~~e~~
~~53558251~~	~~PYRIMINIL~~	~~100/10000~~	~~e,h~~
~~14167181~~	~~SALCOMINE~~	~~500/10000~~	~~e~~
~~107448~~	~~SARIN~~	~~10~~	~~e,h~~
~~7783008~~	~~SELENIOUS ACID~~	~~1000/10000~~	
~~7791233~~	~~SELENIUM OXYCHLORIDE~~	~~500~~	~~e~~
~~563417~~	~~SEMICARBAZIDE HYDROCHLORIDE~~	~~1000/10000~~	~~e~~
~~3037727~~	~~SILANE, (4-AMINOBUTYL)DIETHOXYMETHYL-~~	~~1000~~	~~e~~
~~7631892~~	~~SODIUM ARSENATE~~	~~1000/10000~~	~~d~~
~~7784465~~	~~SODIUM ARSENITE~~	~~500/10000~~	~~d~~
~~26628228~~	~~SODIUM AZIDE(NA(N3))~~	~~500~~	~~b~~
~~124652~~	~~SODIUM CACODYLATE~~	~~100/10000~~	~~e~~
~~143339~~	~~SODIUM CYANIDE(NA(CN))~~	~~100~~	~~b~~
~~62748~~	~~SODIUM FLOUOROACETATE~~	~~10/10000~~	
~~13410010~~	~~SODIUM SELENATE~~	~~100/10000~~	~~e~~
~~10102188~~	~~SODIUM SELENITE~~	~~100/10000~~	~~h~~
~~10102202~~	~~SODIUM TELLURITE~~	~~500/10000~~	~~e~~
~~900958~~	~~STANNANE, ACETOXYTRIPHENYL-~~	~~500/10000~~	~~e,g~~
~~57249~~	~~STRYCHNINE~~	~~100/10000~~	~~c~~
~~60413~~	~~STRYCHNINE, SULFATE~~	~~100/10000~~	~~e~~
~~3689245~~	~~SULFOTEP~~	~~500~~	
~~3569571~~	~~SULFOXIDE, 3-CHLOROPROPYLCOTYL~~	~~500~~	~~e~~
~~7446095~~	~~SULFUR DIOXIDE~~	~~500~~	~~e,I~~
~~7783600~~	~~SULFUR TETRAFLUORIDE~~	~~100~~	~~e~~
~~7446119~~	~~SULFUR TRIOXIDE~~	~~100~~	~~b,e~~
~~7664939~~	~~SUFURIC ACID~~	~~1000~~	

~~77816~~	~~TABUN~~	~~10~~	~~c,e,h~~
~~13494809~~	~~TELLURIUM~~	~~500/10000~~	~~e~~
~~7783804~~	~~TELLURIUM HEXAFLUORIDE~~	~~100~~	~~e,k~~
~~107493~~	~~TEPP~~	~~100~~	
~~13071799~~	~~TERBUFOS~~	~~100~~	~~e,h~~
~~78002~~	~~TETRAETHYL LEAD~~	~~100~~	~~c,d~~
~~597648~~	~~TETRAETHYLTIN~~	~~100~~	~~c,e~~
~~75741~~	~~TETRAMETHYL LEAD~~	~~100~~	~~c,e,l~~
~~509148~~	~~TETRANITROMETHANE~~	~~500~~	
~~10031591~~	~~THALLIUM SULFATE~~	~~100/10000~~	~~h~~
~~6533739~~	~~THALLOUS CARBONATE~~	~~100/10000~~	~~c,h~~
~~7791120~~	~~THALLOUS CHLORIDE~~	~~100/10000~~	~~c,h~~
~~2757188~~	~~THALLOUS MALONATE~~	~~100/10000~~	~~c,e,h~~
~~7446186~~	~~THALLOUS SULFATE~~	~~100/10000~~	
~~2231574~~	~~THIOCARBAZIDE~~	~~1000/10000~~	~~e~~
~~39196184~~	~~THIOFANOX~~	~~100/10000~~	
~~297972~~	~~THIONAZIN~~	~~500~~	
~~108985~~	~~THIOPHENOL~~	~~500~~	
~~79196~~	~~THIOSEMICARBAZIDE~~	~~100/10000~~	
~~5344821~~	~~THIOUREA, (2-CHLOROPHENYL)-~~	~~100/10000~~	
~~614788~~	~~THIOUREA, (2-METHYLPHENYL)-~~	~~500/10000~~	~~e~~
~~7550450~~	~~TITANIUM TETRACHLORIDE~~	~~100~~	~~e~~
~~584848~~	~~TOLUENE 2,4-DIISOCYANATE~~	~~500~~	
~~91087~~	~~TOLUENE 2,6-DIISOCYANATE~~	~~100~~	
~~110576~~	~~TRANS-1,4-DICHLOROBUTENE~~	~~500~~	~~e~~
~~1031476~~	~~TRIAMIPHOS~~	~~500/10000~~	~~e~~
~~24017478~~	~~TRIAZOFOS~~	~~500~~	~~e~~
~~76028~~	~~TRICHLOROACETYL CHLORIDE~~	~~500~~	~~e~~
~~115219~~	~~TRICHLOROETHYLSILANE~~	~~500~~	~~e,h~~
~~327980~~	~~TRICHLORONATE~~	~~500~~	~~e,k~~
~~98135~~	~~TRICHLOROPHENYLSILANE~~	~~500~~	~~e,h~~
~~1558254~~	~~TRICHLORO(CHLOROMETHYL)SILANE~~	~~100~~	~~e~~
~~27137855~~	~~TRICHLOR(DICHLOROPHENYL)SILANE~~	~~500~~	~~e~~
~~998301~~	~~TRIETHOXYSILANE~~	~~500~~	~~e~~
~~75774~~	~~TRIMETHYLCHLOROSILANE~~	~~1000~~	~~e~~
~~824113~~	~~TRIMETHYLOLPROPANE PHOSPHITE~~	~~100/10000~~	~~e,h~~
~~1066451~~	~~TRIMETHYLTIN CHLORIDE~~	~~500/10000~~	~~e~~
~~639587~~	~~TRIPHENYLTIN CHLORIDE~~	~~500/10000~~	~~e~~
~~555771~~	~~TRIS(2-CHLOROETHYL)AMINE~~	~~100~~	~~e,h~~
~~2001958~~	~~VALINOMYCIN~~	~~1000/10000~~	~~c,e~~
~~1314621~~	~~VANADIUM PENTOXIDE~~	~~100/10000~~	
~~08054~~	~~VINYL ACETATE MONOMER~~	~~1000~~	~~d,l~~
~~81812~~	~~WARFARIN~~	~~500/10000~~	
~~129066~~	~~WARFARINSODIUM~~	~~100/10000~~	~~e,h~~
~~28347139~~	~~XYLYENE DICHLORIDE~~	~~100/10000~~	~~e~~
~~58270089~~	~~ZINC, DICHLORO(4,4-DIMETHYL-5((((METHYLAMIONCARBONYL)OXY)IMINO)PENTANENITRILE) (T-4)-~~	~~100/10000~~	~~e~~
~~1314847~~	~~ZINC PHOSPHIDE~~	~~500~~	

~~*Only the statutory or final RQ is shown. for more information, see 40 C.F.R. Table 302.4.~~

~~Notes:~~

~~a This chemical does not meet acute toxicity criteria. Its TPQ is set at 10,000 pounds.~~

~~b This material is a reactive solid. The TPQ does not default to 10,000 pounds for nonpowder, nonmolten, nonsolution form.~~

~~c The calculate TPQ changed after technical review as described in the technical support document.~~

~~d Indicates that the RQ is subject to change when the assessment of potential carcinogenicity and/or other toxicity is completed.~~

~~e Statutory reportable quantity for purposes of notification under SARA sect 304(a)(2).~~

~~f The statutory 1 pound reportable quantity for methyl isocyanate may be adjusted in a future rulemaking action.~~

~~g New chemicals added that were not part of the original list of 402 substances.~~

~~h Revised TPQ based on new or reevaluated toxicity data.~~

~~i Chemicals on the original list that do not meet toxicity criteria but because of their high production volume and recognized toxicity are considered chemicals of concern ("Other Chemicals").~~

~~j TPQ is revised to its calculated value and does not change due to technical review as in proposed rule.~~

~~k The TPQ was revised after proposal due to calculation error.~~

~~Tier Two EMERGENCY AND HAZARDOUS CHEMICAL~~	~~Facility Identification~~ ~~Name~~_____ ~~Street~~_____ ~~City~~_____ ~~County~~_____ ~~State~~_____ ~~Zip~~_____ ~~SIC Code~~ ☐☐☐☐ ~~Dun & Brad Number~~ ☐☐-☐☐☐-☐☐☐☐	~~Owner/Operator Name~~ ~~Name~~_____ ~~Phone~~ (__)_____ ~~Mail Address~~_____ ~~Emergency Contact~~ ~~Name~~_____ ~~Title~~_____

INVENTORY Specific Information by Chemical	FOR OFFICIAL USE ONLY ID#:_____ Fee Received $_____ Date received:_____ Check Number _____	Phone (___)_____ 24 Hr. Phone (___)_____ Name_____ Title_____ Phone (___)_____ 24 Hr. Phone (___)_____
Important: Read all instructions before completing form	Report Period: From January 1 to December 31, 19___	☐ check if information below is identical to the information submitted last year

CONFIDENTIAL LOCATION INFORMATION SHEET	Container type Pressure Temperature	Storage Codes and Locations (Confidential) Storage Locations	Options
CAS ☐☐☐☐☐☐-☐☐-☐ Chem. Name	☐☐☐		☐
CAS ☐☐☐☐☐☐-☐☐-☐ Chem. Name	☐☐☐		☐
CAS ☐☐☐☐☐☐-☐☐-☐ Chem. Name	☐☐☐		☐

Certification (Read and sign after completing all sections I certify under penalty of law that I have personally examined and am familiar with the information submitted in pages one through ____, and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. _____ Name & official title of owner/operator OR owner/operator's authorized representative _____ Signature Date Signed	Optional Attachments ☐ I have attached a site plan. ☐ I have attached a list of site coordinate abbreviations. ☐ I have attached a description of dikes and other safeguard measures.	Check appropriate box: ☐ $250 fee attached ☐ $40 fee attached ☐ No fee required

Tier Two EMERGENCY AND HAZARDOUS CHEMICAL INVENTORY Specific Information By Chemical	Facility Identification Name_____ Street_____ City_____ County_____ State_____ Zip_____ SIC Code ☐☐☐☐ Dun & Brad Number ☐☐-☐☐☐-☐☐☐☐ FOR OFFICIAL USE ONLY ID#:_____ Fee Received $_____ Date received:_____ Check Number _____	Owner/Operator Name Name_____ Phone (___)_____ Mail Address_____ Emergency Contact Name_____ Title_____ Phone (___)_____ 24 Hr. Phone (___)_____ Name_____ Title_____ Phone (___)_____ 24 Hr. Phone (___)_____
Important: Read all instructions before completing form	Report Period: From January 1 to December 31, 19___	☐ check if information below is identical to the information submitted last year

CHEMICAL DESCRIPTION	Physical and Health Hazards (Check all that apply)	Inventory	Container type Pressure Temperature	Storage Codes and Locations (Confidential) Storage Locations	Options

CAS ☐☐☐☐☐☐ ☐☐☐ Trade ☐ Chem. Name_____ _____ Check all that apply: ☐ Pure ☐ Mix ☐ Solid ☐ Liquid ☐ Gas ☐ EHS EHS Name_____	☐ Fire ☐ Sudden release of pressure ☐ Reactivity ☐ Immediate (acute) ☐ Delayed (chronic)	☐☐ Max. Daily Amounts (code) ☐☐ Avg. Daily Amount (code) ☐☐ No. of Days On Site (days) For code 05: Enter actual weight in pounds: _____	☐☐☐ _____ ☐☐☐ _____ ☐☐☐ _____ ☐☐☐ _____ ☐☐☐ _____ ☐☐☐ _____	☐
CAS ☐☐☐☐☐☐ ☐☐☐ Trade ☐ Chem. Name_____ _____ Check all that apply: ☐ Pure ☐ Mix ☐ Solid ☐ Liquid ☐ Gas ☐ EHS EHS Name_____	☐ Fire ☐ Sudden release of pressure ☐ Reactivity ☐ Immediate (acute) ☐ Delayed (chronic)	☐☐ Max. Daily Amounts (code) ☐☐ Avg. Daily Amount (code) ☐☐ No. of Days On Site (days) For code 05: Enter actual weight in pounds: _____	☐☐☐ _____ ☐☐☐ _____ ☐☐☐ _____ ☐☐☐ _____ ☐☐☐ _____ ☐☐☐ _____	☐
CAS ☐☐☐☐☐☐ ☐☐☐ Trade ☐ Chem. Name_____ _____ Check all that apply: ☐ Pure ☐ Mix ☐ Solid ☐ Liquid ☐ Gas ☐ EHS EHS Name_____	☐ Fire ☐ Sudden release of pressure ☐ Reactivity ☐ Immediate (acute) ☐ Delayed (chronic)	☐☐ Max. Daily Amounts (code) ☐☐ Avg. Daily Amount (code) ☐☐ No. of Days On Site (days) For code 05: Enter actual weight in pounds: _____	☐☐☐ _____ ☐☐☐ _____ ☐☐☐ _____ ☐☐☐ _____ ☐☐☐ _____ ☐☐☐ _____	☐

Certification (Read and sign after completing all sections I certify under penalty of law that I have personally examined and am familiar with the information submitted in pages one through ____, and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. _____ Name and official title of owner/operator OR owner/operator's authorized representative _____ Signature and Date Signed	Optional Attachments ☐ I have attached a site plan. ☐ I have attached a list of site coordinate abbreviations. ☐ I have attached a description of dikes and other safeguard measures.	Check appropriate box: ☐ $250 fee attached ☐ $40 fee attached ☐ No fee required

KENTUCKY EMERGENCY RESPONSE COMMISSION
TIER TWO INSTRUCTIONS
GENERAL INFORMATION

Submission of this Tier Two form is required by the Kentucky Emergency Response Commission in accordance with Title III of the Superfund Amendments and Reauthorization Act of 1986, Section 312 and KRS 39.990 and subsequent administrative regulations. The purpose of this Tier Two form is to provide state and local officials and the public with specific information on hazardous chemicals present at your facility during the past year.

CERTIFICATION

The owner or operator or officially designated representative of the owner or operator must certify that all information included in the Tier Two submission is true, accurate, and complete. On the first page of the Tier Two report, enter your full name and official title. Sign your name and enter the current date. Also, enter the total number of pages included in the Confidential and Nonconfidential information Sheets as well as all attachments. An original signature is required on at least the first page of the submission. Submissions to the SERC, LEPC, and fire department must each contain and original signature on at least the first page. Subsequent pages must contain either an original signature, a photocopy of the original signature, or a signature stamp. Each page must contain the date on which the original signature was affixed to the first page of the submission and the total number of pages in the submission.

YOU MUST PROVIDE ALL INFORMATION REQUESTED ON THIS FORM TO FULFILL ANNUAL CHEMICAL INVENTORY REQUIREMENTS.

THE KENTUCKY EMERGENCY RESPONSE COMMISSION REQUIRES SUBMISSION OF THE TIER TWO FORM.

WHO MUST SUBMIT THIS FORM

This request applies to the owner or operator of any facility that is required, under administrative regulations implementing the Occupational Safety and Health Act of 1970, to prepare or have available a Material Safety Data Sheet (MSDS) for a hazardous chemical present at the facility. MSDS requirements are specified in the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard, found in Title 29 of the Code of Federal Regulations at 1910.1200.

WHAT CHEMICALS ARE INCLUDED

You must report the required information on this Tier Two form for each hazardous chemical present at your facility in quantities equal to or greater than established threshold amounts (discussed below), unless the chemicals are excluded under Section 311(e) of Title III. Hazardous chemicals are any substance for which your facility must maintain an MSDS under OSHA's Hazard Communication Standard.

WHAT CHEMICALS ARE EXCLUDED

Section 311(e) of Title III excludes the following substances:

(I) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration:

(II) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use:

(III) Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public:

~~(IV) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual:~~

~~(V) Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.~~

~~OSHA regulations, Section 1910.1200(b), stipulate exemptions from the requirement to prepare or have available an MSDS.~~

~~REPORTING THRESHOLDS~~

~~Minimum thresholds have been established for Tier Two reporting under Title III, Section 312. These thresholds are as follows:~~

~~For Extremely Hazardous Substances (EHSs) designated under section 302 of Title III, the reporting threshold is 500 pounds (or 227 kg.) or the threshold planning quantity (TPQ), whichever is lower:~~

~~For all other hazardous chemicals for which facilities are required to have or prepare an MSDS, the minimum reporting threshold is 10,000 pounds (or 4,540 kg.).~~

~~You need to report hazardous chemicals that were present at your facility at any time during the previous calendar year at levels that equal or exceed these thresholds. For instructions on threshold determinations for components of mixtures, see "What About Mixtures?" on page 2 of these instructions.~~

~~Please read these instructions carefully. Print or type all responses.~~

~~WHEN TO SUBMIT THIS FORM~~
~~Owners or operators of facilities that have hazardous chemicals on hand in quantities equal to or greater than set threshold levels must submit a Tier Two form by March 1.~~

~~WHERE TO SUBMIT FEE~~
~~(See Fee Schedule on page 4)~~

~~Checks shall be made payable to: "Kentucky State Treasurer" and shall be marked "For KyERC Fee Account". Fees and form shall be mailed to:~~

~~Chairman, Kentucky Emergency Response Commission~~
~~EOC Building, Boone National Guard Center~~
~~Frankfort, KY 40601-6168~~

~~WHERE TO SUBMIT THIS FORM~~

~~Send a completed Tier Two form(s) to each of the following organizations:~~

~~1. Your State Emergency Response Commission.~~
~~2. Your Local Emergency Planning Committee.~~
~~3. The fire department with jurisdiction over your facility.~~

~~PENALTIES~~

~~Any owner or operator who violates any Tier Two reporting requirements shall be subject to penalties as set forth in P.L. 99-499, Title III, Section 325 and KRS Chapter 39.990 and subsequent administrative regulations.~~

~~If your Tier Two responses require more than one page use additional forms and fill in the page number at the bottom of the form.~~

~~REPORTING PERIOD~~

~~Enter the appropriate calendar year, beginning January 1 and ending December 31.~~

~~FACILITY IDENTIFICATION~~

~~Enter the full name of your facility (and company identifier where appropriate).~~

~~Enter the full street address or state road. If a street address is not available, enter other appropriate identifiers that describe the physical location of your facility (e.g. longitude and latitude). Include city, county, state, and zip code.~~

~~Enter the primary Standard industrial Classification (SIC) code and the Dun & Bradstreet number for your facility. The financial officer of your facility should be able to provide the Dun & Bradstreet number. If your firm does not have this information, contact the State or regional office of Dun & Bradstreet to obtain your facility number or have one assigned.~~

~~OWNER/OPERATOR~~

~~Enter the owner's or operator's full name, mailing address, and phone number.~~

~~EMERGENCY CONTACT~~

~~Enter the name, title, and work phone number of at least one local person or office who can act as a referral if emergency responders need assistance in responding to a chemical accident at the facility.~~
~~Provide an emergency phone number where such emergency information will be available 24 hours a day, every day. This requirement is mandatory. The facility must make some arrangement to ensure that a 24 hour contact is available.~~

~~IDENTICAL INFORMATION~~

~~Check the box indicating identical information, located below the emergency contacts on the Tier Two form, if the current chemical information being reported is identical to that submitted last year. Chemical descriptions, hazards, amounts, and locations must be provided in this year's form, even if the information is identical to that submitted last year.~~

~~CHEMICAL INFORMATION: Description, Hazards, Amounts, and Locations~~

~~The main section of the Tier Two form requires specific information on amounts and locations of hazardous chemicals, as defined in the OSHA Hazard Communication Standard.~~

~~If you choose to indicate that all of the information on a specific hazardous chemical is identical to that submitted last year, check the appropriate optional box provided at the right side of the storage codes and locations on the Tier Two form. Chemicals descriptions, hazards, amounts, and locations must be provided even if the information is identical to that submitted last year.~~

- ~~What units should I use?~~

~~Calculate all amounts as weight in pounds. To convert gas or liquid volume to weight in pounds, multiply by an appropriate density factor.~~

- ~~What about mixtures?~~

~~If a chemical is part of a mixture, you have the option of reporting either the weight of the entire mixture of only the portion of the mixture that is a particular hazardous chemical (e.g.. if a hazardous of only 5 percent of a particular hazardous chemical, you can indicate either 100 lbs. of the mixture or 5 lbs. of the chemical).~~

~~The option used for each mixture must be consistent with the option used in your Section 311 reporting.~~

~~Because EHSs are important to Section 303 planning, EHSs have lower thresholds. The amount of an EHS at a facility (both pure EHS substances and EHSs in mixtures) must be aggregated for purposes of threshold determination. It is suggested that the aggregation calculation be done as a first step in making the threshold determination. Once you determine whether a threshold for an EHS has been reached, you should report either the total weight of the EHS at your facility, or the weight of each mixture containing the EHS.~~

~~CHEMICAL DESCRIPTION~~

~~1. Enter the Chemical Abstract Service registry number (CAS). For mixtures, enter the CAS number of the mixtures as a whole if it has been assigned a number distinct from its constituents. For a mixture that has no CAS number, leave this item blank or report the CAS number of as many constituent as possible.~~

~~If you are withholding the name of a chemical in accordance with criteria specified in Title III, Section 322, enter the generic class or category that is structurally descriptive of the chemical (e.g., list toluene disocyanate as organic (sooyante) and check the box marked Trade Secret. Trade secret information should be submitted to EPA and must include a substantiation. Please refer to EPA's final regulation on trade secrecy (53 FR 28772, July 29, 1988) for detailed information on how to submit trade secrecy claims.~~

~~2. Enter the chemical name or common name of each hazardous chemical.~~

~~3. Check box for ALL applicable descriptors: pure or mixture; and solid, liquid, or gas; and whether the chemical is or contains an EHS.~~

~~4. If the chemical is a mixture containing EHS, enter the chemical name of each EHS in the mixture.~~

~~EXAMPLE:~~
~~You have pure chlorine gas on hand, as well as two mixtures that contain liquid chlorine. You write "chlorine" and enter the CAS number. Then you check "pure" and "mix" - as well as "liquid" and "gas".~~

~~PHYSICAL AND HEALTH HAZARDS~~

~~For each chemical you have listed, check all the physical and health hazard boxes that apply. These hazard categories are defined in 40 C.F.R. 370.2. The two health hazard categories and three physical hazard categories are a consolidation of the 23 hazard categories defined in the OSHA Hazard Communication Standard, 29 C.F.R. 1910.1200.~~

~~Hazard Category Comparison For Reporting Under Section 311 and 312~~	
~~EPA's Hazard Categories~~	~~OSHA's Hazard Categories~~
~~Fire Hazard~~	~~Flammable~~
	~~Combustion Liquid~~
	~~Pyrophoric~~
	~~Oxidizer~~
~~Sudden Release of Pressure~~	~~Explosive~~
	~~Compressed Gas~~
~~Reactive~~	~~Unstable Reactive~~
	~~Organic Peroxide~~
	~~Water Reactive~~
~~Immediate (Acute) Health Hazards~~	~~Highly Toxic~~
	~~Toxic~~
	~~Irritant~~
	~~Sensitizer~~
	~~Corrosive~~
	~~Other hazardous chemicals with an adverse effect with short term exposure~~
~~Delayed (Chronic) Health Hazard~~	~~Carcinogens~~
	~~Other hazardous chemicals with an adverse effect with long term exposure~~

~~MAXIMUM AMOUNT~~

~~1. For each hazardous chemical, estimate the greatest amount present at your facility on any single day during the reporting period.~~
~~2. Find the appropriate range value code in Table I.~~
~~3. Enter this range value as the Maximum Amount.~~
~~4. If range value 05 (100,000 to 999,999) is used for the maximum daily amount, enter the actual weight in pounds in the Inventory column directly below the code number. This is necessary to determine the appropriate fee category.~~

~~TABLE I REPORTING RANGE~~		
~~Range~~	~~Weight Range in Pounds~~	
~~Value~~	~~From...~~	~~To...~~
~~01~~	~~0~~	~~99~~
~~02~~	~~100~~	~~999~~
~~03~~	~~1,000~~	~~9,999~~
~~04~~	~~10,000~~	~~99,999~~
~~05~~	~~100,000~~	~~999,999~~
~~06~~	~~1,000,000~~	~~9,999,999~~
~~07~~	~~10,000,000~~	~~49,999,999~~
~~08~~	~~50,000,000~~	~~99,999,999~~
~~09~~	~~100,000,000~~	~~499,999,999~~
~~10~~	~~500,000,000~~	~~999,999,999~~
~~11~~	~~1 billion~~	~~higher than 1 billion~~

~~EXAMPLE:~~

~~You received one large shipment of solvent mixture last year. The shipment filled five 5,000-gallon storage tanks. You know that the solvent contains 10 percent benzene, which is a hazardous chemical.~~

~~You figure that 10 percent of 25,000 gallons is 2,500 gallons. You also know that the density of benzene is 7.29 pounds per gallon, so you multiply 2,500 gallons by 7.29 pounds per gallon to get a weight of 18.225 pounds.~~

~~Then you look at Table I and find that the range value o4 corresponds to 18.225. You enter 04 as the Maximum Amount.~~

~~AVERAGE DAILY AMOUNT~~

~~1. For each hazardous chemical, estimate the average weight in pounds that was present at your facility during the year.~~
~~To do this, total all daily weights and divide by the number of days the chemical was present on the site.~~
~~2. Find the appropriate range value in Table I.~~
~~3. Enter this range value as the Average Daily Amount.~~

~~EXAMPLE:~~
~~The 25,000-gallon shipment of solvent you received last year was gradually used up and completely gone in 315 days. The sum of the daily volume levels in the tank is 4,536,000 gallons. By dividing 4,536,000 gallons by 315 days on site, you calculate an average daily amount of 14,400 gallons.~~

~~You already know that the solvent contains 10 percent benzene, which is a hazardous chemical. Since 10 percent of 14,400 is 1,440, you figure that you had an average of 1,440 gallons of benzene. You also know that the density of benzene is 7.29 pounds per gallon, so you multiply 1,440 by 7.29 to get a weight of 10,500 pounds.~~

~~Then you look at Table I and find that the range value 04 corresponds to 10,500. You enter 04 as the Average Daily Amount.~~

~~(If you are using the form as a worksheet for completing a Tier One form, you should write 10,500 in the shaded area.)~~

~~NUMBER OF DAYS ON SITE~~
~~Enter the number of days that the hazardous chemical was found on site.~~

~~EXAMPLE:~~
~~The solvent composed of 10 percent benzene was present for 315 days at your facility. Enter 315 in the space provided.~~

~~STORAGE CODES AND STORAGE LOCATIONS~~

~~List all nonconfidential chemical locations in this column, along with storage types/conditions associated with each location. Please note that a particular chemical may be located in several places around the facility. Each row of boxes followed by a line represents a unique location for the same chemical.~~

~~Storage Codes: Indicate the types and conditions of storage present.~~

~~a. Look at Table II. For each location, find the appropriate storage type and enter the corresponding code in the first box.~~
~~b. Look at Table III. For each location, find the appropriate storage types for pressure and temperature conditions. Enter the applicable pressure code in the second box. Enter the applicable temperature code in the third box.~~

~~TABLE II - STORAGE TYPES~~	
~~CODES~~	~~TYPES OF STORAGE~~
~~A~~	~~Above ground tank~~
~~B~~	~~Below ground tank~~
~~C~~	~~Tank inside building~~
~~D~~	~~Steel drum~~
~~E~~	~~Plastic or nonmetallic drum~~
~~F~~	~~Can~~
~~G~~	~~Carboy~~
~~H~~	~~Silo~~
~~I~~	~~Fiber drum~~
~~J~~	~~Bag~~
~~K~~	~~Box~~
~~L~~	~~Cylinder~~
~~M~~	~~Glass bottles or jugs~~
~~N~~	~~Plastic bottles or jugs~~
~~O~~	~~Tote bin~~
~~P~~	~~Tank wagon~~
~~Q~~	~~Rail car~~
~~R~~	~~Other~~

~~TABLE III - TEMPERATURE AND PRESSURE CONDITIONS~~	
~~CODES~~	~~STORAGE CONDITIONS (PRESSURE)~~
~~1~~	~~Ambient pressure~~
~~2~~	~~Greater than ambient pressure~~
~~3~~	~~Less than ambient pressure~~
	~~(TEMPERATURE)~~
~~4~~	~~Ambient temperature~~
~~5~~	~~Greater than ambient temperature~~
~~6~~	~~Less than ambient temperature but not cryogenic~~
~~7~~	~~Cryogenic conditions~~

~~EXAMPLE:~~

~~The benzene in the main building is kept in a tank inside the building, at ambient pressure and less than ambient temperature.~~

~~Table II shows you that the code for a tank inside a building is C. Table III shows you that the code for ambient pressure is 1, and the code for less than ambient temperature is 6.~~

~~You enter: C 1 6~~

~~Storage Locations~~

~~Provide a brief description of the precise location of the chemical, so that emergency responders can locate the area easily. You may find it advantageous to provide the optional site plan or site coordinates as explained below.~~

~~For each chemical, indicate at a minimum the building or lot. Additionally, where practical, the room or area may be indicated. You may respond in narrative form with appropriate site coordinates or abbreviations.~~

~~If the chemical is present in more than one building, lot, or area location, continue your responses down the page as needed. If the chemical exists everywhere at the plant site simultaneously, you may report that the chemical is ubiquitous at the site.~~

~~Optional Attachments: If you choose to attach one of the following, check the appropriate Attachments box at the bottom of the Tier Two form.~~

~~a. A site plan with site coordinates indicated for building, lots, areas, etc. throughout your facility.~~
~~b. A list of site coordinate abbreviations that correspond to building, lots, areas, etc. throughout your facility.~~
~~c. A description of dikes and other safeguard measures for storage locations throughout your facility.~~

~~EXAMPLE:~~

~~You have benzene in the main room of the main building, and in tank 2 in tank field 10. You attach a site plan with coordinates as follows: main building = G-2, tank field 10 = B-6. fill in the Storage Location as follows:~~

~~B-6 (Tank 2) G-2 (Main Room)~~

~~CONFIDENTIAL INFORMATION~~

~~Under Title III, Section 324, you may elect to withhold location information on a specific chemical from disclosure to the public, if you choose to do so.~~

~~- Enter the word "confidential" in the Nonconfidential Location section of the Tier Two form on the first line of the storage locations.~~

~~- On a separate Tier Two Confidential Location Information Sheet, enter the name and CAS number of each chemical for which you are keeping the location confidential.~~

~~- Enter the appropriate location and storage information, as described above for nonconfidential locations.~~

~~- Attach the Tier Two Confidential Location information Sheet to the Tier Two form. This separates confidential locations from other information that will be disclosed to the public.~~

~~CERTIFICATION~~

~~Instructions for this section are included on page one of these instructions.~~

~~FEE SCHEDULE~~

~~Check appropriate box on the form.~~

~~$0~~	~~Category One Facility is owned or operated by local, state or federal government.~~
~~$40~~	~~Category Two Facility has no less than 10,000 pounds~~

	~~and no more than 499,999 pounds of each of ten (10) or fewer hazardous substances. The combined total of all hazardous substances shall not exceed 499,999 pounds.~~
~~$250~~	~~Category Three Facility has 10,000 pounds or more of each 11 or more hazardous substances. The combined total of all hazardous substance shall not exceed 499,999 pounds.~~
~~$250~~	~~Category Four Facility has a total of over 499,999 pounds of hazardous substances.~~
~~$250~~	~~Category Five Facility has an extremely hazardous substance in excess of the threshold planning quantity.~~

~~TAB Q-7-___~~
~~COVERED FACILITIES~~

~~FACILITY FAC EMERG RESP COORD COMMUNICATIONS~~
~~_____ Office#_____~~
~~St._____ Home#_____~~
~~City_____ Title_____ R. Freq_____~~
~~Pager $_____~~
~~ALTERNATE~~
~~FAC EMERG RESP COORD~~
~~_____ Office#_____~~
~~Home#_____~~
~~Title_____ R.Freq_____~~

~~HAZARDOUS CHEMICAL(S)~~

~~NAME UN ID# FORM PACKAGED MAXIMUM HEALTH~~
~~CAS # CONTAINER QUANTITY RISK~~

~~SKETCH OF FACILITY AND STORAGE AREAS:~~

~~FACILITY RESPONSE POINT (RP) AND DIRECTIONS:~~

~~STAGING AREA (Support units will report and await assignment by local organization):~~

~~TRANSPORTATION ROUTES AND MODES OF TRANSPORTATION (include supplier and telephone number - describe how chemicals are handled - list hazardous points along the routes):~~

~~SPECIAL FACILITIES LIKELY TO BE AFFECTED BY A RELEASE (List affected facilities and day/night contacts):~~

~~PROTECTIVE ACTIONS (In-place sheltering of evacuation - give brief description of area(s) where protection actions may be required - add evacuation procedures to Annex EE):~~

~~EMERGENCY EQUIPMENT ON HAND/TRAINING/EXERCISING:~~

~~SPILL CONTAINMENT/CLEAN-UP/DISPOSAL:~~

~~EMERGENCY NOTIFICATION~~

~~Local 24 hr. warning number (LEPC): ____-____-____~~
~~Haz-mat Coord. (Day) ____-____-____ (Night) ____-____-____~~
~~Alt. Coord. (Day) ____-____-____ (Night) ____-____-____~~
~~_____ Fire Dept. ____-____-____~~
~~_____ Police Dept. ____-____-____~~
~~DES Coord.:~~
~~(Day) ____-____-____ or ____-____-____~~
~~(Night) ____-____-____ or ____-____-____~~
~~_____ Rescue ____-____-____or____-____-____~~
~~_____Ambulance ____-____-____or____-____-____~~

~~Kentucky Emergency Response Commission (KERC) 502- 564-7815~~

~~Kentucky DES Area Coordinator:~~
~~(O) ____-____-____~~
~~(H) ____-____-____~~

~~Nat. Resources & Envir. Prot. Cabinet (NR&EPC): 502-564-2380~~
~~National Response Center (NRC): 1-800-424-8802~~
~~Evir. Prot. Agency (EPA) Hotline: 1-800-535-0202~~
~~Hours: 8:30 a.m. - 7:30 p.m., Mon-Fri. including federal holidays~~
~~Chemtrec: 1-800-424-9300~~]

STEVEN P. BULLARD, Director
APPROVED BY AGENCY: December 14, 2016
FILED WITH LRC: December 15, 2016 at 10 a.m.
CONTACT PERSON: Mr. Steven P. Bullard, Director of Administrative Services, Office of Management and Administration, Department of Military Affairs, phone 502-607-1738, fax 502-607-1240, email steven.p.bullard.mil@mail.mil.

DEPARTMENT OF MILITARY AFFAIRS
Division of Emergency Management
(As Amended at ARRS, February 10, 2017)

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

RELATES TO: KRS 39E.040, 39E.050, 39E.110, ***39E.130, 39E.140, 39E.150, 39E.160, 39E.170, 39E.220,*** 39E.230[~~39.800-39.990~~], ***61.800, 61.805, 61.810, 61.820, 61.823, 61.826, 61.835, Chapter 424.40 C.F.R. Part 355, Appendix A, Appendix B,*** 42 U.S.C. 11001-11050
STATUTORY AUTHORITY: KRS 39E.040, 39E.050[~~39.817, 39.845, 39.850~~]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 39E.040(3) requires the Kentucky Emergency Response Commission to develop reporting requirements and procedures for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances. KRS 39E.040(6) requires the commission to recommend administrative regulations to the director for issuance by the Division of Emergency Management to implement KRS Chapter 39E. This administrative regulation establishes criteria and procedures to be met by local emergency planning committees requesting funds generated by KRS 39E.050[~~39.817~~].

Section 1. Definitions. (1) "EHS facility emergency response plan" means an emergency response plan for a facility subject to SARA Title III ***(Superfund Amendments and Reauthorization Act of 1986), 42 U.S.C. 11001 et seq., that:***
(a)[which] Has in its inventory an extremely hazardous substance (EHS) above threshold planning quantity (TPQ)***; and***
(b)[and] Meets all required planning elements of ***SARA Title III, 42 U.S.C. 11003[Pub.L. 99-499, Section 303]***, KRS 39E.110, KRS 39E.130, KRS 39E.140, KRS 39E.150, KRS 39E.160, KRS 39E.170, ***and*** KRS 39E.220, and the Kentucky Emergency Response Commission's planning requirements found in the Emergency Response Planning Guide for EHS Facilities***: Self-Study Manual[{]***KERC Document***; [#]***730-PGSS***, incorporated by reference in 106 KAR 1:081[}].***
(2) "EHS Facility Emergency Response Plan Checklist" or "KERC Form***: [#]***303-PC" means the checklist completed by all LEPCS and submitted to their Kentucky Emergency Management (KYEM) area manager (AM) for all EHS facility emergency response plans requiring submission to the KERC for approval and in accordance with the Emergency Response Planning Guide for EHS Facilities***: Self-Study Manual, [{]***KERC Document***: [#]***730-PGSS***, incorporated by reference in 106 KAR 1:081[}].***
(3) "Emergency Response Planning Guide for EHS Facilities***: Self-Study Manual***" or "KERC Document***: [#]***730-PGSS" means the packet, ***incorporated by reference in 106 KAR 1:081,[annually updated and]*** published by Kentucky Emergency Management, which provides instructions for the completion of

each section of an EHS facility emergency response plan required to be compliant with all EPCRA***, 42 U.S.C. 11001 through 11050***, KRS ***Chapter 39E***, and ***Title 106*** KAR requirements for the current calendar year.

(4) "Grant ledger" or "KERC Form***: [#]***105-GL" means the form LEPCs are required to use to record all of the checks, cash payments, and outlays of cash in the "(Name of County) Emergency Planning Committee Fee Account" during the calendar year, January 1 through December 31.

(5) "KERC Document Library" or "KERC Document***: [#]***001-LIB" means the packet published and annually reviewed by the Kentucky Emergency Response Commission (KERC) that contains the complete library of required and optional materials, including all aspects of LEPC planning and grants.

(6) "LEPC Annual Certification Letter (ACL)" or "KERC Form***[#]*** 302-ACL" means the letter annually submitted by the local emergency planning committee (LEPC) listing the status of all EHS facility emergency response plans in the planning district, which includes information that was received from covered facilities by March 1, for the previous calendar year, and in accordance with all ACL requirements found in the Emergency Response Planning Guide for EHS Facilities***: Self-Study Manual,[(]*** (KERC Document***: [#]***730-PGSS***[)].***

(7) "LEPC Detailed Budget" or "KERC Form***: [#]***102-DB" means the form submitted by LEPCs annually identifying***[,]*** by category, all intended purchases and expenses for the upcoming calendar year using, if approved, KERC grant funds in accordance with the LEPC Grant Applications Manual ***[(]***KERC Document***: [#]***720-GASS***[)].***

(8) "LEPC Grant Application" or "KERC Form***: [#]***101-GA" means the form submitted by LEPCs initially requesting KERC grant funds in accordance with the LEPC Grant Applications Manual ***[(]***KERC Document***: [#]***720-GASS***[)].***

(9) "LEPC Grant Applications Manual" or "KERC Document***: [#]***720-GASS" means the packet, annually updated and published by Kentucky Emergency Management, which provides instructions for the request for assistance through the KERC grant funds, including templates for all forms required for the current calendar year.

(10) "LEPC Membership Cover Page" or "KERC Form***[#]*** 104-MCP" means the cover letter submitted by LEPCs with their annually required submission of an updated membership list that serves as a checklist, ensuring all representatives required by EPCRA***, 42 U.S.C. 11001 through 11050,*** and KRS ***Chapter 39E*** are included within each LEPC membership.

(11) "Personal Property Inventory" or "KERC Form***: [#]***103-PPI" means the form submitted by LEPCs annually listing all property purchased using KERC grant funds in accordance with the LEPC Grant Applications Manual ***[(]***KERC Document***: [#]***720-GASS***[)].***

(12) "Public (Legal) Notice Advertisement" ***[or "KERC Form #107-PLN"]*** means the template ***established in Section 7 of this administrative regulation and used by*** LEPCs***[shall use]*** to meet the EPCRA***, 42 U.S.C. 11001 through 11050,*** requirements found in ***[EPCRA]*** Section 324, which ***require[requires]*** that each LEPC annually publish a notice in local newspapers that the emergency response plan, material safety data sheets, and inventory forms have been submitted.***[The notice shall state that follow-up emergency notices may subsequently be issued. The notice shall announce that members of the public who wish to review any plan, sheet, form, or follow-up notice may do so at the location designated. Specific information on committee activities (identified within the template by use of parenthesis) shall be provided to the public annually. The "Public (Legal) Notice Advertisement" Template is set out in Section 7 of this administrative regulation]***[~~Tab Q-7 or commission-approved equivalent plan" means a plan describing the location and characteristics of extremely hazardous substances which includes the nine (9) required planning elements of PL 99-499, Section 303 and KRS 39.840 and the Kentucky Emergency Response Commission's planning requirements consisting of:~~

~~(1) A legible sketch of the facility which shows a directional arrow, the location of extremely hazardous substances, and the access road;~~

~~(2) The location of the response point and instructions for responsibilities of the facility emergency response coordinator;~~

~~(3) Designation of the staging area and alternative staging area(s);~~

~~(4) A listing of major suppliers of extremely hazardous substances and their telephone numbers;~~

~~(5) A division of the vulnerable zone into four (4) quadrants, listing the special facilities within each quadrant and the total populations of each quadrant~~].

Section 2. LEPC Eligibility Requirements. (1) To be eligible for financial assistance, local emergency planning committees that[~~which~~] have extremely hazardous substances (EHS) as listed in 40 C.F.R. 355***,*** Appendices A and B***,***[~~106 KAR 1:081, Section 6,~~] in excess of the TPQ[~~threshold planning quantity~~] present in their community shall meet all the[~~following~~] criteria established in this subsection during the preceding calendar year (January 1 through December 31)***.***[~~:~~]

(a)[~~(1)~~] The local emergency planning committee shall meet all requirements set forth in KRS 39E.110[~~39.840~~].

(b)[~~(2)~~] The local emergency planning committee shall have an EHS Facility Emergency Response Plan ***that has been approved by the KERC*** pursuant to KRS 39E.110[~~39.840~~](1)(a), (e), (f) and 39E.150 as set out in the Emergency Response Planning Guide for EHS Facilities***: Self-Study Manual, [(]***KERC Document***: [#]***730-PGSS***,[)]*** for each facility in the planning district that has an extremely hazardous substance (EHS) in excess of the TPQ[~~39.860~~]***[that has been approved by the KERC]***[~~Kentucky Emergency Response Commission~~].

1. The local emergency planning committee shall submit a completed EHS Facility Emergency Response Plan Checklist***, [(]***KERC Form***: [#]***303-PC***,[) as defined in Section 1(2) of this administrative regulation]*** with all EHS Facility Emergency Response plans submitted for KERC approval.

2. The local emergency planning committee shall submit new EHS Facility Emergency Response Plans to the Kentucky Emergency Management (KYEM) area manager (AM) within sixty (60) days of notification that the facility has an extremely hazardous substance (EHS) in excess of the threshold planning quantity (TPQ).

3. The KYEM AM shall review new EHS Facility Emergency plans and their accompanying checklists for completeness.

a. Complete plans***[deemed complete by the KYEM AM]*** shall be forwarded to the Chairman of the Kentucky Emergency Response Commission, or designee, within thirty (30) days of receipt from the local emergency planning committee.

b. Incomplete plans***[deemed incomplete]*** shall be returned to the local emergency planning committee with recommendations[~~(a) The local emergency planning committee's emergency response plan shall contain an approved Tab Q-7 or commission-approved equivalent listed in Section 6 of 106 KAR 1:081 for each facility in the planning district that has an extremely hazardous substance listed in Section 6 of 106 KAR 1:081 in excess of the threshold planning quantity.~~

~~(b) The local emergency planning committee shall submit new Tab Q-7 or commission-approved equivalent plans to the state disaster and emergency services area coordinator within sixty (60) days of notification that the facility has an extremely hazardous substance in excess of the threshold planning quantity.~~

~~(c) After new Tab Q-7 or commission-approved equivalent plans are submitted, no later than April 1 each year, the local emergency planning committee shall review the Tab Q-7 plans and send certification to the state disaster and emergency services area coordinator stating that there were no changes and therefore the plan is correct as is; or the plan has been revised and the revisions are included with the certification.~~

~~(d) The state disaster and emergency services area coordinator shall review new Tab Q-7 or commission-approved equivalent plans for completeness, note any recommendations and forward them to the Chairman of the Kentucky Emergency Response Commission, or designee, within thirty (30) days of receipt from the local emergency planning committee.~~

~~(e) The state disaster and emergency services area coordinator shall review Tab Q-7 or commission-approved equivalent revisions and certifications received from the local emergency planning committee for completeness, note any recommendations and forward them to the Chairman of the Kentucky Emergency Response Commission, or designee, no later than May 1 each year~~].

(c)[~~(3)~~] The local emergency planning committee shall meet at least twice during each calendar year (January 1 through December 31) to conduct its business and a quorum shall be required. A copy of the minutes shall be provided to the Chairman of the Kentucky Emergency Response Commission, or designee, within thirty (30) days of the date of the meeting pursuant to KRS 39E.110(2).

(d)1. No later than January 31 each calendar year (January 1 through December 31) in accordance with KRS Chapter 424***, [(]***Legal ***Notices[~~Notice~~)]***, the local emergency planning committee shall publish public information on committee activities***[~~entitled "Public (Legal) Notice Advertisement" (KERC Form #107-PLN)~~)]*** as set out in Section 7 of this administrative regulation.

2. No later than February 28, each local emergency planning committees shall provide the KERC chairman, or designee, with a photocopy of the legal notice published ***established in Section 7 of this administrative regulation[~~as described~~]*** clearly showing the name of the newspaper and the date of publication.

(e)1. After new equivalent plans are submitted, no later than April 1 each year, the local emergency planning committee shall review all existing EHS Facility Emergency Response plans and send an Annual Certification Letter (ACL)***[~~as defined in Section 1(6) of this administrative regulation~~]*** to the Kentucky Emergency Management (KYEM) area manager (AM) stating that:

a. There were no changes and therefore the plan is correct as is; or

b. The plan has been revised and the revisions are included with the ACL.

2. The KYEM AM shall review the ACL and all EHS Facility Emergency Response Plan revisions received from the local emergency planning committee for completeness.

a. Complete plans***[~~deemed complete by the KYEM AM~~]*** shall be forwarded to the KERC chairman, or designee, no later than May 1 each year.

b. Incomplete plans***[~~deemed incomplete~~]*** shall be returned to the local emergency planning committee with recommendations.

(f)1. No later than April 1, the local emergency planning committee shall submit Grant Application***, [(]***KERC Form***: [#]***101-GA***,[)]*** to the KYEM AM.

2. The KYEM AM shall review the grant request form for completeness and conformance to ***KRS Chapter 39E and Title 106 KAR.***

a. Complete grant applications[~~statutes and administrative regulations. Grant applications deemed complete by the KYEM AM~~] shall be forwarded to the KERC chairman, or designee, no later than May 1 each year.

b. Incomplete grant applications***[~~deemed incomplete~~]*** shall be returned to the local emergency planning committee with recommendations.

(g) No later than April 1, the local emergency planning committee shall provide the KERC chairman, or designee, documentation of expenditures, including bank statements, canceled checks, invoices, receipts, and a Grant Ledger***, [(]***KERC Form***: [#]***105-GL***,[)]*** for the preceding year.

(h) No later than June 1, local emergency planning committees shall submit a LEPC Detailed Budget***, [(]***KERC Form***: [#]***102-DB***,[)]*** to the Chairman of the Kentucky Emergency Response Commission or designee, identifying how the funds requested on the LEPC Grant Application are to be spent.

(i)[~~(4)~~] No later than December 1 each year, the local emergency planning committee shall submit an updated membership list and LEPC Membership Cover Page***, [(]***KERC Form***[#]*** 104-MCP***,[)] as defined in Section 1(10) of this administrative regulation]*** to the KERC chairman, or designee[~~Kentucky Emergency Response Commission~~].

(j)1. No later than December 1 each year, the bylaws of each local emergency planning committee shall be provided to the KERC chairman, or designee, with certification stating that:

a. There were no changes and therefore the bylaws are identical to last year; or

b. The bylaws have been revised and the revisions are included.

2. The bylaws shall identify the position or person who will be responsible for accountability for the funds and who will be listed as the authorized applicant as shown on the Grant Application***, [(]***KERC Form***: [#]***101-GA***[)].***

(k) No later than December 1, local emergency planning committees shall submit a Personal Property Inventory***, [(]***KERC Form***: [#]***103-PPI***, [)]*** identifying all property items valued in excess of $500 purchased using KERC grant funds.

(2)[~~(5) In accordance with KRS Chapter 424 (Legal Notice), the local emergency planning committee shall publish during each calendar year (January 1 through December 31) public information on committee activities entitled "Public (Legal) Notice Advertisement" on form DES/SARA-324 as set out in Section 7 of this administrative regulation.~~

~~Section 3.~~] To be eligible for financial assistance, local emergency planning committees that[~~which~~] do not have any extremely hazardous ***substance[~~substances~~]*** as defined[~~listed~~] in ***106 KAR 1:081, Section 1,[~~KRS 39E.020~~]***[~~106 KAR 1:081, Section 6,~~] in excess of the TPQ[~~threshold planning quantity~~] present in their community shall meet the[~~following~~] criteria established in this subsection during the preceding calendar year (January 1 through December 31).[~~:~~]

(a)[~~(1)~~] The local emergency planning committee shall meet criteria set forth in KRS 39E.110[~~39.840~~](1)(b), (c), (d), (2), (4), (5) and subsection (1)(d), (f), (g), (h), (i), (j), and (k) of this section[~~1(4) and (5) of this administrative regulation~~].

(b)[~~(2)~~] The local emergency planning committee shall meet at least once during each calendar year (January 1 through December 31) to conduct its business and a quorum shall be required. A copy of the minutes shall be provided to the Chairman of the Kentucky Emergency Response Commission, or designee, within thirty (30) days of the date of the meeting pursuant to KRS 39E.110(2).

Section 3. KERC Grant Review Procedures. (1) The KYEM AM, the KERC chairman or designee, or the grant review committee may request additional information that shall be provided by the local emergency planning committee. Failure to provide the requested information shall invalidate the local emergency planning committee's request for funding.

(a) The KERC chairman, or designee, shall annually update, publish, and promulgate all grant requirements in the LEPC Grant Applications Manual (KERC Document #720-GASS).

(b) The KERC chairman, or designee, shall annually review, publish, and promulgate all grant required KERC forms in the KERC Document Library (KERC Document #001-LIB).

(2) The schedule of due dates shall be as established in this subsection.

(a) No later than June 1, the KERC chairman, or designee, shall review the grant request form for completeness and conformance to statutes and administrative regulations, note any recommendations, and forward it to the grant review committee.

(b) No later than July 1, the grant review committee, with a quorum present, shall review all grant requests and ***LEPC*** Detailed Budgets***, [(]***KERC Form***: [#]***102-DB***,[)]*** and forward their recommendations to the KERC for final approval.

(c) No later than September 15, the KERC shall make the grant awards ***pursuant to this administrative regulation***.

Section 4.[~~Local Emergency Planning Committee Procedures. (1) If a local emergency planning committee requests financial assistance, it shall use Grant Request Form DES/SARA-303 as set out in Section 7 of this administrative regulation and shall include a detailed budget identifying how the requested funds are to be spent.~~

~~(2) The grant request form shall be submitted to the state disaster and emergency services area coordinator no earlier than January 1 and no later than May 1.~~

~~(3) The state disaster and emergency services area coordinator shall review the grant request form for completeness and conformance to statutes and administrative regulations, note any recommendations and forward it to the Chairman of the Kentucky Emergency Response Commission or designee, no later than June 1.~~

~~(4) The Chairman of the Kentucky Emergency Response Commission, or designee, shall review the grant request form for completeness and conformance to statutes and administrative regulations, note any recommendations and forward it to the Grant Review Committee no later than July 1.~~

~~(5) The Grant Review Committee, with a quorum present, shall review all grant requests and forward their recommendations no later than August 15 to the Kentucky Emergency Response Commission for final approval.~~

~~(6) The Kentucky Emergency Response Commission shall make the grant awards no later than September 15.~~

~~(7) The state disaster and emergency services area coordinator, the Chairman of the Kentucky Emergency Response Commission, or designee, or the Grant Review Committee may request additional information which shall be provided by the local emergency planning committee. Failure to provide the requested information shall invalidate the local emergency planning committee's request for funding.~~

~~Section 5.~~] Requests for Modifications. (1) A modification of a grant award ***shall be[is]*** required if there is a change in the grant request or if a local emergency planning committee is unable to expend the funds for the purpose for which the grant was awarded.

(a) A request for modification shall be submitted by the LEPC for approval by the commission.

(b) Unexpended monies shall be returned to the KERC[~~Kentucky Emergency Response Commission~~] fee account fund.

(2) Requests for modifications of grant awards shall be submitted on an LEPC Detailed Budget***, [{]***KERC Form***: [#]***102-DB***,[}]***[~~Grant Request Form DES/SARA-303 as set out in Section 7 of this administrative regulation~~] and, except for due dates, shall be processed in accordance with Sections 2 and 3[~~and 6~~] of this administrative regulation.

(3) Modifications may be submitted throughout the grant period.

Section 5[~~6~~]. Supplemental Grant Awards. (1) In the event supplemental money is available, the KERC[~~Kentucky Emergency Response Commission~~] shall determine the date of the supplemental allocation award and inform the local emergency planning committees of that date.

(2) Requests for supplemental money shall be submitted on a Grant Application***, [{]***KERC Form #101-GA***,[}]*** and LEPC Detailed Budget***, [{]***KERC Form***: [#]***102-DB***,[}]***[~~Grant Request Form DES/SARA-303 as set out in Section 7 of this administrative regulation~~] and, except for due dates, shall be processed in accordance with this section and Sections 2 and 3[~~and 6~~] of this administrative regulation.

(3) If a local emergency planning committee requests supplemental money, the schedule of due dates shall be as established in this subsection.[~~is:~~]

(a) Thirty (30) days from notification by the KERC[~~Kentucky Emergency Response Commission~~] of the availability of supplemental ***LEPC*** money, the local emergency planning committee shall submit the supplemental Grant Application***, [{]***KERC Form***: [#]***101-GA***,[}]*** and LEPC Detailed Budget***, [{]***KERC Form***: [#]***102-DB***, [}]***[~~request~~] to the KYEM AM[~~state disaster and emergency services area coordinator~~].

(b) Thirty (30) days from receipt of the supplemental grant request, the KYEM AM[~~state disaster and emergency services area coordinator~~] shall review the supplemental grant request documents for completeness and conformance to statutes and administrative regulations. ***1. Complete*** grant applications***[~~deemed complete by the KYEM AM~~]*** shall be forwarded with the LEPC Detailed Budget***, [{]***KERC Form***: [#]***102-DB***, [}]***to the KERC chairman, or designee.

2. Incomplete grant applications***[~~deemed incomplete~~]*** shall be returned with the LEPC Detailed Budget***, [{]***KERC Form***: [#]***102-DB***, [}]***to the local emergency planning committee with recommendations[~~in accordance with Sections 3 and 6 of this administrative regulation and forward it to the Chairman of the Kentucky Emergency Response Commission, or designee~~].

(c) Thirty (30) days from receipt of the supplemental grant request, the KERC chairman [~~of the Kentucky Emergency Response Commission~~], or designee, shall review the supplemental grant request in accordance with Section[~~Sections~~] 3[~~and 6~~] of this administrative regulation and forward it to the Grant Review Committee.

(d) Forty-five (45) days from receipt of the supplemental grant request, the Grant Review Committee, with a quorum present, shall review the supplemental grant request in accordance with Section[~~Sections~~] 3[~~and 6~~] of this administrative regulation and forward their recommendations to the KERC[~~Kentucky Emergency Response Commission~~].

(e) Thirty (30) days from receipt of the recommendation of the Grant Review Committee, the KERC[~~Kentucky Emergency Response Commission~~] shall make the supplemental grant award ***pursuant to this administrative regulation***.

Section 6[~~7~~]. Requirements for Funding Accountability. (1) Funds provided by the KERC[~~Kentucky Emergency Response Commission~~] shall be deposited in a separate "(Name of County) Emergency Planning Committee Fee Account" and fiscal accountability shall be prescribed by the state auditor of public accounts. All funds shall be subject to audit by the KERC[~~Kentucky Emergency Response Commission~~] and the state auditor of public accounts.

(2) Grant awards approved by the KERC may be withheld for noncompliance with KRS 39E.050 and this administrative regulation and for failure to provide required documentation[~~The bylaws of each local emergency planning committee shall identify the position or person who will be responsible for accountability for the funds and who will be listed as the authorized applicant as shown on DES/Sara-303 and shall be submitted simultaneously with the grant request~~].

(3) All funding allocation decisions shall be made by the KERC and shall be dependent upon availability of fees collected[~~The local emergency planning committee shall provide documentation of expenditures for the preceding year on each grant request submitted except for the initial grant request~~].

(4) Unexpended monies shall be returned to the Kentucky Emergency Response Commission fee account fund[~~Grant awards approved by the Kentucky Emergency Response Commission may be withheld for noncompliance with KRS 39.800 to 39.990 and administrative regulations issued thereunder and for failure to provide required documentation.~~

~~(5) All funding allocation decisions shall be made by the Kentucky Emergency Response Commission and shall be dependent upon availability of fees collected~~].

Section 7[~~8~~]. "Public (Legal) Notice Advertisement"***[~~(KERC Form #107-PLN)~~]*** Template[~~Form DES/SARA-324 and grant request form DES/SARA-303 are set out in this section.~~]**.**

(1) LEPCs shall use the template established in this section to comply with EPCRA, 42 U.S.C. 1101 through 11050, and annual requirements established in Section 324.

(2) Template:

PUBLIC (LEGAL) NOTICE ADVERTISEMENT
_____ COUNTY EMERGENCY PLANNING COMMITTEE

Pursuant to Section 324, Title III of the 1986 Federal Superfund Amendments and Reauthorization Act (SARA) of 1986**,** ***42 U.S.C. 11001 et seq.[~~(PL 99-499)~~]***, the following information is provided in compliance with the Community Right-to-Know requirements of the SARA Law, and the open meetings and open

records provisions of ***KRS 61.800, 61.805, 61.810, 61.823, 61.826, 61.835[~~Kentucky Revised Statutes~~]***. Members of the public may contact the (name of county) County Emergency Planning Committee by writing (name of chairman), Chairman of the (name of county) County Emergency Planning Committee, (working address of chairman or committee), (city), Kentucky (zip code), or contacted by telephone at (area code), (telephone number established by the committee). The (name of county) County Emergency Planning Committee conducts meetings at (name of building), (local address), or at other locations, in accordance with the Kentucky Open Meetings Law. Members of the public may request to be notified of regular or special meetings as provided in KRS 61.820***[~~and KRS 61.825~~]***. Records of the Planning Committee, including the county emergency response plan, material safety data sheets, and inventory forms, or any follow-up emergency notices as may subsequently be issued, are open for inspection, and members of the public who wish to review these records may do so (normal hours of business), (Eastern or Central Time), (days of the week), at (location of the office or place where custodian keeps the committee files), as required by the Kentucky Open Records Law. The local 24-hour telephone number for purposes of emergency notification, as required by ***the*** SARA ***Law***, is (emergency number adopted by county planning committee).

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Grant Ledger", KERC Form: 105-GL, January 2017;

(b) "LEPC Grant Applications Self-Study Manual", KERC Document 720-GASS, 2016;

(c) "LEPC Annual Certification Letter (ACL)", KERC Form 302-ACL, January 2017;

(d) "LEPC Detailed Budget", KERC Form: 102-DB, January 2017;

(e) "LEPC Grant Application", KERC Form: 101-GA", January 2017;

(f) "LEPC Membership Cover Page", KERC Form 104-MCP, January 2017;

(g) "Personal Property Inventory", KERC Form: 103-PPI, January 2017; and

(h) "KERC Document Library", KERC Document: 001-LIB, 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601-6168, Monday through Friday, 8:00 a.m. to 4:30 p.m. [~~KENTUCKY EMERGENCY RESPONSE COMMISSION~~

~~FEE ACCOUNT FUND~~

~~Grant Application for Grant Period 09/01/9__ to 08/31/9__~~

~~DUE DATES~~
~~LEPCs to ACs 05/01~~
~~Received by AC:~~
~~Received by State:~~
~~ACs to State 06/01~~
~~Received by AC:~~
~~Received by State:~~
~~Final Award 09/15~~
~~Initial & Date~~
~~Initial & Date~~

~~AUTHORIZED APPLICANT (INFORMATION)~~
~~Emergency Planning Committee~~

~~County Name:~~
~~County Code-3 digit no.:~~
~~Enter total number of Tab Q-7's with Extremely Hazardous Substances in your county. This is the total number of facilities with extremely hazardous substances in your county: ____~~
~~DATE:~~

~~GRANT INFORMATION~~

~~Grant Amount Requested $~~

~~Circle Type of Application:~~
~~LEPC:~~
~~New~~
~~Revised~~
~~State Agency:~~
~~New~~
~~Revised~~

~~GRANT RECIPIENT~~

~~Checks shall be made payable to and mailed to the AUTHORIZED APPLICANT. The AUTHORIZED APPLICANT is the county emergency planning committee which is authorized to apply for and manage the grant. The AUTHORIZED APPLICANT shall provide the name _____ and phone number _____ of the designated contact person. The AUTHORIZED APPLICANT shall provide the name _____ and address _____ of the bank where the check shall be deposited.~~

~~Emergency Planning Committee~~

~~County Name:~~
~~County Code-3 digit number:~~
~~Street Address:~~
~~City, Zip:~~

~~LEPCs shall submit grant request form DES/SARA-303 to their state disaster and emergency services area coordinator. All required documentation shall accompany the form. Incomplete grant request forms may delay processing and may result in invalidating the request.~~

~~State agencies shall submit grant request form DES/SARA-303 to the Chairman, or designee, of the Kentucky Emergency Response Commission. All required documentation shall accompany the form. Incomplete grant request forms may delay processing and may result in invalidating the request.~~

~~CERTIFICATION~~

~~I, the undersigned, certify to the Kentucky Emergency Response Commission that all the information is true and accurate. I further represent that the money received under this grant program will be used for the administration, development and implementation of the Kentucky Emergency Planning and Community Right-to-know program, known as SARA Title III, within the guidelines mandated by Pub.L. 99-499/Title III, KRS Chapter 39.800 to 39.990 and subsequent administrative regulations.~~

~~Name, Title and Date:~~
~~DES/SARA-303~~

~~Grant Application for Grant Period 09/01/9__ to 08/31/9__~~

~~ATTACHMENTS~~

~~Detailed budget sheet for each budget category you request.~~
~~Documentation for preceding year's award.~~
~~Copy of published DES/SARA-324~~
~~Bylaws.~~

~~INELIGIBLE ITEMS~~

~~Emergency response equipment.~~
~~Reimbursement for emergency response and/or cleanup of a release.~~

~~BUDGET CATEGORIES~~	~~GRANT REQUEST~~	~~GRANT AWARD~~
~~Right-to-know responsibilities includes legal notice DES/SARA-324~~		

~~Data Management-includes receiving and maintaining data under 302(c)/KRS 39.845; 304/KRS 39.840(b), 311/312/KRS 39.840(c)~~		
~~Telephone-includes 24-hour warning point for releases and cost of telephone for LEPC business~~		
~~Services-includes contracts* to support KRS 39.800 to KRS 39.990~~		
~~Office Supplies-includes postage, printing, copying and paper~~		
~~File cabinets, desks, chairs~~		
~~Commission-approved training~~		
~~Commission-approved travel~~		
~~TOTAL GRANT REQUEST~~		
~~LESS CARRYOVER MONIES~~		
~~ADJUSTED GRANT AWARD~~		

~~*Contracts for personal services and equipment shall be in conformance with state laws and administrative regulations.~~
~~DES/SARA-303~~]

STEVEN P. BULLARD, Director
APPROVED BY AGENCY: December 14, 2016
FILED WITH LRC: December 15, 2016 at 10 a.m.
CONTACT PERSON: Mr. Steven P. Bullard, Director of Administrative Services, Office of Management and Administration, Department of Military Affairs, phone 502-607-1738, fax 502-607-1240, email steven.p.bullard.mil@mail.mil.

DEPARTMENT OF MILITARY AFFAIRS
Division of Emergency Management
(As Amended at ARRS, February 10, 2017)

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

RELATES TO: KRS 39E.050, 39E.230[~~39.800-39.990~~]
STATUTORY AUTHORITY: KRS ***39E.040(3), (6),*** 39E.050[~~39.817~~]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 39E.040(3) requires the Kentucky Emergency Response Commission to develop reporting requirements and procedures for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances. KRS 39E.040(6) requires the commission to recommend administrative regulations to the director for issuance by the Division of Emergency Management to implement KRS Chapter 39E. This administrative regulation establishes criteria and procedures to be met by state agencies requesting funds generated by KRS 39E.050[~~39.817~~].

Section 1. Eligibility of State Agencies. State agencies that perform functions to assist the Kentucky Emergency Response Commission in the administration of its programs and activities at the state level ***shall be[~~are~~]*** eligible to apply for funding.

Section 2. State Agency Procedures. (1) State agencies ***that[~~may~~]*** apply for financial assistance ***shall apply*** by completing a Grant Application***, [{]***KERC Form***: [#]***101-GA***, incorporated by reference[}]***[~~Grant Request Form DES/SARA-303~~]***[~~as set out~~]*** in 106 KAR 1:091 and shall include ***an LEPC[a]*** Detailed Budget***, [{]***KERC Form***: [#]***102-DB***, incorporated by reference in 106 KAR 1:091.[}]*** identifying how the requested funds are to be spent.
(2) State agencies may request funding for staff to support the commission in the administration of its programs and activities at the state level. If a request for staff is included in the grant request, the state agencies shall attach a position description detailing job duties and an organization chart defining that position within the agency.
(3) The grant application and detailed budget[~~request form~~] shall be submitted directly to the Chairman of the Kentucky Emergency Response Commission, or designee, no later than May 1.
(4) The Chairman of the Kentucky Emergency Response Commission, or designee, shall review the grant request form for completeness and conformance to ***KRS Chapter 39E and Title 106 KAR[~~administrative regulations and statutes~~]***, note any recommendations, and forward it to the Grant Review Committee no later than June[~~July~~] 1.
(5) The Grant Review Committee, with a quorum present, shall review all grant requests from state agencies and forward their recommendations no later than July 1[~~August 15~~] to the Kentucky Emergency Response Commission for final approval.
(6) The Kentucky Emergency Response Commission shall make the grant awards no later than September 15.
(7) The Chairman of the Kentucky Emergency Response Commission, or designee, or the Grant Review Committee may request additional information, which shall be provided by the state agency. Failure to provide the requested information shall invalidate the state agency's request for funding.

Section 3. Requests for Modifications. (1) A request for modification of a grant award is required if there is a change in the grant request or if a state agency is unable to expend the funds for which the grant was awarded. A request for modification shall[~~must~~] be submitted by the state agency for approval ***or denial*** by the commission. Unexpended monies shall be returned to the fund.
(2) Requests for modifications of grant awards shall be submitted on ***an LEPC[a]*** Detailed Budget***, [{]***KERC Form***: 102-DB, incorporated by reference[~~DB~~]}]***[~~Grant Request Form DES/SARA-303~~]***[~~as set out~~]*** in 106 KAR 1:091 and, except for due dates, shall be processed in accordance with Sections 2 and 4 of this administrative regulation. Requests for modifications may be submitted throughout the grant period.

Section 4. Requirements for Funding Accountability. (1) Funds provided by the Kentucky Emergency Response Commission shall be subject to fiscal accountability prescribed by the state auditor of public accounts.
(a) A Memorandum of Agreement (MOA) between the state agency making application and the Chairman of the Kentucky Emergency Response Commission shall be executed.
(b) All funds shall be subject to audit by the Kentucky Emergency Response Commission and the state auditor of public accounts.
(2) Grant awards approved by the Kentucky Emergency Response Commission may be withheld for***:***
(a) Noncompliance with KRS 39E.050[~~39.800 to 39.990~~]***;***
(b) Noncompliance with[~~and~~] this administrative regulation[~~regulations issued thereunder~~]***: or***
(c)[~~and for~~] Failure to provide required documentation.
(3) All funding allocation decisions shall be made by the Kentucky Emergency Response Commission and shall be dependent upon availability of fees collected.

STEVEN P. BULLARD, Director
APPROVED BY AGENCY: December 14, 2016
FILED WITH LRC: December 15, 2016 at 10 a.m.
CONTACT PERSON: Mr. Steven P. Bullard, Director of Administrative Services, Office of Management and Administration, Department of Military Affairs, phone 502-607-1738, fax 502-607-1240, email steven.p.bullard.mil@mail.mil.

DEPARTMENT OF MILITARY AFFAIRS
Division of Emergency Management
(As Amended at ARRS, February 10, 2017)

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

RELATES TO: KRS 39E.040, 39E.050, 39E.080, 39E.110, 39E.140, 39E.150[~~39.800-39.990~~]
STATUTORY AUTHORITY: KRS 39E.040***(3), (6)***, 39E.050,

39E.080[~~39.817~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39E.040(3) requires the Kentucky Emergency Response Commission to develop reporting requirements and procedures for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances. KRS 39E.040(6) requires the commission to recommend administrative regulations to the director for issuance by the Division of Emergency Management to implement KRS Chapter 39E. This administrative regulation establishes the Kentucky Emergency Response Commission Grant Review Committee to review requests for financial assistance.

Section 1. Purpose of the Grant Review Committee. (1) The Grant Review Committee shall review all grant requests from local emergency planning committees and state agencies and make recommendations to the Kentucky Emergency Response Commission.

(2) The Grant Review Committee shall monitor all grant awards to ensure compliance with ***KRS Chapter 39E and Title 106 KAR[~~statutes and administrative regulations~~]***.

Section 2. Grant Review Committee Organization. (1) The Grant Review Committee shall consist of not less than five (5) nor more than nine (9) members of the Kentucky Emergency Response Commission who shall be appointed by the Chairman of the Kentucky Emergency Response Commission with approval of the commission.

(2) The chairman of the Grant Review Committee shall be elected by members of the Grant Review Committee.

(3) Members shall serve for a term of one (1) year and may be reappointed.

(4) Proxy votes or proxy membership shall not be permitted.

(5) If a member misses two (2) consecutive meetings, the position shall be considered vacant and the Chairman of the Kentucky Emergency Response Commission, with the approval of the Kentucky Emergency Response Commission, shall appoint a replacement.

(6) A quorum shall be[~~is~~] required for the Grant Review Committee meetings.

STEVEN P. BULLARD, Director

APPROVED BY AGENCY: December 14, 2016

FILED WITH LRC: December 15, 2016 at 10 a.m.

CONTACT PERSON: Mr. Steven P. Bullard, Director of Administrative Services, Office of Management and Administration, Department of Military Affairs, phone 502-607-1738, fax 502-607-1240, email steven.p.bullard.mil@mail.mil.

DEPARTMENT OF MILITARY AFFAIRS
Division of Emergency Management
(As Amended at ARRS, February 10, 2017)

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

RELATES TO: KRS 39E.050[~~39.800-39.990~~]***, 42 U.S.C. 11000, et seq.***

STATUTORY AUTHORITY: KRS ***39E.040(3), (6),*** 39E.050[~~39.817~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39E.040(3) requires the Kentucky Emergency Response Commission to develop reporting requirements and procedures for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances. KRS 39E.040(6) requires the commission to recommend administrative regulations to the director for issuance by the Division of Emergency Management to implement KRS Chapter 39E. This administrative regulation establishes administrative support and the grant distribution formula to be used in awarding grants for funds generated by KRS 39E.050[~~39.817~~].

Section 1. Local Emergency Planning Committee Grant Distribution Formula. (1) At least fifty (50) percent of funds collected annually ***pursuant to[~~by~~]*** KRS 39E.050[~~39.817~~] shall be awarded to eligible local emergency planning committees that[~~which~~] submit grant requests for administration, development**,** and implementation of the Kentucky Emergency Planning and Community Right-to- Know Program, known as SARA Title III (Superfund Amendments and Reauthorization Act of 1986)***, 42 U.S.C. 11001, et seq.***, within the guidelines mandated by ***42 U.S.C. 11001(a), (b), and (c), Section 301[~~Pub.L.~~]***[PL]***[~~99-499, Title III (as amended through Pub.L. 107–377, December 31, 2002)~~]***, and KRS 39E.050[~~39.800 to 39.990 and subsequent administrative regulations~~].

(2) The grant distribution formula to determine how much money will be available to each local emergency planning committee ***shall be[~~is~~]***:

(a) Ten (10) percent of the total amount (A) collected by March[~~April~~] 1 divided by all eligible[~~120~~] local emergency planning committees.

$$\frac{.1(A)}{\text{Eligible[120] Local Emergency Planning Committees}}$$

$$\text{Hypothetical example}: \frac{.1(200{,}000)}{120} = \$167$$

(b) Plus twenty (20) percent of the total amount (A) collected statewide times the ratio of Kentucky Emergency Response Commission - required and approved EHS Facility Emergency Response Plans[~~Tab Q-7s or commission-approved equivalent~~] (Qc) in the county to the total Kentucky Emergency Response Commission - approved[~~Tab Q-7s or commission-approved equivalent~~] (Qs) in the state.

$$.2(A)\frac{Qc}{Qs}$$

$$\text{Hypothetical example}: .2(200{,}000)\frac{13}{1{,}000} = \$520$$

(c) Plus twenty (20) percent of the total amount (A) collected statewide times the ratio of[~~fee-generating~~] Tiers (Tc) in the county to the total number of[~~fee generating~~] Tiers (Ts) in the state.

$$.2(a)\frac{Tc}{Ts}$$

$$\text{Hypothetical example}: .2(200{,}000)\frac{30}{1{,}000} = \$1200$$

[~~(d) Therefore the formula for local emergency planning committee grant (Ga) distribution to determine how much money will be available to each eligible local emergency planning committee is:~~

$$\cancel{GA = \frac{.1(A)}{120\ LEPCs} + .2(A)\frac{Qc}{Qs} + .2(A)\frac{Tc}{Ts}}$$]

(3) The grant (Gr) distribution formula to determine how much money an eligible local emergency planning committee that[~~which~~] submits a grant request form may receive is:

$$Gr = \frac{.1(A)}{\text{Total eligible LEPCs}} + .2(A)Qc + .2(A)\frac{Tc}{Ts}$$

[~~(4) All grant awards shall be based upon the amount of money requested by the eligible local emergency planning committee and the formula shown in this section.~~]

Section 2. Notice of Amount of Availability of Funds to Each Local Emergency Planning Committee. (1) No later than May[~~April~~] 1 each year**,** the Kentucky Emergency Response Commission shall notify the local emergency planning committees how much money will be available to each eligible local emergency planning committee that[~~which~~] submits a grant request form. This amount shall be based upon the total amount of funds available in the Kentucky Emergency Response Commission fee account divided pursuant to Section 1 of this administrative regulation.

(2) Notification of money available shall not be construed as an automatic grant award to a local emergency planning committee.

Each local emergency planning committee who wants an award shall submit a grant request form in accordance with 106 KAR 1:091.

Section 3. State Agency Grant Distribution. No more than fifty (50) percent of funds collected annually by KRS 39E.050[~~39.817~~] shall be allocated by the Kentucky Emergency Response Commission to state agencies other than local emergency planning committees that[~~which~~] submit grant requests for administration, development, and implementation of the Kentucky Emergency Planning and Community Right-to-Know program, known as SARA Title III (as amended through Pub.L. 107–377, December 31, 2002), and[~~within the guidelines mandated by PL 99-499, Title III~~] KRS 39E.050[~~39.800 to 39.990 and subsequent administrative regulations~~].

Section 4. Availability of Additional Funds. The Kentucky Emergency Response Commission may set a date and notify all local emergency planning committees and state agencies of the availability of additional funds collected after March[~~April~~] 1 or that[~~which~~] were returned to the commission during the year. Any additional funds shall be distributed in accordance with Sections 1(1) and 3 of this administrative regulation.

Section 5. Administrative support required by KRS 39E.050[~~39.817~~] shall be provided by the Kentucky Division of Emergency Management[~~Division of Disaster and Emergency Services~~].

STEVEN P. BULLARD, Director
APPROVED BY AGENCY: December 14, 2016
FILED WITH LRC: December 15, 2016 at 10 a.m.
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DEPARTMENT OF MILITARY AFFAIRS
Division of Emergency Management
(As Amended at ARRS, February 10, 2017)

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

RELATES TO: KRS 39E.010, 39E.040, 39E.050, 39E.080, 39E.120, 39E.130, 39E.190, 39E.200, 39E.210, 39E.220, 39E.990[~~39.800-39.990~~]
STATUTORY AUTHORITY: KRS ***39E.010(1), 39E.040(6), 39E.050(4), 39E.080(4), 39E.120, 39E.200(1), 39 E.210***, 39E.990[~~39.990~~]***[, 1998 Ky. Acts ch. 226, sec. 82]***[~~1994 Ky. Acts ch. 382, sec. 19~~]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 39E.010(1), 39E.040(6), 39E.050(4), 39E.080(4), 39E.120, 39E.200(1),***[39E.210]*** and 39E.210 require the Kentucky Emergency Response Commission and the Division of Emergency Management to promulgate administrative regulations governing the activities of the Kentucky Emergency Response Commission, including standards and procedures for the operations of the commission and local emergency planning committees, fee system, hazardous substance inventory and substance release reporting, emergency procedures and requirements, and establishment of warning and notification standards. This administrative regulation establishes procedures to be followed to assess civil penalties by the Kentucky Emergency Response Commission as provided for in KRS 39E.990[~~39.990~~].

Section 1.***[Construction. These administrative regulations shall be construed liberally and in conformity with reasonable administrative practice to achieve just, timely and inexpensive determinations of matters before the Kentucky Emergency Response Commission. These administrative regulations are not intended as a comprehensive set of hearing administrative regulations and shall in no way be construed to impede or constrict the power of a hearing officer to administer the law, or administrative regulations, or to govern the conduct of the hearing officer's docket or the procedural course of a particular administrative action. The Kentucky Rules of Civil Procedure and the case law interpreting those rules may be used as analogous authority to interpret these administrative regulations.***

Section 2.] General Provisions. ***(1)*** The commission shall commence an administrative action to impose a civil penalty under KRS 39E.990(3)[~~39.990(3)~~] against a person ***if[when]*** the commission has notice of the existence of a violation of any provision of KRS 39E.010, 39E.040, 39E.050, 39E.080, 39E.120, 39E.130, 39E.190, 39E.200, 39E.210, 39E.220***, or[and]*** 39E.990[~~39.800 to 39.990~~].

(2)(a) The commission chairman (or designee) shall mail to the alleged violator a writing styled "NOTICE OF VIOLATION", which shall contain the specific date, time, and place of the violation, if applicable, together with a summary of the factual, legal, and other grounds upon which the notice of violation is based, and the specific provisions of KRS 39E.010, 39E.040, 39E.050, 39E.080, 39E.120, 39E.130, 39E.190, 39E.200, 39E.210, 39E.220***, or[and]*** 39E.990[~~39.800 to 39.905~~] or ***Title 106 KAR[the commission's administrative regulations]*** that were allegedly violated.

(b)[Mere] Recitation of statutory or regulatory standards ***shall[is]*** not ***be*** a sufficient summary of the grounds for the commission's action.

(3) The commission chairman (or designee) may attempt to informally resolve the violation***. Informal resolution shall be*** in accordance with Section 3 of this administrative regulation.

(4) If[Where], after ninety (90) days from the issuance of the notice of violation the alleged violation is unresolved, the commission chairman (or designee) shall issue a notice of administrative hearing, following the requirements of KRS 13B.050.

Section ***2.[3.]*** Informal Proceedings. After an administrative action commences, the commission may seek informal resolution of the dispute with a party***. Resolution shall be as[under the]***[~~following~~]***[procedures]*** established in this section.[~~:~~] (1) The commission shall give ***[reasonable]*** notice ***not less than twenty (20) days prior to an informal proceeding*** to all affected persons of the commission's notice of violation.

(2) After giving notice, the commission shall give affected persons or parties an opportunity, at a mutually convenient time and place, to present to an authorized commission representative evidence in opposition to the commission action or determination, or to give a statement challenging the grounds upon which the commission has chosen to justify its action or determination.

(3) The authorized representative of the commission shall give the affected person's evidence and objections due consideration, and notify all affected persons in writing within fourteen (14) days of the receipt of the evidence or objections of the commission's decision.

Section ***3.[4.]*** Parties. The parties to the proceeding shall be the commission chairman (or designee) and the alleged violator who shall be designated respondent. A person may be permitted to intervene in any action by filing a petition for intervention in accordance with KRS 13B.060.

Section ***4.[5.]*** Assignment to Hearing Officer; Duties and Authority. (1) Within ten (10) days of the filing of the notice of violation, the commission shall designate a hearing officer for formal administrative action in any manner consistent with KRS 13B.030. If the commission elects to designate a hearing officer from the Division of Administrative Hearings in the Office of the Attorney General under KRS 13B.030, ***the commission[it]*** shall make that request in writing to the division within ten (10) days of the filing of the notice of violation.

(2) Assignment of a hearing officer from the Division of Administrative Hearings of the Office of the Attorney General shall

be made according to ***400 KAR 1:001, 400 KAR 1:030, 400 KAR 1:040, 400 KAR1:090, and 401 KAR 100:010[~~the administrative regulations governing the conduct of the Division of Administrative Hearings of the Office of the Attorney General~~]***.

(3) A request for or assignment of a hearing officer under KRS 13B.030(2) shall be a designation of a hearing officer under these administrative regulations and a delegation to the hearing officer under KRS 13B.030(1) of all powers conferred on and relating to the conduct of the administrative action. The hearing officer shall have the authority to take any procedural action authorized by KRS Chapter 13B***, Title 106 KAR, 400 KAR 1:001, 400 KAR 1:030, 400 KAR 1:040, 400 KAR 1:090, or 401 KAR 100:010[~~or these administrative regulations~~]***, including, for example, the authority to:

(a) Administer oaths and affirmations;

(b) Issue subpoenas for witnesses and production of documents or things;

(c) Regulate discovery;

(d) Rule on procedural requests;

(e) Hold prehearing conferences;

(f) Regulate the course of, and maintain order in the administrative hearing;

(g) Rule on evidentiary matters and admit in or exclude evidence from the record;

(h) Examine witnesses;

(i) Require the parties to submit legal memoranda, and proposed findings of fact and conclusions of law;

(j) Make proposed findings of fact, conclusions of law***,*** and recommended orders for the agency head; and

(k) Take any action consistent with law to promote the orderly and prompt conduct of the administrative action.

Section ***5.[~~6.~~]*** Continuances. (1) Any party may request a continuance of a scheduled hearing for ***a death, serious illness or injury, emergency, or other unforeseen event or circumstance beyond the ability of a person acting with reasonable care and diligence to control that reasonably prevents a party from attending the hearing.***

(a)[~~good cause~~]. The request shall be in writing and include the reason for the request.

(b) The request shall be submitted to the commission chairman (or designee) at least ten (10) days prior to the hearing date.

(2) Any party objecting to a requested continuance may file a written objection to the commission chairman (or designee) at least five (5) days prior to the scheduled hearing.

(3) The hearing officer shall rule on all requests for a continuance.

(a) In the hearing officer's absence, the commission chairman (or designee) shall rule on ***the requests.***

(b)[~~such requests.~~] The commission chairman (or designee) shall execute and transmit an order either granting or denying the continuance to all parties involved.

Section ***6.[~~7.~~]*** Conflict of Interest; Recusal. (1) If at any time during an administrative action an assigned hearing officer's continued service would violate the standard set forth in KRS 13B.040(2)(a) or a canon of judicial ethics, that hearing officer shall recuse and enter a written order withdrawing from the administrative action.

(2) At any point during an administrative action a party may move the hearing officer to recuse from an administrative action. The motion to recuse shall be in writing filed in the record and shall be supported by an affidavit setting forth specific facts ***that[~~which~~]*** demonstrate one (1) or more of the grounds for recusal set forth in KRS 13B.040(2)(b).

(3) Within ten (10) days of recusal of a hearing officer, the commission shall request or assign another hearing officer by written order.

Section ***7.[~~8.~~]*** Ex Parte Contact Prohibited. (1) Unless otherwise allowed by KRS 13B.100, there shall be no administrative action, or any person working under the hearing officer's supervision, and any person with a direct or indirect interest in the outcome to that administrative action concerning the merits of the administrative action assigned to the hearing officer.

(2) This administrative regulation shall not prohibit ex parte contact with staff on purely procedural matters not at issue in the case. This section shall not prohibit communications with staff regarding the status of a case.

(3) Upon receiving an ex parte contact prohibited by this section, the hearing officer shall take every action required under KRS 13B.100, shall cause the parties to be notified of the contact, and shall inform the other parties to the action of their right to move for a recusal.

(4) The hearing officer may impose appropriate sanctions on a person who knowingly makes a prohibited ex parte contact, including***[~~, but not limited to~~]*** deeming the person to have defaulted***;[~~,~~]*** striking all or part of that person's pleadings, claims, or defenses***;[~~,~~]*** denying any pending motions by the party***;[~~,~~]*** issuing a show cause order requiring the person to show why the hearing officer should not sanction the person***;[~~,~~]*** or taking such other actions as are appropriate ***pursuant to KRS Chapter 13B***.

Section ***8.[~~9.~~]*** Motion for Summary Disposition. A hearing officer may grant a motion for a summary disposition and recommend the agency head rule in the moving party's favor if the hearing officer finds that there is no genuine dispute as to any issue of material fact and the moving party is entitled to a summary disposition as a matter of law.

Section ***9.[~~10.~~]*** Filing of Papers. (1) All papers after the petition required to be served upon a party shall be filed with the commission either before service or ***not less than twenty (20) days in advance of a hearing[~~within a reasonable time thereafter~~]***.

(2) Pleadings and other papers shall be filed with the commission when they are received and endorsed by the commission. The commission shall endorse the date of receipt on every paper filed in an action immediately upon receipt.

(3) Papers may be filed with the commission by telefacsimile machine at the telefacsimile telephone number listed for the commission on the notice of violation.

(a) A party[~~Parties~~] filing by telefacsimile machine shall include a certificate that the paper is being filed by fax and the original paper is being filed by mail and shall immediately after faxing ***[~~such~~]*** a paper mail the original paper to the commission.

(b) The filing date of a paper sent by facsimile shall be the date the commission receive the original, unless the original is received with five (5) business days of the facsimile, in which case the filing date shall be the date the commission received the facsimile.

(4) ***Papers may be filed electronically to email tier2kyem@gmail.com. Papers filed electronically via email shall include a certificate that the paper copy is being filed by email and the original paper is being filed by mail immediately after electronic submittal.***

(5)All papers filed in an administrative action ***shall[~~must~~]*** be signed by the filing person.

(a) The signature of the filing person or his ***or her*** authorized representative constitutes a certificate that the signing person has read the paper and that to the best of his ***or her*** knowledge, information and belief formed after reasonable inquiry, it is not interposed for any improper purpose.

(b) If a paper is signed in violation of this subsection, the hearing officer may strike the paper from the record, deem the party to have failed to file the paper***,*** and take any action allowed as a consequence of ***the[~~such~~]*** failure, strike all or part of any pleading, claim or defense asserted in the filing, or bar an attorney violating this subsection from future participation in that administrative action, and recommend that the agency head bar that attorney from appearing in future administrative actions before the commission.

Section ***10.[~~11.~~]*** Venue. Administrative hearings shall be conducted at a site designated by the hearing officer. In determining venue, the hearing officer shall consider the requirements of law ***and[~~,~~]*** the convenience of the parties, the

witnesses**,** and the evidence.

Section ***11.[~~12.~~]*** Default. (1) If a party fails to timely comply with an order of a hearing officer or a requirement of these administrative regulations, the hearing officer shall file an order directing the noncomplying party to show cause why the hearing officer should not deem that party to have waived his ***or her*** right to an administrative hearing and why the hearing officer should not immediately recommend that the commission chairman (or designee) enter an order adverse to the party. If the noncomplying party does not satisfy the show cause order as required, the hearing officer may recommend the entry of a final order in conformity with the relief requested by the opposing party in the administrative action.

(2) If a party fails to appear at a formal administrative hearing, the hearing officer may deem that party to have waived his ***or her*** right to a formal administrative hearing and may immediately recommend the commission chairman (or designee) enter a final order in conformity with the relief requested in the appropriate pleadings, or may proceed without the defaulted party.

(3) Upon the failure of a party to timely comply with a hearing officer's order, the hearing officer may recommend the commission chairman (or designee) grant any relief to which the opposing party is entitled.

(4) A hearing officer may, before the time for filing exceptions has run, set aside a recommendation by default under this section for ***a death, serious illness or injury, emergency, or other unforeseen event or circumstance beyond the ability of a person acting with reasonable care and diligence to control that reasonably prevents a party from complying[~~good cause shown~~]***.

Section ***12.[~~13.~~]*** Burden of Proof. (1) The commission shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion to show the propriety of the commission's action.

(2) The party asserting an affirmative defense shall have the burden of going forward and the ultimate burden of persuasion to establish that defense.

(3) The ultimate burden of persuasion in all administrative actions shall be met by a preponderance of substantial evidence in the record.

Section ***13.[~~14.~~]*** Findings of Fact, Conclusions of Law, and Recommended Order. The hearing officer shall make findings of fact, conclusions of law**,** and issue a recommended order for review and approval by the full commission with service on all parties.

(1) Any party may take exception in writing within fifteen (15) days of mailing of the hearing officer's recommended order. Thereafter, the commission chairman (or designee), shall, as directed by the commission, approve the findings of fact, conclusions of law**,** and recommended order or may modify the findings of fact, conclusions of law and recommended order.

(2) If no exceptions are filed and the commission takes no action on the hearing officer's findings of fact and conclusions of law**,** within thirty (30) days, the order of the hearing officer shall be final.

Section ***14.[~~15.~~]*** (1) Service of the notice of violation, notice of administrative hearing, and the hearing officer's recommended order shall be made by certified mail to the alleged violator at the address shown on the annual inventory report[~~reporting forms~~] or facility plan required to be filed by KRS Chapter 39E[~~39~~]. If no facility plan or annual inventory report has been filed, then to the last known address.

(2) All documents filed with the commission by any party shall be served by mail upon all other parties.

STEVEN P. BULLARD, Director

APPROVED BY AGENCY: December 14, 2016

FILED WITH LRC: December 15, 2016 at 10 a.m.

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GENERAL GOVERNMENT
Board of Physical Therapy
(As Amended at ARRS, February 10, 2017)

201 KAR 22:020. Eligibility and credentialing procedure.

RELATES TO: KRS 164.772, 327.010, 327.050, 327.060, 327.075, 327.080

STATUTORY AUTHORITY: KRS 327.040(1), (11), (13)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the Board of Physical Therapy to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327. KRS 327.040(1) requires the board to determine if physical therapist applicants meet the qualifications and standards required by KRS Chapter 327. KRS 327.040(13) authorizes the board to promulgate administrative regulations regarding the qualifications for physical therapist assistants. This administrative regulation establishes the criteria for eligibility, methods, and procedures of qualifying for a credential to practice physical therapy in Kentucky.

Section 1. An application shall be accepted for credentialing as a physical therapist or physical therapist assistant based on successful completion by the applicant of one (1) of the following processes:

(1) Examination;

(2) Endorsement; or

(3) Reinstatement.

Section 2. Examination Candidate. (1) To be eligible for the examination, the applicant for licensure as a physical therapist shall:

(a) Have successfully completed the academic and clinical requirements of a physical therapy program accredited by CAPTE;

(b) Submit certification of completion by the educational administrator of that program;

(c) Have successfully completed the Jurisprudence Exam;

(d) Submit a complete Application for Credentialing that includes a photo taken within one (1) year;

(e) Submit the correct, nonrefundable fee as required in 201 KAR 22:135;

(f) If applicable, submit on an Applicant Special Accommodations Request Form a request for a reasonable accommodation in testing due to a documented disability; and

(g) Register for the NPTE examination.

(2) To be eligible for the examination, the applicant for certification as a physical therapist assistant shall:

(a) Have successfully completed the academic and clinical requirements of a physical therapy or physical therapist assistant program accredited by CAPTE; and

(b) Complete the requirements of subsection (1)(b) through (g) of this section.

(3)[~~After three (3) failed attempts in taking the examination, an applicant for licensure or certification shall complete a board-approved remediation plan based on identified deficits as provided on the Federation of State Boards of Physical Therapy (FSBPT) Examination Performance Feedback report prior to registering for each subsequent examination.~~

~~(4)~~] Effective July 1, 2012, after six (6) failed attempts at either the physical therapist or physical therapist assistant examination, or combination thereof, in any jurisdiction, an applicant shall not be eligible to register for any additional examinations

Section 3. An applicant for credentialing who is registered for the examination in another jurisdiction shall:

(1) Meet the eligibility requirements of Section 2 of this administrative regulation; and

(2) Register with the FSBPT Score Transfer Service to have

results submitted to Kentucky.

Section 4. To be eligible for a temporary permit, the candidate shall:

(1) Meet the qualifications of Section 2 or 3 of this administrative regulation, except for the retake[~~and remediation~~] provisions in Section 2(3) [~~and (4)~~] of this administrative regulation;

(2) Complete a Supervisory Agreement ***for Applicant with Temporary Permit*** with one (1) or more physical therapists; and

(3) Have not failed either the physical therapist or physical therapist assistant examination in any jurisdiction.

Section 5. (1) Upon issuance of a temporary permit, the physical therapist or physical therapist assistant applicant shall practice only under the supervision of a physical therapist currently engaged in the practice of physical therapy in Kentucky who:

(a) Has practiced in Kentucky for more than one (1) year; and

(b) Has an unrestricted license.

(2) A[~~The~~] supervising physical therapist:

(a) Shall be on-site at all times during the practice of the applicant with a temporary permit;

(b) Shall be responsible for the practice of physical therapy by the applicant with a temporary permit;

(c) Shall review, approve, date, and co-sign all physical therapy documentation by the applicant with a temporary permit[~~within twenty-four (24) hours of when the service was provided~~];

(d) May designate an alternate[~~a temporary~~] supervising physical therapist who meets the qualifications of subsection (1)(a) and (b) of this section. The alternate[~~temporary~~] supervising physical therapist shall sign and date written documentation of the acceptance of the responsibility as identified in paragraph (a) through (c) of this subsection; and

(e) Shall notify the board immediately if the supervisory relationship is terminated.

(3) The applicant with a temporary permit shall:

(a) Disclose the applicant's temporary credential status to all patients prior to initiating treatment;

(b) Sign documentation with the temporary permit number and designation as required in 201 KAR 22:053, Section 5(5)(a) or (b); and

(c) Notify the board immediately if the supervisory relationship is terminated.

(4) The temporary permit shall expire the earlier of:

(a) Six (6) months from the date of issuance; or

(b) Notice of exam results by the board.

Section 6. A physical therapist applicant who meets the qualifications for physical therapy licensure by examination may become a special candidate for physical therapist assistant certification by examination.

Section 7. To be eligible for credentialing by endorsement, the applicant shall:

(1) Have successfully completed the academic and clinical requirements of a physical therapy or physical therapist assistant program accredited by CAPTE;

(2) Meet the requirements established in Section 2(1)(b) through (f) of this administrative regulation;

(3) Have successfully completed the NPTE or its equivalent, predecessor examination and register with the FSBPT Score Transfer Service to have results submitted to Kentucky:

(a) A passing score in Kentucky for the person who took the NPTE prior to July 1, 1993, shall be at least equal to the national average raw score minus one and five-tenths (1.5) standard deviation set equal to a converted score of seventy-five (75); or

(b) After July 1, 1993, a passing score shall be the criterion referenced passing point recommended by the FSBPT set equal to a scaled score of 600;

(4) Have an active credential in this profession in another jurisdiction; and

(5) Have verification of credentials showing the credential has never been revoked, suspended, placed on probation, or is not under disciplinary review in another jurisdiction upon application.

Section 8. To be eligible for reinstatement, the applicant shall meet the requirements in 201 KAR 22:040.

Section 9. A credential issued by the board shall be in effect until March 31 of the next odd-numbered year.

Section 10. A foreign-educated physical therapist shall comply with the provisions of 201 KAR 22:070

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

(a) "Application for Credentialing", December 2011;

(b) "Supervisory Agreement ***for Applicant with Temporary Permit*** ", ***January 2017[~~December 2016~~]***[~~2011~~]; and

(c) "Applicant Special Accommodations Request Form", December 2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Physical Therapy, 312 Whittington Parkway Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

SCOTT D. MAJORS, Executive Director

APPROVED BY THE BOARD: November 17, 2016.

FILED WITH LRC: December 15, 2016 at 10 a.m.

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GENERAL GOVERNMENT CABINET
Board of Licensed Professional Counselors
(As Amended at ARRS, February 10, 2017)

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

RELATES TO: KRS ***335.500,*** 335.535(1)

STATUTORY AUTHORITY: KRS 335.515(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(3) ***requires[~~authorizes~~]*** 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 definitions used in 201 KAR Chapter 36.

Section 1. Definitions. (1) "Academic course offered by an accredited postsecondary institution" means:

(a) A professional counseling course designated by a professional counseling title or content; or

(b) An academic course relevant to the practice of professional counseling.

(2) "Approved" means recognized by the Kentucky Board of Licensed Professional Counselors.

(3) "Chairman" means the chairman or vice-chairman of the board.

(4) "Charge" means a specific allegation contained in a formal complaint, as established in 201 KAR 36:050,***[~~Section 1,~~]*** issued by the board alleging a violation of a specified provision of KRS 335.500 to 335.599 ***or[~~;~~]*** the administrative regulations promulgated thereunder***[~~; or any other state or federal statute or regulation~~]***.

(5) "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.

(6) "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 ***or[,]*** the administrative regulations promulgated thereunder***[, or any other state or federal statute or regulation]***.

(7) "Complaint screening committee" means a committee that:

(a) Consists of three (3) persons appointed by the chairman of the board and may include the executive director or another staff member; and

(b) Reviews complaints and investigative reports, opens investigations, participates in informal proceedings to resolve a complaint, or requests a court of competent jurisdiction to take criminal or civil action.

(8) "Continuing education hour" means fifty (50) clock minutes of participating in continuing educational experiences.

(9) "Distance counseling" means the practice of professional counseling as defined by KRS 335.500(5) between the professional counselor and the patient:

(a) Provided using an electronic communication technology; or

(b) Two (2) way, interactive, simultaneous audio and video.

(10) "Document" means information in any form or format that is relevant to a review or investigation conducted by the board and may include:

(a) Originals, copies, or drafts;

(b) Written documents;

(c) Papers;

(d) Books;

(e) Computer files;

(f) Photographs;

(g) Audio or video recordings;

(h) Correspondence;

(i) Electronic mail; or

(j) Drawings or blueprints.

(11) "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.

(12) "Face-to-face" means supervision that is in person where the supervisor and supervisee are physically present in the same room or through interactive, simultaneous video and audio media.

(13) "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.

(14) "Good moral character" means a licensee or applicant who has not been:

(a) Convicted, in a court of competent jurisdiction, of any crime involving a substantial misrepresentation of any material fact, including any of the following:

1. Bribery or corrupt influences under KRS Chapter 521;

2. Forgery or related offenses under KRS Chapter 516;

3. Business or commercial frauds under KRS Chapter 517;

4. Perjury or related offenses under KRS Chapter 523;

5. Abuse of a public office under KRS Chapter 522; or

6. Miscellaneous crimes affecting businesses, occupations, and professions ***that have a direct financial or adverse impact on business***;

(b) Convicted, in a court of competent jurisdiction, of criminal homicide under KRS Chapter 507 or 507A;

(c) Convicted, in a court of competent jurisdiction, of any felony or misdemeanor involving the following:

1. Sexual offenses under KRS Chapter 510;

2. Pornography under KRS Chapter 531;

3. Theft and related offenses under KRS Chapter 514;

4. Prostitution offenses under KRS Chapter 529; or

5. Family offenses under KRS Chapter 530;

(d) Convicted, in a court of competent jurisdiction, of any felony involving the following:

1. Assault or related offenses under KRS Chapter 508;

2. Kidnapping or related offenses under KRS Chapter 509;

3. Burglary or related offenses under KRS Chapter 511;

4. Criminal damage to property under KRS Chapter 512; or

5. Arson and related offenses under KRS ***Chapter*** 513;

(e) Found to have a behavioral or substance abuse problem, which may endanger or impair the health, personal safety, or welfare of a client;

(f) Found to be a delinquent taxpayer as defined by KRS 131.1817(1)(b);

(g) Convicted, in a court of competent jurisdiction, of ***three (3) or more[multiple]*** offenses of driving under the influence or driving while impaired;

(h) Convicted, in a court of competent jurisdiction, of any drug-related felony under KRS Chapter 218A;

(i) Convicted, in a court of competent jurisdiction, of any criminal offense similar to the convictions identified in paragraphs (a) to (h) of this subsection that constitutes a violation of law of the state where the conviction occurred; or

(j) Subject to a fine, disciplinary supervision, probation, revocation, or suspension of a registration, certification, or license issued by the issuing body.

(15) "Individual supervision" means supervision of one (1) or two (2) supervisees with the supervisor.

(16) "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.

(17) "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.

(18) "Professional counselor" means a licensed professional clinical counselor as defined by KRS 335.500(3) or licensed professional counselor associate as defined by KRS 335.500(4).

(19) "Program" means an organized learning experience:

(a) Planned and evaluated to meet behavioral objectives; and

(b) Presented in one (1) session or a series.

(20) "Relevant" means having content applicable to the practice of professional counseling.

(21) "Respondent" means any person, individual, corporation, business trust, estate, trust partnership, limited liability company, association, organization, joint venture, government or any subdivision, agency or instrumentality thereof, or any other legal or commercial entity who is subject to a charge or formal complaint.

(22) "Scope of practice for professional counseling" means:

(a) The independent practice of counseling encompassing the provision of professional counseling services to individuals, groups, families, couples, and organizations through the application of accepted and established mental health counseling principles, methods, procedures, or ethics;

(b) Counseling to promote mental health wellness, which includes the achievement of social, career, and emotional development across the lifespan, as well as preventing and treating mental disorders and providing crisis intervention;

(c) Counseling that includes psychotherapy, diagnosis, evaluation; administration of assessments, tests and appraisals; referral; or the establishment of counseling plans for the treatment of individuals, couples, groups, and families with emotional, mental, addiction, and physical disorders;

(d) Counseling that encompasses consultation and program evaluation, program administration within and to schools and organizations, and training and supervision of interns, trainees, and pre-licensed professional counselors through accepted and established principles, methods, procedures, and ethics of counselor supervision; or

(e) The functions or practices that are within the professional counselor's training or education.

(23) "Supervisee" means a licensed professional counselor associate who works with clients under supervision.

(24) "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).

(25) "Supervisor" means a member of a mental health or behavioral-services profession listed in 201 KAR 36:065 who

controls, oversees, guides, and takes responsibility for the professional clinical counseling practice of a supervisee.

(26) "Supervisor of record" means the person listed on the supervisory agreement and approved by the board in accordance with 201 KAR 36:060, Section 2.

(27) "Testing and assessment services" means an educational, mental health, clinical, and career assessment to gather information regarding the client for a variety of purposes, including client decision making, treatment planning, and forensic proceedings. Assessment may include both qualitative and quantitative methodologies.

MARTIN C. WESLEY, Chairperson

APPROVED BY AGENCY: October 14, 2016

FILED WITH LRC: October 14, 2016 at 10 a.m.

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GENERAL GOVERNMENT CABINET
Board of Licensed Professional Counselors
(As Amended at ARRS, February 10, 2017)

201 KAR 36:030. Continuing education requirements.

RELATES TO: KRS 13B, 194A.540, 210.366, 335.500-***335.599[335.990]***

STATUTORY AUTHORITY: KRS 210.366, 335.515(3), (6), 335.535(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.366 requires a board licensee to complete a minimum of six (6) hours of continuing education in suicide assessment, treatment, and management every six (6) years. KRS 335.515(3), (6), and 335.535(8) require the board to promulgate an administrative regulation requiring a licensee to complete continuing education requirements as a condition of renewal of his licensee. This administrative regulation delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1.[~~Definitions. (1) "Academic courses offered by an accredited postsecondary institution" means:~~

~~(a) A professional counseling course, designated by a professional counseling title or content; or~~

~~(b) An academic course, relevant to professional counseling.~~

~~(2) "Approved" means recognized by the Kentucky Board of Licensed Professional Counselors.~~

~~(3) "Continuing education hour" means fifty (50) clock minutes of participating in continuing educational experiences.~~

~~(4) "Program" means an organized learning experience:~~

~~(a) Planned and evaluated to meet behavioral objectives; and~~

~~(b) Presented in one (1) session or a series.~~

~~(5) "Provider" means an organization approved by the Kentucky Board of Licensed Professional Counselors for providing continuing education programs.~~

~~(6) "Relevant" means having content applicable to the practice of professional counseling.~~

~~Section 2.~~] Accrual of Continuing Education Hours. (1) A minimum of ten (10) continuing education hours shall be accrued by each person holding a license during the annual period for renewal.

(2) All continuing education hours shall be in or related to the field of professional counseling.

(3) A person holding a license shall complete a minimum of three (3) hours of continuing education in domestic violence within three (3) years of initial licensure, as required by KRS 194A.540.

(4) A person holding a license shall complete a minimum of six (6) hours of continuing education ***in a*** course in suicide assessment, treatment, and management within the first year of licensure and every six (6) years thereafter as required by KRS 210.366.

(a) A person holding a license shall be exempt[~~exempted~~] from the requirement to complete a continuing education course in suicide assessment, treatment, and management within the first year of licensure if the counselor:

1. Graduated from a Council for Accreditation of Counseling and Related Education Program since 2009; or

2. Completed a three (3) semester hours graduate course in suicide and crisis assessment, prevention, and intervention.

(b) A person holding a license shall be exempt[~~exempted~~] from the requirement to complete a continuing education course in suicide assessment, treatment, and management if the counselor satisfies one (1) of the following at least once per year during the six (6) year periodic requirement:

1. Is employed in a position that requires at least forty (40) hours of counseling in suicide and crisis assessment, prevention, and intervention;

2. Teaches a graduate-level counseling course in suicide and crisis assessment, prevention, and intervention; or

3. Teaches a continuing education course in suicide and crisis assessment, prevention, and intervention[~~at least once per year during the six (6) year period~~].

(c) The continuing education course in suicide assessment, treatment, and management shall be board approved in accordance with Section 2[~~3~~] of this administrative regulation.

(d) An individual asserting an exemption of the suicide assessment, treatment, and management course shall maintain sufficient documentation to establish the exemption. Documentation listed in Section 5[~~6~~](3) of this administrative regulation shall be sufficient to establish the exemption.

(5) A person holding a license shall complete a minimum of three (3) hours of continuing education on the law for regulating professional counseling, KRS***[~~Chapter~~]*** 335.500 to ***335.599[~~335.990~~]*** and 201 KAR Chapter 36, every three (3) years. A person holding a license shall be exempt from this requirement if the person:

(a) Teaches a graduate-level course that includes KRS 335.500 to ***335.599[~~335.990~~]*** and 201 KAR Chapter 36 during the three (3) year period; or

(b) Teaches a continuing education course on KRS 335.500 to ***335.599[~~335.990~~]*** and 201 KAR Chapter 36 during the three (3) year period.

Section 2[~~3~~]. Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the license shall be directly related to the professional growth and development of the licensee's practice of professional counseling. They may be earned by completing any of the educational activities as established in this section.

(1) Programs not requiring board review and approval.

(a) A continuing[~~An~~] ***education[~~educational~~]*** program from any of the following providers shall be approved without further review by the board if it is:

1.[~~(a)~~] Sponsored or approved by:

a.[~~1.~~] The American Counseling Association, or any of its affiliated branches or divisions;

b.[~~2.~~] The Kentucky Counseling Association, or any of its affiliated chapters or divisions;

c.[~~3.~~] The American School Counselor Association or any of its affiliated state chapters; or

d.[~~4.~~] The National Board for Certified Counselors; or

2.[~~(b)~~] An academic course offered by an accredited post-secondary institution directly related to professional counseling or counseling psychology.

(b) A continuing ***education[~~educational~~]*** program not requiring board review and approval shall comply with the requirements of subsection (3) of this section and Section 4 of this administrative regulation.

(2) Programs requiring board review and approval. For approval purposes, the board shall review the following types of programs to determine relevancy:

(a) A program, approved by the board, of a service provider, including a home study course or in-service training provided by

another organization or educational institution;

(b) A program or academic course presented by the licensee. A presenter of relevant programs or academic courses may earn full continuing education credit for each contact hour of instruction, except the earned credit shall not exceed one-half (1/2) of the continuing education renewal requirements. Credit shall not be issued for repeated instruction of the same course; or

(c) An article authored by the licensee that was published in a relevant, professionally recognized or juried publication. Credit shall not be granted for an article unless it was published within the one (1) year period immediately preceding the renewal date and a licensee shall not earn more than one-half (1/2) of the continuing education hours required for renewal. More than one (1) publication shall not be counted during a renewal period.

(3)(a)[~~The following continuing education programs shall be presented by an instructor who is licensed by the board:~~

~~(a) Domestic violence under Section 2(3) of this administrative regulation;~~

~~(b)~~] Supervision training under ***201 KAR 36:065, Section 1(3)[201 KAR 36:060, Section 2(3)]***, shall be presented by an instructor who is licensed by the board [~~3(3); or~~

~~(c) Suicide assessment, treatment, and management under Section 2(4) of this administrative regulation~~].

(b) The continuing education program on the law for regulating professional counseling, KRS***[Chapter]*** 335.500 to ***335.599[335.990]*** and 201 KAR Chapter 36, shall be presented by an instructor who is licensed by the board or an attorney who demonstrates knowledge of KRS***[Chapter]*** 335.500 to ***335.599[335.990]*** and 201 KAR Chapter 36 in the Continuing Education Program Application.

(4) Academic credit equivalency for continuing education hours shall be fifteen (15) continuing education hours for every one (1) academic credit hour.

(5) A general education course, whether elective or used to meet degree requirements, shall not be acceptable as continuing education credit.

Section 3[4]. Procedures for Approval of Continuing Education Programs. In order to submit the course to the board for approval, the following shall be submitted:

(1) A published course or similar description;

(2) Names and qualifications of the instructors;

(3) A copy of the program agenda indicating hours of education, coffee, and lunch breaks. The agenda shall state the specific time when each topic of the program is being presented;

(4) Number of continuing education hours requested;

(5) Official certificate of completion or college transcript from the sponsoring agency or college;

(6) The Continuing Education Program Application; and

(7) If a provider is seeking approval for a continuing education course, an application review fee of twenty (20) dollars.

Section 4[5]. Procedures for Preapproval of Continuing Education Sponsors and Programs. (1) Sponsor approval. Any entity seeking to obtain approval:

(a) Of a continuing education program prior to its offering shall apply to the board at least sixty (60) days in advance of the commencement of the program, and shall provide the information required in Section 3[4] of this administrative regulation on an annual basis for each program; or[~~.~~]

(b) As a prior-authorized continuing education provider under Section 2(1)[~~3(1)~~] of this administrative regulation, shall satisfy the board that the entity seeking this status:

1. Consistently offers programs that[~~which~~] meet or exceed all the requirements set forth in Section 1(2)[~~2(2)~~] of this administrative regulation; and

2. Does not exclude a licensee from its programs.

(2) A continuing education activity shall be qualified for approval if the board determines the activity being presented:

(a) Is an organized program of learning;

(b) Pertains to subject matters, which integrally relate to the practice of professional counseling;

(c) Contributes to the professional competency of the licensee; and

(d) Is conducted by individuals who have educational training or experience acceptable to the board.

Section 5[~~6~~]. Responsibilities and Reporting Requirements of a Licensee. (1) During the licensure renewal period, up to fifteen (15) percent of all licensees shall be selected at random by the board and required to furnish documentation of the completion of the appropriate number of continuing education hours. Verification of continuing education hours shall not otherwise be reported to the board.

(2) A licensee shall:

(a) Be responsible for obtaining required continuing education hours;

(b) Identify his own continuing education needs and seek activities that meet[~~meets~~] those needs;

(c) Seek ways to integrate new knowledge, skills, and attitudes;

(d)1. Select approved activities by which to earn continuing education hours; or

2. Submit to the board a request for approval for continuing education activities not approved as required in Section 2(2)[~~3(2)~~] of this administrative regulation;

(e) At the time of renewal, list the continuing education hours obtained during that licensure renewal period;

(f) Document attendance, participation in, and successful completion of continuing education activity for a period of one (1) year from the date of the renewal; and

(g) Maintain records of continuing education hours.

(3) The following items may be used to document continuing education activity:

(a) Transcript;

(b) Certificate;

(c) Affidavit signed by the instructor; or

(d) Receipt for the fee paid to the sponsor.

(4) Compliance with the provisions of this administrative regulation. Failure to comply shall constitute a violation of KRS 335.540(1)(b) and shall result in sanctions in accordance with KRS 335.540(1).

(5) Documentation sent to the board prior to renewal shall be returned to the licensee by regular mail.

Section 6[~~7~~]. Responsibilities and Reporting Requirements of Providers and Sponsors. (1) A provider of continuing education not requiring board approval shall be responsible for providing documentation, as established in Section 5(3)[~~6(3)~~] of this administrative regulation, directly to the licensee.

(2) A sponsor of continuing education requiring board approval shall be responsible for submitting a course offering to the board for review and approval before listing or advertising that offering as approved by the board.

Section 7[~~8~~]. Board to Approve Continuing Education Hours; Appeal of Denial. (1) If an application for approval of continuing education hours is denied, in whole or part, the continuing education course provider or licensee shall have the right to appeal the board's decision.

(2) An appeal shall be:

(a) In writing;

(b) Received by the board within thirty (30) days after the date of the decision denying approval of continuing education hours; and

(c) Conducted in accordance with KRS Chapter 13B.

Section 8[~~9~~]. Waiver or Extensions of Continuing Education. (1) On application, the board may grant a waiver of the continuing education requirements or an extension of time within which to fulfill the requirements in the following cases:

(a) Medical disability of the licensee;

(b) Illness of the licensee or an immediate family member; and

(c) Death or serious injury of an immediate family member.

(2) A written request for waiver or extension of time involving medical disability or illness shall be:

(a) Submitted by the person holding a license; and

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

(3) A waiver of or extension of time within which to fulfill the minimum continuing education requirements shall not exceed one (1) year.

(4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the person holding a license shall reapply for the waiver or extension.

Section 9[~~10~~]. Continuing Education Requirements for Reinstatement or Reactivation of License. (1)(a) Except as provided by paragraph (b) of this subsection, a person requesting reinstatement or reactivation of a license shall submit[:

~~(a)~~] evidence of ten (10) hours of continuing education within the twelve (12) month period immediately preceding the date on which the request for reinstatement or reactivation is submitted to the board.[~~; or~~]

(b) Upon request by the applicant, the board may permit the applicant to resume practice[~~,~~] if ten (10) hours of continuing education is obtained within three (3) months of the date on which the applicant is approved to resume practice.

(2) The continuing education hours received in compliance with this section shall be in addition to the continuing education requirements established in Section 1[2] of this administrative regulation and shall not be used to comply with the requirements of that section.

Section 10[~~11~~]. Incorporation by Reference. (1) "Continuing Education Program Application, KBLPC 007", June 2015 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the 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: October 14, 2016

FILED WITH LRC: October 14, 2016 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.

GENERAL GOVERNMENT CABINET
Board of Licensed Professional Counselors
(As Amended at ARRS, February 10, 2017)

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 ***the counselor's[~~his~~]*** client;

(b) Respect the rights of a person seeking ***the counselor's[~~his~~]*** assistance; and

(c) Make***[~~reasonable~~]*** efforts to ensure that ***the counselor's[~~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 ***the counselor's[~~his~~]*** professional relationship with a client to further his ***or her*** 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 ***for appropriate reasons that include a threat or risk of harm to the professional counselor, a failure to pay for services previously provided, or a severe injury or medical illness suffered by the professional counselor***;

(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 ***the counselor's[~~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 ***the counselor's[~~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 ***each client understands[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 ***a minor[minors]***, ***an*** incapacitated ***adult[adults]***, or other ***person[persons]*** unable to give voluntary consent, a professional counselor shall seek the assent of the client to services and include ***the client[them]*** in decision making as appropriate.

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

(16) A professional counselor shall discuss the required limitations to confidentiality when working with ***each client[clients]*** who ***has[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 ***the counselor's[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 ***counselor[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 ***each client, trainee[clients, trainees]***, and research ***participant[participants]*** and seek training in areas in which ***the counselor is[they are]*** at risk of imposing ***the counselor's[their]*** values onto ***a client[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 ***a*** prospective and current ***client[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 ***a client[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 ***a friend[friends]*** or ***a*** family ***member[members]*** with whom the professional counselor has an inability to remain objective.

(26) A professional counselor shall consider the risks and benefits of accepting ***a client[as clients those]*** with whom the professional counselor has had a previous relationship. ***This[These]*** potential ***client[clients]*** may include ***an individual [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, ***accepting[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 ***the conflicting*** 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 ***a client does[~~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 ***basis[~~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 ***the counselor's[~~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 ***the counselor scores[~~they score~~]*** and ***interprets[~~interpret~~]*** the assessments ***himself or herself[~~themselves~~]*** or ***uses[~~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 ***the*** 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 ***acting*** on behalf of the client ***would[~~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 ***tailored to[~~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 ***the counselor's*** 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 ***based[~~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**, *such as the purpose of the test as it relates to the specific mental impairment, disability, or age group*.**

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

(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 ***to remain*** unbiased and produce objective findings that ***may[~~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 ***may[~~can~~]*** be supported by the data gathered in evaluations.

(23) A professional counselor shall define the limits of ***the counselor's[~~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 ***an individual[~~those~~]***

being evaluated or from ***the individual's[~~their~~]*** legal representative unless a court orders evaluations to be conducted without the written consent of the ***individual[~~individuals~~]*** being evaluated or the individual's parent or guardian.

(25) A professional counselor shall not evaluate ***a*** current or former ***client[~~clients~~], a client's[~~clients'~~]*** romantic partners, or ***a client's[~~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 ***each*** prospective, current, and former ***client[~~clients~~]***.

(3) A professional counselor shall disclose information only with ***the*** appropriate consent or with sound legal or ethical ***justifications under subsection (4) of this section [~~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 ***the counselor[~~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 ***so[~~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 ***except if[~~shall not apply when~~]*** disclosure is required to protect a client or identified others from serious and foreseeable harm or ***if[~~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 ***a*** minor ***client[~~clients~~]*** or ***an*** adult ***client[~~clients~~]*** who ***lacks[~~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 ***the*** 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 ***a*** minor ***client[~~clients~~]*** or ***an*** adult ***client[~~clients~~]*** who ***lacks[~~lack~~]*** the capacity to give voluntary consent to release confidential information, a professional counselor shall obtain written permission from ***a[~~an appropriate~~]*** third party to disclose information. In these instances, a professional counselor shall inform ***the client[~~clients~~]*** consistent with ***his or her[~~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)*** A professional counselor shall provide reasonable access to records and copies of records when requested by a competent client.

(b) A competent client shall include an adult who is able to sign for services, and except for in cases of an emergency, is without the need of a guardian to sign for him or her.

(c) The board may provide reasonable access to records and copies of records to a guardian if a guardian is signing and acting on behalf of an incompetent client.

(d) An incompetent client means a client with chronic issues mentally, such as mental retardation, or acute issues, due to mental illness or drug use. An incompetent client includes a client who is not alert and oriented as to a person, place, time, or situation.

(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. ***The determination of harm made by the professional counselor includes situations of when the client is not competent, or if although a competent client considering all of the circumstances it would still be adverse to the client's welfare to release all or a portion of his or her records.***

(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 ***the client[~~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 ***a client requests[~~clients request~~]*** access to ***the client's[~~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 ***each client[~~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 ***by the counselor shall*** 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 ***may[~~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 ***is unavoidable[~~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 ***the counselor's[~~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 ***the counselor's[~~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)~~] ***the counselor[~~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.[~~(c)~~] Properly responding to subpoenas issued by the board.

(2) A professional counselor shall practice only within the boundaries of their competence, based on ***the counselor's[~~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 ***the counselor's[~~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 ***the counselor's[~~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) ***Each client[~~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 ***the counselor's[~~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 ***a client[~~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 ***each client[~~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 ***each client is[~~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 ***each client understands[~~clients understand~~]*** the purpose and operation of technology applications and follow up with ***each client[~~clients~~]*** to correct possible misconceptions, discover appropriate use, and assess subsequent steps.

(12) When distance counseling services are ***found as[~~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 ***unable[~~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 ***each client[~~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 ***a supervisee[~~supervisees~~]***.

(2) A professional counselor shall:

(a)[~~(1)~~] Be aware of ***the counselor's[~~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 ***or herself*** as competent to perform a professional service beyond his ***or her*** 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 ***each supervisee[~~supervisees~~]*** to review the ***supervisee's [~~supervisees'~~]*** work and help ***the supervisee[~~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 ***each supervisee[~~supervisees~~]*** aware of client rights, including the protection of client privacy and confidentiality in the counseling relationship. ***A supervisee[~~Supervisees~~]*** shall provide ***the supervisee's*** clients with professional disclosure information and inform them of how the supervision process influences the limits of confidentiality. ***A supervisee[~~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 ***a*** current ***supervisee[~~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 ***the counselor has[~~they have~~]*** an inability to remain objective.

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

(9) A professional clinical counselor supervisor shall make ***the counselor's[~~their~~]*** supervisees aware of professional and ethical standards and legal responsibilities.

(10)***(a)*** A professional clinical counselor supervisor or ***a supervisee[~~supervisees~~]*** shall have the right to terminate the supervisory relationship with adequate notice to the other party.

(b) The board shall consider adequate notice as a period of two (2) weeks unless there is an exigent circumstance, an emergency situation, or a competency issue such as in situations of substance abuse, a lack of competency, a violation of the code of ethics, or an exploitation of a client. In these kinds of situations then no notice is required.

(c) When termination is warranted, supervisors shall make appropriate referrals to possible alternative supervisors.

(11) Before providing counseling services, a supervisee shall disclose ***the supervisee's[~~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 ***each supervisee[~~supervisees~~]*** with ongoing feedback regarding ***the supervisee's[~~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 ***the counselor's[~~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; ***or[~~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 ***or her*** 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.

GENERAL GOVERNMENT CABINET
Board of Licensed Professional Counselors
(As Amended at ARRS, February 10, 2017)

201 KAR 36:045. Distance counseling.

RELATES TO: KRS 335.505, 335.515(1), (3), (11)
STATUTORY AUTHORITY: KRS 335.515(3), (11)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(3) ***requires[~~authorizes~~]*** the board to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS 335.500 to 335.599. This administrative regulation***[~~protects the health and safety of the citizens of Kentucky. It also~~]*** establishes procedures for preventing abuse and fraud through the use of distance counseling, prevents fee-splitting through the use of distance counseling, and utilizes distance counseling in the provision of professional counseling services and in the provision of continuing education.

Section 1. Client Requirements. A licensee using distance counseling to deliver counseling services or who practices distance counseling shall, upon initial contact with the client:
(1) Make***[~~reasonable~~]*** attempts to verify the identity of the client;
(2) Obtain alternative means of contacting the client other than electronically ***such as by the use of a telephone number or mailing address***;
(3) Provide to the client alternative means of contacting the licensee other than electronically ***such as by the use of a telephone number or mailing address***;
(4) ***Provide contact methods of alternative communication the licensee shall use for emergency purposes such as an emergency on call telephone number; and***
(5) Document if the client has the necessary knowledge and skills to benefit from the type of distance counseling provided by the licensee;
(6) Document which services were provided by distance counseling;
(7)[~~(5)~~] Use secure communications with clients, including encrypted text messages via e-mail or secure Web sites, and not use personal identifying information in non-secure communications; and
(8)[~~(6)~~] Inform the client in writing about:
(a) The limitations of using technology in the provision of distance counseling;
(b) Potential risks to confidentiality of information due to technology in the provision of distance counseling;
(c) Potential risks of disruption in the use of distance counseling;
(d) When and how the licensee will respond to routine electronic messages;
(e) In what circumstances the licensee will use alternative communications for emergency purposes;
(f) Who else may have access to client communications with the licensee;
(g) How communications can be directed to a specific licensee;
(h) How the licensee stores electronic communications from the client;***[~~and~~]***
(i) ***Whether the licensee or client may elect to discontinue the provision of services through distance counseling; and***
(j) The reporting of clients required by 201 KAR 36:040, Sections 2 and 3.

Section 2. Competence, Limits on Practice, Maintenance, and Retention of Records. A licensee using distance counseling to deliver counseling services or who practices distance counseling shall:
(1) Limit the practice of distance counseling to the area of competence in which proficiency has been gained through education, training, and experience;
(2) Maintain current competency in the practice of distance counseling through continuing education, consultation, or other procedures, in conformance with current standards of scientific and professional knowledge;
(3) Document the client's presenting problem, purpose, or diagnosis;
(4) Maintain records in accordance with the requirements of 201 KAR 36:040; and
(5) Ensure that confidential communications obtained and stored electronically cannot be recovered and accessed by unauthorized persons when the licensee disposes of electronic equipment and data.

Section 3. Compliance with Federal, State, and Local Law. A licensee using distance counseling to deliver counseling services or who practices distance counseling shall:
(1) Comply with the state law where the licensee initiates the distance counseling;
(2) Be licensed to practice counseling where the client is domiciled; and
(3) Comply with Section 508 of the Rehabilitation Act, 29 U.S.C. 794(d), to make technology accessible to a client with disabilities.

Section 4. Representation of Services and Code of Conduct. A licensee using distance counseling to deliver counseling services or who practices distance counseling shall:
(1) Not engage in false, misleading, or deceptive advertising of distance counseling;***[~~and~~]***
(2) Comply with 201 KAR 36:040***; and***
(3) Not split fees.

Section 5. Utilization of Distance Counseling in the Provision of Continuing Education. Providers approved pursuant to 201 KAR 36:030 may utilize distance counseling in the provision of continuing education courses.

MARTIN C. WESLEY, Chairperson
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GENERAL GOVERNMENT CABINET
Board of Licensed Professional Counselors
(As Amended at ARRS, February 10, 2017)

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 ***other than the extenuating circumstances that allow temporary supervision in Section 7 of this administrative regulation***.

(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)***[(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

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GENERAL GOVERNMENT CABINET
Board of Licensed Professional Counselors
(As Amended at ARRS, February 10, 2017)

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***, specialist,*** 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***, specialist,*** 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, *in each area listed in* 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, *in all nine (9) of the content areas listed in* 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 ***that*** 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 ***that*** 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 ***that*** 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) Principals 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 ***that*** 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 ***that*** 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)***, fifth (5th) edition, or the DSM currently in use***;

(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 ***the American Counseling Association (***ACA***)***, its divisions, branches, and affiliates), including membership benefits, activities, services to members, and current emphases;

(iv) Ethical standards of ***the National Board of Certified Counselors (***NBCC***)*** or ***the*** ACA and related ethical and legal issues, and ***the[~~their~~]*** applications to various professional activities (e.g., appraisal, group work);

(v) Professional counselor preparation standards, ***the[~~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 (11/2) 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 ***ninety (90) days[~~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)1. and 2. of this subsection; and

2. Submit an official transcript.

(2) Each applicant for licensure as a licensed professional counselor associate shall:

(a) Submit ***an Application for[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 ***ninety (90) days[~~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. ***(1)*** 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.

(2) For evidence relative of rehabilitation, the board shall consider evidence such as the successful completion of probation, the years since the incident without additional incidents, and the successful completion of inpatient or outpatient treatment.

(3) If the board finds that an applicant has not provided sufficient evidence of rehabilitation then the board may deny the application.

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 2011~~]; and

(b) ***Application for*** "Licensed Professional Counselor Associate ***[Application]***[~~for Licensed Professional Counselor Associate~~]", **January 2017[~~September 2016~~]**[~~October 2011~~].

(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.

GENERAL GOVERNMENT CABINET
Board of Licensed Professional Counselors
(As Amended at ARRS, February 10, 2017)

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) ***requires[~~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 ***LPCC*** 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 ***335.599[~~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~~**

~~(c)~~] 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 ***LPCA*** 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 ***335.599[~~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 *the* 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).

(3) If a supervisor fails to verify the hours required for a licensed professional counselor associate by the termination date of the license, then the LPCA Supervision Agreement, as incorporated by reference in 201 KAR 36:060, shall be terminated.

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.

(3) For evidence relative of rehabilitation, the board shall consider evidence such as the successful completion of probation, the years since the incident without additional incidents, and the successful completion of inpatient or outpatient treatment.

(4) If the board finds that an applicant has not provided sufficient evidence of rehabilitation then the board may deny the application.

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

(a) "LPCC Renewal Application", ***February[~~January~~]* 2017 [~~September, 2016~~]**;

(b) "LPCA Renewal Application", ***February[~~January~~]* 2017 [~~September, 2016~~]**;

(c) "LPCC Reinstatement Application", ***February[~~January~~]* 2017[~~September, 2016~~]**; and

(d) "LPCA Reinstatement Application", ***February[~~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.

GENERAL GOVERNMENT CABINET
Board of Licensed Professional Counselors
(As Amended at ARRS, February 10, 2017)

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) ***requires[~~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) ***requires[~~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 *or she* 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 *or she* 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 *or she* 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.

GENERAL GOVERNMENT CABINET
Board of Licensure for Pastoral Counselors
(As Amended at ARRS, February 10, 2017)

201 KAR 38:020. Application.

RELATES TO: KRS 335.620

STATUTORY AUTHORITY: KRS 335.615(1)-(4), (6), 335.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.615***[~~(1)~~]*** requires the ***Board of Licensure for Pastoral Counselors to promulgate administrative regulations establishing requirements for licensure. KRS 335.620 requires the board to promulgate administrative regulations establishing an initial fee for licensure and requirements for a written examination[~~board to approve or deny applications for licensure of a Kentucky licensed pastoral counselor. KRS 335.620 establishes application requirements for a Kentucky licensed pastoral counselor~~]***. This administrative regulation establishes the application process for certification.

Section 1. An applicant for licensure shall:

(1) Meet the requirements of KRS 335.620;

(2) Pay by check or money order an initial licensure fee as established by 201 KAR 38:040, Fees, made payable to the Kentucky State Treasurer;

(3)***(a)*** Pass the written examination titled "Kentucky Pastoral Counselors Examination" administered and verified by the Kentucky Board of Licensure for Pastoral Counselors, which may include the topics set forth in 201 KAR 38:030, Section 3(1) through (4)***; and***

(b)[~~and~~] Submit documentation of a passing score to the board;

(4) File a completed, signed, and dated Application for Licensure as a ***Licensed[Licensure]*** Pastoral Counselor***, or"Application-2",*** with the board containing***:[~~;~~]***

(a) Name;

(b) Address;

(c) Home phone;

(d) Work address;

(e) Work phone;

(f) Date of birth;

(g) ***Social security number;***

(h)Criminal convictions;

(i)[~~(h)~~] Misconduct in other positions;

(j)[~~(i)~~] Credentials by other states;

(k)[~~(j)~~] Membership in professional organizations;

(l)[~~(k)~~] Education;

(m)[~~(l)~~] Experience;

(n)[~~(m)~~] Clinical supervision that shall be equally distributed throughout the qualifying period and verification that meets the following requirements:

1. At least 120 hours ***of the 250 hours of clinical supervision that is required by KRS 335.620(1)(e)2.*** shall be individual supervision by an approved supervisor; and

2. An approved supervisor shall be an individual who:

a. Holds a diplomate level of certification from the American Association of Pastoral Counselors or its regional affiliates;

b. Holds a fellow level of certification from the American Association of Pastoral Counselors or its regional affiliates and is also under supervision by a diplomate[~~diplomat~~];

c. Is licensed as a licensed pastoral counselor in Kentucky with a minimum of four (4) years of experience in the practice of pastoral counseling; or

d. Holds licensure or certification***, with at least five (5) years of clinical experience and two (2) years of supervisory experience, in one (1) of the following mental health professions:***

(i) Psychiatry;

(ii) Psychology;

(iii) Social work;

(iv) Professional counseling; or

(v) Marriage and family therapy;[~~in one (1) of the mental health professions of psychiatry, psychology, social work, professional counseling, or marriage and family therapy with at least five (5) years of clinical experience and two (2) years of supervisory experience;~~]

(o)[~~(n)~~] Endorsement by a denomination or faith group; and

(p)[~~(o)~~] Signed affidavit.

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

~~(a)~~] Form "Application-2", [~~(~~]June, 1999 edition,[~~)~~] Board of Licensure of Licensed Pastoral Counselors, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Licensure for Pastoral Counselors, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DONALD CUTTER, Chairperson

APPROVED BY AGENCY: December 15, 2016

FILED WITH LRC: December 15, 2016 at 11 a.m.

CONTACT PERSON: Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Chessica Nation, Board Administrator, Kentucky Board of Licensure for Pastoral Counselors, Division of Occupations and Professions, 911 Leawood Drive, P. O. Box 1360, Frankfort, Kentucky 40601, phone (502) 782-8812, fax (502) 696-3925, email chessica.nation@ky.gov.

GENERAL GOVERNMENT CABINET
Board of Licensure for Pastoral Counselors
(As Amended at ARRS, February 10, 2017)

201 KAR 38:030. Equivalent course of study.

RELATES TO: KRS 335.620
STATUTORY AUTHORITY: KRS ***335.615(6), 335.620(1)(d)-(g)***~~[335.615, (6),[;] 335.620(4)-(7)]~~
NECESSITY, FUNCTION, AND CONFORMITY: ***KRS 335.615 requires the Board of Licensure for Pastoral Counselors to promulgate administrative regulations to implement KRS 335.600-335.699.*** KRS 335.620***(1)(d)-(g) authorizes***~~[(4) and (7) provides that]~~ the board ***to promulgate administrative regulations establishing***~~[shall establish]~~ a course of study equivalent to a master of divinity degree~~[plus an additional minimum of one (1) year of academic training relative to pastoral counseling]~~. This administrative regulation establishes the criteria for the equivalent course of study.

Section 1. Clinical membership at the fellow level in the American Association for Pastoral Counselors or one (1) of its regional affiliates shall indicate that the applicant has met both the educational and experiential requirements for certification as set forth in KRS 335.620***(1)(d)-(g)***~~[(4) and (7)]~~.

Section 2. To qualify as an equivalent course of study, a master's or doctoral degree[~~the basic core areas of study~~] shall consist [~~include the completion~~] of a minimum of sixty (60)[~~fifty-eight (58)~~] semester hours of coursework[~~work~~] that meets the requirements of Section 3 of this administrative regulation. The course work may:

(1) Include or extend beyond the one (1) professional degree in a theological or spiritual discipline or a mental health discipline; and

(2) Include unlimited hours earned in:

(a) An American Association of Pastoral Counselors or one (1) of its regional affiliates approved Training Program in pastoral counseling with fifteen (15) contact hours equaling one (1) semester hour; or

(b) Another educational institutional program that[~~which~~] meets the requirements stipulated by the American Association of Pastoral Counselors' Certification Committee or one (1) of its regional affiliates, or the Institutional Accreditation Committee.

Section 3. A master's or doctoral degree in an equivalent course of study[~~The hours~~] shall include the following[~~be distributed as follows~~]:

(1) Religious foundations. This area shall consist of a minimum of twenty-one (21)[~~include up to twenty-seven (27)~~] semester hours in[~~, including~~] the following areas:

(a) Scripture;

(b) Theology;

(c) Religious history;

(d) Theological and social ethics;

(e) Spirituality; and

(f) World religions.

(2) Core clinical theory. This area shall consist of[~~include up to twenty-four (24) semester hours~~]:

(a) A minimum of six (6) semester hours in counseling and psychotherapy techniques, which provides a historically informed theoretical foundation for helping relationships and foundational skills for counselors. Coursework ***shall include***~~[includes]~~:

1. A range of counseling theories that will help them learn to conceptualize client behaviors and make appropriate theoretical choices for interventions;

2. Broad categories of theoretical approaches: cognitive, behavioral, affective, and systemic, with opportunities to explore their differing implications in relation to case material and rationales for employing various models;

3. Particular current models that have established research and practice literatures to assist them in becoming conceptually and clinically grounded in a model of their choice;

4. A conceptual foundation in essential clinical practices such as developing clinical relationships, establishing appropriate goals, designing intervention strategies, evaluating outcomes, and successfully terminating counseling relationship;

5. Self-other awareness related to therapeutic and ethical boundary considerations;

6. Consultation as a related skill, with attention to continuities and discontinuities with counseling;

7. The historical development of current primary models for consultation and a developmental approach to the predictable stages of consultative processes;

8. Relevant technological strategies and applications for clinical practice and consultation; and

9. Ethical and legal considerations relevant to counseling and consultation; and

(b) A minimum of[~~With at least~~] three (3) semester hours in each of the following:

1.[~~Counseling and psychotherapy techniques;~~

~~2.~~] Group dynamics and techniques, which ***shall*** provide theoretical and experiential understanding of clinical group processes ***and shall include***~~[including]~~: the value, predictable stages of development, and dynamics of counseling with groups as well as attention to preparation standards for professional group leaders and related ethical and legal issues. Coursework ***shall include***~~[includes]~~:

a. ***Review of***~~[Reviews]~~ a range of counseling methods and approaches including***[;]*** the principles of group development, process, dynamics, various members' roles and behaviors as well as related therapeutic factors;

b. ***Consideration of***~~[Considers]~~ possible leadership styles and the factors recommending each style;

c. ***Identification of***~~[Identifies]~~ distinguishing characteristics and recommended contexts for varied theories and methods of group counseling with attention to current literature and relevant research; and

d. ***Discussion of***~~[Discusses]~~ ways of working with non-clinical group processes such as task and psycho-educational groups; ***[and]***

2. Couples and family systems, which ***shall provide***~~[provides]~~ a basic introduction to couples and family systems theory and practice. Coursework ***shall include***~~[includes]~~:

a. An overview of general systems and cybernetic models of family functioning;

b. Acquaintance with historic models of family therapy including structural, strategic, object relations, ***and*** Bowenian;

c. An introduction to emerging post-modern and behavioral understandings of family function and therapy;

d. Attention to couple dynamics and models of couple intervention; and

e. Ethical and legal factors;***[and]***

3. Social and cultural diversity, which provides students with a way of understanding the cultural context of relationships and institutions as they contribute to complex social identities in individuals and disclose the necessity of analytical and clinical skills for addressing an increasingly diverse society. The range of issues related to differences***[,]*** that we will address ***shall include***~~[, includes:]~~ race, ethnicity, class, age, gender, sexual orientation, cognitive and physical characteristics, and religion. The course ***shall***~~[will]~~ address:

a. Helping students identify the complexity of their own social identity in relation to the asymmetrical distribution of power in societies related to various aspects of differences and the implications they pose for effective practice;

b. Developing introductory levels of knowledge about emerging increasingly plural demographic trends related to various racial, ethnic, and religious identities and the implications for relationships within and between those groups;

c. Establishing introductory levels of understanding about each form of difference including experiential strategies;

d. Current literatures to develop competency for working with culturally different client populations including work with individuals, couples, families, groups, and larger community contexts;

e. Several theories of multicultural counseling and theories of

multicultural competency for clinicians;

f. Ethical and legal considerations as well as advocacy issues for clinicians that accompany the consequences of prejudice, racism, and other forms of oppression that clients encounter[~~Marriage and family systems theories and techniques~~]; and

4. The function and ethics of professional identity as a counselor, which ***shall address[~~addresses~~]*** the following aspects of professional identity as a counselor:

a. The history and philosophy of the counseling profession with reference to particular cultural and historical factors of significance;

b. Professional roles, functions, and ways of establishing relationships with other related human service providers;

c. Expected areas of computer and related technological competencies;

d. Primary professional organizations and their priorities as well as ***identification of[~~identifying~~]*** benefits and accountabilities related to membership;

e. Professional credentialing, such as certification, licensure, and accreditation practices and standards and their relation to contemporary public policy debates;

f. The role of advocacy on behalf of the profession regarding public and private policy issues as well as advocacy for clients in relation to institutional and social barriers that deny them access to or equity in resources; and

g. The ethical standards of the profession and current legal considerations as well as ***development of[~~developing~~]*** skills in applying these in practice; and

(c) A minimum of six (6)[~~(b) Up to fifteen (15)~~] semester hours taken from the following areas:

1. Professional identity function and ethics;

2.[~~Theories of counseling and psychotherapy;~~

~~3.~~] Theories of human behavior, learning, personality development, which ***shall provide[~~provides~~]*** an introduction to developmental theory ***concerning[~~as it informs our understanding of~~]*** the nature and needs of individuals and families across the lifespan. While varied theoretical approaches may inform the course, the following topics shall be included:

a. Theoretical approaches to individual and family development across the lifespan and attention to transitions in development;

b. Learning theory;

c. Personality development theories;

d. Proposals for enhancing development;

e. Attention to human behavior in light of varied developmental crises, compulsive behaviors, disability, psychopathology, exceptional behavior, and situational and environmental factors affecting both normal and abnormal behavior; and

f. Ethical and legal issues;

3.[~~4.~~] Career development, which introduces students to ways of approaching career development. The following information shall be addressed:

a. Theoretical approaches for career development and related decision-making models as well as relevant instruments and techniques;

b. Career counseling models including those for particular populations;

c. Career related information systems and media resources in print, visual, electronic, computer, and other forms regarding career, avocation, education, occupation, and labor market information;

d. Models for career development program planning, organization, implementation, administration, and evaluation;

e. Possible relationships intersecting work, family, and other areas of life including forms of diversity such as race, ethnicity, class, and gender;

f. Career and educational planning, placement, follow-up, and evaluation;

g. Technology supported career development applications such as web and computer assisted information systems for career guidance; and

h. Ethical and legal factors;

4.[~~and 5.~~] Appraisal, evaluation, and diagnostic procedures to make a current diagnosis, which introduces students to individual and group approaches for assessment and evaluation ***and shall include[~~including~~]*** all of the following:

a. Historical and conceptual perspectives of assessment;

b. Basic concepts for standardized, non-standardized, group and individual testing, and inventory methods; additional assessment techniques including***[:]*** norm and criterion referenced assessment, environmental and performance assessment; behavioral observations***;[~~,~~]*** and computer managed and assisted methods;

c. Statistical concepts ***that shall include, at a minimum,[~~(including at least:~~]*** scales of measurement, measures of central tendency, indices of variability, shapes and types of distributions, and correlations***[~~)~~]***;

d. Reliability and validity measurement procedures;

e. Assessment factors related to specific populations and types of diversity;

f. Strategies for determining, administering, and interpreting evaluative instruments and techniques in counseling;

g. Principles and methods for case conceptualization, assessment, and diagnosis of mental and emotional status including use of current Diagnostic and Statistical Manual of Mental Disorders; and

h. Ethical and legal factors;

5.[~~6.~~] Abnormal behavior, which provides an overview of psychosocial difficulties in living that disrupt personal, familial, work, or other functioning. It ***shall include[~~includes~~]***:

a. An exploration of cultural differences in defining normalcy and health;

b. Individual and systemic developmental contributions to psychopathology and diagnostic categories as outlined in the current Diagnostic and Statistical Manual of Mental Disorders;

c. Psychodynamic and cognitive-behavioral descriptions of psychopathology; and

d. Introductory discussion of treatment options; and

6. Addictions, which addresses current understandings of the description, etiology, and treatment of addictive disorders including addictions to legal and illegal substances such as alcohol and drugs, as well as sexual, love, gambling, and religious addictions. It ***shall include[~~includes~~]***:

a. An overview of developmental precursors of addictive disorders including neurobiological and psychodynamic factors;

b. Attention to the contextual triggers of addictive behaviors and to their repetitive, compulsive nature, increasing tolerance for the object of addiction;

c. Treatment options including 12-step programs;

d. An awareness of the effects of addictions on the person, children, family system, and the unique role of pastoral interventions;

e. Recognition that addictions may co-occur with mental health disorders (dual diagnosis);

f. Ability to acknowledge and address values, issues, and attitudes regarding alcohol and drug use and dependence in oneself, and in one's own family; and

g. Capacity to shape, form, and educate caring groups and support persons for those affected by alcohol and drugs, in congregations and the wider community; and[~~.~~]

(3) Pastoral counseling theory. This area shall include a minimum of three (3)[~~up to twelve (12)~~] semester hours distributed among the following:

(a) Basic pastoral care, which shall include crisis intervention, grief counseling, and hospital ministry;

(b) History of pastoral care and counseling;

(c) Psychology of religion;

(d) Faith development;

(e) Pastoral theology;

(f) Theology of psychotherapy;

(g) Spiritual formation; and

(h) Clinical pastoral education.

(4) Specialized technical studies. This area shall include a minimum of nine (9)[~~up to fifteen (15)~~] semester hours[~~including at least two (2), but not more than three (3),~~] of the following areas:

(a) Psychodynamic psychotherapies, which provide an overview of the historical roots of dynamic psychotherapy, tracing

the key concepts of classical Freudian analysis through modern self-psychology. Attention shall be paid to:

1. The theoretical foundations that support the aims and goals of psychotherapy;

2. Psychotherapeutic methods, strategies, and processes; and

3. Appropriate applicability will be explored and illustrated through case vignettes;

(b) Marriage and family therapy, which provides a basic introduction to family systems theory and practice. While it may focus on one (1) model of therapy for skills competence, it shall also provide:

1. An overview of general systems and cybernetic models of family functioning;

2. Acquaintance with historic models of family therapy, including structural, strategic, object relations, and Bowenian;

3. An introduction to emerging post-modern and behavioral understandings of family function and therapy; and

4. Attention to couple dynamics and models of couple intervention;

(c) Humanistic psychotherapy, which includes courses that explore in breath or depth the theories and techniques of psychotherapy emerging from the humanistic tradition in psychology and personality theory. This tradition ***shall include[~~includes~~]*** the phenomenological, existential, and experiential schools. Major theorists in this area ***may*** include persons such as R. May, C. Rogers, V. Frankl, S. Maddi, J. Bugental and I. Yalom. Examples of courses that satisfy the requirements of this area ***shall*** include: Client Centered Therapy, Existential Psychotherapy, Experiential Psychotherapy, and Third Force Psychotherapy;

(d) Transpersonal psychotherapy, which provides an overview of the interdisciplinary, "fourth force", field of transpersonal psychotherapy with particular attention to the mutual contributions of Eastern and Western notions of self, wholeness, and consciousness, including particularly the writings of Wilber, Tart, Walsh, and Vaughan. Attention ***shall be[~~is~~]*** paid to:

1. Relationships with humanistic, depth psychology and psychodynamic theories;

2. The eclectic integration of those techniques in transpersonal psychotherapy; and

3. Roles and potential risks of specific practices such as meditation, yoga, and other spiritual practices[~~Jungian analytic psychotherapy~~];

(e) Cognitive therapy, which examines the theoretical roots, assumptions, and practices of Cognitive and Cognitive-Behavioral Psychotherapies. From its roots in Behaviorism through the ground-breaking work of Aaron Beck through contemporary Constructivist Cognitive theory, this course shall cover the core concepts and practices of the cognitive approaches. Key topics to be explored include:

1. The role of cognition in the development and maintenance of psychological problems;

2. The process of identifying and testing problematic thinking;

3. The role of culture in forming and maintaining dysfunctional cognitions;

4. The basic practices of Cognitive and Cognitive-Behavioral therapy, especially in the treatment of depression and anxiety; and

5. The use of Cognitive and Cognitive-Behavioral theory in various modalities of individual, couple, family, and group therapies;

(f) Behavior therapy, which examines a range of therapies, both theory and methods, broadly defined as "Behavior Therapies" based on shared assumptions regarding the nature of human behavior, behavioral change or modification, and the role of environmental factors. The primary shared assumption ***shall be[~~is~~]*** that even complex human behavioral problems can be defined in terms of their component parts and that these components can be treated. The course ***shall address[~~addresses~~]***:

1. Treatment approaches based on classical conditioning, such as relaxation training and desensitization, those commonly referred to as behavioral modification, and other current treatments;

2. Critical analysis of the appropriate use of techniques and methodologies as well as their limitations for specific types of problems such as panic disorders and phobias; and

3. Particular populations ***such as[:]*** women, adolescents, racial or ethnically under-represented groups, panic disorders, and phobias;

(g) Brief therapy, which ***shall include[~~includes~~]*** courses that explore in breadth or depth the theories and techniques of short-term or time-limited approaches in psychotherapy. Courses ***shall[~~should~~]*** attend to theoretical foundations, client selection and applicability, treatment techniques, and intervention strategies. Examples of courses satisfying the requirements in this area ***shall*** include***[:]*** Short-Term Psychotherapy, Solution-Focused Psychotherapy, Brief Family Therapy, ***and*** Time limited Couples' Therapy;[~~or~~]

(h) Group therapy, which examines therapeutic modalities and theory***[,]*** designed to be used in group therapy settings. A variety of possible psychological frameworks for group therapy shall be reviewed such as Depth Psychology, Gestalt, Transactional Analysis, and supportive or growth-oriented group approaches. Key topics to be addressed ***shall*** include:

1. Group composition and size, group contracting, and goal setting;

2. Heterogeneous verses homogeneous groups;

3. Therapist or counselor role;

4. Structured versus unstructured group work;

5. Open versus closed groups;

6. Physical settings; and

7. Critical analysis of appropriate use of techniques and methodologies as well as***:***

a. Their limitations for specific types of problems***; and***

b.[~~as well as~~] Particular populations, including women, adolescents, ***and*** racial or ethnically under-represented groups; and

(i) Post-modern and Constructivist therapies, which include therapeutic approaches that have emerged out of post-modernist assumptions, especially the assumption that reality is socially constructed. The course shall focus on the theories and methods used to help people explore their life stories and their meanings. The unique focus of building positive, option-rich future stories shall be thoroughly explored. Key topics to be explored ***shall*** include:

1. Post-modernism and post structuralist theory;

2. The role of culture in constructivist therapies;

3. Mutuality and self-disclosure in the counseling relationship;

4. Deconstructive methods in counseling;

5. Methods for generating narratives of possibility and hope; and

6. Individual, family, and group modes for constructivist therapies; and[~~.~~]

(5)[~~A~~] Practicum, internship, or residency. This area shall be a minimum of three (3) semester hours[~~may be included in addition to academic courses not to exceed more than ten (10) hours~~].

DONALD CUTTER, Chairperson

APPROVED BY AGENCY: December 15, 2016

FILED WITH LRC: December 15, 2016 at 11 a.m.

CONTACT PERSON: Chessica Nation, Board Administrator, Kentucky Board of Licensure for Pastoral Counselors, Division of Occupations and Professions, 911 Leawood Drive, P. O. Box 1360, Frankfort, Kentucky 40601, phone (502) 782-8812, fax (502) 696-3925, email chessica.nation@ky.gov.

GENERAL GOVERNMENT CABINET
Board of Licensure for Pastoral Counselors
(As Amended at ARRS, February 10, 2017)

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

RELATES TO: KRS 210.366, 335.625, 335.640, 335.650

STATUTORY AUTHORITY: KRS 210.366, 335.615(6), 335.625

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.615(6) requires the board to promulgate administrative

regulations to implement the purposes of KRS 335.600 to 335.699. KRS 335.625(1) requires the board to establish the renewal fee in an administrative regulation. KRS 210.366 requires a board licensee to complete a minimum of six (6) hours of continuing education in suicide assessment, treatment, and management at least once every six (6) years. This administrative regulation establishes all fees charged by the board necessary for renewal of licenses and establishes all required continuing education necessary for renewal of licenses.

Section 1. Renewal. Each license holder of the board shall renew his or her license as required by KRS 335.625 on or before a date that is three (3) years from the date of his or her original license or last renewal by submitting to the board a completed Renewal Application.

Section 2. Renewal Fees and Penalties. The following fees shall be paid in connection with all renewals of licenses of the board. (1) The renewal fee for licensure shall be $300.

(2) The late renewal fee, including penalty, for renewal of licensure during the three (3) month grace period shall be $400.

(3) The reinstatement fee for reinstatement and renewal of licensure after the expiration of the three (3) month grace period and before the expiration of one (1) year after the renewal date, including penalty, shall be $500.

Section 3. Continuing Education. (1) Each license holder of the board, before his or her license renewal date, shall obtain twenty (20) clock or credit hours of continuing education completed since the date of the last renewal of the license or the date of the original issuance of the license, whichever is later. Continuing education shall be obtained from any of the following providers or for any of the following activities***[approved by the board]***:

(a) Individual or group supervision of other license holders of this board at the supervisory level;

(b) Attendance at any ***mental health*** educational conferences, continuing education seminars, or educational meetings where seminars are provided in a live or two (2) way video***[,]*** presentation format***[and which regard mental health]*** and which are approved for continuing education by:

1. The American Association of Pastoral Counselors;
2. The Kentucky Board of Licensure of Marriage and Family Therapists;
3. The Kentucky Board of Medical Licensure;
4. The Kentucky Board of Examiners of Psychology;
5. The Kentucky Board of Alcohol and Drug Counselors;
6. The Kentucky Board of Licensure for Professional Art Therapists;
7. The Kentucky Board of Licensed Professional Counselors;
8. The Kentucky Board of Social Work;
9. The Kentucky Board of Nursing; or
10. A mental health credentialing agency or board of any other state in the United States for which continuing education credit is awarded in that state;

(c) Writing and publishing professionally-related articles in mental health publications regarding pastoral counseling which shall not be counted for more than five (5) hours.

(2) A person holding a license shall complete a minimum of six (6) hours of continuing education in suicide assessment, treatment, and management within the first year of licensure and at least once every six (6) years thereafter as required by KRS 210.366. A person holding a license shall be exempt from the requirement to complete a continuing education course in suicide assessment, treatment, and management at least once every six (6) years if, during the six (6) year requirement, the licensee ***teaches a***:

(a)***[Teaches a]*** Graduate-level psychology course in suicide assessment, training, and management; or

(b)***[Teaches a]*** Continuing education course in suicide assessment, training, and management at least once during the six (6) year period.

(3) If audited by the board, the license holder shall***[within ten (10) days]*** submit written proof of compliance with this section to the board ***within ten (10) days of notice from the board that this proof is required***.

Section 4. Expired Licenses. (1) ***A[No]*** person holding a license shall ***not*** represent himself or herself as a licensed pastoral counselor in this state after the renewal date of his or her license unless:

(a) That license has been renewed as provided by this administrative regulation;

(b) The license holder has retained proof of continuing education as set forth by Section 3 of this administrative regulation; and

(c) The prescribed fee has been paid as set forth by Section 2 of this administrative regulation.

(2) All licenses not renewed within three (3) months after the renewal date shall be***[deemed]*** expired for nonrenewal.

Section 5. Duplicate License Fees. The fee for a duplicate certificate shall be twenty-five (25) dollars.

Section 6. Incorporation by Reference. (1) "Renewal Application for Licensure as a Pastoral Counselor", December 2016[August 2001], edition,[Kentucky Board of Licensure for Pastoral Counselors,] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Pastoral Counselors, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DONALD CUTTER, Chairperson

APPROVED BY AGENCY: December 15, 2016

FILED WITH LRC: December 15, 2016 at 11 a.m.

CONTACT PERSON: Chessica Nation, Board Administrator, Kentucky Board of Licensure for Pastoral Counselors, Division of Occupations and Professions, 911 Leawood Drive, P. O. Box 1360, Frankfort, Kentucky 40601, phone (502) 782-8812, fax (502) 696-3925, email Chessica.nation@ky.gov.

KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES
(As Amended at ARRS, February 10, 2017)

202 KAR 7:810. Survivor benefits for death of emergency medical services personnel.

RELATES TO: KRS 61.315***, 311A.010(3)***

STATUTORY AUTHORITY: KRS 61.315

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.315(6) ***requires the board to promulgate administrative regulations to authorize[authorizes]*** the payment of survivor benefits of $80,000 to the survivor of any paid or volunteer emergency medical services personnel who is employed directly by, or volunteering directly for, any county, city, fire protection district, or emergency ambulance service district created under KRS 108.080 to 108.180 to provide emergency medical services and who is killed in the line of duty after November 1, 2015. This administrative regulation establishes the procedures and criteria that shall be utilized to determine the eligibility of the emergency medical service personnel's survivor benefits.

Section 1. Definitions. (1) "AEMT" means an advanced emergency medical technician certified by the board.

(2) "Board" means the Kentucky Board of Emergency Medical Services as defined by KRS 311A.010(3).

(3) "Child or children" means a:

(a) Biological child or children, including a child or children born after the EMS provider's death;

(b) Stepchild or stepchildren; and

(c) Legally adopted child or children.

(4) "Death in the line of duty" means death that occurs as a direct result of an act or acts in the ***"***performance of duty***"*** as defined ***by[in]*** subsection (11) of this section and shall include death that results from a heart or circulatory malfunction that is treated within forty-eight (48) hours after participation in the

performance of these duties, or as the result of illness, sickness, or injury caused by the performance of these duties that result in death within twelve (12) months of the activities if the death is not caused by suicide or self-inflicted injury.***[(a) If death occurs twelve (12) months or more after the performance of duty and is believed to be related to the provision of emergency medical services, the board may review the personnel's medical records to determine whether the death qualifies as death in the line of duty.***

(b) Performance of duty shall not include participation in any sports or athletic event or contest for any purpose.]

(5) "Emergency medical services" means the services utilized in providing care for the perceived individual need for immediate medical care to protect against loss of life, or aggravation of physiological or psychological illness or injury.

(6) "EMR" means an emergency medical responder certified by the board.

(7) "EMS provider" means an emergency medical responder (EMR), emergency medical technician (EMT), advanced emergency medical technician (AEMT), or paramedic.

(8) "EMT" means an emergency medical technician certified by the board.

(9) "Heart or circulatory malfunction" means myocardial infarction, angina pectoris, coronary thrombosis, cardiac arrest**,** or a cerebral vascular accident, the symptoms of which are first medically treated within forty-eight (48) hours after participation in the performance of the duties of an EMS provider as described in subsection (11) of this section.

(10) "Paramedic" mean a paramedic licensed by the board.

(11) "Performance of duty"***:***

(a) Means an EMS provider engaging in the following activities if the activities are performed at the direction or with the knowledge of an officer of a licensed ambulance service, or when immediate action is required at the scene of an emergency not involving an ambulance service or other emergency organization:

1.[(a)] Provision of emergency medical care;

2.[(b)] Participation in EMS-related education or training;

3.[(c)] Rescue or emergency activities for which the ambulance service is licensed;

4.[(d)] Reparation or other work about or in the ambulance or building and grounds of the licensed ambulance service;

5.[(e)] Answering an emergency call;

6.[(f)] Riding in the ambulance that is owned or used by the licensed ambulance service;

7.[(g)] Performance of other duties of the licensed ambulance service as authorized by the jurisdiction that the licensed agency serves; and

8.[(h)] Travel to or from and attendance at meetings related to emergency medical services***: and***

(b) Does not mean participation in any sports or athletic event or contest for any purpose if the EMS provider is representing an organization related to the field of emergency medical services.

Section 2. Requirements for Eligibility. (1) Survivors. Benefits shall be paid to the surviving***:***

(a)1. Spouse;

2. Child or children; or

3. Spouse and child or children; or[spouse, surviving child or children, or both; or the surviving] parents, as set forth in KRS 61.315(2).

(2) Heart or circulatory malfunction limitations. If an EMS provider becomes an active employee of a licensed ambulance service and has not been medically diagnosed or received any medication for a heart or circulatory malfunction within five (5) years prior to the date of employment, the EMS provider's eligible survivors shall receive the death benefits detailed in this administrative regulation if the EMS provider is killed in the line of duty.

(a) If an EMS provider has been medically diagnosed with or received medication for ***a heart or circulatory malfunction[any of the illnesses outlined in subsection (2) of this section]*** within five (5) years prior to becoming an active employee of a licensed ambulance service and presents a medical statement to the board from a licensed physician establishing that the individual has recovered or has been sufficiently medically rehabilitated to meet the physical demands of providing emergency medical services, the EMS provider's survivors shall be eligible to receive death benefits as outlined in this administrative regulation if the EMS provider ***dies[is killed]*** in the line of duty.

(b) If an EMS provider employed by a licensed ambulance service is medically diagnosed with or is prescribed medication for a heart or circulatory malfunction and returns to active employment with a licensed ambulance service, the EMS provider's survivors shall not be eligible to receive death benefits as outlined in this administrative regulation if the EMS provider's death was caused by a heart or circulatory malfunction.

(3) ***If death occurs twelve (12) months or more after the performance of duty and is believed to be related to the provision of emergency medical services, the board may review the personnel's medical records to determine if the death qualifies as a death in the line of duty.***

(4) Autopsy.

(a) The board shall reserve the right to request an autopsy of an EMS provider if sufficient cause is shown for this request.

(b) If an autopsy is performed for any reason, a copy of the report signed by the individual who performs the autopsy and a notary public shall be submitted to the board.

Section 3. Application. (1)(a) Upon the death in the line of duty of an EMS provider, the licensed ambulance service by which the EMS provider was employed at the time of death shall immediately notify the executive director of the board.

(b) Upon receipt of the notification, the executive director shall send Form KBEMS-01LDD to the notifying licensed ambulance service in care of the administrator and Form KBEMS-02LDD to the known survivors of the deceased EMS provider.

(2) Upon receipt of Forms KBEMS-01LDD and KBEMS-02LDD, the administrator of the licensed ambulance service and the EMS provider's survivors or their representative shall complete the forms and return them to the board in care of the executive director.

(3)(a) Upon receipt by the executive director of the completed forms, a committee of the board appointed by its chairman shall review the forms for compliance with KRS 61.315 and this administrative regulation and make recommendations to the board for determination of eligibility for death benefits under this administrative regulation.

(b) The committee and the executive director may seek clarification of the forms' content with the EMS provider's survivors and licensed ambulance service. The board shall make the final determination of eligibility for death benefits pursuant to KRS 61.315 and this administrative regulation.

Section 4. Certification of Payment of Benefits. Upon certification of survivorship rights to the EMS provider's death benefit, the sum of $80,000 shall be paid by check by the state treasurer from the general expenditure fund of the state treasury, as required by KRS 61.315(2), and the treasurer shall transmit the check to the board for payment to the eligible survivor or survivors.

Section 5. Appeals. (1) A decision of the board affecting the eligibility of a survivor to be a recipient of the fund shall not be final until the survivor shall have been afforded an opportunity to be heard on the matter.

(2) An appeal may be taken from a final decision of the board to withhold payment from the fund to any survivor.

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

(a) "Form KBEMS-01LDD, Report of the Death of Emergency Medical Personnel", November 2016; and

(b) "Form KBEMS-02LDD, Claim for Survivor Benefits", November 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of

Emergency Medical Services, 118 James Court, Suite 50, Lexington, Kentucky 40505, Monday through Friday, 8 a.m. to 4:30 p.m.

ANNE-TYLER MORGAN, Legal Counsel
APPROVED BY AGENCY: November 15, 2016
FILED WITH LRC: November 15, 2016 at noon
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KENTUCKY PUBLIC TRANSPORTATION INFRASTRUCTURE AUTHORITY
(As Amended at ARRS, February 10, 2017)

202 KAR 10:020. Public-private partnerships.

RELATES TO: KRS 45A.085, 154.1-750, 175B.005, 175B.010, 175B.020, 175B.030, 175B.035, 175B.037, 175B.040, 175B.095, 49 C.F.R. Part 26
STATUTORY AUTHORITY: KRS 175B.015(12)(d), 175B.020(1)(c)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 175B.015(12)(d) authorizes the state authority to promulgate administrative regulations to fulfill any requirements of KRS Chapter 175B. KRS 175B.020(1)(c) authorizes the state authority to request the establishment of a public-private partnership as well as bi-state authorities and project authorities. This administrative regulation establishes the criteria by which the state authority shall determine if the public-private partnership procurement method is appropriate for a project.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 175B.010(3).
(2) "Private partner" is defined by KRS 175B.010(10).
(3) "Project" is defined by KRS 175B.010(11).
(4) "Public-private partnership" is defined by KRS 175B.010(14).
(5) "State authority" is defined by KRS 175B.010(16).

Section 2. Use of a Public-Private Partnership. (1) A public-private partnership may be used for construction or financing of a project or the procurement of services if the head of the state authority issues a written determination that due to the nature or circumstances of the project or services, a public-private partnership is the most advantageous method of awarding and administering a project.
(2) In determining if the use of a public-private partnership is the most advantageous method of awarding and administering a project, the head of the state authority, or a person authorized in writing as his or her designee, shall undertake an analysis of the proposed project using the criteria established in paragraphs (a) and (b) of this subsection.
(a) Qualitative considerations shall include:
1. The ability of the state authority to allocate and control risks, cost sharing, responsibilities, and rewards between the state authority and a private partner in a way that ultimately benefits the state authority, the cabinet, and the commonwealth;
2. The timeliness of completion, efficiency of delivery, and cost effectiveness of a project via a public-private partnership as compared with other project delivery methods;
3. A determination that the tangible and intangible benefits to be gained by using a public-private partnership equals or exceeds the cost of developing and maintaining a public-private partnership;
4. The ability and expertise of the state authority to measure and monitor performance and operational controls;
5. The ability of the state authority to capture and use incentives, efficiencies, and expertise derived from the involvement of a private partner;
6. If the project or other services are likely to be developed or entered into in the absence of private sector involvement;
7. If a means of financing or innovative approach is likely to be available that is not otherwise available with other project delivery methods;
8. If the project or other ***service[~~services~~]*** promotes and encourages the use of local labor and resources, as well as disadvantaged, minority***, or[~~and~~]*** small business enterprises, consistent with 49 C.F.R. Part 26, KRS 154.1-750, 600 KAR 4:010, and other applicable law, including requiring a private partner who has been awarded a project for a public-private partnership to establish a local office within the Commonwealth of Kentucky;
9. If the public interest is best served through the use of a public-private partnership;
10. The impact of the development structure and financing plan on the long term level of project toll rates and the use of any excess toll revenue;
11. The urgency of need for the project or ***service[~~services~~]*** by the state authority;
12. The allocation of risks and contingencies between the state authority and the private partner;
13. If a public-private partnership is likely to impact the ability to achieve investment grade credit ratings and successfully raise construction funding;
14. An analysis of the impact on procuring financing; and
15. If similar public-private partnership projects have been undertaken successfully.
(b) Quantitative criteria shall include:
1. Net present value of the cost of the project over its entire useful life, including if applicable:
a. Financing, design, and construction costs;
b. Operation and management costs;
c. If the state authority is required to make payments to the private partner or receive payments from the private partner; and
d. Maintenance costs;
2. Operating cash flows expected to provide a return on investment to a private partner;
3. A detailed breakdown of all cash flow on all payments and expenditures, including interest cost associated with utilizing a public-private partnership; and
4. The anticipated value of the project deliverables at the end of the term of the agreement if any.

Section 3. Other Considerations. The state authority may ascribe relative weight to the criteria established in Section 2 of this administrative regulation, based on the size and nature of the project as well as the previous experience of the state authority, if any, in using public-private partnerships under similar circumstances.

GREG THOMAS, Secretary and Chairman
MAX BRIDGES, KPTIA General Counsel
APPROVED BY AGENCY: October 14, 2016
FILED WITH LRC: October 14, 2016 at noon
CONTACT PERSON: Megan M. McLain, Assistant General Counsel, Transportation Cabinet, 200 Mero Street, Frankfort, Kentucky 40622, phone (859) 940-7763, fax (502) 564-5238, email megan.mclain@ky.gov.

KENTUCKY PUBLIC TRANSPORTATION INFRASTRUCTURE AUTHORITY
(As Amended at ARRS, February 10, 2017)

202 KAR 10:030. Tolling projects.

RELATES TO: KRS 65.245, 175B.010(11), (14), (16), 175B.015(12), 175B.035(8), 175B.040, 281A.010(8)
STATUTORY AUTHORITY: KRS 175B.015(12), 175B.040(4)(b)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 175B.015(12)(c) authorizes the state authority to promulgate administrative regulations to collect and enforce tolls. KRS 175B.015(12)(a) authorizes the authority to establish the process

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The written protest shall include:

(a) The grounds for the protest; and

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

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

(a) The license plate was misidentified;

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

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

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

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

(4) The toll operator ***may[~~shall have the authority to~~]*** request additional information from the protestant.

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

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

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

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

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

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

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

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

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

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

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

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

175B.040(4) and securely provide the following information to the Kentucky Transportation Cabinet Division of Motor Vehicle Licensing, the Kentucky Transportation Cabinet Division of Motor Carriers, and the Offices of the County Clerks:

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

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

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

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

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

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

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

GREG THOMAS, Secretary and Chairman
MAX BRIDGES, KPTIA General Counsel
APPROVED BY AGENCY: October 21, 2016
FILED WITH LRC: November 14, 2016 at noon
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TOURISM, ARTS AND HERITAGE CABINET
Kentucky Department of Fish and Wildlife Resources
(As Amended at ARRS, February 10, 2017)

301 KAR 3:015. Shooting ranges on department-owned or managed lands[~~Wildlife Management Areas~~].

RELATES TO: KRS 150.025(1)(h)[~~150.620~~]
STATUTORY AUTHORITY: KRS 150.025(1)(h), 150.620
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to carry out the purposes of KRS Chapter 150. KRS 150.620 authorizes the department to promulgate administrative regulations to acquire or lease land for the operation of public shooting or fishing grounds[~~areas~~]. This administrative regulation establishes requirements for[~~procedures to ensure~~] the safe operation of department-owned or managed shooting ranges[~~on the department's property~~].

Section 1. Definitions. (1) "Archery and crossbow range" means a shooting range that is established for target shooting at stationary targets with archery or crossbow equipment.

(2) "Club-operated shooting range" means a facility that is:

(a) Operated by a department-authorized entity for target shooting; and

(b) Open to the public during club events.

(3) "Firing line" means the[~~an~~] area where[~~from which~~] a weapon is shot or discharged,[~~either~~] as designated by:

(a) Signage;

(b) A shooting bench; or[~~by~~]

(c) A range officer.

(4) "Pistol pit" means a shooting range that is established for target shooting with pistols.

(5)[~~(2)~~] "Range officer" means an[~~a designated~~] individual designated as a National Rifle Association range officer, a National Shooting Sports Foundation range officer, a department hunter education instructor, or a law enforcement range officer, responsible for supervising a shooting range and ensuring compliance with this administrative regulation.

(6) "Safety zone" means an area downrange of a firing line where all public access is prohibited as designated by department signs.

(7) "Self-service trap shooting range" means a shooting range that is established for people to shoot at moving targets with a shotgun.

(8)[~~(3)~~] "Shooting range" means a public facility on lands[~~a Wildlife Management Area, except Central and Lloyd Wildlife Management Areas,~~] owned or managed[~~controlled~~] by the department that[~~which~~] is designated[~~:~~

~~(a) Established and maintained~~] for target shooting with:

(a) A rifle;

(b) A pistol;

(c) A shotgun;

(d) Archery equipment; or

(e) Crossbow equipment.

(9) "Shooting station" means a location on the firing line for one (1) person to shoot, as designated by:

(a) Signage;

(b) A shooting bench; or

(c) A concrete pad.

(10) "Tube range" means a shooting range established for target shooting through designated steel tubes.

[~~a rifle, pistol, or shotgun with single projectile ammunition;~~

~~(b) Designated by a department sign as a public shooting range; and~~

~~(c) Not a trap, skeet or similar facility where shotguns with multiple projectiles are fired at moving targets~~].

Section 2. (1) ***Except as established in subsection (2) of this section,*** if a shooting range exists on department-owned or managed lands[~~property~~], then a person shall not target practice, sight in a firearm, or[~~otherwise~~] discharge a firearm on any area except[~~on~~] the shooting range.

(2) Subsection (1) of this section shall not apply to:

(a) A person legally hunting[~~hunter shooting at~~] a[~~legal~~] game species;[~~or~~]

(b) A department employee, range officer, or certified volunteer hunter education instructor in the performance of an[~~his~~] official duty;[~~or~~]

(c) A person or group[~~Individuals~~] participating in a department-sponsored hunter education class; or

(d) A group participating in a department-approved event pursuant to 301 KAR 3:010.

Section 3. General Shooting Range Requirements. (1) Except as[~~Unless otherwise~~] posted by a department sign or[~~pursuant to~~] an event permit issued pursuant[~~according~~] to 301 KAR 3:010, a person using a shooting range[~~on department property~~] shall only shoot from a designated firing line downrange at a department-provided:

(a) Target stand;

(b) Target; or

(c) Shooting berm[~~sit facing forward on the bench and shoot his or her firearm through the tube~~].

(2) A person shall not:

(a) Enter a shooting range except at a designated entrance;

(b) Enter a designated safety zone, except as established in subsection (6) of this section;

(c) Discharge a firearm:

1. Before 9 a.m.;[~~or~~]

2. After sunset, except on a lighted range during scheduled hours of operation; or

3. At any time prohibited by department signage; or

(d)[~~. (c)~~] Be under the influence of alcohol or other intoxicant.

(3) A person shall not use:

(a)[~~;~~

~~(d) Use a target other than a paper target;~~

~~(e) Place a target anywhere except in the target frames provided;~~

~~(f) Leave a target on a frame after he has finished shooting;~~

~~(g) Use or have in his possession~~

~~1.~~] A tracer bullet;

(b)[~~2.~~] Armor piercing ammunition;[~~or~~]

(c)[~~3.~~] A fully automatic firearm;

(d) A rifle cartridge that is .50 caliber or larger;

(e) A muzzle-loading rifle ball, sabot, or bullet larger than .78 caliber;

(f) A cannon or replica thereof;

(g) A mortar or other explosive device;

(h) A grenade; or

(i) An incendiary.

(4) A person shall not:

(a)[~~(h)~~] Leave spent cartridge cases or litter on the range;

(b)[~~(i)~~] Point a firearm in an unsafe direction or otherwise carelessly handle a firearm; or

(c) Use a shooting range at any time or in any manner inconsistent with department-posted signage[~~(j) Engage in horseplay or other potentially unsafe practices~~].

(5)[~~(3)~~] A person under the age of sixteen (16) shall not discharge a firearm on a shooting range unless[~~he is~~] under the direct supervision of a person at least eighteen (18) years old.

(6)[~~(4) A spectator or other person not actively engaged in shooting shall not go beyond the firing line.~~

~~(5)~~] A person actively engaged in shooting or a spectator shall not go beyond the firing line[~~:~~

~~(a)~~] without first clearly communicating to all[~~stating "cease fire" in a voice loud enough for the~~] other shooters to cease fire[~~hear or clearly indicating for the other shooters to understand; and~~

~~(b) Waiting until the other shooters have:~~

~~1. Ceased firing; and~~

~~2. Holstered their firearms or placed them on a table provided~~].

(7)[~~(6)~~] Upon hearing a cease fire["~~cease fire~~"] command or seeing a person move beyond the firing line, a person shall:

(a) Immediately cease firing;

(b) Unload all firearms[~~his firearm~~];

(c) Leave the[~~his firearm's~~] action open on all firearms;

(d) Place all firearms[~~his firearm~~]:

1. In a holster;

2. On a table at the shooting station; or

3. On the ground; and

(e) Not handle a firearm while a person is beyond the firing line.

(9) There shall not be[~~(7)~~] more than one (1) person[~~shall not be~~] at a shooting station at the same time, unless one (1) person is an instructor and the other is a student.

(10)[~~(8)~~] A person shall immediately obey the range officer's command.

(11) Any[~~(9) A~~] spectator and a person handling a[~~the~~] firearm shall wear protective eye and ear wear.

(12) Each person shall be limited to one (1) hour of shooting time if anyone is waiting to use the shooting range.

(13) If a scheduled event or department maintenance activities preclude open public use of a shooting range, then the department shall notify the public by:

(a) Posting the closure on the department's Web site at fw.ky.gov; and

(b) Posting a notice at the shooting range or a kiosk or bulletin board on the department-managed area.

(14)[~~Section 4.~~] A shooting range may be reserved for group use, ***if[provided that]***:

(a)[~~(1)~~] The group has obtained a department[~~an~~] event permit pursuant to[~~as specified in~~] 301 KAR 3:010; and

(b)[~~(2) The reservation is made thirty (30) days in advance; and~~

~~(3)~~] The group designates a range officer who shall oversee the event and ensure that all participants are in compliance with this administrative regulation.

Section 4. Special Shooting Range Requirements. (1) In addition to the general shooting range requirements established in Section 3 of this administrative regulation, a person shall comply with the special shooting range requirements established in subsections (2) through (8) of this section.

(2) A person using a tube range shall only:

(a) Shoot from a designated shooting station;

(b) Shoot a firearm through the tube provided at a shooting station;

(c) Use the department-provided target frames;

(d) Place target frames in the ground inserts provided on the tube range; and

(e) Attach paper targets to the target frames.

(3) A person using a tube range shall:

(a) Not shoot a pistol;

(b) Close tube doors when any person is downrange of the firing line;

(b) Not smoke or have any open flame;

(c) Not shoot at any objects on the ground; or

(d) Not use the range on a Monday, except if participating in a department-approved event pursuant to 301 KAR 3:010.

(4) A person may target shoot on a club-operated shooting range on Curtis Gates Lloyd WMA, Jones-Keeney WMA, Miller Welch-Central Kentucky WMA, and West Kentucky WMA if the person:

(a) Attends a regularly scheduled event coordinated and sponsored by a department-authorized club;

(b) Complies with the requirements of this administrative regulation and posted signage on the area; and

(c) Complies with the rules of operation established by the club and the club's range officer.

(5) On a club-operated shooting range, a club or organization shall:

(a) Comply with all WMA event permit requirements pursuant to 301 KAR 3:010;

(b) Post all approved event dates and times that are open to the public:

1. In the WMA clubhouse, if present;

2. On a WMA bulletin board or kiosk; and

3. On the department's Web site at fw.ky.gov; and

(c) Provide a range officer who shall oversee each event to ensure that all participants ***shall be[are]*** in compliance with the requirements of this administrative regulation.

(6) A person who is using an archery and crossbow range shall only use:

(a) The department-provided targets; and

(b) Broadhead-tipped arrows or crossbow bolts on department-provided broadhead targets, and in compliance with area signage.

(7) A person using a pistol pit shall:

(a) Only shoot from a designated firing line;

(b) Only use department-provided target frames;

(c) Only attach paper targets to the target frames;

(d) Only use single projectile ammunition;

(e) Not shoot any firearm except a pistol;

(f) Not shoot at any objects on the ground; and

(g) Not use the range on a Monday, except when participating in a department-approved event pursuant to 301 KAR 3:010.

(8) A person using a self-service trap shooting range shall:

(a) Only use a shotgun with shotshells containing multiple projectile pellets no larger than number two (2);

(b) Provide clay targets and portable target throwers; and

(c) Not target shoot anywhere except at a designated self-service trap shooting station.

[~~5. Self-service Shooting Range Areas. (1) There shall be self-service shotgun range areas for shotguns with multiple projectiles fired at moving targets on the following Wildlife Management Areas:~~

~~(a) Central Wildlife Management Area; and~~

~~(b) Lloyd Wildlife Management Area.~~

~~(2) A person or group shall seek the permission of a Wildlife Management Area manager to use the self-service shotgun area.~~

~~(3) Scheduled WMA events preclude public use of the designated public, self-service shotgun station.~~

~~(4) A user shall provide clay targets and portable throwers.~~

~~(5) A person shall not:~~

~~(a) Use single projectile ammunition;~~

~~(b) Use any facilities except at a designated public, self-service shotgun station;~~

~~(c) Discharge a firearm inconsistent with posted hours;~~

~~(d) Be under the influence of alcohol or other intoxicant;~~

~~(e) Leave spent cartridges or litter on the range;~~

~~(f) Point a firearm in an unsafe direction or otherwise carelessly handle a firearm; or~~

~~(g) Engage in horseplay or other potentially unsafe practices.~~

~~(6) A person under the age of sixteen (16) shall not discharge a firearm unless he is under the direct supervision of a person at least eighteen (18) years old.~~

~~(7) A spectator or other person not actively engaged in shooting shall not approach the firing line.~~

~~(8) While a person is actively engaged in shooting, a person shall not, including the operator of a target thrower, go beyond the firing line.~~

~~(9) When shooters are waiting to use the designated public, self-service shotgun range, range time is limited to one (1) hour.~~

~~(10) Spectators shall wear protective eye and ear wear at all times.~~]

GREGORY K. JOHNSON, Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: December 8, 2016

FILED WITH LRC: December 14, 2016 at 2 p.m.

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ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, February 10, 2017)

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

RELATES TO: KRS 224.1-010[~~224.01-010~~], 224.50-760

STATUTORY AUTHORITY: KRS 224.10-100***(28)[(30)]***, 224.40-305, 224.50-760(1)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100***(28)[(30)]*** authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a permit, pursuant to administrative regulations adopted 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 definitions for 401 KAR Chapter 45, concerning the management of special wastes and the training and certification of operators of special waste sites or facilities.

Section 1. Definitions. (1) "Beneficial reuse" means the use or reuse of special wastes, other than solids, residues**,** and precipitate separated from or created in sewage from humans, households, or commercial establishments by the processes of a wastewater treatment plant ***that[which]*** are subject to the provisions of 401 KAR 45:100, in a manner that complies with the environmental performance standards of 401 KAR 30:031 and all other applicable requirements of 401 KAR Chapter 45.

(2) "Certified operator" means a special waste site or facility operator who holds a valid certificate upon the successful completion of an approved training course and examination. The categories of certified operator shall be: composting operator, interim operator, landfarming operator, and landfill operator.

(3) "Closure" is defined by KRS ***224.1-010(4)[224.01-010(4)]***.

(4) "Coal combustion by-products"***:***

(a) Means special waste including fly ash, bottom ash, ***or[and]*** scrubber sludge residues produced by coal-fired electrical generating units***: and***

(b) Does not mean[. This waste shall][does]***[not include]*** residues of refuse derived fuels such as municipal waste, tires, ***or[and]*** solvents.

(5) "Composting" means the process by which biological decomposition of organic special waste is carried out under controlled aerobic conditions, and ***that[which]*** stabilizes the organic fraction into a material that can easily and safely be stored, handled, and used in an environmentally acceptable manner. Composting***:***

(a) May include a process that creates an anaerobic zone within the composting material***; and***

(b)[. Composting] Does not include simple exposure of special waste under uncontrolled conditions resulting in natural decay.

(6) "Composting operator" means a certified operator who is the individual responsible for ensuring compliance with all permit conditions at a composting facility and who is reasonably available to the facility during operations.

(7) "Construction permit" means a formal permit issued by the cabinet to an owner or operator of a special waste site or facility that authorizes the owner or operator to commence site preparation prior to the disposal or management of special waste.

(8) "Construction/operation permit" means a formal permit issued by the cabinet to an owner or operator of a special waste site or facility that authorizes the owner or operator to accept special waste for disposal or management. This permit is issued only after the construction of the site or facility has been certified as complete by the cabinet and the necessary financial assurance has been executed.

(9) "Formal permit" means a permit for special waste landfills, landfarming operations, and composting operations issued by the cabinet after review of the designated application form and completion by the applicant of the requirements of this chapter.

(10) "Horizontal expansion" means any increase in the capacity of a special waste landfill that expands the waste boundary of the landfill beyond the original waste boundaries contained in the approved permit application.

(11) "Interim operator" means a person who assumes the position of a special waste site or facility operator in the absence of a designated certified operator ***pursuant to 401 KAR 45:090, Section 11[. An interim operator may be a person who has not completed training that is required for a certified operator]***.

(12) "Landfarming facility" means a special waste site or facility for land application of sludges or other special waste by any method for purposes of disposal. It can be on any piece or pieces of land, subject to approval, and ***can[may]*** improve the physical and chemical qualities of the land for agricultural purposes, but does not alter the topography of the application area as revealed by contours and will not disturb the soil below three (3) feet from the surface.

(13) "Landfarming operator" means a certified operator who is the individual responsible for ensuring compliance with all permit conditions at a landfarming site or facility and who is reasonably available to the site or facility during operations.

(14) "Landfill operator" means a certified operator who is the individual with primary responsibility for management and operation of a special waste landfill to assure compliance with all permit conditions and is reasonably available to the site or facility during operations.

(15) "Postclosure" means the routine care, maintenance, and monitoring of a special waste site or facility following closure of the facility.

(16) "Special waste":

(a) Is ***established[defined]*** by KRS 224.50-760(1)(a); and

(b) ***Does[Shall]*** not include special wastes that are coal combustion residuals governed by 401 KAR Chapter 46.

(17) "Special waste site or facility" means any land, real property, appurtenance, building, structure, or installation where special waste is managed, processed, beneficially reused, or disposed.

Section 2. Acronyms and Abbreviations. The acronyms and abbreviations used in this chapter are listed in Table 1.

Table 1. Acronyms and Abbreviations	
C.F.R.	Code of Federal Regulations
EPA	Environmental Protection Agency
FDIC	Federal Deposit Insurance Corporation
FSLIC	Federal Savings and Loan Insurance Corporation
KAR	Kentucky Administrative Regulations
KPDES	Kentucky Pollutant Discharge Elimination System
KRS	Kentucky Revised Statutes
NCUA	National Credit Union Administration
NPDES	National Pollutant Discharge Elimination System
PCB	Polychlorinated Biphenyls
POTW	Publicly Owned Treatment Works
U.S.C.	United States Code
USDA	United States Department of Agriculture
USGS	United States Geological Survey

CHARLES G. SNAVELY, Secretary
APPROVED BY AGENCY: October 11, 2016
FILED WITH LRC: October 11, 2016 at 3 p.m.
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ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, February 10, 2017)

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

RELATES TO: KRS 224.1[~~224.01~~], 224.10, 224.40, 224.46, 224.50, 224.99
STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760
NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 requires the cabinet to ***promulgate[~~adopt~~]*** administrative regulations for the management, processing, and disposal of wastes. KRS 224.40-305 requires persons who establish, conduct, operate, maintain, or permit the use of a waste site or facility to obtain a permit. ***[~~This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities.~~]*** This administrative regulation sets forth the requirements for a special waste permit-by-rule.

Section 1. Permit-by-rule. Notwithstanding any other provision of this chapter, the following special waste sites or facilities shall be deemed to have a permit without the owner or operator having made application or registration with the cabinet, ***if[~~provided~~]*** the operation is a practice common to the industry, is not in violation of 401 KAR 30:031, and does not present a threat or potential threat to human health or the environment:

(1) Oil production brine pits and gas and oil drilling mud pits, during the active life of the pit, if the pit is subject to 401 KAR 5:090;

(2) Temporary storage of special waste in piles;

(3) Injection wells used for disposal of special waste subject to 401 KAR 5:090 or in compliance with an underground injection control permit issued by the U.S. EPA;

(4)[~~Surface mining impoundments and other~~] Special waste surface impoundments***[~~in substantial compliance~~]*** with ***a*** KPDES ***permit[~~permits~~]***;

(5) Surface impoundments that treat domestic sewage and that do not contain any industrial wastewater, or are publicly owned treatment works for the treatment of domestic sewage, if the facility is in compliance with the KPDES or NPDES permit;

(6)[~~Disposal of coal combustion fly ash, bottom ash, and scrubber sludge in an active mining operation, if the owner or operator of the mining operation:~~

~~(a) Has a mining permit issued under KRS Chapter 350 that includes the disposal of special waste; and~~

~~(b) Complies with the conditions of the mining permit; and~~

~~(7)~~] Beneficial reuse of coal combustion by-products for placement at active or abandoned underground or surface coal mines, including[~~as an ingredient or substitute ingredient in the manufacturing of products, including but not limited to, cement, concrete, paint, and plastics; antiskid material; highway base course;~~] structural fill, backfill, material for contouring,[~~; blasting grit; roofing granules; and~~] mine stabilization, and reclamation material, if[~~; provided that~~]:

(a) The utilization of coal combustion by-products does not result in the creation of a nuisance condition;

(b) Erosion and sediment control measures consistent with sound engineering practices are undertaken;

(c) ***Unless permission has been obtained from the appropriate regulatory agency,*** the use is not within 100 feet of existing streams ***or[~~,~~]*** 300 feet of existing drinking water wells,***[~~or~~]*** floodplains, or wetlands***[~~, unless permission has been obtained from the appropriate regulatory agency~~]***;

(d) The generator characterizes the nonhazardous nature of the coal combustion by-products; and

(e) The generator submits to the cabinet an annual report that identifies the type and amount of coal combustion by-products[~~waste~~] released for reuse; the name and address of each recipient of coal combustion by-products[~~waste~~]; and the specific use, if known, each recipient made of the coal combustion by-products[~~waste~~].

Section 2. Noncompliances. (1)***[~~The cabinet may take any appropriate enforcement actions, including corrective action or revocation, if~~]*** A special waste permit-by-rule site or facility ***that*** is not operating in***[~~substantial~~]*** compliance with Section 1 of this administrative regulation ***shall be subject to appropriate enforcement action, including corrective action or revocation***.

(2) The cabinet may***[~~, at its discretion,~~]*** require the owner or operator of a special waste permit-by-rule site or facility to upgrade the permit to a registered permit-by-rule ***if doing so will[~~to~~]*** ensure that the requirements of this chapter and the environmental performance standards of 401 KAR 30:031 are met.

CHARLES G. SNAVELY, Secretary
APPROVED BY AGENCY: October 11, 2016
FILED WITH LRC: October 11, 2016 at 3 p.m.
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.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, February 10, 2017)

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 ***401 KAR Chapter 46***[~~*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 ***established***[~~*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.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended at ARRS, February 10, 2017)

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 ***the permittee's***[~~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***. The extension shall*** 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 ***shall***[~~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 *pursuant to 401 KAR 40:040 upon a final determination of noncompliance with 401 KAR Chapter 46***[~~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)(c)*[~~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.

TRANSPORTATION CABINET
Department of Highways
(As Amended at ARRS, February 10, 2017)

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) ***"Director" means the director of the Division of Construction Procurement.***

(4)"Evaluation committee" means a committee designated by the secretary ***of the Transportation Cabinet*** to review and evaluate proposals.

(5)[(4)] "Financial plan" means a plan submitted to, or proposed by, the state authority pursuant to KRS 175B.030 or KRS 175B.035.

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

(7)[(6)] "Public-private partnership" is defined by KRS 175B.010(14).

(8)[(7)] "Request for proposals" is defined by KRS 45A.070(5).

(9)[(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 ***request for proposal[~~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 ***requested[~~solicited~~]*** based on the same or revised terms; or

(b) The procurement may be canceled.

(7)(a) If, after ***a request for[~~solicitation~~]*** of proposals to enter into competitive negotiations, only one (1) proposal responsive to the ***request for proposal[~~solicitation~~]***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 ***request[~~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 DANGELO, 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.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS, February 10, 2017)

803 KAR 2:303. Walking-working surfaces.

RELATES TO: KRS 338.051, 338.061, 29 C.F.R. ***1910.21-1910.30[1910]***
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 C.F.R. ***1910.21-1910.30[1910]***
NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051***(3)*** and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to***[adopt and]*** promulgate occupational safety and health administrative regulations. KRS 338.051(3) authorizes the chairman of the board to adopt established federal standards without board approval if necessary to meet federal time requirements.***[Express authority to adopt[incorporate] by reference established federal standards and national consensus standards is also given by KRS 338.061(2)]***[to the board]. This[The following] administrative regulation establishes[contains]***[those]*** standards ***for walking-working surfaces*** to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.
(2) "Assistant Secretary of Labor" means ***Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.***
(3) "C.F.R." means Code of Federal Regulations.
(4) "Employee" is defined by KRS 338.015(2).
(5) "Employer" is defined by KRS 338.015(1).
(6) "Established federal standard" is defined by KRS 338.015(10).
(7) "National consensus standard" is defined by KRS 338.015(9).
(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.
(9) "Standard" means "occupational safety and health standard" as defined by KRS 338.015(3).
(10) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.[(3) "Employee" means any person employed except those employees excluded in KRS 338.021.
(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.
(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.
(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.
(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".
(8) An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, Department of Workplace Standards, U.S. 127 South, Frankfort, Kentucky 40601.]

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, general industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Administration:
(1) 29 C.F.R ***Subpart D,*** 1910.21-1910.30, revised July 1, 2015; and
(2) The revisions to Subpart D as published in the November 18, 2016 Federal Register, Volume 81, Number 223.[Permanent and Temporary Floor Openings. (1) The language relating to the guarding of permanent and temporary floor openings in subsection (2) of this subsection shall apply in lieu of 29 C.F.R.1910.23(a)(7);
(2) 29 C.F.R. 1910.23(a)(7) is amended to: "Every temporary or permanent floor opening shall have standard railings, or shall be constantly attended by someone."

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) The material in subparagraphs 1 through 2 of this paragraph, published by the Office of the Federal Register, National Archive and Records Services, General Services Administration, revised as of July 1, 1995, is incorporated by reference:
1. 29 C.F.R. 1910.21 through 1910.23(a)(6); and
2. 29 C.F.R. 1910.23(a)(8) through 29 C.F.R. 1910.32;
(b) The revisions to 29 C.F.R. 1910.30, "Other Working Surfaces", as published in the Federal Register, Volume 61, Number 46, March 7, 1996;
(c) The removal of 29 C.F.R. 1910.31, "Sources of Standards", as published in the Federal Register, Volume 61, Number 46, March 7, 1996; and
(d) The removal of 29 C.F.R. 1910.32, "Standards of Organizations", as published in the Federal Register, Volume 61, Number 46, March 7, 1996.
(2) The language relating to the guarding of floor openings in Section 2(2) of this administrative regulation shall apply in lieu of 29 C.F.R. 1910.23(a)(7).
(3) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Occupational Safety and Health Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.]

DERRICK RAMSEY, Chairman
APPROVED BY AGENCY: December 14, 2016
FILED WITH LRC: December 14, 2016 at 3 p.m.
CONTACT PERSON: Mike Pettit, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-4069, fax (502) 564-1682, email Mike.Pettit@ky.gov.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS, February 10, 2017)

803 KAR 2:308. Personal protective equipment.

RELATES TO: 29 C.F.R. 1910.132-***1910.140[1910.138]***
STATUTORY AUTHORITY: KRS 338.051(3), 338.061
NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to adopt occupational safety and health administrative regulations and authorizes the chairman of the board to ***promulgate[adopt]*** established federal standards without board approval if necessary to meet federal time requirements. 29 C.F.R. 1910.132 to ***1910.140[1910.138]*** and Appendices establish the federal requirements relating to personal protective equipment. This administrative regulation establishes personal protective equipment standards to be enforced by the Department of Workplace Standards in general industry.

Section 1. Definitions. (1) "C.F.R." means Code of Federal Regulations.
(2) "Employee" is defined ***by[in]*** KRS 338.015(2).
(3) "Employer" is defined ***by[in]*** KRS 338.015(1).
(4) "Established federal standard" is defined ***by[in]*** KRS

338.015(10).

(5) "National consensus standard" is defined ***by[in]*** KRS 338.015(9).

(6) "Standard" is defined ***by[in]*** KRS 338.015(3).

(7) "U.S. Department of Labor" means Kentucky Labor Cabinet or U.S. Department of Labor.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, general industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Administration:

(1) 29 C.F.R. 1910.132 through 29 C.F.R. ***1910.140 [1910.138]***, and Appendices, revised July 1, 2016[2015]; and

(2) The amendments to 29 C.F.R. 1910.140 as published in the November 18, 2016 Federal Register Volume 81, Number 223[1910.133 as published in the March 25, 2016 Federal Register Volume 81, Number 58.
As approved by the Kentucky Occupational Safety and Health Standards Board].

DERRICK RAMSEY, Chairman

APPROVED BY AGENCY: December 14, 2016

FILED WITH LRC: December 14, 2016 at 3 p.m.

CONTACT PERSON: Mike Pettit, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-4069, fax (502) 564-1682, email Mike.Pettit@ky.gov.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS, February 10, 2017)

803 KAR 2:313. Materials handling and storage.

RELATES TO: KRS 338.051(3), 338.061, 29 C.F.R. 1910.176-1910.184

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 C.F.R. ***1910.176-1910.184[1910]***

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051***(3)*** and 338.061 require the Kentucky Occupational Safety and Health Standards Board to***[adopt and]*** promulgate occupational safety and health administrative regulations. KRS 338.051(3) authorizes the chairman of the board to adopt established federal standards without board approval if necessary to meet federal time requirements. This[The following] administrative regulation establishes standards ***for materials handling and storage*** to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions Applicable to this Part. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means ***Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet[the Secretary of Labor, Commonwealth of Kentucky]***.

(3) "Standard" is defined by KRS 338.015(3).

(4) "U.S. Department of Labor" means the Kentucky***[Department of]*** Labor ***Cabinet*** or the U.S. Department of Labor.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, general industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Administration:

(1) 29 C.F.R. ***Subpart N,*** 1910.176 through 1910.184, revised July 1, 2016[2011]; and

(2) The revisions to Subpart N as published in the November 18, 2016 Federal Register, Volume 81, Number 223[amendment to 29 C.F.R. 1910.177 as published in the December 27, 2011 Federal Register, Volume 76, Number 248.

Section 3. If a truck that falls within the scope of 29 C.F.R. 1910.178 is equipped with vertical only, or vertical and horizontal controls elevatable with the lifting carriage or forks for lifting personnel, the following shall be required:

(1) Use of a safety platform firmly secured to the lifting carriage or forks;

(2) Means whereby personnel on the platform can shut off power to the truck; and

(3) Protection from falling objects as necessary by the operating conditions. As approved by the Kentucky Occupational Safety and Health Standards Board].

DERRICK RAMSEY, Chairman

APPROVED BY AGENCY: December 14, 2016

FILED WITH LRC: December 14, 2016 at 3 p.m.

CONTACT PERSON: Mike Pettit, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-4069, fax (502) 564-1682, email Mike.Pettit@ky.gov.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS, February 10, 2017)

803 KAR 2:317. Special industries.

RELATES TO: KRS 338.015, 338.051(3), 338.061, 29 C.F.R. 1910.261-1910.272

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations necessary to accomplish the purposes of KRS Chapter 338 and authorizes the chairman of the board to adopt established federal standards without board approval if necessary to meet federal time requirements. 29 C.F.R. 1910.261 to 1910.272 authorize the federal requirements relating to special industries. This administrative regulation establishes the special industries standards to be enforced by the Department of Workplace Standards in general industry.

Section 1. Definitions. (1) "Assistant Secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined in KRS 338.015(2).

(4) "Employer" is defined by KRS 338.015(1).

(5) "Standard" is defined by KRS 338.015(3).

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, general industry shall comply with the following federal requirements published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. ***Subpart R,*** 1910.261-1910.272, effective July 1, 2016 [2015;] and

(2) The revisions to Subpart R, as published in the November 18, 2016 Federal Register, Volume 81, Number 223[amendments to 29 C.F.R. 1910.269 as published in the October 5, 2015 Federal Register, Volume 80, Number 192].

DERRICK RAMSEY, Chairman

APPROVED BY AGENCY: December 14, 2016

FILED WITH LRC: December 14, 2016 at 3 p.m.

CONTACT PERSON: Mike Pettit, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-4069, fax (502) 564-1682, email Mike.Pettit@ky.gov.

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, February 10, 2017)

811 KAR 1:220. Harness racing at county fairs.

RELATES TO: KRS 230.215, 230.260, 230.280, 230.290, 230.310, 230.398

STATUTORY AUTHORITY: KRS 230.215, 230.260, 230.398

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.398 authorizes the commission to promulgate administrative regulations governing[~~as may be necessary for~~] the conduct of county fair races. This administrative regulation establishes conditions, races, purses, and payments in races conducted at county fairs in which funds for purses are provided by the commission, and regulates eligibility for participation in harness racing at county fairs.

Section 1. Definitions. (1) "Individual" means a natural person, at least eighteen (18) years of age, but does not include any corporation, partnership, limited liability company, trust, estate, association, joint venture, or any other group or combination acting as a unit.

(2) "Individual or Person domiciled in Kentucky" means:

(a) An individual who has his permanent residence in Kentucky; or[~~and~~]

(b) A person organized under the laws of Kentucky or registered to do business in Kentucky with the Kentucky Secretary of State.

(3) "Person" means any corporation, whether organized for profit or not, partnership, limited liability company, trust, estate, association, joint venture, or any other group or combination acting as a unit.

Section 2. Domicile. (1) The commission shall determine all questions of domicile.

(2) In determining questions of domicile, the commission shall weigh:

(a) The eligibility factors set forth in Section 3 of this administrative regulation; and

(b) Factors which indicate domicile and intent, including:

1. The amount of time the individual spends in Kentucky each year as compared to the amount of time spent elsewhere;

2. Whether the individual or person owns real estate in Kentucky;

3. Whether the individual is registered to vote in Kentucky;

4. Whether the person is organized under Kentucky law;

5. The permanent residence of the individual or principal place of business of the person, as indicated by the records of the commission and the United States Trotting Association; and

6. Whether the individual has a Kentucky automobile driver's license.

Section 3. Eligibility. A horse is eligible to participate in a two (2) or three (3) year old stakes[~~stake~~] race at a county fair if:

(1)(a) Beginning January 1, 2017, the horse is[~~: (a)~~] a[~~two (2) or~~] three (3) year old[~~that is~~] sired by a stallion that was registered with the Kentucky Standardbred Development Fund and Kentucky Standardbred Breeders' Incentive Fund as defined[~~provided~~] in 811 KAR 1:215 at the time of conception;

(b) Beginning January 1, 2017, the horse is a[~~two (2) or~~] three (3) year old whose dam was partially or wholly owned by an individual or person domiciled in Kentucky at the time of conception;[~~or~~]

(c) Beginning January 1, 2017, the horse is a[~~two (2) or~~] three (3) year old that is owned by an individual or person domiciled in Kentucky;

(d) Beginning January 1, 2017, the horse is a two (2) year old that is "Kentucky-bred" as defined in 811 KAR 1:215; or

(e) Beginning January 1, 2018 and thereafter, the horse is a two (2) year old or a three (3) year old that is "Kentucky-bred" as defined in 811 KAR 1:215;

(2) All owners[~~An owner~~] of the participating horse are[~~is a~~] current members[~~member~~] of the Kentucky Colt Racing Association, Inc.;

(3) All owners[~~An owner~~] of the participating horse hold[~~holds~~] a current license with the commission; and

(4) The trainer and driver of the participating horse hold[~~a~~] current licenses[~~license~~] with the commission.

Section 4. Track Requirements. (1) A fair shall have a safe and adequate track, and the entire track, including start and finish lines, shall be visible to judges and spectators.

(2) The track shall be inspected and approved by a representative of the commission.

(3)[~~Section 5.~~] A track shall have a hub rail or pylons approved by the commission.

(4)(a)[~~Section 6.(1)~~] A fair shall have safe and adequate stalls for participating horses.

(b)[~~(2)~~] If permanent stalls are not available,[~~either on or off the fairgrounds,~~] tents or other tie-in type stalls may be used.

(c)[~~(3)(a)~~] Except as provided by paragraph (d)[~~(b)~~] of this subsection, a county fair shall not charge stall rent for horses racing at the fair.

(d)[~~(b)~~] A county fair may charge stall rent if the fair is held on state-owned property.

Section 5[~~7~~]. Fair Fees. (1) The Kentucky Colt Racing Association fees[~~county fair fee~~] shall be as follows:

(a) A nomination fee of fifty (50) dollars per horse due on or before February 15 of each racing year[~~the year in which the fair is being conducted~~];

(b) A sustaining fee of $200 per horse due on or before April 15 of each racing year;

(c) A starting fee of fifty (50) dollars per horse, per fair, due at the time of entry for[~~to~~] the fair; and

(d) A twenty-five (25) dollar fee per horse for starting in an overnight race, due at the time of entry for[~~to~~] the fair.

(2) A $200 payment shall be due at the time of entry for a horse eligible for the fair finals.

Section 6[~~8~~]. Officials[~~at County Fairs~~]. (1) The Kentucky Colt Racing Association shall submit to the commission, at least sixty (60) days prior to the opening of a race meeting, a written list of racing officials and applicable employees.

(2) At a county fair, there shall be at least one (1) presiding judge approved by the commission in the judges' stand. In addition, at a meeting in which races are charted, the association member shall provide both a licensed charter and licensed clerk of the course.

(3) A fair shall use licensed United States Trotting Association judges to preside over the racing.

(4) The judges shall review the ownership of any horse that is entered in order to ensure the horse's eligibility to race.

(5) The judges may determine the validity for racing purposes of any lease, transfer, or agreement pertaining to ownership of a horse and may call for adequate evidence of ownership at any time.

(6) The judges may declare a horse ineligible to race if the ownership or control of the horse is in question.

(7) Officials shall be paid by the Kentucky Colt Racing Association.

Section 7[~~9~~]. Starter. A fair shall use a licensed starter with adequate equipment.

Section 8[~~10~~]. Use of Entry Fees. (1) The entry fees established in Section 5(1)(c) and (d)[~~7~~] of this administrative regulation shall be retained by each fair as compensation for conducting its harness racing program and in reimbursement of the expenses incurred[~~collected by a fair and used:~~

~~(a) To pay racing officials;~~

~~(b) To provide purses for overnight racing events; and~~

~~(c) To promote fair racing as otherwise needed~~].

(2) A fair shall, upon request, make a full accounting of the entry fees to the commission.

Section 9[~~11~~]. Application for a License. A fair shall apply to the commission for a license to conduct a harness racing event and for approval of funds by December 15 of the year prior to the year of the event. At the time of application, the request for pari-mutuel wagering shall be included.

Section 10[~~12~~]. Changes in Racing Program. A fair shall have the right to change the order of its program and to postpone or cancel an event due to bad weather or unavoidable cause. If a race is canceled because of lack of entries, entry fees shall be refunded.

Section 11[~~13~~]. Early Closers. (1) An early closing event, and all divisions of that event, shall race a single heat at a distance of one (1) mile and shall be contested for a purse approved by the commission on an annual basis[~~annually~~].

(2) An early closing race shall be contested regardless of the number of entries. However, a fair may cancel an overnight race with less than five (5) entries.

Section 12[~~14~~]. Division of Races. There shall be no more than two (2) trailers in any race at a county fair.

(1)***[Beginning January 1, 2017,]*** If a two (2) year old race is divided into divisions, each division shall race for the entire amount of the advertised purse for the race.

(2)***[Beginning January 1, 2017,]*** If a three (3) year old race is divided into divisions, each division shall race for a purse of $2,500.

(3) Beginning January 1, 2018 and thereafter, if a race is divided into divisions, each division shall race for the entire amount of the advertised purse for the race[~~There shall not be more than nine (9) starters in any race. If a race is divided into divisions, the purse shall be divided so that each division races for an equal portion of the purse~~].

(4) The purse for each race[~~The purses~~] shall be divided as follows:

(a)[~~(1)~~] Five (5) starters - fifty (50) percent, twenty-five (25) percent, twelve (12) percent, eight (8) percent, and five (5) percent;

(b)[~~(2)~~] Four (4) starters - fifty (50) percent, twenty-five (25) percent, fifteen (15) percent, and ten (10) percent;

(c)[~~(3)~~]Three (3) starters - fifty-five (55) percent, thirty (30) percent, and fifteen (15) percent;

(d)[~~(4)~~] Two (2) starters - sixty-five (65) percent and thirty-five (35) percent; and

(e)[~~(5)~~] One (1) starter - 100 percent.

Section 13[~~15~~]. Points Distribution. (1) Points shall be awarded in an early closing race, and any division of an early closing race, as follows:

(a) First place finisher - fifty (50) points;

(b) Second place finisher - twenty-five (25) points;

(c) Third place finisher - twelve (12) points;

(d) Fourth place finisher - eight (8) points;

(e) Fifth place finisher - five (5) points; and

(f) Each starter that finishes out of the money - one (1) point.

(2) If two (2) horses dead-heat for any position, they shall each receive one-half (1/2) of the points awarded for that position and one-half (1/2) of the points awarded for the next lower position. The same procedure shall be used for the allocation of points if there is a dead-heat of three (3) or more horses.

(3) A horse that is declared in and then is the subject of a judge's scratch shall be awarded one (1) point based upon the decision of the presiding judge. This decision shall be final.

(4) A horse that starts in a Kentucky Sires Stake race within three (3) days of a scheduled county fair race of the same class shall be awarded a county fair start and one (1) point.

(5) If there is a tie among two (2) or more horses with the same number of points, the tie shall be resolved in favor of the horse with the higher earnings in the early closing fair events in which the horses have competed.

(6) If any division of a race is rained out before the completion of all other divisions of that race, the points for distribution set forth in 811 KAR 1:220, Section 13, shall not apply and instead, one (1) point shall be awarded to each horse entered in each division of that race that was rained out.

Section 14[~~16~~]. Entry Limitation. A horse shall not be allowed to compete in more than one (1) race at any fair.

Section 15[~~17~~]. Change in Ownership. In order for a three (3) year old horse, for whom the nomination fee has been paid, to remain eligible to race at a county fair during the calendar year of 2017 after there has been a transfer of ownership, the following payments shall be required:

(1) $300 the first time ownership is transferred from the owner at the time of nomination; and

(2) An additional $600 thereafter if the same horse is again transferred.

Section 16[~~18~~]. Drug Testing. (1) The winning horse at a fair race and any other horse or horses as selected by the judges may be subjected to a drug test as set forth in 811 KAR 1:090 and 811 KAR 1:260.

(2) A fair shall provide two (2) enclosed stalls and bedding to be used by the commission veterinarian for drug testing.

(3) The stalls required by subsection (2) of this section shall be located as close to the race track as possible.

(4) The stalls shall be positioned[~~so as~~] to allow the track announcer to be heard.

Section 17[~~19~~]. Coggins Test. A current negative Coggins test shall be required for each horse racing at a fair.

Section 18[~~20~~]. Drivers. A driver shall wear full colors, white pants, a safety vest that meets the standards set forth in 811 KAR 1:075, Section 21, and a safety helmet that meets the standards set forth in 811 KAR 1:075, Section 20, if on the track less than one (1) hour before the start of a fair racing program.

Section 19[~~21~~]. Trophies. A fair shall provide a trophy or blanket to the winner of a race. If a race is contested in heats or divisions, the trophy shall be presented to the winner of the fastest heat or division.

[~~Section 22. An early closing race shall be contested regardless of the number of entries. However, a fair may cancel an overnight race with less than five (5) entries.~~]

Section 20[~~23~~]. Early Deadlines. The deadline for entries at a fair shall be set by the Kentucky Colt Racing Association at its annual October meeting preceding the racing year.

Section 21[~~24~~]. Programs. A county fair track holding races for purses shall provide a printed program available to the public containing the following information for:

(1) Non pari-mutuel tracks:

(a) Horse's name and sex;

(b) Color and age of horse;

(c) Sire and dam of horse;

(d) Owner's name[~~and colors~~];

(e) Driver's name and colors;

(f) Trainer's name; and

(g) Summary of starts in purse races, earnings, and the best win time for the current and preceding year. A horse's best win time may be earned in either a purse or nonpurse race; and

(2) Pari-mutuel tracks:

(a) All of the program information required by subsection (1) of this section;

(b)[~~Horse's name and sex;~~

~~(b) Color and age of horse;~~

~~(c) Sire and dam of horse;~~

~~(d) Owner's name;~~

~~(e) Driver's name and colors;~~
~~(f) Trainer's name;~~
~~(g) Summary of starts in purse races, earnings, and best win time for the current and preceding year. A horse's best win time may be earned in either a purse or nonpurse race;~~
~~(h)~~] At least the last six (6) performance and accurate chart lines. An accurate chart line shall include:
1. Date of race;
2. Location of race;
3. Size of track if other than a one-half (1/2) mile track;
4. Symbol for free-legged pacers;
5. Track condition;
6. Type of race;
7. Distance;
8. The fractional times of the leading horse including race times;
9. Post position;
10. Position of the one-quarter (1/4) marker, the one-half (1/2) marker, and the three-quarters (3/4) marker;
11. Stretch with lengths behind leader;
12. Finish with lengths behind leader;
13. Individual time of the horse;
14. Closing dollar odds;
15. Name of the driver;
16. Names of the horses that placed first, second, and third by the judges; and
17. Standard symbols for breaks and park-outs, if applicable;
(c)[~~(i)~~] Indicate drivers racing with a provisional license; and
(d)[~~(j)~~] Indicate pacers that are racing without hobbles.

Section 22[~~25~~]. Payments. Nomination and sustaining payments shall be made to the Kentucky Colt Racing Association. Entry fees shall be paid to the fair for which the entry is taken.

Section 23[~~26~~]. Violations. A person or association that violates a provision of this administrative regulation shall have committed a Category 1 violation and shall be subject to the penalties set forth in 811 KAR 1:095.

FRANKLIN S. KLING, JR., Chairman
DAVID A. DICKERSON, Secretary
APPROVED BY AGENCY: December 13, 2016
FILED WITH LRC: December 14, 2016 at 3 p.m.
CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email John.Forgy@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(As Amended at ARRS, February 10, 2017)

900 KAR 6:060. Timetable for submission of certificate of need applications.

RELATES TO: KRS 216B.015, 216B.040, 216B.095(3)(a)-(f)
STATUTORY AUTHORITY: KRS 216B.040(2)(a)1, 216B.062(1), (2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. KRS 216B.062(1) and (2) require the cabinet to promulgate administrative regulations to establish timetables and batching groups for applications for certificates of need. This administrative regulation establishes the timetable for submission of application requirements necessary for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(6).
(2) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site at http://chfs.ky.gov/ohp/con.
(3) "Formal review" means the review of an application for certificate of need ***that***[~~***which***~~] is reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and ***that***[~~***which***~~] is reviewed for compliance with the review criteria set forth at KRS 216B.040 and 900 KAR 6:070.
(4) "Long-term care beds" means nursing home beds, intermediate care beds,[~~skilled nursing~~ ~~***beds,***~~] nursing facility beds, and Alzheimer nursing home beds.
(5) "Nonsubstantive review" is defined by KRS 216B.015(18).

Section 2. Timetable for Submission of an Application for Formal Review. (1) Prior to July 1, 2017, the cabinet's timetable for giving public notice for an application deemed complete for formal review shall be as established in this subsection.
(a) Public notice for an application for organ transplantation, magnetic resonance imaging, megavoltage radiation equipment, cardiac catheterization, open heart surgery, positron emission tomography equipment, a Level I psychiatric residential treatment facility (Level 1 PRTF), a Level II psychiatric residential treatment facility (Level II PRTF), ***or***[~~***and***~~] a new technological development shall be provided in the Certificate of Need Newsletter published on the third Thursday of the following months:
1. January; and
2. July.
(b) Public notice for an application for a residential hospice facility, a hospice service, ***or***[~~***and***~~] a home health agency shall be provided in the Certificate of Need Newsletter published on the third Thursday of the following months:
1. February; and
2. August.
(c) Public notice for an application for a Class I, II, III***, or***[~~***and***~~] VI ground ambulance service, ***or***[~~***and***~~] a private duty nursing service shall be provided in the Certificate of Need Newsletter published on the third Thursday of the following months:
1. March; and
2. September.
(d) Public notice for an application for a day health care program shall be provided in the Certificate of Need Newsletter published on the third Thursday of the following months:
1. April; and
2. October.
(e) Public notice for an application for long-term care beds, an acute care hospital including all other State Health Plan covered services to be provided within the proposed acute care hospital, acute care hospital beds, psychiatric hospital beds, special care neonatal beds, comprehensive physical rehabilitation beds, chemical dependency treatment beds, ***or***[~~***and***~~] an ambulatory surgical center[~~, and an outpatient health care center~~] shall be provided in the Certificate of Need Newsletter published on the third Thursday of the following months:
1. May; and
2. November.
(f) Public notice for an application for an intermediate care facility for individuals with an intellectual disability shall be provided in the Certificate of Need Newsletter published on the third Thursday of the following months:
1. June; and
2. December.
(g) A proposal not included in paragraphs (a) through (f) of this subsection shall be placed in the cycle that the cabinet determines to be most appropriate by placing it in the cycle with similar services.
(2) ***Beginning***[~~***After***~~] July 1, 2017, the cabinet's timetable for giving public notice for an application deemed complete for formal review shall be as established in this subsection.
(a) Public notice for an application for organ transplantation, magnetic resonance imaging, megavoltage radiation equipment, cardiac catheterization, open heart surgery, positron emission tomography equipment, a Level I psychiatric residential treatment facility (Level 1 PRTF), a Level II psychiatric residential treatment

facility (Level II PRTF), ***or[~~and~~]*** a new technological development shall be provided in the Certificate of Need Newsletter published on the third Thursday of the following months:

1. January;
2. April;
3. July; and
4. October.

(b) Public notice for an application for long-term care beds, intermediate care beds for individuals with an intellectual disability, a residential hospice facility, a hospice service, a private duty nursing service, ***or[~~and~~]*** a home health agency shall be provided in the Certificate of Need Newsletter published on the third Thursday of the following months:

1. February;
2. May;
3. August; and
4. November.

(c) Public notice for an application for an acute care hospital including all other State Health Plan covered services to be provided within the proposed acute care hospital, acute care hospital beds, psychiatric hospital beds, special care neonatal beds, comprehensive physical rehabilitation beds, chemical dependency treatment beds, an ambulatory surgical center, ***or[~~and~~]*** a Class I, II, III***, or[~~and~~]***and VI ground ambulance service shall be provided in the Certificate of Need Newsletter published on the third Thursday of the following months:

1. March;
2. June;
3. September; and
4. December.

(d) A proposal not included in paragraphs (a) through (c) of this subsection shall be placed in the cycle that the cabinet determines to be most appropriate by placing it in the cycle with similar services.

(3) An application for formal review shall be filed with the cabinet at least fifty (50) calendar days, but not more than eighty (80) calendar days, prior to the date of the desired public notice. An initial application filed more than eighty (80) days prior to the desired public notice shall be returned to the applicant along with the fee submitted pursuant to 900 KAR 6:020.

Section 3. Timetable for Submission of an Application for Nonsubstantive Review. (1) The cabinet shall give public notice for an application deemed complete and granted nonsubstantive review status pursuant to KRS 216B.095(3)(a) through (f) in the Certificate of Need Newsletter published on the third Thursday of each month.

(2) An application for nonsubstantive review shall be filed with the cabinet at least fifty (50) calendar days prior to the date of the desired public notice.

PAUL A. COOMES, Ph.D., Executive Director
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: December 7, 2016

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

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CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(As Amended at ARRS, February 10, 2017)

900 KAR 6:065. Certificate of need application process.

RELATES TO: KRS 216B.015, 216B.040, 216B.062(1), 216B.085, 216B.095

STATUTORY AUTHORITY: KRS 216B.040(2)(a)1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the requirements necessary for the orderly administration of the certificate of need application, review, decision, and reconsideration process.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(6).

(2) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site at http://chfs.ky.gov/ohp/con.

(3) "Days" means calendar days, unless otherwise specified.

(4) "Formal review" means the review of an application for certificate of need ***that[~~which~~]*** is reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and ***that[~~which~~]*** is reviewed for compliance with the review criteria set forth at KRS 216B.040 and 900 KAR 6:070.

(5) "Nonsubstantive review" is defined by KRS 216B.015(18).

(6) "Owner" means a person as defined in KRS 216B.015(22) who is applying for the certificate of need and will become the licensee of the proposed health service or facility.

(7) "Proposed service area" means the geographic area the applicant proposes to serve.

(8) "Secretary" is defined by KRS 216B.015(26).

(9) "Show cause hearing" means a hearing during which it is determined whether a person or entity has violated provisions of KRS Chapter 216B.

Section 2.[~~Letter of Intent. (1) Except for an applicant requesting nonsubstantive review under the provisions of KRS 216B.095(3)(a) through (f), OHP - Form 1, Letter of Intent, incorporated by reference in 900 KAR 6:055, shall be filed with the cabinet by an applicant for a certificate of need.~~

~~(2) Upon receipt of a letter of intent, the cabinet shall within three (3) days provide the sender with written acknowledgment of receipt of the letter and shall publish notice of the receipt in the next published Certificate of Need Newsletter.~~

~~(3) An application for a certificate of need shall not be processed until the letter of intent has been on file with the cabinet for thirty (30) days.~~

~~Section 3.~~] Certificate of Need Application. (1) An applicant for a certificate of need shall file an application with the cabinet on the appropriate certificate of need application form: OHP - Form 2A, OHP - Form 2B, or OHP - Form 2C, incorporated by reference in 900 KAR 6:055.

(2) To file an application for certificate of need, the applicant shall file an original and one (1) copy of the appropriate certificate of need application form together with the prescribed fee set forth in 900 KAR 6:020 on or before the deadlines established by 900 KAR 6:060.

(3) Formal or nonsubstantive review of an application for a certificate of need shall not begin until the application has been deemed complete by the cabinet.

(4) The cabinet shall deem an application complete if the applicant has:

(a) Provided the cabinet with all of the information necessary to complete the application; or

(b) Declined to submit the requested information and has requested that its application be reviewed as submitted.

(5) Once an application has been deemed complete, the applicant shall not submit additional information regarding the application unless the information is introduced at a public hearing.

(6) Once an application has been deemed complete, it shall not be amended to:

(a) Increase the scope of the project;

(b) Increase the amount of the capital expenditure;

(c) Expand the size of the proposed service area;

(d) Change the location of the health facility or health service; or

(e) Change the owner, unless the application involves a licensed health facility and a change of ownership with appropriate notice has occurred after the application was submitted.

(7) An application that has been deemed complete may be

amended at a public hearing to:

(a) Decrease the scope of the project;

(b) Decrease the amount of the capital expenditure; or

(c) Decrease the proposed service area.

(8) An applicant ***that[which]*** has had a certificate of need approved under the nonsubstantive review provisions of KRS 216B.095(3)(a) through (f) may request that the cabinet change the specific location to be designated on the certificate of need if:

(a) The facility has not yet been licensed;

(b) The location is within the county listed on the certificate of need application; and

(c) The applicant files a written request with the cabinet within 180 days of the date of issuance of the certificate of need. A request shall include the reason why the change is necessary.

(9)[~~If an application is not filed with the cabinet within one (1) year of the date of the filing of a letter of intent, the letter of intent shall expire, and the applicant shall file a new letter of intent at least thirty (30) days prior to submitting an application.~~

~~(10) If an application is withdrawn, the applicant shall file a new letter of intent at least thirty (30) days prior to resubmitting an application.~~

~~(11)~~] An application that is not deemed complete within one (1) year from the date that it is filed shall expire and shall not be placed on public notice or reviewed for approval.

Section 3[4]. Certificate of Need Review. (1) Prior to being reviewed for the approval or denial of a certificate of need, an application for certificate of need shall be reviewed for completeness pursuant to Section ***4[5]*** of this administrative regulation.

(2) Unless granted nonsubstantive review status under the criteria in 900 KAR 6:075, an application for a certificate of need shall be reviewed for approval or denial according to the formal review criteria set forth in 900 KAR 6:070.

(3) If granted nonsubstantive review status under the criteria in 900 KAR 6:075, an application for a certificate of need shall be reviewed for approval or denial of the certificate of need according to the nonsubstantive review criteria set forth in 900 KAR 6:075.

Section 4[~~5~~]. Completeness Review. (1) Fifteen (15) days after the deadline for filing an application in the next appropriate batching cycle, the cabinet shall conduct an initial review to determine if the application is complete for formal review or nonsubstantive review requested pursuant to KRS 216B.095(3)(a) through (f).

(2) If the cabinet finds that the application for formal review is complete, the cabinet shall:

(a) Notify the applicant in writing within one (1) day that the application has been deemed complete and that review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

(b) Give public notice in the next appropriate Certificate of Need Newsletter, pursuant to the timetable set forth in 900 KAR 6:060, that review of the application for approval or denial of a certificate of need has begun.

(3) If the cabinet finds that the application for nonsubstantive review is complete, the cabinet shall notify the applicant in writing within ten (10) days that the application has been deemed complete and that review of the application for the approval or denial of a certificate of need shall begin upon public notice being given.

(4) A decision to grant or deny nonsubstantive review status shall be made within ten (10) days of the date the applicant is notified that the application has been deemed complete.

(5) The cabinet shall give public notice for applications granted nonsubstantive review status under the provisions of KRS 216B.095(3)(a) through (f) in the next appropriate Certificate of Need Newsletter, pursuant to the timetable set forth in 900 KAR 6:060, that status has been granted and that review of the application for approval or denial of a certificate of need has begun.

(6) If the cabinet finds that the application is incomplete, the cabinet shall:

(a) Provide the applicant with written notice of the information necessary to complete the application; and

(b) Notify the applicant that the cabinet shall not deem the application complete unless within fifteen (15) days of the date of the cabinet's request for additional information:

1. The applicant submits the information necessary to complete the application by the date specified in the request; or

2. The applicant requests in writing that the cabinet review its application as submitted.

(7) If, upon the receipt of the additional information requested, the cabinet finds that the application for formal review is complete, the cabinet shall:

(a) Notify the applicant in writing that:

1. The application for formal review has been deemed complete; and

2. Review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

(b) Give public notice in the next appropriate Certificate of Need Newsletter, pursuant to the timetable set forth in 900 KAR 6:060, that review of the application for approval or denial of a certificate of need has begun.

(8) If, upon the receipt of the additional information requested, the cabinet finds that an application for nonsubstantive review is complete, the cabinet shall:

(a) Notify the applicant in writing that:

1. The application has been deemed complete;

2. Review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

3. A decision to grant or deny nonsubstantive review status shall be made within ten (10) days of the date that the application was deemed complete; and

(b) Give public notice in the next appropriate Certificate of Need Newsletter, pursuant to the timetable set forth in 900 KAR 6:060, for applications granted nonsubstantive review status under the provisions of KRS 216B.095(3)(a) through (f) that status has been granted and that review of the application for approval or denial of a certificate of need has begun.

(9) If the information submitted in response to the cabinet's request for additional information is insufficient to complete the application, the cabinet shall:

(a) Request the information necessary to complete the application; and

(b) Inform the applicant that the application shall not be deemed complete and shall not be placed on public notice until:

1. The applicant submits the information necessary to complete the application; or

2. The applicant requests in writing that its application be reviewed as submitted.

(10) Once an application has been deemed complete, an applicant shall not submit additional information to be made part of the public record unless:

(a) The information is introduced at a public hearing;

(b) For a deferred application for formal review, the additional information is submitted at least twenty (20) days prior to the date that the deferred application is placed on public notice; or

(c) For a deferred application for nonsubstantive review, the additional information is submitted at least ten (10) days prior to the date that the deferred application is placed on public notice.

(11) A determination that an application is complete shall:

(a) Indicate that the application is sufficiently complete to be reviewed for approval or disapproval;

(b) Not be determinative of the accuracy of, or weight to be given to, the information contained in the application; and

(c) Not imply that the application has met the review criteria for approval.

Section 5[6]. Notice of Decision. (1) The cabinet shall notify the applicant and any party to the proceeding of the final action on a certificate of need application within three (3) days.

(2) Notification of approval shall be in writing and shall include:

(a) Verification that the review criteria for approval have been

met;

(b) Specification of any terms or conditions limiting a certificate of need approval, including limitations regarding certain services or patients. This specification shall be listed on the facility or service's certificate of need and license;

(c) Notice of appeal rights; and

(d) The amount of capital expenditure authorized, if applicable.

(3) Written notification of disapproval shall include:

(a) The reason for the disapproval; and

(b) Notice of appeal rights.

(4) An identical application for certificate of need that is disapproved shall not be refiled for a period of twelve (12) months from the original date of filing, absent a change in circumstances.

Section 6[~~7~~]. Deferral of an Application. (1)(a) Except as described in ***paragraph (b)[paragraphs (b) and (c)]*** of this subsection, an applicant may defer review of an application a maximum of two (2) times by notifying the cabinet in writing of its intent to defer review.

(b) An applicant shall not defer review of an application filed pursuant to 900 KAR 6:080 to alleviate an emergency circumstance.

(c)***[If an application has been deferred prior to the effective date of this administrative regulation, an applicant may defer review of the application a maximum of one (1) additional time.***

(d)]1. If the application has been granted nonsubstantive review status under the provisions of KRS 216B.095(3)(a) through (f), the notice to defer shall be filed pursuant to 900 KAR 6:090 no later than five (5) days prior to the date that the decision is due on the application unless a hearing has been scheduled.

2. If a hearing has been scheduled, the notice to defer shall be filed pursuant to 900 KAR 6:090 no later than six (6) days prior to the date of the hearing.

(d)[(e)]1. If the application is being reviewed under formal review, the notice to defer shall be filed pursuant to 900 KAR 6:090 no later than ten (10) days prior to the date
that the decision is due on the application unless a hearing has been scheduled.

2. If a hearing has been scheduled, the notice to defer shall be filed pursuant to 900 KAR 6:090***[,]*** no later than eight (8) days prior to the date of the hearing.

(e)[(f)] If a hearing has been scheduled, the applicant shall also notify all parties to the proceedings in writing of the applicant's intent to defer the application.

(2) If a notice to defer an application for formal review is filed, the application shall be deferred to the next regular batching cycle and shall be placed on public notice pursuant to the timetables set forth in 900 KAR 6:060.

(3) If an application for formal review is deferred, an applicant may update its application by providing additional information to the cabinet at least twenty (20) days prior to the date that the deferred application is placed on public notice.

(4) If a notice to defer an application ***that[which]*** has been granted nonsubstantive review is filed, the application shall be deferred and shall be placed on public notice in the Certificate of Need Newsletter published the following month.

(5) If an application for nonsubstantive review is deferred, an applicant may update its application by providing additional information to the cabinet at least ten (10) days prior to the date that the deferred application is placed on public notice.

(6) In order for a hearing to be held on a deferred application, a hearing shall be requested by either the applicant or an affected person within:

(a) Ten (10) days of the deferred application being placed on public notice if the application has been granted nonsubstantive review status; or

(b) Fifteen (15) days of the deferred application being placed on public notice if the application is being reviewed under the provision of formal review.

Section 7[~~8~~]. Withdrawal of an Application. (1) An applicant may withdraw an application for certificate of need by notifying the cabinet in writing of the decision to withdraw the application prior to the entry of a decision to deny or approve the application.

(2) If a hearing has been scheduled or held on the application, the applicant shall also notify all parties to the proceedings in writing of the applicant's decision to withdraw the application.

(3) If an applicant withdraws a deferred application between ***February 5, 2015[the effective date of this administrative regulation]*** and June 30, 2015 and submits a new application for the same proposed health facility or service within five (5) years from the date of withdrawal, the cabinet shall apply the application fee ***that[which]*** was submitted for the withdrawn application toward the fee assessed pursuant to 900 KAR 6:020 for the new application.

Section 8[~~9~~]. Location of New and Replacement Facilities. A certificate of need approved for the establishment of a new facility or the replacement of an existing facility shall be valid only for the location stated on the certificate.

Section 9[~~10~~]. Requests for Reconsideration. (1) ***A request[Requests]*** for reconsideration shall be filed, pursuant to 900 KAR 6:090, within fifteen (15) days of the date of the notice of the cabinet's final decision relating to:

(a) Approval or disapproval of an application for a certificate of need;

(b) An advisory opinion entered after a public hearing;

(c) Revocation of a certificate of need; or

(d) A show cause hearing conducted in accordance with 900 KAR 6:090.

(2) A copy of the request for reconsideration shall be served by the requester on all parties to the proceedings.

(3) A party to the proceedings shall have seven (7) days from the date of service of the request for reconsideration to file a response to the request with the cabinet.

(4) If a hearing was held pursuant to subsection (1)(a), (b), or (c) of this section, the hearing officer that presided over the hearing shall enter a decision to grant or deny a request for reconsideration within thirty (30) days of the request being filed.

(5) If a hearing was held pursuant to subsection (1)(d) of this section, the secretary shall enter a decision to grant or deny a request for reconsideration within thirty (30) days of the request being filed.

(6) If reconsideration is granted, the hearing shall be held by the cabinet in accordance with the applicable provisions of 900 KAR 6:090, Section 3 or 4, within thirty (30) days of the date of the decision to grant reconsideration, and a final decision shall be entered by the cabinet no later than thirty (30) days following the conclusion of the hearing.

(7) If reconsideration is granted on the grounds that a public hearing was not held pursuant to KRS 216B.085, the applicant shall have the right to waive the reconsideration hearing if the deficiencies in the application can be adequately corrected by submission of written documentation.

PAUL A. COOMES, Ph.D., Executive Director
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: December 7, 2016

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

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CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(As Amended at ARRS, February 10, 2017)

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***(1)***, 216B.042(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS

216B.042***(1)(a)*** 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 *or health service*.**

(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 ***(12)[(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:

a. The date by which the violation shall be corrected;

b. The specific measures utilized to correct the violation; and

c. 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:

a. Accept the plan;

b. Not accept the plan; or

c. 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:

a. State the specific reasons the plan is unacceptable; and

b. 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:

a. Accept the plan;

b. Deny, suspend, or revoke the license for a substantial regulatory violation in accordance with KRS 216B.105(2); or

c. 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:

1. Submits a completed licensure application;

2. Pays the prescribed fee;

3. Has no pending adverse action; and

4. Unless exempted, has responded to requests from the cabinet for:

a. Annual utilization surveys; and

b. 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)[(10)] 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)[(11)] 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
(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**[or Service]", ***February[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 ***Technological[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.

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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.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(As Amended at ARRS, February 10, 2017)

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-7l, 42 U.S.C. 5119a(a)(1), 42 U.S.C. 5119c
STATUTORY AUTHORITY: KRS 194A.050(1), 42 U.S.C. 1320a-7l
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-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. 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-7l. 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 ***offenses[~~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 ***(10)[~~(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 ***(9)[~~(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***(10)[(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)[(c)] 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[the] 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[Clear to] hire;[,] or

2. Not eligible for[clear to] 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[Not disclose the applicant's] 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 if 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[Disclosure] Form or Waiver Agreement and Statement[Consent and Release] Form required by Section 5[4](1)[(a) and] (b) and (c) of this administrative regulation;

(2) The applicant is found on a registry as defined by Section 1***(10)[(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[clear] 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[a 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(3)(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.][~~3.~~] 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***(12)[(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[~~is~~] not be obligated to employ or offer

employment to an individual who is granted a waiver pursuant to this section.

Section 11[~~10~~]. 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[~~11~~]. 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[~~12~~]. 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[~~13~~]. 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.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

GENERAL GOVERNMENT CABINET
Kentucky Board of Social Work
(Amended After Comments)

201 KAR 23:075. Continuing education for renewal.

RELATES TO: KRS 335.130(4)
STATUTORY AUTHORITY: KRS 335.070(3), (6), 335.130(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.070(3) authorizes the board to promulgate administrative regulations pursuant to KRS Chapter 13A to carry out the provisions of KRS 335.010 to 335.160 and KRS 335.990. KRS 335.070(6) and KRS 335.130(4) allow[~~allows~~] the board to require continuing education as a condition of license renewal. This administrative regulation describes[~~delineates~~] the requirements for continuing education for renewal and prescribes methods and standards for the board to approve[~~accreditation of~~] continuing education courses.

Section 1. Definitions. (1) "Academic course[~~courses~~] offered by an accredited postsecondary institution" means a graduate level social work course[~~, at the graduate level~~]:
(a) Designated by a social work title or content; or
(b) A graduate level[~~An~~] academic course[~~, at the graduate level,~~] relevant to social work.
(2) "Approved" means recognized by the Kentucky Board of Social Work.
(3) "Continuing education hour" means fifty (50) clock minutes of participation in continuing education[~~educational~~] programs.
(4) "Program" means an organized educational experience, which is:
(a) Planned and evaluated to meet behavioral objectives; and
(b) Presented in one (1) session or series.
(5) "Provider" means a person or an organization approved by the Kentucky Board of Social Work to provide a single continuing education program over the course of one (1) year.
(6) "Relevant" means having content applicable to the practice of social work.
(7) "Sponsor" means a person or an organization approved by the Kentucky Board of Social Work to provide more than one (1) continuing education program over the course of one (1)[a] year.
(8) "Training program in suicide assessment, treatment, and management" means an empirically supported training program approved by the board that is at least six (6) hours in length and contains suicide assessment including screening and referral, suicide treatment, and suicide management as required by KRS 210.366.

Section 2. Accrual and Computation of Continuing Education Hours for Renewal. (1) Each certified social worker and licensed clinical social worker shall complete a minimum of thirty (30) continuing education hours during the three (3) year period for renewal, which shall be completed in person before a live presenter or through home or self-study, courses delivered through electronic media or technology including distance learning, online, or teleconference courses[~~A minimum of thirty (30) continuing education hours shall be accrued by each licensed clinical social worker and certified social worker holding licensure during the three (3) year period for renewal~~].
(2) Each licensed social worker shall complete a minimum of fifteen (15) continuing education hours during the three (3) year period for renewal, which shall be completed in person before a live presenter or through home or self-study, courses delivered through electronic media or technology including distance learning, online, or teleconference courses[~~A minimum of fifteen (15) continuing education hours shall be accrued by each licensed social worker holding licensure during the three (3) year period for renewal~~].
(3) All continuing education hours shall be[~~in or~~] relevant to the licensee's level of licensure.
(4) Kentucky Code of Ethical Conduct. Each renewal period**, as part of their required continuing education hours**, each licensee shall complete a board approved three (3) hour course on the Kentucky Code of Ethical Conduct established in 201 KAR 23:080, which shall be taken in person before a live presenter or through courses delivered through electronic media or technology including distance learning, online, or teleconference courses[~~Three (3) of the continuing education hours during each renewal period shall be acquired in the area of the social work code of ethics as established in 201 KAR 23:080~~].
(5) Clinical Social Work Supervision. Each renewal period, as part of the required continuing education hours, each licensed clinical social worker[~~workers~~] who is a[~~are~~] board approved supervisor[~~supervisors~~] pursuant to 201 KAR 23:070, Section 4[~~3~~](1)(c)2, shall complete a three (3) hour, board approved clinical social work supervision course, which shall be taken in person before a live presenter[~~every licensure renewal period as part of their thirty (30) continuing education hours~~].
(6) Training Program in Suicide Assessment, Treatment, and Management. Every six (6) years, as part of the required continuing education hours, each licensee shall complete a minimum of six (6) hours of continuing education in a board approved training program in suicide assessment, treatment, and management as required by KRS 210.366(2).
(a) The training program in suicide assessment, treatment, and management shall be approved by the board, by a pre-approved provider or sponsor identified in Section 3(1) of this administrative regulation, or by one (1) of the following boards:
1. Kentucky Board of Licensure of Marriage and Family Therapists;
2. Kentucky Board of Licensed Professional Counselors;
3. Kentucky Board of Licensure for Pastoral Counselors;
4. Kentucky Board of Alcohol and Drug Counselors;
5. Kentucky Board of Examiners of Psychology; or
6. Kentucky Board of Licensure for Occupational Therapy.
(b) Exemptions. A licensee shall be exempted from completion of the training program in suicide assessment, treatment, and management if he or she:
1. Teaches or taught a graduate-level counseling course in suicide assessment, treatment, and management at least once**[per year]** during the six (6) year period; or
2. Teaches or taught a six (6) hour continuing education course in suicide assessment, treatment, and management at least once **[per year]** during the six (6) year period[~~Every third renewal period, two (2) of the continuing education hours shall be on HIV/AIDS courses approved by the Cabinet for Health and Family Services pursuant to KRS 214.610~~].
(7) Domestic Violence **and Elder Abuse, Neglect, and Exploitation**. During the three (3) year renewal period following initial licensure, as part of the required continuing education hours, each licensee shall complete **a** three (3) **hour course[~~hours of continuing education~~]** in domestic violence**, and elder abuse, neglect, and exploitation; effects of domestic violence and elder abuse, neglect, and exploitation on adult and child victims; legal remedies for protection; lethality and risk issues; model protocols for addressing domestic violence and elder abuse, neglect, and exploitation; available community resources and victim services; and reporting requirements[~~related training courses~~]** as defined by KRS 194A.540[~~Three (3) of the continuing education hours shall be completed in the area of domestic violence related training courses pursuant to KRS 194A.540 during the three (3) year cycle following initial licensure~~].
(8) Pediatric Abusive Head Trauma. At least one (1) time every six (6) years, as part of the required continuing education hours, each licensee shall complete one and one-half (1.5) hours of continuing education covering the recognition and prevention of pediatric abusive head trauma as defined in KRS 620.020[~~One and one-half (1.5) hours of continuing education shall be completed one (1) time every six (6) years in the area of the recognition and~~

~~prevention of pediatric abusive head trauma pursuant to KRS 335.130(5)~~].

(9) Academic Credit Equivalency. Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equals fifteen (15) continuing education hours.

Section 3. Methods of Acquiring Continuing Education Hours. Continuing education hours for renewal[~~applicable to the renewal of the license~~] shall be directly related to the professional growth and development of the licensee. The hours may be earned by completing any of the continuing[~~following~~] education programs listed in this section.[~~:~~]

(1) Preapproved programs not requiring board review and approval. Except for courses on the Kentucky Code of Ethical Conduct under Section 2(4) of this administrative regulation, and courses on clinical social work supervision under 201 KAR 23:070, Section 4(1)(c)2., which require separate review and approval by the board[~~Except for courses on ethics which are provided to meet the requirements of Section 2(4) of this administrative regulation and courses for supervision under 201 KAR 23:070, Section 3(1)(c)2~~], an educational program from any of the following providers shall be deemed to be relevant to the practice of social work and shall be approved without further review by the board if it is:

(a) Sponsored or approved by:

1. The Association of Social Work Boards (ASWB);

2. The National Association of Social Workers (NASW) or any of its affiliated state chapters;

3. The National Association of Black Social Workers (NABSW) or any of its affiliated state chapters;

4. The North American Association of Christians in Social Work or any of its affiliated state chapters; or

5. Clinical Social Work Association or any of its affiliated state chapters[~~or~~

~~2. The Association of Social Work Boards~~];

(b) Sponsored by:

1.[~~Clinical Social Work Association or any of its affiliated state chapters;~~

~~2.~~] The American Psychological Association or any of its affiliated state chapters;

2.[~~3.~~] The American Counseling Association or any of its affiliated state chapters;

3.[~~4.~~] The National Board for Certified Counselors or any of its affiliated state chapters;

4.[~~5.~~] The American Psychiatric Association or any of its affiliated state chapters; or

5.[~~6.~~] A college, school, department, or program of social work in Kentucky, which is accredited by the Council on Social Work Education (CSWE); or

(c) An academic course offered by an accredited postsecondary institution directly related to social work, counseling, or psychology.

(2) Programs requiring board review and approval.

(a) A program that is not provided or sponsored by a preapproved provider or sponsor identified in subsection (1) of this section shall be reviewed by the board and approved for continuing education credit if the board determines that it is:

1. Relevant to the practice of social work; and

2. Contributes to the continuing professional competency of licensees.

(b) The board may approve various methods in which a continuing education program is presented including:

1. Home or self-study, courses delivered through electronic media or technology including distance learning, online, or teleconference courses; and

2. In-service training, conferences, or workshops provided by other organizations, educational institutions, or other service providers approved by the board.

(c) Board approval for home or self-study courses, courses delivered through electronic media or technology including distance learning, online, or teleconference courses shall be obtained each year unless the continuing education program does not require board approval under subsection (1) of this section[~~A program from any of the following sources shall be reviewed and determined if it is relevant and therefore subsequently approved by the board.~~

~~(a) Relevant programs, including home study, distance learning or teleconference courses, and in-service training provided by other organizations, educational institutions, or other service providers approved by the board.~~

~~1. Board approval for home study, distance learning and teleconference courses shall be obtained each year unless the program does not require board approval under subsection (1) of this section.~~

~~2. The combined total number of hours for home study, distance learning or teleconference courses shall not exceed one-half (1/2) of the individual's continuing education hours.~~

~~3. Courses on the board's code of ethics which are taken to meet the requirements of Section 2(4) of this administrative regulation and courses for supervision under 201 KAR 23:070, Section 3(1)(c)2, shall be attended in person before a live presenter, and shall not be taken through home study, distance learning or teleconference courses~~].

(3)[~~(b)~~] Relevant programs or academic courses presented by the licensee. A licensee who presents[~~presenter of~~] relevant programs or academic courses shall earn full continuing education credit for each contact hour of instruction, not to exceed one-half (1/2) of the continuing education renewal requirements. Credit shall not be issued for repeated instruction of the same course.

(4) Relevant articles authored by the licensee. A licensee who is an author of a relevant article, which is published in a professionally recognized or juried publication, shall earn **seven and a half (71/2) hours[~~continuing education credit not to exceed one-half (1/2)~~]** of the continuing education requirements for renewal **if a certified social worker or fifteen (15) hours of the continuing education requirements for renewal if a licensed social worker or licensed clinical social worker**, if the article was published within one (1) year immediately preceding his or her renewal date[~~(c) Authoring an article in a relevant, professionally recognized or juried publication. Credit shall not be granted unless an article was published within the one (1) year period immediately preceding the renewal date~~]. ~~A licensee shall not earn more than one-half (1/2) of the continuing education hours required for renewal under the provisions of this subsection~~]. **[~~More than one (1) publication shall not be counted for continuing education credit during each renewal period.~~]**

(5) The following continuing education courses shall be submitted to the board for approval and shall not be automatically preapproved under subsection (1) of this section:

(a) Kentucky Code of Ethical Conduct required by Section 2(4) of this administrative regulation; and

(b) Clinical social work supervision for board-approved supervisors required by 201 KAR 23:070, Section 4(1)(c)2[~~(d) Courses on ethics required by Section 2(4) of this administrative regulation shall be submitted to the board for approval and shall not be automatically approved under Section 3(1) of this administrative regulation~~].

Section 4. Procedures for Approval and Renewal of Continuing Education Providers and Programs. (1) Provider Approval. A provider seeking approval of a continuing education program shall apply to the board no less than thirty (30) days in advance of the commencement of the program, and provide the information required by subsection (3) of this section.

(2) The board shall approve a continuing education program if it determines that the program being presented:

(a) Is relevant to the practice of social work;

(b) Contributes to the continuing professional competency of a licensee; and

(c) Has competent instructors with appropriate academic training, professional license or certification, or professionally recognized experience.

(3) The board may approve a provider of a continuing education program for one (1) year if the provider:

(a) Files a completed Provider/Sponsor Application for Continuing Education Approval, which includes:

1. A published program outline that includes an explanation of the program objectives;

2. The names and qualifications of the instructors presented in the form of resumes or curriculum vitas;

3. A copy of the evaluation sheet by which the licensee can assess and comment on the program;

4. A copy of the program agenda stating the number of continuing education credit hours, including all breaks;

5. The number of continuing education credit hours requested;

6. A copy of the official certificate of completion or attendance from the provider; and

7. A statement whether the provider is requesting approval to meet the requirements of the following courses:

a. Kentucky Code of Ethical Conduct required by Section 2(4) of this administrative regulation; or

b. Clinical social work supervision for board-approved supervisors required by 201 KAR 23:070, Section 4(1)(c)2.; and

(b) Pays an application fee, payable to the Kentucky State Treasurer, of:

1. $100 for each one (1) day program of eight (8) hours or less; and

2. $100 for each additional one (1) day program of eight (8) hours or less.

(4) If the provider is requesting approval to meet the requirements of the Kentucky Code of Ethical Conduct course required for renewal by Section 2(4) of this administrative regulation, a minimum of one (1) presenter or instructor for the course shall:

(a) Hold a degree in social work;

(b) Hold an active license to practice social work in the Commonwealth of Kentucky;

(c) Not have an unresolved, pending disciplinary action before the board; and

(d) Not be practicing social work under terms or conditions of supervision imposed by the board.

(5) If the provider is requesting approval to meet the requirements of the clinical social work supervision course required for board approved supervisors by 201 KAR 23:070, Section 4(1)(c)2., each presenter and instructor for the course shall:

(a) Hold a degree in social work;

(b) Hold an active social work license in the Commonwealth of Kentucky;

(c) Be a board approved supervisor;

(d) Not have an unresolved, pending disciplinary action before the board; and

(e) Not be practicing social work under terms or conditions of supervision imposed by the board.

(6) A provider of continuing education shall be responsible for providing documentation in the form of a certificate of attendance or completion directly to the licensee, as established in Section 7(5) of this administrative regulation.

(7) A provider of a continuing education program requiring board approval shall not advertise that a course has been approved before written board approval has been received.

(8) Provider Renewal. An approved provider may submit a renewal request for a subsequent one (1) year period by:

(a) Notifying the board that the original information required in this section for each program remains current; and

(b) Paying a fifty (50) dollar renewal fee made payable to the Kentucky State Treasurer[~~A program, which is offered by a provider, may be used for continuing education if approval is secured from the board for the course. In order for the board to adequately review these programs, the following information shall be submitted:~~

~~(a) A published course outline or similar description which includes an explanation of the course objectives;~~

~~(b) Names and qualifications of the instructors presented in the form of curriculum vitas or resumes;~~

~~(c) Copies of the evaluation sheet or instrument by which the attendees can comment on the program, and the program agenda indicating hours of education, including all breaks;~~

~~(d) Number of continuing education hours requested and a statement whether the provider is requesting course approval to meet the requirements of Section 2(4) of this administrative regulation;~~

~~(e) Official certificate of completion or college transcript from the sponsoring agency or college; and~~

~~(f) A completed Provider Application for Continuing Education Credit Approval form.~~

~~(2) The board may approve a specific continuing education program if the provider of the program:~~

~~(a) Files a written request for approval;~~

~~(b) Pays an application fee of $100 for each one day program of eight (8) hours or less; and~~

~~(c) Provides information about each continuing education program that it proposes to present which meets the requirements established in subsection (1) of this section.~~

~~(3) The approval of a program pursuant to this section shall permit the provider to offer the program for one (1) year.~~

~~(4) The provider shall submit a request for renewal and a fifty (50) dollar renewal fee for each subsequent request to offer the same approved program~~].

Section 5. Procedures for Approval and Renewal of Continuing Education for Sponsors and Programs. (1) Sponsor Approval. A sponsor seeking approval of continuing education programs shall apply to the board no less than thirty (30) days in advance of the commencement of the program, and provide the information required by subsection (3) of this section.

(2) The board shall approve a continuing education program if it determines that the program being presented meets the following criteria[~~Preapproval of Continuing Education Sponsors and Programs. (1) Sponsor approval. Any sponsor seeking to obtain approval of a continuing education program prior to its offering shall:~~

~~(a) Apply to the board at least thirty (30) days in advance of the commencement of the program, and shall provide the information required in Section 4(1) of this administrative regulation; and~~

~~(b) Provide proof to the board that the sponsor seeking this status:~~

~~1. Consistently offers programs which meet or exceed all the requirements set forth in subsection (2) of this section; and~~

~~2. Does not exclude any licensee from its programs.~~

~~(2) A continuing education program shall be qualified for approval if the board determines that the program being presented~~]:

(a) Is relevant to the practice of social work;

(b) Contributes to the professional competency of the licensee; and

(c) Has competent instructors with appropriate academic training, professional licenses[~~license~~] or certifications[~~certification~~], or professionally recognized experience.

(3) The board may approve a sponsor of continuing education programs for one (1) year if the sponsor:

(a) Files a completed Provider/Sponsor Application for Continuing Education Approval, which is received by the board thirty (30) days in advance of the commencement of the program, and includes:

1. A published program outline that includes an explanation of the program objectives;

2. The names and qualifications of each presenter and instructor documented in the form of resumes or curriculum vitas;

3. A copy of the evaluation sheet by which the licensee can assess and comment on the program;

4. A copy of the program agenda stating the number of continuing education credit hours, including all breaks;

5. The number of continuing education credit hours requested;

6. A copy of the official certificate of completion from the provider or sponsor; and

7. A statement whether the sponsor is requesting approval to meet the requirements of the following courses:

a. Kentucky Code of Ethical Conduct required by Section 2(4) of this administrative regulation; or

b. Clinical Social Work Supervision for board-approved supervisors required by 201 KAR 23:070, Section 3(1)(c)2.; and

(b) Pays an initial application fee of $250 made payable to the Kentucky State Treasurer.

(4)[~~The sponsor shall specify whether it is requesting course approval to meet the requirements of Section 2(4) of this administrative regulation.~~

~~(4)(a) The board may approve an organization that is not listed in Section 3(1) of this administrative regulation as a sponsor of continuing education for a twelve (12) month period if the organization:~~

~~1. Files a written request for approval by submitting the Sponsorship Application for Continuing Education Credit Approval form;~~

~~2. Pays an initial application fee of $250; and~~

~~3. Proposes to sponsor continuing education programs that meet the requirements established in Section 3 of this administrative regulation.~~

~~(b)~~] The board shall periodically review the programs that a sponsor has provided to determine if the sponsor continues to meet the requirements of this administrative regulation.

(5)[~~(c)~~] An approved sponsor shall submit an annual report to the board of the continuing education programs offered during that calendar year and shall include copies of attendance sheets and evaluations (or evaluation summaries) for each program.

(6) A sponsor of a continuing education program shall be responsible for providing documentation in the form of a certificate of attendance directly to the licensee, as established in Section 7(5) of this administrative regulation.

(7) A sponsor of a continuing education program requiring board approval shall not advertise that the course has been approved before written board approval has been received.

(8) Sponsor Renewal. An approved sponsor may submit a renewal request for a subsequent one (1) year period by notifying the board that the original information required in this section for each program remains current and by paying $150 renewal fee made payable to the Kentucky State Treasurer [~~(d) A sponsor that is approved pursuant to paragraph (a) of this subsection may request renewal of its approval for subsequent years by filing a 150 renewal fee annually and notifying the board that the original information required in this section remains current~~].

Section 6. Individual Request for Board Review and Approval of Continuing Education Courses. (1) A licensee[~~or a certificate holder~~] may request an individual review of a continuing education program that was otherwise not approved if it was completed during the three (3) year renewal[~~appropriate time~~] period if the individual licensee[~~has~~]:

(a) Applies[~~Made a timely request by applying~~] for individual review by submitting the Individual Application for Continuing Education[~~Credit~~] Approval[~~form~~]; and

(b) Pays[~~Paid~~] a fee of ten (10) dollars made payable to the Kentucky State Treasurer.

(2) The board's review shall be based on the standards for continuing education established by this administrative regulation.

(3) The board's approval[~~by the board~~] of a continuing education program under this section shall:

(a) Qualify as if it has been obtained from an approved provider or sponsor; and

(b) Be limited to the particular program[~~offering~~] upon which the request for individual review is based.

Section 7. Responsibilities and Reporting Requirements of Licensees. Each licensee shall be responsible for obtaining the required continuing education hours for her or his renewal. The licensee shall identify his or her own continuing education needs, seek[~~take the initiative in seeking~~] continuing professional education activities to meet those[~~these~~] needs, and develop[~~seek~~] ways to integrate new knowledge, skills, and attitudes. Each licensee[~~person holding licensure~~] shall:

(1) Select approved programs by which to earn continuing education hours for renewal;

(2) Submit to the board, if applicable, a request for continuing education programs requiring approval by the board as established in Section 3[4]of this administrative regulation;

(3) Maintain her or his[~~the licensee's own~~] records of continuing education hours;

(4) At the time of renewal, list the continuing education hours obtained during that licensure renewal period; and

(5) If requested by the board, furnish documentation[~~of attendance and participation in the appropriate number~~] of continuing education courses completed[~~hours~~] at the time of his or her renewal.[~~, as follows:~~]

(a)[~~Each person holding licensure shall maintain, for a period of one (1) year from the date of renewal, all documentation verifying successful completion of continuing education hours;~~

~~(b)~~] In each calendar year, the board shall require up to fifteen (15) percent of all licensees[~~shall be required by the board~~] to furnish documentation of the completion of[~~the appropriate number of~~] continuing education hours for the current renewal period;

(b) Documentation[~~(c) Verification~~] of continuing education hours shall not otherwise be reported to the board;

(c)[~~(d)~~] Documentation shall take the form of official documents including:

1. Transcripts;
2. Certificates of completion or attendance;
3. Affidavits signed by instructors; or
4. Receipts for fees paid to the provider or sponsor; and

(d)[~~(e)~~] Each licensee shall retain copies of his or her documentation for a period of one (1) year following the date of his or her last renewal.

Section 8.[~~Responsibilities and Reporting Requirements of Providers and Sponsors. (1) Providers of continuing education not requiring board approval shall be responsible for providing documentation, as established in Section 7(5) of this administrative regulation, directly to the licensee.~~

~~(2) Sponsors of continuing education requiring board approval shall be responsible for submitting a course offering to the board for review and approval before listing or advertising that offering as approved by the board.~~

~~Section 9.~~] Board to Approve Continuing Education Hours; Appeal if Approval Denied. If an application for approval of continuing education hours is denied, in whole or part, a licensee,[~~or a~~] provider, or sponsor may request[~~reconsideration by~~] the board to reconsider[~~of~~] its decision. The request shall be in writing and shall be received by the board within thirty (30) days after the date of the board's decision denying approval of continuing education hours.

Section 9[~~10~~]. Waiver or Extensions of Continuing Education Requirements. (1)[~~The board may,~~] In individual cases involving medical disability, illness, or undue hardship as determined by the board, the board may grant waivers of the minimum continuing education requirements or extensions of time[~~within which~~] to fulfill the requirements for renewal or make the required reports of continuing education credits.

(2) A licensee may submit a written request to the board for a waiver or extension of time involving medical disability, illness, or undue hardship.

(a) If the request is based on medical disability or illness, the licensee shall include a written statement[~~A written request for waiver or extension of time involving medical disability or illness shall be submitted by the person holding licensure and shall be accompanied by a verifying document~~] signed by a licensed physician.

(b) If the request is based upon undue hardship, the licensee shall submit a written explanation of the nature of the undue hardship.

(c) At its discretion, the board may request that a licensee provide additional information and verification by a third party.

(3) The board may grant a waiver[~~waivers~~] of the minimum continuing education requirements or an extension[~~extensions~~] of time to a licensee[~~within which~~] to fulfill the continuing education requirements for renewal[~~may be granted by the board~~] for a period of time not to exceed one (1) calendar year.

(4) If the medical disability,[~~or~~] illness, or undue hardship upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the licensee may[~~person~~

~~holding licensure shall~~] reapply for the waiver or extension.

(a) If the reapplication is based on medical disability or illness, the licensee shall include a written statement signed by a licensed physician.

(b) If the reapplication is based upon undue hardship, the licensee shall submit a written explanation of the nature of the undue hardship.

(c) At its discretion, the board may request that a licensee provide additional information and verification by a third party to support the reapplication.

Section 10[~~11~~]. Continuing Education Requirements for Reinstatement of Expired License[~~or Reactivation of Licensure~~]. (1) A certified social worker or a licensed clinical social worker who requests reinstatement of an expired license[~~person requesting reinstatement or reactivation of licensure~~] shall submit documentation[~~evidence~~] of completion of thirty (30) hours of continuing education within the three (3) year[~~thirty-six (36) month~~] period immediately preceding the date he or she submits[~~on which~~] the request for reinstatement[~~or reactivation is submitted~~] to the board.

(2) A licensed social worker who requests reinstatement of an expired license shall submit documentation of completing fifteen (15) hours of continuing education within the three (3) year period immediately preceding the date he or she submits the request for reinstatement to the board[~~The person may request, and the board, at its discretion, may reinstate the licensure, with the provision that the person shall receive thirty (30) hours of continuing education within six (6) months of the date on which the licensure is reinstated~~].

(3) If the licensee requesting reinstatement cannot provide evidence of completion of the required hours of continuing education, the board may reinstate the license for six (6) months on the condition that the licensee obtain the required hours of continuing education for his or her level of licensure within six (6) months of the date the license is reinstated.

(a)[~~(4)~~] The continuing education hours completed for reinstatement[~~received in compliance with this section~~] shall be in addition to the continuing education requirements for renewal established in Section 2 of this administrative regulation and shall not be used to comply with the requirements of that section.

(b)[~~(5)~~] Failure to obtain the required continuing education hours within the approved six (6) month period shall result in termination of the reinstated license.

Section 11[~~12~~]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Provider/Sponsor[~~Provider~~] Application for Continuing Education[~~Credit~~] Approval", **2/2017[~~10/2016~~]**[~~10/2010~~];

(b) "Provider/Sponsor Renewal Application for Continuing Education Approval", **2/2017[~~11/2016~~]**; and[~~Sponsorship Application for Continuing Education Credit Approval", 10/2010~~]; and

(c) "Individual Application for Continuing Education[~~Credit~~] Approval", **2/2017[~~11/2016~~]**[~~10/2010~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Board of[~~Licensure for~~] Social Work, 43-44 Fountain Place, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. or on the board's Web site bsw.ky.gov.

JUSTIN MILLER, Ph.D., CSW, Chair

APPROVED BY AGENCY: February 15, 2017

FILED WITH LRC: February 15, 2017 at noon

CONTACT PERSON: Florence S. Huffman, Executive Director, Kentucky Board of Social Work, 43-44 Fountain Place, Frankfort, Kentucky 40601, phone (502) 564-2350, fax (502) 696-8030, email florence.huffman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Florence S. Huffman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum requirements for continuing education for renewal as a method for ensuring the continued professional competence of licensed social workers and compliance with Kentucky law. This administrative regulation specifies the number of hours to be obtained for each renewal period and defines courses in certain content areas required by the board and Kentucky law for initial licensure, renewal and reinstatement. It also prescribes methods and defined standards the board will use to assess and approve continuing education program content, including qualifications of instructors, submitted by course providers and sponsors.

(b) The necessity of this administrative regulation: This administrative is necessary to establish the continuing education requirements for continuing professional competence and as a condition of renewal and reinstatement, and to define standards for approval of courses.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.070(6) authorizes the board to renew licenses and require continued education as a condition for license renewal, and to authorize organizations to provide or sponsor continuing education programs. KRS 210.366 authorizes the board to implement administrative regulation to require a minimum six (6) hour course on suicide prevention assessment, treatment, and management; and KRS 214.615 was repealed effective June 24, 2015 and the board has voted to remove the HIV/AIDs course requirement.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs applicants and licensed social workers of the continuing education requirements for renewal and reinstatement established by the board. In addition, KRS 210.366 mandates a six (6) hour training program in suicide assessment, treatment and management for social workers among others. It also removes the HIV/AIDs course requirement on initial licensure (KRS 214.615 was repealed effective June 24, 2015).

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes that the required social work ethics course for renewal may be taken online (and removes the mandate of in-person training); and permits licensees to take 100 percent of continuing education courses for renewal online, through home study, distance learning or other electronic media. The amendment also revises the requirements for sponsors and providers of continuing education programs.

(b) The necessity of the amendment to this administrative regulation: This administrative is necessary to allow licensees to take the social work ethics course online and remove the face-to-face, in-person requirement; to permit licensees to acquire 100 percent of continuing education courses online or through distance learning; to implement suicide prevention training as a requirement for renewal; to remove the requirement that licensees must complete an HIV/AIDs course; and to make other corrections.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 335.070(6) authorizes the board to renew licenses and require continued education as a condition for license renewal, and to authorize organizations to provide or sponsor continuing education programs; KRS 210.366 authorizes the board to implement administrative regulation to require a minimum six (6) hour course on suicide prevention assessment, treatment, and management; and KRS 214.615 was repealed effective June 24, 2015 and the board has voted to remove the HIV/AIDs course requirement for licensure.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation removes a potential barrier and permits licensees to comply with the board's requirements for continuing education for renewal through the growing advantages of technology and adult education.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 5,200 licensed social

workers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment to permit the social work ethics course to be taken online or through distance learning will relieve licensees of attending the course in person – this will be particularly helpful for licensees who find it difficult to attend the in-person courses, and those who live outside Kentucky to comply with the renewal requirement without the necessity of physically traveling to Kentucky to take the: it alleviates the current requirement that only fifty percent of continuing education courses may be taken online or through home study.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The board anticipates that the only cost will be the expense of the suicide prevention training course incurred by the licensee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By allowing 100 percent of continuing education courses to be taken online or through home study, licensees may elect online or distance learning courses to meet renewal requirements if they are ill, cancellations are caused by inclement weather or challenges due to the distances between rural settings. The amendment will also let licensees take advantage of growing technological opportunities for training. Also, by permitting the social work ethics course to be taken online, out-of-state licensees can comply with this requirement without having to go to the expense of traveling to Kentucky to take an in-person course.

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

(a) Initially: The board estimates that it will incur no additional costs to implement this amendment.

(b) On a continuing basis: The board estimates that no additional costs will be incurred by this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is wholly self-funded by fees paid by the licensees and applicants as well as continuing education providers and sponsors.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation amendment does not directly establish or increase fees; individual licensees or their employers who pay for the cost of continuing education as an employment benefit may incur the cost of the suicide prevention training.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applied uniformly to each licensee, each provider of a single continuing education course, and to each sponsor of multiple continuing education courses requesting approval from the board. This regulation does not distinguish between similarly situated "providers" on the basis of any factor because each provider seeking approval of a single course is required to submit the same information and pay a scheduled fee depending upon course credit hours; the same is true for a similarly situation "sponsor" who is requesting approval of more than one continuing education course. The evaluation criteria established by this amendment equalizes the requirements for providers and sponsors.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.070(3) authorizes the board to promulgate administrative regulations to carry out the provisions of KRS 335.010 to 335.160 and KRS 335.990; KRS 210.366 adds a continuing education requirement for suicide prevention training, mandated for all mental health professionals and occupational therapists by July 2016); and KRS 214.615, which required HIV/AIDs training before initial licensure, was repealed effective June 24, 2015.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None. Please note the six hours for the suicide prevention programs should be included when licensees calculate the total continuing education hours due for their renewal period.

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

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

(c) How much will it cost to administer this program for the first year? The board estimates that no additional costs will be incurred by this amendment.

(d) How much will it cost to administer this program for subsequent years? The board estimates that no additional costs for subsequent years will be incurred by this amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Alcohol and Drug Counselors
(Amended After Comments)

201 KAR 35:030. Code of Ethics.

RELATES TO: KRS 309.081

STATUTORY AUTHORITY: KRS 309.0813(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.1315(14) requires the board to promulgate a code of ethics for credential holders. This administrative regulation establishes the required code of ethics.

Section 1. Responsibility to Clients. (1) A credential holder shall:

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

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

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

(2) If **a registered**[~~an~~] alcohol and drug peer support specialist is employed by a facility or credential holder from whom the peer support specialist received services as a client, the peer support specialist's supervisor shall clearly define the relationship and boundaries of the peer support specialist's employment position.

(3) Regarding any client, including clients of the facility where the counselor provides alcohol and drug counseling or any other service, or where the peer support specialist provides services, a credential holder shall not:

(a) Discriminate against or refuse professional service to anyone on the basis of:

1. Race;

2. Gender;

3. Age;
4. Sexual preference or orientation;
5. Religion; or
6. National origin;
(b) Exploit the trust and dependency of a client;
(c) Engage in a dual relationship with a client, whether social, business, or personal, that may impair professional judgment, incur a risk of exploitation of the client, or otherwise violate a provision of this administrative regulation, unless:
1. A dual relationship:
a. Cannot be avoided; and
b. Does not impair professional judgment, incur a risk of exploitation of the client, or otherwise violate a provision of this administrative regulation; and
2. The **credential holder[~~counselor~~]** takes appropriate professional precautions to ensure that judgment is not impaired and exploitation of the client does not occur;
(d) Engage in:
1. A romantic or sexual relationship with a:
a. Current or former client;
b. Current or former client of the facility where the counselor provides alcohol and drug counseling; or
c. Member of a client's immediate family or client's romantic partner; or
2. Sexual or other harassment, or exploitation, of a:
a. Client;
b. Student;
c. Trainee;
d. Supervisee;
e. Employee;
f. Colleague;
g. Research subject; or
h. Actual or potential witness or complainant in an investigation or ethical proceeding;
(e) Use the professional relationship with a client to further an institutional or personal interest;
(f) Continue a therapeutic relationship unless it is reasonably clear that the client is benefiting from the relationship;
(g) Fail to assist a person in obtaining other therapeutic service if the **credential holder[~~counselor~~]** is unable or unwilling, for an appropriate reason, 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 a therapy session without having first obtained written informed consent from the client; or
(j) Diagnose, treat, or advise on problems outside the recognized boundaries of competence.

Section 2. Confidentiality. (1) A credential holder shall respect and guard the confidence of each individual client in any setting and through any means of communication.
(2) A credential holder shall not disclose a client confidence except:
(a) As 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 counseling, at which the credential holder is a defendant; or
(d) In accordance with the terms of a written informed consent agreement.
(3) A credential holder may use client or clinical material in teaching, writing, and public presentations if:
(a) Written informed consent has been obtained in accordance with subsection (2)(d) of this section; or
(b) Appropriate steps have been taken to protect client identity and confidentiality.
(4) A credential holder shall maintain a client's record for no less than seven (7) years from termination of services with the client.
(5) A credential holder shall store or dispose of a client record so as to maintain confidentiality.

Section 3. Publication Credit. A credential holder shall assign credit to all who have contributed to the published material and for the work upon which publication is based. A credential holder shall:
(1) Recognize joint authorship and major contributions of a professional character made by several persons to a common project. The author who has made the principal contribution to a publication shall be identified as the first listed;
(2) Acknowledge in a footnote or introductory statement minor contributions of a professional character, extensive clerical or similar assistance; and
(3) Acknowledge, through specific citations, unpublished, as well as published, material that has directly influenced the research or writing.
Section 4. Professional Competence and Integrity. (1) A credential holder shall maintain standards of professional competence and integrity and shall be subject to disciplinary action if:
(a) The board determines the credential holder has violated KRS Chapter 309 or 201 KAR Chapter 35 by an act that results in disciplinary action by another state's regulatory agency; or
(b) The credential holder:
1. Is impaired due to mental capacity or the abuse or use of alcohol or other substances which negatively impacts the practice of alcohol and drug counseling or peer support services;
2. Refuses to comply with an order issued by the board;[~~or~~]
3. Fails to cooperate with the board by not:
a. Furnishing in writing a complete explanation to a complaint filed with the board;
b. Appearing before the board at the time and place designated;[~~or~~]
c. Properly responding to a subpoena issued by the board;
d. Notifying the board of any arrest or conviction, felony or misdemeanor, in any jurisdiction within thirty (30) days of the arrest or conviction; or
e. Notifying the board of disciplinary action taken against any state-issued credential in any jurisdiction within thirty (30) days of the disciplinary action.
(2) A credential holder who is aware of conduct by another credential holder that violates this code of ethics shall report that conduct to the Kentucky Board of Alcohol and Drug Counselors.
(3) A credential holder shall comply with all the policies and procedures of the facilities where a credential holder is employed. If there is conflict with the policies or procedures of the facility and this code of ethics, the credential holder shall report this conflict to the Kentucky Board of Alcohol and Drug Counselors.

Section 5. Responsibility to a Student or Supervisee. A credential holder shall:
(1) Be aware of his influential position with respect to a student or supervisee;
(2) Avoid exploiting the trust and dependency of a student or supervisee;
(3) Avoid a social, business, personal, or other dual relationship that could:
(a) Impair professional judgment; and
(b) Increase the risk of exploitation;
(4) Take appropriate precautions to ensure that judgment is not impaired and to prevent exploitation if a dual relationship cannot be avoided;
(5) Not provide counseling to a:
(a) Student;
(b) Employee; or
(c) Supervisee;
(6) Not engage in sexual intimacy or contact with a:
(a) Student; or
(b) Supervisee;
(7) Not permit a student or supervisee to perform or represent oneself as competent to perform a professional service beyond his level of:
(a) Training;
(b) Experience; or
(c) Competence;
(8) Not disclose the confidence of a student or supervisee

unless:

(a) Permitted or mandated by law;

(b) It is necessary to prevent a clear and immediate danger to a person;

(c) During the course of a civil, criminal, or disciplinary action arising from the supervision, at which the credential holder is a defendant;

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

(e) In accordance with the terms of a written informed consent agreement.

Section 6. Responsibility to a Research Participant. (1) A credential holder performing research shall comply with federal and state laws and administrative regulations and professional standards governing the conduct of research.

(2) A credential holder performing research shall:

(a) Be responsible for making a careful examination of ethical acceptability in planning a study;

(b) Seek the ethical advice of another qualified professional not directly involved in the investigation, if it is possible that services to a research participant could be compromised; and

(c) Observe safeguards to protect the rights of a participant.

(3) A credential holder requesting a participant's involvement in research shall:

(a) Inform the participant of all aspects of the research that might reasonably affect the participant's willingness to participate; and

(b) Be sensitive to the possibility of diminished consent if the participant:

1. Is also receiving clinical services;

2. Has an impairment which limits understanding or communication; or

3. Is a child.

(4) A credential holder performing research shall respect a participant's freedom to decline participation in, or to withdraw from, a research study at any time.

(5) A credential holder shall avoid a dual relationship with research participants.

(6) Information obtained about a research participant during the course of an investigation shall be confidential unless there is an authorization previously obtained in writing. The following shall be explained to the participant before obtaining written, informed consent:

(a) A risk that another person, including a family member, could obtain access to the information; and

(b) The plan to be used to protect confidentiality.

Section 7. Financial Arrangements. A credential holder shall:

(1) Not charge an excessive fee for service;

(2) Disclose fees to a client and supervisee at the beginning of service;

(3) Make financial arrangements with a client, third-party payor, or supervisee that:

(a) Are reasonably understandable; and

(b) Conform to accepted professional practices;

(4) Not offer or accept compensation for a referral of a client;

(5) Represent facts truthfully to a client, third-party payor, or supervisee regarding services rendered;[~~and~~]

(6) Provide a client with necessary forms, reimbursement codes, and tax identification numbers for reimbursement for services from a third-party payor; and

(7) Not trade services to the client in exchange for goods or services provided by or on behalf of the client.

Section 8. Advertising. (1) A credential holder shall:

(a) Accurately represent education, training, and experience relevant to the practice of professional alcohol and drug counseling;

(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;

4. Telephone or association directory listing; or

5. Webpage or social media.

(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 is likely to create an unjustified expectation; or

(c) Deletes a material fact or information.

Section 9. Environment. A credential holder shall provide a safe, functional environment in which to offer alcohol and drug counseling services. This shall include the following:

(1) Allowance for privacy and confidentiality; and

(2) Compliance with any other health and safety requirement according to local, state, and federal agencies.

Section 10. Documentation. A credential holder shall accurately document activity with a client in a timely manner.

Section 11. Interprofessional Relationships. A credential holder shall treat a colleague with respect, courtesy, and fairness and shall afford the same professional courtesy to other professionals.

(1) A credential holder shall not offer professional service to a client in counseling with another professional unless efforts have been made to inform the other professional, or to establish collaborative treatment, or until after the termination of the client's relationship with the other professional.

(2) A credential holder shall cooperate with a duly constituted professional ethics committee and promptly supply necessary information unless constrained by the demands of confidentiality.

GEOFFREY WILSON, Board Chairperson

APPROVED BY AGENCY: February 15, 2017

FILED WITH LRC: February 15, 2017 at 11 a.m.

CONTACT PERSON: Kelly Walls, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8814, fax (502) 696-5898, email Kelly.Walls@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kelly Walls

(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 impairment from abuse of alcohol or other substances to merely being under the influence alcohol or other substances when providing services to a client.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to address credential holders who engage in the practice of alcohol and drug counseling while under the influence, and refusing to provide a client with information necessary for a client to obtain reimbursement for services rendered.

(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 amendment will protect the public.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently 467 Licensed Clinical Alcohol and Drug Counselors, three (3) Licensed Clinical Alcohol and Drug Counselor Associates, 816 Certified Alcohol and Drug Counselors, 386 Temporary Certified Alcohol and Drug Counselors, fifty-six (56) Temporary Registered Alcohol and Drug Peer Support Specialists, and one (1) Registered Alcohol and Drug Peer Support Specialist.

(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 credential holder will be required to comply with the code of ethics or be subject to possible disciplinary action.

(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 known new costs associated with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The credential holders will know the ethical standards expected of them by the board.

(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 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 Alcohol and Drug Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.0813(1) and (2).

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

(a) 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 Alcohol and Drug Counselors
(Amended After Comments)

201 KAR 35:050. Curriculum of study.

RELATES TO: KRS 309.083(4), (8)

STATUTORY AUTHORITY: KRS 309.0813(1), (5), (6), 309.083, 309.0831, 309.0832, 309.0833

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.083, 309.0831, 309.0832, and 309.0833 require the Board of Alcohol and Drug Counselors to promulgate administrative regulations establishing curriculum requirements for applicants for a credential. This administrative regulation identifies the areas of study that will satisfy the requirement.

Section 1. (1) Registration. An applicant seeking registration as an alcohol and drug peer support specialist shall:

(a) Complete sixty (60) classroom hours, which shall include:

1. Sixteen (16) hours of interactive[~~, face-to-face~~] training in ethics of which eight (8) hours shall consist of face-to-face training;

2. Two (2) hours of training in the transmission, control, treatment, and prevention of the human immunodeficiency virus;

3. Ten (10) hours of advocacy training;

4. Ten (10) hours of training in mentoring and education; and

5. Ten (10) hours of training in recovery support; and

(b) File with the board KBADC Form 5, Peer Support Specialist Alcohol/Drug Training Verification Form[~~of Alcohol/Drug Training~~].

(2) Certification.

(a) An applicant seeking certification as an alcohol and drug counselor shall:

1. Complete 270 classroom hours that are specifically related to the knowledge and skills necessary to perform the following alcohol and drug counselor competencies:

a. Understanding addiction;

b. Treatment knowledge;

c. Application to practice;

d. Professional readiness;

e. Clinical evaluation;

f. Treatment planning;

g. Referral;

h. Service coordination;

i. Counseling;

j. Client, family, and community education;

k. Documentation; and

l. Professional and ethical responsibilities; and

2. File with the board KBADC Form 10, Certified Alcohol and Drug Counselor, Verification of Classroom Training.

(b) A minimum of six (6) hours of the total 270 hours shall be interactive, face-to-face ethics training relating to counseling.

(c) Two (2) hours of the total 270 hours shall be specific to transmission, control, and treatment of the human immunodeficiency virus and other sexually transmitted diseases.

(d) Three (3) hours of the total 270 hours shall be specific to domestic violence.

(3)(a) An applicant seeking licensure as a licensed clinical alcohol and drug counselor or associate shall:

1. Complete 180 classroom hours of curriculum that are specifically related to the knowledge and skills necessary to

perform the following alcohol and drug counselor competencies:
a. Understanding addiction;
b. Treatment knowledge;
c. Application to practice;
d. Professional readiness;
e. Clinical evaluation;
f. Treatment planning;
g. Referral;
h. Service coordination;
i. Counseling;
j. Client, family, and community education;
k. Documentation; and
l. Professional and ethical responsibilities; and
2. File with the board KBADC Form 11, Verification of Classroom Training.
(b) A minimum of six (6) hours of the total 180 hours shall be interactive, face-to-face ethics training relating to counseling.
(c) Two (2) hours of the total 180 hours shall be specific to transmission, control, and treatment of the human immunodeficiency virus and other sexually transmitted diseases.
(d) Three (3) hours of the total 180 hours shall be specific to domestic violence.

Section 2. (1) Attendance at conferences, workshops, seminars, or in-service training related to addictions shall be acceptable to meet the requirements of Section 1 of this administrative regulation if the board determines that the activity:
(a) Is an organized program of learning;
(b) Covers an area listed in Section 1 of this administrative regulation; and
(c) Is conducted by a competent instructor, as documented by appropriate academic training, professional licensure or certification, or professionally recognized experience.
(2) One (1) semester hour of study from an accredited college or university credit shall equal fifteen (15) classroom hours.
(3) Publication on a subject relevant to addictions therapy may be submitted to the board. Credit shall be granted as established in this subsection.
(a) A chapter in a book shall be equivalent to ten (10) classroom hours.
(b) 1. Authoring or editing a book relevant to addictions therapy shall be given credit equivalent to thirty (30) classroom hours.
2. An applicant shall submit a copy of the title page, table of contents, and bibliography.
(c) 1. Publication in a professional refereed journal shall be equivalent to fifteen (15) classroom hours.
2. An applicant shall submit the journal table of contents and a copy of the article as it appeared in the journal including bibliography.

Section 3. (1) A list of courses the applicant wishes to have considered shall be organized by core area as established in Section 1 of this administrative regulation and shall include documentation to verify that the course satisfies the requirements of that section.
(2) Appropriate documentation of the course shall include:
(a) Date;
(b) Title;
(c) Description;
(d) Sponsoring organization;
(e) Presenter and presenter's credentials;
(f) Number of contact hours attended; and
(g) Certificates of attendance or transcript.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "KBADC Form 5, Peer Support Specialist Alcohol/Drug Training Verification Form[~~of Alcohol/Drug Training~~]", **February 2017[~~December 2016~~]**[~~June 2015~~];
(b) "KBADC Form 10, Certified Alcohol and Drug Counselor Verification of Classroom Training", June 2015; and
(c) "KBADC Form 11, Verification of Classroom Training", June 2015.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Alcohol and Drug Counselors, 911 Leawood Drive, Frankfort, Kentucky, Monday through Friday, 8[~~8:30~~] a.m. to 4:30[~~5~~] p.m.

GEOFFREY WILSON, Board Chairperson
APPROVED BY AGENCY: February 15, 2017
FILED WITH LRC: February 15, 2017 at 11 a.m.
CONTACT PERSON: Kelly Walls, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8814, fax (502) 696-5898, email Kelly.Walls@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kelly Walls
(1) Provide a brief summary of
(a) What this administrative regulation does: This administrative regulation establishes the required education for a credential holder.
(b) The necessity of this administrative regulation: The necessity of this regulation is to establish a required education requirement for a credential holder to maintain competency in the practice.
(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 education 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 educational requirements 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 reduces the total number of face-to-face ethics training for an applicant as an alcohol and drug peer support specialist from sixteen (16) hours to eight (8) hours.
(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to allow more opportunities for an applicant as an alcohol and drug peer support specialist to satisfy the ethics training requirement as an alcohol and drug peer support specialist.
(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for education for a credential holder.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will expand the opportunities for an applicant as an alcohol and drug peer support specialist to obtain training on ethics.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently 467 Licensed Clinical Alcohol and Drug Counselors, three (3) Licensed Clinical Alcohol and Drug Counselor Associates, 816 Certified Alcohol and Drug Counselors, 386 Temporary Certified Alcohol and Drug Counselors, fifty-six (56) Temporary Registered Alcohol and Drug Peer Support Specialists, and one (1) Registered Alcohol and Drug Peer Support Specialist.
(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 as an alcohol and drug peer support specialist has no new requirements.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in

question (3): There are no new costs associated to the amendment of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment should provide more opportunities for an applicant as an alcohol and drug peer support specialist to obtain training on ethics.

(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 Alcohol and Drug Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.0813(1), (5), and (6), 309.083, 309.0831, 309.0832, and 309.0833.

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:

PUBLIC PROTECTION CABINET
Department of Insurance
Agent Licensing Division
(Amended After Comments)

806 KAR 9:360. Pharmacy benefit manager license.

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

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

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

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

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

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

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

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

(a) The Pharmacy Benefit Manager License Application;

(b) The fee set forth in KRS 304.9-053(3) and the penalty fee, if applicable, set forth in KRS 304.9-053(5);

(c) The following evidence of financial responsibility:

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

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

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

1. Licensed as an administrator in Kentucky; and

2. Designated in accordance with KRS 304.9-133;

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

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

1. Appeals dispute resolution process;

2. Maximum allowable cost appeals process; **and**

3. Exceptions policy and override policy required by**[~~45 C.F.R. 156.122(c) and~~]** KRS 304.17A-163 and KRS 304.17A-165; and **[~~4. Pharmacy and Therapeutics committee membership standards and duties as required by 45 C.F.R. 156.122(a); and~~]**

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

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

1.a. Approve the application; and

b. Issue the applicant the pharmacy benefit manager license;

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

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

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

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

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

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

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

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

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

2. Expire on March 31.

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

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

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

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

Section 4. Incorporation by Reference. (1) "Pharmacy Benefit Manager License Application", Form PBM, **01/2017**[~~09/2016~~], is incorporated by reference.

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

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

APPROVED BY AGENCY: February 14, 2017

FILED WITH LRC: February 14, 2017 at 4 p.m.

CONTACT PERSON: Patrick O'Connor, Deputy Commissioner, Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, phone (502) 782-5264, fax (502) 564-1453, email patrick.oconnor@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Patrick O'Connor II

(1) Provide a brief summary of:

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

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

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

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

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

(a) How the amendment will change this existing administrative regulation: The amendments to the regulations following the comment procedure delete the requirements to submit the pharmacy and therapeutic committee membership standards and duties, as well as, the reference to 45 C.F.R. 156.22. The deletion of these provisions ensures these federal requirements are not unnecessarily expanded to areas beyond their scope. However, the pharmacy benefit managers will need to continue to submit the remaining materials as they are subject to the general oversight of the Department of Insurance through KRS 304.9-055.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to properly limit the breadth of the scope of the regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to the statute by requiring the information necessary for the department to perform a thorough review prior to licensure to ensure compliance with the statutory requirements applicable to pharmacy benefit managers.

(d) How the amendment will assist in the effective administration of the statutes: The department will obtain all necessary information to ensure the pharmacy benefit manager has in place the required policy and procedures before they become licensed to continue operations within 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 administrative regulation will impact approximately thirty (30) entities that offer pharmacy benefit manager services in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities currently performing pharmacy benefit manager services in Kentucky will need to apply for and be licensed as pharmacy benefit managers no later than January 1, 2017. Entities wishing to begin performing pharmacy benefit manager services will need to apply for and be licensed in Kentucky prior to doing business. Entities wishing to continue doing business as pharmacy benefit managers will need to complete the renewal process outlined in the administrative regulation on an annual basis.

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

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

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The costs to implement and enforce this administrative regulation

will be paid by the entities licensed as pharmacy benefit managers and from the existing budget of the Department of Insurance.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The licensing fees set forth in KRS 304.9-053 will be necessary to implement this regulation. Any deficit in revenue received from license fees from the cost of implementing this regulation shall be assessed among licensees pursuant to KRS 304.9-054(7).

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110, KRS 304.9-053, KRS 304.9-054, KRS 304.9-055, and KRS 304.17A-162.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The Department of Insurance anticipates receiving approximately $30,000 in licensing fees as a result of this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The Department of Insurance anticipates receiving approximately $30,000 in licensing renewal fees as a result of this administrative regulation.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Prevention and Quality Improvement
(Amended After Comments)

902 KAR 21:020. Kentucky Colon Cancer Screening Program.

RELATES TO: KRS 205.520, 211.090(3), 211.180(1), 214.540-214.544, **Chapter** 304.17A

STATUTORY AUTHORITY: KRS 194A.050(1), 214.542(6)

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 the programs and fulfill the responsibilities vested in the cabinet. KRS 214.542(6) requires the cabinet to promulgate administrative regulations to implement the Kentucky Colon Cancer Screening Program. This administrative regulation establishes the eligibility criteria, services, and requirements for participation in the colon cancer screening program.

Section 1. Definitions. (1) "Applicant" means an individual desiring services paid in part by the screening program.

(2) "Contractor" means a person or facility that agrees to the terms of participation of the screening program in contract and ensures services are delivered pursuant to the screening program terms.

(3) "Department" means the Department for Public Health or its designated representative.

(4) "Screening program" means the Kentucky Colon Cancer Screening Program administered by the department.

Section 2. Eligibility Criteria. (1) In order to receive a service established in Section 3 of this administrative regulation, an applicant shall:

(a) Meet the eligibility for screening pursuant to**[~~the current~~]** American Cancer Society Colorectal Cancer Screening Guidelines;

(b) Be a legal resident of Kentucky;

(c) Have an individual income at or below 300 percent of the federal poverty level**, established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2)**; and

(d) If covered by health insurance, have **an** out-of-pocket **maximum[~~medical expenses~~]** that **is[~~are~~]** five (5) percent or more of the individual's annual income.

(2) A service received without prior authorization from the screening program is not eligible to be covered.

Section 3. Services. If funding is available, the services to be paid in part by the screening program shall include colon cancer screening tests and may include:

(1) Referral, examination, and rescreening for individuals for whom further examination or treatment is indicated by the colon cancer screening;

(2) Surveillance; and

(3) Treatment.

Section 4. Contractor Responsibility. A contractor shall:

(1) Complete a KCCSP 101 **form**, Kentucky Colon Cancer Screening Program Eligibility and Enrollment,**[~~form~~]** with the applicant;

(2) Review the completed KCCSP 102 **form**, Kentucky Colon Cancer Screening Program Affidavit**[~~, form~~]**;

(3) Determine applicant eligibility **pursuant to Section 2 of this administrative regulation**;

(4) If the applicant is eligible, provide service or referral for service; and

(5) Report program data into the data collection system pursuant to Section 6 of this administrative regulation.

Section 5. Payment. (1) A contractor may charge a fee for a service provided through the screening program in accordance with the guideline document to be provided by the department and agreed upon through contract.

(2) The screening program shall reimburse the contractor an amount for specific and determined services as agreed in contract.

Section 6. Data Collection System. The department shall establish a data collection system **in accordance with KRS 214.542(5)[~~to record the:~~**

[~~(1) Number of individuals screened;~~

[~~(2) Demographic characteristics of the individuals~~

~~screened; and~~

~~(3) Type of services performed under the screening program~~].

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form "KCCSP 101, Kentucky Colon Cancer Screening Program Eligibility and Enrollment", **2/2017**[~~12/2016~~]; and

(b) Form "KCCSP 102, Kentucky Colon Cancer Screening Program Affidavit", **2/2017**[~~12/2016~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, First Floor, Health Services Building, 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: February 13, 2017

FILED WITH LRC: February 15, 2017 at 10 a.m.

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40602, phone 502-564-7905, fax 502-564-7573, email Tricia.Orme@ky.gov.

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 establishes the eligibility criteria, services, and requirements for participation in the Kentucky Colon Cancer Screening Program as required by KRS 214.542(6).

(b) The necessity of this administrative regulation: KRS 214.540 establishes the Colon Cancer Screening Program for the purpose of increasing colon cancer screening, reducing morbidity and mortality from colon cancer, and reducing the cost of treating colon cancer among citizens of the Commonwealth. KRS 214.542(6) requires the Department for Public Health in the Cabinet for Health and Family Services to promulgate administrative regulations to implement the provisions of these statutes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the Kentucky Colon Cancer Screening Program in regulation as required by KRS 214.540 and contains the requirements of KRS 214.542.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the process and requirements for enrolling people in the Kentucky Colon Cancer Screening Program, which works to increase colon cancer screening, reduce morbidity and mortality from colon cancer, and reduces the cost of treating colon cancer among citizens of the Commonwealth, as funding is available.

(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 language that was used in the original proposed version. Public comment suggested using the term "out-of-pocket maximum" instead of "out-of-pocket medical expenses" and the regulation and affidavit are being amended accordingly. This amendment clarifies that the American Cancer Society guidelines to be used to determine eligibility should be whatever is current at the time and not what was current as of the effective date of the regulation. A citation has been included for the federal poverty level. The eligibility and enrollment form is being amended to include two additional questions relating to symptoms and surgical history that may have a correlation with colon cancer. Also, the regulation is being amended for compliance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative: The amendment clarifies the intention of the original proposed language where necessary and makes the regulation compliant with KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment does not include any substantive changes to the proposed administrative regulation, which met and continues to meet the requirements of KRS 214.542(6).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Uninsured and underinsured individuals between the ages of 50 and 75 are the target audience of this regulation. Since the passage of the Affordable Care Act, the number of uninsured and underinsured individuals is unknown. In past variations of the Kentucky Colon Cancer Screening Program, many local health departments were funded by this program. These local health departments in turn contracted with various providers within their local communities to provide the clinical services of the program. In the redesign of this program, various healthcare facilities will have the option of participating. Various partner organizations impacted by this regulation include the Kentucky Cancer Program, Kentucky Cancer Consortium, Colon Cancer Prevention Project, and American Cancer Society.

(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: The Kentucky Colon Cancer Screening Program is a voluntary participation program that works to increase colon cancer screening, reduce morbidity and mortality from colon cancer, and reduces the cost of treating colon cancer among citizens of the Commonwealth, as funding is available. A contractor shall review applications for acceptance to the Program and, if the applicant is eligible, shall navigate them to the appropriate services or provide those services, have those services paid for at least in part by the Program, and report data into a data collection system.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The Kentucky Colon Cancer Screening Program is a voluntary participation program that works to increase colon cancer screening, reduce morbidity and mortality from colon cancer, and reduces the cost of treating colon cancer among citizens of the Commonwealth, as funding is available. Costs are variable and depend upon the contractors participating in this program. This administrative regulation does not require costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Kentucky Colon Cancer Screening Program is a voluntary participation program that works to increase colon cancer screening, reduce morbidity and mortality from colon cancer, and reduces the cost of treating colon cancer among citizens of the Commonwealth

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

(a) Initially: The Kentucky Colon Cancer Screening Program is limited to the amount of General Fund appropriations to the Department for Public Health for the Colon Cancer Screening Program and private or public awards of funds. Costs will not exceed the funding received by the program.

(b) On a continuing basis: The Kentucky Colon Cancer Screening Program is limited to the amount of General Fund appropriations to the Department for Public Health for the Colon Cancer Screening Program and private or public awards of funds. Costs will not exceed the funding received by the program. Services offered are dependent on, "if funding is available."

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Fund appropriations to the Department for Public Health for the Colon Cancer Screening Program and private or public awards of 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: An increase in fees or funding is not necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? No. This administrative regulation is applicable to contractors with the Kentucky Colon Cancer Screening Program and applicants meeting the eligibility requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local health departments may be affected if they contract with the Kentucky Colon Cancer Screening Program to provide the services of the Program or navigate eligible applicants to services. The Kentucky Department for Public Health operates this program if funding is available pursuant to KRS 214.540.

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) and 214.542(6)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? The Kentucky Colon Cancer Screening Program is limited to the amount of General Fund appropriations to the Department for Public Health for the Colon Cancer Screening Program and private or public awards of funds. Costs will not exceed the funding received by the program. Services offered are dependent on, "if funding is available."

(d) How much will it cost to administer this program for subsequent years? The Kentucky Colon Cancer Screening Program is limited to the amount of General Fund appropriations to the Department for Public Health for the Colon Cancer Screening Program and private or public awards of funds. Costs will not exceed the funding received by the program. Services offered are dependent on, "if funding is available."

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

907 KAR 1:045. Reimbursement provisions and requirements regarding community mental health center services.

RELATES TO: KRS 205.520(3), 210.370

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6313, 42 C.F.R. 447.325, 42 U.S.C. 1396a-d

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the reimbursement provisions and requirements regarding community mental health center services provided to Medicaid recipients who are not enrolled with a managed care organization.

Section 1. Definitions. (1) "Community board for mental health or individuals with an intellectual disability" means a board established pursuant to KRS 210.380.

(2) "Community mental health center" or "CMHC" means a facility that[~~which~~] meets the community mental health center requirements established in 902 KAR 20:091.

(3) "CPT code" means a code used for reporting procedures and services performed by medical practitioners and published annually by the American Medical Association in Current Procedural Terminology.

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

(5)[~~(3)~~] "Enrollee" means a recipient who is enrolled with a managed care organization.

(6)[~~(4)~~] "Federal financial participation" is defined by 42 C.F.R. 400.203.

(7) "Federal indirect rate" means the rate approved by the United States Department for Health and Human Services (HHS) for grantee institutions to be used to calculate indirect costs as a percentage of direct costs.

(8) "Federal Register" means the official journal of the United States federal government that publishes government agency rules and public notices.

(9) "Healthcare Common Procedure Coding System code" means a billing code:

(a) Recognized by Medicare; and

(b) Monitored by the Centers for Medicare and Medicaid Services.

(10) "Injectable drug" means an injectable, infused, or inhaled drug or biological that:

(a) Is not excluded as a non-covered immunization or vaccine;

(b) Requires special handling, storage, shipping, dosing, or administration; and

(c) Is a rebatable drug.

(11) "Interim reimbursement" means a reimbursement:

(a) In effect for a temporary period of time; and

(b) That does not represent final reimbursement for services provided during the period of time.

(12)[~~(5)~~] "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(13) "Medicaid allowable costs" means the costs:

(a) Associated with the Medicaid-covered services covered pursuant to 907 KAR **1:047[~~1:046~~]** and 907 KAR 1:044:

1. Rendered to recipients who are not enrollees; and

2. Not rendered as a 1915(c) home and community based waiver services provider; and

(b) Determined to be allowable costs by the department.

(14) "Medical Group Management Association (MGMA) Physician Compensation and Production Survey Report" means a report developed and owned by the Medical Group Management Association that:

(a) Highlights the critical relationship between physician salaries and productivity;

(b) Is used to align physician salaries and benefits with provider production; and

(c) Contains:

1. Performance ratios illustrating the relationship between compensation and production; and

2. Comprehensive and summary data tables that cover many specialties.

(15) "Medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(16) "Medicare Economic Index" means a measure of inflation:
(a) Associated with the costs of physicians' practices; and
(b) Published in the Federal Register.
(17) "Outreach services" means provider programs:
(a) Specifically designed to:
1. Engage recipients for the purposes of supporting Medicaid or Children's Health Insurance Program (CHIP) enrollment efforts;
2. Assist recipients with finding healthcare or coverage options; and
3. Promote preventive services for recipients; and
(b) That are directly assigned or allocated to a cost report line that is not cost settled by the department.
(18) "Payment plan request" means a request to pay an amount owed to the department over a period of time approved by the department.
(19) "Primary care services" means services covered as established in 907 KAR **1:047[~~1:046~~]**.
(20)[~~(6)~~] "Provider" is defined by KRS 205.8451(7).
(21) "Rebatable drug" means a drug for which the drug's manufacturer has entered into or complied with a rebate agreement in accordance with 42 U.S.C. 1396r-8(a).
(22)[~~(7)~~] "Recipient" is defined by KRS 205.8451(9).
(23) "State fiscal year" means the period beginning on July 1 of a calendar year and ending on June 30 of the following calendar year.

Section 2. General Reimbursement Provisions. (1) The department shall reimburse a participating in-state community mental health center under this administrative regulation for services:
(a) If the services are:
1. Covered pursuant to:
a. 907 KAR 1:044; or
b. 907 KAR **1:047[~~1:046~~]**;
2. Not provided by the CMHC acting as a 1915(c) home and community based waiver services provider, as those services are reimbursed based on the home and community based waiver;
3. Provided to recipients who are not enrolled with a managed care organization; and
4. Medically necessary; and
(b) Based on the community mental health center's Medicaid allowable costs.
(2) The department's reimbursement shall include reimbursing:
(a) On an interim basis during the course of a cost report period; and
(b) A final reimbursement for the state fiscal year that results from a reconciliation of the interim reimbursement amount paid to the CMHC compared to the CMHC's Medicaid allowable cost by cost center for the state fiscal year.

Section 3. Interim Reimbursement for Primary Care Services and Injectable Drugs.
(1) The department's interim reimbursement to a CMHC for primary care services shall depend upon the type of primary care service.
(2)(a)1. The department's interim reimbursement for physician services shall be the reimbursement established for the service on the current Kentucky-specific Medicare Physician Fee Schedule unless no reimbursement for the service exists on the current Kentucky-specific Medicare Physician Fee Schedule for the given service.
2. If no reimbursement for a given physician service exists on the current Kentucky-specific Medicare Physician Fee Schedule, the department shall reimburse on an interim basis for the service as it reimburses for services pursuant to 907 KAR 3:010.
(b)1. The department's interim reimbursement for laboratory services shall be the reimbursement established for the service on the current Kentucky-specific Medicare Laboratory Fee Schedule unless no reimbursement for the service exists on the current Kentucky-specific Medicare Laboratory Fee Schedule for the given service.
2. If no reimbursement for a given laboratory service exists on the current Kentucky-specific Medicare Laboratory Fee Schedule, the department shall reimburse on an interim basis for the service as it reimburses for services pursuant to 907 KAR 3:010.
(c)1. The department's interim reimbursement for radiological services shall be the reimbursement established for the service on the current Kentucky-specific Medicare Physician Fee Schedule unless no reimbursement for the service exists on the current Kentucky-specific Medicare Physician Fee Schedule for the given service.
2. If no reimbursement for a given radiological service exists on the current Kentucky-specific Medicare Physician Fee Schedule, the department shall reimburse on an interim basis for the service as it reimburses for services pursuant to 907 KAR 3:010.
(d)1. The department's interim reimbursement for occupational therapy service shall be the reimbursement established for the service on the current Kentucky-specific Medicare Physician Fee Schedule unless no reimbursement for the given service exists on the current Kentucky-specific Medicare Physician Fee Schedule.
2. If no reimbursement for a given occupational therapy service exists on the current Kentucky-specific Medicare Physician Fee Schedule, the department shall reimburse on an interim basis for the service as it reimburses for the service pursuant to 907 KAR 8:045.
(e)1. The department's interim reimbursement for physical therapy service shall be the reimbursement established for the service on the current Kentucky-specific Medicare Physician Fee Schedule unless no reimbursement for the given service exists on the current Kentucky-specific Medicare Physician Fee Schedule.
2. If no reimbursement for a given physical therapy service exists on the current Kentucky-specific Medicare Physician Fee Schedule, the department shall reimburse on an interim basis for the service as it reimburses for the service pursuant to 907 KAR 8:045.
(f)1. The department's interim reimbursement for speech-language pathology service shall be the reimbursement established for the service on the current Kentucky-specific Medicare Physician Fee Schedule unless no reimbursement for the given service exists on the current Kentucky-specific Medicare Physician Fee Schedule.
2. If no reimbursement for a given speech-language pathology service exists on the current Kentucky-specific Medicare Physician Fee Schedule, the department shall reimburse on an interim basis for the service as it reimburses for the service pursuant to 907 KAR 8:045.
(3) The department's interim reimbursement for the cost of injectable drugs administered in a CMHC shall be the reimbursement methodology established in 907 KAR 3:010 for injectable drugs.

Section 4. Interim Reimbursement for Behavioral Health Services through June 30, 2018. (1)(a) To establish interim rates for behavioral health services effective for dates of service through June 30, 2018, the department shall use the CMHC rates paid effective July 1, 2015.
(b) To establish interim rates for behavioral health services effective for dates of service July 1, 2018, and each subsequent July 1, the department shall use a CMHC's most recently submitted cost report that meets the requirements established in paragraph (c) of this subsection.
(c) The cost report shall comply with all requirements established in Section 5(1) of this administrative regulation.
(2) The department shall:
(a) Review the cost report referenced in subsection (1) of this section; and
(b) Establish interim rates for Medicaid-covered behavioral health services:
1. To be effective July 1, 2018;
2. Based on Medicaid allowable costs as determined by the department through its review;
3. Intended to result in a reimbursement for Medicaid-covered behavioral health services:
a. Provided to recipients who are not enrollees; and
b. That equals the department's estimate of behavioral health services' costs for the CMHC for the period; and

4. That shall be updated effective July 1, 2019, and each July 1 thereafter, based on the most recently received cost report referenced in subsection (1) of this section.

(3) Interim rates for behavioral health services effective July 1 each calendar year shall have been trended and indexed from the midpoint of the cost report period to the midpoint of the rate year using the Medicare Economic Index.

(4) To illustrate the timeline referenced in subsection (2)(b) of this section, a cost report submitted by a CMHC to the department on December 31, 2017, shall be used by the department to establish behavioral health services' interim rates effective July 1, 2018.

(5)(a) A behavioral health services interim rate shall not be subject to retroactive adjustment except as specified in this section.

(b) The department shall adjust a behavioral health services interim rate during the state fiscal year if the rate that was established appears likely to result in a substantial cost settlement that could be avoided by adjusting the rate.

(c)1. If the cost report from a CMHC has not been audited or desk-reviewed by the department prior to establishing interim rates for the next state fiscal year, the department shall use the cost report under the condition that interim rates shall be subject to adjustment as established in subparagraph 2. of this paragraph.

2. A behavioral health services interim rate based on a cost report that has not been audited or desk-reviewed shall be subject to adjustment when the audit or desk review is completed.

3. An unaudited cost report shall be subject to an adjustment to the audited amount after the auditing has occurred.

(d) Upon receipt of the cost report filed December 31, 2017, the department shall review the cost report to determine if the interim rates established in accordance with subsection (1)(a) of this section need to be revised to more closely reflect the costs of services for the interim period.

Section 5. Final Reimbursement Beginning with the State Fiscal Year that Begins July 1, 2018. (1)(a) For the state fiscal year spanning July 1, 2017, through June 30, 2018, and for subsequent state fiscal years, by December 31 following the end of the state fiscal year, a CMHC shall submit a cost report to the department:

1. In a format that has been approved by the Centers for Medicare and Medicaid Services;

2. That has been audited by an independent auditing entity; and

3. That states all of the:

a. CMHC's Medicaid allowable direct costs for:

(i) Medicaid-covered services rendered to eligible recipients during the cost report period; and

(ii) Medicaid-covered injectable drugs rendered to eligible recipients during the cost report period;

b. CMHC's costs associated with:

(i) Medicaid-covered services rendered to enrollees during the cost report period; and

(ii) Medicaid-covered injectable drugs rendered to enrollees during the cost report period;

c. Costs of the community board for mental health or individuals with an intellectual disability under which the CMHC operates for the cost report period; and

d. CMHC's costs associated with services rendered to individuals:

(i) That were reimbursed by an insurer or party other than the department or a managed care organization; and

(ii) During the cost report period.

(b) To illustrate the timeline referenced in paragraph (a) of this subsection, an independently audited cost report stating costs associated with services and injectable drugs provided during the state fiscal year spanning July 1, 2017, through June 30, 2018, shall be submitted to the department by December 31, 2018.

(2) By October 1 following the department's receipt of a CMHC's completed cost report submitted to the department by the prior December 31, the department shall:

(a) Review the cost report referenced in subsection (1) of this section; and

(b) Compare the Medicaid allowable costs to the department's interim reimbursement for Medicaid-covered services and injectable drugs rendered during the same state fiscal year.

(3)(a) After the department compares a CMHC's interim reimbursement with the CMHC's Medicaid allowable costs for the period, if the department determines that the interim reimbursement:

1. Was less than the CMHC's Medicaid allowable costs for the period, the department shall send a payment to the CMHC equal to the difference between the CMHC's total interim reimbursement and the CMHC's Medicaid allowable costs; or

2. Exceeded the CMHC's Medicaid allowable costs for the period, the:

a. Department shall send written notification to the CMHC requesting the amount of the overpayment; and

b. CMHC shall, within thirty (30) days of receiving the department's written notice, send a:

(i) Payment to the department equal to the excessive amount; or

(ii) Payment plan request to the department.

(b) A CMHC shall not implement a payment plan unless the department has approved the payment plan in writing.

(c) If a CMHC fails to comply with the requirements established in paragraph (a)2 of this subsection, the department shall:

1. Suspend payment to the CMHC; and

2. Recoup the amount owed by the CMHC to the department.

Section 6. Final Reimbursement for the Cost Report Period Spanning November 1, 2016, through June 30, 2017. The provisions established in Section 5 of this administrative regulation shall apply to final reimbursement for the period beginning November 1, 2016, through June 30, 2017, except that the cost report period shall begin November 1, 2016, and end June 30, 2017.

Section 7. New Services. (1) Reimbursement regarding a projection of the cost of a new Medicaid-covered service or expansion shall be made on a prospective basis in that the costs of the new service or expansion shall be considered when actually incurred as an allowable cost.

(2)(a) A CMHC may request an adjustment to an interim rate after reaching the mid-year point of the new service or expansion.

(b) An adjustment shall be based on actual costs incurred.

Section 8. Auditing and Accounting Records. (1)(a) The department shall perform a desk review of each cost report to determine whether an audit is necessary and, if so, the scope of the audit.

(b) If the department determines that an audit is not necessary, the cost report shall be settled without an audit.

(c) A desk review or audit shall be used to verify costs to be used in setting the interim behavioral health services rate, to adjust interim behavioral health services rates that have been set based on unaudited data, or for final settlement to cost.

(2)(a) A CMHC shall maintain and make available any records and data necessary to justify and document:

1. Costs to the CMHC;

2. Services provided by the CMHC;

3. The cost of injectable drugs provided, if any, by the CMHC;

4. Cost allocations utilized including overhead statistics and supportive documentation;

5. Any amount reported on the cost report; and

6. Chart of accounts.

(b) The department shall have unlimited on-site access to all of a CMHC's fiscal and service records for the purpose of:

1. Accounting;

2. Auditing;

3. Medical review;

4. Utilization control; or

5. Program planning.

(3) A CMHC shall maintain an acceptable accounting system to account for the:

(a) Cost of total services provided;

(b) Charges for total services rendered; and

(c) Charges for covered services rendered to eligible recipients.

(4) An overpayment discovered as a result of an audit or desk review shall be settled through recoupment or withholding.

Section 9. Allowable and Nonallowable Costs. (1) The following shall be allowable costs:

(a) Services' or drugs' costs associated with the services or drugs;

(b) Depreciation as follows:

1. A straight line method shall be used;

2. The edition of the American Hospital Association's useful life guidelines currently used by the Centers for Medicare and Medicaid Services' Medicare program shall be used;

3. The maximum amount for expensing an item in a single cost report shall be $5,000; and

4. Only the depreciation of assets actually being used to provide services shall be recognized;

(c) Interest costs;

(d) Costs incurred for research purposes, which shall be allowable to the extent that they are related to usual patient services and are not covered by separate research funding;

(e) Costs of motor vehicles used by management personnel up to $25,000;

(f) Costs for training or educational purposes for licensed professional staff outside of Kentucky excluding transportation costs to travel to the training or education;

(g) Costs associated with any necessary legal expense incurred in the normal administration of the CMHC;

(h) The cost of administrative staff salaries, which shall be limited to the average salary for the given position as established for the geographic area on www.salary.com;

(i) The cost of practitioner salaries, which shall be limited to the median salary for the southern region as reported in the Medical Group Management Association (MGMA) Physician Compensation and Production Survey Report, if available.

1. A per visit amount using MGMA median visits shall be utilized.

2. The most recently available MGMA publication that relates to the cost report period shall be used;

(j) Indirect costs, which shall be:

1. Calculated utilizing the approved federal indirect rate, if the provider has an approved federal indirect rate.

a. A provider shall include in indirect costs on line one (1) of the cost report the same category of costs identified as indirect within the approved federal indirect rate supporting documentation.

b. Direct costs shall be those costs identified as direct within the approved federal indirect rate.

c. The Federal indirect rate shall be applied to the same category of expenses identified as direct during the Federal rate determination; or

2. If the provider does not have a federal indirect rate, those costs of an organization that are not specifically identified with a particular project, service, program, or activity but nevertheless are necessary to the general operation of the organization and the conduct of the activities it performs. The actual allowable cost of indirect services as reported on the cost report shall be allocated to direct cost centers based on accumulated cost if a federal indirect rate is not available; and

(k) Services provided in leased or donated space outside the walls of the facility.

(2) To be allowable, costs shall comply with reasonable cost principles established in 42 C.F.R. 413.

(3) The allowable cost for a service or good purchased by a facility from a related organization shall be in accordance with 42 C.F.R. 413.17.

(4)(a) The following shall not be allowable costs:

1. Bad debt;

2. Charity;

3. Courtesy allowances;

4. Political contributions;

5. Costs associated with an unsuccessful lawsuit against the department or the Cabinet for Health and Family Services;

6. Costs associated with any legal expense incurred related to a judgment granted as a result of an unlawful activity or pursuit;

7. The value of services provided by nonpaid workers;

8. Travel or related costs or expenses associated with non-licensed staff attending:

a. A convention;

b. A meeting;

c. An assembly; or

d. A conference;

9. Costs related to lobbying;

10. Costs related to outreach services; or

11. Costs incurred for transporting recipients to services.

(b) Outreach services' costs shall either be directly assigned or allocated to a cost report line that is not cost-settled by the department.

(5) A discount or other allowance received regarding the purchase of a good or service shall be deducted from the cost of the good or service for cost reporting purposes, including in-kind donations.

(6)(a) Maximum allowable costs shall be the maximum amount that may be allowed as reasonable cost for the provision of a service or drug.

(b) To be considered allowable, a cost shall:

1. Be necessary and appropriate for providing services; and

2. Not exceed usual and customary charges.

(7) For direct and indirect personnel costs, 100 percent time reporting methods shall be utilized to group/report expenses to each cost category. Detailed documentation shall be available upon request[~~as established in this subsection.~~

~~(a) The payment rate that was in effect on June 30, 2002, for the community mental health center for community mental health center services shall remain in effect and there shall be no cost settling.~~

~~(b) Allowable costs shall not:~~

~~1. Exceed customary charges which are reasonable; or~~

~~2. Include:~~

~~a. The costs associated with political contributions;~~

~~b. Travel or related costs for trips outside the state (for purposes of conventions, meetings, assemblies, conferences, or any related activities);~~

~~c. The costs of motor vehicles used by management personnel which exceed $20,000 total valuation annually (unless the excess cost is considered as compensation to the management personnel); or~~

~~d. Legal fees for unsuccessful lawsuits against the cabinet.~~

~~(c) Costs (excluding transportation costs) for training or educational purposes outside the state shall be allowable costs.~~

~~(2) To be reimbursable, a service shall:~~

~~(a) Meet the requirements of 907 KAR 1:044, Section 4(2); and~~

~~(b) Be medically necessary~~].

Section 10. Units of Service[~~3. Implementation of Payment System~~]. (1) Interim[~~(a)~~] payments for behavioral health services, physician services, physical therapy services, occupational therapy services, speech-language pathology services, laboratory services, or radiological services shall be based on units of service.

(2) A unit for a behavioral health service, a physician service, a physical therapy service, a speech-language pathology service, an occupational therapy service, a laboratory service, or radiological service shall be the amount indicated for the corresponding:

1. CPT code; or

2. Healthcare Common Procedure Coding System code

[~~(b) One (1) unit for each service shall be defined as follows:~~

~~Service~~	~~Unit of Service~~
~~Individual Outpatient Therapy~~	~~15 minutes~~
~~Group Outpatient Therapy~~	~~15 minutes~~
~~Family Outpatient Therapy~~	~~15 minutes~~
~~Collateral Outpatient Therapy~~	~~15 minutes~~
~~Psychological Testing~~	~~15 minutes~~
~~Therapeutic Rehabilitation~~	~~15 minutes~~
~~Medication Prescribing and Monitoring~~	~~15 minutes~~

~~Physical Examinations~~	~~15 minutes~~
~~Screening~~	~~15 minutes~~
~~Assessment~~	~~15 minutes~~
~~Crisis Intervention~~	~~15 minutes~~
~~Service Planning~~	~~15 minutes~~
~~Screening, Brief Intervention, and Referral to Treatment~~	~~15 minutes~~
~~Mobile Crisis Services~~	~~1 hour~~
~~Assertive Community Treatment~~	~~Per Diem~~
~~Intensive Outpatient Program Services~~	~~Per Diem~~
~~Residential Crisis Stabilization Services~~	~~Per Diem~~
~~Residential Services for Substance Use Disorders~~	~~Per Diem~~
~~Partial Hospitalization~~	~~Per Diem~~
~~Day Treatment~~	~~1 hour~~
~~Comprehensive Community Support Services~~	~~15 minutes~~
~~Peer Support Services~~	~~15 minutes~~

~~(2) An initial unit of service which lasts less than fifteen (15) minutes may be billed as one (1) unit.~~

~~(3) Except for an initial unit of a service, a service that is:~~

~~(a) Less than one-half (1/2) of one (1) unit shall be rounded down; or~~

~~(b) Equal to or greater than one-half (1/2) of one (1) unit shall be rounded up.~~

~~(4) An individual provider shall not exceed four (4) units of service in one (1) hour.~~

~~(5) An overpayment discovered as a result of an audit shall be settled through recoupment or withholding.~~

~~(6) A community mental health center shall maintain an acceptable accounting system to account for the:~~

~~(a) Cost of total services provided;~~

~~(b) Charges for total services rendered; and~~

~~(c) Charges for covered services rendered eligible recipients.~~

~~(7) A community mental health center shall make available to the department all recipient records and fiscal records:~~

~~(a) At the end of each fiscal reporting period;~~

~~(b) Upon request by the department; and~~

~~(c) Subject to reasonable prior notice by the department.~~

~~(8) Payments due a community mental health center shall be made at least once a month.~~

~~Section 4. Nonallowable Costs. The department shall not reimburse:~~

~~(1) Under the provisions of this administrative regulation for a service that is not covered by 907 KAR 1:044; or~~

~~(2) For a community mental health center's costs found unreasonable or nonallowable in accordance with the Community Mental Health Center Reimbursement Manual~~].

Section 11[~~5~~]. Reimbursement of Out-of-state Providers. Reimbursement to a participating out-of-state community mental health center shall be the lesser of the:

(1) Charges for the service;

(2) Facility's rate as set by the state Medicaid Program in the other state; or

(3) The state-wide average of payments for in-state community mental health centers[~~Upper limit for that type of service in effect for Kentucky providers~~].

Section 12[~~6~~]. Appeal Rights. A community mental health center may appeal a Department for Medicaid Services decision as to the application of this administrative regulation in accordance with 907 KAR 1:671.

Section 13[~~7~~]. Not Applicable to Managed Care Organization. A managed care organization shall not be required to reimburse for community mental health center services in accordance with this administrative regulation.

Section 14[~~8~~]. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

STEPHEN P. MILLER, Commissioner
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: February 7, 2017

FILED WITH LRC: February 15, 2017 at 10 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact persons: Sharley Hughes (502) 564-4321, email Sharley.hughes@ky.gov, and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the Department for Medicaid Services' (DMS's) reimbursement provisions and requirements regarding community mental health center services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS's reimbursement provisions and requirements regarding community mental health center services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing DMS's reimbursement provisions and requirements regarding community mental health center services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assist in the effective administration of the authorizing statutes by establishing DMS's reimbursement provisions and requirements regarding community mental health center services.

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

(a) How the amendment will change this existing administrative regulation: The amendment introduces a new cost-based reimbursement methodology and establishes reimbursement for primary care services (in concert with a companion administrative regulation – 907 KAR 1:047, Coverage provisions and requirements regarding community mental health center primary care service services.) Via the cost-based model, the Department for Medicaid Services (DMS) will ultimately reimburse for all services (behavioral health as well as primary care services) rendered during a given year based on Medicaid allowable costs after a thorough review of cost data reported by each CMHC to determine such costs for each CMHC. As a given CMHC's costs for a year is reported after the year concludes and DMS must review the cost data before determining the CMHC's total Medicaid allowable costs for the year, DMS reimburses each CMHC on an interim basis during the course of the year. After completing the review and determination of a CMHC's Medicaid allowable costs for a year, DMS will compare its interim reimbursement paid to the CMHC during the course of the year to the CMHC's actual Medicaid allowable costs for the year. If DMS's interim reimbursement to the CMHC exceeded the CMHC's Medicaid allowable costs, the CMHC will send the overpayment amount to DMS. If DMS's interim reimbursement was less than the CMHC's Medicaid allowable costs for the year, DMS will issue a lump sum payment to the CMHC equaling the amount owed. DMS's interim reimbursement for behavioral health services will initially be the reimbursement it currently pays CMHCs for behavioral health services, but after the first full twelve-month cost report has been audited and approved (and going forward) interim behavioral health reimbursement will be rates based on the most recently audited and approved cost report. DMS's interim reimbursement for physician services, laboratory services, and radiological services will be the reimbursement stated on the Kentucky-specific Medicare Physician Fee Schedule for the given service. If no

reimbursement exists on the fee schedule for a given service, DMS will reimburse (again, on an interim basis) for the service in the manner that it reimburses for physician's services pursuant to 907 KAR 3:010, Reimbursement for physician's services. DMS's interim reimbursement for occupational therapy, physical therapy, and speech-language pathology services will be the reimbursement stated on the Kentucky-specific Medicare Physician Fee Schedule for the given service. If no reimbursement exists on the fee schedule for a given service, DMS will reimburse (again, on an interim basis) for the service in the manner that it reimburses for physician's services pursuant to 907 KAR 3:010, Reimbursement for physician's services. DMS's interim reimbursement for the cost of injectable drugs administered in a CMHC will be DMS's reimbursement for such pursuant to its physician's services reimbursement administrative regulation (907 KAR 3:010). The reimbursement established in this administrative regulation only applies to services rendered to Medicaid "fee-for-service" recipients. These are Medicaid recipients who are not enrolled with a managed care organization. Managed care organizations are not required to reimburse for CMHC services in accordance with this administrative regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment establishing a new cost-based reimbursement methodology results from a mandate from the Centers for Medicare and Medicaid Services (CMS). DMS's reimbursement of primary care services is necessary to comply with legislation (HB 527) enacted during the 2014 Regular Session of the General Assembly which was codified into KRS 205.6313.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to the content of the authorizing statutes by revising Medicaid reimbursement for community mental health centers in a manner that complies with a federal mandate and with a state mandate.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist in the effective administration of the authorizing statutes by revising Medicaid reimbursement for community mental health centers in a manner that complies with a federal mandate and with a state mandate.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Community mental health centers will be affected by the administrative regulation. There are centers located across Kentucky under the governance of fourteen regional boards.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. In order to be reimbursed by the Department for Medicaid Services CMHCs will have to annually submit cost report information to DMS stating all of the CMHCs Medicaid allowable costs, costs associated with care provided to recipients who are enrolled with a managed care organization, costs experienced by the Community Board for Mental Health or Individuals with an Intellectual Disability which oversees the CMHC; and costs associated with services covered by another payor/party. As mandated by the Centers for Medicare and Medicaid Services (CMS) the Medicaid "fee-for-service" costs of the CMHC must be clearly demarcated from the board's costs as well as the costs associated with care to recipients enrolled in an MCO.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). CMHCs will experience administrative costs associated with tracking and reporting costs data (including employing or contracting with personnel capable of accurately tracking and reporting the data).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). CMHCs will benefit by receiving a cost-based reimbursement from DMS for services to Medicaid recipient who are not enrolled with a managed care organization.

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

(a) Initially: Due to the uncertainty of how many CMHCs will elect to expand their scope of services to include primary care services and to the uncertainty of when such CMHCs will meet the associated licensure requirements established by the Office of Inspector General, DMS is unable to project a cost associated with this action. DMS does not anticipate a substantial change in costs associated with implementing the new cost-based reimbursement methodology mandated by CMS, but won't know the full impact until after receiving cost reports from CMHCs in the future. DMS spent an aggregate (state and federal funds combined) of $9.67 million on CMHC services during the state fiscal year that ended June 30, 2015.

(b) On a continuing basis: The response in paragraph (a) also applies here.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(10)(B).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect." KRS 205.6313 mandates that the Medicaid Program pay community mental health centers for primary service services at the same rates it pays primary care providers for such services.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope as available to other individuals (non-Medicaid.) Expanding the primary care provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

Medicaid Services will be affected by the amendment to this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6313.

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

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

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

(c) How much will it cost to administer this program for the first year? Due to the uncertainty of how many CMHCs will elect to expand their scope of services to include primary care services and to the uncertainty of when such CMHCs will meet the associated licensure requirements established by the Office of Inspector General, DMS is unable to project a cost associated with this action. DMS does not anticipate a substantial change in costs associated with implementing the new cost-based reimbursement methodology mandated by CMS, but won't know the full impact until after receiving cost reports from CMHCs in the future. DMS spent an aggregate (state and federal funds combined) of $9.67 million on CMHC services during the state fiscal year that ended June 30, 2015.

(d) How much will it cost to administer this program for subsequent years? The response in (c) above also applies here.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

907 KAR 1:047. Community mental health center primary care services.

RELATES TO: KRS 205.520, 210.410

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6313, 42 C.F.R. 440.130, 42 U.S.C. 1396d(a)(13)(C)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Medicaid Program's coverage provisions and requirements regarding primary care services provided in a community mental health center to Medicaid recipients.

Section 1. Definitions. (1) "CLIA" means the Clinical Laboratory Improvement Amendments, 42 C.F.R. Part 493.

(2) "Community mental health center" or "CMHC" means a facility that meets the community mental health center requirements established in 902 KAR 20:091.

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

(4) "Enrollee" means a recipient who is enrolled with a managed care organization. (5) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(6) "Injectable drug" means an injectable, infused, or inhaled drug or biological that:

(a) Is not excluded as a noncovered immunization or vaccine;

(b) Requires special handling, storage, shipping, dosing, or administration; and

(c) Is a rebatable drug.

(7) "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined by 42 C.F.R. 438.2.

(8) "Medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(9) "Occupational therapist" is defined by KRS 319A.010(3).

(10) "Occupational therapy assistant" is defined by KRS 319A.010(4).

(11) "Physical therapist" is defined by KRS 327.010(2).

(12) "Physical therapist assistant" means a skilled health care worker who:

(a) Is certified by the Kentucky Board of Physical Therapy; and

(b) Performs physical therapy and related duties as assigned by the supervising physical therapist.

(13) "Rebatable drug" means a drug for which the drug's manufacturer has entered into or complied with a rebate agreement in accordance with 42 U.S.C. 1396r-8(a).

(14) "Recipient" is defined by KRS 205.8451(9).

(15) "Speech-language pathologist" is defined by KRS 334A.020(3).

(16) "Speech-language pathology clinical fellow" means an individual who is recognized by the American Speech-Language-Hearing Association as a speech-language pathology clinical fellow.

Section 2. General Requirements. (1) For the department to reimburse for a primary care service provided by a community mental health center under this administrative regulation, the:

(a) CMHC shall be currently:

1. Enrolled in the Medicaid Program in accordance with 907 KAR 1:672;

2. Participating in the Medicaid Program in accordance with 907 KAR 1:671; and

3. Licensed in accordance with 902 KAR 20:091; and

(b) Service shall:

1. Be medically necessary;

2. Meet the coverage and related requirements established in this administrative regulation; and

3. Be provided by an individual who is currently licensed or certified in accordance with the respective Kentucky licensure or certification Kentucky Revised Statute or administrative regulation to provide the given service.

(2) In accordance with 907 KAR 17:015, Section 3(3), a CMHC that provides a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

(3) A CMHC shall:

(a) Agree to provide services in compliance with federal and state laws regardless of age, sex, race, creed, religion, national origin, handicap, or disability; and

(b) Comply with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments to the act.

Section 3. Covered Services and Injectable Drugs. (1)(a) Primary care services provided by a community mental health center and covered under this administrative regulation shall include:

1. Physician services;

2. Laboratory services if the CMHC is certified under CLIA to perform laboratory services;

3. Radiological services;

4. Occupational therapy;

5. Physical therapy; and

6. Speech-language pathology services.

(b) An injectable drug listed on the Physician Injectable Drug List that is administered in a CMHC shall be covered under this

administrative regulation.

(2)(a) The coverage of:

1. Physician services provided by a community mental health center shall be in accordance with the requirements established in 907 KAR 3:005;

2. Laboratory services provided by a community mental health center shall be in accordance with the requirements established in 907 KAR 3:005; or

3. Radiological services provided by a community mental health center shall be in accordance with the requirements established in 907 KAR 3:005.

(b) Occupational therapy provided by a community mental health center shall be covered under this administrative regulation if provided by an:

1. Occupational therapist; or

2. Occupational therapy assistant who renders services under supervision in accordance with 201 KAR 28:130.

(c) Physical therapy provided by a community mental health center shall be covered under this administrative regulation if provided by a:

1. Physical therapist; or

2. Physical therapist assistant who renders services under supervision in accordance with 201 KAR 22:053.

(d) Speech-language pathology services provided by a community mental health center shall be covered under this administrative regulation if provided by a:

1. Speech-language pathologist; or

2. Speech-language pathology clinical fellow who renders services under the supervision of a speech-language pathologist.

Section 4. Service Limitations. (1) The limitations established in 907 KAR 3:005 regarding:

(a) Physician services shall apply to physician services provided by a community mental health center;

(b) Laboratory services shall apply to laboratory services provided by a community mental health center; and

(c) Radiological services shall apply to radiological services provided by a community mental health center.

(2)(a) Except as established in paragraph (b) of this subsection, the limitations and coverage requirements established in 907 KAR 8:040 regarding occupational therapy, physical therapy, and speech-language pathology services shall apply to occupational therapy, physical therapy, and speech-language pathology services provided by a community mental health center.

(b) The provision in 907 KAR 8:040 establishing that the eligible providers of occupational therapy, physical therapy, or speech-language pathology services shall be any of the following shall not apply to a community mental health center:

1. An adult day health care program;

2. A multi-therapy agency;

3. A comprehensive outpatient rehabilitation facility;

4. A mobile health service;

5. A special health clinic; or

6. A rehabilitation agency.

Section 5. Prior Authorization Requirements. (1)(a) Except for the prior authorization requirements regarding occupational therapy, physical therapy, and speech-language pathology services and except as established in paragraph (b) of this subsection, the prior authorization requirements established in 907 KAR 3:005 for physician services, laboratory services, and radiological services shall apply to physician services, laboratory services, and radiological services provided by a CMHC under this administrative regulation.

(b) The prior authorization requirements established in 907 KAR 3:005 shall not apply to services provided to recipients who are enrolled with a managed care organization.

(2) The prior authorization requirements established in 907 KAR 8:040 regarding occupational therapy, physical therapy, and speech-language pathology services shall apply to occupational therapy, physical therapy, and speech-language pathology services provided by a community mental health center.

Section 6. No Duplication of Service. (1) The department shall not reimburse for a primary care service provided to a recipient by more than one (1) provider of any program in which primary care services are covered during the same time period.

(2) For example, if a recipient is receiving a primary care service from a rural health clinic enrolled with the Medicaid Program, the department shall not reimburse for the same primary care service provided to the same recipient during the same time period by a community mental health center.

Section 7. Records Maintenance, Protection, and Security. (1) A provider shall maintain a current health record for each recipient.

(2) A health record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.

(3) The individual who provided the service shall date and sign the health record **within forty-eight (48) hours of**[~~on~~] the date that the individual provided the service.

(4)(a) Except as established in paragraph (b) of this subsection, a provider shall maintain a health record regarding a recipient for at least five (5) years from the date of the service or until any audit dispute or issue is resolved beyond five (5) years.

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

(5) A provider shall comply with 45 C.F.R. Part 164.

Section 8. Medicaid Program Participation Compliance. (1) A provider shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672; and

(c) All applicable state and federal laws.

(2)(a) If a provider receives any duplicate payment or overpayment from the department or a managed care organization, regardless of reason, the provider shall return the payment to the department or managed care organization in accordance with 907 KAR 1:671.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

Section 9. Third Party Liability. A provider shall comply with KRS 205.622.

Section 10. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.

Section 11. Auditing Authority. The department or managed

care organization in which an enrollee is enrolled shall have the authority to audit any:

(1) Claim;

(2) Health record; or

(3) Documentation associated with any claim or health record.

Section 12. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 13. Appeal Rights. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

Section 14. Incorporation by Reference. (1) The "Physician Injectable Drug List", April 1, 2016, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law:

(a) At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at http://www.chfs.ky.gov/dms/incorporated.htm.

STEPHEN P. MILLER, Commissioner
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: February 7, 2017

FILED WITH LRC: February 15, 2017 at 10 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact persons: Sharley Hughes (502) 564-4321, email Sharley.hughes@ky.gov, and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program primary care services provided by community mental health centers (CMHCs). Primary care services covered under this administrative regulation include physician services, laboratory services, radiological services, occupational therapy (OT), physical therapy (PT), and speech-language pathology (SLP) services. Additionally, physician injectable drugs administered at a community mental shall center shall be covered under this administrative regulation. Key requirements include that any physician service limit established in the Medicaid program physician services administrative regulation (907 KAR 3:005, Physician services) shall apply to physician services provided by a CMHC; that any laboratory service limit established in 907 KAR 3:005 shall apply to any laboratory service provided by a CMHC; that any radiological service limit established in 907 KAR 3:005 shall apply to any radiological service provided by a CMHC; that any OT limit, PT limit, or SLP service limit established in 907 KAR 8:040, Coverage of occupational therapy, physical therapy, and speech-language pathology services provided by various entities shall apply to OT, PT, or SLP services provided by a community mental health center; that the prior authorization requirements established in 907 KAR 3:005, Physician services shall apply to physician services, laboratory services, or radiological services provided by a community mental health center; and that the prior authorization requirements regarding OT, PT, and SLP services established in 907 KAR 8:040 shall apply to OT, PT, or SLP services provided by a community mental health center.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the coverage provisions and requirements regarding CMHC primary care services covered by the Medicaid Program as authorized by KRS 205.6313.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes (including KRS 205.6313) by establishing the coverage provisions and requirements regarding CMHC primary care services covered by the Medicaid Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes (including KRS 205.6313) by establishing the coverage provisions and requirements regarding CMHC primary care services covered by the Medicaid Program.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Community mental health centers will be affected by this amendment as will Medicaid recipients who receive services from CMHCs.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. CMHCs that wish to provide primary care services to Medicaid recipients will have to do so according to the requirements such as having staff authorized to provide such services.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). CMHCs that wish to provide primary care services to Medicaid recipients will benefit by being enabled to receive Medicaid reimbursement for such services.

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

(a) Initially: Due to the uncertainty of how many CMHCs will elect to expand their scope of services to include primary care services and to the uncertainty of when such CMHCs will meet the associated licensure requirements established by the Office of Inspector General, DMS is unable to project a cost associated with this action. Additionally, DMS cannot predict how many individuals who currently receive primary care services from other Medicaid primary care providers (physician's practices, advanced practice registered nurse practices, primary care centers, federally-qualified health care centers, or rural health clinics) – each category of which is reimbursed uniquely - will choose to receive such care from a CMHC.

(b) On a continuing basis: The response to (a) above also applies here.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), and 205.6313.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS does not anticipate additional revenues for state or local government as a result of the amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The response to question (a) also applies here.

(c) How much will it cost to administer this program for the first year? Due to the uncertainty of how many CMHCs will elect to expand their scope of services to include primary care services and to the uncertainty of when such CMHCs will meet the associated licensure requirements established by the Office of Inspector General, DMS is unable to project a cost associated with this action.

(d) How much will it cost to administer this program for subsequent years? The response in (c) above also applies here.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

907 KAR 15:005. Definitions for 907 KAR Chapter 15.

RELATES TO: KRS 194A.025(3)

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.6311, 42 U.S.C. 1396a

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the definitions for 907 KAR Chapter 15.

Section 1. Definitions. (1) "Adult peer support specialist" means an individual who meets the requirements for an adult peer support specialist established in 908 KAR 2:220.

(2) "Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7).

(3)[~~(2)~~] "Approved behavioral health services provider" means a practitioner who[~~provider that~~] is:

(a) A physician; (b) A psychiatrist;

(c) An advanced practice registered nurse;

(d) A physician assistant;

(e) A licensed psychologist

(f) A licensed psychological practitioner;

(g) A certified psychologist with autonomous functioning;

(h) A licensed clinical social worker;

(i)[~~(h)~~] A licensed professional clinical counselor;

(j)[~~(i)~~] A licensed marriage and family therapist;

(k)[~~(j)~~] A licensed psychological associate working under the supervision of a board-approved licensed psychologist who is a billing supervisor;

(l) A certified psychologist working under the supervision of a board-approved licensed psychologist who is a billing supervisor;

(m)[~~(k)~~] A marriage and family therapy associate working under the supervision of a billing supervisor;

(n)[~~(l)~~] A certified social worker working under the supervision of a billing supervisor;

(o)[~~(m)~~] A licensed professional counselor associate working under the supervision of a billing supervisor;

(p)[~~(n)~~] A licensed professional art therapist;[~~or~~]

(q)[~~(o)~~] A licensed professional art therapist associate working under the supervision of a billing supervisor;

(r) A licensed clinical alcohol and drug counselor;

(s) A licensed clinical alcohol and drug counselor associate working under the supervision of a billing supervisor; or

(t) A certified alcohol and drug counselor working under the supervision of a billing supervisor.

(4)[~~(3)~~] "Behavioral health multi-specialty group[~~practitioner~~]" means a group of more than one (1) individually licensed behavioral health practitioners of varying practitioner types who form a business entity to:

(a) Render health services; and

(b) Bill the Medicaid Program for services rendered to Medicaid recipients[~~An approved behavioral health services provider; or~~

~~(b) A certified alcohol and drug counselor~~].

(5)[~~(4)~~] "Behavioral health practitioner under supervision" means an individual who is:

(a)1. A licensed psychological associate**[~~working under the supervision of a board-approved licensed psychologist who is a billing supervisor~~]**;

2. A licensed professional counselor associate;

3. A licensed clinical alcohol and drug counselor associate;

4. A certified social worker;

5.[~~4.~~] A marriage and family therapy associate;

6.[~~5.~~] A licensed professional art therapist associate;

7.[~~6.~~] A licensed assistant behavior analyst;

8.[~~7.~~] A physician assistant;[~~or~~]

9. A certified psychologist**[~~working under the supervision of a board-approved licensed psychologist who is a billing supervisor~~]**; or

10.[~~8.~~] A certified alcohol and drug counselor; and

(b) Employed by or under contract with the same billing provider as the billing supervisor.

(6) "Behavioral health provider group" means a group of more than one (1) individually licensed behavioral health practitioners of the same practitioner type who form a business entity to:

(a) Render health services; and

(b) Bill the Medicaid Program for services rendered to Medicaid recipients.

(7)[~~(5)~~] "Behavioral health services organization" means an entity that is licensed as a behavioral health services organization pursuant to 902 KAR 20:430.

(8)[~~(6)~~] "Billing provider" means the individual who, group of individual providers that, or organization that:

(a) Is authorized to bill the department or a managed care organization for a service; and

(b) Is eligible to be reimbursed by the department or a

managed care organization for a service.

(9)[(7)] "Billing supervisor" means an individual who is:

(a)1. A physician;

2. A psychiatrist;

3. An advanced practice registered nurse;

4. A licensed clinical alcohol and drug counselor;

5. A licensed psychologist;

6.[5.] A licensed clinical social worker;

7.[6.] A licensed professional clinical counselor;

8.[7.] A licensed psychological practitioner;

9. A certified psychologist with autonomous functioning;

10.[8.] A licensed marriage and family therapist;

11.[9.] A licensed professional art therapist; or

12.[10.] A licensed behavior analyst; and

(b) Employed by or under contract with the same billing provider as the behavioral health practitioner under supervision who renders services under the supervision of the billing supervisor.

(8) "Certified alcohol and drug counselor" is defined by KRS 309.080(2)[means an individual who meets the requirements established in KRS 309.083].

(10) "Certified prevention specialist" means an individual who is currently certified as a certified prevention specialist by the Kentucky Certification Board for Prevention Professionals.

(11) "Certified psychologist" means an individual who is a certified psychologist pursuant to KRS 319.056.

(12) "Certified psychologist with autonomous functioning" means an individual who is a certified psychologist with autonomous functioning pursuant to KRS 319.056.

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

(14) "Chemical dependency treatment center" means an entity that is licensed as a chemical dependency treatment center pursuant to 902 KAR 10:160.

(15)[(10)] "Community support associate" means a paraprofessional who meets the application, training, and supervision requirements of 908 KAR 2:250.

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

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

(18)[(13)] "Enrollee" means a recipient who is enrolled with a managed care organization.

(19)[(14)] "Face-to-face" means occurring:

(a) In person; or

(b) If authorized by 907 KAR 3:170, via a real-time, electronic communication that involves two (2) way interactive video and audio communication.

(20)[(15)] "Family peer support specialist" means an individual who meets the requirements for a Kentucky family peer support specialist established in 908 KAR 2:230.

(21)[(16)] "Federal financial participation" is defined by 42 C.F.R. 400.203.

(22)[(17)] "Healthcare common procedure coding system" or "HCPCS" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services (CMS) that represents procedures or items.

(23) "Level I psychiatric residential treatment facility" means an entity that is licensed as a Level I psychiatric residential treatment facility pursuant to 902 KAR 20:320.

(24) "Level II psychiatric residential treatment facility" means an entity that is licensed as a Level II psychiatric residential treatment facility pursuant to 902 KAR 20:320.

(25)[(18)] "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).

(26)[(19)] "Licensed behavior analyst" is defined by KRS 319C.010(6).

(27) "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(4).

(28) "Licensed clinical alcohol and drug counselor associate" is defined by KRS 309.080(5).

(29)[(20)] "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.

(30)[(21)] "Licensed marriage and family therapist" is defined by KRS 335.300(2).

(31)[(22)] "Licensed professional art therapist" is defined by KRS 309.130(2).

(32)[(23)] "Licensed professional art therapist associate" is defined by KRS 309.130(3).

(33)[(24)] "Licensed professional clinical counselor" is defined by KRS 335.500(3).

(34)[(25)] "Licensed professional counselor associate" is defined by KRS 335.500(4).

(35)[(26)] "Licensed psychological associate" means an individual who **meets the requirements established in KRS 319.064[:**

(a)1. Currently possesses a licensed psychological associate license in accordance with KRS 319.010(6); and

2. Meets the licensed psychological associate requirements established in 201 KAR Chapter 26; or

(b) Is a certified psychologist].

(36)[(27)] "Licensed psychological practitioner" means an individual who [:

(a)] meets the requirements established in KRS 319.053**;** [; or

(b) Is a certified psychologist with autonomous functioning].

(37)[(28)] "Licensed psychologist" means an individual who:

(a) Currently possesses a licensed psychologist license in accordance with KRS 319.010(6); and

(b) Meets the licensed psychologist requirements established in 201 KAR Chapter 26.

(38)[(29)] "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined by[in] 42 C.F.R. 438.2.

(39)[(30)] "Marriage and family therapy associate" is defined by KRS 335.300(3).

(40) "Medicaid-covered service" means a service covered by the department as established in Title 907 of the Kentucky Administrative Regulations.

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

(42)[(32) "Peer support specialist" means an individual who meets the peer specialist qualifications established in 908 KAR 2:220.

(33)] "Person-centered service plan" means a plan of services for a recipient that meets the requirements established in 42 C.F.R. 441.540.

(43)[(34)] "Physician" is defined by KRS 205.510(11).

(44)[(35)] "Physician assistant" is defined by KRS 311.840(3).

(45)[(36)] "Provider" is defined by KRS 205.8451(7).

(46)[(37)] "Provider abuse" is defined by KRS 205.8451(8).

(47) "Psychiatric hospital" means an entity licensed as a psychiatric hospital pursuant to 902 KAR 20:180.

(48)[(38) "Provider group" means a group of more than one (1) individually licensed practitioners who form a business entity to:

(a) Render health services; and

(b) Bill the Medicaid Program for services rendered to Medicaid recipients.

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

(49)[(40)] "Recipient abuse" is defined by KRS 205.8451(10).

(50) "Recipient's representative" means:

(a) For a recipient who is authorized by Kentucky law to provide written consent, an individual acting on behalf of, and with written consent from, the recipient; or

(b) A legal guardian.

(51) "Registered alcohol and drug peer support specialist" is defined by KRS 309.080(8).

(52)[(41)] "Registered nurse" is defined by KRS 314.011(5).

(53)[(42)] "Residential crisis stabilization unit" means an entity that is licensed as a residential crisis stabilization unit pursuant to 902 KAR 20:440.

(54)[(43)] "Section 504 plan" means a plan developed:

(a) Under the auspices of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 (Section 504); and

(b) To ensure that a child who has a disability identified under

the law and is attending an elementary or secondary educational institution receives accommodations to ensure the child's academic success and access to the learning environment.

(55)[~~(44)~~] "Youth peer support specialist" means an individual who meets the requirements established for a Kentucky youth peer support specialist established in 908 KAR 2:240.

STEPHEN P. MILLER, Commissioner
VICKIE YATES BROWN GLISSON, Secretary
APPROVED BY AGENCY: February 15, 2017
FILED WITH LRC: February 15, 2017 at 10 a.m.
CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Sharley Hughes (502) 564-4321, extension 2010, email sharleyj.hughes@ky.gov, and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the definitions for administrative regulations located in 907 KAR Chapter 15. Chapter 15 contains Medicaid administrative regulations regarding behavioral health services (treatment of mental health disorders as well as of substance use disorders) provided by independently enrolled behavioral health professionals, behavioral health service organizations, behavioral health provider groups, behavioral health multi-specialty groups, chemical dependency treatment centers, and residential crisis stabilization units.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the definitions for administrative regulations located in 907 KAR Chapter 15. Chapter 15 contains Medicaid administrative regulations regarding behavioral health services (treatment of mental health disorders as well as of substance use disorders) provided by independently enrolled behavioral health professionals, behavioral health service organizations, behavioral health provider groups, behavioral health multi-specialty groups, chemical dependency treatment centers, and residential crisis stabilization units. Medicaid programs are federally-mandated to cover behavioral health services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the definitions for administrative regulations located in 907 KAR Chapter 15.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing the definitions for administrative regulations located in 907 KAR Chapter 15.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds the following definitions; "certified psychologist", "certified psychologist with autonomous functioning", "chemical dependency treatment center", "Level I psychiatric residential treatment facility", "Level II psychiatric residential treatment facility", "licensed assistant behavior analyst", "licensed behavior analyst, licensed clinical alcohol and drug counselor", "licensed clinical and alcohol and drug counselor associate", "psychiatric hospital", and "recipient's representative". The amendment also adds "certified psychologist with autonomous functioning", "licensed professional clinical counselor", "certified psychologist", "licensed clinical alcohol and drug counselor", "licensed clinical alcohol and drug counselor associate" and "certified alcohol and drug counselor" to the definition of "an approved behavioral health service provider," Further, the amendment adds "certified psychologist with autonomous functioning" to the list of "billing supervisors". Finally, the amendment revises the definitions of "licensed psychological practitioner" and "peer support specialist".

(b) The necessity of the amendment to this administrative regulation: Inserting the new definitions is necessary to update terminology used in recently promulgated administrative regulations subsequent to the adoption of 907 KAR 15:005. The amendments are also necessary to comport with legislation that created two new licensed practitioners - "licensed clinical alcohol drug counselors" and "licensed clinical alcohol drug counselor associates".

(c) How the amendment conforms to the content of the authorizing statutes: The amendments will conform to the content of the authorizing statutes by defining terms utilized in Medicaid program behavioral health administrative regulations.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist in the effective administration of the authorizing statutes by defining terms utilized in behavioral health administrative regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The following Medicaid-enrolled providers will be affected by this administrative regulation: individual Medicaid- behavioral health providers, behavioral health provider groups and multi-specialty groups, behavioral health services organizations, chemical dependency treatment centers, and residential crisis stabilization units. There are currently over 2,200 such individuals or entities enrolled in the Medicaid program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required by this administrative regulation is it only contains definitions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individuals will benefit due to terms being defined.

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

(a) Initially: No cost is necessary to initially implement this administrative regulation.

(b) On a continuing basis: No continuing cost is necessary to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and state matching funds comprised of general fund and restricted fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding are necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor directly or indirectly increases any fees.

(9) Tiering: Is tiering applied? Tiering is neither applied nor necessary as the administrative regulation establishes definitions for Medicaid independent behavioral health services (including substance use disorder services) and reimbursement.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1),

205.520(3), 205.6311, 42 U.S.C. 1396a.

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

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

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

(c) How much will it cost to administer this program for the first year? No cost is necessary to implement this administrative regulation in the first year.

(d) How much will it cost to administer this program for subsequent years? No cost is necessary in subsequent years to implement this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other explanation:

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

907 KAR 15:010. Coverage provisions and requirements regarding behavioral health services provided by individual behavioral health providers, behavioral health provider groups, and behavioral health multi-specialty groups.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6311

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program behavioral health services provided by certain licensed individual behavioral health professionals who are independently enrolled in the Medicaid Program, [~~or~~] practitioners working for or under the supervision of the individual behavioral health[~~independent~~] providers, **and** individual behavioral health professionals**[,]** and practitioners under supervision working in behavioral health provider groups or in behavioral health multi-specialty groups.

Section 1. General Coverage Requirements. (1) For the department to reimburse for a service covered under this administrative regulation, the service shall[~~be~~]:

(a) Be medically necessary;

(b) Meet the coverage requirements established in Section 3 of this administrative regulation;

(c) Be provided to a recipient by:

1. An individual behavioral health provider who:

a. Is enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

b. Except as established in Section 2(1) of this administrative regulation, currently participates in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; and

c. Is:

(i) A physician;

(ii) A psychiatrist;

(iii) An advanced practice registered nurse;

(iv) A physician assistant;

(v) A licensed psychologist;

(vi) A licensed psychological practitioner;

(vii) A certified psychologist with autonomous functioning;

(viii) A licensed clinical social worker;

(ix) A licensed professional clinical counselor;

(x) A licensed marriage and family therapist;

(xi) A licensed professional art therapist; [~~or~~]

(xii) A licensed clinical alcohol and drug counselor; **or**

(xiii) A licensed behavior analyst.

2. Any of the individual behavioral health professionals listed in subparagraph 1.c. of this paragraph who is working for:

a. A behavioral health provider group that is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; or

b. A behavioral health multi-specialty group that is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;

3. A behavioral health practitioner under supervision working for:

a. An individual behavioral health professional listed in subparagraph 1.c. of this paragraph who is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;

b. A behavioral health provider group that is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; or

c. A behavioral health multi-specialty group that is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;

4. A certified psychologist working under the supervision of a board-approved licensed psychologist who is:

a.(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;

b. Working for a behavioral health provider group that is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; or

c. Working for a behavioral health multi-specialty group that is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; or

5. An adult peer support specialist, family peer support specialist, youth peer support specialist,**[community support associate,]** or registered alcohol and drug peer support specialist working for:

a. Any of the individual behavioral health professionals listed in subparagraph 1.c. of this paragraph who is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;

b. A behavioral health provider group that is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; or

c. A behavioral health multi-specialty group that is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671[~~(b) Provided:~~

~~1. To a recipient; and~~

~~2. By a:~~

~~a. Provider who meets the provider participation requirements established in Section 2 of this administrative regulation; or~~

~~b. Practitioner working under the supervision of a provider who meets the provider participation requirements established in Section 2 of this administrative regulation~~]; and

(d) Be[~~(c)~~] billed to the department by the:

1. Individual[~~Billing~~] provider who provided the service or under whose supervision the service was rendered[~~provided by an authorized practitioner~~] in accordance with Section 3 of this administrative regulation;

2. Behavioral health provider group on behalf of which the service was rendered in accordance with Section 3 of this administrative regulation; or

3. Behavioral health multi-specialty group on behalf of which the service was rendered in accordance with Section 3 of this administrative regulation.

(2)(a) Face-to-face[~~Direct~~] contact between a provider or practitioner and a recipient shall be required for each service except for:

1. Collateral outpatient therapy for a child under the age of twenty-one (21) years if the collateral outpatient therapy is in the child's plan of care;

2. A family outpatient therapy service in which the corresponding current procedural terminology code establishes that the recipient is not present;

3. A psychological testing service comprised of interpreting or explaining results of an examination or data to family members or others in which corresponding current procedural terminology code establishes that the recipient is not present; or

4. A service planning activity in which the corresponding current procedural terminology code establishes that the recipient is not present[~~a collateral service for a child under the age of twenty-one (21) years if the collateral service is in the child's plan of care~~].

(b) A service that does not meet the requirement in paragraph (a) of this subsection shall not be covered.

(3) A billable unit of service shall be actual time spent delivering a service in a face-to-face encounter.

(4) A service shall be:

(a) Stated in a recipient's[~~treatment~~] plan of care; and

(b) Provided in accordance with a recipient's[~~treatment~~] plan of care[~~; and~~

~~(c) Provided on a regularly scheduled basis except for a screening, assessment, or crisis intervention~~].

(5) A provider shall establish a plan of care for each recipient receiving services from the provider.

Section 2. Provider Participation. (1)[~~To be eligible to provide services under this administrative regulation, a provider shall:~~

~~(a) Be currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and~~

~~(b) Except as established in subsection (2) of this section, be currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671.~~

~~(2)~~] In accordance with 907 KAR 17:015, Section 3(3), a provider of a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

(2)[~~(3)~~] A provider shall:

(a) Agree to provide services in compliance with federal and state laws regardless of age, sex, race, creed, religion, national origin, handicap, or disability; and

(b) Comply with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments to the Act.

Section 3. Covered Services. (1) Except as specified in the requirements stated for a given service, the services covered may be provided for a:

(a) Mental health disorder;

(b) Substance use disorder; or

(c) Co-occurring mental health and substance use disorders.

(2) The following services shall be covered under this administrative regulation in accordance with the[~~corresponding following~~] requirements established in this section of this administrative regulation:

(a) A screening provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A certified psychologist with autonomous functioning;

10. A licensed clinical and alcohol drug counselor; **[~~or~~]**

11. **A licensed professional art therapist; or**

12. A behavioral health practitioner under supervision except for a licensed assistant behavior analyst[~~licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;~~

~~10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;~~

~~11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;~~

~~12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;~~

~~13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;~~

~~14. A licensed professional art therapist; or~~

~~15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service~~];

(b) An assessment provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A certified psychologist with autonomous functioning[~~licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service~~];

10. A licensed[~~professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;~~

~~11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;~~

~~12. A marriage and family therapy associate working under the~~

~~supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;~~

~~13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;~~

~~14. A licensed professional art therapist;~~

~~15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service~~;

~~16. A licensed~~] behavior analyst;

11.[~~or 17.~~] A licensed clinical alcohol and drug counselor; **[~~or~~]**

12. **A licensed professional art therapist; or**

13. A behavioral health practitioner under[~~licensed assistant behavior analyst working under the~~] supervision[~~of a licensed behavior analyst if the licensed behavior analyst is the billing provider for the service~~];

(c) Psychological testing provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner;[~~or~~]

3. A licensed psychological associate working under the supervision of a board-approved licensed psychologist who is a[~~if the licensed psychologist is the~~] billing supervisor[~~provider for the service~~];

4. A certified psychologist with autonomous functioning; or

5. A certified psychologist working under the supervision of a board-approved licensed psychologist who is a billing supervisor;

(d)[~~Crisis intervention provided by:~~

~~1. A licensed psychologist;~~

~~2. A licensed professional clinical counselor;~~

~~3. A licensed clinical social worker;~~

~~4. A licensed marriage and family therapist;~~

~~5. A physician;~~

~~6. A psychiatrist;~~

~~7. An advanced practice registered nurse;~~

~~8. A licensed psychological practitioner;~~

~~9. A licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;~~

~~10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;~~

~~11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;~~

~~12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;~~

~~13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;~~

~~14. A licensed professional art therapist; or~~

~~15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service;~~

~~(e)~~] Service planning provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A certified psychologist with autonomous functioning;

10. A licensed[~~psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;~~

~~10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;~~

~~11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;~~

~~12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;~~

~~13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;~~

~~14. A licensed~~] professional art therapist;

11.[~~15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service;~~

~~16.~~] A licensed behavior analyst; or

12. A behavioral health practitioner[~~17. A licensed assistant behavior analyst working~~] under[~~the~~] supervision except for a:

a. Certified alcohol and drug counselor; or

b. Licensed clinical alcohol and drug counselor associate[~~of a licensed behavior analyst if the licensed behavior analyst is the billing provider for the service~~];

(e)[~~(f)~~] Individual outpatient therapy, group outpatient therapy, collateral outpatient therapy, or crisis intervention services provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A certified psychologist with autonomous functioning[~~licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service~~];

10. A licensed[~~professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;~~

~~11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;~~

~~12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;~~

~~13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;~~

~~14. A licensed~~] professional art therapist;

11.[~~15.~~] A licensed[~~professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service;~~

~~16. A licensed~~] behavior analyst;

12. A licensed clinical alcohol and drug counselor; or

13. A behavioral health practitioner[~~17. A licensed assistant behavior analyst working~~] under[~~the~~] supervision[~~of a licensed behavior analyst if the licensed behavior analyst is the billing provider for the service~~];

(f)[~~(g)~~] Family outpatient therapy provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A certified psychologist with autonomous functioning[~~licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist~~

~~is the billing provider for the service~~];

10. A licensed professional[~~counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;~~

~~11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;~~

~~12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;~~

~~13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;~~

~~14. A licensed professional~~] art therapist;**[~~or~~]**

11. **A licensed clinical alcohol and drug counselor; or**

12.[~~or 15.~~] A behavioral health practitioner[~~licensed professional art therapist associate working~~] under[~~the~~] supervision except for a licensed assistant behavior analyst[~~of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service~~];

(g)[~~(h) Group outpatient therapy provided by:~~

~~1. A licensed psychologist;~~

~~2. A licensed professional clinical counselor;~~

~~3. A licensed clinical social worker;~~

~~4. A licensed marriage and family therapist;~~

~~5. A physician;~~

~~6. A psychiatrist;~~

~~7. An advanced practice registered nurse;~~

~~8. A licensed psychological practitioner;~~

~~9. A licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;~~

~~10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;~~

~~11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;~~

~~12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;~~

~~13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;~~

~~14. A licensed professional art therapist;~~

~~15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service;~~

~~16. A licensed behavior analyst; or~~

~~17. A licensed assistant behavior analyst working under the supervision of a licensed behavior analyst if the licensed behavior analyst is the billing provider for the service;~~

~~(i) Collateral outpatient therapy provided by:~~

~~1. A licensed psychologist;~~

~~2. A licensed professional clinical counselor;~~

~~3. A licensed clinical social worker;~~

~~4. A licensed marriage and family therapist;~~

~~5. A physician;~~

~~6. A psychiatrist;~~

~~7. An advanced practice registered nurse;~~

~~8. A licensed psychological practitioner;~~

~~9. A licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;~~

~~10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;~~

~~11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;~~

~~12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;~~

~~13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;~~

~~14. A licensed professional art therapist;~~

~~15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service;~~

~~16. A licensed behavior analyst; or~~

~~17. A licensed assistant behavior analyst working under the supervision of a licensed behavior analyst if the licensed behavior analyst is the billing provider for the service;~~

~~(j)~~] A screening, brief intervention, and referral to treatment for a substance use disorder or SBIRT provided by:

1. A licensed psychologist;
2. A licensed professional clinical counselor;
3. A licensed clinical social worker;
4. A licensed marriage and family therapist;
5. A physician;
6. A psychiatrist;
7. An advanced practice registered nurse;
8. A licensed psychological practitioner;
9. A certified psychologist with autonomous functioning[~~licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service~~];
10. A licensed professional[~~counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;~~

~~11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;~~

~~12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;~~

~~13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;~~

~~14. A licensed professional~~] art therapist;

11. A licensed clinical alcohol and drug counselor; or

12. A behavioral health practitioner[~~or 15. A licensed professional art therapist associate working~~] under[~~the~~] supervision except for[~~of~~] a licensed assistant behavior analyst[~~licensed professional art therapist if the licensed professional art therapist is the billing provider for the service~~];

(h)[~~(k)~~] Day treatment provided by:

1. A licensed psychologist;
2. A licensed professional clinical counselor;
3. A licensed clinical social worker;
4. A licensed marriage and family therapist;
5. A physician;
6. A psychiatrist;
7. An advanced practice registered nurse;
8. A licensed psychological practitioner;
9. A certified psychologist with autonomous functioning[~~licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service~~];
10. A licensed professional[~~counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;~~

~~11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;~~

~~12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the~~

~~service;~~

~~13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;~~

~~14. A licensed professional~~] art therapist;

11. A licensed behavior analyst;

12. A behavioral health practitioner[~~or~~

~~15. A licensed professional art therapist associate working~~] under[~~the~~] supervision[~~of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service~~];

13. An adult peer support specialist, family peer support specialist, or youth peer support specialist working under the supervision of an approved behavioral health services provider; **[~~or~~]**

14. A registered alcohol and drug peer support specialist working under the supervision of an approved behavioral health services provider; or

15. A licensed clinical alcohol and drug counselor;

(i)[~~(l)~~] Comprehensive community support services provided by:

1. A licensed psychologist;
2. A licensed professional clinical counselor;
3. A licensed clinical social worker;
4. A licensed marriage and family therapist;
5. A physician;
6. A psychiatrist;
7. An advanced practice registered nurse;
8. A licensed psychological practitioner;
9. A certified psychologist with autonomous functioning[~~licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service~~];
10. A licensed professional[~~counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;~~

~~11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;~~

~~12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;~~

~~13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;~~

~~14. A licensed professional~~] art therapist;

11.[~~15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service;~~

~~16.~~] A licensed behavior analyst; **or**

12.[~~or~~

~~17.~~] A behavioral health practitioner[~~licensed assistant behavior analyst working~~] under[~~the~~] supervision except for[~~of~~] a:

a. Certified alcohol and drug counselor[~~licensed behavior analyst if the licensed behavior analyst is the billing provider for the service~~]; or

b. Licensed clinical alcohol and drug counselor associate**;[~~ or~~**

~~13. A community support associate;~~]

(j)[~~(m)~~] Peer support, except as established in subsection (3)(a) of this section, provided by:

1. An adult[~~A~~] peer support specialist working under the supervision of an approved behavioral health service provider;[~~or~~]
2. A youth peer support specialist working under the supervision of an approved behavioral health service provider;
3. A family peer support specialist working under the supervision of an approved behavioral health services provider; or
4. A registered alcohol and drug peer support specialist working under the supervision of an approved behavioral health services provider;

(k)[~~(n) Parent or family peer support provided by a family peer support specialist working under the supervision of an approved behavioral health service provider;~~

~~(o)~~] Intensive outpatient program services, except as established in subsection (3)(b) of this section, provided by:

1. A licensed psychologist;
2. A licensed professional clinical counselor;
3. A licensed clinical social worker;
4. A licensed marriage and family therapist;
5. A physician;
6. A psychiatrist;
7. An advanced practice registered nurse;
8. A licensed psychological practitioner;
9.[~~A licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;~~

~~10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;~~

~~11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;~~

~~12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;~~

~~13.~~] A behavioral health practitioner[~~physician assistant working~~] under[~~the~~] supervision**, except for a licensed assistant behavioral analyst**[~~of a physician if the physician is the billing provider for the service~~]; **[~~or~~]**

10.[~~14.~~] A licensed professional art therapist;[~~or~~

~~15. A licensed professional art therapist associate;~~] or

11. A licensed clinical alcohol and drug counselor; or

(l)[~~(p)~~] Therapeutic rehabilitation program services provided by:

1. A licensed psychologist;
2. A licensed professional clinical counselor;
3. A licensed clinical social worker;
4. A licensed marriage and family therapist;
5. A physician;
6. A psychiatrist;
7. An advanced practice registered nurse;
8. A licensed psychological practitioner;
9. A certified psychologist with autonomous functioning[~~licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service~~];
10. A licensed professional[~~counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;~~

~~11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;~~

~~12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;~~

~~13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service~~

~~14. A licensed professional~~] art therapist;

11.[~~or~~

~~15.~~] A behavioral health practitioner[~~licensed professional art therapist associate working~~] under[~~the~~] supervision except for[~~of~~] a:

a. Certified alcohol and drug counselor;

b. Licensed clinical alcohol and drug counselor associate; or

c. Licensed assistant behavior analyst; or

12. An adult peer support specialist, family peer support specialist, or youth peer support specialist working under the supervision of an approved behavioral health services provider[~~licensed professional art therapist if the licensed professional art therapist is the billing provider for the service~~].

(3)(a) Peer support shall only be covered if provided by a behavioral health:

1. Provider group; or
2. Multi-specialty group.

(b) Intensive outpatient program services shall only be covered if provided by a behavioral health:

1. Provider group; or

2. Multi-specialty group.

(4)(a) A screening shall:

1. Determine[~~Be the determination of~~] the likelihood that an individual has a mental health disorder, substance use disorder, or co-occurring disorders;

2. Not establish the presence or specific type of disorder; and

3. Establish the need for an in-depth assessment.

(b) An assessment shall:

1. Include gathering information and engaging in a process with the individual that enables the provider to:

a. Establish the presence or absence of a mental health disorder, substance use disorder, or co-occurring disorders;

b. Determine the individual's readiness for change;

c. Identify the individual's strengths or problem areas that may affect the treatment and recovery processes; and

d. Engage the individual in developing an appropriate treatment relationship;

2. Establish or rule out the existence of a clinical disorder or service need;

3. Include working with the individual to develop a treatment and service plan; and

4. Not include psychological or psychiatric evaluations or assessments.

(c) Psychological testing shall:

1. Include:

a.[~~1.~~] A psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities; and

b.[~~2.~~] Interpretation and a written report of testing results; and

2. Be performed by an individual who has met the requirements of KRS Chapter 319 related to the necessary credentials to perform psychological testing.

(d) Crisis intervention:

1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to:

a. The recipient; or

b. Another individual;

2. Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities for individuals;

3. Shall be provided:

a. On-site at the provider's office;

b. As an immediate relief to the presenting problem or threat; and

c. In a face-to-face, one-on-one encounter between the provider and the recipient;

4. May include:

a. Further service prevention planning including:

(i) Lethal means reduction for suicide risk; or

(ii) Substance use disorder relapse prevention; or

b. Verbal de-escalation, risk assessment, or cognitive therapy; and

5. Shall be followed by a referral to noncrisis services if applicable.

(e)1. Service planning shall[~~involve~~]:

a. Involve assisting a recipient in creating an individualized plan for services needed for maximum reduction of a mental health disorder[~~an intellectual disability~~];[~~and~~]

b. Involve restoring a recipient's functional level to the recipient's best possible functional level; and

c. Be performed using a person-centered planning process.

2. A service plan:

a. Shall be directed by the recipient;[~~and~~]

b. Shall include practitioners of the recipient's choosing; and

c. May include:

(i) A mental health advance directive being filed with a local hospital;

(ii) A crisis plan; or

(iii) A relapse prevention strategy or plan.

(f) Individual outpatient therapy shall:

1. Be provided to promote the:

a. Health and well-being[~~wellbeing~~] of the recipient[~~individual~~]; and[~~or~~]

b. Recipient's recovery from a substance related disorder, mental health disorder, or co-occurring mental health and substance use disorders;

2. Consist of:

a. A face-to-face, one-on-one encounter between the provider and recipient; and

b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified[~~treatment~~] plan of care;

3. Be aimed at:

a. Reducing adverse symptoms;

b. Reducing or eliminating the presenting problem of the recipient; and

c. Improving functioning; and

4. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary.

(g)1. Family outpatient therapy shall consist of a face-to-face behavioral health therapeutic intervention provided:

a. Through scheduled therapeutic visits between the therapist and the recipient and at least one (1) member of the recipient's family; and

b. To address issues interfering with the relational functioning of the family and to improve interpersonal relationships within the recipient's home environment.

2. A family outpatient therapy session shall be billed as one (1) service regardless of the number of individuals (including multiple members from one (1) family) who participate in the session.

3. Family outpatient therapy shall:

a. Be provided to promote the:

(i) Health and wellbeing of the recipient[~~individual~~]; and[~~or~~]

(ii) Recipient's recovery from a substance use disorder, mental health disorder, or co-occurring related disorders; and

b. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per individual unless additional time is medically necessary.

(h)1. Group outpatient therapy shall:

a. Be a behavioral health therapeutic intervention provided in accordance with a recipient's identified plan of care;

b. Be provided to promote the:

(i) Health and well-being[~~wellbeing~~] of the recipient[~~individual~~]; and[~~or~~]

(ii) Recipient's recovery from a substance related disorder, mental health disorder, or co-occurring mental health and substance use disorders;

c.[~~b.~~] Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the recipient's identified[~~treatment~~] plan of care;

d.[~~c.~~] Be provided to a recipient in a group setting:

(i) Of nonrelated individuals except for multi-family group therapy; and

(ii) Not to exceed twelve (12) individuals in size;

e. Focus on the psychological needs of the recipients as evidenced in each recipient's plan of care;

f.[~~d.~~] Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;

g.[~~e.~~] Not include physical exercise, a recreational activity, an educational activity, or a social activity; and

h.[~~f.~~] Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary.

2. The group shall have a:

a. Deliberate focus; and

b. Defined course of treatment.

3. The subject of group outpatient therapy shall be related to each recipient participating in the group.

4. The provider shall keep individual notes regarding each recipient within the group and within each recipient's health record.

(i)1. Collateral outpatient therapy shall:

a. Consist of a face-to-face behavioral health consultation:

(i) With a parent or caregiver of a recipient, household member of a recipient, legal representative of a recipient, school personnel, treating professional, or other person with custodial control or supervision of the recipient; and

(ii) That is provided in accordance with the recipient's[~~treatment~~] plan of care; and

b. Not be reimbursable if the therapy is for a recipient who is at least twenty-one (21) years of age[~~; and~~

~~c. Not exceed three (3) hours per day per individual unless additional time is medically necessary~~].

2. Consent to discuss a recipient's treatment with any person other than a parent or legal guardian shall be signed and filed in the recipient's health record.

(j) Screening, brief intervention, and referral to treatment for a substance use disorder shall:

1. Be an evidence-based early intervention approach for an individual with non-dependent substance use to provide an effective strategy for intervention prior to the need for more extensive or specialized treatment; and

2. Consist of:

a. Using a standardized screening tool to assess an individual for risky substance use behavior;

b. Engaging a recipient[~~,~~] who demonstrates risky substance use behavior[~~,~~] in a short conversation and providing feedback and advice to the recipient; and

c. Referring a recipient to[~~:~~

~~(i) Therapy; or~~

~~(ii) Other~~] additional mental health disorder, substance use disorder, or co-occurring disorders services[~~to address substance use~~] if the recipient is determined to need other additional services to address the recipient's substance use.

(k) 1. Day treatment shall be a nonresidential, intensive treatment program designed for a child under the age of twenty-one (21) years who has:

a. A mental health disorder,[~~An emotional disability or neurobiological or~~] substance use disorder, or co-occurring mental health and substance use disorders; and

b. A high risk of out-of-home placement due to a behavioral health issue.

2. Day treatment[~~services~~] shall:

a. Consist of an organized, behavioral health program of treatment and rehabilitative services[~~(substance use disorder, mental health, or co-occurring mental health and substance use disorder)~~];

b.[~~Have unified policies and procedures that:~~

~~(i) Address the program philosophy, admission and discharge criteria, admission and discharge process, staff training, and integrated case planning; and~~

~~(ii) Have been approved by the recipient's local education authority and the day treatment provider;~~

~~c.~~] Include:

(i) Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;

(ii) Behavior management and social skills[~~skill~~] training;

(iii) Independent living skills that correlate to the age and development stage of the recipient; or

(iv) Services designed to explore and link with community resources before discharge and to assist the recipient and family with transition to community services after discharge; and

c.[~~d.~~] Be provided:

(i) In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);

(ii) On school days and during scheduled breaks;

(iii) In coordination with the recipient's individual educational plan if the recipient has an individual educational plan;

(iv) Under the supervision of an approved behavioral health services provider; and

(v) With a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider.

3. To provide day treatment services, a provider shall have:

a. The capacity to employ staff authorized to provide day treatment services in accordance with this section and to coordinate the provision of services among team members; and

b. Knowledge of substance use disorders.

4. Day treatment shall not include a therapeutic clinical service that is included in a child's individualized education plan.

(l)1. Comprehensive community support services shall:

a. Be activities necessary to allow an individual to live with maximum independence in the community;

b. Be intended to ensure successful community living through the utilization of skills training[~~, cueing, or supervision~~] as identified in the recipient's[~~treatment~~] plan of care; and

c. Consist of using a variety of psychiatric **or behavioral** rehabilitation techniques to[~~include~~]:

(i) Improve[~~Reminding a recipient to take medications and monitoring symptoms and side effects of medications;~~

~~(ii) Teaching parenting skills;~~

~~(iii) Teaching community resource access and utilization;~~

~~(iv) Teaching~~] emotional regulation skills;

(ii) Improve[~~(v) Teaching~~] crisis coping skills;

(iii) Develop and enhance[~~(vi) Teaching how to shop;~~

~~(vii) Teaching about transportation;~~

~~(viii) Teaching financial management;~~

~~(ix) Developing and enhancing~~] interpersonal skills;

(iv) Improve[~~or~~

~~(x) Improving~~] daily living skills; and

(v) Improve self-monitoring of symptoms and side effects.

2. To provide comprehensive community support services, a provider shall:

a. Have the capacity to employ staff authorized pursuant to 908 KAR 2:250 to provide comprehensive community support services in accordance with subsection (2)(i)[~~(2)(m)~~] of this section and to coordinate the provision of services among team members; and

b. Meet the requirements for comprehensive community support services established in 908 KAR 2:250.

(m)1. Peer support services shall:

a. Be[~~social and~~] emotional support that is provided by:

(i) An individual who has been trained and certified in accordance with 908 KAR 2:220[~~is employed by a provider group~~] and who is experiencing or has experienced a mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders[~~disorder~~] to a recipient by sharing a similar mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders[~~disorder~~] in order to bring about a desired social or personal change;

(ii) A parent who has been trained and certified in accordance with 908 KAR 2:230 of a child having or who has had a mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders to a parent or family member of a child sharing a similar mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders in order to bring about a desired social or personal change;

(iii) A family member who has been trained and certified in accordance with 908 KAR 2:230 of a child having or who has had a mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders to a parent or family member of a child sharing a similar mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders in order to bring about a desired social or personal change; or

(iv) A registered alcohol and drug peer support specialist who is experiencing or has experienced a substance use disorder to a recipient by sharing a similar substance use disorder in order to bring about a desired social or personal change;

b. Be an evidence-based practice;

c. Be structured and scheduled nonclinical therapeutic activities with an individual recipient or a group of recipients;

d.[~~Be provided by a self-identified consumer who has been trained and certified in accordance with 908 KAR 2:220 or 908 KAR 2:240;~~

~~e.~~] Promote socialization, recovery, self-advocacy,

preservation, and enhancement of community living skills for the recipient;[~~and~~]

e. Be coordinated within the context of a comprehensive, individualized plan of care developed through a person-centered planning process;

f. Be identified in each recipient's[~~treatment~~] plan of care; and

g. Be designed to directly contribute to the recipient's individualized goals as specified in the recipient's plan of care.

2. To provide peer support services a provider shall:

a. Have demonstrated:

(i) The capacity to provide[~~the core elements of~~] peer support services for the behavioral health population being served including the age range of the population being served; and

(ii) Experience in serving individuals with behavioral health disorders;

b. Employ:

(i) Adult peer support specialists, family peer support specialists, or youth peer support specialists who are qualified to provide peer support services in accordance with 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240; or

(ii) Registered alcohol and drug peer support specialists; and

c. Use an approved behavioral health services provider to supervise adult peer support specialists, family peer support specialists, or youth peer support specialists.

(n)1.[~~Parent or family peer support services shall:~~

~~a. Be emotional support that is provided by a parent or family member, who is employed by a provider group, of a child who has experienced a mental health disorder, substance use disorder, or co-occurring mental health and substance use disorder to a parent or family member with a child sharing a similar mental health disorder, substance use disorder, or co-occurring mental health and substance use disorder in order to bring about a desired social or personal change;~~

~~b. Be an evidence-based practice;~~

~~c. Be structured and scheduled nonclinical therapeutic activities with an individual recipient or a group of recipients;~~

~~d. Be provided by a self-identified parent or family member of a child consumer of mental health disorder services, substance use disorder services, or co-occurring mental health disorder services and substance use disorder services who has been trained and certified in accordance with 908 KAR 2:230;~~

~~e. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient; and~~

~~f. Be identified in each recipient's treatment plan.~~

~~2. To provide parent or family peer support services a provider shall:~~

~~a. Have demonstrated the capacity to provide the core elements of parent or family peer support services for the behavioral health population being served including the age range of the population being served;~~

~~b. Employ family peer support specialists who are qualified to provide family peer support services in accordance with 908 KAR 2:230; and~~

~~c. Use an approved behavioral health services provider to supervise family peer support specialists.~~

~~(o)1.~~] Intensive outpatient program services shall:

a. Be an alternative to or transition from inpatient hospitalization or partial hospitalization for a mental health or substance use disorder;

b. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is significantly more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;

c. Be provided at least three (3) hours per day at least three (3) days per week; and

d. Include:

(i) Individual outpatient therapy;

(ii) Group outpatient therapy;

(iii) Family outpatient therapy unless contraindicated;

(iv) Crisis intervention; or

(v) Psycho-education.

2. During psycho-education the recipient or recipient's family member shall be:

a. Provided with knowledge regarding the recipient's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and

b. Taught how to cope with the recipient's diagnosis or condition in a successful manner.

3. An intensive outpatient program services treatment plan shall:

a. Be individualized; and

b. Focus on stabilization and transition to a lesser level of care.

4. To provide intensive outpatient program services, a provider shall:

a. Be employed by a provider group; and

b. Have:

(i) Access to a board-certified or board-eligible psychiatrist for consultation;

(ii) Access to a psychiatrist, other physician, or advanced practice registered nurse for medication management;

(iii) Adequate staffing to ensure a minimum recipient-to-staff ratio of fifteen (15) recipients to one (1) staff person;

(iv) The capacity to provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles;

(v) The capacity to employ staff authorized to provide intensive outpatient program services in accordance with this section and to coordinate the provision of services among team members;

(vi) The capacity to provide the full range of intensive outpatient program services as stated in this paragraph;

(vii) Demonstrated experience in serving individuals with behavioral health disorders;

(viii) The administrative capacity to ensure quality of services;

(ix) A financial management system that provides documentation of services and costs; and

(x) The capacity to document and maintain individual case records.

5. Intensive outpatient program services shall be provided in a setting with a minimum recipient-to-staff ratio of ten (10) to one (1).

(o)1.[~~(p)1. A~~] Therapeutic rehabilitation program services shall be:

a. A rehabilitative service for an:

(i) Adult with a severe[~~serious~~] mental illness; or

(ii) Individual under the age of twenty-one (21) years who has a severe[~~serious~~] emotional disability; and

b. Designed to maximize the reduction of a mental health disorder[~~an intellectual disability~~] and the restoration of the individual's functional level to the individual's best possible functional level.

2. A recipient in a therapeutic rehabilitation program shall establish the recipient's own rehabilitation goals within the[~~person-centered service~~] plan of care.

3. A therapeutic rehabilitation program shall:

a. Be delivered using a variety of psychiatric rehabilitation techniques;

b. Focus on:

(i) Improving daily living skills;

(ii) Self-monitoring of symptoms and side effects;

(iii) Emotional regulation skills;

(iv) Crisis coping skills[~~skill~~]; and

(v) Interpersonal skills; and

c. Be delivered individually or in a group. [~~(4)(a) The following requirements shall apply to any provider of a service to a recipient for a substance use disorder or co-occurring mental health disorder and substance use disorder:~~

~~1. The licensing requirements established in 908 KAR 1:370;~~

~~2. The physical plant requirements established in 908 KAR 1:370;~~

~~3. The organization and administration requirements established in 908 KAR 1:370;~~

~~4. The personnel policy requirements established in 908 KAR 1:370;~~

~~5. The quality assurance requirements established in 908 KAR 1:370;~~

~~6. The clinical staff requirements established in 908 KAR~~

~~1:370;~~

~~7. The program operational requirements established in 908 KAR 1:370; and~~

~~8. The outpatient program requirements established in 908 KAR 1:370.~~

~~(b) The detoxification program requirements established in 908 KAR 1:370 shall apply to a provider of a detoxification service.~~]

(5) The extent and type of a screening shall depend upon the problem of the individual seeking or being referred for services.

(6) A diagnosis or clinic impression shall be made using terminology established in the most current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders.

(7) The department shall not reimburse for a service billed by or on behalf of an entity or individual who is not a billing provider. [~~(8)(a) The term "billing provider" used in this administrative regulation shall include:~~

~~1. The individual provider that is referenced; or~~

~~2. A provider group that includes the individual provider that is referenced.~~

~~(b) As an example of paragraph (a) of this subsection, a licensed psychologist who is a billing provider shall include:~~

~~1. The licensed psychologist as an individual provider; or~~

~~2. A provider group of licensed psychologists that includes the licensed psychologist.~~

~~(c) The services established in this administrative regulation shall be provided by a provider enrolled in the Medicaid Program as:~~

~~1. An individual provider; or~~

~~2. A provider group.~~]

Section 4. Additional Limits and Noncovered Services or Activities. (1) The following services or activities shall not be covered under this administrative regulation:

(a) A service provided to:

1. A resident of:

a. A nursing facility; or

b. An intermediate care facility for individuals with an intellectual disability;

2. An inmate of a federal, local, or state:

a. Jail;

b. Detention center; or

c. Prison;

3. An individual with an intellectual disability without documentation of an additional psychiatric diagnosis;

(b) Psychiatric or psychological testing for another agency, including a court or school, that does not result in the individual receiving psychiatric intervention or behavioral health therapy from the[~~independent~~] provider;

(c) A consultation or educational service provided to a recipient or to others;

(d) Collateral therapy for an individual aged twenty-one (21) years or older;

(e) A telephone call, an email, a text message, or other electronic contact that does not meet the requirements stated in the definition of "face-to-face";

(f) Travel time;

(g) A field trip;

(h) A recreational activity;

(i) A social activity; or

(j) A physical exercise activity group.

(2)(a) A consultation by one (1) provider or professional with another shall not be covered under this administrative regulation except regarding collateral outpatient therapy as specified in Section 3(4)(i)[~~3(3)(k)~~] of this administrative regulation.

(b) A third party contract shall not be covered under this administrative regulation.

(3)(a) Except as established in paragraph (b) of this subsection, unless a diagnosis is made and documented in the recipient's medical record within three (3) visits, the service shall not be covered.

(b) The requirement established in paragraph (a) of this subsection shall not apply to:

1. Crisis intervention;

2. A screening; or

3. An assessment.

(4) The department shall not reimburse for both a screening and an SBIRT provided to a recipient on the same date of service.

(5) A billing supervisor arrangement between a billing supervisor and a behavioral health practitioner under supervision shall not:

(a) Violate the clinical supervision rules or policies of the respective professional licensure boards governing the billing supervisor and the behavioral health practitioner under supervision; or

(b) Substitute for the clinical supervision rules or policies of the respective professional licensure boards governing the billing supervisor and the behavioral health practitioner under supervision.

Section 5. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider, of any program in which the service is covered, during the same time period.

(2) For example, if a recipient is receiving a behavioral health service from an individual[~~independent~~] behavioral health provider, the department shall not reimburse for the same service provided to the same recipient during the same time period by a behavioral health services organization[~~local health department~~].

Section 6. Records Maintenance, Documentation, Protection, and Security. (1) An individual[~~A~~] provider, a behavioral health provider group, or a behavioral health multi-specialty group shall maintain a current health record for each recipient.

(2)(a) A health record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.

(b) The individual who provided the service shall date and sign the health record within forty-eight (48) hours of[~~on~~] the date that the individual provided the service.

(3) A health record shall:

(a) Include:

1. An identification and intake record including:

a. Name;

b. Social Security number;

c. Date of intake;

d. Home (legal) address;

e. Health insurance information;

f. If applicable, the referral source's name[~~source~~] and address[~~of referral source~~];

g. Primary care physician's name[~~physician~~] and address;

h. The reason the individual is seeking help including the presenting problem and diagnosis; and

i. Any physical health diagnosis, if a physical health diagnosis exists for the individual, and information regarding:

(i) Where the individual is receiving treatment for the physical health diagnosis; and

(ii) The physical health provider's name[~~provider~~];

k. The name of the informant and any other information deemed necessary by the[~~independent~~] provider to comply with the requirements of:

(i) This administrative regulation;

(ii) The provider's licensure board, if applicable;

(iii) State law; or

(iv) Federal law;

2. Documentation of the:

a. Screening;

b. Assessment;

c. Disposition if a disposition was performed; and

d. Six (6) month review of a recipient's[~~treatment~~] plan of care each time a six (6) month review occurs;[~~and~~]

3. A complete history including mental status and previous treatment;

4. An identification sheet;

5. A consent for treatment sheet that is accurately signed and dated; and

6. The individual's stated purpose for seeking services; and

(b) Be:

1. Maintained in an organized central file;

2. Furnished upon request to the:

a. Cabinet for Health and Family Services[~~upon request~~]; or

b. For an enrollee, managed care organization in which the recipient is enrolled or has been[~~upon request if the recipient is~~] enrolled in the past[~~with a managed care organization~~];

3. Made available for inspection and copying by:

a. Cabinet for Health and Family Services' personnel; or

b. Personnel of the managed care organization in which the recipient is enrolled if applicable[~~the recipient is enrolled with a managed care organization~~];

4. Readily accessible; and

5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient if the recipient received services beyond a screening.

(4) Documentation of a screening shall include:

(a) Information relative to the individual's stated request for services; and

(b) Other stated personal or health concerns if other concerns are stated.

(5)(a) A behavioral health practitioner's[~~provider's~~] notes regarding a recipient shall:

1. Be made within forty-eight (48) hours of each service visit;

2. Describe the:

a. Recipient's symptoms or behavior, reaction to treatment, and attitude;

b. Behavioral health practitioner's[~~Therapist's~~] intervention;

c. Changes in the[~~treatment~~] plan of care if changes are made; and

d. Need for continued treatment if deemed necessary[~~continued treatment is needed~~].

(b)1. Any edit to notes shall:

a. Clearly display the changes;

b. Be initialed and dated by the person who edited the notes.

2. Notes shall not be erased or illegibly marked out.

(c)1. Notes recorded by a practitioner working under supervision shall be co-signed and dated by the supervising professional within thirty (30) days of each service visit.

2. If services are provided by a behavioral health practitioner working under supervision, there shall be a monthly supervisory note recorded by the supervision professional reflecting consultations with the practitioner working under supervision concerning the:

a. Case; and

b. Supervising professional's evaluation of the services being provided to the recipient.

(6) Immediately following a screening of a recipient, the behavioral health practitioner who performed the screening [~~provider~~] shall perform a disposition related to:

(a) A provisional diagnosis;

(b) A referral for further consultation and disposition, if applicable; or

(c)1. If applicable, termination of services and referral to an outside source for further services; or

2. If applicable, termination of services without a referral to further services.

(7)(a) A recipient's[~~treatment~~] plan of care shall be reviewed at least once every six (6) months.

(b) Any change to a recipient's[~~treatment~~] plan of care shall be documented, signed, and dated by the rendering practitioner and by the recipient or recipient's representative[~~provider~~].

(8)(a) Notes regarding services to a recipient shall:

1. Be organized in chronological order;

2. Be dated;

3. Be titled to indicate the service rendered;

4. State a starting and ending time for the service; and

5. Be recorded and signed by the rendering behavioral health practitioner[~~provider~~] and include the practitioner's professional title (for example, licensed clinical social worker)[~~of the provider~~].

(b) Initials, typed signatures, or stamped signatures shall not be accepted.

(c) Telephone contacts, family collateral contacts not coverable under this administrative regulation, or other non-reimbursable contacts shall:

1. Be recorded in the notes; and

2. Not be reimbursable.

(9) A termination summary shall:

(a) Be required, upon termination of services, for each recipient who received at least three (3) service visits; and

(b) Contain a summary of the significant findings and events during the course of treatment including the:

1. Final assessment regarding the progress of the individual toward reaching goals and objectives established in the individual's[~~treatment~~] plan of care;

2. Final diagnosis of clinical impression; and

3. Individual's condition upon termination and disposition.

(c) A health record relating to an individual who terminated from receiving services shall be fully completed within ten (10) days following termination.

(10) If an individual's case is reopened within ninety (90) days of terminating services for the same or related issue, a reference to the prior case history with a note regarding the interval period shall be acceptable.

(11)(a) Except as established in paragraph (b) of this subsection, if a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring provider shall, within ten (10) business days of the transfer or referral, transfer[~~if the recipient gives the provider written consent to do so, forward a copy or summary of~~] the recipient's health record in a manner that complies with the records' use and disclosure requirements as established in or required by:

1.a. The Health Insurance Portability and Accountability Act;

b. 42 U.S.C. 1320d-2 to 1320d-8; and

c. 45 C.F.R. Parts 160 and 164; or

2.a. 42 U.S.C. 290ee-3; and

b. 42 C.F.R. Part 2[~~to the health care facility or other provider who is receiving the recipient within ten (10) business days of the transfer or referral~~].

(b) If a recipient is transferred or referred to a residential crisis stabilization unit, a psychiatric hospital, a psychiatric distinct part unit in an acute care hospital, or an acute care hospital for care or treatment, the transferring provider shall, within forty-eight (48) hours of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

1.a. The Health Insurance Portability and Accountability Act;

b. 42 U.S.C. 1320d-2 to 1320d-8; and

c. 45 C.F.R. Parts 160 and 164; or

2.a. 42 U.S.C. 290ee-3; and

b. 42 C.F.R Part 2.

(12)(a) If an individual behavioral health[~~a~~] provider's, a behavioral health provider group's, or a behavioral health multi-specialty group's Medicaid Program participation status changes as a result of voluntarily terminating from the Medicaid Program, involuntarily terminating from the Medicaid Program, or a licensure suspension[~~, or death of the provider~~], the health records of the individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group shall:

1. Remain the property of the individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group; and

2. Be subject to the retention requirements established in subsection (13) of this section.

(b)1. If an individual behavioral health[~~A~~] provider dies, the health records maintained by the individual behavioral health provider shall remain the property of the individual behavioral health provider.

2. An individual behavioral health provider shall have a written plan addressing how to maintain health records in the event of the provider's death in a manner that complies with the retention requirements established in subsection (13) of this section.

(13)(a) Except as established in paragraph (b) or (c) of this subsection, an individual behavioral health[~~a~~] provider, a behavioral health provider group, or a behavioral health specialty

group shall maintain a health record regarding a recipient for at least **five (5) [~~six (6)~~]**[~~five (5)~~] years from the date of the service or until any audit dispute or issue is resolved beyond **five (5)[~~six (6)~~]**[~~five (5)~~] years.

(b) After a recipient's death or discharge from services, an individual behavioral health provider, a behavioral health provider group, or a behavioral health multi-specialty group shall maintain the recipient's record for the longest of the following periods:

1. **Five (5)[~~Six (6)~~]** years unless the recipient is a minor; or

2. If the recipient is a minor, three (3) years after the recipient reaches the age of majority under state law.

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

(14)(a) An individual behavioral health[~~A~~] provider, a behavioral health provider group, or a behavioral health multi-specialty group shall comply with 45 C.F.R. Chapter 164.

(b) All information contained in a health record shall:

1. Be treated as confidential;

2. Not be disclosed to an unauthorized individual; and

3. Be disclosed to an authorized representative of:

a. The department;[~~or~~]

b. Federal government; or

c. For an enrollee, the managed care organization in which the enrollee is enrolled.

(c)1. Upon request, an individual behavioral health[~~a~~] provider, a behavioral health provider group, or a behavioral health multi-specialty group shall provide to an authorized representative of the department,[~~or~~] federal government, or managed care organization if applicable, information requested to substantiate:

a. Staff notes detailing a service that was rendered;

b. The professional who rendered a service;

c. The type of service rendered and any other requested information necessary to determine, on an individual basis, whether the service is reimbursable by the department or the managed care organization, if applicable.

2. Failure to provide information referenced in subparagraph 1 of this paragraph shall result in denial of payment for any service associated with the requested information.

Section 7. Medicaid Program Participation Compliance. (1) An individual behavioral health[~~A~~] provider, a behavioral provider group, or a behavioral health multi-specialty group shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672; and

(c) All applicable state and federal laws.

(2)(a) If an individual behavioral health[~~a~~] provider, a behavioral health provider group, or a behavioral health multi-specialty group receives any duplicate payment or overpayment from the department, regardless of reason, the individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this section may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

(3)(a) When the department makes payment for a covered service and the individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group accepts the payment:

1. The payment shall be considered payment in full;

2. A[~~No~~] bill for the same service shall not be given to the recipient; and

3.[~~No~~] Payment from the recipient for the same service shall not be accepted by the individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group.

(b)1. An individual behavioral health[~~A~~] provider, behavioral health provider group, or behavioral health multi-specialty group may bill a recipient for a service that is not covered by the Kentucky Medicaid Program if the:

a. Recipient requests the service; and

b. Individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group makes the recipient aware in advance of providing the service that the:

(i) Recipient is liable for the payment; and

(ii) Department is not covering the service.

2. If a recipient makes payment for a service in accordance with subparagraph 1 of this paragraph, the:

a. Individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group shall not bill the department for the service; and

b. Department shall not:

(i) Be liable for any part of the payment associated with the service; and

(ii) Make any payment to the individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group regarding the service.

(4)(a) An individual behavioral health[~~A~~] provider, behavioral health provider group, or behavioral health multi-specialty group shall attest[~~attests~~] by the individual behavioral health provider's signature or signature of an individual on behalf of a behavioral health provider group or behavioral health multi-specialty group that any claim associated with a service is valid and submitted in good faith.

(b) Any claim and substantiating record associated with a service shall be subject to audit by the:

1. Department or its designee;

2. Cabinet for Health and Family Services, Office of Inspector General or its designee;

3. Kentucky Office of Attorney General or its designee;

4. Kentucky Office of the Auditor for Public Accounts or its designee;

5. United States General Accounting Office or its designee;

(c) If an individual behavioral health[~~a~~] provider, behavioral health provider group, or behavioral health multi-specialty group receives a request from the department to provide a claim,[~~or~~] related information,[~~or~~] related documentation, or record for auditing purposes, the individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group shall provide the requested information to the department within the timeframe requested by the department.

(d)1. All services provided shall be subject to review for recipient or provider abuse.

2. Willful abuse by an individual behavioral health[~~a~~] provider, behavioral health provider group, or behavioral health multi-specialty group shall result in the suspension or termination of the individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group from Medicaid Program participation.

(5)(a) If an individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group renders a Medicaid-covered service to a recipient, regardless of if the service is billed through the individual behavioral health provider's, behavioral health provider group's, or behavioral health multi-specialty group's Medicaid provider number or any other entity or individual including a non-Medicaid provider, the recipient shall not be charged or billed for the service.

(b) The department shall terminate from Medicaid Program participation an individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group that:

1. Charges or bills a recipient for a Medicaid-covered service; or

2. Participates in an arrangement in which an entity or individual bills a recipient for a Medicaid-covered service rendered by the individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group.

Section 8. Third Party Liability. An individual behavioral health[~~A~~] provider, behavioral health provider group, or behavioral

health multi-specialty group shall comply with KRS 205.622.

Section 9. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) An individual behavioral health[A] provider, behavioral health provider group, or behavioral health multi-specialty group that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the individual behavioral health provider's, behavioral health provider group's, or behavioral health multi-specialty group's electronic signature policy;

2. The signed consent form; and

3. The original filed signature[immediately upon request].

Section 10. Auditing Authority. The department shall have the authority to audit any:

(1) Claim;

(2) Medical record; or

(3) Documentation associated with any claim or medical record.

Section 11. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 12. Appeals. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

STEPHEN P. MILLER, Commissioner
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: February 15, 2017

FILED WITH LRC: February 15, 2017 at 10 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Sharley Hughes (502) 564-4321, extension 2010, email sharleyj.hughes@ky.gov, and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program behavioral health services provided by individual behavioral health providers, behavioral health provider groups, and behavioral health multi-specialty groups.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish the requirements for Medicaid Program behavioral health services provided by individual behavioral health providers, behavioral health provider groups, and behavioral health multi-specialty groups. These providers are a critical component of Medicaid Program substance use disorder and mental health disorder treatment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by providing Medicaid recipients access to mental health disorder and substance use disorder treatment from individual behavioral health professional practices.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by providing Medicaid recipients access to mental health disorder and substance use disorder treatment from individual behavioral health professional practices.

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

(a) How the amendment will change this existing administrative regulation: The amendment expands the Medicaid behavioral health practitioner base to include licensed clinical alcohol and drug counselors (LCADCs), licensed clinical and alcohol drug counselor associates (LCADCAs) working under supervision), and certified alcohol and drug counselors (CADCs) working under supervision; adds registered alcohol and drug peer support specialists to individuals authorized to provider services; clarifies that the administrative regulation applies to individual behavioral health providers, behavioral health provider groups, and behavioral health multi-specialty groups; contains miscellaneous other clarifications; and consolidates requirements where possible.

(b) The necessity of the amendment to this administrative regulation: Adding LCADCs and LCADCAs to the authorized practitioners is necessary to comply with a charge in KRS 205.6311 to "expand the behavioral health network to allow providers to provide services within their licensure category; also to respond to 2015 legislation that created these new practitioner types; similarly, adding registered alcohol and drug peer support specialists is necessary in response to 2015 legislation (codified into KRS 309.080-089); consolidating requirements is necessary to shorten the administrative regulation by reducing duplicative language; miscellaneous clarifications are necessary for clarity and to synchronize requirements with related behavioral health administrative regulations.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by adding practitioners (LCADCs, LCADCAs, and registered alcohol and drug peer support specialists) that were created by 2015 legislation (codified into KRS 309.080-089) in order to enhance Medicaid recipient access to behavioral health services.

(d) How the amendment will assist in the effective administration of the statutes: The amendment after comments assists in the effective administration of the authorizing statutes by adding practitioners (LCADCs, LCADCAs, and registered alcohol and drug peer support specialists) that were created by 2015 legislation (codified into KRS 309.080-089) in order to enhance Medicaid recipient access to behavioral health services.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Licensed psychologists, advanced practice registered nurses, licensed professional clinical counselors, licensed clinical social workers, licensed marriage and family therapists, licensed psychological practitioners, licensed professional art therapists, licensed behavior analysts, and licensed clinical alcohol and drug counselors (who wish to enroll in the Medicaid Program as independent providers/group practices) will be affected by this administrative regulation. Behavioral health providers groups and behavioral health multi-specialty groups will also be affected by this administrative regulation. Licensed psychological associates, certified social workers, licensed

professional counselor associates, marriage and family therapy associates, licensed professional art therapy associates, licensed assistant behavior analysts, licensed clinical alcohol and drug counselor associates, certified alcohol and drug counselors, and registered alcohol and drug peer support specialists who wish to provide behavioral health services while working for one (1) of the aforementioned independent providers or groups will also be affected by this administrative regulation. Medicaid recipients who qualify for behavioral health services will be affected by this administrative regulation. There are approximately 2,170 individual behavioral health providers, behavioral health provider groups, and behavioral health multi-specialty groups enrolled in the Medicaid Program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. The amendment expands the authorized behavioral health professional base to include licensed clinical and alcohol drug counselors (LCADCs), licensed clinical alcohol and drug counselor associates (LCADCAs) working under supervision, certified alcohol and drug counselors (CADCs), and registered alcohol and drug peer support specialists working under supervision. LCADCs who wish to provide services to Medicaid recipients will need to enroll with the Medicaid Program as prescribed in the Medicaid provider enrollment regulation (complete and application and submit it to DMS) and sign agreements with managed care organizations if the individual wishes to provide services to Medicaid recipients who are enrolled with a managed care organization. LCADCAs, CADCs, and registered alcohol and drug peer support specialists who wish to provide services will need to find an individual provider under whose supervision they would work.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Individual behavioral health providers, behavioral health provider groups, or behavioral health multi-specialty groups who wish to provide behavioral health services to Medicaid recipients per this administrative regulation could experience administrative costs associated with enrolling with the Medicaid Program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). As a result of the amendment LCADCs will be able to enroll in the Medicaid Program and be reimbursed for services provided to Medicaid recipients. LCADCAs, CADCs, and registered alcohol and drug peer support specialists who work under supervision will be able to provide services to Medicaid recipients (but not be directly reimbursed by the Medicaid program as they are not authorized by Kentucky law to practice independently.)

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

(a) Initially: DMS does not anticipate a substantial increase in costs as a result of adding licensed clinical alcohol and drug counselors, licensed clinical alcohol and drug counselor associates, and registered alcohol and drug peer support specialists to the array of Medicaid-recognized behavioral health professionals.

(b) On a continuing basis: The response to question (a) also applies here.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is not applied as the requirements apply to all providers.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(10)(B) and 42 U.S.C. 1396a(a)(30)(A).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect." KRS 205.6311 requires the Department for Medicaid Services to "promulgate administrative regulations. .. to expand the behavioral health network to allow providers to provide services within their licensure category."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area. Medicaid reimbursement for services is required to be consistent with efficiency, economy and quality of care and be sufficient to attract enough providers to assure access to services. 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "...provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.6311, 42 U.S.C. 1396a(a)(10)(B), and 1396a(a)(30)(A).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

The amendment is not expected to generate revenue for state or local government.

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

(c) How much will it cost to administer this program for the first year? DMS is unable to accurately estimate the costs of expanding the behavioral health provider base due to the variables involved as DMS cannot estimate how many individual LCADCs will enroll in the Medicaid Program nor the utilization of these services versus the realm of currently authorized providers (other individual behavioral health providers, provider groups, community mental health centers, federally-qualified health centers, rural health clinics, primary care centers, or physician offices.)

(d) How much will it cost to administer this program for subsequent years? The response to question (a) also applies here.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

907 KAR 15:015. Reimbursement provisions and requirements for behavioral health services provided by individual behavioral health[~~independent~~] providers, behavioral health provider groups, or behavioral health multi-specialty groups.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23), 42 U.S.C. 1396a(a)(30)(A)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6311

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the reimbursement provisions and requirements regarding Medicaid Program behavioral health services provided by certain licensed individual behavioral health professionals who are independently enrolled in the Medicaid Program**, practitioners working for or under the supervision of the individual behavioral health providers, and individual behavioral health professionals and practitioners under supervision working in[as Medicaid providers]** behavioral health provider groups**, or in** behavioral health multi-specialty groups**[, and by]**[, or]**[behavioral health service practitioners working]**[for or]**[under supervision for individual]**[of the independent]**[behavioral health]**[service]**[providers, behavioral health provider groups, or behavioral health multi-specialty groups]**, to Medicaid recipients who are not enrolled with a managed care organization.

Section 1. General Requirements. For the department to reimburse for a service covered under this administrative regulation, the service shall be:

(1)[~~Medically necessary;~~

~~(2) Provided:~~

~~(a) To a recipient; and~~

~~(b) By a:~~

~~1. Provider who meets the provider participation requirements established in 907 KAR 15:010; or~~

~~2. Practitioner working under the supervision of a provider who meets the provider participation requirements established in 907 KAR 15:010;~~

~~(3) A service~~] covered in accordance with 907 KAR 15:010; and

(2)[~~(4)~~] Billed to the department by an individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group recognized as a Medicaid Program provider[~~the billing provider who provided the service or under whose supervision the service was provided by an authorized practitioner~~] in accordance with 907 KAR 15:010.

Section 2. Reimbursement. (1) One (1) unit of service shall be:

(a) Fifteen (15) minutes in length unless a different unit of service exists for the service in the corresponding:

1. Current procedural terminology code; or

2. Healthcare common procedure coding system code; or

(b) The unit amount identified in the corresponding:

1. Current procedural terminology code if an amount is identified in the current procedural terminology code; or

2. Healthcare common procedure coding system code if an amount is identified in the healthcare common procedure coding system code.

(2) The rate per unit for a screening shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or

2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; or

2. A licensed psychologist;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;

2. Licensed clinical social worker;

3. Licensed psychological practitioner;

4. Certified psychologist with autonomous functioning;

5. Licensed marriage and family therapist;

6.[~~or 5.~~] Licensed professional art therapist; or

7. Licensed clinical alcohol and drug counselor; or

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a billing supervisor[~~licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service~~];

2. Licensed professional counselor associate working under the supervision of a billing supervisor[~~licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service~~];

3. Licensed psychological associate working under the supervision of a **board-approved licensed psychologist[billing supervisor]**[~~licensed psychologist if the licensed psychologist is the billing provider for the service~~];

4. Certified social worker working under the supervision of a billing supervisor[~~licensed clinical social worker if the licensed clinical social worker is the billing provider for the service~~];

5. Physician assistant working for a physician if the physician is the billing provider for the service;[~~or~~]

6. Licensed professional art therapist associate working under the supervision of a billing supervisor;

7. Certified psychologist working under the supervision of a board-approved licensed psychologist**[who is a billing supervisor]**;

8. Licensed clinical alcohol and drug counselor associate working under the supervision of a billing supervisor; or

9. Certified alcohol and drug counselor working under the supervision of a billing supervisor[~~licensed professional art therapist if the licensed professional art therapist is the billing provider for the service~~].

(3) The rate per unit for an assessment shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or

2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; or

2. A licensed psychologist;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;

2. Licensed clinical social worker;

3. Licensed psychological practitioner;

4. Certified psychologist with autonomous functioning;

5. Licensed marriage and family therapist;

6.[~~5.~~] Licensed professional art therapist;

7.[~~or 6.~~] Licensed behavior analyst; or

8. Licensed clinical alcohol and drug counselor; or

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a billing supervisor[~~licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service~~];

2. Licensed professional counselor associate working under the supervision of a **board-approved licensed psychologist[billing supervisor]**[~~licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service~~];

3. Licensed psychological associate working under the supervision of a billing supervisor[~~licensed psychologist if the licensed psychologist is the billing provider for the service~~];

4. Certified social worker working under the supervision of a billing supervisor[~~licensed clinical social worker if the licensed clinical social worker is the billing provider for the service~~];

5. Physician assistant working for a physician if the physician is the billing provider for the service;

6. Licensed professional art therapist associate working under the supervision of a billing supervisor[~~licensed professional art therapist if the licensed professional art therapist is the billing provider for the service~~];[~~or~~]

7. Licensed assistant behavior analyst working under the supervision of a billing supervisor;

8. Certified psychologist working under the supervision of a board-approved licensed psychologist**[who is a billing supervisor]**;

9. Licensed clinical alcohol and drug counselor associate working under the supervision of a billing supervisor; or

10. Certified alcohol and drug counselor working under the supervision of a billing supervisor[~~licensed behavior analyst if the licensed behavior analyst is the billing provider for the service~~].

(4) The rate per unit for psychological testing shall be:

(a) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a licensed psychologist;

(b) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed psychological practitioner; or

2. Certified psychologist with autonomous functioning; or

(c) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service; or

2. Certified psychologist working under the supervision of a board-approved licensed psychologist who is a billing supervisor if the board-approved licensed psychologist is the billing provider for the service.

(5)[~~The rate per unit for screening, brief intervention, and referral to treatment shall be as established on the Non-Medicare Services Fee Schedule.~~

~~(6) The rate per unit for crisis intervention shall be:~~

~~(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:~~

~~1. Physician; or~~

~~2. Psychiatrist;~~

~~(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:~~

~~1. An advanced practice registered nurse; or~~

~~2. A licensed psychologist;~~

~~(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:~~

~~1. Licensed professional clinical counselor;~~

~~2. Licensed clinical social worker;~~

~~3. Licensed psychological practitioner;~~

~~4. Licensed marriage and family therapist; or~~

~~5. Licensed professional art therapist; or~~

~~(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:~~

~~1. Marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;~~

~~2. Licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;~~

~~3. Licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;~~

~~4. Certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;~~

~~5. Physician assistant working for a physician if the physician is the billing provider for the service; or~~

~~6. Licensed professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service.~~

~~(7) The rate per unit for service planning shall be as established on the Non-Medicare Services Fee Schedule.~~

~~(8)~~] The rate per unit for individual outpatient therapy, group outpatient therapy, collateral outpatient therapy, or crisis intervention services shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or

2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; or

2. A licensed psychologist;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;

2. Licensed clinical social worker;

3. Licensed psychological practitioner;

4. Certified psychologist with autonomous functioning;

5. Licensed marriage and family therapist;

6.[~~5.~~] Licensed professional art therapist;

7.[~~or 6.~~] Licensed behavior analyst; or

8. Licensed clinical alcohol and drug counselor; or

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a billing supervisor[~~licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service~~];

2. Licensed professional counselor associate working under

the supervision of a billing supervisor[~~licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service~~];

3. Licensed psychological associate working under the supervision of a **board-approved licensed psychologist[~~billing supervisor~~]**[~~licensed psychologist if the licensed psychologist is the billing provider for the service~~];

4. Certified social worker working under the supervision of a billing supervisor[~~licensed clinical social worker if the licensed clinical social worker is the billing provider for the service~~];

5. Physician assistant working for a physician if the physician is the billing provider for the service;

6. Licensed professional art therapist associate working under the supervision of a billing supervisor[~~licensed professional art therapist if the licensed professional art therapist is the billing provider for the service~~];[~~or~~]

7. Licensed assistant behavior analyst working under the supervision of a billing supervisor;

8. Certified psychologist working under the supervision of a board-approved licensed psychologist**[~~who is a billing supervisor if the board-approved licensed psychologist is the billing provider~~]**;

9. Licensed clinical alcohol and drug counselor associate working under the supervision of a billing supervisor; or

10. Certified alcohol and drug counselor working under the supervision of a billing supervisor[~~licensed behavior analyst if the licensed behavior analyst is the billing provider for the service~~].

(6)[~~(9)~~] The rate per unit for family outpatient therapy shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or

2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; or

2. A licensed psychologist;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;

2. Licensed clinical social worker;

3. Licensed psychological practitioner;

4. Certified psychologist with autonomous functioning;

5. Licensed marriage and family therapist;

6.[~~or 5.~~] Licensed professional art therapist; or

7. Licensed clinical alcohol and drug counselor; or

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a billing supervisor[~~licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service~~];

2. Licensed professional counselor associate working under the supervision of a billing supervisor[~~licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service~~];

3. Licensed psychological associate working under the supervision of a **board-approved licensed psychologist[~~billing supervisor~~]**[~~licensed psychologist if the licensed psychologist is the billing provider for the service~~];

4. Certified social worker working under the supervision of a billing supervisor[~~licensed clinical social worker if the licensed clinical social worker is the billing provider for the service~~];

5. Physician assistant working for a physician if the physician is the billing provider for the service;[~~or~~]

6. Licensed professional art therapist associate working under the supervision of a billing supervisor;

7. Certified psychologist working under the supervision of a board-approved licensed psychologist**[~~who is a billing supervisor~~]**;

8. Licensed clinical alcohol and drug counselor associate working under the supervision of a billing supervisor; or

9. Certified alcohol and drug counselor working under the supervision of a billing supervisor[~~licensed professional art therapist if the licensed professional art therapist is the billing provider for the service~~].

(7) Reimbursement for the following services shall be as established on the DMS Non-Medicare Behavioral Health Services Fee Schedule:

(a) Screening, brief intervention, and referral to treatment (SBIRT);

(b) Service planning;

(c) Day treatment;

(d) Comprehensive community support services;

(e) Peer support services;

(f) Intensive outpatient program services; or

(g) Therapeutic rehabilitation program services.

(8)[~~(10) The rate per unit for group outpatient therapy shall be:~~

~~(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:~~

~~1. Physician; or~~

~~2. Psychiatrist;~~

~~(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:~~

~~1. An advanced practice registered nurse; or~~

~~2. A licensed psychologist;~~

~~(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:~~

~~1. Licensed professional clinical counselor;~~

~~2. Licensed clinical social worker;~~

~~3. Licensed psychological practitioner;~~

~~4. Licensed marriage and family therapist;~~

~~5. Licensed professional art therapist; or~~

~~6. Licensed behavior analyst; or~~

~~(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:~~

~~1. Marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;~~

~~2. Licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;~~

~~3. Licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;~~

~~4. Certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;~~

~~5. Physician assistant working for a physician if the physician is the billing provider for the service;~~

~~6. Licensed professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service; or~~

~~7. Licensed assistant behavior analyst working under the supervision of a licensed behavior analyst if the licensed behavior analyst is the billing provider for the service.~~

~~(11) The rate per unit for collateral outpatient therapy shall be:~~

~~(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:~~

~~1. Physician; or~~

~~2. Psychiatrist;~~

~~(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:~~

~~1. An advanced practice registered nurse; or~~

~~2. A licensed psychologist;~~

~~(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:~~

~~1. Licensed professional clinical counselor;~~

~~2. Licensed clinical social worker;~~

~~3. Licensed psychological practitioner;~~

~~4. Licensed marriage and family therapist;~~

~~5. Licensed professional art therapist; or~~

~~6. Licensed behavior analyst; or~~

~~(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:~~

~~1. Marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;~~

~~2. Licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;~~

~~3. Licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;~~

~~4. Certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;~~

~~5. Physician assistant working for a physician if the physician is the billing provider for the service;~~

~~6. Licensed professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service; or~~

~~7. Licensed assistant behavior analyst working under the supervision of a licensed behavior analyst if the licensed behavior analyst is the billing provider for the service.~~

~~(12) The rate per unit for day treatment shall be as established on the Non-Medicare Services Fee Schedule.~~

~~(13) The rate per unit for comprehensive community support services shall be as established on the Non-Medicare Services Fee Schedule.~~

~~(14) The rate per unit for peer support services shall be as established on the Non-Medicare Services Fee Schedule.~~

~~(15) The rate per unit for parent or family peer support services shall be as established on the Non-Medicare Services Fee Schedule.~~

~~(16) The rate per unit for an intensive outpatient program shall be as established on the Non-Medicare Services Fee Schedule.~~

~~(17) The rate per unit for a therapeutic rehabilitation program shall be as established on the Non-Medicare Services Fee Schedule.~~

~~(18)~~](a) The department shall use the current version of the Kentucky-specific Medicare Physician Fee Schedule for reimbursement purposes.

(b) For example, if the Kentucky-specific Medicare Physician Fee Schedule currently published and used by the Centers for Medicare and Medicaid Services for the Medicare Program is:

1. An interim version, the department shall use the interim version until the final version has been published; or

2. Final version, the department shall use the final version.

(9)[~~(19)~~] The department shall not reimburse for a service billed by or on behalf of an entity or individual that is not a billing provider.

Section 3.[~~No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.~~

~~(2) For example, if a recipient is receiving a behavioral health service from an independent behavioral health provider, the department shall not reimburse for the same service provided to the same recipient during the same time period by a community mental health center.~~

~~Section 4.~~] Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse in accordance with this administrative regulation for a service covered pursuant to:

(1) 907 KAR 15:010; and

(2) This administrative regulation.

Section 4[~~5~~]. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

Section 5[~~6~~]. Incorporation by Reference. (1) **"Behavioral Health Substance Abuse Services Outpatient (Non-Facility) Fee Schedule", June, 2016**[~~**Non-Medicare Services Fee Schedule", May 2014,**~~] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at:

(a) The Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at http://www.chfs.ky.gov/dms/incorporated.htm.

STEPHEN P. MILLER, Commissioner
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: February 15, 2017

FILED WITH LRC: February 15, 2017 at 10 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact persons: Sharley Hughes, phone (502) 564-4321, ext. 2010, email sharleyj.hughes@ky.gov, and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement provisions and requirements regarding Medicaid Program behavioral health services provided by individual behavioral health professionals enrolled in the Medicaid Program.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish the reimbursement provisions for Medicaid Program behavioral health services provided by individual behavioral health professionals. These providers are a critical component of Medicaid Program substance use disorder and mental health disorder treatment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid reimbursement for behavioral health services provided by individual behavioral health providers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing Medicaid reimbursement for behavioral health services provided by individual behavioral health providers.

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

(a) How the amendment will change this existing administrative regulation: The amendment expands the Medicaid behavioral health practitioner base to include licensed clinical alcohol and drug counselors (LCADCs), licensed clinical and alcohol drug counselor associates (LCADCAs) working under supervision), and certified alcohol and drug counselors (CADCs) working under supervision; adds registered alcohol and drug peer support specialists to individuals authorized to provider services; contains miscellaneous clarifications; and consolidates requirements where possible.

(b) The necessity of the amendment to this administrative regulation: Adding LCADCs and LCADCAs to the authorized practitioners is necessary in response to 2015 legislation that created these new practitioner types; similarly, adding registered

alcohol and drug peer support specialists is necessary in response to 2015 legislation (codified into KRS 309.080-089); consolidating requirements is necessary to shorten the administrative regulation by reducing duplicative language; miscellaneous clarifications are necessary for clarity and to synchronize requirements with related behavioral health administrative regulations.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by adding practitioners (LCADCs, LCADCAs, and registered alcohol and drug peer support specialists) there were created by 2015 legislation (codified into KRS 309.080-089).

(d) How the amendment will assist in the effective administration of the statutes: The amendment after comments assists in the effective administration of the authorizing statutes by adding practitioners (LCADCs, LCADCAs, and registered alcohol and drug peer support specialists) there were created by 2015 legislation (codified into KRS 309.080-089).

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Licensed clinical alcohol and drug counselors (who wish to enroll in the Medicaid Program as independent providers/group practices) will be affected by this administrative regulation as will licensed clinical alcohol and drug counselor associates, certified alcohol and drug counselors, and registered alcohol and drug peer support specialists who wish to provide behavioral health services while working for one (1) an independent, individual behavioral health provider. Additionally, independent behavioral health providers, behavioral health provider groups, and behavioral health multi-specialty groups will be affected by the administrative regulation. There are approximately 2,170 of such individuals and groups enrolled in the Medicaid Program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. The amendment expands the authorized behavioral health professional base to include licensed clinical and alcohol drug counselors (LCADCs), licensed clinical alcohol and drug counselor associates (LCADCAs) working under supervision, certified alcohol and drug counselors (CADCs), and registered alcohol and drug peer support specialists working under supervision. LCADCs who wish to provide services to Medicaid recipients will need to enroll with the Medicaid Program as prescribed in the Medicaid provider enrollment regulation (complete and application and submit it to DMS) and sign agreements with managed care organizations if the individual wishes to provide services to Medicaid recipients who are enrolled with a managed care organization. LCADCAs, CADCs, and registered alcohol and drug peer support specialists who wish to provide services will need to find an individual provider or provider group for whom/which to work.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Individual behavioral health providers, behavioral health provider groups, or behavioral health multi-specialty groups that wish to provide behavioral health services to Medicaid recipients per this administrative regulation could experience administrative costs associated with enrolling with the Medicaid Program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). As a result of the amendment LCADCs will be able to enroll in the Medicaid Program and be reimbursed for services provided to Medicaid recipients. LCADCAs, CADCs, and registered alcohol and drug peer support specialists who work under supervision will be able to provide services to Medicaid recipients (but not be directly reimbursed by the Medicaid program as they are not authorized by Kentucky law to practice independently.)

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

(a) Initially: DMS does not anticipate a substantial increase in costs as a result of adding licensed clinical alcohol and drug counselors, licensed clinical alcohol and drug counselor associates, and registered alcohol and drug peer support specialists to the array of Medicaid-recognized behavioral health professionals.

(b) On a continuing basis: The response to question (a) also applies here.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Reimbursements are tiered to the level of the provider/practitioner based on the provider/practitioner's education and experience. Tiering is not applied as the requirements apply to all providers.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(10)(B) and 42 U.S.C. 1396a(a)(30)(A).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect." KRS 205.6311 requires the Department for Medicaid Services to "promulgate administrative regulations. .. to expand the behavioral health network to allow providers to provide services within their licensure category."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area. Medicaid reimbursement for services is required to be consistent with efficiency, economy and quality of care and be sufficient to attract enough providers to assure access to services. 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "...provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The

administrative regulation does not impose stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.6311, 42 U.S.C. 1396a.

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

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

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

(c) How much will it cost to administer this program for the first year? DMS is unable to accurately estimate the costs of expanding the behavioral health provider base due to the variables involved as DMS cannot estimate how many individual LCADCs will enroll in the Medicaid Program nor the utilization of these services versus the realm of currently authorized providers (other individual behavioral health providers, provider groups, community mental health centers, federally-qualified health centers, rural health clinics, primary care centers, or physician offices.)

(d) How much will it cost to administer this program for subsequent years? The response to question (a) also applies here.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PROPOSED AMENDMENTS

COUNCIL ON POSTSECONDARY EDUCATION
(Amendment)

13 KAR 2:110. Advanced practice doctoral degree programs at comprehensive universities.

RELATES TO: KRS 164.001, 164.020(15), 164.295(3)
STATUTORY AUTHORITY: KRS 164.295(4), (5)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.295(4) and (5) require[~~requires~~] the Council on Postsecondary Education, in consultation with the Advisory Conference of Presidents pursuant to KRS 164.021, to promulgate an administrative regulation to establish the criteria and conditions upon which an advanced practice doctoral degree program may be approved for a comprehensive university. This administrative regulation establishes the criteria and conditions for the approval of an advanced practice doctoral degree program.

Section 1. Definitions. (1) "Advanced practice doctorate" means a program of study beyond the master's degree designed to meet the workforce and applied research needs of a profession.
(2) "Board" or "governing board" is defined by KRS 164.001(4).
(3) "College" means an administrative unit within a state university, which consists of related academic disciplines, that offers academic programs but does not have the authority to grant a degree.
(4) "Comprehensive university" is defined by KRS 164.001(7).
(5) "Council" is defined by KRS 164.001(8).
(6) "Learning outcomes" is defined by KRS 164.001(25).
(7) "Postsecondary education system" is defined by KRS 164.001(17).
(8) "Public" is defined by KRS 164.001(19).
(9) "Southern Association of Colleges and Schools Commission on Colleges" means the regional body for the accreditation of degree-granting higher education institutions in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia,[~~and~~] Latin America, and other international sites.
(10) "Specialization" means a set of courses designed to develop expertise within a major at the doctoral level.
(11) "Strategic agenda" is defined by KRS 164.001(23).

Section 2. General Requirements. (1) In submitting the ["]Pre-Proposal for a New Academic Program["] required by Section 3(1) of this administrative regulation and the ["]Proposal for a New Doctoral Program["] required by Section 3(5) of this administrative regulation, a comprehensive university shall demonstrate that an advanced practice doctorate adheres to the role and scope of the institution as set forth in its mission statement and as complemented by the institution's academic plan by:
(a) Listing the objectives of the advanced practice doctorate;
(b) Providing a copy of the curriculum and explaining how the advanced practice doctorate relates to the institutional mission and strategic plan;
(c) Explaining how the advanced practice doctorate addresses the state's postsecondary education strategic agenda; and
(d) Explaining how the advanced practice doctorate furthers the statewide implementation plan for the strategic agenda.
(2) In submitting the ["]Pre-Proposal for a New Academic Program["] required by Section 3(1) of this administrative regulation and the ["]Proposal for a New Doctoral Program["] required by Section 3(5) of this administrative regulation, a comprehensive university shall demonstrate program quality and commitment to student success by:
(a) Listing all learning outcomes;
(b) Explaining how the curriculum achieves the objectives of the advanced practice doctorate by describing the relationship between the overall curriculum or the major curricular components and the objectives;
(c) Highlighting any distinctive qualities of the advanced practice doctorate;
(d) Noting whether the advanced practice doctorate will replace any specializations within another doctorate program;
(e) Including the projected ratio of faculty to students;
(f) Explaining if the comprehensive university will seek specialized accreditation if accreditation exists for the advanced practice doctorate;
(g) Demonstrating that faculty possesses terminal degrees, master's degrees with professional experience in the field of study, and research experience;
(h) Demonstrating that library resources meet standards for study at the doctoral level and in a particular field of study if standards are available from the Southern Association of Colleges and Schools Commission on Colleges or a specialized accrediting agency for a specific field of study;
(i) Demonstrating availability of classroom, laboratory, office space, and specialized equipment;
(j) Explaining the admission and retention standards;
(k) Stating the degree completion requirements;
(l) Describing how the advanced practice doctorate articulates with related programs at other comprehensive universities and at the University of Kentucky and the University of Louisville;
(m) Providing course descriptions for all courses that will be offered as part of the advanced practice doctorate;
(n) Describing alternative methods of program delivery involving use of technology, distance education, or accelerated degree designs;
(o) Describing how the advanced practice doctorate builds upon the reputation and resources of the comprehensive university's existing master's degree program in the field of study;
(p) Explaining the impact of the advanced practice doctorate on undergraduate education at the comprehensive university; and
(q) Discussing the nature and appropriateness of available clinical sites if there is a clinical component to the advanced practice doctorate.
(3) In submitting the ["]Pre-Proposal for a New Academic Program["] required by Section 3(1) of this administrative regulation and the ["]Proposal for a New Doctoral Program["] required by Section 3(5) of this administrative regulation, a comprehensive university shall demonstrate demand for the advanced practice doctorate and lack of unnecessary duplication by:
(a) Providing evidence of student demand at the regional, state, and national levels;
(b) Identifying the potential pool of students and how potential students will be contacted;
(c) Describing the student recruitment and selection process;
(d) Identifying the undergraduate and master's level programs as well as employers from which students will be identified;
(e) Providing any evidence of a projected net increase in total student enrollments to the campus as a result of the advanced practice doctorate;
(f) Estimating student enrollment, doctoral candidacies, and degrees conferred for the first five (5) years of the program;
(g) Describing the types of jobs available for graduates, average wages for these jobs, and the number of anticipated openings for each type of job at the regional, state, and national levels;
(h) Justifying the advanced practice doctorate based on changes in the field of study or other academic reasons;
(i) Explaining new practice or licensure requirements in the profession and new requirements by specialized accrediting agencies;
(j) Identifying similar advanced practice doctoral programs in the member states of the Southern Regional Education Board; and
(k) Comparing the program to similar programs within Kentucky in terms of curriculum or areas of specialization, student populations, access to similar programs, demand for similar programs, and potential for collaboration between the proposed program and similar programs.
(4) In submitting the ["]Pre-Proposal for a New Academic Program["] required by Section 3(1) of this administrative regulation and the ["]Proposal for a New Doctoral Program["] required by

Section 3(5) of this administrative regulation, a comprehensive university shall demonstrate costs and funding sources for the advanced practice doctorate by:

(a) Identifying any necessary additional resources;

(b) Explaining the financial impact on existing programs and organizational units within the comprehensive university;

(c) Demonstrating sufficient return on investment to Kentucky to offset new costs;

(d) Obtaining letters from other comprehensive universities stating that there will not be a negative financial impact on any of their existing programs[~~Providing assurance that funding for the program will not impair funding of any existing program at any other comprehensive institution~~];

(e) Providing financial and enrollment data from other comprehensive universities with similar programs;

(f) Estimating funding available from state, federal, other non-state, tuition, and institutional allocations and reallocations; and

(g)[~~(f)~~] Estimating costs associated with faculty, student employees, graduate assistants, and professional staff; equipment and instructional materials; library materials; contractual services; academic and student support services; other support services; faculty professional development; student space and equipment; faculty space and equipment; and miscellaneous expenses.

(5) In submitting the ["]Pre-Proposal for a New Academic Program["] required by Section 3(1) of this administrative regulation and the ["]Proposal for a New Doctoral Program["] required by Section 3(5) of this administrative regulation, a comprehensive university shall demonstrate program evaluation procedures by:

(a) Identifying what program components will be evaluated;

(b) Explaining when and how the components will be evaluated;

(c) Identifying who is responsible for the data collection;

(d) Explaining how the data will be shared with faculty;

(e) Explaining how the data will be used for program improvement;

(f) Identifying measures of teaching effectiveness; and

(g) Identifying plans to assess students' post-graduation success.

Section 3. New Advanced Practice Program Application Procedures. (1) A comprehensive university shall submit the ["]Pre-Proposal for a New Academic Program["] to the online Kentucky Postsecondary Program Proposal System (KPPPS) after the pre-proposal has been approved by the appropriate college within the comprehensive university.

(2) After this information is posted to KPPPS, the chief academic officers, or their designees, of the postsecondary education system and council staff shall have thirty (30)[~~forty-five (45)~~] days to review and comment on the proposed program. The thirty (30)[~~forty-five (45)~~] day time period shall begin on the date that the pre-proposal is submitted.

(3) If another institution or the council staff expresses concerns about the proposed program, the council staff may require additional relevant information and may request review by the chief academic officers of the postsecondary education system. If additional information is requested, the proposing institution shall submit that information within thirty (30) days of the request.

(4) Once all concerns have been addressed, the council staff shall notify the comprehensive university that:

(a) The advanced practice doctoral degree program proposed for that comprehensive university has been pre-approved; and

(b) The comprehensive university may continue the process for developing the program.

(5) The comprehensive university shall submit a ["]Proposal for a New Doctoral Program["], which has been approved by the institutional governing board, to the council within six (6)[~~eighteen (18)~~] months of the council staff's pre-approval.

(6) Upon receipt of the ["]Proposal for a New Doctoral Program,["] council staff shall review the proposal. If council staff determines that the comprehensive university has met all the requirements established in Section 2 of this administrative regulation, staff shall recommend the proposal to the council for approval.

(7) Upon staff recommendation, at its first subsequent meeting after completion of the proposal process, the council shall either:

(a) Approve the proposal; or

(b) Deny the proposal and identify deficiencies in the proposal that[~~which~~] shall be corrected by the comprehensive university by submitting a revised proposal to council staff within ninety (90) working days.

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

(a) "Kentucky Postsecondary Program Proposal System", November 2011;

(b) "Pre-Proposal for a New Academic Program", November 2011; and

(c) "Proposal for a New Doctoral Program", November 2011.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SHERRILL B. ZIMMERMAN, Chair
TRAVIS POWELL, General Counsel

APPROVED BY AGENCY: February 9, 2017

FILED WITH LRC: February 9, 2017 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2017 at 10:00 a.m. EST at the Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601 in Conference Room A. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 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: Travis Powell, General Counsel and Associate Vice President, Council on Postsecondary Education, 1024 Capital Center Dr., Suite 350, Frankfort, Kentucky 40601, phone 502.573.1555 ext. 142, fax 502.573.1535, email travis.powell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Travis Powell

(1) Provide a brief summary of:

(a) What this administrative regulation does: Sets forth the criteria and conditions for approval of advanced practice doctoral degree programs at comprehensive universities in accordance with KRS 164.295.

(b) The necessity of this administrative regulation: KRS 164.295(5) requires that the Council on Postsecondary Education promulgate administrative regulations setting forth the criteria and conditions for the approval of advanced practice doctorate degree programs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms explicitly to the authorizing statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation provides the approval process for advanced practice doctoral degree programs.

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

(a) How the amendment will change this existing administrative regulation: This amendment seeks to require that institutions

provide a copy of the program curriculum in addition to explaining how the curriculum conforms to the objectives of the degree. In addition, the amendment shortens the time periods for review of Pre-Proposals for New Academic Programs from 45 to 30 days and the time frame in which to submit a full proposal for review is shortened from eighteen (18) months to six (6) months. Other changes have been made to conform with KRS Chapter 13A regulatory drafting requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to allow staff to review the full program curriculum as part of the review process in order to better assess program quality and effectiveness and expedite the approval process to meet workforce and student demand.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms with the requirements of KRS 164.295 which gives the Council the broad authority on implementation of the process to approve advanced practice doctoral degrees.

(d) How the amendment will assist in the effective administration of the statutes: The amendment allow staff to review the full program curriculum as part of the review process in order to better assess program quality and effectiveness and expedite the approval process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The six Kentucky public comprehensive universities are affected.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, 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: Institutions will be required to provide a full copy of proposed program curriculum with any Pre-Proposal filed and submit full proposals within six (6) months of pre-approval.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment will require the most minimal amount of additional staff time of providing a copy of program curriculum electronically.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits include a more complete review of a proposed program which could result in program improvements and institutions programs will be approved in a more expedient manner.

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

(a) Initially: See 4(b) above.

(b) On a continuing basis: See 4(b) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Any available sources of funding can be used, most likely general operating expenses.

(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. This regulation does not assess fees.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: N/A. This regulation does not assess fees.

(9) TIERING: Is tiering applied? No. All regulated entities are of the same class, i.e. public comprehensive universities, and therefore uniform criteria must be applied to all.

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? CPE and all public comprehensive universities in Kentucky.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.295(4)

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

(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? In and of itself, this regulation will not generate any revenue, however the offering of new advanced practice doctoral degree programs approved pursuant to this regulation will generate new tuition revenue for the universities that offer them. The amount will vary depending on the program.

(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? See 3(a).

(c) How much will it cost to administer this program for the first year? Duties related to this regulation are generally assumed by two CPE staff members as part of their many other responsibilities. There are no additional costs of administration.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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: N/A

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education Professional Standards Board
(Amendment)

16 KAR 6:020. Assessment requirements[~~Written examination prerequisites~~] for occupation-based career and technical education teachers.

RELATES TO: KRS 158.816, 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 158.816, 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.030(3)(a) requires that all new teachers, including out-of-state teachers with less than two (2) years' experience, successfully complete appropriate assessments[~~written tests~~] prior to initial certification in Kentucky and serve a one (1) year internship. This administrative regulation establishes the assessments[~~tests~~] and passing scores for occupation-based career and technical education teachers certified under 16 KAR 2:020.

Section 1. (1) All new information technology, industrial education, health science, human service, and public service teacher applicants, and other applicants for occupation-based career and technical education teacher certificates both with and without a teacher preparation degree, and out-of-state applicants for occupation-based career and technical education certification with less than two (2) years of teaching experience shall successfully complete the appropriate assessments[~~written tests~~] prior to initial Kentucky certification.

(2) Each applicant who has not completed[~~without~~] an educator preparation program or does not currently hold a specialized associates degree within the specific technical field of certification, verified by official transcript,[~~degree~~] shall successfully complete[~~either~~] the following assessments[~~Pre-Professional Skills Test (PPST) or the COMPASS Test~~] for communication skills and general knowledge:

(a) ACT:

1. Reading – score of twenty (20) or higher;

2. Mathematics – score of nineteen (19) or higher; and

3. English (Writing) – score of eighteen (18) or higher; or

(b) SAT:

1. Reading – score of 470 or higher on Evidence-Based

Reading and Writing;

2. Mathematics – score of 460 or higher; and

3. English (Writing) – score of 430 or higher on Evidence-Based Reading and Writing; or

(c) Kentucky On-Line Testing (KYOTE):

1. Reading – score of twenty (20) or higher;

2. Mathematics – score of twenty-two (22) or higher on College Readiness Mathematics or score of fourteen (14) or higher on College Algebra; and

3. English (Writing) – score of six (6) or higher; or

(d) General Education Readiness (GED):

1. Reading – score of 165 or higher on Reasoning Through the Language Arts;

2. Mathematics – score of 165 or higher on Mathematical Reasoning; and

3. English (Writing) - score of 165 or higher on Reasoning Through the Language Arts.

(3) All applicants shall demonstrate subject matter competency via passage of the specialty assessment[~~test~~] in the occupational area for which certification is to be granted or completion of the appropriate state or national industry licensure, or certification[~~, or registration as established in this administrative regulation~~].

(4) The assessments[~~certificates, examinations, or prerequisites~~] shall be divided into the following three (3) categories:

(a) Industrial education and information technology:

1. National Occupational Competency Testing Institute's (NOCTI) Teacher Occupational Competency Test (TOCT) if one (1) corresponding to the teaching specialty is available;

2. Kentucky Department of Education[~~or Kentucky Department of Workforce Investment~~] developed or identified assessment corresponding to the teaching specialty;

3. Appropriate state or national industry licensure or[~~,~~] certification[~~, or registration~~]; or

4. Minimum postsecondary educational attainment in a related area of study;

(b) Health science and human services;[~~.~~]

1. The appropriate state or national industry licensure or[~~,~~] certification[~~, or registration~~]; or

2. Minimum postsecondary program[~~education attainment~~] in a related area of study; or

(c) Public-service;[~~.~~] the appropriate state or national industry licensure or[~~,~~] certification[~~, or registration~~].

Section 2. The Education Professional Standards Board (EPSB) shall require the specialty assessments[~~tests~~] and passing scores[~~or other examination prerequisites identified in this section~~] for new applicants[~~each new teacher applicant~~] and educators[~~each teacher~~] seeking an additional certificate under 16 KAR 2:020.

(1) Specialty assessment scores for new applicants and educators seeking an additional certificate under 16 KAR 2:020 shall be determined by the EPSB in consultation with the Kentucky Department of Education.

(2) The EPSB shall specify the specialty assessments and passing scores for new applicants and educators seeking an additional certificate via order of the EPSB. The order shall be posted on the Web site for the EPSB[~~Preprofessional Skills Test:~~

~~(a) Reading - 167;~~

~~(b) Mathematics - 166; and~~

~~(c) Writing - 167;~~

~~(2) In lieu of the Preprofessional Skills Tests identified in subsection (1) of this section, a new teacher applicant may meet the testing requirement by obtaining the following COMPASS Test scores:~~

~~(a) Reading - 78;~~

~~(b)1. Prealgebra - 48; or~~

~~2. Algebra - any reported score; and~~

~~(c) Writing - 68.~~

~~(3) Specialty area tests or other examination prerequisites for industrial education certification:~~

~~(a) Auto body technology and collision repair and refinish:~~

~~1. NOCTI Collision Repair/Refinishing Technology Test - 61; or~~

~~2. Automotive Service Excellence (ASE) certification;~~

~~(b) Automotive technology:~~

~~1. NOCTI Automotive Technology Test - 63; or~~

~~2. Automotive Service Excellence (ASE) certification;~~

~~(c) Aviation flight technician. Federal Aviation Administration certified commercial license with instructor endorsement;~~

~~(d) Aviation maintenance technician. Federal Aviation Administration certified airframe and power plant;~~

~~(e) Building and apartment maintenance. NOCTI Building Trades Maintenance - 52;~~

~~(f) Construction Carpentry. NOCTI Carpentry - 58;~~

~~(g) Computer Aided Drafting and Drafting technology. NOCTI Technical Drafting - 62;~~

~~(h) Diesel technology:~~

~~1. NOCTI Diesel Mechanics - 62; or~~

~~2. Automotive Service Excellence (ASE) certification;~~

~~(i) Digital media. No test identified;~~

~~(j) Electrical technology. NOCTI Electrical Technology Construction - 45;~~

~~(k) Engineering technology. Bachelor's degree in engineering or engineering technology;~~

~~(l) Environmental technology. No test identified;~~

~~(m) HVAC and Air conditioning technology. No test identified;~~

~~(n) Heavy equipment. Commonwealth of Kentucky license for equipment taught;~~

~~(o) Industrial chemical technology. Bachelor's degree in chemistry or related sciences;~~

~~(p) Industrial electronics technology. No test identified;~~

~~(q) Industrial maintenance technology. NOCTI Industrial Maintenance Mechanic - 44;~~

~~(r) Interior finishing and design. No test identified;~~

~~(s) Machine tool technology. NOCTI Precision Machining - 50;~~

~~(t) Major appliance technology. No test identified;~~

~~(u) Manufacturing. NOCTI Industrial Maintenance Mechanic - 44;~~

~~(v) Marine technology. No test identified;~~

~~(w) Masonry - No test identified;~~

~~(x) Metal fabrication. No test identified;~~

~~(y) Multimedia technology:~~

~~1. Macromedia Certified Professional; or~~

~~2. Adobe Certified Expert;~~

~~(z) Plastics technology. No test identified;~~

~~(aa) Plumbing technology. NOCTI Plumbing - 55;~~

~~(bb) Printing technology. No test identified;~~

~~(cc) Small engine and motorcycle repair technology:~~

~~1. NOCTI Small engine technology - 71; or~~

~~2. Equipment and Engine Training Council (EETC) Outdoor Power Equipment Certification;~~

~~(dd) Visual communication art.~~

~~1. NOCTI Advertising and Design - 69; or~~

~~2. Adobe-certified expert in Photoshop or Illustrator;~~

~~(ee) Welding:~~

~~1. NOCTI Welding - 53; or~~

~~2. American Welding Society (AWS) Certified Welder; or~~

~~(ff) Wood manufacturing technology. No test identified;~~

~~(4) Specialty area tests or other examination prerequisites for health science and human service:~~

~~(a) Allied health sciences. Active licensure, certification, or registration by a state or nationally-recognized accrediting agency as a professional health care practitioner following completion of a minimum of an associate degree or technical diploma preparation program;~~

~~(b) Barbering. A license for teacher of barbering issued by the Kentucky Board of Barbering;~~

~~(c) Biomedical sciences. Baccalaureate or higher degree in biomedical or health science area;~~

~~(d) Culinary arts. In the field of culinary arts, an individual shall provide proof of one (1) of the following prerequisites:~~

~~1. NOCTI Commercial Foods - 55; or~~

~~2. American Culinary Federation Professional Certification;~~

~~(e) Cosmetology. A license for instructor of cosmetology issued by the Kentucky Board of Hairdressers and Cosmetologists;~~

~~(f) Health science. An active Registered Nurse License in~~

~~Kentucky and meet applicable accrediting body state and federal requirements; or~~

~~(g) Practical nursing. An active Registered Nurse License in Kentucky and baccalaureate or higher degree in nursing;~~

~~(5) Specialty area tests or other examination prerequisites for public service:~~

~~(a) EMS training. First Responder Instructor Certification and EMT Instructor Certification by the Kentucky Board of Emergency Medical Services;~~

~~(b) Fire and rescue training. State Fire Commission Instructor Certification;~~

~~(c) Law Enforcement. Certification as a police officer or police instructor from the Kentucky Law Enforcement Council; or~~

~~(6) Specialty area tests for information technology:~~

~~(a) Computing Technology Industry Association (CompTIA):~~

~~1. A+ Certification;~~

~~2. Security+ Certification; or~~

~~3. Network+ Certification;~~

~~(b) Cisco Certified Network Associate (CCNA);~~

~~(c) Microsoft Certified Professional (MCP);~~

~~(d) Novell Certified Administrator (CAN); or~~

~~(e) NOCTI Computer Technology Test - 63~~].

Section 3. An[~~A teacher~~] applicant in any occupation-based career and technical education program for which no appropriate specialty assessment[~~test~~] is yet available shall not be required to take a specialty assessment[~~test~~], except for research and validation purposes. After a new program has been piloted and fully implemented, an assessment[~~a test~~] shall be developed or identified and only new applicants[~~and a new teacher applicant~~] shall be required to pass the new [~~a designated~~] specialty assessment[~~test~~].

Section 4. (1) An applicant for initial certification may take the assessments[~~written tests~~] on any of the dates established by the Kentucky Department of Education or other appropriate entity[~~Workforce Investment, with the tests to be administered on a regular basis~~].

(2)[~~Public announcement of testing dates and locations shall be issued sufficiently in advance of testing dates to permit advance registration as required by the Kentucky Department of Workforce Investment.~~

~~(3) An applicant shall seek information regarding the dates and location of the tests and make application to the Kentucky Department of Workforce Investment for the appropriate tests prior to the deadlines established and sufficiently in advance of anticipated employment.~~

~~(4)~~] Applicants shall authorize assessment[~~test~~] results to be forwarded to the Education Professional Standards Board (EPSB).

Section 5. Applicants shall pay an examination fee directly to the appropriate entity[~~testing agency~~] for the required assessments [~~tests. The testing agency shall publish the examination fee with the publication of testing dates~~].

Section 6. An applicant who fails to achieve at least the minimum score on any of the appropriate assessments[~~examinations~~] may retake the assessment or assessments[~~test or tests during one (1) of the scheduled test administrations. All retakes shall meet the regularly scheduled testing dates~~]. Initial certification shall not be granted until acceptable scores are achieved in each of the required areas.

Section 7. Assessment Recency. (1) An applicant for initial or additional[~~Kentucky teacher~~] certification under 16 KAR 2:020 shall comply with the assessment recency requirements established in this section.

(2) An assessment[~~A test~~] established in this administrative regulation shall be valid for five (5) years from the[~~test~~] administration date.

(3) A passing score on an assessment[~~a test~~] established in this administrative regulation and completed on or after January 1, 2002 shall be valid for five (5) years from the[~~test~~] administration date.

(4)(a) An applicant[~~A teacher~~] shall complete application for certification to the EPSB[~~Education Professional Standards Board~~] within the five (5) year validity period of the assessment[~~test~~] and the passing score.

(b) An applicant[~~A teacher~~] who fails to complete application for certification to the EPSB [~~Education Professional Standard Board~~] within the five (5) year validity period of the assessment[~~test~~] and the passing score shall retake the appropriate assessment or assessments[~~test or tests~~] and achieve the appropriate passing score or scores required for certification at the time of application. [~~(5) The test administration date shall be established by the National Occupational Competency Testing Institute or other authorized test administrator.~~]

Section 8. The EPSB[~~Education Professional Standards Board~~] in conjunction with the Kentucky Department of Education and the Kentucky Center for Education and Workforce Statistics[~~Department of Workforce Investment~~] shall collect data and conduct analyses of[~~the impact of~~] these assessments to determine whether the assessment scores are appropriate and to evaluate the adequacy of educator preparation program[~~tests as to permit a review of this administrative regulation on a regular basis~~].

DAVID WHALEY, Board Chair

APPROVED BY AGENCY: February 13, 2017

FILED WITH LRC: February 14, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2017 at 9:00 a.m., at 100 Airport Road, Third Floor, 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. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 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: Lisa K. Lang, General Counsel, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080, email LisaK.Lang@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa K. Lang

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the assessment requirements for occupation-based career and technical education teachers certified under 16 KAR 6:020.

(b) The necessity of this administrative regulation: KRS 161.028(1)(a) requires that the Education Professional Standards Board (EPSB) establish requirements for obtaining and maintaining a teaching certificate. KRS 161.030(3)(a) states that the certification of all new teachers and teachers seeking additional certification shall require the successful completion of the appropriate assessments prior to certification. KRS 158.816(3)(a) requires that the Kentucky Department of Education coordinate the development of a statewide technical assistance plan relating to technical education to aid providers of programs identify areas where improvement is needed. That plan must include analysis of the adequacy of teacher preparation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028(1)(a) authorizes the EPSB to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030(3) and (4) require the EPSB to select and determine the appropriate level of achievement for assessments required prior to teacher certification. KRS 158.816 requires that the Kentucky Department of Education (KDE) consult with the Education Professional

Standards Board as it relates to teacher preparation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes assessment requirements for occupation-based career and technical education teachers certified under 16 KAR 6:020.

(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 removes from the regulation those assessments that were designed to assess communication skills and general knowledge, but have been discontinued (the Pre-Professional Skills Test (PPST) and the COMPASS Test). This amendment replaces those discontinued assessments with four different assessments new teachers and teachers seeking additional certification may choose to take to demonstrate communication skills and general knowledge. These assessments have been aligned to those assessments required by the Kentucky Community and Technical College System. This amendment aligns the language of this regulation with the language contained in KRS 161.028 and 161.030, by substituting "test" with "assessment". This amendment no longer specifically identifies every specialty assessment in the occupational area for which teacher certification is requested. These specialty assessments are the same assessments that must be taken and passed to receive appropriate state or national industry licensure, or certification. The occupational area determines the appropriate assessments to be taken. Neither the KDE nor the EPSB have any control or input over specialty assessments in occupational areas that result in state or national industry licensure, or certification. The EPSB in conjunction with the KDE makes information relating to these assessments available to new teachers and teachers seeking teaching certification an additional certification area. Given the fast pace of ever-changing industry, it is more efficient for the EPSB and the KDE to periodically review and update as necessary the specialty assessments and the corresponding scores necessary for teacher certification. This amendment makes clear that the EPSB will work in conjunction with the KDE and the Kentucky Center for Education and Workforce Statistics to gather data necessary to evaluate the adequacy of educator preparation programs.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to replace and/or discontinue assessments designed to ensure new teachers possess the communication skills and general knowledge necessary to teach technical programs and to provide the EPSB and the KDE with greater flexibility to review, revise, and update specialty assessments of occupational areas that require state or national industry licensure.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment establishes assessment requirements and minimal acceptable achievement scores for those assessments required of teachers of technical programs as required by KRS 161.028(1)(a) and 161.030(3)(a).

(d) How the amendment will assist in the effective administration of the statues: This amendment clarifies the assessments required for teacher certification for technical programs and their corresponding minimal acceptable achievement scores for certification.

(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 candidates for Kentucky certification; the KDE because the KDE submits Kentucky certification recommendations on behalf of candidates for provisional teaching certificates for technical programs; institutions of higher education that offer educator preparation programs for technical programs; and the 173 Kentucky public school districts who hire teachers to teach technical programs.

(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: Candidates for teacher certification must ensure that they have taken and successfully passed the appropriate assessment for certification. The KDE will assist the EPSB with the notification of candidates for certification interested in teaching technical programs. Institutions of higher education will need to review their curriculum to implement changes, if necessary. Public school districts will not have to take any action.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost associated with this amendment. The cost associated with any new assessments is the same as the cost associated with the previous assessments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Teaching quality is the most important school-based factor in determining student success and we must ensure that all Kentucky teachers enter their classroom prepared to excel. These amendments reflect Kentucky's commitment to ensure that only qualified individuals are issued a teaching certificate, thus enabling them to provide instruction to Kentucky's children. All teacher candidates must successfully demonstrate essential knowledge via comprehensive assessments which help measure skills and content knowledge. Educator preparation programs must ensure their curriculum prepares teachers for the specific teaching field of the applicant, including content of the field and teaching of that content. The assessments measure those concepts, ideas, and facts which are being taught in teacher education programs in Kentucky.

(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: Assessment fees are provided to the test administrator by the certification candidates.

(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: These assessments are not administered by the EPSB therefore no fee or funding increase will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees have been increased. This is a cost to the certification candidate and is paid to the assessment administration agent.

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation. All candidates for certification are required to take the specified assessment which measures content knowledge in the specific teaching field of the applicant. The EPSB does not administer these assessments nor does the EPSB set the rates for these assessments.

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 Education Professional Standards Board, the KDE, institutions of higher education, and Kentucky public school districts.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.028(1)(a) requires that the EPSB establish requirements for obtaining and maintaining a teaching certificate. KRS 161.030(3)(a) states that the certification of all new teachers and teachers seeking additional certification shall require the successful completion of the appropriate assessments prior to certification.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There should be no effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? Currently, the EPSB spends approximately $25,000.00 per year to manage assessments.

(d) How much will it cost to administer this program for subsequent years? The administrative costs associated with this program are estimated to remain constant at approximately $25,000.00 per year.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PERSONNEL CABINET
(Amendment)

101 KAR 2:046. Applying for employment[~~Applications~~], qualifications and examinations.

RELATES TO: KRS 18A.030(2), 18A.032, 18A.110(1)(a), (7)(c), 18A.120, 18A.150

STATUTORY AUTHORITY: KRS 18A.030(2), 18A.110(1)(a), (7)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(1)(a) and (7)(c) requires the Secretary of Personnel to promulgate administrative regulations that[~~which~~] govern open competitive exams to determine the relative fitness of applicants and for the rejection of candidates or eligibles who fail to meet reasonable requirements of the secretary. This administrative regulation establishes the process and requirements to apply for employment[~~application and examination requirements~~].

Section 1. Notices of Examinations. (1) An examination for entrance to the classified service shall be conducted on an open-competitive basis.

(2) The recruitment program shall:

(a) Accept an applicant's submission[~~application~~] for employment; and

(b) Hold an examination whenever and wherever the secretary reasonably determines it to be in the best interests of the Merit System.

(3) Eligibles shall be listed in rank order upon certification of a register based on their highest valid scores.

(4) The public notice of examination required by KRS 18A.110(7)(c) shall specify:

(a) The title and minimum salary of the job classification;

(b) The minimum qualifications required;

(c) The opening date on which[~~an~~] application may be made[~~will be received~~] for placement of the applicant on the register; and

(d) All other pertinent information and requirements.

Section 2. Minimum Qualifications for Applying[~~Filing Applications~~]. An open-competitive examination shall be available to each applicant who meets the minimum requirements determined by the secretary with regard to:

(1) Education;

(2) Experience;

(3) Training;

(4) Licensure;

(5) Certification; or

(6) Other factors that relate to the ability of the candidate to perform the essential functions of the position with reasonable efficiency.

Section 3. Applying for Employment[~~Filing Applications~~]. (1) An applicant shall apply for employment electronically as required by instructions at careers.ky.gov[~~Application for Employment shall be electronically submitted~~].

(2) An applicant[~~application~~] shall provide[~~require~~] information concerning:

(a) Personal characteristics;

(b) Education;

(c) Experience;

(d) References; and

(e) Other pertinent information specific to the position sought.

(3)[~~An application shall be signed by the applicant personally or by electronic means.~~] The truth of the statements provided pursuant to subsection (2) of this section[~~contained in the application~~] shall be certified by the applicant's act of electronic submission[~~signature~~].

(4) An applicant shall:

(a) Meet the minimum qualifications established in the job class specification as to education and experience; and

(b) Not be guaranteed a passing grade by admission to an examination.

(5) For a job classification for which there is to be continuous recruitment, a statement shall be included in the announcement to the effect that submissions[~~an application~~] shall be received until further notice.

Section 4. Advance Eligibility[~~Examinations~~]. An applicant shall be eligible to apply to a specific vacancy within thirty (30) calendar days of completing the education required in the job classification or anytime thereafter[~~(1) If an applicant does not meet the minimum requirements as to education at the time of application, but will meet these requirements as a result of the completion of currently scheduled educational work within three (3) months following the date of receipt of the application, the applicant shall be allowed to take the examination.~~
~~(2) An applicant taking the examination under subsection (1) of this section shall be eligible to apply for a specific vacancy announcement up to thirty (30) calendar days prior to completing the educational requirements~~].

Section 5. Character of Examinations. An examination shall:

(1) Be practical in nature;

(2) Be constructed to reveal the capacity of the candidate for the particular job classification for which the applicant is competing;

(3) Consider the applicant's general background and related knowledge; and

(4) Be rated impartially.

Section 6. Conduct of Examinations. (1) An examination shall be conducted in as many places in the commonwealth as are found convenient for applicants and practicable for administration.

(2) Reasonable accommodation in testing shall be provided upon timely request and receipt of verification of need.

(3) The secretary may:

(a) Designate monitors in various parts of the commonwealth to conduct an examination under instructions prescribed by the secretary;

(b) Provide for the compensation of the monitors; and

(c) Make arrangements for the use of a public building in which to conduct an examination.

(4) Retest procedures. For open continuous testing, an applicant shall not:

(a) Be admitted to the same exam or its alternate more than two (2) times within a regular workweek; or

(b) Take the same exam or its alternate more than twelve (12) times in a twelve (12) month period beginning with the original date the test is taken.

Section 7. Rating Examinations. (1) The secretary shall determine the rating or standing of an applicant on the register for each examination at the time of certification of a register.

(2) The secretary shall determine the passing score of each examination.

(3) All applicants for the same job classification shall be accorded uniform and equal treatment in all phases of the examination procedure.

Section 8. Rating Education and Experience. (1) If the selection method is rating of education and experience, the secretary shall determine a procedure for the evaluation of the education and experience qualifications of an applicant.

(2) The formula used in appraisal shall give due regard to recency and quality as well as quantity of experience and the pertinence of the education.

(3) The secretary shall investigate the candidate's educational documentation.

(4) The secretary shall investigate the candidate's work history.

(5) If the results of this investigation disclose information affecting the rating of education and experience, the secretary shall:

(a) Rate the candidate accordingly;

(b) Make the necessary revision of the rating; and

(c) Notify the candidate.

(6) The secretary shall determine the selection method for a qualifying job classification based upon the knowledge, skills, and abilities necessary for the job classification.

(a) The secretary shall notify the Personnel Board of the job classification and the minimum requirements for a qualifying selection method.

(b) The secretary shall maintain for public review a list of those job classifications that[~~which~~] are qualifying along with the minimum requirements for each job classification.

Section 9. Notice of Examination Results. (1) Each applicant shall be notified of the examination score as soon as the rating of the examination has been completed.

(2) An eligible shall be entitled to information concerning his or her relative position on the register upon request and presentation of proper identification.

Section 10. Adjustment of Errors. (1) The secretary shall correct a clerical error in the rating of an examination, if the error is called to the attention of the secretary within thirty (30) calendar days after receipt of the notice of examination results. Further, the secretary may correct an applicant's[~~application~~] submission error, if the error is called to the attention of the secretary within thirty (30) calendar days of the issuance of a register certificate.

(2) A correction shall not invalidate a certification and appointment previously made.

Section 11. Examination Records. The secretary shall maintain all records pertinent to an applicant's submission for employment[~~application~~] or examination for a period of three (3) years. [~~Section 12. Incorporation by Reference. (1) "Application for Employment", May 2015, is incorporated by reference.~~

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

THOMAS B. STEPHENS, Secretary

APPROVED BY AGENCY: February 14, 2017

FILED WITH LRC: February 14, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, March 21, 2017 at 10:00 a.m. at 501 High Street, 3rd floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. March 31, 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: Lesley Bilby, Executive Director, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224, email Lesley.Bilby@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Lesley Bilby

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application and examination requirements for state employment.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to communicate requirements for application and eligibility for classified employment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with KRS 18A.030(2), 18A.110 (1)(a) and (7)(c).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the procedures for personnel recruitment and certification.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation removes the Application for Employment from incorporation by reference. It also changes language to reflect the process of applying instead of focusing on the form used to apply.

(b) The necessity of the amendment to this administrative regulation: This amendment provides for flexibility in the evolution of applicant tracking systems. It cuts red tape in the application process for classified positions.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 18A.030(2), 18A.110 (1)(a) and (7)(c).

(d) How the amendment will assist in the effective administration of the statutes: This amendment promotes efficiency and economy by improving the opportunity to leverage existing technology instead of customizing computer programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for state employment, the Personnel Cabinet and all Commonwealth Executive Branch agencies are affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Neither the Commonwealth's Executive Branch agencies, nor applicants for state employment, will have additional actions required as a result of this regulation amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No additional benefits will accrue.

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

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

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

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PERSONNEL CABINET
(Amendment)

101 KAR 2:056. Registers.

RELATES TO: KRS 18A.005, 18A.110(1)(f), (7), 18A.120

STATUTORY AUTHORITY: KRS 18A.030(2), 18A.040, 18A.110(1)(f), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(1)(f) and (7) requires the Secretary of Personnel to promulgate administrative regulations that[~~which~~] govern the establishment of eligible lists for appointment and for the rejection of candidates or eligibles who do not meet reasonable selection requirements of the secretary. This administrative regulation establishes requirements for the state registers.

Section 1. Notification of Vacancies to Be Filled From a Register. An appointing authority shall notify the secretary as far in advance as possible of a vacancy in a full-time or part-time classified position to be filled from a register.

Section 2. Minimum Requirements. (1) The secretary shall review the qualifications of additional applicants who meet the minimum requirements and qualifications for a vacancy if there are insufficient applicants for the vacancy.

(2) The secretary shall, if appropriate, reevaluate an applicant's training and experience on the basis of the minimum qualifications required for the job classification in which the vacancy exists.

Section 3. Duration of Registers. (1) A register that[~~which~~] has become exhausted shall expire upon the administration of a superseding examination and the establishment of a register on the basis of that examination.

(2) If a new examination is established for a job classification, the secretary shall send to each eligible remaining on the current register a notification prior to the administration of a superseding examination.

Section 4. Internal Mobility Program. The internal mobility program shall facilitate the movement of a qualified classified employee to a different position in the state personnel system. (1) The secretary shall certify a full-time or part-time register that[~~which~~] shall include:

(a) The names of eligibles for reemployment and appointment, in accordance with 101 KAR 2:066; and

(b) The names of interested employees with internal mobility full-time or internal mobility part-time status who:

1. Meet the minimum requirements;

2. Seek promotion, demotion, or transfer to a different position; and

3. Have applied for a posted vacancy.

(2)[~~An employee with status interested in internal mobility shall:~~
~~(a) Submit an Application for Employment to the Personnel Cabinet; and~~
~~(b) Apply for placement on the register.~~
~~(3)~~] An appointing authority may request a register consisting of exclusively internal mobility candidates for a time period specified by the appointing authority of at least ten (10) calendar days.

Section 5. Reemployment Registers. The secretary shall prepare a reemployment register, which:

(1) Shall contain the names of former employees, in rank order of seniority, who are exercising their reemployment rights; and

(2) May be combined with the list of current employees in the Internal Mobility Program for the job classification.

Section 6. Full-time or Part-time Registers. The secretary shall certify a separate register for full-time and part-time positions.

Section 7. Number of Registers. A person meeting minimum qualifications for job classifications shall be eligible to apply for any posted vacancy.[~~Section 8. Incorporation by Reference. (1) The "Application for Employment", May 2015, is incorporated by reference.~~
~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, Third Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.~~]

THOMAS B. STEPHENS, Secretary

APPROVED BY AGENCY: February 14, 2017

FILED WITH LRC: February 14, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, March 21, 2017 at 10:00 a.m. at 501 High Street, 3rd floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed

administrative regulation. Written comments shall be accepted until 11:59 p.m. March 31, 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: Lesley Bilby, Executive Director, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224, email Lesley.Bilby@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Lesley Bilby

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes requirements for the list of eligible candidates on state employment registers.

(b) The necessity of this administrative regulation: This regulation is necessary to set forth the requirements and different types of state employment registers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with KRS 18A.030(2), 18A.110 (1)(a) and (7)(c)

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation defines how certified registers are established and controlled.

(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 removes the Application for Employment from incorporation by reference. It also removes redundant language related to internal mobility of incumbent classified employees.

(b) The necessity of the amendment to this administrative regulation: This amendment provides for flexibility in the evolution of applicant tracking systems. It cuts red tape in the application process for classified positions.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 18A.030(2), 18A.110 (1)(a) and (7)(c)

(d) How the amendment will assist in the effective administration of the statutes: This amendment promotes efficiency and economy by improving the opportunity to leverage existing technology instead of customizing computer programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for state employment, the Personnel Cabinet and all Commonwealth Executive Branch agencies are affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Neither the Commonwealth's Executive Branch agencies, nor applicants for state employment, will have additional actions required as a result of this regulation amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No additional benefits will accrue.

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

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

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

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PERSONNEL CABINET
(Amendment)

101 KAR 2:066. Certification and selection of eligible applicants for appointment.

RELATES TO: KRS 18A.030(2), 18A.110(1)(b), (7), 18A.113, 18A.135, 18A.165

STATUTORY AUTHORITY: KRS 18A.030(2), 18A.110(1)(b), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(1)(b) and (7) requires the Secretary of Personnel to promulgate administrative regulations that[~~which~~] govern the establishment of eligibility lists for appointment, and for consideration for appointment of persons whose scores are included in the five (5) highest scores on the examination. This administrative regulation establishes the requirements for certification and selection of eligible applicants for appointment.

Section 1. Request for Certification of Eligible Applicants. To fill a vacant position in the classified service that is not filled by lateral transfer, reinstatement, reversion, or demotion, the appointing authority shall submit a request for a register to the secretary. The request shall:

(1) Be for one (1) or more positions in the same:

(a) Job classification; or

(b) County;

(2) Indicate:

(a) The number and identity of the positions to be filled;

(b) The title of the job classification for each position; and

(c) Other pertinent information that[~~which~~] the appointing authority and the secretary reasonably determine are necessary; and

(3) Be made by the appointing authority as far in advance as possible of the date the position is to be filled.

Section 2. Certification of Eligible Applicants. (1) Upon receipt of a request for a register, the secretary shall certify and submit to the appointing authority the names of eligible applicants for the position who have applied.

(a) If one (1) position is involved, the secretary shall certify the names of:

1. Each applicant who:

a. Applied for the vacant position; and

b. If it is a tested position, has a score included in the highest five (5) scores earned through the selection method; and

2. All internal mobility candidates who are eligible and have applied for the vacant position.

(b) If more than one (1) vacancy is involved, the secretary may certify sufficient additional names for the agency's consideration in filling the total number of vacancies.

(c) Each appointment shall be made from:

1. The internal mobility candidate listing of eligible applicants who have applied for the vacant position; or

2. The eligible applicants with the five (5) highest scores who have applied for the vacant position, if applicable.

(2) The life of a certificate during which action may be taken shall be ninety (90) days from the date of issue unless otherwise specified on the certificate or job requisition. An appointment made from the certificate during that time shall not be subject to a change in the condition of the register taking place during that period.

(3) Subject to the provisions of KRS 18A.113 and KRS 18A.135, a vacancy associated with an active register certificate may be filled by an eligible who did not apply if filled by lateral transfer, reinstatement, reversion, or demotion.

Section 3. Preferences and Skills Questions. (1) The secretary shall approve a list of preferences and skills questions to assist in the determination of an applicant's qualifications and availability for a job vacancy.

(2) The appointing authority may identify preferences and skills questions from the approved list of questions that[~~which~~] relate to the specific job classification. The appointing authority may request that an applicant answer those preferences and skills questions when applying[~~submitting an Application~~] for employment. After an appointing authority has received a register, the appointing authority may consider the answers to the preferences and skills questions to assist in applicant selection.

Section 4. Selection. The appointing authority shall report to the secretary the recommended candidate for appointment.

THOMAS B. STEPHENS, Secretary

APPROVED BY AGENCY: February 14, 2017

FILED WITH LRC: February 14, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, March 21, 2017 at 10:00 a.m. at 501 High Street, 3rd floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. March 31, 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: Lesley Bilby, Executive Director, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224, email Lesley.Bilby@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Lesley Bilby

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for certification and selection of eligibles for appointment.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set forth the requirements for certification and selection of eligibles for appointment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with KRS 18A.030(2), 18A.110(1)(b), (7).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the requirements for certification and selection of eligibles for appointment.

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

(a) How the amendment will change this existing administrative regulation: The amendment removes reference to a specific Application for Employment form and makes minor changes to grammar.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary for consistency with other regulation amendments where the Application for Employment is removed from incorporation by reference.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 18A.030(2), 18A.110(1)(b), (7).

(d) How the amendment will assist in the effective administration of the statutes: This amendment promotes consistency and clarifies requirements for certification and selection of eligibles.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for state employment, the Personnel Cabinet and all Commonwealth Executive Branch agencies are affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action is required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No additional benefits will accrue.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

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

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

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

additional fees or funding.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Office of Occupations and Professions
Board of Interpreters for the Deaf and Hard of Hearing
(Amendment)

201 KAR 39:001. Definitions for 201 KAR Chapter 39.

RELATES TO: KRS 309.300(4), KRS 309.304[~~KRS 309.3015~~]

STATUTORY AUTHORITY: KRS 309.304(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.304(3) requires the Kentucky Board of Interpreters for the Deaf and Hard of Hearing to promulgate administrative regulations pertaining to the practice and licensure of interpreters, interpreter intern, or student in training. This administrative regulation establishes definitions for 201 KAR Chapter 39.

Section 1. Definitions. (1) "American Sign Language Proficiency Interview (ASLPI) as administered by Gallaudet University" means the assessment that rates the ability to use American Sign Language grammar and vocabulary in most formal and informal conversations on social and work topics.

(2) "BEI" means the Board for Evaluation of Interpreters sponsored by the Department of Assistive and Rehabilitative Services in Texas and the University of Arizona National Center for Interpretation Testing, Research and Policy.

(3)[~~(2)~~] "Board-approved mentor" means a licensed interpreter in this state or the resident of another state who:

(a) Can meet the requirements for licensure in this state as set forth in KRS Chapter 309 and 201 KAR Chapter 39;

(b) Holds a valid certificate meeting the requirements for full licensure for a minimum of three (3) years prior to serving as a mentor; and

(c) Has completed forty-five (45) hours of continuing education since obtaining certification.

(4)[~~(3)~~] "Case manager" means a member of the board appointed by the chair of the board to review complaints and investigative reports, and to participate in informal proceedings to resolve a formal complaint.

(5)[~~(4)~~] "Certificate of Interpretation (CI) granted by RID" means a certificate indicating that the holder has demonstrated the ability to interpret between American Sign Language and spoken English in both sign-to-voice and voice-to-sign, without consideration of the interpreter's ability to transliterate.

(6)[~~(5)~~] "Certificate of Transliteration (CT) granted by RID" means a certificate indicating that the holder has demonstrated the ability to transliterate between English-based sign language and spoken English in both sign-to-voice and voice-to-sign, without consideration of the transliterator's ability to interpret.

(7)[~~(6)~~] "Certified Deaf Interpreter (CDI) granted by RID" means a certificate indicating the holder of this certificate is an interpreter who is deaf or hard of hearing, has passed comprehensive written and performance tests, and is recommended for a broad range of assignments where an interpreter who is deaf or hard of hearing would be beneficial.

(8)[~~(7)~~] "Chair" means the chair or vice-chair of the board.

(9)[~~(8)~~] "Charge" means a specific allegation contained in a formal complaint issued by the board alleging a violation of a specified provision of KRS 309.300 to 309.319, 201 KAR Chapter 39, or any other state or federal statute or administrative regulation.

(10)[~~(9)~~] "Complaint" means any written or videotaped allegation of misconduct by a licensed individual that might constitute a violation of KRS 309.300 to 309.319, 201 KAR Chapter 39, or any state or federal statute regulating the practice of interpreting.

(11)[~~(10)~~] "Complaint screening committee" means a committee consisting of three (3) persons on the board appointed by the chairman of the board to review complaints and investigative reports, and to participate in informal proceedings to resolve a formal complaint or recommend action to the board.

(12)[~~(11)~~] "Comprehensive Skills Certificate (CSC) granted by RID" means a certificate indicating that the holder has demonstrated the ability to interpret between American Sign Language and Spoken English and to transliterate between spoken English and an English-based sign language.

(13)[~~(12)~~] "Conditional Legal Interpreting Permit-Relay (CLIP-R) granted by RID" means that the holder of this conditional certificate has completed a RID-recognized training program designed for interpreters and transliterators who work in legal settings, who are also deaf or hard of hearing, and who are recommended for a broad range of assignments in the legal setting.

(14)[~~(13)~~] "Cued Language Transliterator National Certification Examination (CLTNCE)" means the examination which measures skills that satisfy the TECUnit minimum standard of both knowledge and skills in cued language transliteration and passage of which is required to recommended the individual for limited settings that require cued speech.

(15)[~~(14)~~] "Deaf Interpreter" means an individual who is deaf or hard of hearing and holds licensure or temporary licensure indicating the holder is an interpreter who is deaf or hard of hearing, has submitted proof of qualification to the Board, and is recommended for a broad range of assignments where an interpreter who is deaf or hard of hearing would be beneficial.

(16)[~~(15)~~] "Deaf or Hard of Hearing Individuals" means individuals who have hearing disorders and who cannot hear and understand speech clearly through the ear alone with or without amplification, as verified by a licensed medical professional specializing in the provision of services to the deaf and hard of hearing.

(17)[~~(16)~~] "Education Interpreter Performance Assessment (EIPA) granted by Boys Town National Research Hospital" means an assessment indicating that the holder:

(a) Has demonstrated the ability to expressively interpret classroom content and discourse;

(b) Has demonstrated the ability to receptively interpret student sign language;

(c) Is not limited to any one sign language or system; and

(d) Is recommended to work with students who predominately use American Sign Language (ASL), Manually-Coded English (MCE), or Pidgin Sign English (PSE).

(18)[~~(17)~~] "Educational Certificate: K-12 (Ed: K-12) granted by RID" means that the holder has demonstrated:

(a) The ability to interpret classroom content, discourse, and student sign language; and

(b) Proficient expressive and receptive interpreting skills in all elementary and secondary school classroom settings.

(19)[~~(18)~~] "Formal complaint" means a formal administrative pleading authorized by the board which:

(a) Sets forth charges against a licensed individual or other person; and

(b) 1. Commences a formal disciplinary proceeding pursuant to KRS Chapter 13B; or

2. Requests the court to take criminal or civil action.

(20)[~~(19)~~] "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.

(21)[~~(20)~~] "Interpretation Certificate (IC) granted by RID" means that the holder has demonstrated the ability to interpret between American Sign Language and spoken English.

(22)[~~(21)~~] "Interpreting Certificate/Transliteration Certificate (IC/TC) granted by RID" means that the holder has demonstrated the ability to transliterate between English and a signed code for English and the ability to interpret between American Sign Language and spoken English.

(23)[~~(22)~~] "Investigator" means an individual designated by the board to assist the board in the investigation of a complaint.

(24)[~~(23)~~] "Licensure year" means the period between July 1st of each year and June 30th of the following year or the time from which a license or temporary license was granted until the next June 30th.

(25)[~~(24)~~] "Master Comprehensive Skills Certificate (MCSC) granted by RID" means that the holder has demonstrated a higher standard of performance than holders of the CSC and is recommended for a broad range of interpreting and transliterating assignments.

(26)[~~(25)~~] "NAD" means the National Association of the Deaf.

(27)[~~(26)~~] "NAD Level III (Generalist)" means that the holder has demonstrated average voice-to-sign skills, good sign-to-voice skills, and the minimum competence needed to meet generally accepted interpreter standards, except that this individual is not qualified for all situations.

(28)[~~(27)~~] "NAD Level IV (Advanced)" means that the holder has demonstrated excellent voice-to-sign skills and above average sign-to-voice skills, and this individual is recommended for most situations.

(29)[~~(28)~~] "NAD Level V (Master)" means that the holder has demonstrated superior voice-to-sign skills and excellent sign-to-voice skills, and this individual is recommended for a broad range of interpreting assignments.

(30)[~~(29)~~] "National Interpreter Certification (NIC)" means a certification indicating that the holder has passed the NIC Knowledge exam as administered by RID and has scored within the standard range on the interview and performance portions of the test.

(31)[~~(30)~~] "National Interpreter Certification (NIC Advanced)" means a certification indicating that the holder has passed the NIC Knowledge exam as administered by RID, scored within the standard range on the interview portion, and scored within the high range on the performance portion of the test.

(32)[~~(31)~~] "National Interpreter Certification Master (NIC Master)" means a certification indicating that the holder has passed the NIC Knowledge exam as administered by RID and has scored within the high range on both the interview and performance portions of the test.

(33) "Nationally Recognized Organization" means an organization that owns or administers an interpreting skills assessment that has been adopted by law or regulation by two or more state agencies or state regulatory boards.

(34)[~~(32)~~] "One (1) continuing education hour" means sixty (60) contact minutes of participating in continuing education experiences.

(35)[~~(33)~~] "Oral Interpreting Certificate. Comprehensive (OIC:C) granted by RID" means a certificate indicating that the holder has demonstrated the ability to transliterate a spoken message from a person who hears to a person who is deaf or hard-of-hearing and the ability to understand and repeat the message and intent of the speech and mouth movements of the person who is deaf or hard-of-hearing.

(36)[~~(34)~~] "Oral Interpreting Certificate. Spoken to Visible (OIC:S/V) granted by RID" means a certificate indicating that the holder has demonstrated the ability to transliterate a spoken message from a person who hears to a person who is deaf or hard-of-hearing.

(37)[~~(35)~~] "Oral Interpreting Certificate. Visible to Spoken (OIC:V/S) granted by RID" means a certificate indicating that the holder has demonstrated the ability to understand the speech and silent mouth movements of a person who is deaf or hard-of-hearing and to repeat the message for a hearing person.

(38)[~~(36)~~] "Oral Transliteration Certificate (OTC) granted by RID" means a certificate indicating that the holder has demonstrated ability to transliterate a spoken message from a person who hears to a person who is deaf or hard-of-hearing and the ability to understand and repeat the message and intent of the speech and mouth movements of the person who is deaf and hard-of-hearing.

(39)[~~(37)~~] "Reverse Skills Certificate (RSC) granted by RID" means a certificate indicating that the holder:

(a) Is deaf or hard of hearing; and

(b) Has demonstrated the ability to:

1. Interpret between American Sign Language and English-based sign language; or

2. Transliterate between spoken English and a signed code for English.

(40)[~~(38)~~] "Revoked" means the process by which the board terminates all rights and privileges associated with that license, in settlement of a disciplinary action initiated by the board.

(41)[~~(39)~~] "RID" means Registry of Interpreters for the Deaf, Inc.

(42)[~~(40)~~] "Sign Communication Proficiency Interview (SCPI) as developed by National Technical Institute for the Deaf" means the assessment that rates the ability to communicate expressively and receptively in a video-taped one-on-one interview or conversation with a trained interviewer.

(43)[~~(41)~~] "Sign Language Proficiency Interview (SLPI) as developed by National Technical Institute for the Deaf" means the assessment that rates the ability to communicate expressively and receptively in a video-taped one-on-one interview or conversation with a trained interviewer.

(44)[~~(42)~~] "Specialist Certificate: Legal (SC:L) granted by RID" means a certificate indicating that the holder has demonstrated specialized knowledge of legal settings and greater familiarity with language used in the legal system and is recommended for a broad range of assignments in the legal setting.

(45)[~~(43)~~] "Specialist Certificate: Performing Arts (SC:PA) granted by RID" means a certificate indicating that the holder has demonstrated specialized knowledge in performing arts interpretation and is recommended for a broad range of assignments in the performing arts setting.

(46)[~~(44)~~] "TECUnit" means the National Training, Evaluation, and Certification Unit.

(47)[~~(45)~~] "Transliteration Certificate (TC) granted by RID" means a certificate indicating that the holder has demonstrated the ability to transliterate between spoken English and a signed code for English.

(48)[~~(46)~~] "Voluntary surrender" means the process by which a person who holds a license issued by the board, knowingly and willingly, returns the license to the board, forfeiting all rights and

privileges associated with that license, in settlement of a disciplinary action initiated by the board.

DEREK DRURY, Board Chair

APPROVED BY AGENCY: February 14, 2017

FILED WITH LRC: February 15, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, March 21, 2017 at 2:00 p.m., local time, at the Kentucky Board of Interpreters for the Deaf and Hard of Hearing, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received in writing five (5) workdays prior to the hearing 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 in writing five (5) workdays prior to the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of day Friday, March 31, 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: John Marcus Jones, Board Counsel, Office of the Attorney General, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5635, fax (502) 696-3925, email marcus.jones@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John Marcus Jones

(1) Provide a brief summary of: Establishes the definitions for terms used in the regulations pertaining to Interpreters for the Deaf and Hard of Hearing.

(a) What this administrative regulation does: This administrative regulation establishes the definitions for terms used in the regulations pertaining to Interpreters for the Deaf and Hard of Hearing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set uniform definitions for terms used in the regulations pertaining to Interpreters for the Deaf and Hard of Hearing.

(c) How does this administrative regulation conform to the content of the authorizing statutes? KRS Chapter 309.304(3) requires the board to promulgate necessary and reasonable regulations to carry out the provisions of KRS 309.300 to 309.319. The uniform definitions for terms used in the administrative regulation are necessary to carry out that mandate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs the public of the definitions for the terms used in the administrative regulations pertaining to Interpreters for the Deaf and Hard of Hearing.

(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 add the BEI and define the term "Nationally Recognized Organization."

(b) The necessity of the amendment to this administrative regulation: The amendment will identify the BEI certification examination and define the term "Nationally Recognized Organization" as used in the chapter regulations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 309.304(1) requires the board to promulgate regulations to carry out the provisions of KRS 309.300 to 309.319.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will define the term BEI as a certification examination and provide a uniform definition for the term "Nationally Recognized Organization" for the chapter regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An estimated 50 persons will seek licensure within the next fiscal year, this regulation will also continue as new applicants seek licensure from the board.

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

(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 define the term BEI as a certifying agency and provide a uniform definition for the term nationally recognized organization.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The board does not anticipate any cost to the applicants affected by the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for licensure will be aware of the BEI as a certifying examination available to applicants for licensure as an interpreter.

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

(a) Initially: The budget for the Board is $38,000 annual. It will not cost the administrative body any additional funds to implement this administrative regulation.

(b) On a continuing basis: The budget for the Board is estimated to continue to have a budget of $38,000 annual. It will not cost the administrative body any additional funds to implement this administrative regulation.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish the fees. This regulation only sets the definitions for the administrative regulations pertaining to Interpreters for the Deaf and Hard of Hearing.

(9) Tiering: Is tiering applied? No. Tiering is not applied because this change in the administrative regulation will apply to all applicants for licensure or temporary licensure equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?
Kentucky Board of Interpreters for the Deaf and Hard of Hearing is an administrative body created by KRS 309.302.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.300, KRS 309.304.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will not have any effect on the expenditures and revenues of state and local government.

(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 revenue generated will depend on the number of applicants for the 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 revenue will depend on the number of applicants for the subsequent years.

(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 (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

GENERAL GOVERNMENTAL CABINET
Office of Occupations and Professions
Board of Interpreters for the Deaf and Hard of Hearing
(Amendment)

201 KAR 39:030. Application; qualifications for licensure; and certification levels.

RELATES TO: KRS 309.304(1), 309.312(1)(b)

STATUTORY AUTHORITY: KRS 309.304(3), 309.312(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.304(3) and 309.312(1)(b) require the Kentucky Board of Interpreters for the Deaf and Hard of Hearing to promulgate an administrative regulation establishing the requirements for an applicant for licensure as an interpreter for the deaf and hard of hearing. This administrative regulation establishes these requirements.

Section 1. Application. Each applicant for a license shall:

(1) Submit a completed Application for Licensure form to the board;

(2) Pay the application and license fee as set forth in 201 KAR 39:040; and

(3) Submit proof of valid certification from one the following nationally recognized organizations;

(a) At a level recognized by RID, with the exception of NAD III;

(b) At EIPA level 4.0 and passage of the EIPA written;

(c) TECUnit;[~~or~~]

(d) BEI Advanced or better achieved within three (3) years of application; or

(e) Other certifications as described in 201 KAR 39:080, if applying for licensure via reciprocity.

Section 2. Appeal of Denial of an Application for Licensure. (1) If an application for licensure is denied, the applicant shall have the right to appeal that preliminary determination.

(2) An appeal shall be submitted to the board and shall be:

(a) In writing and submitted by certified mail;

(b) Received by the within thirty (30) days after the date the applicant receives the notice of preliminary denial by certified mail or email message delivered to the addresses stated on the Application for Licensure.

(c) The appeal of a preliminary denial of an Application for Licensure shall be held in accordance with the provision of KRS Chapter 13B.

Section 3. Incorporation by Reference. (1) "Application for Licensure", December 2016[~~August 2015~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Professional Licensing[~~Division of Occupations and Professions~~], 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

DEREK DRURY, Board Chair

APPROVED BY AGENCY: February 14, 2017

FILED WITH LRC: February 15, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, March 21, 2017 at 2:00 p.m., local time, at the Kentucky Board of Interpreters for the Deaf and Hard of Hearing, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received in writing five (5) workdays prior to the hearing 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 in writing five (5) workdays prior to the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of day Friday, March 31, 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: John Marcus Jones, Board Counsel, Office of the Attorney General, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5635, fax (502) 696-3925, email marcus.jones@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John Marcus Jones

(1) Provide a brief summary of: Establishes the requirements to obtain a license as an Interpreter for the Deaf and Hard of Hearing.

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the licensure of persons who wish to practice in the state as a Licensed Interpreter for the Deaf and Hard of Hearing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the process and minimum certification testing score for licensure.

(c) How does this administrative regulation conform to the content of the authorizing statutes? KRS Chapter 309 requires the board to verify the qualifications of and establish a procedure for the licensure of persons who wish to practice in the state as a Licensed Interpreter for the Deaf and Hard of Hearing. This administrative regulation establishes the minimum qualifications and requirements for licensure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs the applicants of the examinations required, minimum test scores, and requirements for obtaining licensure from 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 will add the BEI as a certification examination for applicants wishing to obtain a license as an interpreter in the Commonwealth of Kentucky. The amendment will clarify the appeal process for a preliminary denial of a license.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to add the BEI as a certification examination for applicants wishing to obtain a license as an interpreter in the Commonwealth of Kentucky. The amendment is necessary as the existing certifying examinations have been placed on a moratorium with no foreseeable end date. The amendment is necessary to clarify the appeal process for applicants for licensure.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 309.304(1) requires the board to evaluate the qualifications for applicants for licensure and establish procedures for the issuance of temporary licenses. KRS 309.312 requires applicants to meet current certification standards from a nationally recognized organization at the requisite level for sign language interpreters. KRS 309.318 allows the appeal of a refusal

to issue a license held in accordance with the provisions of KRS Chapter 13B.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will add the BEI as a certification examination for applicants wishing to obtain a license as an interpreter in the Commonwealth of Kentucky. The amendment is necessary as the existing certifying examinations have been placed on a moratorium with no foreseeable end date.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An estimated 50 persons will seek licensure within the next fiscal year, this regulation will also continue as new applicants seek licensure from the board.

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

(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 allow new applicants to use a passing score on the BEI to qualify for licensure as an interpreter in the Commonwealth of Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The board does not anticipate any cost to the applicants affected by the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for licensure will have an additional certifying examination alternative for qualifying for Kentucky licensure as an interpreter. Applicants will be aware of the appeal process for denial of an application for licensure.

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

(a) Initially: The budget for the Board is $38,000 annual. It will not cost the administrative body any additional funds to implement this administrative regulation.

(b) On a continuing basis: The budget for the Board is estimated to continue to have a budget of $38,000 annual. It will not cost the administrative body any additional funds to implement this administrative regulation.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish the fees. This regulation only sets the procedure for obtaining a license.

(9) Tiering: Is tiering applied? No. Tiering is not applied to this regulation because the criteria will apply to all license applicants equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?
Kentucky Board of Interpreters for the Deaf and Hard of Hearing is an administrative body created by KRS 309.302.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.304, KRS 309.312.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will not have any effect on the expenditures and revenues of state and local government.

(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 revenue generated will depend on the number of applicants for the 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 revenue will depend on the number of applicants for the subsequent years.

(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 (+/-): N/A
Expenditures (+/-): N/A
Other Explanation: N/A

GENERAL GOVERNMENTAL CABINET
Office of Occupations and Professions
Board of Interpreters for the Deaf and Hard of Hearing
(Amendment)

201 KAR 39:070. Application and qualifications for temporary licensure.

RELATES TO: KRS 309.312(1)(b), (3)
STATUTORY AUTHORITY: KRS 309.304(3), 309.312
NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.304(3) and 309.312(1)(b) and (3) require the board to promulgate an administrative regulation establishing the requirements for an applicant for temporary licensure as an interpreter for the deaf and hard of hearing. This administrative regulation establishes the requirements regarding temporary licensure.

Section 1. Application for Licensure. Each applicant shall submit:

(1) A completed Application for Licensure Form;

(2) The appropriate application and licensure fees as required by 201 KAR 39:040;

(3) A Plan of Supervision for a Temporary License from a board approved mentor;

(4) Proof documenting passage of the NIC or EIPA Knowledge Exam. If the interpreter is deaf or hard of hearing, eighteen (18) hours of continuing education focused on CDI preparation may be obtained in lieu of this requirement; and

(5) Proof of achieving or holding one (1) of the following:

(a) Valid NAD Level III as a currently certified member;

(b) SCPI Advanced or better, within three (3) years of application;

(c) SLPI Advanced or better, within three (3) years of application;

(d) ASLPI of three and one-half (3.5) or better, within three (3) years of application; [~~or~~]

(e) EIPA of three (3.0) or better; or

(f) BEI Basic or better, within three (3) years of application.

Section 2. Temporary Licensure Duration. (1) An individual may hold temporary licensure for a maximum of five (5) consecutive licensure years from the date of initial issuance.

(2) An individual who is deaf or hard of hearing may hold temporary licensure for a maximum of ten (10) consecutive licensure years from the date of initial licensure[~~issuance~~].

(3) Any reinstatement or extension of a temporary license shall occur during the period established in subsection (1) or (2) of this section.

(4) The board shall, in individual cases involving medical disability, illness, undue hardship, or active military service, or

other extenuating circumstances that preclude the individual from completing the requirements, grant an extension of temporary licensure for an additional one (1) year for applicants who submit to the board:

(a) A written request for an extension of the temporary licensure term delivered to the board, by certified mail, no less than thirty (30) days before the expiration of the temporary license; and

(b) Verifying documentation signed by a licensed physician or proper military personnel, if applicable; or

(c) Documentation that provides evidence of the undue hardship.

Section 3. Supervision Requirements. (1) Each applicant for a temporary license shall be trained and supervised by a board-approved mentor.

(2) During the period of training and supervision the mentor shall meet with the[~~each~~] licensee on a quarterly basis. One (1) of these meetings shall be on a face to face basis with each person being mentored. The remaining meetings may be through the use of video or video teleconferencing or any other method outlined in the approved plan of supervision.

(3) A mentor shall contract with no more than twenty (20) temporary licensees during a calendar year.

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

(a) "Application for Licensure", December 2016[~~August 2015~~]; and

(b) "Plan of Supervision for Temporary License", 10/2011.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Professional Licensing[~~Division of Occupations and Professions~~], 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

DEREK DRURY, Board Chair

APPROVED BY AGENCY: February 14, 2017

FILED WITH LRC: February 15, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, March 21, 2017 at 2:00 p.m., local time, at the Kentucky Board of Interpreters for the Deaf and Hard of Hearing, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received in writing five (5) workdays prior to the hearing 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 in writing five (5) workdays prior to the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of day Friday, March 31, 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: John Marcus Jones, Board Counsel, Office of the Attorney General, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5635, fax (502) 696-3925, email marcus.jones@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John Marcus Jones

(1) Provide a brief summary of: Establishes the requirements to obtain a temporary license as an Interpreter for the Deaf and Hard of Hearing.

(a) What this administrative regulation does: This administrative regulation establishes the procedures and certification levels for the licensure of persons who wish to practice in the state as a Licensed Interpreter for the Deaf and Hard of Hearing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the process and minimum certification testing scores for temporary licensure and establish an expiration date for certifications.

(c) How does this administrative regulation conform to the content of the authorizing statutes? KRS Chapter 309 requires the board to verify the qualifications of and establish a procedure for the temporary licensure of persons who wish to practice in the state as a Licensed Interpreter for the Deaf and Hard of Hearing. This administrative regulation establishes the minimum qualifications and supervision requirements for temporary licensure and the expiration date for certifications.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs the applicants of the examinations required, minimum test scores, and supervision requirements for obtaining temporary licensure from 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 will add the BEI as a certification examination for applicants wishing to obtain a temporary license as an interpreter in the Commonwealth of Kentucky.

(b) The necessity of the amendment to this administrative regulation: The amendment will add the BEI as a certification examination for applicants wishing to obtain a license as an interpreter in the Commonwealth of Kentucky. The amendment is necessary as the existing certifying examinations have been placed on a moratorium with no foreseeable end date.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 309.312(3) states that the board may issue a temporary license to applicants for licensure and establish procedures for the issuance of temporary licenses. KRS 309.312 requires applicants to meet current certification standards from a nationally recognized organization at the requisite level for sign language interpreters. BEI is a nationally recognized examination from Texas and Arizona and an affordable alternative for applicants.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will add the BEI as a certification examination for applicants wishing to obtain a temporary license as an interpreter in the Commonwealth of Kentucky. The amendment is necessary as the existing certifying examinations have been placed on a moratorium with no foreseeable end date.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An estimated 50 persons will seek temporary licensure within the next fiscal year, this regulation will also continue as new applicants seek temporary licensure from the board.

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

(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 allow new applicants to use a passing score on the BEI to qualify for licensure as an interpreter in the Commonwealth of Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The board does not anticipate any cost to the applicants affected by the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for licensure will have an additional certifying examination alternative for qualifying for Kentucky licensure as an interpreter.

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

(a) Initially: The budget for the Board is $38,000 annual. It will not cost the administrative body any additional funds to implement

this administrative regulation.

(b) On a continuing basis: The budget for the Board is estimated to continue to have a budget of $38,000 annual. It will not cost the administrative body any additional funds to implement this administrative regulation.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish the fees. This regulation only sets the procedure for obtaining a temporary license.

(9) Tiering: Is tiering applied? No. Tiering is not applied because this change in the administrative regulation will apply to all applicants for licensure or temporary licensure equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?
Kentucky Board of Interpreters for the Deaf and Hard of Hearing is an administrative body created by KRS 309.302.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.304, KRS 309.312.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will not have any effect on the expenditures and revenues of state and local government.

(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 revenue generated will depend on the number of applicants for the 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 revenue will depend on the number of applicants for the subsequent years.

(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 (+/-): N/A
Expenditures (+/-): N/A
Other Explanation: N/A

GENERAL GOVERNMENT CABINET
Board of Licensed Diabetes Educators
(Amendment)

201 KAR 45:100. Fees.

RELATES TO: KRS 309.335
STATUTORY AUTHORITY: KRS 309.331, 309.335
NECESSITY, FUNCTION AND CONFORMITY: KRS 309.335 requires the board to promulgate an administrative regulation establishing the initial fee, annual fee, and late renewal fee for licensure as a diabetes educator. This administrative regulation establishes fees for licensure as a diabetes educator.

Section 1. Licensure Fee. The fee for licensure as a licensed diabetes educator, apprentice diabetes educator, or master licensed diabetes educator shall be fifty (50) dollars.

Section 2. Renewal,[~~and~~] Reinstatement, and Reactivation. (1) The renewal date for all licenses issued by the board shall be November 1 of each calendar year.

(2) The following fees shall be paid for renewals,[~~and~~] reinstatements, and reactivations for licenses and permits issued by the board:

(a) The renewal fee on or before November 1 shall be fifty ($50) dollars annually;

(b) The renewal fee after November 1[~~December 2~~] but before December 31[~~January 30~~] shall be the licensure fee as set forth in Section 1 of this administrative regulation, plus a twenty (20) dollar late fee.(c) The reinstatement fee after December 31[~~January 30~~] of an expired license due to failure to renew shall be $120.

(d) The reactivation fee for a license or permit holder whose license or permit has been placed in inactive status shall be fifty (50) dollars.

KIM DECOSTE, Chairperson
APPROVED BY AGENCY: February 15, 2017
FILED WITH LRC: February 15, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2017 at 10:00 a.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wished to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 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: Matt James, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-9380, email matt.james@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt James

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes the fees for licensure, renewal, reinstatement, and reactivation.

(b) The necessity of this administrative regulation: This regulation is necessary because it states the cost to obtain and maintain the license.

(c) How this administrative regulation conforms to the content of the authorizing statues: The board is given the authority to establish regulations for the fees in KRS 309.335(1)(c).

(d) How this administrative regulation currently assists or will assist in the effective
administration of the statutes: This administrative regulation sets forth the fees for licensure, renewal, reinstatement, and reactivation.

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

(a) How the amendment will change this existing administrative regulation: The amendment establishes a uniform grace period for renewal and adds a reactivation fee.

(b) The necessity of the amendment to this administrative

regulation: The current grace period for renewal has resulted in confusion, and there is currently no reactivation fee.

(c) How the amendment conforms to the content of the authorizing statutes: The board is given the authority to establish regulations for the fees in KRS 309.335(1)(c).

(d) How the amendment will assist in the effective and administration of the statutes: The amendment will establish a uniform grace period and a reactivation fee.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 500 individuals currently have licenses or permits from the board.

(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 the administrative regulation or amendment: This administrative regulation will require license holders who have placed their license in inactive status to pay a fee for reactivation of the license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The reactivation fee for licensees in inactive status will be $50.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The applicants' licenses will be reactivated.

(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: The board's operation is funded by the fees paid by licensees and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: The fee for reactivation will be established.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment establishes a reactivation fee of $50.

(9) TIERING: Is tiering applied? Tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, countries fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensed Diabetes Educators is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.335

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? Approximately $500

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for subsequent years? Approximately $500

(c) How much will it cost to administer this program for the first year? Current budget is $26,800 – this change will not increase the current year budget.

(d) How much will it cost to administer this program for subsequent years? Current budget is $26,800 – this change will not increase the current year budget.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensed Diabetes Educators
(Amendment)

201 KAR 45:110. Supervision and work experience.

RELATES TO: KRS 309.331

STATUTORY AUTHORITY: KRS 309.331(1), 309.334(2)(a)

NECESSITY, FUNCTION AND CONFORMITY: KRS 309.331(1) requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.325 to 309.339. KRS 309.334(2)(a) requires the board to promulgate administrative regulations to establish the duties of the apprentice diabetes educator supervisor. This administrative regulation establishes the amount of work experience required for licensure and the qualifications to be a supervisor.

Section 1. Accumulation of Work Experience. An apprentice diabetes educator shall accumulate at least 750 hours of supervised work experience within five (5) years from the date of application for licensure, of which 250 hours shall have been obtained within the last twelve (12) months preceding licensure application.

Section 2. Supervision. (1)(a) The supervisor shall review the apprentice diabetes educator's provision of diabetes self-management education.

(b) The apprentice diabetes educator shall interact with the supervisor no less than two (2) hours quarterly, one (1) hour of which shall be while being physically present in the same room.

(2) The hours of work experience and verification by the apprentice diabetes educator and supervisor shall be documented on the Application for Licensure, Form DE-01.

(3) A supervisor shall not serve as a supervisor for more than four (4) apprentice diabetes educators at a time.

(4) The supervision process shall focus on:

(a) Identifying strengths, developmental needs, and providing direct feedback to foster the professional development of the apprentice diabetes educator;

(b) Identifying and providing resources to facilitate learning and professional growth;

(c) Developing awareness of professional and ethical responsibilities in the practice of diabetes education; and

(d) Ensuring the safe and effective delivery of diabetes education services and fostering the professional competence and development of the apprentice diabetes educator.

Section 3. Documentation Requirements. The documentation required by the Supervised Work Experience Report, Form DE-05 shall be maintained for a period of five (5) years and provided to the board at the request of the board.

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

(a) "Application for Licensure", Form DE-01, 3/2017[~~01/2015~~]; and

(b) "Supervised Work Experience Report", Form DE-05, 06/2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensed Diabetes Educators, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

KIM DECOSTE, Chairperson

APPROVED BY AGENCY: February15, 2017

FILED WITH LRC: February 15, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2017 at 10:00 a.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wished to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 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: Matt James, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-9380, email matt.james@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt James, Board Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes the work experience and supervision required for licensure.

(b) The necessity of this administrative regulation: This regulation is necessary because it explains the amount of work experience needed for licensure and the standards for supervision.

(c) How this administrative regulation conforms to the content of the authorizing statues: The Board is given the authority to establish administrative regulations for the practice of diabetes educators.

(d) How this administrative regulation currently assists or will assist in the effective
administration of the statutes: This administrative regulation sets forth the definitions of work experience and supervision for apprentice diabetes educators.

(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 requirements on the application form.

(b) The necessity of the amendment to this administrative regulation: Some of the requirements were not clear on the application form.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment clarifies the requirements for application.

(d) How the amendment will assist in the effective and administration of the statutes: The amendment clarifies the requirements for application.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Over 500 individuals are licensed or master licensed diabetes educators, and there are currently several apprentice diabetes educators.

(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 the administrative regulation or amendment: The supervisors and apprentice diabetes educators will have to complete the supervision requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fee for applying is established in a separate regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Apprentice diabetes educators will be able to apply for licensure and receive supervision.

(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 operation is funded by the fees paid by licensees and apprentice diabetes educators.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation did not establish the fees. The application fee is set in a separate regulation.

(9) TIERING: Is tiering applied? Tiering was not applied because these requirements apply equally to all licensees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, countries fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensed Diabetes Educators is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.331, 309.334

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? 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 (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

GENERAL GOVERNMENT CABINET
Board of Licensed Diabetes Educators
(Amendment)

201 KAR 45:120. Renewal, reinstatement, and inactive status.

RELATES TO: KRS 309.331, 309.334, 309.335

STATUTORY AUTHORITY: KRS 309.331(1), 309.335

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.331 requires the board to promulgate administrative regulations establishing procedures for annual renewal of licenses, and KRS 309.335(2)(c) requires the board to promulgate administrative regulations for reinstatement of licenses. This administrative

regulation establishes procedures for annual renewal and reinstatement of licenses.

Section 1. Regular License Renewal. (1) A licensed diabetes educator or master licensed diabetes educator shall submit to the board by November 1 of each year:

(a) A completed Renewal Application, Form DE-02;

(b) Proof of the required continuing education as set forth in 201 KAR 45:130; and;

(c) The renewal fee as established in 201 KAR 45:100.

(2) If a license is not renewed by December 31[~~January 30~~] of the new licensure year, the license shall automatically expire.

Section 2. Reinstatement. (1) An expired license or permit shall be reinstated upon the licensee or permit holder:

(a) Submitting a completed Reinstatement Application, Form DE-08;

(b) Paying the required fees established in 201 KAR 45:100; and

(c) Submitting proof of completion of an amount of continuing education courses equivalent to the continuing education requirements as established in 201 KAR 45:130 for each year since the last date the license was active.

(2) An expired license or permit may be reinstated within five (5) years of the date of expiration.

Section 3. Inactive Status. (1) A licensee or permit holder may place his or her license or permit in inactive status. To request that a license or permit be placed in inactive status, the licensee or permit holder shall submit written notice to the board prior to November 1.

(2)(a) An individual with an inactive license or permit shall not practice diabetes education while the license or permit is inactive.

(b) A licensee or permit holder may remain in inactive status for a maximum of five (5) years.

(3)(a) During the period of inactive status, the licensee or permit holder shall not be required to meet the annual continuing education requirements as established in 201 KAR 45:130.

(b) Upon the licensee's or permit holder's request for licensure reactivation, the licensee or permit holder shall provide proof of completion of an amount of continuing education courses equivalent to the continuing education requirements as established in 201 KAR 45:130 for each year the license was inactive, and payment of the reactivation fee as established in 201 KAR 45:100.

(4)(a) An individual shall submit in writing a request to the board to be placed back in active status.

(b) The request shall be submitted at least one (1) week in advance of the board's regularly scheduled board meeting.

Section 4. Regular Permit Renewal. (1) An apprentice diabetes educator shall submit to the board by November 1 of each year:

(a) A completed Apprentice Renewal Application, Form DE-04;

(b) Proof of the required continuing education established in 201 KAR 45:130; and

(c) The renewal fee established in 201 KAR 45:100.

(2)(a) If a permit is not renewed by December 31[~~January 30 of the new licensure year~~], it shall automatically expire[~~, and the apprentice diabetes educator shall reapply for a permit as established in KRS 309.334~~].

(b) A permit may be reinstated by complying with the requirements of Section 2 of this administrative regulation.[~~Work experience accumulated shall not carry over between permits.~~]

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Renewal Application", Form DE-02, 02/2015;

(b) "Apprentice Renewal Application", Form DE-04, 06/2015; and

(c) "Reinstatement Application," Form DE-08, 03/2017[~~06/2015~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensed Diabetes Educators, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

KIM DECOSTE, Chairperson

APPROVED BY AGENCY: February 15, 2017

FILED WITH LRC: February 15, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2017 at 9:30 a.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wished to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 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: Matt James, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-9380, email matt.james@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes the process to renew and reinstate a license and place a license into inactive status.

(b) The necessity of this administrative regulation: This regulation is necessary because it explains how a licensee can renew his license before it expires, reinstate the license once it has expired and place it into an inactive status.

(c) How this administrative regulation conforms to the content of the authorizing statues: The board is given the authority to establish administrative regulations for the licensing of diabetes educators.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the process to renew and reinstate a license and place a license into inactive status.

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

(a) How the amendment will change this existing administrative regulation: The amendment requires payment of a reactivation fee, and allows for reinstatement or reactivation of apprentice diabetes educator permits.

(b) The necessity of the amendment to this administrative regulation: The amendment includes a reactivation fee, and allows for reinstatement or reactivation of apprentice diabetes educator permits.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 309.331(2) authorizes the board to issue renewals, and KRS 309.335(2)(c) requires the board to promulgate regulations for reinstatements.

(d) How the amendment will assist in the effective and administration of the statutes: This amendment requires payment of a reactivation fee, and allows for reinstatement or reactivation of apprentice diabetes educator permits.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 500 individuals hold licenses or permits from the board.

(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 the administrative

regulation or amendment: The regulation requires payment of a fee for reactivation, and allows for reinstatement or reactivation of apprentice diabetes educator permits.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fee for reactivation is $50.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Apprentice diabetes educators will be able to reinstate or reactivate their permits.

(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 operation is funded by the fees paid by licensees and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: The amendment requires payment of a fee for reactivation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation did not establish the fees but there will be a fee applied that is set in a separate regulation for renewal and reinstatment.

(9) TIERING: Is tiering applied? Tiering was not applied because these requirements apply equally to all licensees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, countries fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensed Diabetes Educators is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.331, 309.335

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? 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 (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

GENERAL GOVERNMENT CABINET
Board of Licensed Diabetes Educators
(Amendment)

201 KAR 45:130. Continuing education.

RELATES TO: KRS 309.337

STATUTORY AUTHORITY: KRS 309.331

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

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

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

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

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

Section 2. Methods of Acquiring Continuing Education Hours. (1) Continuing education hours for license renewal shall be applicable to diabetes and presented at a professional level that enhances the quality and effectiveness of diabetes self-management education.

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

(a) American Association of Diabetes Educators (AADE);

(b) American Diabetes Association (ADA);

(c) Academy of Nutrition and Dietetics (AND);

(d) Accreditation Council for Pharmacy Education (ACPE);

(e) Accreditation Council for Continuing Medical Education (ACCME-AMA);

(f) American Nurses Credentialing Center (ANCC);

(g) American Academy of Family Physicians (AAFP);

(h) American Academy of Nurse Practitioners (AANP);

(i) American Academy of Optometry (AAO);

(j) American Academy of Physician Assistants (AAPA);

(k) American Association of Clinical Endocrinologists (AACE);

(l) American College of Endocrinology (ACE);

(m) American College of Sports Medicine (ACSM);

(n) American Medical Association (AMA) or its Kentucky affiliate;

(o) American Nurses Association (ANA);

(p) American Occupational Therapy Association (AOTA);

(q) American Physical Therapy Association (APTA);

(r) American Psychological Association (APA);

(s) Commission on Dietetic Registration (CDR);

(t) Council on Continuing Medical Education (CCME-AOA);

(u) Council on Podiatric Medical Education (CPME-APMA);

(v) International Diabetes Federation (IDF);

(w) National Association of Clinical Nurse Specialists (NACNS);

(x) National Association of Social Workers (NASW);

(y) Kentucky Board of Nursing (KBN);

(z) Kentucky Board of Pharmacy;

(aa) Kentucky Board of Medical Licensure; or

(bb) Kentucky Nurses Association (KNA).

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

(2) Appropriate documentation to be kept shall include:

(a) Proof of attendance;

(b) Date of activity;

(c) Description of activity;

(d) Total hours of instruction, excluding breaks; and

(e) Names and professional qualifications of the presenters.

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

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

Section 4. Reconsideration. (1) A licensee may request the board to reconsider its denial of a continuing education course by

filing a written request with the board.

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

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

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

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

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

(a) For the first offense, the licensee or permit holder shall be fined fifty (50) dollars. The licensee or permit holder shall be subject to audit after the next renewal period.

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

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

2. If the licensee or permit holder does not comply with subparagraph 1. of this paragraph, the licensee or permit holder's license or permit shall expire.

KIM DECOSTE, Chairperson

APPROVED BY AGENCY: February 15, 2017

FILED WITH LRC: February 15, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2017 at 10:00 a.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wished to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 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: Matt James, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-5380, email matt.james@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt James

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes the continuing education required to maintain licensure.

(b) The necessity of this administrative regulation: Since licensees are required to obtain continuing education, they must know what will be accepted for continuing education credit.

(c) How this administrative regulation conforms to the content of the authorizing statues: The Board is given the authority to establish regulations setting the requirements for continuing education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the activities that are acceptable for continuing education and the licensee's duty to maintain records regarding the courses attended.

(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 subjects those who fail the first audit to another audit the following year.

(b) The necessity of the amendment to this administrative regulation: This amendment ensures that those who fail an audit will comply with the continuing education requirements in the following year.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 309.331(1) authorizes the board to promulgate administrative regulations establishing continuing education requirements for licensed diabetes educators.

(d) How the amendment will assist in the effective and administration of the statutes: The amendment will require the board to verify that individuals who fail an audit are complying with the continuing education requirements in the following year.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 500 individuals have licenses or permits issued by the board.

(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:

(3) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: Licensees who fail an audit will be re-audited the following year.

(4) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not cost licensees anything other than copying or postage costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees will be able to maintain licensure and stay aware of the developments in the profession of diabetes educator.

(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 operation is funded by the fees paid by licensees and applicants.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because the regulation applies equally to all licensees and permit holders.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, countries fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensed Diabetes Educators is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.331 and 309.337

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 (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

GENERAL GOVERNMENT CABINET
Board of Medical Imaging and Radiation Therapy
(Amendment)

201 KAR 46:040. Medical imaging technologist, advanced imaging professional, radiographer, nuclear medicine technologist, and radiation therapist licenses.

RELATES TO: KRS 311B.020, 311B.050, 311B.080, 311B.100(2), 311B.110, 311B.120, 311B.180, 311B.190

STATUTORY AUTHORITY: KRS 311B.050, 311B.080, 311B.100(2), 311B.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311B.050 requires the Board of Medical Imaging and Radiation Therapy to promulgate administrative regulations to establish the procedures for the issuance and renewal of a license. KRS 311B.100(2) and KRS 311B.110(6) require the board to promulgate administrative regulations to establish the qualifications for an advanced imaging professional, a medical imaging technologist, a radiographer, a radiation therapist, and a nuclear medicine technologist. KRS 311B.080 requires the board to recognize and enforce national practice standards and scopes of practice. This administrative regulation establishes uniform standards for the licensure of individuals who perform medical imaging and radiation therapy for diagnostic and therapeutic purposes while under the supervision of a licensed practitioner of the healing arts.

Section 1. Applicability. This administrative regulation shall apply to individuals who perform medical imaging or radiation therapy for diagnostic medical imaging or therapeutic purposes while under the direct or indirect supervision of a licensed practitioner of the healing arts as specified by practice standards, by scope of practice, and in the ACR-AAPM Technical Standard For The Management Of The Use Of Radiation In Fluoroscopic Procedures as listed in Section 12[~~11~~] of this administrative regulation.

Section 2. Eligibility for an Advanced Imaging Professional, a Medical Imaging Technologist, a Radiographer, a Radiation Therapist, and a Nuclear Medicine Technologist License. A[~~No~~] person shall not be eligible for a license pursuant to this administrative regulation for diagnostic imaging or therapeutic purposes unless the person has:

(1) Satisfactorily passed the national examination administered by the American Registry of Radiologic Technologists or the Nuclear Medicine Technology Certification Board examination; and

(2) Satisfactorily completed a program in radiography, nuclear medicine technology, radiation therapy, or advanced imaging practice that has achieved and maintained programmatic accreditation recognized by the board as described in 201 KAR 46:030.

Section 3. Application for Initial License. (1) An applicant shall submit:

(a) A completed and signed application KBMIRT Form 1;

(b) A non-refundable initial application and license fee as established by 201 KAR 46:020, Section 1;

(c) The results of a criminal background check completed within the past six (6) months in state of residence and employment and any other state of residence and employment within the past five (5) years;

(d) A copy of a government-issued photo ID;

(e) Documentation of active registration or certification with the ARRT or NMTCB; and

(f) Verification of graduation from a program accredited by the Joint Review Committee on Education in Radiologic Technology or the Joint Review Committee on Educational Programs in Nuclear Medicine Technology.

(2) Notwithstanding subsection (1)(f) of this section, if a student enters a program not under probation, and the majority of the education program is completed under the accreditation required under 201 KAR 46:030, then the board may waive the accreditation standard as long as the graduate passes the American Registry of Radiologic Technologists (ARRT) examination on the first attempt.

Section 4. Applicant for an Unaccredited Educational Program. (1) If an applicant does not graduate from an accredited educational program as required in Section 2(2), Section 3(1)(f), or Section 3(2) of this administrative regulation, the licensing requirements for the accredited educational program requirement may be waived for an applicant if:

(a) The applicant holds an active valid license or certificate from another jurisdiction's regulatory board to practice as an advanced imaging professional, medical imaging technologist, radiographer, radiation therapist, or nuclear medicine technologist and is in good standing;

(b) The other jurisdiction grants the same privileges to licensees of Kentucky as Kentucky grants to a licensee or certificate holder of that other jurisdiction;

(c) The licensing requirements of the other jurisdiction are determined by the board to be substantially similar to the requirements of KRS Chapter 311B and the administrative regulations in 201 KAR Chapter 46;

(d) The applicant is certified or licensed by a national organization recognized by the board;

(e) The applicant has not been disciplined as an advanced imaging professional, medical imaging technologist, radiographer, radiation therapist, or nuclear medicine technologist by any jurisdiction or national organization that has issued a license or certificate to the applicant; and

(f) The applicant has provided the board with evidence of a minimum of five (5) years of work experience as a certified or licensed advanced imaging professional, medical imaging technologist, radiographer, radiation therapist, or nuclear medicine technologist.

(2) An applicant for reciprocity under this section shall submit and satisfy the requirements of Section 3(1)(a) through (e) of this administrative regulation.

Section 5. The issued license shall identify the licensee as an advanced imaging professional, a medical imaging technologist, a radiographer, a radiation therapist, or a nuclear medicine technologist. The medical imaging technologist license shall also identify any ARRT or NMTCB disciplines awarded to the licensee.

Section 6[~~5~~]. The license shall expire annually on the last day of the licensee's birth month.

Section 7[~~6~~]. Renewal of License. To renew a license, the licensee shall submit:

(1) KBMIRT Form 2;

(2) Verification of current active status with the ARRT or

NMTCB; and

(3) The renewal license fee as established by 201 KAR 46:020, Section 2.

Section 8[~~7~~]. Reinstatement of Lapsed License. (1) A licensee who has allowed the license to lapse for more than one (1) month but less than twelve (12) months shall be[~~is~~] eligible to be reinstated upon:

(a) Submission of KBMIRT Form 2;

(b) Submission of[~~,~~] documentation of twenty-four (24) hours of approved continuing education biennially;[~~,~~] and

(c) The payment of reinstatement, late, and renewal fees as established by 201 KAR 46:020, Sections 2,[~~and~~] 7, and 14.

(2) A licensee whose license has lapsed for more than twelve (12) months shall submit:

(a) Verification of current active status with the ARRT or NMTCB;

(b) KBMIRT Form 1;

(c) Continuing education KBMIRT Form 8, as incorporated by reference in 201 KAR 46:060, that documents twenty-four (24) hours of approved continuing education;

(d) The non-refundable initial application and license fee as established by 201 KAR 46:020, Section 1;

(e) The results of a criminal background check completed within the past six (6) months in state of residence and employment and any other state of residence and employment within the past five (5) years; and

(f) A copy of a government-issued photo ID.

Section 9[~~8~~]. Temporary License. The board may, upon completion of Form KBMIRT 3, as incorporated by reference in 201 KAR 46:045, and payment of the fee established in 201 KAR 46:020, Section 3, issue a temporary license to an applicant who has successfully completed an approved course of study in radiography, nuclear medicine technology, radiation therapy, or an advanced imaging profession and meets the other requirements of 201 KAR 46:045 other than having taken the required examination. A temporary license[~~licenses~~] shall be effective for one (1) year only and shall[~~are~~] not be renewable.

Section 10[~~9~~]. Continuing Education Audit Process. (1) The board shall select a sample of licensees to audit for continuing education compliance.

(2) The board shall send each licensee selected for audit a notification of audit.

(3) Each licensee shall maintain his or her personal files such as certificates or records of credit from approved continuing education programs from the current biennium and immediate prior biennium.

(4) A licensee selected for audit shall provide the board with a copy of his or her certificate or records of completion.

(5) Failure to comply with an audit may result in non-renewal, suspension, or revocation of license.

Section 11[~~10~~]. Contrast Procedures. Only individuals holding a license pursuant to this administrative regulation shall perform diagnostic imaging or radiation therapy procedures regulated by KRS Chapter 311B at facilities where contrast studies are performed.

Section 12[~~11~~]. Practice Standards. Individuals licensed pursuant to this administrative regulation shall perform according to practice standards of the discipline for which they hold credentials, as established by the American Society of Radiologic Technologists (ASRT), the American College of Radiology (ACR), the American Association of Physicists in Medicine (AAPM), and the Society of Nuclear Medicine and Molecular Imaging (SNMMI) and incorporated by reference. These standards include the:

(1) Radiography Practice Standards;

(2) Nuclear Medicine Technologist Scope of Practice and Performance Standards;

(3) Positron Emission Tomography (PET) Technologist Scope of Practice and Performance Standards;

(4) Scope of Practice for the Nuclear Medicine Advanced Associate;

(5) Radiation Therapy Practice Standards;

(6) Bone Densitometry Practice Standards;

(7) Cardiac[~~Cardiovascular~~] Interventional and Vascular Interventional Technology Practice Standards;

(8) Computed Tomography Practice Standards;

(9) Limited X-ray Machine Operator Practice Standards;

(10) Mammography Practice Standards;

(11) Radiologist Assistant Practice Standards;

(12) ACR ASRT Joint-Policy Statement-Radiologist Assistant: Roles and Responsibilities; and

(13) ACR-AAPM Technical Standard For Management Of The Use Of Radiation In Fluoroscopic Procedures.

Section 13[~~12~~]. CT Training for Nuclear Medicine Technologists and Radiation Therapists. Individuals who are licensed in the primary discipline of nuclear medicine or radiation therapy, are certified by the ARRT or NMTCB, and are seeking post-primary certification in computed tomography (CT) may work under the direct supervision of a licensed and certified CT technologist to gain clinical competency. An individual who wishes to complete clinical training in CT shall submit a Provisional License Application, as incorporated by reference in 201 KAR 46:050, which shall expire twenty-four (24) months from the date of issuance.

Section 14[~~13~~]. PET Training for Radiographers and Radiation Therapists. Individuals who are licensed in the primary discipline of radiography or radiation therapy, are certified by the ARRT, and are seeking post-primary certification in positron emission tomography (PET) may work under the direct supervision of a licensed and certified PET technologist with the permission of an authorized user to gain clinical competency. An individual who wishes to complete clinical training in PET shall submit a Provisional License Application, as incorporated by reference in 201 KAR 46:050, which shall expire twenty-four (24) months from the date of issuance.

Section 15[~~14~~]. Applications for licensure shall be filed with the Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601.

Section 16[~~15~~]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Radiography Practice Standards", revised June 26, 2016[~~16, 2013~~];

(b) "Nuclear Medicine Technologist Scope of Practice and Performance Standards", revised June 7, 2013;

(c) "Positron Emission Tomography (PET) Technologist Scope of Practice and Performance Standards", revised January 26, 2013;

(d) "Scope of Practice for the Nuclear Medicine Advanced Associate", created 2009;

(e) "Radiation Therapy Practice Standards ", revised June 26, 2016[~~19, 2011~~];

(f) "Bone Densitometry Practice Standards", revised June 26, 2016[~~19, 2011~~];

(g) "Cardiac[~~Cardiovascular~~] Interventional and Vascular Interventional Technology Practice Standards", revised June 26, 2016[~~16, 2013~~];

(h) "Computed Tomography Practice Standards", revised June 26, 2016[~~16, 2013~~];

(i) "Limited X-ray Machine Operator Practice Standards", revised June 26, 2016[~~16, 2013~~];

(j) "Mammography Practice Standards", revised June 26, 2016[~~July 1, 2012~~];

(k) "Radiologist Assistant Practice Standards", revised June 26, 2016[~~July 29, 2014~~];

(l) "ACR ASRT Joint Policy Statement-Radiologist Assistant: Roles and Responsibilities", May 2003;

(m) "ACR-AAPM Technical Standard For Management Of The Use Of Radiation In Fluoroscopic Procedures", revised 2013

(Resolution 44);

(n) KBMIRT Form 1, "License Application-Medical Imaging or Radiation Therapy", February 2017[~~March 2015~~]; and

(o) KBMIRT Form 2, "License Renewal Application-Medical Imaging or Radiation Therapy", February 2017[~~March 2015~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at:

(a) American Society of Radiologic Technologists, 15000 Central Ave. SE Albuquerque, NM 87123-3909, http://www.asrt.org/main/standards-regulations/practice-standards;

(b) Society for Nuclear Medicine and Molecular Imaging, 1850 Samuel Morse Drive Reston, Virginia 20190, http://www.snmmi.org; or

(c) The Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

AMY ADKINS, Chair

APPROVED BY AGENCY: February 15, 2017

FILED WITH LRC: February 15, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held March 21, 2017, at 10:00 a.m. in the office of the Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, (502) 782-5687. Individuals interested in attending this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through March 31, 2017. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Elizabeth Morgan, Executive Director, Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, phone (502) 782-5687, fax (502) 782-6495; email elizabeth.morgan@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Elizabeth Morgan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for eligibility for licensure, and the initial and renewal application process.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the standards and process for application and renewal of license issued 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 giving the board the ability to promulgate regulations to carry out and enforce the provisions of KRS 311B.050(3), which authorizes the board to issue and renew the licenses of duly qualified applicants, following procedures established by the board through the promulgation of administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the procedures for the board to issue and renew the licenses of duly qualified applicants.

(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 would allow individuals who has established they are competency; update forms; and update standards of practice.

(b) The necessity of the amendment to this administrative regulation: The amendment allows the Board to update its standards of practice; and provide for licensure for individuals who did not graduate from an unaccredited educational program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statute giving the board the ability to promulgate regulations to carry out and enforce the provisions of KRS 311B.050(3), which authorizes the board to issue and renew the licenses of duly qualified applicants, following procedures established by the board through the promulgation of administrative regulations.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will update the renewal application; and provide for qualified applicants, who graduated for an unaccredited educational program, to be licensed in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 300 state health care organizations and approximately 8,000 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: Individuals who seek to be licensed or have an issued licensed to be renewed must submit an application setting forth the individual's qualifications.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Qualified individuals will be able to be licensed and maintain previously issued licenses.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: No additional cost will be incurred as a result of amending this administrative regulation.

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

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

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.

(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 Medical Imaging and Radiation Therapy.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 311B.050, 311B.080, 311B.100(2), 311B.110

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

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

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

(c) How much will it cost to administer this program for the first year? There is no cost associated with administering this regulation.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with administering this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Medical Imaging and Radiation Therapy
(Amendment)

201 KAR 46:060. Continuing education requirements.

RELATES TO: KRS 311B.050, 311B.110

STATUTORY AUTHORITY: KRS 311B.050(2), (4), 311B.110(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311B.050(2) requires the Board of Medical Imaging and Radiation Therapy to promulgate administrative regulations to administer and enforce KRS Chapter 311B. KRS 311B.050(4) and 311B.110(6) require the board to determine and enforce continuing education requirements and establish guidelines for the approval of continuing education. The board is authorized by KRS 311B.110(3) to require that all licensees obtain continuing education for ongoing knowledge of current practices in radiation safety and clinical procedures prior to licensure renewal. This administrative regulation delineates the requirements for continuing education and prescribes methods and standards for the approval of continuing education courses.

Section 1. Mandatory Continuing Education Units. (1) Medical imaging technologists, advanced imaging professionals, radiographers, nuclear medicine technologists, and radiation therapists shall obtain a minimum of twenty-four (24) continuing education units per biennium.

(2) Limited X-Ray machine operators shall obtain a minimum of twelve (12) continuing education units per biennium.

(3) A continuing education unit shall be earned by participating in fifty (50) contact minutes in an approved continuing education program.

Section 2. Methods of Acquiring Continuing Education. (1) Continuing education units applicable to the renewal of a license shall be directly relevant to the professional growth and development of the medical imaging technologist, radiation therapist, advanced imaging professional, radiographer, nuclear medicine technologist, or limited x-ray machine operator.

(2) Continuing education units may be earned by completing any of the following educational activities:

(a) Academic courses relevant to the radiologic sciences or patient care and is offered by a post-secondary educational institution accredited by a mechanism recognized by the American Registry of Radiologic Technologists (ARRT) or the Nuclear Medicine Technologist Certification Board (NMTCB). Relevant courses in the biologic sciences, physical sciences, radiologic sciences, health and medical sciences, social sciences, communication (verbal and written), mathematics, computers, management, or education methodology shall be accepted. Some subject areas that shall not be applicable include courses in astronomy, fine arts, geology, geography, history, music, philosophy, and religion;

(b) Continuing education units approved by a professional organization recognized by the board or [~~and~~] designated as a Recognized Continuing Education Evaluation Mechanism (RCEEM); or

(c) Continuing education units offered by other individuals, organizations, or institutions that have been approved by the board.

(3) Academic course credit equivalency for continuing education units shall be based on one (1) credit hour is equal to fifteen (15) continuing education units.

(4) A presenter may earn for the development of a continuing education presentation a maximum of twice the continuing education units awarded for the delivery of the presentation. The presenter shall also receive the continuing education approved for attendance at the presentation.

(5) Credit shall not be issued for repeated instruction of the same course within the biennium.

Section 3. Procedure for Preapproval of Continuing Education Programs. (1) A continuing education program may be approved by two (2) mechanisms:

(a) By applying and receiving approval from a RCEEM; or

(b) By applying and receiving approval from the board.

(2) For board approval of continuing education programs, a person, agency, or company shall:

(a) Submit KBMIRT Form 9, Continuing Education Program Approval Request Form at least twenty (20) business days in advance of the date of the offering; and

(b) Submit the continuing education approval fee as established by 201 KAR 46:020, Section 13.

(3) A continuing education activity shall be approved if the board determines that the activity is appropriate. The criteria as established in paragraphs (a) through (d) of this subsection shall be used by the board to determine the preapproval of a continuing education program.

(a) The activity shall enhance knowledge and skills associated with professional performance.

(b) It shall pertain to services provided to patients, the public, or medical profession by an advanced imaging professional, a medical imaging technologist, a radiographer, a radiation therapist, a nuclear medicine technologist, or a limited x-ray machine operator.

(c) The presenter shall submit a curriculum vitae, an abstract, the objectives, and an outline of the presentation.

(d) The objectives shall be obtainable for the time frame, outline, and scope of the presentation.

Section 4. Responsibilities and Reporting Requirements of Licensee. A licensee shall be responsible for obtaining required continuing education units and submit documents only if requested by the board. Each licensee shall maintain all documentation verifying successful completion of continuing education units for the current and prior biennium. Documentation shall include:

(1) Official transcripts for completed academic courses;

(2) A copy of the program showing an individual as a presenter of an approved continuing education program; or

(3) Completion certificates or cards for continuing education programs.

Section 5. Audit Procedures. (1) The board shall audit a random selection of licensees per year and notify the randomly-selected licensees.

(2) Each licensee selected for audit shall furnish documentation of completed continuing education units on KBMIRT Form 8, Licensee Continuing Education Documentation Form, for the identified time frame.

Section 6. Temporary Licensees. Continuing education requirements shall not apply to the holders of a temporary license.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) KBMIRT Form 9, "Continuing Education Program Approval Request Form", March 2015; and

(b) KBMIRT Form 8, "Licensee Continuing Education Documentation Form", March 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

AMY ADKINS, Chair

APPROVED BY AGENCY: February 15, 2017

FILED WITH LRC: February 15, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2017, at 10:00 a.m., in the office of the Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, (502) 782-5687. Individuals interested in attending this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until end of the day on March 31, 2017. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Elizabeth Morgan, Executive Director, Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, phone (502) 782-5687, fax (502) 782-6495, email elizabeth.morgan@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Elizabeth Morgan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for continuing education to maintain a license.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the standards and process for application and approval of continuing education courses.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311B.050(4) authorizes the board to determine and enforce continuing education requirements and establish guidelines for approval of continuing education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the standards for application and approval of continuing education courses which are required for license renewal, activation and reinstatement.

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

(a) How the amendment will change this existing administrative regulation: The amendment allows a licensee to obtain a continuing education unit earned by completing an educational activity that has been approved by a professional organization recognized by the board or designated as a Recognized Continuing Education Evaluation Mechanism (RCEEM). The present regulation requires a continuing education unit to be approved by the board and RCEEM.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to allow either the board or a RCEEM to approve a continuing education unit rather than both.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for supervision for registration, certification, and licensure.

(d) How the amendment will assist in the effective administration of the statutes: This amendment establishes the standards for the approval of continuing education courses which are required for license renewal, activation and reinstatement.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 300 state health care organizations and approximately 8,100 licensees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals who are licensed will have to take continuing education courses approved by the board.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The additional cost will be the specific continuing education courses that the licensee will complete.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals will maintain their competency and ethical standards.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: No additional cost will be incurred as a result of amending this administrative regulation.

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

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

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.: KRS 311B.050(4)

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

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

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

(c) How much will it cost to administer this program for the first year? There is no cost associated with administering this regulation.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with administering this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Medical Imaging and Radiation Therapy
(Amendment)

201 KAR 46:070. Violations and enforcement.

RELATES TO: KRS 311B.100, 311B.120, 311B.150, 311B.160, 311B.170, 311B.180, 311B.190

STATUTORY AUTHORITY: KRS 311B.050, 311B.120, 311B.180, 311B.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311B.050 requires the Board of Medical Imaging and Radiation Therapy to promulgate administrative regulations to administer and enforce KRS Chapter 311B. KRS 311B.120 and 311B.190 require the board to promulgate administrative regulations to establish appropriate fees and penalties for violations. KRS 311B.180 requires the board to assess penalties against an individual or licensee who performs diagnostic or therapeutic procedures without a valid license. This administrative regulation establishes uniform enforcement procedures regarding the licensure of an advanced imaging professional, a medical imaging technologist, a radiographer, a radiation therapist, a nuclear medicine technologist, or a limited x-ray machine operator and penalties for violation of licensure requirements.

Section 1. Denial, Revocation, and Suspension of Licenses. (1) The board may deny, revoke, or suspend the license of a licensee in accordance with KRS 311B.160.

(2) A licensee shall comply with an order of the board.

(3) An order of the board in subsection (2) of this section shall include items such as discovery orders, requests for information, subpoenas, requests for attendance before the board, and responses to complaints.

Section 2. Hearings. (1) The board shall notify the licensee in accordance with KRS 311B.170(1) and (2).

(2) A licensee to whom a notice or order is directed shall comply with KRS 311B.170(3) to avoid license revocation.

(3) The board shall issue the licensee a notice of proposed action in accordance with 201 KAR 46:090.

(4) A licensee may request a conference and appeal the board's action in accordance with KRS 311B.170(5) and 201 KAR 46:090.

Section 3. Penalties. (1)(a) The board shall assess civil penalties in accordance with KRS 311B.180 and 311B.190 against an individual who performs diagnostic or therapeutic procedures without valid licensure.

(b) The board shall investigate an allegation that an individual performed a diagnostic or therapeutic procedure without valid licensure in accordance with 201 KAR 46:090.

(c) The board shall only assess a civil penalty after confirmation through one of the means enumerated in KRS 311.180(2).

(2) An individual who performs a diagnostic or therapeutic procedure without valid licensure shall be assessed a civil penalty of fifty (50) dollars per day that the procedure occurs.

(3) Civil penalties double the amount assessed against an individual shall be assessed against the employer of the individual without a valid license pursuant to KRS 311B.180.

(4) Any person or employer assessed a civil penalty may request a hearing as specified in[~~Section 2 of this administrative regulation and~~] 201 KAR 46:090, Section 6.

(5)(a) An individual shall not be subject to a fine of more than $1,500.

(b) An employer shall not be subject to a fine of more than $3,000.

AMY ADKINS, Chair

APPROVED BY AGENCY: February 15, 2017

FILED WITH LRC: February 15, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2017, at 10:00 a.m., in the office of the Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, (502) 782-5687. Individuals interested in attending this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the day on March 31, 2017. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Elizabeth Morgan, Executive Director, Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, phone (502) 782-5687, fax (502) 782-6495, email elizabeth.morgan@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Elizabeth Morgan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process for the board imposing a civil monetary penalty when an individual performs a diagnostic or therapeutic procedure without a license; and the administrative hearing process.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the process for the board to impose a civil penalty; and the administrative hearing process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to authority delegated in KRS 311B.050(2) and KRS 311B.050(7).

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation establishes the process for the board handling complaints and due process to licensees who are subjection to disciplinary action; and imposing a civil monetary penalty.

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

(a) How the amendment will change the existing administrative regulation: The amendment clarifies that an employer shall receive notice and has due process rights, if requested.

(b) The necessity of the amendment to this administrative regulation: The amendment is needed to provide an employer with notice and due process rights, if requested.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for issuing a civil monetary penalty.

(d) How the amendment will assist in the effective administration of the statutes: This regulation establishes guidelines for an employer being assessed a civil penalty and appeal rights.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will impact the approximate 8,100 individuals currently licensed by the board.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: This regulation will establish the complaint and disciplinary hearing processes that have not been promulgated by the board.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) are provided an opportunity to respond to any

complaint filed and due process if evidence is found to support a violation of state law.

(b) In complying with this administrative regulation or amendment, how much will it cost for each of the entities: No new costs are associated with the changes to the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with the regulation, the individuals identified in question (3) will be provided with due process in the complaint process.

(5) Estimate of how much it will cost to implement this administrative regulation:

(a) Initially: None.

(b) On a continuing basis: None.

(6) The source of funding for the implementation and enforcement of this administrative regulation: The Kentucky Board of Medical Imaging and Radiation Therapy is funded from fees paid by licensees and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No increase in fees or funding will be necessary to implement this administrative regulation.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Board of Medical Imaging and Radiation Therapy.

(2) Identify each state or federal statute or federal regulation that authorizes the action taken by the administrative regulation: KRS 11B.050(2) and (7), KRS 311B.160, and KRS 311B.170.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? N/A.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A.

(c) How much will it cost to administer this program for the first year? N/A

(d) How much will it cost to administer this program for subsequent years? N/A

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

Revenues (+/-)

Expenditures (+/-)

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Medical Imaging and Radiation Therapy
(Amendment)

201 KAR 46:090. Complaint Process and Administrative Hearings.

RELATES TO: KRS 311B.050, 311B.100, 311B.120, 311B.150, 311B.160, 311B.170, 311B.180, 311B.190

STATUTORY AUTHORITY: KRS 311B.050(1), (2), (7), 311B.120, 311B.170, 311B.180, 311B.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311B.050(1) and (2) require the Board of Medical Imaging and Radiation Therapy to promulgate administrative regulations to administer and enforce the chapter. KRS 311B.050(7) requires the board to investigate violations of the chapter, conduct hearings, resolve allegations, and to impose sanctions or penalties if appropriate. KRS 311B.120, 311B.180, and 311B.190 require the board to promulgate administrative regulations to establish and assess penalties and fees. KRS 311B.170 requires the board to provide an administrative hearing process for a violation of KRS Chapter 311B. KRS Chapter 13B establishes a uniform procedure to be followed by administrative agencies in conducting agency hearings. This administrative regulation establishes, consistent with the requirements of KRS Chapter 13B, the procedures to be followed by the board in hearing appeals of actions taken under the public health laws of the Commonwealth.

Section 1. 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 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.

(c) The board shall evaluate the date of receipt based upon the postmark date, or, if not sent through the mail, the date hand stamped on the complaint.

(3)(a) Upon receipt of the written response of the individual named in the complaint, a copy of the response shall be sent to the complainant.

(b) The complainant shall have seven (7) days from receipt of the response to submit a written reply to the response.

(c) The board shall evaluate the date of receipt based upon the postmark date or, if not sent through the mail, the date hand stamped on the response.

Section 2. 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 relevant material available and make a recommendation to the board.

(a) The names of the individuals and other identifying information shall be redacted to provide anonymity.

(b) The board shall find whether there is enough evidence to warrant a formal investigation of the complaint.

(2) If the board finds 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 finds 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. 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.

(a) The complaint screening committee shall review the investigative report and make a recommendation to the board.

(b) The board shall find whether there has been a prima facie violation of KRS Chapter 311B or 201 KAR Chapter 46 and if a complaint shall be filed.

(2) If the board finds that a complaint does not warrant the

issuance of a formal complaint, it shall:

(a) Dismiss the complaint; and

(b) Notify the complainant and respondent of the board's decision.

(3) If the board finds that a violation has occurred but is not serious, the board shall issue a private written admonishment to the licensee.

(a) A copy of the private written admonishment shall be placed in the permanent file of the licensee.

(b) The licensee shall have the right to file a response in writing to the private written admonishment within thirty (30) days of its receipt and may have it placed in a permanent file.

(c) Private admonishment shall not be subject to disclosure to the public under KRS 61.878(1)(l) and shall not constitute disciplinary action, but may be used by the board for statistical purposes or in subsequent disciplinary action against the credential holder or applicant.

(4) If the board finds that a complaint warrants a disciplinary action, the board shall issue a notice of disciplinary action and inform the licensee:

(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 disciplinary action is based;

(b) That the licensee may appeal the disciplinary action to the board within twenty (20) days after receipt of this notification, excluding the day he or she receives notice;

(c) That a written request for an administrative hearing shall be filed with the board within twenty (20) calendar days of the date of the board's notice. This request shall be sent to the Board of Medical Imaging and Radiation Therapy by mail or by hand-delivery to 42 Fountain Place, Frankfort, Kentucky 40601;

(d) That if the request for an appeal is not timely filed, the notice of disciplinary action shall be effective upon the expiration of the time for the licensee to request an appeal; and

(e) That the administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 4. 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 chair.

(3) The board may employ mediation as a method of resolving the matter informally.

Section 5. Right of Appeal of Application. If the board denies an application or renewal for application, the board shall issue a notice of denial informing the applicant:

(1) Of the specific reason for the board's action, including:

(a) The statutory or regulatory violation; and

(b) The factual basis on which the denial is based;

(2) That the applicant may appeal the pending denial to the board within twenty (20) days after receipt of this notification, excluding the day he or she receives notice;

(3) That a written request for an administrative hearing shall be filed with the board within twenty (20) calendar days of the date of the board's notice. This request shall be sent to the Board of Medical Imaging and Radiation Therapy by mail or by hand-delivery to 42 Fountain Place, Frankfort, Kentucky 40601;

(4) That 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 licensee to request an appeal;[~~and~~]

(5) That the administrative hearing shall be conducted in accordance with KRS Chapter 13B;

(6) 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; and

(7) If the final order of the board is adverse to an applicant, the board shall impose the costs in an amount equal to the cost of stenographic services, the cost of the hearing officer, and the board's attorney fees against the licensee or applicant. If there is financial hardship, the board may waive all or part of the fee.

Section 6. Procedures Without a License. If the board finds an individual[~~or licensee~~] performed a diagnostic or therapeutic procedure without a valid license, the board shall issue a notice of civil penalty and inform the individual [~~or licensee~~], and employer of the individual[~~or licensee~~]:

(1) Of the specific reason for the board's action, including:

(a) The statutory or regulatory violation;

(b) The factual basis on which the civil penalty is based; and

(c) The civil penalty to be imposed;

(2) That the individual or employer[~~licensee~~] may appeal the civil penalty to the board within twenty (20) days after receipt of this notification, excluding the day he or she receives notice;

(3) That a written request for an administrative hearing shall be filed with the board within twenty (20) calendar days of the date of the board's notice. This request shall be sent to the Board of Medical Imaging and Radiation Therapy by mail or by hand-delivery to 42 Fountain Place, Frankfort, Kentucky 40601;

(4) That if the request for an appeal is not timely filed, the notice of civil penalty shall be effective upon the expiration of the time for the licensee to request an appeal; and

(5) That the administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 7. A person may petition for reinstatement after three (3) years from the date of a revocation.

AMY ADKINS, Chair

APPROVED BY AGENCY: February 15, 2017

FILED WITH LRC: February 15, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2017, at 10:00 a.m., in the office of the Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, (502) 782-5687. Individuals interested in attending this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the day on March 31, 2017. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Elizabeth Morgan, Executive Director, Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, phone (502) 782-5687, fax (502) 782-6495, email elizabeth.morgan@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Elizabeth Morgan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the complaint process and the administrative hearing process.

(b) The necessity of this administrative regulation: This regulation is necessary to provide a party adversely affected by a board's decision to have a due process hearing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to authority delegated in KRS 311B.050(2) and KRS 311B.050(7).

(d) How this administrative regulation will assist in the effective administration of the statutes: This regulation will provide a party adversely affected by a board's decision to have a due process hearing.

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

(a) How the amendment will change the existing administrative regulation: The amendment provides due process to an employer who is assessed a civil monetary penalty. The amendment also limits the documentary evidence allowed to be introduced from a denial of an application and assesses the cost to the applicant, if unsuccessful on appeal.

(b) The necessity of the amendment to this administrative regulation: The amendment clarifies that an employer who is assessed a civil monetary penalty is entitled to a due process hearing, if requested. The amendment is also necessary to impose costs on individuals who appeals a denial of an application and is unsuccessful.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for issuing a civil monetary penalty.

(d) How the amendment will assist in the effective administration of the statutes: This regulation will provide a party adversely affected by a board's decision to have a due process hearing.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will impact the approximate 8,100 individuals currently licensed by the board. The board is unable to provide the number of employers across Kentucky of its 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: This regulation will establish the complaint and disciplinary hearing processes that have not been promulgated by the board.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) are provided an opportunity to respond to any complaint filed and due process if evidence is found to support a violation of state law.

(b) In complying with this administrative regulation or amendment, how much will it cost for each of the entities: No new costs are associated with the changes to the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with the regulation, the individuals identified in question (3) will be provided with due process in the complaint process.

(5) Estimate of how much it will cost to implement this administrative regulation:

(a) Initially: None.

(b) On a continuing basis: None.

(6) The source of funding for the implementation and enforcement of this administrative regulation: The Kentucky Board of Medical Imaging and Radiation Therapy is funded from fees paid by licensees and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No increase in fees or funding will be necessary to implement this administrative regulation.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Board of Medical Imaging and Radiation Therapy.

(2) Identify each state or federal statute or federal regulation that authorizes the action taken by the administrative regulation: KRS 311B.050(1), (2), (7), 311B.120, 311B.170, 311B.180, 311B.190.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? N/A.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A.

(c) How much will it cost to administer this program for the first year? N/A

(d) How much will it cost to administer this program for subsequent years? N/A

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

Revenues (+/-)

Expenditures (+/-)

Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:132. Elk hunting seasons, permits, zones, and requirements[quota hunts, elk depredation permits, landowner cooperator permits, and voucher cooperator permits].

RELATES TO: KRS 150.010, 150.170(4), 150.180, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.105, 150.177, 150.178, 150.390(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.177 authorizes the department to issue special commission permits for game species to nonprofit wildlife conservation organizations. KRS 150.178 authorizes the department to issue cooperator permits to landowners who enroll property for public hunting access. KRS 150.390(3) authorizes the department to promulgate administrative regulations establishing the conditions under which depredation permits for elk may be issued. This administrative regulation establishes the requirements for the elk permit drawing and quota hunts, the conditions under which special commission and landowner cooperator permits can be used, procedures for elk damage abatement, and any postseason hunt held after the quota hunts.

Section 1. Definitions. (1) "Antlered elk" means an elk having visible polished antler protruding above the hairline.

(2) "Antlerless elk" means an elk without visible polished antler protruding above the hairline.

(3) "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.

(4) "At-large" means any portion of the elk zone not included in a limited entry area.

(5)[~~(4)~~] "Bait":

(a) Means a substance composed of grains, minerals, salt, fruits, vegetables, hay, or any other food materials, whether natural or manufactured, that could lure, entice, or attract wildlife; and

(b) Does not mean the establishment and maintenance of plantings for wildlife, foods found scattered solely as the result of

normal agricultural planning or harvesting practices, foods available to wildlife through normal agricultural practices of livestock feeding if the areas are occupied by livestock actively consuming the feed on a daily basis, or standing farm crops under normal agricultural practices.

(6) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without aid from the archer.

(7)[~~(5)~~] "Electronic decoy" means a motorized decoy powered by electricity, regardless of source.

(8)[~~(6)~~] "Elk" means Cervus elaphus nelsoni.

(9)[~~(7)~~] "Elk Management Unit" or "EMU" means a designated area in the restoration zone with specific management restrictions for a post-season antlerless elk quota hunt.

(10) "Elk Restoration Permit" or "ERP" means an elk permit given to a landowner or lessee who allows the department to capture elk on the landowner or lessee's property for restoration or restocking purposes.

(11) "Firearm" means a breech or muzzle-loading rifle, shotgun, or handgun.

(12)[~~(8)~~] "Landowner cooperator" means a landowner or lessee who owns or leases at least 5,000 acres of land in the restoration zone and enters into an agreement with the department to allow public access and hunting for at least five (5) years.

(13)[~~(9)~~] "Limited Entry Area" or "LEA" means a designated area in the restoration zone with specific management restrictions.

(14) "Muzzleloader" means a rifle, shotgun, or handgun that is loaded from the discharging end of the barrel or discharging end of the cylinder.

(15)[~~(10)~~] "Out-of-zone" means all counties not included in the restoration zone.

(16)[~~(11)~~] "Restoration zone" means the Kentucky counties: Bell, Breathitt, Clay, Floyd, Harlan, Johnson, Knott, Knox, Leslie, Letcher, Magoffin, Martin, McCreary, Perry, Pike, and Whitley.

(17)[~~(12)~~] "Spike" means an elk having one (1) or two (2) antler points on each side.

(18)[~~(13)~~] "Voucher cooperator" means a landowner or lessee who owns or leases at least 100 acres of land in the restoration zone and enters into an agreement with the department to allow elk hunting access.

(19)[~~(14)~~] "Youth" means a person under the age of sixteen (16) by the first date of the hunt.

Section 2. Elk Damage Control. The department may authorize the removal or destruction of elk that are causing property damage. A person authorized to destroy an elk shall:

(1) Attach a department-issued destruction tag[~~disposal permit~~] to an elk prior to moving the carcass; and

(2) Not remove the destruction tag[~~disposal permit~~] until the carcass is processed.

Section 3. Elk Quota Hunts. (1) The elk quota hunt application period shall be January 1 to April 30.

(2) An applicant shall:

(a) Complete the elk quota hunt application process on the department's Web site at fw.ky.gov; and

(b) Pay a nonrefundable application fee of ten (10) dollars.

(3) The commissioner shall extend the application deadline if technical difficulties with the application system prevent applications from being accepted for one (1) or more days during the application period.

(4) There shall be a random electronic drawing from each applicant pool.

(5) Youth may enter a separate drawing pool for ten (10) either-sex elk permits. These permits shall be valid for use during all elk seasons:

(a) Anywhere in the at-large portion of the restoration zone; or

(b) Within an LEA if the youth applies for and is drawn for an LEA, pursuant to Section 7[~~6~~](3) of this administrative regulation.

(6) A youth applicant shall not apply for the youth-only elk quota hunt more than once per application period.

(7) An applicant for the youth-only elk quota hunt may also apply for the regular quota hunts. The regular quota hunts shall be as established in subsection (12) of this section.

(8) A youth applicant drawn for the youth-only elk quota hunt shall not be drawn in any other elk quota hunt held during the same calendar year.

(9) A youth drawn for the youth-only elk quota hunt shall be ineligible to be drawn in the youth-only elk quota hunt in subsequent years.

(10) Nonresidents shall not comprise more than ten (10) percent of all drawn applicants in each quota hunt pool.

(11) A quota hunt permit awarded from any department-administered drawing shall not be transferable.

(12) In addition to the youth-only quota hunt, there shall be four (4) separate regular elk quota hunts consisting of:

(a) Antlered archery and crossbow;

(b) Antlered firearms;

(c) Antlerless archery and crossbow; and

(d) Antlerless firearms.

(13) An applicant shall:

(a) Apply only once for an individual elk quota hunt;

(b) Not be eligible to be drawn in more than one (1) of the four (4) quota hunt pools;

(c) Only be selected by a random electronic drawing; and

(d) Pay a nonrefundable application fee of ten (10) dollars for each entry.

(14) A person who is drawn for an elk quota hunt shall be ineligible to be drawn for any elk quota hunt for the following three (3) years.

(15) A person who does not have access to the department's Web site to apply for any quota hunt may contact the department toll free at 1-800-858-1549 for assistance in applying.

Section 4. Landowner Cooperator Permits. (1) With the approval of the commission, the commissioner shall issue to a landowner cooperator:

(a) One (1) either-sex permit annually per 5,000 acres of land enrolled with the department in a hunting access agreement for the duration of the agreement;

(b) Two (2) antlerless-only permits annually per 5,000 acres of land enrolled with the department in a hunting access agreement for the duration of the agreement; or

(c) One (1) antlerless-only permit annually per 5,000 acres of land enrolled with the department in an elk hunting access agreement for the duration of the agreement.

(2) A recipient of a landowner cooperator permit shall comply with the season, bag limit, and hunter requirements in Sections 7[~~6~~] and 8[~~7~~] of this administrative regulation.

(3) A landowner cooperator permit shall only be used on the land that is established in the agreement, except that it may be used on adjacent property if:

(a) The adjacent property is owned by a different landowner; and

(b) The adjacent landowner has granted permission to the permit holder.

(4) A landowner cooperator permit may be transferred to any person eligible to hunt in Kentucky, but prior to hunting, the landowner cooperator or person who has received the transferred permit shall provide the department with the hunter's:

1. Name;
2. Social Security number;
3. Address; and
4. Telephone number.

(5) The landowner cooperator permit shall not be transferable if it was already used for the harvest of one (1) elk.

(6) Public access agreements with the department shall be recorded in writing.

Section 5. Voucher Cooperator Permits (1) A voucher cooperator shall accrue:

(a) Two (2) voucher points for each legally harvested antlered elk; and

(b) One (1) voucher point for each legally harvested antlerless elk.

(2) A voucher cooperator who accrues twenty (20) total points on land enrolled pursuant to Section 1(18)[~~(13)~~] of this

administrative regulation shall receive one (1) either-sex elk permit from the department.

(3) A recipient of a voucher cooperator elk permit shall comply with all of the requirements established in Sections 7[6] and 8[7] of this administrative regulation.

(4) A voucher cooperator elk permit shall only be used on:

(a) The property enrolled with the department per agreement; or

(b) Other property that the landowner or lessee owns or leases.

(5) A voucher cooperator permit may be transferable to any person eligible to hunt in Kentucky.

(6) If a voucher cooperator permit is to be transferred, then the landowner, lessee, or person who has received the transferred permit shall provide to the department by August 15 the hunter's:

(a) Name;

(b) Social security number;

(c) Address; and

(d) Telephone number.

(7) A permit shall not be transferable after being used for the harvest of an elk.

Section 6. Elk Restoration Permits. (1) A landowner or lessee who allows the department to capture elk on the landowner or lessee's property shall accrue:

(a) Two (2) points for each male elk captured; and

(b) One (1) point for each female elk captured.

(2) A landowner or lessee who accrues twenty (20) total points shall receive one (1) either-sex elk permit from the department that shall only be used the following hunting season.

(3) A recipient of an ERP shall comply with all the requirements established in Sections 7 and 8 of this administrative regulation.

(4) An ERP shall only be used on property that the ERP recipient owns or leases.

(5) An ERP recipient may transfer the permit to any person eligible to hunt in Kentucky.

(6) If an ERP recipient transfers an ERP to another hunter, then the ERP recipient shall provide to the department by August 15 the hunter's:

(a) Name;

(b) Address;

(c) Telephone number; and

(d) Social security number.

(7) An ERP shall be invalid if it has already been used to harvest an elk.

Section 7. Hunter Requirements. (1) A person shall carry proof of purchase of a valid Kentucky hunting license and valid elk permit while hunting, unless exempted by KRS 150.170.

(2) The statewide bag limit shall be one (1) elk per hunter per license year.

(3) If a legal elk hunter kills any elk, then:

(a) The person shall immediately cease hunting elk for the remainder of the elk season; and

(b) All elk permits held by that individual shall immediately become invalid.

(4) A drawn hunter may apply to hunt in up to four (4) areas in any combination of the limited entry areas by completing the application process on the department's Web site.

(a) Up to three (3)[~~five (5)~~] drawn hunters may apply for their LEA choices as a party.

(b) If the party is drawn for the LEA, all hunters in the party shall be assigned to that same LEA.

(c) If the number of slots remaining in the quota is less than the number of hunters in the next party selected, the entire party shall be assigned to the party's next choice ranking or to the at-large area.

(5)[~~(4)~~] A hunter who does not apply for an LEA or is not drawn for an LEA shall be assigned to the at-large area.

(6)[~~(5)~~] A hunter drawn for an LEA may hunt only in the assigned LEA, except that a person who is drawn for any elk quota hunt may hunt on his or her land within the restoration zone.

(7)[~~(6)~~] An elk hunter or any person accompanying an elk hunter shall comply with hunter orange requirements established in 301 KAR 2:172.

(8)[~~(7)~~] An elk hunter shall not:

(a) Take elk except during daylight hours;

(b) Use dogs, except to recover wounded elk using leashed tracking dogs;

(c) Hunt over bait inside the elk restoration zone;

(d) Drive elk from outside the assigned area;

(e) Take an elk while it is swimming;

(f) Use electronic calls or electronic decoys; or

(g) Take an elk if the hunter is in a vehicle, boat, or on horseback, except that a disabled hunter who has a hunting method exemption permit issued pursuant to 301 KAR 3:027 may use a stationary vehicle as a hunting platform.

(9)[~~(8)~~] A person shall:

(a) Obtain a vehicle tag from the department prior to hunting elk in the restoration zone; and

(b) Display the vehicle tag in the windshield of the vehicle while hunting elk.

(10)[~~(9)~~] A youth shall be accompanied by an adult who shall remain in a position to take immediate control of the youth's firearm.

(11)[~~(10)~~] An adult accompanying a youth shall not be required to possess a hunting license or elk permit if the adult is not hunting. [~~(11) A hunter may use any deer hunting method authorized by 301 KAR 2:172.~~]

(12) A person shall only use the weapons and ammunition established in paragraphs (a) through (e) of this subsection to take an elk:

(a) A crossbow or archery equipment loaded with a [~~non-barbed~~] broadhead of seven-eighths (7/8) inch or wider upon expansion;

(b) A firearm:

1. With an action that fires a single round of ammunition upon each manipulation of the trigger;

2. Of .270 caliber or larger; and

3. Loaded with centerfire, single projectile ammunition designed to expand upon impact;

(c) A muzzleloader[~~muzzle-loading firearm~~] of .50 caliber or larger;

(d) A shotgun of twenty (20) gauge or larger loaded with a shell containing one (1) projectile; or

(e) A handgun loaded with:

1. Centerfire cartridges;

2. Bullets of .270 caliber or larger designed to expand upon impact; and

3. Cartridges with a case length of 1.285 inches or larger.

(13) A crossbow shall contain a working safety device.

(14) An elk hunter shall not use a magazine capable of holding more than ten (10) rounds.

(15) A quota elk hunter shall only take an elk of the type and sex determined by the permit drawn.

(16) A hunter drawn for a firearms elk permit shall hunt elk pursuant to that permit only during the seven (7) day period assigned during the initial drawing.

(17) An individual who receives or is transferred a landowner cooperator permit, a voucher cooperator permit, an elk restoration permit, or a special commission permit may hunt in all of the antlered-only or antlerless-only quota hunts and shall hunt in accordance with the seasons and limits established in Section 7 of this administrative regulation.

(18) A person who is drawn for an archery or crossbow permit or has a landowner cooperator permit, a special commission permit, an elk restoration permit, or voucher cooperator permit may hunt with a crossbow during all archery and crossbow seasons, if at the time of the hunt, the person:

(a) Is a youth;

(b) Is sixty-five (65) years or older; or

(c) Has a crossbow hunting method exemption permit for hunting deer pursuant to 301 KAR 3:027.

Section 8[7]. Elk Quota Hunt Seasons and Limits. (1) A person drawn for an antlerless or antlered archery and crossbow permit

shall not hunt when an elk firearms season is open.

(2) A person drawn for an antlered archery and crossbow permit shall use:

(a) Archery equipment to take an antlered elk beginning the third Saturday in September through December 31[~~the third Monday in January~~]; and

(b) A crossbow to take an antlered elk from the fourth Saturday in September through [~~the fourth Friday in~~] December 31.

(3) A person drawn for an antlerless archery and crossbow permit shall use:

(a) Archery equipment to take an antlerless elk beginning the second[~~third~~] Saturday in October through[~~the third Monday in January~~] December 31; and

(b) A crossbow to take an antlerless elk from the second[~~third~~] Saturday in October through[~~to the fourth Friday in~~] December 31.

(4) A person drawn for an antlered firearms permit shall use any legal weapon as established in Section 7(12) of this administrative regulation[~~a modern gun or muzzleloader~~] to take an antlered elk during one (1) of two (2) seven (7) day periods randomly assigned by the department from the:

(a) Last[~~First~~] Saturday in September[~~October~~] for seven (7) consecutive days; or

(b) First[~~Second~~] Saturday in October for seven (7) consecutive days.

(5) A person drawn for an antlerless firearms permit shall use any legal weapon as established in Section 7(12) of this administrative regulation[~~a modern gun or muzzleloader~~] to take an antlerless elk during one (1) of two (2) seven (7) periods randomly assigned by the department from the:

(a) Second Saturday in December for seven (7) consecutive days; or

(b) Third[~~First~~] Saturday in December[~~January~~] for seven (7) consecutive days.

Section 9[~~8~~]. LEA Boundaries. (1) Hazard LEA - Starting at the intersection of State Hwy 476 and State Hwy 80, the boundary proceeds east on Hwy 80 to the intersection with State Hwy 3209. The boundary then goes west on Hwy 3209 to the intersection with State Hwy 1087. The boundary then goes east on Hwy 1087 to the intersection with State Hwy 1098 near Yellow Mountain. The boundary then follows Hwy 1098 north and west to the intersection with State Hwy 15 near Quicksand. The boundary then goes south on Hwy 15 to the intersection with State Hwy 476 near Lost Creek. The boundary then goes south on Hwy 476 to the intersection with State Highway 80, completing the boundary.

(2) Levisa Fork LEA - Starting at the intersection of State Hwy 1789 and State Hwy 460 at Millard, the boundary proceeds south and east on Hwy 460 to the intersection of Hwy 460 and State Hwy 1499 at Mouthcard. The boundary then runs north along State Hwy 1499 to the intersection of State Hwy 1499 and State Hwy 194. It then runs west and north on Hwy 194 to the intersection of Hwy 194 and State Hwy 3418 (Ridge Line Road). The boundary then runs west on Hwy 3418 to the intersection of State Hwy 3418 and Raccoon Road. The boundary then runs west on Raccoon Road to the intersection of Raccoon Road and State Hwy 1441. The boundary then runs south along Hwy 1441 to the intersection of State Hwy 1441 and State Highway 1789. The boundary then runs west to the intersection of Hwy 1789 and State Highway 460, completing the boundary.

(3) Middlesboro LEA - Starting at the intersection of US Hwy 25E and the Tennessee border at Middlesboro, the boundary proceeds southward and westward on the Tennessee and Kentucky border until the intersection of State Hwy 190. The boundary proceeds northward and westward on State Hwy 190 to the intersection of US Hwy 25E. The boundary then goes south on US Hwy 25E to the Tennessee border, completing the boundary.

(4) Prestonsburg LEA - The area shall be within the boundary of the Czar Hunter Access Area as indicated by signage.

(5) Straight Creek LEA - Starting at the intersection of State Hwy 66 and State Hwy 221 at Straight Creek, the boundary proceeds east on State Hwy 221 to the intersection with State Hwy 2009. The boundary then proceeds north along State Hwy 2009 to the intersection with US Route 421. The boundary then proceeds north on US Route 421 to the intersection with State Hwy 406 near Stinnett. The boundary then follows State Hwy 406 west to the intersection with State Highway 66. The boundary then follows State Hwy 66 south to the intersection with Hwy 221 to complete the boundary.

(6) Tug Fork LEA – The area shall be within the boundary of the Revelation Energy Hunter Access Areas in Martin, Pike, and Floyd Counties, as established by signage.

Section 10[~~9~~]. Post-season Quota Hunt on Private Land. (1) A modern firearms quota hunt for antlerless elk and spikes shall take place beginning on the fourth Saturday in January for fourteen (14) consecutive days.

(2) Each hunter shall be randomly drawn from the pool of applicants who:

(a) Were not drawn for the previous elk quota hunts; and

(b) Are residents of counties included, wholly or in part, within an EMU boundary.

(3) A drawn applicant shall comply with the requirements in Section 7[~~6~~] of this administrative regulation except that an applicant may hunt only in the assigned EMU or on land the applicant owns within another EMU.

(4) The EMU boundaries shall be as incorporated by reference in this administrative regulation[~~:~~

~~(a) Knott County EMU - Starting at the intersection of Kentucky Route 777 and Kentucky Route 550 near Porter Junction, the boundary proceeds east along Kentucky Route 777 to the intersection with Kentucky Route 680. The boundary then proceeds east along Kentucky Route 680 to the intersection with Kentucky Route 122 at Minnie. The boundary proceeds south along Kentucky Route 122 to the intersection with Kentucky Route 1498 near Bevinsville. The boundary then continues south on Kentucky Route 1498 to the intersection with Kentucky Route 7. The boundary then proceeds south on Kentucky Route 7 to the intersection with Kentucky Route 1410. The boundary then proceeds west on Kentucky Route 1410 to the intersection with Kentucky Route 160. The boundary then proceeds north on Kentucky Route 160 to the intersection with Kentucky Route 550 in Hindman. The boundary then proceeds north on Kentucky Route 550 to the intersection with Kentucky Route 7, with which Kentucky Route 550 merges and both continue north, to the intersection with Kentucky Route 777 near Porter Junction, thus completing the boundary.~~

~~(b) Stoney Fork EMU - Starting at the intersection of State Hwy 2058 and U.S. Hwy 421 near Helton, the boundary then proceeds south along U.S. Hwy 421 to the intersection of U.S. Hwy 421 and U.S. Hwy 119 near Harlan, then west along U.S. Hwy 119 to the intersection of U.S. Hwy 119 and U.S. Hwy 25E. The boundary then goes north following U.S. Hwy 25E to the intersection with State Hwy 66, then north on State Hwy 66 to the intersection of State Hwys 66 and 1850, then east along State Hwy 1850 to the intersection of State Hwys 1850 and 1780 at Warbranch. The boundary then proceeds south on State Hwy 1780 to its intersection with State Hwy 2058 near Spruce Pine, then east on State Hwy 2058 back to U.S. Hwy 421 at Helton, thus completing the boundary~~].

(5) Any public hunting area within an EMU shall be closed to elk hunting during this season.

Section 11[~~10~~]. Tagging and Checking Requirements. (1) Immediately after taking an elk, a hunter shall record on a hunter's log:

(a) The species harvested;

(b) The sex of the animal;

(c) Date of harvest; and

(d) County of harvest.

(2) A hunter shall check a harvested elk before midnight on the day the elk is recovered by:

(a) Calling (800) 245-4263 and providing the requested information; or

(b) Completing the online check-in process at fw.ky.gov.

(3) A hunter who has checked in an elk shall record the confirmation number on a hunter's log.

(4) If the hide or head is removed from the carcass before the elk is checked in, then the hunter shall be required to demonstrate proof of the sex of the elk.
(a) For antlered elk the hunter shall retain the:
1. Head with antlers; or
2. Testicles, scrotum, or penis attached to the carcass; or
(b) For antlerless elk the hunter shall retain the:
1. Head; or
2. Udder or vulva attached to the carcass.
(5) If a harvested elk leaves the possession of the hunter, the hunter shall attach to the carcass a hand-made tag that contains the hunter's:
(a) Confirmation number;
(b) Name; and
(c) Telephone number.
(6) A person shall not provide false information in:
(a) Completing the hunter's log;
(b) Checking an elk; or
(c) Creating a carcass tag.

Section 12[~~11~~]. Elk Hunting on Public Land. (1) A person drawn for an elk quota hunt or the recipient of a special commission permit may hunt on the areas listed in paragraphs (a) through (f) of this subsection within the restoration zone pursuant to the conditions of the permit received:
(a) Wildlife Management Areas;
(b) Hunter Access Areas;
(c) State forests;
(d) Big South Fork National River and Recreation Area;
(e) Daniel Boone National Forest; or
(f) Jefferson National Forest.
(2) Portions of Paintsville Lake WMA that lie out of the restoration zone shall be subject to the requirements established in Section 13[~~12~~] of this administrative regulation.
(3) Elk hunting shall not be allowed on public areas during quota deer hunts listed in 301 KAR 2:178.
(4) Paul Van Booven WMA.
(a) The archery and crossbow seasons shall be open as established in Section 8[~~7~~] of this administrative regulation.
(b) A firearm shall not be used to hunt elk.
(5) A person shall not mimic the sound of an elk on public land open to elk hunting from September 1 until the opening of the elk archery season.

Section 13[~~12~~]. Out-of-zone Elk Hunting. (1) The methods for taking deer and the deer seasons established in 301 KAR 2:172 shall apply to a person taking elk outside of the restoration zone, except that a hunter shall comply with the weapons and ammunition requirements established in Section 7[~~6~~] of this administrative regulation.
(2) Unless exempted by KRS 150.170, a person who is hunting out-of-zone elk shall possess:
(a) A valid Kentucky hunting license; and
(b) An out-of-zone elk permit.
(3) A person may take an elk of either sex, which shall not count toward the person's deer bag limit.
(4) Any elk harvested out-of-zone shall be telechecked pursuant to Section 11[~~10~~] of this administrative regulation.

Section 14[~~13~~]. A person who takes possession of any elk antler that has the skull or skull plate attached to it shall contact the department's Law Enforcement Division within twenty-four (24) hours to obtain a disposal permit.

Section 15[~~14~~]. A person who is the recipient of a valid elk quota hunt permit, landowner cooperator permit, voucher cooperator permit, an ERP, or special commission permit may defer use of the permit to the following year if:
(1) There is a death of the permit holder's:
(a) Spouse;
(b) Child; or
(c) Legal guardian, if the permit holder is under eighteen (18) years old; and
(2) The permit holder provides to the department a death certificate and one (1) of the following documents prior to May 1 of the year following the hunting season:
(a) A marriage certificate;
(b) A birth certificate; or
(c) An affidavit of paternity or maternity.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Knott-Floyd Elk Management Unit 2017 Edition" map; and
(b) "Mayking Letcher Elk Management Unit 2017 Edition" map.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m, Eastern time.

GREGORY K. JOHNSON, Commissioner
DON PARKINSON, Secretary
APPROVED BY AGENCY: February 9, 2017
FILED WITH LRC: February 14, 2017 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2017 at 9:00 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 March 31, 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 elk permit drawing and quota hunts, the conditions under which special commission permits, landowner cooperator permits, elk restoration permits and cooperator voucher permits can be used, procedures for elk damage abatement, and any postseason hunt held after the quota hunts.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage elk populations in Kentucky, while providing optimal elk hunting and tourism opportunities.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish hunting seasons, bag limits, and the methods of taking wildlife. KRS 150.177 authorizes the department to issue special commission permits for game species to nonprofit wildlife conservation organizations. KRS 150.178 authorizes the department to issue cooperator permits to landowners who enroll property for public hunting access. KRS 150.390(3) authorizes the department to promulgate administrative regulations establishing the conditions under which depredation permits for elk may be issued.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist the statutes by establishing the requirements for the elk permit drawing, quota hunts, legal

methods of harvest, the conditions under which special commission permits, landowner cooperator permits, elk restoration permits, and voucher cooperator permits can be used, the procedures for elk damage abatement and any postseason hunt held after the quota hunts.

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

(a) How the amendment will change this existing administrative regulation: The amendment modifies the season length for elk hunting. It also creates the establishment of a new permit, the elk restoration permit, which shall be given to landowners or lessees who allow the department to capture elk for restoration and restocking purposes. The amendment reduces the group applications for the limited entry area drawing from 5 applicants to 3 applicants. The amendment also creates two new areas for the late season elk hunt.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to adjust the season length and the department's goal for the long-term elk population. The areas hunted for the late season hunt no longer have elk damage issues, so moving hunters to areas where elk damage is occurring is needed. The amendment is also necessary to create an elk restoration permit for landowners or lessees who allow elk to be captured on their land.

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See 1(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 25,000 to 45,000 people who apply for the elk permit drawing in Kentucky each year, of which approximately 910 are drawn.

(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 drawn hunter will have different season dates compared to previous years. Landowners will now have another option to receive an elk permit via the elk restoration permit. The late season hunters will now have 2 new areas to hunt and the 2 areas that previously had damage were removed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not change any cost to the entities identified in (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Landowners who allow the department to capture elk for restoration purposes will benefit from an additional program that allows them to receive elk hunting permits and late season hunters will have new areas were elk nuisance issues are high.

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

(a) Initially: Other than a minor administrative cost, there will be no additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the agency on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Additional fees for direct implementation of this regulation are not necessary, as infrastructure for conducting all aspects of elk management and quota hunts already exists.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. Residents of the counties within the EMUs who are not drawn for the regular quota hunt shall be eligible for a late season depredation hunt. This hunt allows residents to assist landowners in removing elk causing property damage in 2 areas with chronic nuisance elk problems. These tags can only be used on private land within one of the 2 Elk Management Units (EMUs). The number of tags to be issued will be determined by the level of nuisance elk cases or property damage caused by elk documented within the EMUs prior to January each year.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources' Divisions of Wildlife and Law Enforcement will be impacted by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025, KRS 150.177, KRS 150.178, and KRS 150.390.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? For the 2016 elk season, approximately 74,953 applications were purchased at $10 per application ($749,530 of revenue to the department). Approximately 721 of the 910 drawn hunters paid for elk permits, generating $72,000 in additional revenue to the department. Total revenue directly generated by the elk hunts for the department was $822,000 for the 2016 season.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is estimated that approximately $600,000 to $850,000 will be generated from quota hunt applications and elk permits for the department. There is also a positive economic impact to cities, counties and local businesses in and near the elk restoration zone as hunters and tourists visit. This economic impact is estimated at $2,500,000 annually in or near the elk zone.

(c) How much will it cost to administer this program for the first year? There will be no additional costs for the first year. The department already has mechanisms in place for quota hunt application procedures, random drawings and other aspects of the elk hunts.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred for subsequent years.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:178. Deer hunting on Wildlife Management Areas, state parks, other public lands, and federally controlled areas.

RELATES TO: KRS 150.010, 150.170, 150.340, 150.370(1), 150.990

STATUTORY AUTHORITY: 148.029(5), 150.025(1), 150.390(1), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 148.029(5) authorizes the Department of Parks, in cooperation with the Department of Fish and Wildlife Resources, to implement wildlife management plans on state parks. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits, and to make these requirements apply to a limited area. KRS 150.390(1) prohibits the taking of deer in any manner contrary to any provisions of KRS Chapter 150 or Title 301 KAR. KRS 150.620 authorizes the department to promulgate administrative regulations for the maintenance and operation of the lands it has acquired for public recreation. This administrative regulation establishes deer hunting seasons, application procedures, and other matters pertaining to deer hunting on Wildlife Management Areas, state parks, other public lands, and federally controlled areas that differ from statewide requirements.

Section 1. Definitions. (1) "Adult" means a person who is at least eighteen (18) years of age.

(2) "Bait" means a substance composed of grains, minerals, salt, fruits, vegetables, hay, or any other food materials, whether natural or manufactured, that may lure, entice, or attract wildlife.

(3)[~~(2)~~] "Centerfire" means a type of gun[~~firearm~~] that detonates a cartridge by the firing pin striking a primer in the middle of the end of the cartridge casing.

(4) "Ground blind" means a structure consisting of a frame and a top that is placed on the ground to completely enclose a hunter while hunting deer.

(5)[~~(3)~~] "In-line muzzleloader[~~muzzleloading gun~~]" means a gun[~~firearm~~]:

(a) Capable of being loaded only from the discharging end of the barrel or cylinder; and

(b) That is equipped with an enclosed ignition system located directly behind the powder charge.

(6) "Mentor hunt" means a quota youth hunt in which the adult who accompanies a youth may legally take a deer.

(7)[~~(4)~~] "Mobility-impaired" means an individual who meets the requirements of 301 KAR 3:026, Section 2(1).

(8) "Modern gun" means an air gun, rifle, handgun, or shotgun that is loaded from the rear of the barrel.

(9)[~~(5)~~] "Modern gun[~~firearm~~] season" means the ten (10) or sixteen (16) consecutive day period beginning the second Saturday in November during which a modern gun[~~breech-loading firearms~~] may be used to take deer pursuant to 301 KAR 2:172.

(10) "Muzzleloader" means a rifle, shotgun, or handgun that is loaded from the discharging end of the barrel or discharging end of the cylinder.

(11)[~~(6)~~] "Quota hunt" means a hunt in which a participant is selected by a random drawing.

(12) "Quota youth hunt" means a quota hunt in which a youth is the only person who can legally take a deer.

(13)[~~(7)~~] "Statewide requirements" mean the season dates, zone descriptions, and other requirements for deer hunting as established in 301 KAR 2:172.

(14)[~~(8)~~] "Wildlife management area" or "WMA" means a tract of land:

(a) Controlled by the department through ownership, lease, license, or cooperative agreement; and

(b) That has "Wildlife Management Area" or "WMA" as part of its official name.

(15)[~~(9)~~] "Youth" means a person under the age of sixteen (16) by the date of the hunt.

(16) "Youth gun seasons" means the October youth gun season and the December free youth weekend, as established in 301 KAR 2:172.

Section 2. General WMA Requirements. (1) Unless established in this administrative regulation, statewide requirements shall apply.

(2) [~~A hunter shall not take more than one (1) deer per day on a WMA in Zones 2, 3, or 4, except:~~

~~(a) During a quota hunt; or~~

~~(b) The Grayson Lake WMA open youth deer hunt.~~

~~(3)~~] Except as established in Section 6 of this administrative regulation, if a WMA is in two (2) or more deer hunting zones as established in 301 KAR 2:172, then the WMA shall be regulated by the most liberal zone requirements of the zones in which it lies.

(3)[~~(4)~~] Deer hunting on WMAs listed in Section 6 of this administrative regulation shall be permitted only as established in this administrative regulation, except archery and crossbow hunting shall be allowed pursuant to the statewide[~~archery~~] requirements established in 301 KAR 2:172, unless otherwise noted.

(4) If a WMA is:

(a) Listed in Section 6 of this administrative regulation, then gun hunting shall be prohibited, unless otherwise noted; and

(b) Not listed in Section 6 of this administrative regulation, then statewide deer hunting requirements shall apply.

(5) An antlerless deer shall not count against a person's statewide or zone bag limit if harvested during:

(a) The Grayson Lake WMA open youth hunt; or

(b) [~~West Kentucky WMA firearms hunts; or~~

~~(c)~~] Any WMA or state park either-sex quota hunt.

(6) An open gun[~~firearm~~] deer hunt, beginning on the Wednesday following the third Monday in January for ten (10) consecutive days, shall:

(a) Be limited to members of the United States Armed Forces and the National Guard and reserve component who:

1. Are residents of Kentucky or nonresidents stationed in Kentucky; and

2. Were deployed out-of-country during any portion of the most recent regular statewide deer season;

(b) Only be on a WMA designated as open for this special hunt; and

(c) Be pursuant[~~according~~] to statewide requirements established in 301 KAR 2:172.

(7) On all WMAs and Otter Creek Outdoor Recreation Area, a person:

(a) Attaching a tree stand or climbing a tree shall not use a:

1. Nail;

2. Spike;

3. Screw-in device;

4. Wire; or

5. Tree climber;

(b) May use a portable stand or climbing device [~~that shall not injure a tree~~];

(c) [~~1.~~] Shall:

1. Not place a portable stand in a tree more than two (2) weeks before opening day; and

2.[~~Shall~~] Remove a portable stand[~~it~~] within one (1) week following the last day of each hunting period;

(d) Shall plainly mark the portable stand with the hunter's name and address;

(e) Shall not use an existing permanent tree stand;[~~and~~]

(f) Shall not place, distribute, or hunt over bait; and

(g) Shall not hunt in a ground blind, if gun deer hunting is allowed, without first attaching a hat or vest made of solid, unbroken hunter orange material to the blind so that it is visible from all sides.

(8) A person without a valid quota hunt confirmation number shall not enter a WMA during a quota hunt on that area except:

(a) To travel through a WMA on an established road or to use an area designated open by a sign; [~~or~~]

(b) To accompany a youth who is hunting in a youth or mentor quota hunt;

(c) That one (1) assistant, who shall not be required to have applied for the quota hunt, may accompany a hunter who was drawn to hunt, but shall check in and out as established in Section 5 of this administrative regulation; or

(d) To participate in small game hunting or the October shotgun segment of the fall turkey season during the archery and crossbow quota hunt on Big Rivers WMA.

(9) Except for waterfowl or dove hunting, or legal hunting at night, a person who is hunting any species, or a person who is accompanying a hunter, shall wear hunter orange clothing pursuant to 301 KAR 2:172 while:

(a) On a WMA if gun[~~while firearms~~] deer hunting is allowed;

(b) Hunting within the sixteen (16) county elk zone when a firearms elk season is open, pursuant to 301 KAR 2:132; or

(c) Hunting within the bear zone during a bear firearms season, pursuant to 301 KAR 2:300.

Section 3. General Quota Hunt Procedures. (1) A quota hunt applicant who is not selected and applies to hunt the following year shall be given one (1) preference point for each year the applicant was not selected.

(2) If selected for a quota hunt, a person shall lose all accumulated preference points.

(3) A random selection of hunters with preference points shall be made for each year's quota hunts before those without preference points are chosen.

(4) A person shall forfeit all accumulated preference points if, in a given year, the person does not apply for or is ineligible to apply for:

(a) A deer quota hunt; and

(b) The no-hunt option.

(5) A person who applies for the no-hunt option shall:

(a) Not be drawn for a quota hunt; and

(b) Be given one (1) preference point for each year the no-hunt option is selected.

(6) If applying as a party:

(a) Each applicant's preference points shall be independent of each other; and

(b) The entire party shall be selected if one (1) member of the party is selected.

(7) The commissioner shall extend the application deadline if technical difficulties with the automated application system prevent applications from being accepted for one (1) or more days during the application period.

(8) A hunter may take up to two (2) deer on a quota hunt in Zones 2, 3, and 4, only one (1) of which may be an antlered deer, except as established in Section 6 of this administrative regulation.

(9) If a hunter has purchased the appropriate permits, a hunter may take unlimited antlerless deer in:

(a) The West Kentucky WMA gun hunt[~~firearms season~~];

(b) WMA quota hunts in Zone 1; and

(c) State Park quota hunts in Zone 1, except as established in Section 8 of this administrative regulation.

(10) One (1) person shall be drawn from the eligible quota hunt applicants who were not selected in the original drawing, and shall receive one (1) deer permit that carries with it all the privileges of the Special Commission Permit established in 301 KAR 3:100.

Section 4. Quota Hunt Application Process. A person applying for a quota hunt shall:

(1) Call the toll free number listed in the current fall hunting and trapping guide or apply online at fw.ky.gov by completing the Quota Hunt Application: Deer Quota Hunt Form, between September 1 and September 30;

(2) Enter each applicant's Social Security number;

(3) Select:

(a) A first and second choice of hunts; or

(b) The no-hunt option;

(4) Pay a three (3) dollar application fee for each applicant, prior to the draw by:

(a) Electronic funds transfer;

(b) Visa Card;

(c) Master Card; or

(d) Discover Card;

(5) Not apply more than one (1) time; and

(6) Not apply as a group of more than five (5) persons[~~; and~~

~~(7) Not be eligible to participate in a quota hunt unless:~~

~~(a) Selected pursuant to this administrative regulation; or~~

~~(b) Accompanying a drawn hunter~~].

Section 5. Quota Hunt Participant Requirements. Except as otherwise established in this administrative regulation, a person selected to participate in a quota hunt shall:

(1) Possess, unless exempted pursuant to KRS 150.170:

(a) A valid annual Kentucky hunting license; and

(b) A deer permit that authorizes the taking of deer with the equipment being used and in accordance with the zone restrictions where the hunt will occur;

(2) Hunt on the assigned dates and in assigned areas selected by a random drawing of applicants if applicable;

(3) Comply with hunting equipment restrictions specified by the type of hunt;

(4) Check in at the designated check station prior to hunting:

(a) Either:

1. On the day before the hunt, between noon and 8 p.m. local time; or

2. On the day of the hunt, between 5:30 a.m. and 8 p.m. Eastern time; and

(b) With documentation of the participant's:

1. Social Security number or draw confirmation number; and

2. Purchase of a current license or permit which allows or includes statewide deer hunting privileges;

(5) Check out at the designated check station:

(a) If finished hunting;

(b) If the hunter's bag limit is reached; or

(c) By 8 p.m. Eastern time on the final day of the hunt;

(6) Take a harvested deer to the designated check station by 8 p.m. Eastern time the day the deer was harvested;

(7) Be declared ineligible to apply for the next year's drawing if the hunter or the hunter's assistant fails to check out properly; and

(8) Comply with all species quota hunt requirements or be ineligible to apply for any quota hunt or no-hunt option for these species the following year.

Section 6. Wildlife Management Area Requirements. (1) Dr. Norman and Martha Adair WMA.[~~The crossbow season shall be open pursuant to statewide requirements.~~]

(2) Ballard WMA.

(a) On the main tract, the quota hunt shall be for two (2) consecutive days beginning on the first Saturday in November.

(b) On the main tract, the archery, crossbow, and October youth gun[~~firearm~~] seasons shall be open pursuant to statewide requirements through October 14, except that the two (2) mile driving loop marked by signs shall be closed to all hunting.

(c) The archery, crossbow, modern gun[~~firearm~~], youth gun[~~firearm~~], and muzzleloader seasons shall be open pursuant to statewide requirements only on the 400-acre tract south of Sallie Crice Road.

(d)[~~A hunter shall not take a deer with antlers that have an outside spread less than fifteen (15) inches.~~

~~(e)~~] A quota hunt participant shall be given one (1) preference point for each female deer checked in, up to a maximum of four (4) points.

(3) Barren River WMA. The area shall be open pursuant to statewide requirements except that on the Peninsula Unit, including Narrows, Goose, and Grass Islands, a person shall not hunt deer with a modern gun[~~firearm~~].

(4) Beaver Creek WMA.

(a) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(b) The limit shall be one (1) antlered deer during the quota hunt.

(c) The youth gun seasons[~~crossbow season~~] shall be open pursuant to statewide requirements.

(5) Big Rivers WMA.

(a) The youth gun seasons[~~firearms season~~] shall be open pursuant to statewide requirements.

(b) [~~The crossbow season shall be open pursuant to statewide requirements, except that it shall be closed during the archery and crossbow quota hunt as established in paragraph (d) of this subsection.~~

~~(c)~~] There shall be a quota hunt for two (2) consecutive days beginning the first Saturday in November.

(c) The archery and crossbow quota hunt shall begin the Monday following the second Saturday in October and continue through November 30, except that it shall be closed during the two (2) day quota hunt as established in paragraph (b) of this

subsection.

(d) Pursuant to 301 KAR 2:172, any deer taken in the quota hunt established in paragraph (c) of this subsection shall be:

1. Telechecked; or

2. Checked in on the department's Web site at fw.ky.gov[~~(d) There shall be an archery and crossbow quota hunt beginning the Monday following the second Saturday in October and continuing through November 30, except that it shall be closed during the two (2) day quota hunt as established in paragraph (c) of this subsection~~].

(6) Boatwright WMA. The area shall be open pursuant to statewide requirements, except that on the Swan Lake Unit the:

(a) [~~On the Swan Lake Unit the~~] Archery, October youth gun, and crossbow seasons[~~season~~] shall only be open[~~pursuant to statewide requirements~~] through October 14; and

(b) December free youth weekend shall be closed[~~The October youth deer season shall be open pursuant to statewide requirements~~].

(7) Cedar Creek Lake WMA.[~~The crossbow season shall be open pursuant to statewide requirements.~~]

(8) Clay WMA.

(a) On the main tract,[~~crossbow,~~] muzzleloader[~~,~~] and youth gun[~~firearm~~] seasons shall be open pursuant to statewide requirements, except archery hunting shall be prohibited during the quota fox hunting field trials as established in 301 KAR 2:049.

(b) The remainder of the WMA shall be open pursuant to statewide requirements for the archery, crossbow, muzzleloader, and youth gun seasons, except during the quota deer hunt.

(c) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(d) A quota hunt participant shall be given one (1) preference point for each female deer checked-in, up to a maximum of four (4) points.

(e) Hunters drawn for the quota hunt may harvest up to four (4) deer, only one (1) of which may be antlered.

(9) Dewey Lake WMA.

(a) The December muzzleloader[~~crossbow~~] and youth gun[~~firearm~~] seasons shall be open pursuant to statewide requirements.

(b) Guns[~~The use of firearms~~] shall be prohibited for deer hunting on the:

1. Western side of the lake, north of the Terry Boat Ramp; and

2. Eastern side of the lake, north of the ridge that begins across the lake from the Terry Boat Ramp, and extends eastward to the WMA boundary.

(c)[~~A deer hunter shall not take a deer with antlers that have an outside spread less than fifteen (15) inches.~~

~~(d)~~] There shall be a quota hunt for two (2) consecutive days beginning the first Saturday in December.

(d)[~~(e)~~] There shall be a one (1) deer limit during the quota hunt.

(10) Dix River WMA. The[~~crossbow,~~] youth gun[~~firearm,~~] and muzzleloader seasons shall be open pursuant to statewide requirements.

(11) Fishtrap Lake WMA.

(a) The quota hunt shall be for two (2) consecutive days beginning on the Saturday before Thanksgiving.

(b) The limit for the quota hunt shall be one (1) deer.

(c) The[~~crossbow and~~] youth gun and December muzzleloader seasons[~~firearm season~~] shall be open pursuant to statewide requirements.

(12) Grayson Lake WMA.

(a) An open youth hunt shall:

1. Be the first Saturday in November for two (2) consecutive days; and

2. Have a two (2) deer bag limit, only one (1) of which may be an antlered deer.

(b) A person who has not checked in shall not enter the Grayson Lake WMA during the open youth hunt, except to:

1. Travel through the WMA on an established public road; or

2. Use an area designated as open by signs.

(c) The property of Camp Webb shall be open for a mobility-impaired deer hunting event during the first weekend of October.

(d) The crossbow season[~~hunt~~] shall be from the first Saturday in September through the third Monday in January, except that the archery and crossbow seasons shall be closed during the November open youth hunt.

(e) The[~~statewide~~] youth gun seasons[~~firearm season~~] shall be open pursuant to statewide requirements.

(f) The December muzzleloader season shall be open pursuant to statewide requirements.

(13) Green River Lake WMA and Dennis-Gray WMA.

(a) The youth gun seasons[~~crossbow season~~] shall be open pursuant to statewide requirements.

(b) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(c) Fifteen (15) openings shall be reserved in the quota hunt for mobility-impaired persons.

(d)[~~A deer hunter shall not take a deer with antlers that have an outside spread less than fifteen (15) inches.~~

~~(e)~~] The Green River Lake and Dennis-Gray WMAs shall be considered to be located in the Eastern Time Zone.

(14) Griffith Woods WMA. The December muzzleloader[~~crossbow~~] and youth gun[~~firearms~~] seasons shall be open pursuant to statewide requirements.

(15) Higginson-Henry WMA.

The youth gun[~~firearm and crossbow deer~~] seasons shall be open pursuant to statewide requirements.

(16) J.C. Williams WMA. The December muzzleloader[~~crossbow~~] and youth gun[~~firearm~~] seasons shall be open pursuant to statewide requirements.

(17) Kentucky River WMA.

(a) The December muzzleloader[~~crossbow~~] and youth gun[~~firearm~~] seasons shall be open pursuant to statewide requirements.

(b) There shall be a quota hunt for two (2) consecutive days beginning on the first Saturday in November.

(18) Kleber WMA.

(a)[~~The crossbow season shall be open pursuant to statewide requirements, except during a quota hunt.~~

~~(b)~~] The quota hunts shall be for:

1. Two (2) consecutive days beginning the first Saturday in November; and

2. Two (2) consecutive days beginning the first Saturday in December.

(b)[~~(c)~~] The youth gun and December muzzleloader seasons[~~firearm season~~] shall be open pursuant to statewide requirements.

(19) Knobs State Forest WMA. The December muzzleloader[~~crossbow~~] and youth gun seasons shall be open pursuant to statewide requirements.

(20) Lake Barkley WMA shall be open pursuant to statewide requirements except:

(a) The North Refuge shall be closed from November 1 to February 15; and

(b) Duck Island shall be closed from October 15 to March 15, except that it shall be open for the October muzzleloader season, pursuant to statewide requirements.

(21) Livingston County WMA. The[~~crossbow,~~] youth gun[~~firearm~~], muzzleloader, and modern gun[~~firearm~~] seasons shall be open pursuant to statewide requirements, except a person shall not hunt deer with a modern gun[~~firearm~~] during the modern gun[~~firearm~~] deer season.

(22) Curtis Gates Lloyd WMA. The December muzzleloader[~~crossbow~~] and youth gun[~~firearms~~] seasons shall be open pursuant to statewide requirements.

(23) Mill Creek WMA.

(a) The youth gun seasons[~~crossbow season~~] shall be open pursuant to statewide requirements.

(b) The modern gun season shall be open pursuant to statewide requirements for two (2) consecutive days beginning the second Saturday in November[~~The quota hunt shall:~~

~~1. Be for two (2) consecutive days beginning the first Saturday in November; and~~

~~2. Have a one (1) deer bag limit~~].

(24) Miller-Welch Central Kentucky WMA. The archery and

crossbow seasons shall be open pursuant to statewide requirements:

(a) On Monday through Thursday, from the first Saturday in September through December 17, except during scheduled field trials as posted on the area bulletin board; and

(b) December 18 through the third Monday in January.

(25) Mud Camp Creek WMA. The[~~crossbow,~~] youth gun[~~firearm,~~] and muzzleloader seasons shall be open pursuant to statewide requirements.

(26) Mullins WMA. The youth gun and December muzzleloader seasons[~~crossbow season~~] shall be open pursuant to statewide deer requirements.

(27) Ohio River Islands WMA, Stewart Island Unit.

(a) The muzzleloader season shall be for two (2) consecutive days beginning the third Saturday in October.

(b) The archery season shall be from the first Saturday in September through October 14.

(c) The crossbow season shall be from October 1 through October 14.

(d) The October youth gun season shall be open pursuant to statewide requirements.

(e) The remainder of the WMA shall be open pursuant to statewide requirements.

(28) Paintsville Lake WMA.

(a) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(b) The December muzzleloader[~~crossbow~~]and youth gun[~~firearm~~] seasons shall be open pursuant to statewide requirements.

(c) A person shall not use a gun[~~firearms~~] for deer hunting on:

1. The area extending eastward from the drainage of Glade Branch, along the north edge of the lake, to the No Hunting Area surrounding Rocky Knob Recreation Area and enclosing all property from the WMA boundary downslope to the lake edge; and

2. The islands to the south and that portion of the area extending eastward along the south edge of the lake from the drainage of Shoal Branch to the No Hunting Area surrounding the dam and ranger station, and extending downslope to the edge of the lake. [~~(d) A deer hunter shall not take a deer with antlers that have an outside spread less than fifteen (15) inches.~~]

(29) Peabody WMA.

(a) The[~~crossbow,~~] youth gun[~~firearms,~~] and muzzleloader seasons shall be open pursuant to statewide requirements.

(b) The modern gun[~~firearm~~] season shall be open pursuant to statewide requirements for ten (10) consecutive days beginning the second Saturday in November.

(30) Pennyrile State Forest-Tradewater WMA.

[~~(a) The crossbow season shall be open pursuant to statewide requirements.~~

~~(b)~~] The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(31) Ping-Sinking Valley WMA. The December muzzleloader and youth gun seasons shall be open pursuant to statewide requirements.

(32)[~~(c) A deer hunter shall not take a deer with antlers that have an outside spread less than fifteen (15) inches.~~

~~(31)~~] Pioneer Weapons WMA. Statewide requirements shall apply except that a person:

(a) Shall not use a modern gun[~~firearm~~];

(b) Shall not use an in-line muzzleloader[~~muzzleloading gun~~];

(c) Shall not use a scope;

(d) May use a crossbow during the entire archery season; and

(e) Shall use only open or iron sights on any weapon.

(33)[~~(32)~~] Redbird WMA.

(a) The youth gun seasons[~~crossbow season~~] shall be open pursuant to statewide requirements.

(b) The modern gun[~~firearm~~] season shall be open pursuant to statewide requirements for two (2) consecutive days beginning the second Saturday in November.

(34)[~~(33)~~] Dr. James R. Rich WMA.

(a) There shall be a[~~The crossbow season shall be open pursuant to statewide requirements, except during a quota hunt.~~

~~(b) The~~] quota hunt[~~hunts shall be~~] for two (2) consecutive days beginning on the first Saturday in:

1.[~~Two (2) consecutive days beginning the first Saturday in~~] November; and

2.[~~Two (2) consecutive days beginning the first Saturday in~~] December; and

(b)[~~(c)~~] The youth gun and December muzzleloader seasons[~~firearm season~~] shall be open pursuant to statewide requirements.

(35)[~~(34)~~] Robinson Forest WMA.

(a) A person shall not hunt deer on the main block of Robinson Forest.

(b) The remainder of the WMA shall be open pursuant to statewide requirements.

(36) Rockcastle River WMA.

(a) The youth gun seasons shall be open pursuant to statewide requirements.

(b) The modern gun season shall be open pursuant to statewide requirements for two (2) consecutive days beginning the second Saturday in November.

(37)[~~(35) Sinking Valley WMA. The crossbow and youth firearms seasons shall be open pursuant to statewide requirements.~~

~~(36)~~] Sloughs WMA.

(a) On the Sauerheber Unit, the archery, crossbow, muzzleloader, and youth gun[~~firearm~~] seasons shall be open pursuant to statewide requirements through October 31, except that the Crenshaw and Duncan II Tracts shall be open pursuant to statewide requirements through the end of modern gun[~~firearm~~] season.

(b) The remainder of the WMA shall be open pursuant to statewide requirements.

(38)[~~(37)~~] South Shore WMA.

(a) The youth gun[~~firearm~~], October muzzleloader, and modern gun[~~firearm~~] seasons shall be open pursuant to statewide requirements through November 14, except that the use of centerfire rifles and handguns shall be prohibited.

(b) The archery and crossbow seasons shall be open pursuant to statewide requirements, except that the area shall be closed November 15 through January 15.

(c) The December free youth weekend and December muzzleloader season shall be closed.

(39)[~~(38)~~] T.N. Sullivan WMA. The youth gun and December muzzleloader seasons[~~crossbow season~~] shall be open pursuant to statewide requirements.

(40)[~~(39)~~] R.F. Tarter WMA. The[~~crossbow,~~] youth gun[~~firearm,~~] and muzzleloader seasons shall be open pursuant to statewide requirements.

(41)[~~(40)~~] Taylorsville Lake WMA.

(a) There shall be a quota hunt for two (2) consecutive days beginning the first Saturday in: [~~1. Two (2) consecutive days beginning the first Saturday in~~] November; and [~~for antlerless deer;~~]

2.[~~Two (2) consecutive days beginning the first Saturday in~~] December[~~; and~~

~~3. Two (2) consecutive days beginning the first Saturday in January~~].

(b) Seven (7) openings shall be reserved in each quota hunt for mobility-impaired persons.

(c) The youth gun and December muzzleloader seasons [~~firearm season~~] shall be open pursuant to statewide requirements.

(42)[~~(d) The crossbow season shall be open pursuant to statewide requirements.~~

~~(e) A participant in the November antlerless-only quota hunt shall be given one (1) preference point for each female deer checked in, up to four (4).~~

~~(41)~~] Twin Eagle WMA. The youth gun and December muzzleloader seasons[~~crossbow season~~] shall be open pursuant to statewide requirements.

(43)[~~(42)~~] Paul Van Booven WMA.[~~The crossbow season shall be open pursuant to statewide requirements.~~]

(44)[~~(43)~~] Veteran's Memorial WMA.

(a) The December muzzleloader[~~crossbow,~~]and youth gun[~~firearms~~] seasons shall be open pursuant to statewide requirements.

(b) There shall be a quota hunt for two (2) consecutive days beginning the first Saturday in:

1.[~~Two (2) consecutive days beginning the first Saturday in~~] November; and

2.[~~Two (2) consecutive days beginning the first Saturday in~~] December for antlerless deer.

(c) A participant in the December antlerless-only quota hunt shall be given one (1) preference point for each female deer checked in, up to a maximum of four (4) points.

(45)[~~(44)~~] West Kentucky WMA.

(a) All tracts shall be open pursuant to statewide requirements for the archery and crossbow seasons, except that the statewide archery and crossbow seasons[~~all tracts~~] shall be closed [~~to archery and crossbow hunting~~] during department administered quota, mentor, and gun[~~firearm~~] deer hunts.

(b) Tracts 1-6 shall be open to shotgun and muzzleloader hunters participating in the quota and open gun[~~firearm~~] deer hunts.

(c) Tract 7 and "A" tracts[~~Tracts~~] shall not be open for department administered quota or gun[~~firearm~~] deer hunts, except as established in paragraph (d) of this subsection.

(d) The "A" tracts shall be open to shotgun hunters participating in the mentor hunt.

(e) The quota hunt shall be for four (4)[~~five (5)~~] consecutive days beginning the Saturday prior to Thanksgiving.

(f) There shall be a mentor hunt for four (4) consecutive days beginning the Saturday prior to Thanksgiving in which:

1. There shall be no more than two (2) youths per adult;

2. There shall be no more than one (1) adult per youth; and

3. The adult may take a deer.

(g)[~~(e)~~] The gun hunt[~~firearms season~~] shall:

1. Be for three (3) consecutive days beginning the Saturday preceding the third Monday in January;

2. Require a hunter to check-in at a designated check station from 4 p.m. to 8 p.m. Central Time on the day before the hunt or between 4:30 a.m. and 7 p.m. Central Time on hunt days;

3. Require a hunter to check out at the designated check station:

a. When finished hunting; or

b. By 7 p.m. Central time on the final day of the hunt;

4. Have an unlimited bag limit, only one (1) of which may be an antlered deer; and

5. Require every person to check in during the gun hunt[~~firearms season~~], except for:

a. A person traveling on an established public road; or

b. A person in an area designated as open by signs.

(h) Gun[~~(f) Firearm~~] hunters shall not use centerfire rifles or handguns.

(i)[~~(g)~~] All persons shall check in daily at the designated check-in locations before entering the "A" tracts.

(j)[~~(h) A deer hunter shall not take a deer with antlers that have an outside spread of less than fifteen (15) inches.~~

~~(i)~~] A participant in the quota hunt, mentor hunt, or open gun hunt[~~firearms season~~] shall:

1. Sign in for the hunting tract of his or her choice at check-in prior to each day's hunt; and

2. Except after noon, not hunt outside of that tract.

(46)[~~(45)~~] Yatesville WMA.

(a) The[~~crossbow,~~] youth gun[~~firearm,~~] and muzzleloader seasons shall be open pursuant to statewide requirements.

(b) The modern gun[~~firearm~~] season shall be open pursuant to statewide requirements for ten (10) consecutive days beginning the second Saturday in November.

(47)[~~(46)~~] Yellowbank WMA. The December muzzleloader [~~crossbow,~~]and youth gun[~~firearm~~] deer seasons shall be open pursuant to statewide requirements.

Section 7. State Park Deer Seasons. (1) A state park may allow archery and crossbow hunting from the first Saturday in September through the third Monday in January for antlered or antlerless deer.

(2) A state park may allow up to sixteen (16) days of modern gun[~~firearm~~] hunting and up to eleven (11) days of muzzleloader hunting from the first Saturday in September through the third Monday in January for antlered or antlerless deer.

(3) A state park shall be open to deer hunting as established in this subsection and Section 8 of this administrative regulation.

(a) Lake Barkley State Resort Park. Deer hunting shall be allowed beginning[~~permitted~~] on the second Tuesday of January for two (2) consecutive days.

(b) Greenbo Lake State Resort Park. Deer hunting shall be allowed beginning[~~permitted~~] on the:

1. First Friday of November for three (3) consecutive days;

2. Second Friday of November for three (3) consecutive days; and

3. Second Tuesday of January for two (2) consecutive days.

(c) Green River Lake State Park.

1. Archery and crossbow deer hunting shall be allowed[~~permitted~~] beginning on the first[~~second~~] Thursday of December for four (4) consecutive days.

2. Archery and crossbow deer hunting shall be allowed[~~permitted~~] beginning on the second[~~third~~] Thursday of December for four (4) consecutive days. [~~3. A deer hunter shall not take an antlered deer with antlers having an outside spread less than fifteen (15) inches.~~]

(d) Dale Hollow Lake State Resort Park.

1. Youth deer hunting shall be allowed beginning on the second Saturday of December for two (2) consecutive days.

2. Deer hunting shall be allowed beginning on the first Saturday of January for two (2) consecutive days.

(e) Kenlake State Resort Park. Archery and crossbow deer hunting shall be allowed beginning on the second Thursday of November for four (4) consecutive days.

(f) Kincaid Lake State Park.

1. Archery and crossbow hunting shall be allowed beginning on the second Thursday of December for four (4) consecutive days.

2. Archery and crossbow deer hunting shall be allowed beginning on the third Thursday of December for four (4) consecutive days.

(g) Perryville Battlefield State Historic Site. Deer hunting shall be allowed beginning on the first Saturday of November for two (2) consecutive days.

(h) Yatesville Lake State Park. Muzzleloader[~~Muzzleloading firearm~~], archery, and crossbow deer hunting shall be allowed[~~permitted~~] pursuant to statewide deer requirements on the second Monday of December for three (3) consecutive days.

(i)[~~(e)~~] Jenny Wiley State Resort Park.

1. Deer hunting shall be allowed beginning[~~permitted~~] on the first Saturday of January for two (2) consecutive days.

2. The bag limit shall be two (2) deer, only one (1) of which may be antlered.

3. The hunt shall be open to the first fifteen (15) mobility-impaired persons who check in at the park on the day before the hunt.

4. A person who participates in the hunt shall comply with the requirements established in 301 KAR 3:026. [~~5. A deer hunter shall not take an antlered deer with antlers having an outside spread less than fifteen (15) inches.~~]

Section 8. State Park Deer Hunt Requirements. (1)[~~Except for the open hunts at Jenny Wiley State Resort Park and Yatesville Lake State Park,~~] A person shall not hunt on a state park unless:

(a) Selected by a random drawing as established in Section 3 of this administrative regulation;

(b) The person is a member of a successful applicant's quota hunt[~~hunting~~] party; [~~or~~]

(c) The person is participating in a deer hunt established in Section 7 of this administrative regulation; or

(d) The person successfully registers on a first-come, first-served basis[~~was selected~~] as part of a process administered by the Department of Parks, at an area established in subparagraphs 1. through 5. of this paragraph:

1. Blue Licks Battlefield State Resort Park;

2. Carter Caves State Resort Park;

3. John James Audubon State Park;

4. My Old Kentucky Home State Park; and

5. Taylorsville Lake State Park[~~pursuant to Section 7 of this~~

~~administrative regulation~~].

(2) A person participating in a state park quota hunt, except for the quota hunts at Green River Lake State Park and the Yatesville Lake State Park open deer hunt, shall:

(a) Check in and check out as required in Section 5 of this administrative regulation;

(b) Furnish at check-in a driver's license or other form of government-issued identification;

(c) Check in:

1. Between noon and 8 p.m. Eastern Time the day before the hunt at the state park campground if hunting in the Yatesville Lake State Park open deer hunt; or

2. At the park the day before the hunt if hunting in the Jenny Wiley State Resort Park deer hunt; and

(d) Not be eligible to apply for a quota hunt the following year if the person does not check out as required in Section 5 of this administrative regulation.

(3) A person participating in a state park deer hunt shall:

(a) Comply with the requirements established in[~~provisions of~~] 301 KAR 2:172; and

(b) Check a harvested deer by completing the telecheck or online check-in process as established in 301 KAR 2:172[~~daily at the designated park check station, except that deer taken in the Green River Lake State Park quota hunts and the open hunts at Jenny Wiley State Resort Park and Yatesville Lake State Park shall be telechecked or checked in on the department's Web site at fw.ky.gov, pursuant to 301 KAR 2:172~~].

(4) A person participating in a state park deer hunt shall not:

(a) Take more than [~~two (2) deer in a quota hunt, only~~] one (1) [~~of which may be~~] antlered deer;

(b) Hunt over bait;

(c) Use[~~Injure a tree by using~~]:

1. A tree stand except a portable stand;

2. Climbing devices that nail or screw to the tree; or

3. Climbing spikes;

(d) Leave a deer stand unattended for more than twenty-four (24) hours;

(e) Discharge a gun[~~firearm~~] within 100 yards of a maintained road or building; or

(f) Hunt:

1. In an area posted as closed by signs;[~~or~~]

2. Outside park boundaries; or

3. From a ground blind, if gun deer hunting is allowed, unless first attaching a hat or vest made of solid, unbroken hunter orange material to the blind so that it is visible from all sides.

(5) A person participating in a state park deer hunt, other than the open hunts at Jenny Wiley State Resort Park and Yatesville Lake State Park and any department-administered state park quota hunt, may take up to two (2) bonus deer per hunt that shall not count toward the statewide limit if the person:

(a) Takes no more than one (1) bonus antlered deer per license year; and

(b) Obtains the valid bonus deer tag from the state park hunt administrators.

(6) A person participating in a state park deer hunt or in possession of harvested wildlife on state park property shall comply with all posted state park rules and regulations concerning the possession, storage, or disposal of harvested wildlife.

Section 9. Other Public Lands. (1) On Daniel Boone National Forest, Jefferson National Forest, and Land Between the Lakes, a person shall not use bait, feed, minerals, or other attractants.

(2) The areas established in paragraphs (a) through (g) of this subsection may schedule a gun[~~firearm~~], crossbow, or archery deer hunting season between September 1 and January 31:

(a) Big South Fork National River and Recreation Area;

(b) Clark's River National Wildlife Refuge;

(c) Daniel Boone National Forest;

(d) Jefferson National Forest;

(e) Land Between the Lakes National Recreation Area;

(f) Ohio River Islands National Wildlife Refuge; and

(g) Reelfoot National Wildlife Refuge.

(3) An area listed in subsection (2) of this section may issue a bonus permit for antlered or antlerless deer, which shall:

(a) Not count against a hunter's statewide bag limit; and

(b) Only be issued for a hunt that is open to the general public.

(4) At Land Between the Lakes, a person:

(a) Shall not take more than:

1. Two (2) deer during archery hunts; and

2. One (1) deer during quota hunts;

(b) Who is a quota deer hunter shall:

1. Apply in advance at Land Between the Lakes; and

2. Only hunt from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset; and

(c) Who harvests a deer shall:

1. Check in the carcass pursuant to U.S. Forest Service requirements; and

2. Affix a game check card pursuant to U.S. Forest Service requirements.

(5) At Reelfoot National Wildlife Refuge:

(a) Zone 1 bag limits shall apply during the open archery season;

(b) A person shall not take more than two (2) deer by gun[~~firearm~~], only one (1) of which shall be antlered;

(c) A quota hunt participant shall:

1. Tag deer with a tag issued by the Refuge; and

2. Comply with the Refuge check-in requirements; and

(d) A person who is archery hunting shall:

1. Only take deer using the appropriate statewide or additional deer permit; and

2. Check harvested deer through the department's telephone or online check-in systems.

(6) At Otter Creek Outdoor Recreation Area:

(a) The archery and crossbow seasons shall be open pursuant to statewide requirements; and

(b) There shall be a quota hunt for two (2) consecutive days beginning the second Saturday in December.

(7) At Twin Knobs Campground, the area shall be closed to all statewide seasons, except that there shall be a quota hunt on the second Saturday in December during odd-numbered years for mobility-impaired persons.

(8) At Zilpo Campground, the area shall be closed to all statewide seasons, except that there shall be a quota hunt on the second Saturday in December during even-numbered years for mobility-impaired persons.

Section 10. Special Areas under Federal Control. (1) The areas established in paragraphs (a) through (e) of this subsection may schedule a gun[~~firearm~~], archery, or crossbow deer hunting season between September 1 and January 31:

(a) Bluegrass Army Depot;

(b) Fort Campbell;

(c) Fort Knox;

(d) Hidden Valley Training Center; and

(e) Wendell Ford Regional Training Center.

(2) An area listed in subsection (1) of this section may issue a bonus permit for antlered or antlerless deer, which shall:

(a) Not count against a hunter's statewide bag limit; and

(b) Only be issued for a hunt that is open to the general public.

(3) Except on the Hidden Valley Training area, on the areas listed in subsection (1) of this section, a deer hunter shall:

(a) Obtain a permit from the area before hunting;

(b) Only hunt on assigned dates;

(c) Remain in assigned areas;

(d) Tag deer with tags issued on the area, unless otherwise established in this section;

(e) Keep the area tag attached to the deer until the carcass is processed; and

(f) Check deer at a designated check station before leaving the area.

(4) At Bluegrass Army Depot, a person shall not take an antlered deer whose outside antler spread is less than fifteen (15) inches.

(5) At Fort Knox, a person shall not take an antlered deer whose outside antler spread is less than twelve (12) inches.

(6) At Hidden Valley Training Area, a person shall not use a

gun[~~firearm~~] to hunt deer.

Section 11. Incorporation by Reference. (1) "Quota Hunt Application: Deer Quota Hunt Form", March 2014, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GREGORY K. JOHNSON, Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: February 14, 2017

FILED WITH LRC: February 14, 2017 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 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 March 31, 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 regulation establishes the deer hunting seasons, limits, and equipment restrictions under which deer may be taken on wildlife management areas, state parks, and other lands controlled by state or federal government agencies.

(b) The necessity of this administrative regulation: To establish deer hunting seasons, limits, and methods of taking deer to control and manage deer populations and hunting pressure on wildlife management areas, state parks, and other public lands.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits, and to make these requirements apply to a limited area. KRS 150.390(1) prohibits the taking of deer in any manner contrary to any provisions of KRS Chapter 150 or its administrative regulations. KRS 150.620 authorizes the department to manage public lands for hunting and fishing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statute by establishing requirements for effectively managing deer herds on Wildlife Management Areas (WMAs), state parks, and other public lands, including the establishment of requirements to ensure safe, orderly hunting practices on public lands.

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

(a) How the amendment will change this existing administrative regulation: This amendment requires use of hunter orange-colored material on ground blinds during gun hunts on WMAs and State Parks, increases the daily deer bag limit on WMAs to match that on private land, removes the 15-inch outside antler spread restriction on six WMAs and two State Parks, establishes youth gun deer hunting opportunities on eight WMAs, opens 17 WMAs to the late muzzleloader season, deletes quota deer hunts on two WMAs (but replaces the opportunity lost on one of them with two days of open/non-quota gun hunting), establishes deer hunting regulations for two new WMAs in central and south-central Kentucky, eliminates the final day of a quota hunt on West Kentucky WMA (but also creates a new, four-day youth deer hunting opportunity there as well), removes the requirement for on-site checking of deer harvested at two State Park quota deer hunts, and establishes new deer hunting opportunities at seven other Parks.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to maximize hunter opportunity without harm to the deer resource.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: For the 2015-16 deer season, there were approximately 248,000 resident and 25,000 non-resident Kentucky deer hunters. Additionally, 7,940 people applied for quota deer hunts administered by the Kentucky Department of Fish and Wildlife Resources.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Those who hunt deer on WMAs and state parks must comply with the individual hunt requirements for those sites, as listed in the fall hunting guide produced by the department.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no direct cost to hunters as a result of this amendment to the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Deer hunters will benefit from the increased hunting opportunities that will be created and also from the expansion (and improvement) of existing opportunity.

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

(a) Initially: There will be no additional cost to the agency to implement this regulation.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It will not be necessary to increase a fee or funding to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not used because all persons who hunt deer on WMAs, state parks, or other public lands are required to abide by these guidelines.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources' Wildlife and Law Enforcement Divisions will be affected by this regulation.

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

regulation. KRS 148.029(5), 150.025(1), 150.390(1) and 150.620.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated in subsequent years.

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

(d) How much will it cost to administer this program for subsequent years? There will no additional costs to administer this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 6:060. Northpoint Training Center.

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 Northpoint Training Center.

Section 1. Incorporation by Reference. (1) "Northpoint Training Center Policies and Procedures", February 14[~~December 9~~], 2015, are incorporated by reference. Northpoint Training Center policies and procedures include:

NTC 01-17-01	Relationships with Public, Media and Other Agencies (Amended 7/14/14)
NTC 02-07-02	Institutional Religious Center Fund (Amended 2/14/17[~~7/13/11~~])
NTC 02-08-01	Inmate Canteen (Amended 2/14/17[~~9/28/15~~])
NTC 02-12-01	Inmate Accounts (Amended 2/14/17[~~12/9/15~~])
NTC 03-03-01	Tobacco Products and Nicotine Procedures (Amended 2/14/17[~~12/9/15~~])
NTC 03-25-01	Firewood Cutting and Firewood Sales (Added 2/14/17)
NTC 06-01-01	Offender Information Services (Amended 9/28/15)
NTC 06-01-02	Offender Information Services - Release of Information (Amended 9/13/11)
NTC 09-06-01	Searches and Contraband Procedures; Disposition of Contraband (Amended 2/14/17[~~9/28/15~~])
NTC 09-14-01	Inmate Death (Amended 7/13/11)
NTC 09-16-01	Restricted Areas (Amended 2/14/17[~~12/9/15~~])
NTC 10-01-01	Restrictive Housing[~~Special Management~~] Unit (Amended 2/14/17[~~12/9/15~~])
NTC 11-04-02	Menu, Nutrition, Special, and Individual Diets (Amended 9/28/15)
NTC 11-05-02	Food Service Staff Health Standards (Amended 9/28/15)
NTC 12-02-01	Personal Hygiene for Inmates: Clothing and Linens (Amended 2/14/17[~~9/28/15~~])
NTC 12-02-02	Issuance of Personal Hygiene Products (Amended 2/14/17[~~7/13/11~~])
NTC 12-06-01	Housekeeping Procedures (Amended 7/13/11)
NTC 12-07-01	Grooming and Hair Care Standards (Amended 2/14/17[~~9/28/15~~])
NTC 13-01-01	Emergency Medical Care Plan (Amended 2/14/17[~~7/14/14~~])
NTC 13-02-01	Provisions and Authority for Health Services (Amended 12/9/15)
NTC 13-03-01	Sick Call and Pill Call (Amended 2/14/17[~~7/13/11~~])
NTC 13-04-01	Utilization of Pharmaceutical Products (Amended 2/14/17[~~9/13/11~~])
NTC 13-05-01	Dental Services (Amended 9/28/15)
NTC 13-08-01	Medical and Dental Records (Amended 9/28/15)
NTC 13-10-01	Notification of Inmate's Family or Designation Individual of Serious Illness or Injury, Surgery, or Inmate Death (Added 11/15/07)
NTC 13-11-01	Inmate Health Screening and Evaluation (Amended 2/14/17[~~9/28/15~~])
NTC 13-12-01	Special Health Care Programs (Amended 12/9/15)
NTC 13-13-01	Inmate Self Administration of Medication (Amended 2/14/17[~~9/28/15~~])
NTC 13-19-01	Mental Health Care Program (Amended 2/14/17[~~7/14/14~~])
NTC 13-19-03	Suicide Prevention and Intervention Program (Amended 2/14/17[~~7/13/11~~])
NTC 13-20-02	Infectious Disease Control (Amended 2/14/17[~~7/14/14~~])
NTC 13-22-01	Informed Consent (Amended 9/28/15)
NTC 13-26-01	Public Advocacy Access to Psychological and Psychiatric Reports (Amended 12/13/05)
NTC 14-01-01	Legal Services Program (Amended 2/14/17[~~10/14/14~~])
NTC 14-02-01	Inmate Grievance Procedure (Amended 9/28/15)
NTC 14-03-02	Board of Claims (Amended 9/13/11)
NTC 15-02-01	Due Process and Disciplinary Procedures (Amended 9/28/15)
NTC 15-02-02	Extra Duty Assignments (Amended 9/28/15)
NTC 15-03-01	Rules for Inmates Assigned to Outside Detail (Amended 9/28/15)
NTC 15-03-02	Rules for General Population Dormitories (Amended 2/14/17[~~9/28/15~~])
NTC 15-04-01	Inmate Identification (Amended 2/14/17[~~7/14/14~~])
NTC 15-05-01	Drug Abuse and Intoxicants Testing (Amended 2/14/17[~~7/14/14~~])
NTC 16-01-01	Inmate Mail (Amended 2/14/17[~~9/28/15~~])
NTC 16-02-01	Visiting (Amended 2/14/17[~~9/28/15~~])
NTC 16-03-01	Inmate Furloughs (Amended 9/28/15)
NTC 16-05-01	Telephone Use and Control (Amended 2/14/17[~~9/28/15~~])
NTC 17-01-01	Personal Property Control (Amended 2/14/17[~~9/28/15~~])
NTC 17-01-04	Disposition of Unauthorized Property (Amended 2/14/17[~~7/14/14~~])
NTC 17-02-03	Mattress and Pillow Issue (Amended 2/14/17[~~Added 9/28/15~~])
NTC 17-03-01	Assessment and Orientation (Amended 12/9/15)
NTC 18-01-01	Preparole Progress Report (Amended 9/28/15)
NTC 18-02-01	Classification (Amended 2/14/17[~~9/13/11~~])
NTC 18-02-02	Classification - 48 Hour Notification (Amended 5/12/06)

NTC 18-02-03	Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) (Amended 12/9/15)
NTC 18-03-01	Conflict Notification Form (Amended 2/14/17[~~9/28/15~~])
NTC 18-05-01	Transfer of Inmates (Amended 7/14/14)
NTC 19-01-01	Inmate Work Programs (Amended 2/14/17[~~9/28/15~~])
NTC 20-01-01	Educational Programs (Amended 2/14/17[~~9/28/15~~])
NTC 20-02-02	Live Work Projects in Technical School Classes (Amended 2/14/17[~~9/28/15~~])
NTC 20-02-03	Correspondence Courses (Added 9/28/15)
NTC 21-01-01	Library Services (Amended 2/14/17[~~9/28/15~~])
NTC 22-03-01	Conducting Inmate Organizational Meetings and Programs (Amended 9/28/15)
NTC 23-01-01	Religious Services (Amended 2/14/17[~~9/28/15~~])
NTC 23-03-01	Marriage of Inmates (Amended 2/14/17[~~9/28/15~~])
NTC 24-04-01	Honor Housing (Amended 2/14/17[~~7/13/11~~])
NTC 24-06-01	Veterans Dormitory (Amended 12/9/15)
NTC 25-01-01	Release Preparation Program (Amended 9/28/15)
NTC 25-01-02	Temporary and Community Center Release
NTC 25-02-01	Funeral Trips and Bedside Visits (Amended 7/14/14)
NTC 25-03-01	Inmate Release Procedure (Amended 12/9/15)
NTC 26-01-01	Citizen Involvement and Volunteer Services Program (Amended 2/14/17[~~9/28/15~~])

(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: February 1. 2017

FILED WITH LRC: February 14, 2017 a 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 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 March 31, 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 and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegsContact@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 Northpoint Training Center 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 American Correctional Association (ACA) standard requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of the Northpoint Training Center.

(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 Corrections employees and the inmate population 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 keeps the Northpoint Training Center in 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 statutes authorize the Secretary or his authorized representative and the Commissioner to implement or amend practices or procedures to ensure the safe and efficient operation of the Northpoint Training Center.

(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: This affects 300 employees and 1,256 inmates at the Northpoint Training Center 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, inmates, volunteers, and visitors will have to follow the changes made in the policies and procedures. They 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 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 penal institution.

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

(a) Initially: No increase in cost is anticipated.

(b) On a continuing basis: No increase in cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Northpoint Training Center 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 regulation does not establish 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? Northpoint Training Center

(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

(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 Northpoint Training Center or other entity.

(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 Northpoint Training Center or other entity.

(c) How much will it cost to administer this program for the first year? The amendments to this regulation impact how the institution operates, but do not increase costs from what will be budgeted to the Department of Corrections.

(d) How much will it cost to administer this program for subsequent years? The amendments to this regulation impact how the institution operates, but are not expected to increase costs from what will be budgeted to the Department of Corrections

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:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amendment)

702 KAR 6:090. Minimum nutritional standards for foods and beverages available on public school campuses during the school day; required nutrition and physical activity reports.

RELATES TO: KRS 156.035, 156.160, 156.200, 158.854(1), 158.856, 160.345, 7 C.F.R. 210.11

STATUTORY AUTHORITY: KRS 156.160, 158.854(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.854(1) requires the Kentucky Board of Education to promulgate an administrative regulation to specify the minimum nutritional standards for all foods and beverages that are sold outside the National School Breakfast and National School Lunch programs, whether in vending machines, school stores, canteens, or a la carte cafeteria sales.[~~KRS 158.854(1) requires that the administrative regulation address serving size, sugar, and fat content of the foods and beverages.~~] This administrative regulation establishes the minimum nutritional standards for food and beverages available on the school campus during the school day[~~and establishes reporting requirements for local school districts for nutrition and physical activity~~].

Section 1. Beverages. During the period of time beginning thirty (30) minutes after the last lunch period until the end of the last instructional period, a beverage offered for sale through a vending machine, school store, canteen, or fundraiser on school property shall meet the requirements established in 7 C.F.R. 210.11[~~:~~

~~(1) Be a:~~

~~(a) Fluid unflavored or flavored milk that is no more than one (1) percent milk fat;~~

~~(b) Plain or flavored, noncaloric, noncarbonated water;~~

~~(c) 100 percent fruit or vegetable juice or any combination of both totaling 100 percent; or~~

~~(d) Any other beverage that contains no more than ten (10) grams of sugar per serving, except this limit shall not apply to 100 percent fruit or vegetable juice or any combination of both equaling 100 percent; and~~

~~(2)(a) Except as provided in paragraph (b) of this subsection, not exceed a volume size of seventeen (17) ounces, except for plain or flavored, noncaloric, noncarbonated water; or~~

~~(b) For sales to middle school or high school students (grade six (6) through twelve (12)), the volume size of a beverage shall not exceed twenty (20) ounces~~].

Section 2. Food. During the period beginning thirty (30) minutes after the last lunch period until the end of the last instructional period, a food item offered for sale through a vending machine, school store, canteen, or fundraiser on school property shall meet the requirements established in 7 C.F.R. 210.11[~~this section.~~

~~(1) Calories from fat shall not exceed thirty (30) percent, excluding reduced fat (two (2) percent milk-fat or less), cheese, nuts, seeds, and nut butters.~~

~~(a) This shall be determined by dividing the calories from total fat by the total calories and multiplying by 100.~~

~~(b) If the calories from fat are not available, the grams of fat shall be multiplied by nine (9) to equal calories from fat.~~

~~(2) Calories from saturated fat shall not exceed ten (10) percent.~~

~~(a) This shall be determined by dividing the calories from saturated fat by the total calories and multiplying by 100.~~

~~(b) If calories from saturated fat are not available, the grams of saturated fat shall be multiplied by nine (9) to equal calories from saturated fat.~~

~~(3) Calories from sugar shall not exceed thirty-two (32) percent by weight.~~

~~(a) This shall be determined by dividing the grams of sugar by the gram weight of the product and multiplying by 100. This shall include both naturally-occurring and added sugars.~~

~~(b) The grams of sugar shall not exceed fourteen (14) grams.~~

~~(c) The limit established in this subsection shall not apply to fresh, frozen, canned or dried fruits and vegetables.~~

~~(4)(a) Chips, cereals, crackers, baked goods, and other snack items shall not contain more than 300 milligrams of sodium per serving.~~

~~(b) Pastas, meats, and soups shall not contain more than 450 milligrams of sodium per serving.~~

~~(c) Pizza, sandwiches, and main dishes shall not contain more than 600 milligrams of sodium per serving.~~

~~(5) The portion or pack size for chips, crackers, popcorn, cereal, trail mix, nuts, seeds, or jerky shall not exceed two (2) ounces.~~

~~(6) The portion or pack size for cookies shall not exceed one (1) ounce.~~

~~(7) The portion or pack size for cereal bars, granola bars, pastries, muffins, doughnuts, bagels, or other bakery-type items shall not exceed two (2) ounces.~~

~~(8) The portion or pack size for nonfrozen yogurt shall not exceed eight (8) ounces.~~

~~(9) The portion or pack size for frozen dessert items, including low-fat or fat-free ice cream, frozen fruit juice bars, or frozen real fruit items, shall not exceed four (4) ounces~~].

Section 3. A la carte Items. A food or beverage item offered for sale as an a la carte item on the cafeteria line during the serving of breakfast or lunch shall meet the requirements established in 7 C.F.R. 210.11[~~following standards:~~

~~(1) A beverage shall meet the standards established in Section 1 of this administrative regulation; and~~

~~(2) A food item shall meet the standards established in Section 2 of this administrative regulation, except schools may offer for a la carte sale any item that is creditable under the School Breakfast or National School Lunch Program meal patterns as set forth in 7 C.F.R. 220.8 and 210.10, respectively~~].

Section 4.[~~If a school did not have a school breakfast program on February 3, 2006, the school may conduct a breakfast food and beverage activity that:~~

~~(1) Involves students and is intended as a student learning opportunity;~~

~~(2) Offers only food and beverage items that meet the minimum nutritional standards of KRS 158.854 and Sections 1 and 2 of this administrative regulation; and~~

~~(3) Concludes at least three (3) hours prior to the first lunch period~~

~~Section 5.~~] Local District Nutrition Program Report. (1)[~~(a)~~] A school nutrition director of the local district shall complete the assessment of the nutrition program required under KRS 158.856 and issue a report at least sixty (60) days prior to the public forum required by KRS 158.856(5).

(2)[~~(b)~~] The director may issue the report via posting to the district Web site.

(3)[~~(c)~~] A local district superintendent shall submit a summary of the findings and recommendations of the nutrition report as required by KRS 158.856(6) to the Kentucky Department of Education[~~by May 1, 2006, and~~] by May 1 of each[~~succeeding~~] year. [~~(2) If the Department of Education completes review of a district's nutrition program during the school year prior to the deadline established in subsection (1) of this section, the report and recommendations of that review may constitute the district's annual assessment and report issued in accordance with subsection (1) of this section.~~]

Section 5[~~6~~]. Student Physical Activity. (1) A local district superintendent shall evaluate the student physical activity environment, including the amount of time and types of physical activity provided in the elementary schools, as required in KRS 160.345(11), and release the report at least sixty (60) days prior to the public forum required by KRS 158.856(5).

(2) A local district superintendent shall submit the report on physical activity, including a summary of findings and recommendations to the Department of Education[~~by May 1, 2006, and~~] by May 1 of each[~~succeeding~~] year.

(3) The superintendent may release the report via posting to the district Web site.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

STEPHEN L. PRUITT, Ph.D., Commissioner
WILLIAM TWYMAN, Chairperson

APPROVED BY AGENCY: February 15, 2017

FILED WITH LRC: February 15, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 27, 2017, at 10 a.m., in the State Board Room, Fifth Floor, Sower Building, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through March 31, 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: Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of Education, 300 Sower Boulevard, Fifth Floor, Sower Building, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email kevin.brown@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amendment aligns the requirements for the sale of competitive food in schools with 7 C.F.R. 210.11.

(b) The necessity of this administrative regulation: 7 C.F.R. 210.11 became effective on September 27, 2016. This amendment aligns the state requirements for the sale of competitive foods with the federal rule. This will allow schools to comply with one set of standards and should make state and federal compliance easier.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 158.854(1) requires the Kentucky Board of Education (KBE) to promulgate administrative regulations relating to the minimum nutritional standards for foods and beverages sold outside the normal school breakfast and lunch programs. This amendment aligns those requirements with the federal rule and creates one set of standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 158.854(1) requires the Kentucky Board of Education (KBE) to promulgate administrative regulations relating to the minimum nutritional standards for foods and beverages sold outside the normal school breakfast and lunch programs. This amendment aligns those requirements with the federal rule and creates one set of standards.

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

(a) How the amendment will change this existing administrative regulation: The amendment removes the nutritional standards set forth in the existing regulation and replaces them with those found in 7 C.F.R. 210.11. The federal rule became effective on September 27, 2016.

(b) The necessity of the amendment to this administrative regulation: The standards contained in the current state administrative regulation are stricter than the federal rule. School districts have had a difficult time finding food that complies with the stricter state standards. The federal rule is preferable to school districts. It enables schools to find snacks for students that still meet healthy nutritional standards.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 158.854(1) requires the Kentucky Board of Education (KBE) to promulgate administrative regulations relating to the minimum nutritional standards for foods and beverages sold outside the normal school breakfast and lunch programs.

(d) How the amendment will assist in the effective administration of the statues: KRS 158.854(1) requires the Kentucky Board of Education (KBE) to promulgate administrative regulations relating to the minimum nutritional standards for foods and beverages sold outside the normal school breakfast and lunch programs. This amendment aligns those requirements with the federal rule and creates one set of standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: School districts will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Division of School and Community Nutrition will provide school districts with the training necessary to understand and comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance costs should be minimal to none.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will create one consistent standard for the sale of competitive foods in school that complies with both state and federal rules.

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

(a) Initially: Compliance costs should be minimal to none.

(b) On a continuing basis: Compliance costs should be minimal to none.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Education general funds and federal school and community nutrition funding for training.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: N/A.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

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? School districts and the Department of Education.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 158.854(1), 7 C.F.R. 210.11.

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. This administrative regulation should have no impact on the expenditures or revenues for school districts.

(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 should not impact school district 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? This administrative regulation should not impact school district revenues.

(c) How much will it cost to administer this program for the first year? Administration costs to school districts should be minimal to none.

(d) How much will it cost to administer this program for subsequent years? Administration costs to school districts should be minimal to 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: There should be no fiscal impact resulting from the amendment.

FINANCE AND ADMINISTRATION CABINET
School Facilities Construction Commission
(Amendment)

750 KAR 1:030. Emergency and Targeted Investment Fund.

RELATES TO: KRS 157.618

STATUTORY AUTHORITY: KRS 157.617, 157.618, 157.622

NECESSITY, FUNCTION, AND CONFORMITY: [~~KRS 157.617(1) authorizes the School Facilities Construction Commission to promulgate administrative regulations for the orderly conduct of its affairs, including assisting local school districts to meet the school construction needs of the state. KRS 157.622(4) requires the commission to promulgate administrative regulations governing allocations of state funds to eligible school districts. KRS 157.618(5) requires the commission to promulgate administrative regulations to establish the process to apply for and receive funds from the Emergency and Targeted Investment Fund.~~] This administrative regulation establishes the application procedure and requirements for the commission to determine eligibility for funding from the emergency and targeted investment fund due to an unforeseen emergency or the expectation that the facility will be rendered structurally uninhabitable. This administrative regulation is filed to comply with statutory changes made as a result of Acts Chapter 138, section 4, effective April 27, 2016.

Section 1. Definitions. (1) "Applicant" means any local public school district that has submitted an application to the authority for an offer of assistance from the emergency and targeted investment fund and meets the definition of a "common school" under KRS 158.030. (2) "Application" means the information submitted by an applicant to obtain an offer of assistance, including the need for a specific project and financial information necessary to determine eligibility for assistance from the emergency and targeted investment fund.

(3) "Available local revenues" is defined by KRS 157.615(1).

(4) "Commission" means the School Facilities Construction Commission.

(5) "Core academic facility" means a public elementary or secondary educational institution that is under the administrative control of a principal and is not a program or part of another school, except for district-operated schools that are exclusively:

(a) Vocational-technical, special education, or preschool programs;

(b) Instructional programs operated in institutions or schools outside of the district; or

(c) Alternative schools designed to provide services to at-risk populations with unique needs.

(6) "District facility plan" means the plan developed pursuant to the survey specified by KRS 157.420 and by 702 KAR Chapters 3 and 4.

(7) "Offer of assistance" means[~~a financial commitment from the commission to pay all or a portion of the debt service on bonds issued by or on behalf of the applicant or~~] a direct loan or grant made to the applicant from the emergency and targeted investment fund.

Section 2. Eligible Applicants.[~~(1)~~] A local public school district may submit a cover letter and the information requested in Section 3(2) of this administrative regulation for an offer of assistance from the emergency and targeted investment fund if any of the district's core academic facilities meet the criteria set forth in[~~fall within~~]KRS 157.618(3). [~~(2) Local public school districts that submit an application under KRS 157.618(3)(c) or (d) shall have levied a ten (10) cent equivalent tax for the purposes of funding major construction and renovation projects and the project shall be identified as a priority one (1) or priority two (2) in the district facility plan.~~]

Section 3. Submission Requirements. (1) The commission shall accept applications for offers of assistance from the emergency and targeted investment fund from local public school districts throughout the commission's fiscal year.

(2) Applications for offers of assistance from the fund shall include:

(a) Information about the school facility to which the offer of assistance would be applied and an explanation of any events that contributed to the facility's physical condition;

(b) Certification from local officials, engineers, or the commissioner of education that the facility meets the criteria in KRS 157.618(3);

(c) A proposed timeline for bidding and awarding contracts, planning and design, construction, and equipping the facility;

(d) A copy of a motion or resolution from the local board of education approving the request for an offer of assistance from the fund;

(e) An estimate from a financial advisor hired by the applicant

of the amount of funding necessary to bring the facility to the Kentucky Department of Education's current standards; and

(f) Certification from the applicant that the project shall adhere to the Kentucky Department of Education's best practice guidelines.

(3)(a) Offers of assistance shall be limited to[~~the lesser of~~] the total cost of the project minus the applicant's available local revenues[~~:~~

~~1.The difference between the total cost of the project and the applicant's available local revenues; or~~

~~2. A dollar-amount limit determined by the commission at the commission's first regular meeting held after the beginning of the commission's fiscal year that shall be applied to all projects during that fiscal year~~].

(b) In addition to the provisions in Section 1(3) of this administrative regulation, available local revenues shall also include any unexpected funds in accounts for projects that have been completed when an application is submitted to receive an offer of assistance from the emergency and targeted investment fund.

(4) All information submitted as application for offers of assistance from the fund shall be submitted to the School Facilities Construction Commission at 229 West Main Street, Suite 102, Frankfort, Kentucky 40601. The supporting documentation shall be accompanied with a letter from the district's superintendent to the commission requesting assistance and summarizing the district's facility needs.

Section 4. Project Execution. (1) Applicants that receive offers of assistance from the emergency and targeted investment fund shall follow the process established in 750 KAR 1:010, Sections 6, 7(1), (3), and (4), 8, and 10, concerning allowable expenditure of funds, bond issuance procedures, and refinancing savings. 750 KAR 1:010, Section 7(2), shall not apply to this administrative regulation. Emergency and Targeted Investment funds available for a project shall be expended for the project that is identified in the application and any balance of funds remaining after completion of the project shall be applied toward the associated bonds. If the commission's offer of assistance takes the form of a cash grant or loan, any unexpended funds shall be returned to the emergency and targeted investment fund.

(2) Applicants who wish to utilize alternative bond structures shall contact the School Facilities Construction Commission for approval. The executive director shall approve or disapprove the alternative bond structure based on the proposed structure's financial and economic viability.

(3) If a school district receives an offer of assistance from the emergency and targeted investment fund and subsequently, as a result of litigation or insurance, receives funds for the original facility, the district shall reimburse the emergency and targeted investment fund pursuant to KRS 157.618(4).

CHELSEY BIZZLE, Executive Director

APPROVED BY AGENCY: February 14, 2017

FILED WITH LRC: February 14, 2017 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2017 from 1:00 p.m. to 3:00 p.m. in Room 318, Capital Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through March 31, 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: Corey Henderson, Administrative Assistant, School Facilities Construction Commission, 229 W Main Street, Suite 102, Frankfort, Kentucky 40601, phone (502) 564-5582, fax (888) 979-6152, email Corey.Henderson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Corey Henderson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation prescribes the application process for receiving an offer of assistance from the emergency and targeted investment fund in compliance with amendments made to KRS 157.618 under HB 80 passed in the 2016 budget session.

(b) The necessity of this administrative regulation: KRS 157.618(5) requires the School Facilities Construction Commission to promulgate regulations for the emergency and targeted investment fund. Furthermore, the School Facilities Construction Commission must create an applicable regulation in regards to amendments made to KRS 157.618 under HB 80 passed in the 2016 budget session.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 157.617 (1) and 157.622(4) empower the School Facilities Construction Commission to promulgate administrative regulations governing the operation of its programs. KRS 157.618(5) specifically directs the commission to promulgate regulations establish the process to apply for and receive funds from the emergency and targeted investment fund.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation prescribes the application process for applying and receiving and offer of assistance from the emergency and targeted investment fund in compliance with amendments made to KRS 157.618 under HB 80 passed in 2016.

(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 prescribes a revised application process for applying and receiving an offer of assistance.

(b) The necessity of the amendment to this administrative regulation: An amendment is necessary to comply with revisions made to KRS 157.618 under HB 80 passed in 2016.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment establishes compliant application procedures and requirements for the commission to determine eligibility for funding from the emergency and targeted investment fund. Furthermore, the amendment conforms to the definition of "offer of assistance" and "eligible applicants" put forth by the statute.

(d) How the amendment will assist in the effective administration of the statues: By establishing applicable definitions and procedures, the amendment will determine appropriate eligibility for funding from the emergency and targeted investment fund.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local public school districts with facilities that have been impacted by a catastrophic event.

(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 regulation outlines an application process and process for funding a project.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Damaged or hazardous school facilities will be replaced.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: These activities are incorporated into the commission's existing operating budget.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased by this regulation.

(9) TIERING: Is tiering applied? Tiering was not applied in this regulation because all applicants for assistance will be considered equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 157.617(1); 157.622 (4); KRS 157.618(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. School districts that are applying for funding will be impacted, not school districts broadly.

(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:

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

803 KAR 2:320 Toxic and hazardous substances.

RELATES TO: KRS 338.015, 338.031, 29 C.F.R. 1910.134, 1910.141, 1910.1000-1910.1450

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations necessary to accomplish the purposes of KRS Chapter 338. 29 C.F.R. 1910.1000 to 1910.1450 establish federal requirements relating to toxic and hazardous substances. This administrative regulation establishes the toxic and hazardous substances standards to be enforced by the Department of Workplace Standards in the area of general industry.

Section 1. Definitions. (1) "Absolute filter" means a filter capable of retaining 99.97 percent of a mono disperse aerosol of three-tenths (0.3) mu particles.

(2) "Area director" means Director, Division of Occupational Safety and Health Compliance, Kentucky Labor Cabinet.

(3) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(4) "Authorized employee" means an employee whose duties require the employee to be in the regulated area and who has been specifically assigned to that area by the employer.

(5) "Clean change room" means a room where employees put on clean clothing or protective equipment in an environment free of 4,4' Methylene bis (2-chloroaniline).

(6) "Closed system" means an operation involving 4, 4'-Methylene bis (2-chloroaniline) if containment prevents the release of 4,4' Methylene bis (2-chloroaniline) into regulated areas, nonregulated areas, or the external environment.

(7) "Decontamination" means the inactivation of 4,4'-Methylene bis (2-chloroaniline) or its safe disposal.

(8) "Director" means the Director, National Institute for Occupational Safety and Health, or any person directed by the director or the Secretary of Health, Education, and Welfare to act for the director.

(9) "Disposal" means the safe removal of 4,4'-Methylene bis (2-chloroaniline) from the work environment.

(10) "Emergency" means an unforeseen circumstance or set of circumstances resulting in the release of 4,4'-Methylene bis (2-chloroaniline) that may result in exposure to or contact with 4,4'-Methylene bis (2-chloroaniline).

(11) "Employee" is defined by KRS 338.015(2).

(12) "Employer" is defined by KRS 338.015(1).

(13) "Established federal standard" is defined by KRS 338.015(10).

(14) "External environment" means any environment external to regulated and nonregulated areas.

(15) "Isolated system" means a fully enclosed structure, other than the vessel of containment, of 4,4'-Methylene bis (2-chloroaniline), which is impervious to the passage of entry of 4,4'-Methylene bis (2-chloroaniline), and which would prevent the entry of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, or the external environment, if leakage or spillage from the vessel of containment occurs.

(16) "Laboratory type hood" means a device:

(a) Enclosed on three (3) sides with the top and bottom designed and maintained to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; and

(b) Designed, constructed, and maintained so that an operation involving 4,4'-Methylene bis (2-chloroaniline) within the hood does not require the insertion of any portion of an employee's body other than hands and arms.

(17) "National consensus standard" is defined by KRS 338.015(9).

(18) "Nonregulated area" means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(19) "Open-vessel system" means an operation involving 4,4'-Methylene bis (2-chloroaniline) in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, nonregulated areas, or the external environment.

(20) "Protective clothing" means clothing designed to protect an employee against contact with or exposure to 4,4'-Methylene bis (2-chloroaniline).

(21) "Regulated area" means an area where entry and exit is restricted and controlled.

(22) "Standard" means "occupational safety and health standards" as defined by KRS 338.015(3).

Section 2. 4,4'-Methylene bis (2-Chloroaniline). (1) Scope and application.

(a) This section shall apply to any area in which 4,4'-Methylene

bis (2-chloroaniline), Chemical Abstracts Service Registry Number 101144, is manufactured, processed, repackaged, released, handled, or stored. This section shall not apply to trans-shipment in sealed containers, except for the labeling requirements under subsection (4)(b), (c), and (d) of this section.

(b) This section shall not apply to solid or liquid mixtures containing less than one and zero-tenths (1.0) percent by weight of 4,4'-Methylene bis (2-chloroaniline).

(2) Requirements for areas containing 4,4'-Methylene bis (2-chloroaniline). A regulated area shall be established by an employer where 4,4'-Methylene bis (2-chloroaniline) is manufactured, processed, used, repackaged, released, handled, and stored. Those areas shall be controlled in accordance with the requirements for the following category or categories describing the operations involved:

(a) Isolated systems. Employees working with 4,4'-Methylene bis (2-chloroaniline) within an isolated system such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(b) Closed system operation. Within regulated areas if 4,4'-Methylene bis (2-chloroaniline) is stored in a sealed container, or contained in a closed system including piping systems, with any sample ports or openings closed while 4,4'-Methylene bis (2-chloroaniline) is contained within:

1. Access shall be restricted to authorized employees only; and

2. Employees shall be required to wash hands, forearms, face, and neck upon each exit from the regulated areas, close to the point of exit and before engaging in other activities.

(c) Open vessel system operations. Open vessel system operations shall be prohibited.

(d) Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system. In operations involving a "laboratory type hood," or in locations where 4,4'-Methylene bis (2-chloroaniline) is contained in an otherwise "closed system," but is transferred, charged, or discharged into other normally closed containers, the provisions of this paragraph shall apply.

1. Access shall be restricted to authorized employees only.

2. Each operation shall be provided with continuous local exhaust ventilation so that air movement shall always be from ordinary work areas to the operation.

a. Exhaust air shall not be discharged to regulated areas, nonregulated areas, or the external environment unless it is decontaminated.

b. Clean make-up air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

3. Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), shoe covers, and gloves prior to entering the regulated area.

4. Employees engaged in 4,4'-Methylene bis (2-chloroaniline) handling operations shall be provided with and required to wear and use a half-face, filter-type respirator for dusts, mists, and fumes, in accordance with 29 C.F.R. 1910.134. A respirator affording a higher level of protection may be substituted.

5. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal. The contents of the impervious containers shall be identified, as required under subsection (4)(b), (c), and (d) of this section.

6. Employees shall be required to wash hands, forearms, face, and neck on each exit from the regulated area, close to the point of exit, and before engaging in other activities.

7. Employees shall be required to shower after the last exit of the day.

8. Drinking fountains shall be prohibited in the regulated area.

(e) Maintenance and decontamination activities. In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, or any operations involving work in an area where direct contact with 4,4'-Methylene bis (2-chloroaniline) could result, each authorized employee entering that area shall be:

1. Provided with and required to wear clean, impervious garments, including gloves, boots, and continuous-air supplied hood in accordance with 29 C.F.R. 1910.134;

2. Decontaminated before removing the protective garments and hood; and

3. Required to shower upon removing the protective garments and hood.

(f) Laboratory activities. The requirements of this paragraph shall apply to research and quality control activities involving the use of 4,4'-Methylene bis (2-chloroaniline).

1. Mechanical pipetting aids shall be used for all pipetting procedures.

2. Experiments, procedures, and equipment that could produce aerosols shall be confined to laboratory-type hoods or glove boxes.

3. Surfaces on which 4,4'-Methylene bis (2-chloroaniline) is handled shall be protected from contamination.

4.a. Contaminated wastes and animal carcasses shall be collected in impervious containers that are closed and decontaminated prior to removal from the work area.

b. The wastes and carcasses shall be incinerated so that no carcinogenic products are released.

5. All other forms of 4,4'-Methylene bis (2-chloroaniline) shall be inactivated prior to disposal.

6. Employees engaged in animal support activities shall be:

a. Provided with and required to wear, a complete protective clothing change, clean each day, including coveralls or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices;

b. Required, prior to each exit from a regulated area, to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal. The contents of the impervious containers shall be identified as required under subsection (4)(b), (c), and (d) of this section;

c. Required to wash hands, forearms, face, and neck upon each exit from the regulated area close to the point of exit and before engaging in other activities; and

d. Required to shower after the last exit of the day.

7. Employees, except for those engaged in animal support activities, each day shall be:

a. Provided with and required to wear a clean change of appropriate laboratory clothing, such as a solid front gown, surgical scrub suit, or fully buttoned laboratory coat;

b. Required, prior to each exit from a regulated area, to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal. The contents of the impervious containers shall be identified as required under subsection (4)(b), (c), and (d) of this section; and

c. Required to wash hands, forearms, face, and neck upon each exit from the regulated area close to the point of exit and before engaging in other activities.

8. Air pressure in laboratory areas and animal rooms where 4,4'-Methylene bis (2-chloroaniline) is handled and bioassay studies are performed shall be negative in relation to the pressure in the surrounding area. Exhaust air shall not be discharged to regulated areas, nonregulated areas, or the external environment unless it is decontaminated.

9. There shall not be a connection between regulated areas and any other areas through the ventilation system.

10. A current inventory of 4,4'-Methylene bis (2-chloroaniline) shall be maintained.

11. Ventilated apparatus such as laboratory type hoods, shall be tested at least semi-annually or immediately after ventilation modification of maintenance operations, by personnel fully qualified to certify correct containment and operation.

(g) Premixed solutions. If 4,4'-Methylene bis (2-chloroaniline) is present only in a single solution at a temperature not exceeding 120 degrees Celsius, the establishment of a regulated area shall not be required, except:

1. Only authorized employees shall be permitted to handle the materials;

2. Each day employees shall be provided with and required to wear a clean change of protective clothing (smocks, coveralls, or long-sleeved shirts and pants), gloves, and other protective garments and equipment necessary to prevent contact with the solution in the process used;

3. Employees shall be required to remove and leave protective clothing and equipment if leaving the work area at the end of the work day or if solution is spilled on the clothing or equipment. Used clothing and equipment shall be placed in impervious containers for decontamination or disposal. The contents of the impervious containers shall be identified, as required under subsection (4)(b), (c), and (d) of this section;

4. Employees shall be required to wash hands and face after removing protective clothing and equipment and before engaging in other activities;

5. Employees assigned to work covered by this paragraph shall be deemed to be working in regulated areas for the purposes of subsection (4)(a), (b), and (c) of this section; and

6. Work areas where solution may be spilled shall be:

a. Covered daily or after any spill with a clean covering; and

b. Cleaned thoroughly daily and after any spill.

(3) General regulated area requirements.

(a) Employee identification.

1. A daily roster of employees entering regulated areas shall be established and maintained.

2. The rosters or a summary of the rosters shall be retained for a period of twenty (20) years.

3. The rosters or summaries shall be provided upon request to authorized representatives of the assistant secretary and the director.

4. If the employer ceases business without a successor, rosters shall be forwarded by registered mail to the director.

(b) Emergencies. In an emergency, immediate measures, including the requirements of this paragraph, shall be implemented.

1. The potentially affected area shall be evacuated as soon as the emergency is determined.

2. Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.

3.a. Special medical surveillance by a physician shall be instituted within twenty-four (24) hours for employees present in the potentially affected area at the time of the emergency.

b. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with subsection (5)(b) of this section.

4. If an employee has a known contact with 4,4'-Methylene bis (2-chloroaniline), the employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.

5. An incident report on the emergency shall be reported as provided in subsection (5)(b) of this section.

(c) Hygiene facilities and practices.

1. Storage or consumption of food, storage or use of containers of beverages, storage or consumption of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of those products, shall be prohibited in regulated areas.

2. If employees are required by this section to wash, washing facilities shall be provided in accordance with 29 C.F.R. 1910.141.

3. If employees are required by this section to shower, facilities shall be provided in accordance with 29 C.F.R. 1910.141(d)(3).

4. If employees wear protective clothing and equipment, clean change rooms shall be provided, in accordance with 29 C.F.R. 1910.141(e), for the number of employees required to change clothes.

5. If toilets are located in regulated areas, the toilets shall be in a separate room.

(d) Contamination control.

1. Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas.

a. Local exhaust ventilation may be used to satisfy this requirement.

b. Clean make-up air in equal volume shall replace air removed.

2. Any equipment, material, or other item taken or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

3. Decontamination procedures shall be established and implemented to remove 4,4'-Methylene bis (2-chloroaniline) from the surface of materials, equipment, and the decontamination facility.

4. Dry sweeping and dry mopping shall be prohibited.

(4) Signs, information, and training.

(a) Signs.

1. Entrance to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT
Authorized Personnel Only

2. Entrances to regulated areas containing operations established in subsection (2)(e) of this section shall be posted with signs bearing the legend:

Cancer-Suspect Agent Exposed
In this Area
Impervious Suit Including Gloves,
Boots, and Air-Supplied Hood
Required At All Times
Authorized Personnel Only

3. Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that shall be followed in entering and leaving a regulated area.

(b) Container labeling. Containers shall be labeled in accordance with the requirements of 29 C.F.R. 1910.1200.

(c) Lettering.

1. Lettering on signs and instructions required by paragraph (a) of this subsection shall be a minimum letter height of two (2) inches.

2. Labels on containers required by paragraph (b) of this subsection shall:

a. Not be less than one-half (1/2) the size of the largest lettering on the package, up to a maximum required size of one (1) inch in height; and

b. Not use less than eight (8) point type.

(d) Prohibited statements. A statement shall not appear on or near any required sign, label, or instruction that contradicts or detracts from the effect of any required warning, information, or instruction.

(e) Training and indoctrination.

1. Each employee, prior to being authorized to enter a regulated area, shall receive a training and indoctrination program including:

a. The nature of the carcinogenic hazards of 4,4'-Methylene bis (2-chloroaniline), including local and systemic toxicity;

b. The specific nature of the operation involving 4,4'-Methylene bis (2-chloroaniline) that could result in exposure;

c. The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;

d. The purpose for and application of decontamination practices and procedures;

e. The purpose for and significance of emergency practices and procedures;

f. The employee's specific role in emergency procedures;

g. Specific information to aid the employee in recognition and evaluation of conditions and situations that may result in the release of 4,4'-Methylene bis (2-chloroaniline); and

h. The purpose for and application of specific first-aid procedures and practices.

2. Each employee shall receive a review of this section at the employee's first training and indoctrination program and annually thereafter.

3. Specific emergency procedures shall be prescribed and posted, and employees shall be familiarized with their terms and

rehearsed in their application.

4. All materials relating to the program shall be provided if requested by authorized representatives of the assistant secretary and the director.

(5) Reports.

(a) Operations. Not later than March 1 of each year, the information required by this paragraph shall be reported in writing by the employer to the nearest Area Director. Any change in the reported information shall be reported in writing within fifteen (15) calendar days of the change. The report shall contain the following information:

1. A brief description and in-plant location of the areas regulated and the address of each regulated area;

2. The names and other identifying information as to the presence of 4,4'-Methylene bis (2-chloroaniline) in each regulated area;

3. The number of employees in each regulated area, during normal operations including maintenance activities; and

4. The manner in which 4,4'-Methylene bis (2-chloroaniline) is present in each regulated area, such as whether it is manufactured, processed, used, repackaged, released, stored, or otherwise handled.

(b) Incidents. Incidents that result in the release of 4,4'-Methylene bis (2-chloroaniline) into any area where employees may be exposed shall be reported in accordance with this paragraph.

1. A report of the incident and the facts obtainable at that time, including a report on any medical treatment of affected employees, shall be made within twenty-four (24) hours to the nearest Area Director.

2. A written report shall be filed with the nearest Area Director within fifteen (15) calendar days of the initial report and shall include:

a. A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure;

b. A description of the area involved, and the extent of known and possible employee and area contamination;

c. A report of any medical treatment of affected employees and any medical surveillance program implemented; and

d. An analysis of the steps to be taken, with specific completion dates, to avoid further similar release.

(6) Medical surveillance. At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(a) Examinations.

1. Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

2. Authorized employees shall be provided with periodic physical examinations at least annually, following the preassignment examination.

3. In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, current treatment with steroids of cytotoxic agents, pregnancy, and cigarette smoking.

(b) Records.

1. Employers of employees examined pursuant to this subsection shall maintain complete and accurate records of all medical examinations. Records shall be maintained for the duration of the employee's employment. If the employee's employment is terminated, including by retirement or death, or if the employer ceases business without a successor; records, or notarized true copies thereof, shall be forwarded by registered mail to the director.

2. Records required by this paragraph shall be provided if requested by authorized representatives of the assistant secretary or the director. If requested by an employee or former employee, the records shall be provided to a physician designated by the employee or to a new employer.

3. Any physician who conducts a medical examination required by this subsection shall furnish to the employer a statement of the employee's suitability for employment in the specific exposure.

Section 3. Laboratory Activities. The requirements of this section shall apply to research and quality control activities involving the use of chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016. (1) Mechanical pipetting aids shall be used for all pipetting procedures.

(2) Experiments, procedures, and equipment which could produce aerosols shall be confined to laboratory-type hoods or glove boxes.

(3) Surfaces on which chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016 are handled shall be protected from contamination.

(4) Contaminated wastes and animal carcasses shall be collected in impervious containers that are closed and decontaminated prior to removal from the work area. The wastes and carcasses shall be incinerated so that carcinogenic products shall not be released.

(5) All other forms of chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016 shall be inactivated prior to disposal.

(6) Laboratory vacuum systems shall be protected with high-efficiency scrubbers or with disposal absolute filters.

(7) Employees engaged in animal support activities shall be:

(a) Provided with and required to wear, a complete protective clothing change, clean each day, including coveralls, or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices;

(b)1. Required, prior to each exit from a regulated area, to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal; and

2. The contents of the impervious containers shall be identified as required under Section 2(4)(b), (c), and (d) of this administrative regulation;

(c) Required to wash hands, forearms, face, and neck upon each exit from the regulated area close to point of exit, and before engaging in other activities; and

(d) Required to shower after the last exit of the day.

(8) Employees, except for those engaged only in animal support activities, each day shall be:

(a) Provided with and required to wear a clean change of appropriate laboratory clothing, such as a solid front gown, surgical scrub suit, or fully buttoned laboratory coat;

(b)1. Required, prior to each exit from a regulated area, to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal; and

2. The contents of the impervious containers shall be identified as required under Section 2(4)(b), (c), and (d) of this administrative regulation; and

(c) Required to wash hands, forearms, face, and neck upon each exit from the regulated area close to point of exit, and before engaging in other activities.

(9) Air pressure in laboratory areas, and animal rooms where chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016 are handled and bioassay studies are performed shall be negative in relation to the pressure in surrounding areas. Exhaust air shall not be discharged to regulated areas, nonregulated areas, or the external environment unless it is decontaminated.

(10) There shall not be a connection between regulated areas and any other areas through the ventilation system.

(11) A current inventory of chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016 shall be maintained.

(12) Ventilated apparatus such as laboratory-type hoods shall be tested at least semi-annually or immediately after ventilation modification or maintenance operations, by personnel fully qualified to certify correct containment and operation.

Section 4. Access to Exposure or Medical Records. (1) The

language relating to the access to exposure or medical records in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1910.1020(e)(1)(i).

(2) If an employee or designated representative requests access to an exposure or medical record, the employer shall assure that access is provided in a reasonable time, place, and manner, but not longer than fifteen (15) days after the request for access is made unless sufficient reason is given why that time is unreasonable or impractical.

(3) The language relating to the access to exposure or medical records in subsection (4) of this section shall apply in lieu of 29 C.F.R. 1910.1020(e)(1)(iii).

(4) If an employee or designated representative requests a copy of a record, the employer shall, except as specified in 29 C.F.R. 1910.1020(e)(1)(v) of this section, within the period of time previously specified assure that either:

(a) A copy of the record is provided without cost to the employee or representative;

(b) The necessary mechanical copying facilities (e.g., photocopying) are made available without cost to the employee or representative for copying the record; or

(c) The record is loaned to the employee or representative for a reasonable time to enable a copy to be made.

Section 5. (1) The language relating to gloves in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1910.1030(d)(3)(ix).

(2) Gloves shall be worn if it can be reasonably anticipated that the employees may have hand contact with blood, other potentially infectious materials, mucous membranes, and nonintact skin if performing vascular access procedures or if handling or touching contaminated items or surfaces.

Section 6. Except as modified by Sections 1 through 5 of this administrative regulation, general industry shall comply with the following federal requirements published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1910.1000 - 1910.1450, revised July 1, 2016 [~~2015~~]; and

(2) The revisions to 29 C.F.R 1910 Subpart Z as published in the January 9, 2017 Federal Register, Volume 82, Number 5[~~The revisions to 29 C.F.R. 1910 Subpart Z as published in the March 25, 2016 Federal Register, Volume 81, Number 58~~].

As approved by the Kentucky Occupational Safety and Health Standards Board.

DERRICK RAMSEY, Chairman

APPROVED BY AGENCY: February 14, 2017

FILED WITH LRC: February 14, 2017 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2017 at 10:30 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through March 31, 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: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682, email Kristi.redmon@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 of this administrative regulation carries requirements which are stricter than those required by OSHA. This section places requirements on employers related to the use of 4,4'-Methylene bis (2-Chloroaniline), which the federal regulation does not. This provision has been in place since February 12, 1996. Section 3 of this administrative regulation carries requirements which are stricter than those required by OSHA. This section places requirements associated with research and quality control laboratory activities involving the use of the chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016. This provision has been in place since February 12, 1996. Section 4 of this administrative regulation carries requirements which are stricter than those required by OSHA. This section places requirements related to access to exposure or medical records. This provision has been in place since July 17, 1997. Section 5 of this administrative regulation carries requirements which are stricter than those required by OSHA. This section places requirements related to glove use as it applies to 29 C.F.R. 1910.1030. This provision has been in place since October 7, 1992. Section 6 requires employers in general industry to comply with the requirements of Subpart Z of 29 C.F.R. 1910 and updates the C.F.R. to July 1, 2016. Section 6 also establishes the amendments to Subpart Z as published in the January 9, 2017 Federal Register, Volume 82, Number 5. The Chair of the Kentucky OSH Standards Board adopted these amendments in February of 2017. With the January 9, 2017 final rule, OSHA is adding additional requirements where employees may be exposed to beryllium. This rule greatly expands upon the previous requirement which only limited an employee's exposure through the permissible exposure limit (PEL). After much research and the continuing exposure of workers to beryllium, OSHA decided that the current PEL for beryllium was not sufficient to protect the safety and health of workers. In the 45 years since the current PEL was established numerous agencies including NIOSH and the U.S. Toxicology Program have identified beryllium as a human carcinogen. This final rule revises the old PEL and requires that employers use engineering controls to reduce workers' exposure to beryllium. The new PEL is set at 0.2 micrograms per meter cubed whereas the current PEL is set at 2 micrograms per meter cubed. Even with this cut in the PEL, OSHA believes a significant risk to employees remains; however, OSHA considers this PEL to be the lowest that can reasonably be achieved in most affected industries. In addition to the revised PEL, OSHA is requiring the implementation of engineering controls to include wetting the work operations or using ventilation before the use of respirators. The new standard requires the employer to evaluate employee exposures and then based on exposure levels the employer must implement engineering controls and/or work practices. Work practices that may be necessary include creating a regulated area, providing hygiene areas for showering and changing, conducting medical surveillance, and training employees on the hazards of beryllium. OSHA believes that approximately 7,300 workplaces will be affected across the construction, general, and maritime industries. This will include approximately 62,000 workers, the majority of which are in general industry. OSHA estimates the net benefit of the rule to be approximately $487 million. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the January 9, 2017 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by July 9, 2017. In order to accomplish this

the Chair of the OSH Standards board adopted these amendments in February of 2017.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal 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. Section 6 requires employers in general industry to comply with the requirements of Subpart Z of 29 C.F.R. 1910 and updates the C.F.R. to July 1, 2016. Section 6 also established the amendments to Subpart Z as published in the January 9, 2017 Federal Register, Volume 82, Number 5. This Federal Register sets forth work practices and engineering controls that are required where employees are exposed to beryllium in the workplace. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the January 9, 2017 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by July 9, 2017

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

(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: Approximately 7,300 workplaces in the nation are expected to be affected by this final rule which requires employers to implement engineering controls and work practices where employees are exposed to beryllium. Engineering controls may include the use of wet work practices or local exhaust ventilation. Work practices may include the designation of a regulated area, use of personal protective equipment, medical surveillance of exposed employees, and hazard training.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): OSHA estimates the annualized cost of the rule is around $74 million with the net benefits of the rule around $487 million nationwide.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):
Improved employee protection is likely to result from the promulgation of this amendment, due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: (a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the Program to implement this administrative regulation.

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

(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 neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the January 9, 2017 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by July 9, 2017.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the January 9, 2017 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by July 9, 2017.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Section 2 of this administrative regulation carries requirements which are stricter than those required by OSHA. This section places requirements on employers related to the use of 4,4'-Methylene bis (2-Chloroaniline), which the federal regulation does not. This provision has been in place since February 12, 1996. Section 3 of this administrative regulation carries requirements which are stricter than those required by OSHA. This section places requirements associated with research and quality control laboratory activities involving the use of the chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016. This provision has been in place since February 12, 1996. Section 4 of this administrative regulation carries requirements which are stricter than those required by OSHA. This section places requirements related to access to exposure or medical records. This provision has been in place since July 17, 1997. Section 5 of this administrative regulation carries requirements which are stricter than those required by OSHA. This section places requirements related to glove use as it applies to 29 C.F.R. 1910.1030. This provision has been in place since October 7, 1992. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Section 2 of this administrative regulation carries requirements which are stricter than those required by OSHA. This section places requirements on employers related to the use of 4,4'-Methylene bis (2-Chloroaniline), which the federal regulation does not. This provision has been in place since February 12, 1996. Section 3 of

this administrative regulation carries requirements which are stricter than those required by OSHA. This section places requirements associated with research and quality control laboratory activities involving the use of the chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016. This provision has been in place since February 12, 1996. Section 4 of this administrative regulation carries requirements which are stricter than those required by OSHA. This section places requirements related to access to exposure or medical records. This provision has been in place since July 17, 1997. Section 5 of this administrative regulation carries requirements which are stricter than those required by OSHA. This section places requirements related to glove use as it applies to 29 C.F.R. 1910.1030. This provision has been in place since October 7, 1992. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

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 affect any unit, part, or division of local government covered by KRS 338 and engaged in general industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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? OSHA expects the rule to result in annual costs of approximately $10,000 to the average workplace covered by the rule.

(d) How much will it cost to administer this program for subsequent years? OSHA expects the rule to result in annual cost of approximately $10,000 to the average workplace covered by the rule.

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

Revenues (+/-): Unknown

Expenditures (+/-): Unknown

Other explanation: No information was specific to local governments, but estimated expenditures of about $2,600 were given for smaller (less than 20 employee) firms affected by the regulation.

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

803 KAR 2:403. Occupational health and environmental controls.

RELATES TO: KRS 338.051, 338.061, 29 C.F.R. 1926.50-1926.66

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. 29 C.F.R. 1926.50 to 1926.66 establish the federal requirements relating to occupational health and environmental controls. This administrative regulation establishes the occupational health and environmental control standards to be enforced by the Department of Workplace Standards in the area of construction.

Section 1. Definitions. (1) "Assistant secretary" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet.

(2) "Director" means Director, Division of Occupational Safety and Health Compliance, Kentucky Labor Cabinet.

(3) "U.S. Department of Labor" means Kentucky Labor Cabinet or U.S. Department of Labor.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, the construction industry shall comply with the following federal requirements published in the Office of the Federal Register, National Archives and Records Services:

(1) 29 C.F.R. 1926.50 through 1926.66, revised July 1, 2016 [~~2015~~]; and

(2) The revisions to 29 C.F.R 1926.55 as published in the January 9, 2017 Federal Register, Volume 81, Number 5[~~as published in the March 25, 2016 Federal Register, Volume 81, Number 58~~].

As approved by the Kentucky Occupational Safety and Health Standards Board.

DERRICK RAMSEY, Chairman

APPROVED BY AGENCY: February 14, 2017

FILED WITH LRC: February 14, 2017 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2017 at 10:30 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through March 31, 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: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682, email Kristi.redmon@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1926.50-.66. Section 2 also updates the C.F.R. to July 2016 and establishes the amendments to 29 C.F.R. 1926.55, as published in the January 9, 2017 Federal Register, Volume 82, Number 5. The Chair of the Kentucky OSH Standards Board adopted these amendments in February of 2017. As a result of the adoption of this final rule, 803 KAR 2:403 must be amended. With the January 9, 2017 final rule, OSHA is adding additional requirements where employees may be exposed to beryllium. This rule greatly expands upon the previous requirement

which only limited an employee's exposure through the permissible exposure limit (PEL). After much research and the continuing exposure of workers to beryllium, OSHA decided that the current PEL for beryllium was not sufficient to protect the safety and health of workers. In the 45 years since the current PEL was established, numerous agencies including NIOSH and the U.S. Toxicology Program have identified beryllium as a human carcinogen. This final rule revises the old PEL and requires that employers use engineering controls to reduce workers' exposure to beryllium. The new PEL is set at 0.2 micrograms per meter cubed whereas the current PEL is set at 2 micrograms per meter cubed. Even with this cut in the PEL, OSHA believes a significant risk to employees remains; however, OSHA considers this PEL to be the lowest that can reasonably be achieved in most affected industries. In addition to the revised PEL, OSHA is requiring the implementation of engineering controls to include wetting the work operations or using ventilation before the use of respirators. The new standard requires the employer to evaluate employee exposures and then based on exposure levels the employer must implement engineering controls and/or work practices. Work practices that may be necessary include creating a regulated area, providing hygiene areas for showering and changing, conducting medical surveillance, and training employees on the hazards of beryllium.
OSHA believes that approximately 7,300 workplaces will be affected across the construction, general, and maritime industries. This will include approximately 62,000 workers, the majority of which are in general industry. OSHA estimates the net benefit of the rule to be approximately $487 million. The amendment specific to this regulation, changes a reference in an Appendix Table to update the new PEL. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the January 9, 2017 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by July 9, 2017. In order to accomplish this the Chair of the OSH Standards board adopted these amendments in February of 2017.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal 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. Section 2 requires employers in general industry to comply with the requirements of Subpart Z of 29 C.F.R. 1910 and updates the C.F.R. to July 1, 2016. Section 2 also establishes the amendments to 29 Code of Federal Regulations 1926.55 as published in the January 9, 2017 Federal Register, Volume 82, Number 5. This amendment specifically changes the updates the changed PEL in a table located in the Appendix of the federal standard. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the January 9, 2017 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by July 9, 2017.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

(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: Approximately 7,300 workplaces in the nation are expected to be affected by this final rule which requires employers to implement engineering controls and work practices where employees are exposed to beryllium. Engineering controls may include the use of wet work practices or local exhaust ventilation. Work practices may include the designation of a regulated area, use of personal protective equipment, medical surveillance of exposed employees, and hazard training.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): OSHA estimates the annualized cost of the rule is around $74 million with the net benefits of the rule around $487 million nationwide.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):
Improved employee protection is likely to result from the promulgation of this amendment, due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the Program to implement this administrative regulation.

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

(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 neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the January 9, 2017 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by July 9,

2017.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the January 9, 2017 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by July 9, 2017.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

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 affect any unit, part, or division of local government covered by KRS 338 and engaged in construction industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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? OSHA expects the rule to result in annual costs of approximately $10,000 to the average workplace covered by the rule.

(d) How much will it cost to administer this program for subsequent years? OSHA expects the rule to result in annual cost of approximately $10,000 to the average workplace covered by the rule.

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

Revenues (+/-): Unknown

Expenditures (+/-): Unknown

Other explanation: No information was specific to local governments, but estimated expenditures of about $2,600 were given for smaller (less than 20 employee) firms affected by the regulation.

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

803 KAR 2:425. Toxic and hazardous substances.

RELATES TO: 29 C.F.R. 1926.1101-1926.1153

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. 29 C.F.R. 1926.1101 to 1926.1153 establish the federal requirements relating to toxic and hazardous substances. This administrative regulation establishes the general standards to be enforced by the Department of Workplace Standards in the construction industry.

Section 1. Definitions. (1) "Assistant secretary" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet.

(2) "Director" means Director, Division of Occupational Safety and Health Compliance, Kentucky Labor Cabinet.

(3) "U.S. Department of Labor" means Kentucky Labor Cabinet or U.S. Department of Labor.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, the construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1926.1101 through 1926.1153, revised as of July 1, 2016[~~2015~~]; and

(2) The amendments to 29 C.F.R. 1926 Subpart Z as published in the January 9, 2017 Federal Register, Volume 82, Number 5[~~March 25, 2016 Federal Register, Volume 81, Number 58~~].

As approved by the Kentucky Occupational Safety and Health Standards Board.

DERRICK RAMSEY, Chairman

APPROVED BY AGENCY: February 14, 2017

FILED WITH LRC: February 14, 2017 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2017 at 10:30 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through March 31, 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: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682, email Kristi.redmon@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1926 Subpart Z. Section 2 also updates the C.F.R. to July 2016 and establishes the amendments to Subpart Z, as published in the January 9, 2017 Federal Register, Volume 82, Number 5. The Chair of the Kentucky OSH Standards Board adopted these amendments in February of 2017. As a result of the adoption of this final rule, 803 KAR 2:425 must be amended. With the January 9, 2017 final rule, OSHA is adding additional requirements where employees may be exposed to

beryllium. This rule greatly expands upon the previous requirement which only limited an employee's exposure through the permissible exposure limit (PEL). After much research and the continuing exposure of workers to beryllium, OSHA decided that the current PEL for beryllium was not sufficient to protect the safety and health of workers. In the 45 years since the current PEL was established, numerous agencies including NIOSH and the U.S. Toxicology Program have identified beryllium as a human carcinogen. This final rule revises the old PEL and requires that employers use engineering controls to reduce workers' exposure to beryllium. The new PEL is set at 0.2 micrograms per meter cubed whereas the current PEL is set at 2 micrograms per meter cubed. Even with this cut in the PEL, OSHA believes a significant risk to employees remains; however, OSHA considers this PEL to be the lowest that can reasonably be achieved in most affected industries. In addition to the revised PEL, OSHA is requiring the implementation of engineering controls to include wetting the work operations or using ventilation before the use of respirators. The new standard requires the employer to evaluate employee exposures and then based on exposure levels the employer must implement engineering controls and/or work practices. Work practices that may be necessary include having a competent person, providing hygiene areas for washing and changing, conducting medical surveillance, and training employees on the hazards of beryllium. OSHA believes that approximately 7,300 workplaces will be affected across the construction, general, and maritime industries. This will include approximately 62,000 workers, the majority of which are in general industry. OSHA estimates the net benefit of the rule to be approximately $487 million. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the January 9, 2017 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by July 9, 2017. In order to accomplish this the Chair of the OSH Standards board adopted these amendments in February of 2017.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal 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. Section 2 requires employers in general industry to comply with the requirements of Subpart Z of 29 C.F.R. 1910 and updates the C.F.R. to July 1, 2016. Section 2 also establishes the amendments to 29 Code of Federal Regulations Subpart Z as published in the January 9, 2017 Federal Register, Volume 82, Number 5. This amendment requires employers in the construction industry to implement engineering controls and work practices like medical surveillance, training, having a competent person, and creating a written control plan to comply with the new PEL. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the January 9, 2017 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by July 9, 2017

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

(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: Approximately 7,300 workplaces in the nation are expected to be affected by this final rule which requires employers to implement engineering controls and work practices where employees are exposed toberyllium. Engineering controls may include the use of wet work practices or local exhaust ventilation. Work practices may include the designation of a regulated area, use of personal protective equipment, medical surveillance of exposed employees, and hazard training.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): OSHA estimates the annualized cost of the rule is around $74 million with the net benefits of the rule around $487 million nationwide.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection is likely to result from the promulgation of this amendment, due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the Program to implement this administrative regulation.

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

(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 neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the January 9, 2017 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program,

Kentucky must incorporate the federal requirements by July 9, 2017.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the January 9, 2017 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by July 9, 2017.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

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 affect any unit, part, or division of local government covered by KRS 338 and engaged in construction industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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? OSHA expects the rule to result in annual costs of approximately $10,000 to the average workplace covered by the rule.

(d) How much will it cost to administer this program for subsequent years? OSHA expects the rule to result in annual cost of approximately $10,000 to the average workplace covered by the rule.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: No information was specific to local governments, but estimated expenditures of about $2,600 were given for smaller (less than 20 employee) firms affected by the regulation.

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

803 KAR 2:500. Maritime employment.

RELATES TO: KRS 338.015, 29 C.F.R. 1915, 1917, 1918, 1919

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. 29 C.F.R. Parts 1915, 1917, 1918, and 1919 establish federal requirements relating to maritime employment. This administrative regulation establishes maritime employment standards to be enforced by the Department of Workplace Standards in the maritime industry.

Section 1. Definitions. (1) "Administration" means the Kentucky Labor Cabinet or Department of Workplace Standards.

(2) "Assistant secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(4) "Employee" is defined by KRS 338.015(2).

(5) "Employer" is defined by KRS 338.015(1).

(6) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet.

Section 2. Except as modified by the definitions established in Section 1 of this administrative regulation, the maritime industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. Part 1915, revised July 1, 2016[~~2015~~], relating to occupational safety and health standards for shipyard employment;

(2) 29 C.F.R. Part 1917, revised July 1, 2016[~~2015~~], relating to maritime terminals;

(3) 29 C.F.R. Part 1918, revised July 1, 2016[~~2015~~], relating to safety and health regulations for longshoring;

(4) 29 C.F.R. Part 1919, revised July 1, 2016[~~2015~~], relating to gear certification; and

(5) The revisions to 29 C.F.R. Part 1915 as Published in the January 9, 2017 Federal Register, Volume 82, Number 5[~~Parts 1915, 1917, and 1918 as published in the March 25, 2016 Federal Register, Volume 81, Number 58.~~].

As approved by the Kentucky Occupational Safety and Health Standards Board.

DERRICK RAMSEY, Chairman

APPROVED BY AGENCY: February 14, 2017

FILED WITH LRC: February 14, 2017 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2017 at 10:30 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through March 31, 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: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682, email Kristi.redmon@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in

the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. Parts 1915, 1917, 1918, and 1919. Section 2 also updates the C.F.R.s to July 2016 and establishes the amendments to Part 1915, as published in the January 9, 2017 Federal Register, Volume 82, Number 5. The Chair of the Kentucky OSH Standards Board adopted these amendments in February of 2017. As a result of the adoption of this final rule, 803 KAR 2:500 must be amended. With the January 9, 2017 final rule, OSHA is adding additional requirements where employees may be exposed to beryllium. This rule greatly expands upon the previous requirement which only limited an employee's exposure through the permissible exposure limit (PEL). After much research and the continuing exposure of workers to beryllium, OSHA decided that the current PEL for beryllium was not sufficient to protect the safety and health of workers. In the 45 years since the current PEL was established, numerous agencies including NIOSH and the U.S. Toxicology Program have identified beryllium as a human carcinogen. This final rule revises the old PEL and requires that employers use engineering controls to reduce workers' exposure to beryllium. The new PEL is set at 0.2 micrograms per meter cubed whereas the current PEL is set at 2 micrograms per meter cubed. Even with this cut in the PEL, OSHA believes a significant risk to employees remains; however, OSHA considers this PEL to be the lowest that can reasonably be achieved in most affected industries. In addition to the revised PEL, OSHA is requiring the implementation of engineering controls to include wetting the work operations or using ventilation before the use of respirators. The new standard requires the employer to evaluate employee exposures and then based on exposure levels the employer must implement engineering controls and/or work practices. Work practices that may be necessary include creating a regulated area, providing hygiene areas for washing and changing, conducting medical surveillance, and training employees on the hazards of beryllium. OSHA believes that approximately 7,300 workplaces will be affected across the construction, general, and maritime industries. This will include approximately 62,000 workers, the majority of which are in general industry. OSHA estimates the net benefit of the rule to be approximately $487 million. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the January 9, 2017 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by July 9, 2017. In order to accomplish this the Chair of the OSH Standards board adopted these amendments in February of 2017.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal 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. Section 2 requires employers in general industry to comply with the requirements of Subpart Z of 29 C.F.R. 1910 and updates the C.F.R. to July 1, 2016. Section 2 also establishes the amendments to 29 Code of Federal Regulations Subpart Z as published in the January 9, 2017 Federal Register, Volume 82, Number 5. This amendment requires employers in the maritime industry to implement engineering controls and work practices like medical surveillance, training, and creating regulated areas to comply with the new PEL. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the January 9, 2017 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by July 9, 2017

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in maritime industry activities covered by KRS Chapter 338.

(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: Approximately 7,300 workplaces in the nation are expected to be affected by this final rule which requires employers to implement engineering controls and work practices where employees are exposed to beryllium. Engineering controls may include the use of wet work practices or local exhaust ventilation. Work practices may include the designation of a regulated area, use of personal protective equipment, medical surveillance of exposed employees, and hazard training.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): OSHA estimates the annualized cost of the rule is around $74 million with the net benefits of the rule around $487 million nationwide.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):
Improved employee protection is likely to result from the promulgation of this amendment, due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: (a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the Program to implement this administrative regulation.

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

(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 neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health

Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the January 9, 2017 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by July 9, 2017.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the January 9, 2017 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by July 9, 2017.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

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 affect any unit, part, or division of local government covered by KRS 338 and engaged in maritime industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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? OSHA expects the rule to result in annual costs of approximately $10,000 to the average workplace covered by the rule.

(d) How much will it cost to administer this program for subsequent years? OSHA expects the rule to result in annual cost of approximately $10,000 to the average workplace covered by the rule.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: No information was specific to local governments, but estimated expenditures of about $2,600 were given for smaller (less than 20 employee) firms affected by the regulation.

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(Amendment)

804 KAR 3:100. License may be suspended or revoked for accepting Supplemental Needs Assistance Program ("SNAP") benefits for alcohol purchases[~~Retail sales to certain persons prohibited~~].

RELATES TO: KRS 243.490(1), 7 U.S.C. 2012(k), 7 U.S.C. 2013(a), 7 C.F.R. 278.6

STATUTORY AUTHORITY: KRS 241.060(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate administrative regulations governing procedures relative to revocations of licenses.[~~By the terms of~~] KRS 243.490(1)[~~,~~] authorizes the[~~this~~] board to[~~may~~] revoke a license [~~issued to a licensee~~] for a violation of any[~~an~~] Act of Congress or any rule or regulation of any federal board, agency, or commission relating to alcoholic beverages.[~~Since~~] Federal law prohibits[~~food stamp regulations prohibit~~] the sale of alcoholic beverages in exchange for SNAP benefits[~~food coupons,~~] This administrative regulation provides[~~states specifically~~] that any licensee[~~licensees~~] accepting SNAP benefits[~~food stamps~~] in exchange[~~return~~] for alcoholic beverages is[~~are~~] subject to having its alcoholic beverage license(s)[~~their licenses~~] suspended or revoked.

Section 1. Prohibition Against Alcoholic Beverage Sales Using SNAP Benefits. No licensee of the department[~~of Alcoholic Beverage Control of the Commonwealth of Kentucky~~] shall accept United States Department of Agriculture Supplemental Needs Assistance Program ("SNAP") benefits[~~U.S.D.A. food coupons (or any other food coupon)~~] in exchange for an alcoholic beverage[~~beverages of any kind, whether it be distilled spirit, wine, beer, near beer, or any other beverage containing alcohol in any amount~~].

CHRISTINE TROUT, Commissioner
DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: February 15, 2017

FILED WITH LRC: February 15, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 28, 2017 at 1:00 p.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 March 31, 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: Steve Humphress, General Counsel, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 782-1026, fax (502) 564-7479, email Steve.Humphress@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Steve Humphress

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation prohibits the use of food stamps to purchase alcoholic beverages. The amendment updates the regulation with the current name of the federal food stamps program, i.e., the Supplemental Needs

Assistance Program ("SNAP").

(b) The necessity of this administrative regulation: The regulation prevents licensees from selling alcoholic beverages to individuals attempting to pay for the beverages with SNAP benefits. This amendment is necessary to update the language of the regulation to make it consistent with federal law.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations governing the sale of alcoholic beverages. KRS 243.490(1) authorizes the board to revoke a license for a violation of any Act of Congress or any rule or regulation of any federal board, agency, or commission relating to alcoholic beverages. Federal law prohibits accepting SNAP benefits for alcoholic beverages.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation prevents the unlawful use of SNAP benefits to purchase alcoholic beverages.

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

(a) How the amendment will change this existing administrative regulation: This regulation amendment changes the title of the regulation to more appropriately describe the substance of the regulation. It also updates the language in the regulation to make the terms consistent with federal law.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that the same terms are being used in state and federal law.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations governing the sale of alcoholic beverages. KRS 243.490(1) authorizes the board to revoke a license for a violation of any Act of Congress or any rule or regulation of any federal board, agency, or commission relating to alcoholic beverages. Federal law prohibits accepting SNAP benefits for alcoholic beverages.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will assist licensees by clarifying the subject matter of the regulation and by using the same terminology as federal law.

(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 is impacted by this administrative regulation. Licensees of the department are also affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Because this regulation amendment simply updates existing language and does not make any substantive changes, there is no need for regulated entity to take any further action.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There is no financial benefit to this administrative regulation.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is needed to implement and enforce the amendment of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: 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 tiering is applied because this regulation applies equally to all regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation that mandates that a regulation be promulgated on this subject matter; however, this regulation relates to 7 U.S.C. 2012(k), 7 U.S.C. 2013(a), and 7 C.F.R. 278.6.

(2) State compliance standards. Federal law prohibits the use of SNAP benefits for the purchase of alcohol. This regulation provides that violation of federal law may result in license suspension or revocation at the state level.

(3) Minimum or uniform standards contained in the federal mandate. Federal law prohibits the use of SNAP benefits for the purchase of alcohol.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation correlates with the federal law on the subject matter.

(5) Justification or the imposition of the stricter standard, or additional or different responsibilities or requirements. No. This regulation correlates with the federal law on the subject matter.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 241.060(1) authorizes the board to promulgate administrative regulations governing the sale of alcoholic beverages. KRS 243.490(1) authorizes the board to revoke a license for a violation of any Act of Congress or any rule or regulation of any federal board, agency, or commission relating to alcoholic beverages. Federal law (7 U.S.C. 2012(k), 7 U.S.C. 2013(a), 7 C.F.R. 278.6) prohibits accepting SNAP benefits for alcoholic beverages.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No future revenue will be generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? There are no costs expected to amend this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There are no future costs expected to amend 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: None is expected.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Behavioral Health, Developmental and Intellectual Disabilities
Division of Administration and Financial Management
(Amendment)

908 KAR 3:060. "Means test" for determining patient liability and per diem rates.

RELATES TO: KRS Chapter 13B, 210.710, 210.720, 210.730
STATUTORY AUTHORITY: KRS 194A.050, 210.710(4), 210.720(2), 210.720(3), 210.750
NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050 requires the Secretary of 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 210.720(2) requires the secretary of the Cabinet for Health and Family Services to establish the patient cost per day for board, maintenance, and treatment for state owned facilities at frequent intervals which shall be the uniform charge for persons receiving those services. KRS 210.750 authorizes the secretary to promulgate administrative regulations to carry out the provisions of KRS 210.710 to 210.760. KRS 210.710(4) and 210.720(3) require the secretary to adopt a "Means test" for determining the ability to pay of the patient or person responsible for the patient for board, maintenance, and treatment at a facility owned by the state. This administrative regulation establishes the "Means test" for making that determination and establishes the patient cost per day for board, maintenance, and treatment at state owned facilities.

Section 1. Definitions. (1) "Allowed deduction" means an amount disregarded or deducted from income and assets for the purpose of determining the ability to pay for services rendered by a facility.
(2) "Available assets" means resources of the patient or person responsible for the patient in accordance with KRS 210.720(3), less the allowed deductions.
(3) "Deductible" means an amount that a patient or person responsible for the patient is expected to pay toward the patient's care by a third-party payor such as Medicare or a private insurance company.
(4) "Facility" is defined in KRS 210.710(2).
(5) "Income" means funds received by the patient or person responsible for the patient and includes the following:
(a) Salaries;
(b) Wages;
(c) Self-employed gross revenues, less operating expenses;
(d) Benefit payments, except for Supplemental Security Income payments;
(e) Social Security payments;
(f) Rents;
(g) Royalties;
(h) Pensions;
(i) Retirement payments;
(j) Veteran's Administration payments;
(k) Black lung benefits;
(l) Railroad retirement benefits;
(m) Gifts;
(n) Settlements;
(o) Trust receipts;
(p) Alimony, but does not include child support payments;
(q) Interest income; and
(r) Income from investments.
(6) "Patient" means a person admitted to a facility.
(7) "Person responsible for the patient" is defined in KRS 210.710(5).
(8) "Personal Needs Allowance" means an amount of resources deducted from income for the patient's personal needs, including clothing and other miscellaneous items required by the patient.
(9) "Poverty Guidelines" means the federal poverty guidelines updated periodically in the Federal Register by the United States Department of Health and Human Services, under the authority of 42 U.S.C. 9902(2).

Section 2. Determination of the Ability to Pay for Services Rendered at Facilities. (1) The facility shall apply the means test to each patient who is admitted to the facility for treatment.
(2)(a) The means test shall include a determination of the responsible party or parties to pay for the patient's care, which shall be documented using the Patient or Responsible Party Financial Record form.
(b) This form shall be explained to the patient or person responsible for the patient and signed by all parties.
(c) If the patient or person responsible for the patient refuses to sign, this refusal shall be noted on the form along with the date the form was discussed.
(d) Refusal to sign the form shall not absolve the liability of the patient or person responsible for the patient to pay for services rendered.
(3) The amount a patient or person responsible for the patient is required to pay for services shall be the lesser of:
(a) The cost per patient day in accordance with Section 7 of this administrative regulation[~~908 KAR 3:050~~], less any amount paid by Medicare, Medicaid, and other third-party payment sources; or
(b) The amount the patient is able to pay calculated in accordance with this administrative regulation.
(4) The facility shall determine the financial resources available to the patient or person responsible for the patient including:
(a) Insurance and third-party payors;
(b) Income received or expected to be received during the period of hospitalization; and
(c) Available assets.
(5) Allowed deductions shall be calculated as the patient and the number of the patient's dependents.
(a) A patient's legally-recognized spouse and each individual less than eighteen (18) years of age who is in the patient's care shall be classified as dependents for purposes of calculating the poverty guidelines.
(b) Allowed deductions for the patient plus the patient's dependents shall be as follows:
1. One (1) shall be $2,000;
2. Two (2) shall be $4,000; or
3. Three (3) or more shall be $4,000 plus fifty (50) dollars added for each additional member over the initial two (2).
(6) The following shall be allowed deductions from income:
(a) Federal income taxes;
(b) State income taxes;
(c) Social security taxes;
(d) Normal retirement contributions;
(e) Unpaid medical and dental bills;
(f) Health insurance premiums;
(g) Medicare Part B insurance premiums;
(h) Long-term care insurance premiums;
(i) A personal needs allowance of forty (40) dollars per month;
(j) Student loan payments;
(k) Bed-hold reservation costs at another facility for up to fourteen (14) days as long as the patient's stay is expected to be shorter than the reservation period;
(l) Child support payments;
(m) Life insurance premiums if the patient's estate or a funeral home is the named beneficiary on the policy; and
(n) A basic maintenance allowance, derived from the current Poverty Guidelines, for the size of the patient's family, if the following conditions are met:
1. The patient was maintaining a residence immediately prior to admission;
2. The residence will continue to be maintained during the period of hospitalization and resources of the patient are needed for this effort; and
3. Facility staff expects the patient's hospital stay to be three (3) months or less in duration.
(7) An estimated income tax related deduction of twenty-five (25) percent of total income shall be allowed instead of the actual

wage taxes contained in subsection (6) of this section. A patient or person responsible for the patient may request that actual tax amounts be used instead of the estimated deduction, if the person can substantiate the actual tax amounts.

(8) The following shall be excluded from the calculation of available assets:

(a) Prepaid burial plans of up to $1,500 per family member;

(b) Automobiles;

(c) Housing structures;

(d) Land;

(e) Retirement accounts;

(f) Pension funds;

(g) Trust funds that cannot be accessed;

(h) The applicable allowed deduction; and

(i) Other assets that are exempted under state law, if any.

Section 3. Calculation of the Amount the Patient or Person Responsible for the Patient is Able to Pay. (1) The facility shall calculate the ability to pay amount utilizing either the Ability to Pay Worksheet or the Deductible Ability to Pay Worksheet as appropriate and by using the following formula:

(a) Determine the total amount of income of the patient or person responsible for the patient;

(b) Determine the amount of allowed deductions from income in accordance with Section 2(5) and (6) of this administrative regulation;

(c) Subtract the allowed deductions from income; and

(d) The remaining available income shall be divided by 365 to obtain the average daily income of the patient or person responsible for the patient.

(2) If the patient or person responsible for the patient has available assets, the facility shall:

(a) Determine the amount of available assets; and

(b) Include available assets that remain after the deduction in the patient or person responsible for the patient's ability to pay amount.

(3) Payments to be made on behalf of the patient by a third-party, such as Medicare, Medicaid, or private insurance companies, shall be subtracted from the facility's per diem rate as contained in Section 7 of this administrative regulation[~~908 KAR 3:050~~]. Any remaining liability shall be satisfied as follows, with the exception of ability to pay amounts arising from deductibles:

(a) The available income of the patient or person responsible for the patient shall first be applied to the patient's liability for services;

(b) Any liability that remains after application of the average available income shall be satisfied by available assets; and

(c) The applicable average income per day and available asset amount per day shall be combined to determine the ability to pay amount. The ability to pay amount shall be charged for each day the patient is in the facility.

(4) Ability to pay liabilities arising from deductibles shall first be applied to available assets of the patient or person responsible for the patient with any remaining liability being satisfied with available income.

(5) If the Department for Medicaid Services performs an income assessment for a Medicaid patient residing in a nursing facility, intermediate care facility for an individual with an intellectual disability, or psychiatric hospital in accordance with 907 KAR 20:035, that Medicaid income assessment shall be relied upon instead of the ability to pay provisions established in this administrative regulation.

(6)(a) After the ability to pay is determined for the patient or person responsible for the patient, a Patient or Responsible Party Financial Agreement and Assignment form shall be completed.

(b) This form shall be explained to the patient or person responsible for the patient and signed by all parties.

(c) If the patient or person responsible for the patient refuses to sign, this refusal shall be noted on the form including the date the form was discussed.

(d) Refusal to sign the form shall not absolve the liability of the patient or person responsible for the patient to pay for services rendered.

(7) The patient liability shall be calculated based on the United States Department of Health and Human Services poverty guidelines.

Section 4. Revisions to Ability to Pay Amounts. (1) Facility staff shall update a patient's ability to pay amount to incorporate changes that take place subsequent to the initial determination. These changes may include:

(a) Income revisions;

(b) Asset revisions, including exhaustion of available assets;

(c) Change in allowed deductions;

(d) Change in a dependent of the patient or person responsible for the patient; or

(e) Change regarding the status of the person responsible for the patient.

(2) Upon a change to the ability to pay information, a revised Ability to Pay Worksheet or Deductible Ability to Pay Worksheet shall be prepared along with a revised Patient or Responsible Party Financial Record form and a revised Patient or Responsible Party Financial Agreement and Assignment form. The revised forms shall be presented to the patient or person responsible for the patient in the same manner as the original forms.

Section 5. Failure to Provide Financial Information or to Assign Benefits. (1) If the patient or person responsible for the patient fails to or will not provide the information necessary to calculate the ability to pay amount, the maximum charge provided in Section 2(3)(a) of this administrative regulation shall be assessed.

(2) If the patient or person responsible for the patient fails to sign the assignment provision contained in the Patient or Responsible Party Financial Agreement and Assignment form, the maximum charge provided in Section 2(3)(a) of this administrative regulation shall be assessed.

Section 6. Payment Hardship, Appeal and Waiver Procedures. (1) Payment hardships.

(a) If the patient or person responsible for the patient believes that payment of the ability to pay amount results in a financial hardship, the patient or person responsible for the patient may request to make installment payments.

(b) This request shall be made in writing to the facility's patient billing supervisor and shall include documentation to support the claimed hardship.

(c) The patient billing supervisor shall review the financial hardship request and render a payment plan decision within fifteen (15) days from the receipt of the hardship request. If there is financial hardship, the patient billing supervisor shall allow minimum monthly payments based on what the patient can reasonably afford.

(2) Appeals.

(a) If the patient or person responsible for the patient is aggrieved by the facility charges or a payment plan determined in accordance with this administrative regulation, that person may appeal the determination to the facility director or the facility director's designee for informal resolution within thirty (30) days of the ability to pay amount or payment plan being calculated.

(b) The facility director or the facility director's designee shall review the appeal and issue a determination within thirty (30) days of receipt.

(c) If the patient or person responsible for the patient is dissatisfied with the informal resolution, that person may file an appeal within thirty (30) days of the facility's response to the Director of the Division of Administration and Financial Management, Department for Behavioral Health, Developmental and Intellectual Disabilities, 275 E Main Street, Frankfort, Kentucky 40621. The director shall arrange for an administrative hearing in accordance with KRS Chapter 13B.

(d) The appeal request shall fully explain the patient's, or person responsible for the patient's, position and shall include all relevant documentation supporting the claim of financial hardship.

(3) Waivers.

(a) The director of each facility may waive payment of the facility's charges under this administrative regulation if waiver is in

the best interest of all parties, based on the factors provided in paragraph (c) of this subsection.

(b) The Director of the Division of Administration and Financial Management shall have the authority to waive payment at any facility within the department if waiver is in the best interest of all parties, based on the factors provided in paragraph (c) of this subsection.

(c) When making a waiver determination, the following factors shall be considered:

1. Income;
2. Overall family debt;
3. Assets; and
4. Other information relating to the current financial situation of the patient or the person responsible for the patient.

Section 7. Per Diem Rates. (1) Facilities owned by the state shall charge a per diem rate for room and board and a separate charge for each treatment service listed in subsection (3) of this section.

(2) The per diem rate for room and board for each facility shall be calculated using the equations on the Kentucky Facility Per Diem Rate Form.

(3) A separate charge shall be imposed if the following treatment services are provided at a Department for Behavioral Health, Developmental and Intellectual Disabilities facility:

(a) Physician's services;
(b) EEG;
(c) EKG;
(d) Occupational therapy;
(e) Physical therapy;
(f) X-ray;
(g) Laboratory;
(h) Speech therapy;
(i) Hearing therapy;
(j) Psychology;
(k) Pharmacy;
(l) Respiratory therapy;
(m) Anesthesia;
(n) Electroshock therapy;
(o) Physician assistant;
(p) Advanced practice registered nurse; and
(q) Outpatient clinic services.

Section 8. Board, Maintenance, and Treatment Charges. The cost per day for board, maintenance, and treatment charges shall be established using the last available Behavioral Health, Developmental and Intellectual Disability (BHDID) annual finance report. Current rates shall be posted at http://dbhdid.ky.gov/kdbhdid and at each facility.

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

(a) "DBHDID 3:060-1 Ability to Pay Worksheet", November 2016[~~February 2015~~];

(b) "DBHDID 3:060-2 Deductible Ability to Pay Worksheet", November 2016[~~February 2015~~];

(c) "DBHDID 3:060-3 Patient or Responsible Party Financial Agreement and Assignment", November 2016[~~February 2015~~]; [~~and~~]

(d) "DBHDID 3:060-4 Patient or Responsible Party Financial Record", November 2016; and

(e) "Kentucky Facility Per Diem Rate Form", November 2016 [~~February 2015~~].

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

WENDY MORRIS, Commissioner
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: January 31, 2017
FILED WITH LRC: February 3, 2017 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 21, 2017 at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 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 March 31, 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 Persons: Justin Dearinger, BHDID Regulation Coordinator, phone (502) 782-7212, email Justin.Dearinger@ky.gov, and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the "Means test" for determining the ability to pay of the patient or person responsible for the patient for board, maintenance, and treatment at a facility owned by the state and establishes the patient cost per day for board, maintenance, and treatment at state owned facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because KRS 210.720(2) requires the secretary of the Cabinet for Health and Family Services to establish the patient cost per day for board, maintenance, and treatment for state owned facilities at frequent intervals which shall be the uniform charge for persons receiving those services. KRS 210.750 authorizes the secretary to promulgate administrative regulations to carry out the provisions of KRS 210.710 to 210.760 and KRS 210.710(4) and 210.720(3) require the secretary to adopt a "Means test" for determining the ability to pay of the patient or person responsible for the patient for board, maintenance, and treatment at a facility owned by the state.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 210.720(2) by establishing the patient cost per day for board, maintenance, and treatment for state owned facilities at frequent intervals which shall be the uniform charge for persons receiving those services. This administrative regulation also conforms to KRS 210.750 by carrying out the provisions of KRS 210.710 to 210.760 and conforms to KRS 210.710(4) and 210.720(3) by adopting a "Means test" for determining the ability to pay of the patient or person responsible for the patient for board, maintenance, and treatment at a facility owned by the state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing the patient cost per day for board, maintenance, and treatment for state owned facilities at frequent intervals which shall be the uniform charge for persons receiving those services carrying out the provisions of KRS 210.710 to 210.760, and by adopting a "Means test" for determining the ability to pay of the patient or person responsible for the patient for board, maintenance, and treatment at a facility owned by the state.

(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 the requirements from 908 KAR 3:050 that establish a per diem rate for facilities. The amendment also adds a form that describes the equation used to determine the

per diem rates.

(b) The necessity of the amendment to this administrative regulation: This amendment puts all of the facility rate information in one administrative regulation, makes information easier to access by putting rates and the equations used to obtain the rates online and giving the facilities more information.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 210.720(2) by establishing the patient cost per day for board, maintenance, and treatment for state owned facilities at frequent intervals which shall be the uniform charge for persons receiving those services.

(d) How the amendment will assist in the effective administration of the statutes: This amendment establishes the per diem rates for facilities based on the previous year's costs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Thirteen mental health facilities and programs will be impacted by this administrative regulation including: Central State Hospital; Bingham Gardens Intermediate Care Facility/Clinic; Western State Hospital; Western State Nursing Facility; Outwood Intermediate Care Facility; Oakwood Intermediate Care Facility/Clinic; Hazelwood Center; Glasgow State Nursing Facility; Del Maria; Meadows; Wind Song; Eastern State Hospital; and Eastern State Nursing Facility.

(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: These regulated entities will not have to take any actions to comply with this administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Mental health, developmental and intellectual disability facilities will have one regulation instead of two for rates and will have faster and easier access to rates and to how rates were obtained.

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

(a) Initially: No costs will be incurred to implement this administrative regulation on an initial basis.

(b) On a continuing basis: No costs will be incurred to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no funding needed for the implementation and enforcement of this regulation.

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

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

(9) TIERING: Is tiering applied? Tiering will not be applied as this regulation is applied statewide in an equal 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? The Cabinet for Health and Family Services.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The following statutes authorize the actions taken by this administrative regulation: KRS 194A.050, 210.710(4), 210.720(2), 210.720(3), 210.750.

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 new revenues for state or local government in the first year.

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

(c) How much will it cost to administer this program for the first year? There will be no additional costs to implement this program in the first year.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing 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
Department for Income Support
Child Support Enforcement
(Amendment)

921 KAR 1:430. Child support administrative hearings.

RELATES TO: KRS Chapter 13B, 15.055, 154A.060(2)(g), 205.710, 205.712, 205.745, 205.7685, 205.769, 205.778, 237.110(4)(f), 341.392, 341.420, 405.411, 405.440(4), 405.450(5), 405.463, 405.465, 405.467, 405.470, 405.490(4)

STATUTORY AUTHORITY: KRS 13B.170, 194A.050(1), 205.712, 45 C.F.R. 303.35, 42 U.S.C. 666

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 implement programs mandated by federal law, qualify for the receipt of federal funds, or to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 42 U.S.C. 666 requires each state to have in effect procedures to increase the effectiveness of the Child Support Enforcement Program. 45 C.F.R. 303.35 requires the agency administering the Child Support Enforcement Program to develop a procedure for administrative reviews of child support cases for individuals with complaints. KRS 13B.170 authorizes an agency to promulgate administrative regulations that are necessary to carry out the provisions of KRS Chapter 13B. This administrative regulation establishes the administrative hearing procedures used by the cabinet in the administration of the Child Support Enforcement Program.

Section 1. Availability of a Hearing. (1) An opportunity for an administrative hearing shall be provided to an individual aggrieved by an action or inaction:

(a) On the part of the Child Support Enforcement Program; and

(b) That affects the child support case of the individual.

(2) An individual requesting an administrative hearing shall have the option to designate a representative to act on behalf of the aggrieved party for the hearing process, such as:

(a) Legal counsel;

(b) A relative; or

(c) Any other person.

(3) An administrative hearing shall be conducted by an

administrative hearing officer assigned by the Division of Administrative Hearings, Families and Children Administrative Hearings Branch:

(a) In the county of residence for the appellant or child; or

(b) By telephone or at an alternate location, if the appellant:

1. Is unable to travel; and

2. Requests alternate hearing arrangements at least five (5) calendar days in advance of the scheduled hearing.

(4) If the appellant or authorized representative speaks a language other than English, the cabinet shall ensure that interpreter services are provided for the administrative hearing.

(5) Child support enforcement staff shall schedule and hold an informal interview or conference with an aggrieved individual:

(a) Within ten (10) calendar days of receiving the individual's hearing request;

(b) Prior to an administrative hearing being scheduled; and

(c) To attempt resolution of the dispute.

(6) If the informal conference does not resolve the issue, the hearing request shall be sent to the Families and Children Administrative Hearings Branch as specified in Section 2 of this administrative regulation for scheduling.

Section 2. Request for a Hearing. (1) An individual shall request an administrative hearing by:

(a) Completing and submitting a CS-180, Request for Administrative Hearing;

(b) Submitting a written request; or

(c) Making an oral request, which is then transferred into a written request within the timeframes specified in subsection (4) of this section.

(2) An administrative hearing request shall be submitted to the:

(a) Child support contracting official's office in the appellant's county of residence; or

(b) Child Support Enforcement's central office.

(3) The count of days specified in subsection (4) of this section shall begin from the date of:

(a) Issuance, if the notice is sent by first class mail; or

(b) Receipt, if the notice is personally served or sent by certified mail.

(4) A written request for an administrative hearing shall be considered timely if received by the cabinet within:

(a) Ten (10) calendar days of:

1. An income withholding notice;

2. A notice of intent to boot a vehicle, in accordance with KRS 205.745(9).[~~; or~~

~~3. A notice of intent to request a credit report, in accordance with KRS 205.7685;~~]

(b) Fifteen (15) calendar days of a notice of withholding from unemployment insurance, pursuant to KRS 341.392 and 341.420;

(c) Twenty (20) calendar days of:

1. An initial notice of monthly support obligation, in accordance with KRS 405.440(4);

2. An order to withhold assets, in accordance with KRS 405.490(4);

3. A request for denial or suspension of a license or certificate;

4. A lien notice, in accordance with KRS 205.745(7); or

5. A notice to place the obligor's name on the delinquent listing; or

(d) Thirty (30) calendar days of a:

1. Modified notice of monthly support obligation, in accordance with KRS 405.450(5);

2. Notice that an obligation amount was reviewed without change, in accordance with KRS 405.450(5); or

3. Notice regarding the collection of past-due support in accordance with KRS 154A.060(2)(g), 205.712(17), and 205.769.

(5) In accordance with KRS 205.712(13), an individual shall be granted an administrative hearing based upon a mistake in fact, such as an incorrect:

(a) Person identified as an obligor; or

(b) Current or past due support obligation.

(6) An appellant or authorized representative may withdraw an administrative hearing request by submitting a written request to the:

(a) Families and Children Administrative Hearings Branch, as specified in Section 3 of this administrative regulation; or

(b) Child support enforcement office that accepted the original request for an administrative hearing.

Section 3. Hearing Notification. (1) The Division of Administrative Hearings, Families and Children Administrative Hearings Branch shall acknowledge an administrative hearing request.

(2) A notice of an administrative hearing shall:

(a) Comply with the requirements of KRS 13B.050(3);

(b) Specify the name, address, and phone number of the person to notify if an appellant is unable to attend the scheduled hearing; and

(c) Specify that the hearing request shall be dismissed if an appellant or the authorized representative fails to appear for an administrative hearing without good cause as specified in Section 4(3) of this administrative regulation.

(3) Pursuant to KRS 405.450(1), the cabinet shall schedule an administrative hearing within sixty (60) calendar days of an individual's hearing request.

(4) An administrative hearing shall be conducted in accordance with KRS Chapter 13B.

(5) An individual that fails to appear for a scheduled hearing shall receive notification to provide good cause within ten (10) calendar days.

Section 4. Denial or Dismissal of an Administrative Hearing Request. (1) A hearing request shall be denied or dismissed if the:

(a) Request is not based on a mistake of fact as specified in Section 2(5) of this administrative regulation;

(b) Request is untimely and good cause, as defined in subsection (3) of this section, is:

1. Not claimed; or

2. Found not to exist;

(c) Appellant submits a written request to withdraw the administrative hearing request; or

(d) Appellant or an authorized representative fails to appear for the scheduled hearing without:

1. Notifying the cabinet prior to the hearing; or

2. Establishing good cause for failure to appear, as defined in subsection (3) of this section.

(2) A claim of good cause for an untimely hearing request or failure to appear at an administrative hearing shall be established within ten (10) calendar days of receipt of a notice to provide good cause.

(3) Upon receipt of a good cause claim, a hearing officer shall determine if the appellant:

(a) Was away from home during the entire filing period;

(b) Is unable to read or comprehend the right to request an administrative hearing on the notice received;

(c) Moved, resulting in a delay in receiving or failure to receive the notice in the required time period;

(d) Was suffering from a serious illness;

(e) Was caring for an immediate household member who had a serious illness; or

(f) Was not at fault for the delay of the request, as determined by the hearing officer.

(4) The cabinet shall notify an appellant of the dismissal of an administrative hearing request by sending a recommended order of dismissal.

Section 5. Appellant's Rights. (1) An appellant or an appellant's legal representative shall have the right to examine and copy case material pertinent to the dispute before or during the hearing process in accordance with KRS 13B.090(3).

(2) The cabinet shall release case information as specified in subsection (1) of this section to the appellant's authorized representative if the appellant provides written authorization that is:

(a) Signed in the presence of child support enforcement staff who shall also sign as a witness; or

(b) Notarized.

(3) An appellant or representatives shall have the right to:

(a) Examine, prior to the hearing:
1. The list of witnesses to be called during the hearing;
2. Evidence to be presented at the hearing; and
3. Other information in the cabinet's possession that pertains to the hearing;
(b) Present witnesses or documents to support the appellant's claim; and
(c) Appeal the decision of the final order of the hearing to Circuit Court in accordance with KRS 13B.140.

Section 6. Obligation Pending a Hearing or Appeal. (1) If a hearing request is based on the dispute of:
(a) An initial notice of monthly support obligation, the obligation shall be stayed until a final order of the secretary is issued, in accordance with KRS 405.450(2); or
(b) The findings of a modification review of an administratively established obligation, the amount of the existing obligation shall be:
1. Enforceable; and
2. Paid by the obligor pending receipt of the final order.
(2) If the action taken on behalf of the Child Support Enforcement Program is:
(a) Upheld, the obligation amount shall be retroactive to the effective date on the notice of monthly support obligation; or
(b) Found to be incorrect, the cabinet shall return to the obligor any overpayment made since the date the administrative hearing was requested.
(3) If an appellant files an appeal of the final order with the Circuit Court, the appellant shall be obligated to pay the amount listed on the notice of monthly support obligation while the appeal is pending.

Section 7. Recommended Order. (1) After the hearing has concluded, the hearing officer shall submit to the secretary of the Cabinet for Health and Family Services a recommended order in accordance with KRS 13B.110 that:
(a) Summarizes the facts of the case;
(b) Specifies the address where a party to the hearing may send an exception to the recommended order; and
(c) Identifies the:
1. Findings of fact;
2. Conclusions of law;
3. Supporting evidence; and
4. Applicable state and federal laws and administrative regulations.
(2) A copy of the recommended order shall be sent to the:
(a) Appellant or representative;
(b) The secretary; and
(c) Designated staff of the Child Support Enforcement's central office.

Section 8. Written Exceptions. If a party to the hearing disagrees with the recommended order, within fifteen (15) days from the date the recommended order is mailed, the party may file with the secretary written exceptions in accordance with KRS 13B.110(4).

Section 9. Final Order. (1) Within ninety (90) days from the date the recommended order is mailed, a final order shall be issued by the secretary in accordance with KRS 13B.120.
(2) If the final order differs from the recommended order, the final order shall comply with KRS 13B.120(3).

Section 10. Incorporation by Reference. (1) "CS-180, Request for Administrative Hearing", 7/14, is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Department for Income Support, Child Support Enforcement, 730 Schenkel Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN P. VENO, Commissioner
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: January 31, 2017
FILED WITH LRC: February 3, 2017 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 21, 2017, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 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 March 31, 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 40602, phone 502-564-7905, fax 502-564-7573, email Tricia.Orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Mary W. Sparrow, phone (502) 564-2285, extension 4832, email mary.sparrow@ky.gov., and Tricia Orme
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation details the process of a hearing: the availability, requests for, notification of, denial/dismissal of a request and appellant's rights.
(b) The necessity of this administrative regulation: This administrative regulation is necessary as it provides the procedures surrounding the hearing process as related to the child support enforcement program. KRS 13B.170, 194A.050(1), 205.712, 405.450, 45 C.F.R. 303.35, 42 U.S.C. 666.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The Cabinet has responsibility under KRS 13B, 194A.050(1), 205.712(2)(o), 205.712(12-13), 205.795, and by virtue of applying for federal funds under 42 U.S.C. 654 and 666 to establish procedures for the hearing process in a child support enforcement case. This administrative regulation sets forth such procedures and processes.
(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 for the hearing process in a child support enforcement case.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment eliminates the requirement to notify an obligor prior to a consumer credit report being generated. This change is consistent with amendments made to the Fair Credit Reporting Act, signed on December 4, 2015 and filed as Senate Bill 238 in the 2016 session and signed by the Governor on April 9, 2016.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to be consistent with federal and state laws.
(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes provide guidance for the Child Support Enforcement (CSE) program as well as participants in the program, by providing timeframes related to enforcement remedies being done on the participants' case.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the administration of the statutes through workers being able to generate a credit report without waiting 10 days to notice the obligor.
(3) List the type and number of individuals, businesses,

organizations, or state and local governments affected by this administrative regulation: The updates in this regulation will affect participants in the Child Support Enforcement Program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This change will eliminate unnecessary delays in receiving child support payments as staff will no longer have to send the advanced notice (CS-93) and wait 10 days before generating a credit report. Credit reports often provide an address and employment information for an obligor.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Participants in the Child Support Enforcement Program will benefit from the change, as child support staff will be able to locate an obligor and take the next appropriate enforcement action on that case.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
Initially: No additional funds will be necessary to implement the amendment to this administrative regulation.

(b) On a continuing basis: No additional funds will be necessary to implement the amendment to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds from The Child Support Enforcement State Program under Title IV-D of the Social Security Act support the implementation and enforcement of this administrative regulation. State General Funds are also utilized.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation neither establishes nor increases any fees.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Participants in the Child Support Enforcement Program will be affected by this amendment.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13B, 15.055, 205.710, 205.712, 205.745, 205.7685, 205.769, 205.778, 237.110, 341.392, 341.420, 405.411, 405.440, 405.450, 405.463, 405.465, 405.467, 405.470, 405.490,

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 additional 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? This administrative regulation will not generate additional funding.

(c) How much will it cost to administer this program for the first year? No additional funds will be necessary to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No additional funds will be necessary to implement this 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:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amendment)

922 KAR 1:400. Supportive services.

RELATES TO: KRS 2.015, 45.237-45.241, 194A.005(1), 199.011(4), 205.2003(3), 205.211, 205.703, 209.020(2), 209A.020(2), 600.020(1), (6), (8), 610.110(6), 620.020(1), 45 C.F.R. Parts 260-265, 42 U.S.C. 601-679b

STATUTORY AUTHORITY: KRS 194A.050(1), 605.130(4), 605.150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill responsibilities vested in the cabinet. KRS 605.150 authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605, including KRS 605.130(4), which authorizes the cabinet to perform services necessary for the protection of children. This administrative regulation establishes standards for provision of supportive services to a family receiving ongoing case management services or to safely maintain a child in the child's home through the cabinet, to the extent funds are available.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 194A.005(1), 600.020(6), 209.020(2), and 209A.020(2).

(2) "Child" means:

(a) A child[~~is~~] defined by KRS 199.011(4) and[~~,~~] 600.020(8);

(b) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with[~~, and as extended by~~] KRS 610.110(6); or

(c) A person under age twenty-one (21) who meets the exceptions to the age of majority in accordance with KRS 2.015.

(3) "Intensive family-based support services" means the goal of keeping the family united or if removal of a child is necessary, placing the child in the least restrictive setting consistent with his or her individual needs.

(4) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky's Temporary Assistance for Needy Families Program, a money payment program for a child who is deprived of parental support or care, as described at 921 KAR 2:006, Section 1(9).

(5) "Kentucky Works" means a program that assists a:

(a) Recipient of K-TAP in obtaining education, training, experience, and employment necessary to leave public assistance; or

(b) Former K-TAP recipient with job retention service.

(6) "Paraprofessional attendant" means a person with a high school diploma or bachelor's degree and training related to the services he or she provides, under the supervision of a licensed professional.

(7)"Rehabilitative services" means medical or remedial services recommended by a physician or other licensed practitioner of the healing arts, within the scope of his or her practice under state law, for maximum reduction of physical or mental disability and restoration of a recipient to his or her best possible functional level.

(8) "Relative placement support benefit" means a monetary benefit to address a child's immediate needs[~~need~~] during the cabinet's placement of the child with a nonparental relative.

(9) "Safety net services" means:

(a) A short-term intervention or maintenance service to help an individual or family develop and maintain skills and abilities to prevent out-of-home placement for a child in that family; or

(b) Monetary benefits to assist in maintaining self-sufficiency.

(10) "Targeted case management" means a set of activities which assist an individual in accessing needed medical, social, educational, and other support services.

Section 2. Child Care Services. The cabinet may refer an individual or family for child care services pursuant to 922 KAR 2:160 if the individual or family:

(1) Makes a request for assistance for child care expenses;

(2) Needs child care for protection or prevention of child abuse, neglect, or exploitation; or

(3) Needs child care for a child of a teen parent attending high school.

Section 3. Child Support Service. The cabinet may make a referral for child support services, by means of the process described at 921 KAR 1:380 on behalf of a child entering out-of-home care through a:

(1) Voluntary commitment agreement; or

(2) Court order assigning legal responsibility for the child to the cabinet.

Section 4. Intensive Family-based Support Services. (1) Intensive family-based support services shall be provided through a contractual agreement, for the purpose of:

(a) Stabilizing a child in the child's own home or foster home;

(b) Preventing further hospitalization or institutionalization; and

(c) Enabling a child and the child's family to improve their lives.

(2) An intensive family-based support service may be provided to a child with one (1) or more of the following:

(a) Intellectual[~~Mental retardation~~] or developmental disability;

(b) Emotional or behavioral disturbance;

(c) Dual diagnosis;

(d) Risk of institutionalization; or

(e) Need for aftercare services following release from an institution or other highly structured setting.

(3) Except for the assessment and discharge planning, intensive family-based support services shall not start while a child is in a hospital or an institution.

(4) Intensive family-based support services shall be available to a family with a child living in a:

(a) Biological home;

(b) Foster home; or

(c) Adoptive placement.

(5) The cabinet may make a referral for intensive family-based support services which may include the following:

(a) A comprehensive assessment, to include:

1. Review of medical, psychiatric, social, and educational assessments conducted within the last twelve (12) months; and

2. An in-home assessment;

(b) If appropriate, discharge planning provided through the service provider's involvement with a foster or biological family, the child, and the hospital or institution to ensure:

1. A coordinated approach upon discharge; and

2. That communication is clear regarding behaviors, goals, and recommended interventions;

(c) Planned support services provided to assist with routine day-to-day activity that is crucial to stabilization of a child within the family unit;

(d) Family intervention services, such as behavioral and family counseling, to assist a child and family in:

1. Identifying and resolving issues underlying the dysfunctional behaviors within a family; or

2. Eliminating barriers to change;

(e) Respite care services provided to allow a biological or a foster parent relief for a designated period of time from the stress of caring for an emotionally disturbed or physically disabled child or to allow time to attend to other needs;

(f) A paraprofessional attendant to provide direct in-home services to a child, or a biological or foster parent, as identified in the case plan;

(g) Purchase of care in an alternate living unit, as a component of an intensive family-based support services contract;

(h) Art or music therapy from a qualified professional;

(i) Educational consultation and support;

(j) Crisis intervention;

(k) Skill development; or

(l) Other service identified in the case plan.

(6) The type, frequency, intensity, and duration of services shall be determined according to each individual situation.

(7) A family case plan shall be developed to address:

(a) Family strengths and needs;

(b) Goals, objectives, and tasks;

(c) Time frames; and

(d) Anticipated outcomes.

Section 5. Safety Net Services. (1) Safety net services shall be provided for a former K-TAP recipient who:

(a) Has total income at or below 200 percent of federal poverty level; and

(b) Is no longer eligible for K-TAP benefits due to:

1. Failure to comply with Kentucky Works requirements of 921 KAR 2:370, Section 7(2); or

2. Reaching benefit time limitations established at 921 KAR 2:006, Section 21.

(2) A safety net service shall include contact with the family and may address the following:

(a) Assistance to the individual or family to identify the problem and resources available to improve the situation;

(b) Linkage to the appropriate resources; or

(c) Intervention in a crisis situation including:

1. Fuel shortage;

2. Utility shutoff;

3. Insufficient food, clothing, housing, or employment; or

4. Response to an inquiry regarding the family situation.

(3)(a) The cabinet may authorize fund distribution to an appropriate vendor, in order to provide for a family's safety net services.

(b) Up to a total of $635 may be paid over four (4) months during the twelve (12) month period following an event specified in subsection (1)(b) of this section.

Section 6. Medicaid Services. (1) Rehabilitative services shall be provided to a Medicaid-eligible child under the age of twenty-one (21) who meets the Department for Community Based Services' conditions and circumstances as a child in the custody of, or under the supervision of, or at risk of being in the custody of, the cabinet.

(2) Targeted case management services shall be provided to a Medicaid-eligible individual in accordance with 907 KAR 3:020, Section 3(1).

Section 7. K-TAP Determination for Domestic Violence Victims. If a report of alleged domestic violence is made the cabinet shall:

(1) Attempt to arrange a face-to-face interview with the alleged victim to conduct an assessment or investigation, according to the procedure established at 921 KAR 2:006, Section 25, and, if necessary, shall offer protective and general adult services; and

(2) Upon completion of the assessment or investigation, provide information to K-TAP whether the reported victim:

(a) Is in a domestic violence situation; and

(b) Has agreed to services.

Section 8. Assessment of Minor Teenage Parents. (1) If a determination is made that a minor teenage parent is an applicant or recipient of K-TAP and is not living with an adult or legal guardian, the minor teenage parent shall be referred for an assessment of the minor teenage parent's[~~his~~] safety, including assistance with an alternative living arrangement if necessary.

(2) The cabinet shall:

(a) Conduct a face-to-face contact with the minor teenager's parent and the minor parent's child;

(b) Conduct a face-to-face interview with the minor parent in order to assess the minor parent's current situation and the safety issues for the minor teenage parent and child;

(c) Determine if the minor teenager's parent or guardian accepts the minor teenager's living arrangement;

(d) Refer the family to the appropriate services; and

(e) Provide the following to the Division of Family Support:

1. Identification of safety issues;

2. A recommendation regarding opening a protective or preventive services case on the family; and

3. Services to which the minor teenage parent has been referred.

Section 9. Relative Placement Support Benefit. (1)[~~Effective April 1, 2013,~~] To the extent that funds are available, the cabinet shall provide a one (1) time relative placement support benefit:

(a) To facilitate the cabinet's placement of a child with a nonparental relative as an alternative to the child's placement in foster care;

(b) If a court of competent jurisdiction has granted temporary custody of the child to the relative or the cabinet[~~determines that a child is at risk of being placed in foster care, or is in the custody of the cabinet and residing in foster care~~] due to:

1. Child[~~A cabinet investigation pursuant to 922 KAR 1:330 that resulted in a substantiation of~~] abuse or neglect by[~~naming~~] the child's biological or adoptive parent[~~as the perpetrator~~]; or

2. The death of both parents;

(c) That will provide for a child's immediate needs, such as[~~need for~~]:

1. Clothing;

2. School supplies;

3. Additional furniture; or

4. A deposit for a larger apartment[~~; or~~

~~5. An essential documentable cost up to the maximum amount allowed in paragraph (d) of this subsection~~]; and

(d) That is equal to or does not exceed the [~~maximum~~] amount for the appropriate number of eligible children as follows:

Number of Eligible Children	[~~Maximum~~]Payment Amount
1	$350
2	$700
3	$1,050
4	$1,400
5	$1,750
6 or more	$2,100

(2)(a) The relative placement support benefit shall be issued by check or electronic fund transfer directly to:

1. The relative with whom the child is placed; or

2. A vendor providing the needed service or item listed in subsection (1)(c) of this section.

(b) Before the provision of the relative placement support benefit, the relative or the vendor shall provide tax status and contact information for accounting of the benefit's disbursement.

(3) The cabinet shall indicate the need for a relative placement support benefit in the relative's home evaluation in accordance with 922 KAR 1:140.

(4) In accordance with Kentucky's Title IV-A Temporary Assistance for Needy Families Block Grant state plan, the cabinet shall prioritize a child for the relative placement support benefit if the child is:

(a) Placed with a relative whose household income is at or below 200 percent of the federal poverty level as determined annually by the U.S. Department of Health and Human Services; or

(b) Determined eligible for K-TAP.

Section 10. Improper Payments. The cabinet shall recover the amount of an improper payment pursuant to KRS 45.237-45.241 and 205.211, including assistance paid pending the outcome of a hearing, from the claimant-payee.

Section 11. State Plan. A copy of the state's Title IV-A Temporary Assistance for Needy Families state plan may be obtained by a request in writing made to the Commissioner of the Department for Community Based Services, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621.

ADRIA JOHNSON, Commissioner
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: January 31, 2017

FILED WITH LRC: February 3, 2017 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 21, 2017, at 9:00 a.m. in the Distance Learning Center, Health Services Building, Third Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 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 March 31, 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 40601, phone 02-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email Elizabeth.Caywood@ky.gov., and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for the provision of supportive services to a family receiving ongoing case management services or to safely maintain a child in the child's home through the cabinet, to the extent funds are available.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards for the provision of supportive services to a family receiving ongoing case management services or to safely maintain a child in the child's home through the cabinet, to the extent funds are available.

(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 supportive services for vulnerable children and families to the extent funds are available.

(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 supportive services for vulnerable children and families to the extent funds are available.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation authorizes the issuance of the relative placement support benefit directly to the relative in addition to a vendor. The amendment makes other technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to reduce administrative burden and delayed access to necessary benefits for relative caregivers who accept children for out-of-home placement from the cabinet.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of

the authorizing statutes by authorizing direct payment of the relative placement support benefit to the relative reinforcing the child's safety in placement, continuity with the child's family of origin, and overall welfare.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its refinement of the relative placement support benefit to better support vulnerable children and families.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 500 relative placement support benefits are issued annually.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Relatives who accept children for placement will have to provide tax status and contact information to receive the relative placement support benefit directly in accordance with the state's accounting processes.

(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 new or additional costs imposed on regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Relatives who accept children for placement from the cabinet will have more direct, timelier access to the benefit and greater discretion over the use of the benefit, including selection of retailer.

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

(a) Initially: There is no new or additional cost anticipated for the administrative body. The benefit subject to change through this amendment has been in existence since 2013. The amendment does not propose to change the benefit amount, but rather to whom the benefit may be paid.

(b) On a continuing basis: There is no new or additional cost anticipated for the administrative body 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 funding sources to be used for the implementation and enforcement of this administrative regulation include the federal funds from the Temporary Assistance for Needy Families Block Grant (TANF) and Social Service Block Grant (SSBG), Restricted Funds (derived from Medicaid), General Funds; and state funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement the amendment to this administrative regulation. All supportive services outlined in this administrative regulation are provided to the extent funding is available.

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 260-265, 42 U.S.C. 601-679b

2. State compliance standards. KRS 194A.050(1), 605.130(4), 605.150

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 260-265, 42 U.S.C. 601-679b

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, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 605.130(4), 605.150, 45 C.F.R. 260-265, 42 U.S.C. 601-679b

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

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

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

(c) How much will it cost to administer this program for the first year? There will be no new costs to the agency to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no new costs to the agency to implement this administrative regulation for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

NEW ADMINISTRATIVE REGULATIONS

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Behavioral Health, Developmental and Intellectual Disabilities
Division of Program Integrity
(Repealer)

908 KAR 3:051. Repeal of 908 KAR 3:050.

RELATES TO: KRS 210.710, 210.720, 210.730
STATUTORY AUTHORITY: KRS 210.010
NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.010 authorizes the Secretary for the Cabinet for Health and Family Services to promulgate administrative regulations for the administration of the cabinet and of the institutions under the control of the cabinet. This administrative regulation repeals 908 KAR 3:050. This administrative regulation is being repealed and all requirements from this administrative regulation are being added to 908 KAR 3:060.

Section 1. 908 KAR 3:050, Per diem rates, is hereby repealed.

WENDY MORRIS, Commissioner
VICKIE YATES BROWN GLISSON, Secretary
APPROVED BY AGENCY: January 31, 2017
FILED WITH LRC: February 3, 2017 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 21, 2017 at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 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 March 31, 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: Justin Dearinger, BHDID Regulation Coordinator, phone (502) 782-7212, email Justin.Dearinger@ky.gov., and Tricia Orme
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation repeals 908 KAR 3:050.
(b) The necessity of this administrative regulation: This administrative regulation is necessary because all requirements where added to 908 KAR 3:060.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 210.010 in that it administers the administrative regulations concerning the institutions under control of the Cabinet.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statute by repealing regulations to eliminate redundancy.
(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: Thirteen mental health facilities and programs will be impacted by this administrative regulation including: Central State Hospital; Bingham Gardens Intermediate Care Facility/Clinic; Western State Hospital; Western State Nursing Facility; Outwood Intermediate Care Facility; Oakwood Intermediate Care Facility/Clinic; Hazelwood Center; Glasgow State Nursing Facility; Del Maria; Meadows; Wind Song; Eastern State Hospital; & Eastern State Nursing Facility.
(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: These regulated entities will not have to take any actions to comply with this administrative regulation.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost associated with this administrative regulation.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):
Mental health, developmental and intellectual disability facilities will have one regulation instead of two for rates.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No costs will be incurred to implement this administrative regulation on an initial basis.
(b) On a continuing basis: No costs will be incurred to implement this administrative regulation on a continuing basis.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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 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 and does not directly or indirectly increase fees.
(9) TIERING: Is tiering applied? Tiering will not be applied as this regulation is applied statewide in an equal 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? The Cabinet for Health and Family Services.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The following statutes authorize the actions taken by this administrative regulation: KRS 210.010
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 new revenues for

state or local government in the first year.

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

(c) How much will it cost to administer this program for the first year? There will be no additional costs to implement this program in the first year.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing 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:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of February 10, 2017

The February meeting of the Administrative Regulation Review Subcommittee was held on Friday, February 10, 2017, at 12 p.m. in Room 149 of the Capitol Annex. Representative Ken Upchurch Co-Chair, called the meeting to order, the roll call was taken. The minutes of the January 2017 meeting were approved.

Present were:
Members: Senators Julie Raque-Adams, Perry Clark, Alice Forgy Kerr, and Ernie Harris; and Representatives Jason Petrie, 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, Misty Indy, Ethics Commission; Jimmy Adams, Lisa Lang, Education Professional Standards Board; Steve Bullard, Department of Military Affairs; Mike Dossett, Tiffany Sizemore, Division of Emergency Management; Louis Kelly, Board of Physical Therapy; Brian Judy, Martin Wesley, Board of Licensed Professional Counselors; Dr. Elizabeth Reda Milazzotto, Board of Licensure for Pastoral Counselors; Angela Evans, Charles O'Neal, Board of Medical Services; Ann Dangelo, Megan McClain, Department of Transportation; Chris Garland, Karen Waldrop, David Wicker, Department of Fish and Wildlife Resources; Tony Hatton, Aaron Keatley, Bruce Scott, Department for Environmental Protection; Mike Pettie, Kristi Redmon, Department of Workplace Standards; Stephen Humphress, Melissa McQueen, Department of Alcoholic Beverage Control; Deborah Crocker, Tiffany Ge, Department of Financial Institutions; Jamie Eads, John Forgy, Marc Guilfoil, Horse Racing Commission; Eric Clark, Justin Clark, Office of the Secretary, Nancy Galvagni, Hospital Association; Paul Coomes, Diona Mullins, Office of Health Policy; Robert Silverthorn Jr., Office of Inspector General; Elizabeth Caywood, Todd Trapp, Department of Community Based Services; Tom Fitzgerald, Kentucky Recourses Council, and Kelly Leach.

The Administrative Regulation Review Subcommittee met on Friday, February 10, 2017, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

FINANCE AND ADMINISTRATION CABINET: Executive Branch Ethics Commission: Commission

9 KAR 1:060. Requirements relating to fundraising activities and charitable nonprofit organizations. Katie Gabhart, executive director, and Misty Judy, general counsel, represented the commission.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Education Professional Standards Board: General Administration

16 KAR 1:010. Standards for certified teachers. Jimmy Adams, executive director, and Lisa Lang, general counsel, represented the board.

In response to questions by Co-Chair Harris, Mr. Adams stated that the major changes to this administrative regulation included a series of streamlined standards for educator preparation providers that would reduce duplication and condense standards. These standards would apply to and reduce the workload for colleges and universities. The intent was to increase efficiency.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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. Brig. Gen. Steve Bullard, counsel, Department of Military Affairs; Michael Dossett, director, Kentucky Division of Emergency Management, and chair, Kentucky Emergency Response Commission; and Tiffany Sizemore, program manager, Kentucky Emergency Response Commission, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE to clarify the acronym, "EHS;" (2) to amend the RELATES TO paragraph to add citations; (3) to amend Sections 1 through 5 to comply with the drafting requirements of KRS Chapter 13A; and (4) to revise the REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT and the FISCAL NOTE ON STATE OR LOCAL GOVERNMENT. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add citations; (2) to amend Sections 1 through 5 and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A; (3) to add Section 8 to incorporate material by reference; (4) to revise the REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT and the FISCAL NOTE ON STATE OR LOCAL GOVERNMENT; and (5) to include a FEDERAL MANDATE ANALYSIS COMPARISON and a SUMMARY OF MATERIAL INCORPORATED BY REFERENCE. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add citations; (2) to amend Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (3) to revise the REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT and the FISCAL NOTE ON STATE OR LOCAL GOVERNMENT. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add citations; and (2) to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to add citations; (2) to amend Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A; and (3) to include a FEDERAL MANDATE ANALYSIS COMPARISON. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and the NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct citations; (2) to amend Sections 1 through 15 to comply with

the drafting and formatting requirements of KRS Chapter 13A; (3) to amend Sections 3 and 10 to clarify deadlines; (4) to amend Section 10 to provide for electronic filing of papers via email; and (5) to revise the REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT and the FISCAL NOTE ON STATE OR LOCAL GOVERNMENT. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Board of Physical Therapy: Board

201 KAR 22:020. Eligibility and credentialing procedure. Louis Kelly, general counsel, represented the board.

In response to a question by Co-Chair Harris, Mr. Kelly stated that, although it was not common, the board had instances of an applicant failing the required exam more than six (6) times. Most applicants passed the exam in one (1) or two (2) attempts. The board believed that the remediation plan should be developed without board involvement. The remediation plan should be a matter between the applicant and the educational institution.

A motion was made and seconded to approve the following amendments: to amend Sections 4 and 11 and the Supervisory Agreement for Applicant with Temporary Permit to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Licensed Professional Counselors: Board

201 KAR 36:005. Definitions for 201 KAR Chapter 36. Brian Judy, assistant attorney general, and Martin Wesley, chair, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A; and (3) to amend Section 1 to clarify: (a) what shall be considered a miscellaneous crime affecting businesses, occupations, and professions; and (b) what shall constitute multiple offenses of driving while under the influence or impaired. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 36:020. Fees.

201 KAR 36:030. Continuing education requirements.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct citations; and (2) to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 36:040. Code of ethics.

In response to questions by Co-Chair Harris, Mr. Judy stated that the previous requirement for peer intervention in the case of impairment resulted in colleague-to-colleague conflict, which negatively impacted the profession as a whole. The board still retained disciplinary options if a complaint of impairment was filed.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 36:045. Distance counseling.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (2) to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A; (3) to amend Section 4 to add a reference to a licensee not splitting fees; and (4) to add a new Section 5 to cover the utilization of distance counseling in the provision of continuing education. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 36:050. Complaint management process.

201 KAR 36:055. Administrative subpoena.

201 KAR 36:060. Qualifying experience under supervision.

A motion was made and seconded to approve the following amendments: (1) to amend Section 5 to clarify that the prohibition on a supervisee not continuing to practice professional counseling shall not apply to a supervision agreement being terminated due to extenuating circumstances that allow for temporary supervision; and (2) to amend Sections 6 and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

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

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 4, and 6 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 5 to clarify what shall be considered as evidence of rehabilitation and what shall happen if rehabilitation is not established. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 3, and 6 to comply with the drafting requirements of KRS Chapter 13A; (2) to amend Section 4 to clarify that if a supervisor fails to verify an associate's hours by the license termination date that the supervision agreement shall be terminated; (3) to amend Section 5 to clarify what shall be considered as evidence of rehabilitation and what shall happen if rehabilitation is not established; and (4) to update the renewal and reinstatement applications to make technical corrections. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to delete a citation; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Licensure for Pastoral Counselors: Board

201 KAR 38:020. Application. Brian Judy, assistant attorney general, and Dr. Elizabeth Milazzotto, board member, represented the board.

In response to questions by Senator Clark, Mr. Judy stated that licensed pastoral counselors were different from licensed professional counselors in that they approached treatment from a theological and faith basis. Religious clerics were exempt from penalties for counseling without a license. Dr. Milazzotto stated that pastoral counseling usually took place in a faith-based center, and education requirements were different for a pastoral counselor and a professional counselor.

Senator Kerr stated that this licensure category was established so that pastoral counselors could receive insurance reimbursement. Most pastoral counselors actually had more education than most professional counselors.

In response to a question by Co-Chair Harris, Mr. Judy stated that the reduction in education hours was a minimum requirement.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Section 1 to comply with the drafting and

formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 38:030. Equivalent course of study.

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 Sections 1 and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: to amend Section 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Emergency Medical Services: Board

202 KAR 7:810. Survivor benefits for death of emergency medical services personnel. Angela Evans, board counsel, and Charles O'Neal, deputy executive director, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Public Transportation Infrastructure Authority: Authority

202 KAR 10:010. Unsolicited proposals. Megan McLain, assistant general counsel, represented the authority.

202 KAR 10:020. Public-private partnerships.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

202 KAR 10:030 & E. Tolling projects.

In response to a question by Co-Chair Harris, Ms. McLain stated that the authority had updated the Web site, and the tolling information was now easily available within only one (1) click of the authority's home Web page.

A motion was made and seconded to approve the following amendments: to amend Section 2 to clarify that "circular" means "regional newspaper;" (2) to amend Section 3 to comply with the drafting requirements of KRS Chapter 13A; and (3) to amend Section 4 to clarify that an out-of-service notice shall only be placed on a commercial motor vehicle in violation of KRS 175B.040(4) after the owner has received a notice of violation. Without objection, and with agreement of the agency, the amendments were approved.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Hunting and Fishing

301 KAR 3:015. Shooting ranges on department-owned or managed lands. Chris Garland, program manager; Karen Waldrop, deputy commissioner; and David Wicker, general counsel, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 3, and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TRANSPORTATION CABINET: Department of Highways: Preconstruction

603 KAR 2:020. Public-private partnerships. Ann D'Angelo, assistant general counsel, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to: (a) add a definition for "director"; and (b) clarify a definition to establish that "secretary" means Secretary of the Transportation Cabinet; and (2) to amend Sections 1 and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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. Mike Pettit, occupational safety and health standards specialist, and Kristi Redmon, occupational safety and health standards specialist, represented the division.

803 KAR 2:303. Walking-working surfaces.

In response to questions by Co-Chair Harris, Mr. Pettit stated that these administrative regulations updated standards commensurate with federal revisions. Walking-working surface standards, which had not been revised since 1973, were updated. Personal protective equipment and American National Standards Institute provisions were updated. New training was required for personal fall protection systems. The general industry scaffold standard was deleted in lieu of the construction standard, which required personal fall arrest systems. The federal financial analysis expected the savings from prevented deaths and injuries to more than offset the costs of implementation. These administrative regulations were expected to improve safety for employees.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Section 2 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 1: (a) to cite to statutory definitions; and (b) for consistency with other department administrative regulations. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:305. Powered platforms, manlifts, and vehicle-mounted work platforms.

803 KAR 2:308. Personal protective equipment.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 2 to correct citations; and (2) to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:313. Materials handling and storage.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph and Section 2 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 1 for consistency with other department administrative regulations. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:317. Special industries.

A motion was made and seconded to approve the following amendment: to amend Section 2 to correct a citation. Without objection, and with agreement of the agency, the amendment was approved.

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Local Administrators

804 KAR 10:010. Appointment notification of local alcoholic beverage administrator. Stephen Humphress, general counsel, and Melissa McQueen, staff attorney, represented the department.

804 KAR 10:021. Repeal of 804 KAR 10:020 and 804 KAR 10:025.

Department of Financial Institutions: Division of Depository Institutions: Administration

808 KAR 1:111. Repeal of 808 KAR 1:110. Deborah Crocker, assistant general counsel, and Tiffany Ge, general counsel, represented the division.

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. Jamie Eads, director, Division of Incentives and Development; John Forgy, general counsel; and Marc Guilfoil, executive director, represented the commission.

811 KAR 1:220. Harness racing at county fairs.

A motion was made and seconded to approve the following amendments: to amend Section 12 to delete references to an outdated effective date. Without objection, and with agreement of the agency, the amendments were approved.

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. Eric Clark, legislative director; Justin Clark, general counsel; and Diona Mullins, executive advisor, represented the office.

Certificate of Need

900 KAR 6:055. Certificate of need forms.

900 KAR 6:060. Timetable for submission of certificate of need applications.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 2(2) to clarify that the revised submission dates are applicable "beginning" July 1, 2017, rather than "after" that date. Without objection, and with agreement of the agency, the amendments were approved.

900 KAR 6:065. Certificate of need application process.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 through 4, 6, 7, and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 6 to delete provisions that no longer apply because a stated deadline has already occurred. Without objection, and with agreement of the agency, the amendments were approved.

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. Robert Silverthorn, Jr., inspector general, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct citations; (2) to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A; (3) to amend Sections 1, 4, and 9 and the material incorporated by reference for clarity; and (4) to amend Sections 4 and 5 to delete notification provisions that repeat or conflict with statute, as required by KRS 13A.120. Without objection, and with agreement of the agency, the amendments were approved.

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.

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

A motion was made and seconded to approve the following amendments: to amend Sections 1, 5, 7, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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. Elizabeth Caywood, executive advisor; Eric Clark, legislative director; and Todd Trapp, assistant director, represented the division.

Other Business: Co-Chair Harris announced that committee staff administrator, Donna Little, was leaving the Subcommittee to be a special assistant to the Cabinet for Health and Family Services. Ms. Little had served LRC for nearly twenty-three (23) years, beginning as an intern, and had worked for Constituent Services, the Task Force for Governmental Ethics, the Education Committee, and the Administrative Regulation Review Subcommittee. A resolution was read honoring Ms. Little and her service. Co-Chair Harris stated that Ms. Little, with her many talents and consummate professionalism, would be sorely missed by the subcommittee. Senator Kerr stated that the transfer of Ms. Little, with her well-known work ethic, was a tremendous loss to the Subcommittee. Members appreciated all Ms. Little had done for the legislature. Co-Chair Upchurch thanked Ms. Little for her service.

Ms. Little thanked the Subcommittee for the resolution and recognition, stating that this was the best subcommittee in the General Assembly. Members and staff worked together for the benefit of the Commonwealth. While excited about future endeavors, Ms. Little would miss working with this Subcommittee.

A motion was made and seconded to adopt the resolution. Without objection, the resolution was adopted.

The following administrative regulations were deferred to the March 6, 2017, meeting of the Subcommittee:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Education Professional Standards Board: Certification Procedures

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.

GENERAL GOVERNMENT CABINET: Board of Physical Therapy: Board

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.

201 KAR 28:200. Continuing competence.

Board of Alcohol and Drug Counselors: Board

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

201 KAR 35:070. Supervision experience.

Board of Licensure for Massage Therapy: Board

201 KAR 42:020. Fees.

201 KAR 42:040. Renewal.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Water: Water Resources

401 KAR 4:070. Coal combustion residuals surface impoundments. Tony Hatton, deputy commissioner; Aaron Keatley, commissioner; and Bruce Scott, deputy secretary, represented the department. Tom FitzGerald, director, Kentucky Resources Council, and Kelley Leach, resident of an impacted community, appeared in opposition to these administrative regulations.

In response to a question by Co-Chair Upchurch, Mr. Scott stated that in 2015 U.S. EPA promulgated regulations to address coal combustion residuals (CCRs). Kentucky had approximately forty-six (46) coal ash ponds and twelve (12) CCR landfills. Most coal ash ponds would be closed as a result of the federal regulations. The requirements were self implementing, meaning utilities were responsible for regulating themselves to ensure compliance with the program. Kentucky chose to promulgate these state requirements to ensure enforcement capabilities.

In response to questions by Co-Chair Harris, Mr. Scott stated that U.S. EPA provided no funding to states for this self-implementing program. Because the federal regulations were rushed, many implementation compliance deadlines had already passed. The department complied with the KRS 13A.270 public comment process and received public comments pursuant to these administrative regulations. The department amended some of these administrative regulations in response to the public comments by adding financial assurance requirements, changing the permitting and permit application process, and changing the public notification process. Landfill disposal of CCR was considered safer than containment in coal ash ponds. The Effluent Guideline Rule under the Clean Water Act required the leachate from CCRs to be treated.

Mr. FitzGerald stated that in his thirty-three (33) years representing Kentucky Resources Council, he had never seen a more reckless package of administrative regulations. The federal rules did not require Kentucky to eliminate permitting procedures. CCR waste had hazardous components. Kentucky was eliminating requirements for special waste landfills as pertained to CCR waste. A proposal for a special waste landfill would have required an individual permit, with siting, engineering, construction, groundwater and surface water monitoring, operation, closure, and post-closure requirements. The individual permit would be subject to public review and potentially public challenge. The proposed registered permit-by-rule would require only a one (1) page disclosure with very little technical information. The individual permitting structure had been in place for over twenty-five (25) years.

Mr. Leach stated that he owns a 150-acre family farm that adjoins the Trimble County Louisville Gas and Electric Company proposed CCR landfill. His family had owned this farm for three (3) generations, and Mr. Leach had planned to live his life there; however, he had tried to sell the property recently because of the planned CCR landfill. Louisville Gas and Electric Company had several Notices of Deficiency issued for the current landfill permit. The porous nature of the underlying dolomite layer meant that, even with liners, the groundwater was at significant risk of being contaminated by leachate from the CCR landfill. There was also a concern regarding noise and light from the facility. Mr. Leach requested that the Subcommittee not allow the current permitting process to be eliminated.

In response to questions by Senator Clark, Mr. Scott stated that there was no current permitting program for coal ash ponds. These administrative regulations would give the department a framework and requirements. The department agreed to defer consideration of these administrative regulations to the March 6 meeting of the Subcommittee.

Representative Turner stated that he wanted the department to defer and wanted additional time to research the implications of this administrative regulation package.

In response to a question by Co-Chair Harris, Mr. FitzGerald stated that ratepayers would be affected if there were environmental problems resulting from CCR disposal. A motion was made and seconded to defer consideration of these administrative regulations. Without objection, and with agreement of the agency, these administrative regulations were deferred to the March 6 meeting of the subcommittee.

Division of Waste Management: Special Waste

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

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct citations; and (2) to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Coal Combustion Residuals (CCR)

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

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

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

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 4, 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.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Driver Licensing: Administration

601 KAR 2:030 & E. Ignition interlock.

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.

PUBLIC PROTECTION CABINET: 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.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Medicaid Services: Commissioner's Office: Managed Care

907 KAR 17:015 & E. Managed care organization requirements and policies relating to providers.

The Subcommittee adjourned at 1:35 p.m. until March 6, 2017, at 1 p.m.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON EDUCATION
Meeting of January 30, 2017

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Education for its meeting of January 30, 2017, having been referred to the Committee on January 4, 2017, pursuant to KRS 13A.290(6):

13 KAR 2:060
13 KAR 4:010 & E
702 KAR 3:171
705 KAR 4:231
780 KAR 4:012

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the January 30, 2017 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates **I - 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 **I - 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 **I - 23**

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 **I - 26**

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

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 *Administrative Register of Kentucky* but had not yet gone into effect when the *2016 Kentucky Administrative Regulations Service* was published.

SYMBOL KEY:

* Statement of Consideration not filed by deadline
** Withdrawn, not in effect within 1 year of publication
*** Withdrawn before being printed in Register
**** Emergency expired after 180 days
(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

Regulation Number	42 Ky.R. Page No.	Effective Date
9 KAR 1:040E	2866	5-13-2016
Replaced		See 43 Ky.R.
301 KAR 2:221E	1699	11-3-2015
Resubmitted	2868	5-11-2016
Replaced		See 43 Ky.R.
301 KAR 2:222E	1701	11-3-2015
Resubmitted	2870	5-11-2016
Replaced		See 43 Ky.R.
301 KAR 2:225E	1111	8-21-2015
Resubmitted	2875	5-11-2016
Replaced	2944	8-4-2016
401 KAR 31:040E	2877	4-26-2016
Replaced		See 43 Ky.R.
601 KAR 2:030E	1114	9-1-2015
Resubmitted	2702	3-29-2016
Expired		10-25-2016
921 KAR 3:035E	2708	4-1-2016
Replaced		See 43 Ky.R.
922 KAR 1:320E	2530	2-26-2016
Replaced		See 43 Ky.R.
922 KAR 2:020E	2534	2-26-2016
Replaced		See 43 Ky.R.
922 KAR 2:160E	2540	2-26-2016
Replaced		See 43 Ky.R.
922 KAR 2:260E	2550	2-26-2016
Replaced		See 43 Ky.R.

ORDINARY ADMINISTRATIVE REGULATIONS:

Regulation Number	42 Ky.R. Page No.	Effective Date
9 KAR 1:040		
Amended	2911	See 43 Ky.R.
11 KAR 4:080		
Amended	2611	7-1-2016
11 KAR 5:145		
Amended	2612	7-1-2016
103 KAR 3:050		
Amended	2614	
As Amended	2881	7-1-2016
200 KAR 30:010		
Amended	2913	See 43 Ky.R.
200 KAR 30:020		
Amended	2914	See 43 Ky.R.
200 KAR 30:030		
Amended	2916	See 43 Ky.R.
200 KAR 30:040		
Amended	2918	See 43 Ky.R.
200 KAR 30:050		
Repealed	2997	10-7-2016
200 KAR 30:051*(r)*	2997	10-7-2016
200 KAR 30:060		
Repealed	2997	10-7-2016
200 KAR 30:070		
Amended	2919	
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		
Amended	2251	
AmComments	2591	
As Amended	2888	6-15-2016
201 KAR 23:075		
Amended	2812	See 43 Ky.R.
201 KAR 29:015		
Amended	2628	See 43 Ky.R.
201 KAR 32:030		
Amended	2817	See 43 Ky.R.
201 KAR 44:020		
Repealed	2685	7-1-2016
201 KAR 44:021*(r)*	2685	7-1-2016
201 KAR 44:030		
Repealed	2685	7-1-2016
201 KAR 45:110		
Amended	855	See 43 Ky.R.
201 KAR 46:020		
Amended	2932	See 43 Ky.R.
201 KAR 46:070		
Amended	2933	See 43 Ky.R.
301 KAR 2:095		

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	42 Ky.R. Page No.	Effective Date
Amended	2819	7-19-2016
301 KAR 2:122		
Amended	2820	See 43 Ky.R.
301 KAR 2:176		
Amended	2935	See 43 Ky.R.
301 KAR 2:221		
Amended	2937	See 43 Ky.R.
301 KAR 2:222		
Amended	2940	See 43 Ky.R.
301 KAR 2:225		
Amended	2944	8-4-2016
301 KAR 2:226		
Amended	2822	See 43 Ky.R.
301 KAR 5:040		
Amended	2947	See 43 Ky.R.
401 KAR 31:040		
Amended	2949	See 43 Ky.R.
401 KAR 51:010		
Amended	2824	See 43 Ky.R.
401 KAR 53:010		
Amended	2830	See 43 Ky.R.
501 KAR 6:020		
Amended	2630	
AmComments	2908	See 43 Ky.R.
501 KAR 6:170		
Amended	2632	
As Amended	2890	7-1-2016
600 KAR 1:030		
Repealed	2846	8-2-2016
600 KAR 1:031*(r)*	2846	8-2-2016
600 KAR 1:045		
Repealed	2846	8-2-2016
600 KAR 2:010		
Repealed	2847	8-2-2016
600 KAR 2:011*(r)*	2847	8-2-2016
600 KAR 2:020		
Repealed	2847	8-2-2016
600 KAR 2:030		
Repealed	2847	8-2-2016
600 KAR 2:040		
Repealed	2847	8-2-2016
601 KAR 1:030		
Repealed	2849	8-2-2016
601 KAR 1:031		
Repealed	2849	8-2-2016
601 KAR 1:032*(r)*	2849	8-2-2016
601 KAR 1:045		
Repealed	2849	8-2-2016
601 KAR 1:050		
Repealed	2849	8-2-2016
601 KAR 1:065		
Repealed	2849	8-2-2016
601 KAR 1:070		
Repealed	2849	8-2-2016
601 KAR 2:030		
Amended	2833	
Withdrawn by agency		10-27-2016
601 KAR 9:055		
Repealed	2850	8-2-2016
601 KAR 9:056*(r)*	2850	8-2-2016
601 KAR 15:010		
Repealed	2851	8-2-2016
601 KAR 15:020		
Repealed	2851	8-2-2016
601 KAR 15:030*(r)*	2851	8-2-2016
704 KAR 3:470		
Repealed	2998	9-2-2016
704 KAR 3:471*(r)*	2998	9-2-2016
780 KAR 4:030		
Repealed	2999	9-2-2016
780 KAR 4:031	2999	9-2-2016
780 KAR 7:060		
Amended	2951	See 43 Ky.R.
780 KAR 7:070		
Repealed	3000	9-2-2016
780 KAR 7:071*(r)*	3000	9-2-2016
803 KAR 2:300		
Amended	2953	9-2-2016
803 KAR 2:307		
Amended	2955	See 43 Ky.R.
803 KAR 2:308		
Amended	2957	9-2-2016
803 KAR 2:317		
Amended	2958	9-2-2016
803 KAR 2:318		
Amended	2960	9-2-2016
803 KAR 2:320		
Amended	2962	9-2-2016
803 KAR 2:400		
Amended	2968	See 43 Ky.R.
803 KAR 2:403		
Amended	2970	9-2-2016
803 KAR 2:404		
Amended	2972	9-2-2016
803 KAR 2:421		
Amended	2974	9-2-2016
803 KAR 2:425		
Amended	2976	9-2-2016
803 KAR 2:500		
Amended	2978	9-2-2016
803 KAR 25:010		
Amended	2634	See 43 Ky.R.
803 KAR 25:009		
Repealed	2686	10-7-2016
803 KAR 25:014*(r)*	2686	10-7-2016
803 KAR 25:089		
Amended	2980	10-7-2016
804 KAR 4:400		
Amended	2839	
Withdrawn		7-13-2016
804 KAR 9:040		
Amended	2648	9-2-2016
808 KAR 9:050	2852	See 43 Ky.R.
815 KAR 6:010		
Amended	2265	
AmComments	2596	
As Amended	2891	7-1-2016
815 KAR 6:040		
Amended	2269	
As Amended	2894	7-1-2016
815 KAR 6:080		
Amended	2270	
As Amended	2895	7-1-2016
815 KAR 6:090		
Amended	2272	
AmComments	2600	
As Amended	2895	7-1-2016
815 KAR 7:120		
Amended	2650	6-22-2016
815 KAR 7:125		
Amended	2653	6-22-2016
815 KAR 8:095	2687	
As Amended	2897	6-22-2016
815 KAR 20:084	2688	
As Amended	2898	6-22-2016
815 KAR 20:191		
Amended	2655	
As Amended	2899	6-22-2016
815 KAR 20:195		
Amended	2661	

Regulation Number	42 Ky.R. Page No.	Effective Date
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.

SYMBOL KEY:
* Statement of Consideration not filed by deadline
** Withdrawn, not in effect within 1 year of publication
*** Withdrawn before being printed in Register
(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation

VOLUME 43

EMERGENCY ADMINISTRATIVE REGULATIONS:
(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

9 KAR 1:040E		See 42 Ky.R.
Replaced	392	10-7-2016
13 KAR 4:010E	657	10-14-2016
Replaced	1163	1-30-2017
101 KAR 2:034E	873	11-15-2016
101 KAR 2:180E	877	11-15-2016
101 KAR 3:045E	880	11-15-2016
101 KAR 2:210E	517	9-15-2016
Replaced	599	1-6-2017
103 KAR 15:180E	168	
Replaced	266	11-4-2016
200 KAR 2:006E	659	9-15-2016
Replaced	1164	2-3-2017
201 KAR 47:010E	519	8-25-2016
Replaced	1170	2-3-2017
201 KAR 47:020E	522	8-25-2016
202 KAR 10:030E	885	11-14-2016
Replaced	1172	2-3-2017
301 KAR 2:221E		See 42 Ky.R.
Replaced	202	8-4-2016
301 KAR 2:222E		See 42 Ky.R.
Replaced	203	8-4-2016
401 KAR 31:040E		See 42 Ky.R.
Replaced	207	8-4-2016
601 KAR 2:030E	888	10-27-2016
804 KAR 4:400E	171	7-15-2016
Replaced	546	11-4-2016
804 KAR 4:410E	172	7-15-2016
Replaced	547	11-4-2016
804 KAR 11:010E	174	7-15-2016
Replaced	752	1-6-2017
806 KAR 9:360E	894	10-25-2016
900 KAR 5:020E	665	9-27-2016
900 KAR 10:200E	896	11-1-2016
902 KAR 2:020E	5	6-15-2016
Replaced	568	11-16-2016
902 KAR 20:091E	901	11-1-2016
902 KAR 55:015E	912	11-15-2016
907 KAR 1:045E	915	11-1-2016
907 KAR 1:047E	921	11-1-2016
907 KAR 7:010E	176	6-30-2016
Withdrawn		9-15-2016
907 KAR 7:015E	187	6-30-2016
Withdrawn		9-15-2016
907 KAR 15:005E	925	11-1-2016
907 KAR 15:010E	928	11-1-2016
907 KAR 15:015E	941	11-1-2016
907 KAR 17:015E	1144	12-1-2016
907 KAR 17:035E	1149	12-1-2016
907 KAR 17:040E	1152	12-1-2016
921 KAR 2:015E	1154	12-14-2016
921 KAR 3:035E		See 42 Ky.R.
Replaced	218	8-17-2016
922 KAR 1:320E		See 42 Ky.R.
Replaced	45	8-17-2016
922 KAR 1:360E	666	9-28-2016
Replaced	826	2-3-2017
922 KAR 2:020E		See 42 Ky.R.
Replaced	221	8-17-2016
922 KAR 2:160E		See 42 Ky.R.
Replaced	225	8-17-2016
922 KAR 2:260E		See 42 Ky.R.
Replaced	65	8-17-2016

ORDINARY ADMINISTRATIVE REGULATIONS:

2 KAR 2:010		
Amended	69	10-7-2016
2 KAR 2:020		
Amended	70	
As Amended	390	10-7-2016
2 KAR 2:040		
Amended	72	
As Amended	390	10-7-2016
2 KAR 2:050	145	
As Amended	391	10-7-2016
2 KAR 2:060	146	
As Amended	391	10-7-2016
2 KAR 2:070	148	10-7-2016
9 KAR 1:010		
Amended	997	
As Amended	1367	
9 KAR 1:040		See 42 Ky.R.
As Amended	392	10-7-2016
9 KAR 1:060		
Amended	754	
AmComments	1390	
As Amended	1504	
10 KAR 6:010		
Amended	756	
As Amended	1161	2-3-2017
11 KAR 4:080		
Amended	998	
11 KAR 15:090		
Amended	73	
As Amended	525	11-4-2016
12 KAR 1:116		
Amended	428	12-2-2016
12 KAR 1:140		
Amended	429	12-2-2016

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	43 Ky.R. Page No.	Effective Date
12 KAR 1:155		
Amended	431	
As Amended	673	12-2-2016
13 KAR 2:110		
Amended	1625	
13 KAR 2:060		
Amended	758	
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SYMBOL KEY:

* Statement of Consideration not filed by deadline

** Withdrawn, not in effect within 1 year of publication

*** Withdrawn before being printed in Register

(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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The Technical Amendment Index is a list of administrative regulations 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/frntpage.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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