ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 43, NUMBER 10
SATURDAY, APRIL 1, 2017

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

ARRS – APRIL 11, 2017 TENTATIVE AGENDA 1709
REGULATION REVIEW PROCEDURE 1712

EMERGENCIES
NONE

AS AMENDED
Education Professional Standards Board 1714
Board of Social Work 1716
Board of Licensure for Occupational Therapy 1720
Board of Alcohol and Drug Counselors 1721
Board of Licensure for Massage Therapy 1729
Department of Fish and Wildlife Resources 1731
Department of Alcoholic Beverage Control 1733
Department for Public Health 1736
Department for Medicaid Services 1768

AMENDED AFTER COMMENTS
Board of Medical Licensure 1777
Department of Corrections 1780
Department for Public Health 1782
Department for Medicaid Services 1786
Department for Community Based Services 1791

PROPOSED AMENDMENTS
Board of Pharmacy 1796
Board of Nursing 1799
Board of Examiners of Psychology 1805
Board of Licensure for Marriage and Family Therapists 1841
Office of Occupations and Professions 1846
Department of Fish and Wildlife Resources 1731
Energy and Environment Cabinet 1853
Department for Environmental Protection 1866
Department for Natural Resources 1869
Department of Corrections 1780
Department of Vehicle Regulation 1890

NEW ADMINISTRATIVE REGULATIONS
Board of Examiners of Psychology 1900
Energy and Environment Cabinet 1901
Department for Environmental Protection 1906
Department for Natural Resources 1907
Office of Health Benefit and Information Exchange 1908
Department for Public Health 1910

ARRS Report 1913
OTHER COMMITTEE REPORTS ..... NONE

CUMULATIVE SUPPLEMENT
Locator Index - Effective Dates ..... **J - 2**
KRS Index ..... **J - 14**
Technical Amendments ..... **J - 27**
Subject Index ..... **J - 30**

MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet April 11, 2017, at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages **1709-1711** of this Administrative Register.

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

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

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

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

ADMINISTRATIVE REGISTER OF KENTUCKY
(ISSN 0096-1493)
© 2017 Legislative Research Commission, All Rights Reserved

The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, 700 Capitol Avenue, Room 300, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: $120 (plus 6% Kentucky sales tax) per year for 12 issues, beginning in July and ending with the June issue of the subsequent year. Periodical postage paid at Frankfort, Kentucky. POSTMASTER: Send address changes to Administrative Register of Kentucky, 700 Capitol Avenue, Room 64, State Capitol, Frankfort, Kentucky 40601.

KENTUCKY LEGISLATIVE RESEARCH COMMISSION

Chairmen

Senator Robert Stivers
Senate President

Representative Jeff Hoover
House Speaker

Senate and House Members

Senator David P. Givens
President Pro Tempore

Representative David W. Osborne
Speaker Pro Tempore

Senator Damon Thayer
Majority Floor Leader

Representative Jonathan Shell
Majority Floor Leader

Senator Ray Jones
Minority Floor Leader

Representative Rocky Adkins
Minority Floor Leader

Senator Daniel Seum
Majority Caucus Chair

Representative David R. Meade
Majority Caucus Chair

Senator Dorsey Ridley
Minority Caucus Chair

Representative Dennis Keene
Minority Caucus Chair

Senator Jimmy Higdon
Majority Whip

Representative Kevin Bratcher
Majority Whip

Senator Julian Carroll
Minority Whip

Representative Wilson Stone
Minority Whip

David Byerman, Director
Joe Cox, Printing and Publications Officer

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Members

Senator Ernie Harris, Co-Chair
Representative Ken Upchurch, Co-Chair
Senator Julie Raque Adams
Senator Perry B. Clark
Senator Alice Kerr
Representative Mary Lou Marzian
Representative Jason Petrie
Representative Tommy Turner

Staff

Sarah Amburgey
Emily Caudill
Betsy Cupp
Ange Darnell
Emily Harkenrider
Karen Howard
Carrie Klaber

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA, APRIL 11, 2017, at 1:00 p.m., Room 149 Capitol Annex

COUNCIL ON POSTSECONDARY EDUCATION

Public Educational Institutions

13 KAR 2:110. Advanced practice doctoral degree programs at comprehensive universities.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education Professional Standards Board

Assessment

16 KAR 6:020. Assessment requirements for occupation-based career and technical education teachers.

PERSONNEL CABINET

Personnel Cabinet, Classified

101 KAR 2:046. Applying for employment, qualifications, and examinations.
101 KAR 2:056. Registers.
101 KAR 2:066. Certification and selection of eligible applicants for appointment.

GENERAL GOVERNMENT CABINET
Board of Medical Licensure

Board

201 KAR 9:270. Professional standards for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone.

Board of 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 Prosthetics, Orthotics and Pedorthics

Board

201 KAR 44:040. Professional conduct and code of ethics. (Deferred from March)

Board of Licensed Diabetes Educators

Board

201 KAR 45:100. Fees.
201 KAR 45:110. Supervision and work experience.
201 KAR 45:120. Renewal, reinstatement, and inactive status.
201 KAR 45:130. Continuing education.

Board of Medical Imaging and Radiation Therapy

Board

201 KAR 46:040. Medical imaging technologist, advanced imaging professional, radiographer, nuclear medicine technologist, and radiation therapist licenses.
201 KAR 46:060. Continuing education requirements.
201 KAR 46:070. Violations and enforcement.
201 KAR 46:090. Complaint process and administrative hearings.

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

Game

301 KAR 2:132. Elk hunting seasons, permits, zones, and requirements.
301 KAR 2:178. Deer hunting on Wildlife Management Areas, state parks, other public lands and federally controlled areas.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections

Office of the Secretary

501 KAR 6:020. Corrections policies and procedures. (Amended After Comments)
501 KAR 6:030. Kentucky State Reformatory. (Not Amended After Comments)
501 KAR 6:060. Northpoint Training Center.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Board of Education
Department of Education

Food Service Programs

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.

FINANCE AND ADMINISTRATION CABINET
School Facilities Construction Commission

Procedures

750 KAR 1:030. Emergency and targeted investment fund.

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

Unemployment Insurance
787 KAR 1:070. Reasonable time for protesting claim. (Not Amended After Comments) (Deferred from February)

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 2:320. Toxic and hazardous substances.
803 KAR 2:403. Occupational health and environmental controls.
803 KAR 2:425. Toxic and hazardous substances.
803 KAR 2:500. Maritime employment.

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control

Fair Trade; Pricing and Sales
804 KAR 3:100. License may be suspended or revoked for accepting Supplemental Needs Assistance Program ("SNAP") benefits for alcohol purchases.

Department of Insurance
Agent Licensing Division

Group and Blanket Health Insurance
806 KAR 18:020. Preferred and exclusive provider arrangements. (Not Amended After Comments)

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. (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) (Deferred from March)
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) (Deferred from March)
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) (Deferred from March)

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 March)
907 KAR 17:035 & E. External independent third-party review. ("E" Expires 6/27/2017) (Amended After Comments)
907 KAR 17:040 & E. Appeal and administrative hearing post external independent third-party review. ("E" Expires 6/27/2017) (Amended After Comments)

Department for Behavioral Health, Developmental and Intellectual Disabilities
Division of Program Integrity

Institutional Care
908 KAR 3:051 Repeal of 908 KAR 3:050.
908 KAR 3:060. "Means test" for determining patient liability and per diem rates.

Department for Income Support
Child Support Enforcement

Child Support
921 KAR 1:430. Child support administrative hearings.

Department for Community Based Services
Division of Protection and Permanency

Child Welfare
922 KAR 1:400. Supportive services.

Block Grants
922 KAR 3:011. Repeal of 922 KAR 3:010 and 922 KAR 3:020. (Amended After Comments)

Adult Services
922 KAR 5:120. Caregiver misconduct registry and appeals. (Amended After Comments)

REMOVED FROM APRIL AGENDA

GENERAL GOVERNMENT CABINET
Office of Occupations and Professions
Board of Interpreters for the Deaf and Hard of Hearing

Board
201 KAR 39:001. Definitions for 201 KAR Chapter 39. (Comments Received, SOC due 4/14/2017)
201 KAR 39:030. Application; qualifications for licensure; and certification levels. (Comments Received, SOC due 4/14/2017)
201 KAR 39:070. Application and qualifications for temporary licensure. (Comments Received, SOC due 4/14/2017)

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing

Administration

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Epidemiology and Health Planning

Communicable Diseases

902 KAR 2:060. Immunization schedules for attending child day care centers, certified family child care homes, other licensed facilities which care for children, preschool programs, and public and private primary and secondary schools. (Comments Received, SOC ext. due 4/14/2017)

Department for Medicaid Services
Division of Policy and Operations

Medicaid Services

907 KAR 1:065. Payments for price-based nursing facility services. (Comments Received, SOC ext. due 4/14/2017)

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

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education Professional Standards Board
(As Amended at ARRS, March 6, 2017)

16 KAR 4:040.[~~Recency and~~] Certification fees.

RELATES TO: KRS 161.020, 161.027, 161.028, 161.030, 161.046, 161.048, 161.053

STATUTORY AUTHORITY: KRS ***161.020,*** 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020, 161.028, and 161.030 require ***the Education Professional Standards Board to promulgate administrative regulations establishing requirements and standards for obtaining and maintaining certification and for approval of an education preparation provider. KRS 161.028(1)(q) authorizes the board to charge reasonable fees for the issuance, reissuance, and renewal of certificates. This administrative regulation establishes these fees*** **that educators** [a teacher and other professional school personnel] ***[hold a certificate of legal qualification for his or her respective position to be issued upon completion of a program of educator preparation prescribed by the Education Professional Standards Board (EPSB); furthermore, an educator preparation provider]*** [a teacher education institution] ***[is required to be approved for offering a preparation program corresponding to a particular certificate on the basis of standards and procedures established by the EPSB]*** [Education Professional Standards Board] ***[. KRS 161.030 establishes additional testing and internship requirements for certification.]*** [This administrative regulation establishes requirements for the issuance of the limited initial certificate; the beginning teacher internship program; certificate renewal; and filing a certificate application.] ***[This administrative regulation establishes fees to be charged for the issuance, reissuance, and renewal of a certificate..]***

Section 1. (1) Application for teacher certification shall be made to the Division of Certification.

(2)[~~The~~] Application shall be accompanied by an official transcript showing all college credits necessary for the requested certification.

Section 2.[~~Recency. Teacher certification issued initially under the provisions of 16 KAR 2:010 or 16 KAR 2:020 shall comply with the provisions of KRS 161.030 and the following requirements and procedures:~~

~~(1) There shall be a recency of preparation prerequisite for the issuance of a certificate covered by this section, as follows:~~

~~(a) Except as provided in paragraphs (b) and (c) of this subsection, an out-of-state applicant for initial Kentucky certification shall have prepared as a teacher or completed six (6) semester hours of graduate credit within the five (5) years preceding the application.~~

~~(b) An out-of-state applicant for initial Kentucky certification who has completed a Planned Fifth-year Program shall be exempt from taking the six (6) additional hours, if the applicant has completed two (2) years of successful teaching experience within the last ten (10) years.~~

~~(c)1. A certificate shall be issued for a one (1) year period ending June 30 of the next calendar year if the applicant:~~

~~a. Does not meet the recency of preparation requisite;~~

~~b. Has not previously held a Kentucky teaching certificate;~~

~~c. Otherwise qualifies for certification; and~~

~~d. Agrees that six (6) semester hours of credit applicable toward the usual renewal requirement shall be completed by September 1 of the year of expiration.~~

~~2. To renew a certificate issued under subparagraph 1 of this paragraph, the applicant shall comply with the requirements for renewal established in subsection (2) of this section.~~

~~(2)(a) A teaching certificate described in this section shall be issued for a duration period of five (5) years and with provisions for a subsequent five (5) year renewal, as established in 16 KAR 7:010.~~

~~(b) Semester hour credit for certificate renewal shall be earned after the issuance of the certificate. Credit earned in excess of the minimum requirement for a renewal period shall accumulate and be carried forward to apply toward a subsequent renewal.~~

~~Section 3. (1) Reissuance.~~

~~(a) If a certificate has lapsed as a result of the applicant's failure to meet the renewal requirements, the certificate shall be reissued at a later date for a one (1) year period if the applicant completes at least six (6) semester hours of graduate credit applicable toward the Planned Fifth-year Program.~~

~~(b) The applicant shall complete an additional nine (9) semester hours of credit applicable toward the planned fifth-year program by September 1 of the year of expiration to qualify for extending the certificate for the remaining four (4) years of the first five (5) year renewal period.~~

~~(c) At the end of the renewal period established in paragraph (b) of this subsection, the applicant shall have completed the Planned Fifth-year Program to qualify for the next five (5) year renewal. After the renewal period established in this paragraph, the regular renewal schedule of three (3) years of successful teaching experience with evidence of continuing growth documented in a portfolio as required by 16 KAR 4:060 or six (6) semester hours of additional graduate credit each five (5) year period shall apply.~~

~~(2) An applicant who has already completed the Planned Fifth-year Program and whose certificate lapses shall have the certificate reissued after completing another six (6) semester hours of graduate credit. The certificate shall be issued for a five (5) year period and subject to the renewal schedule of three (3) years of successful teaching experience or completion by September 1 of the year of expiration of at least six (6) semester hours of additional credit for each five (5) year period.~~

~~(3) Pursuant to KRS 161.030 (3) and (4), successful experience shall be in a position directly corresponding to the type of teaching certificate for which the application is being made and shall be defined as follows:~~

~~(a) Employment shall be at least on a half-time basis;~~

~~(b) A full year of experience shall include at least 140 days of employment performed within the academic year; and~~

~~(c) A half year of experience shall include at least seventy (70) days of employment performed within an academic semester.~~

~~Section 4.~~] Fees. (1) The Education Professional Standards Board shall assess a fee of eighty-five (85) dollars for the issuance, reissuance, or renewal of a certificate except under the following circumstances[~~following fees for teaching certificates shall apply~~]:

(a) Issuance of an initial statement of eligibility for internship - no charge;

(b) Issuance or reissuance of a[~~Limited~~] one (1) year certificate - no charge;

(c) Renewal of a statement of eligibility – fifty (50) dollars[~~Issuance, reissuance, or renewal of a regular certificate - fifty (50) dollars, which shall include all previously approved certifications and endorsements~~];

(d) Issuance of a five (5) year substitute certificate – fifteen (15) dollars;

(e) Issuance[~~Reissuance~~] of a[~~limited~~] four (4) year certificate[~~certification~~] – fifty (50)[~~thirty-five (35)~~] dollars; and

(f) A duplicate copy of the certificate - twenty-five (25) dollars.

(2) If a certificate holder is renewing or adding a new certification, he or she may align all certification renewal dates to the same date for each of the certificate holder's certificates for a

fee of fifteen (15) dollars in addition to the fee established in subsection (1) of this section.

(3) All fees paid to the EPSB shall be nonrefundable if application for certification is denied.

(4)[~~A refund of the certification fee shall be provided to an unsuccessful certification applicant, less a ten (10) dollar processing fee~~.

~~(3)~~] The appropriate fee shall:

(a) Accompany[~~the~~] application; and

(b) Be paid through electronic payment on the EPSB's Web site[~~received in the form of a certified check or money order made payable to the Kentucky State Treasurer~~].

DAVID WHALEY, Board Chair

APPROVED BY AGENCY: December 12, 2016

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

CONTACT PERSON: Lisa K. Lang, General Counsel, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, email LisaK.Lang@ky.gov, phone (502) 564-4606, fax (502) 564-7080.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education Professional Standards Board
(As Amended at ARRS, March 6, 2017)

16 KAR 4:080. Out-of-State Recency.

RELATES TO: KRS 161.020, 161.027, 161.028, 161.030, 161.046, 161.048, 161.053

STATUTORY AUTHORITY: KRS ***161.020,*** 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020, 161.028, and 161.030 require ***the Education Professional Standards Board to promulgate administrative regulations establishing requirements and standards for obtaining and maintaining certification and for approval of an education preparation provider[~~that educators hold a certificate of legal qualification for his or her respective position to be issued upon completion of a program of educator preparation prescribed by Kentucky's Education Professional Standards Board; furthermore, an educator preparation provider is required to be approved for offering a preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. KRS 161.030 establishes additional testing and internship requirements for Kentucky certification. This administrative regulation establishes the recency requirements for the issuance of an initial Kentucky certificate to an out-of-state applicant~~]***.

Section 1. Teacher certification issued initially under the provisions of 16 KAR 2:010 or 16 KAR 2:020 shall comply with the provisions of KRS 161.030 and the requirements and procedures established in this section.

(1) There shall be a recency of preparation prerequisite for the issuance of a certificate.

(a) Except as provided in paragraphs (b) and (c) of this subsection, an out-of-state applicant for initial Kentucky certification shall have prepared as a teacher or completed six (6) semester hours of graduate credit within the five (5) years preceding application.

(b) An out-of-state applicant for initial Kentucky certification who has completed a planned fifth-year program shall be exempt from taking the six (6) additional hours, if the applicant has completed two (2) years of successful teaching experience within the last ten (10) years.

(c)1. A certificate shall be issued for a one (1) year period ending June 30 of the next calendar year if the applicant:

a. Does not meet the recency of preparation requisite;

b. Has not previously held a Kentucky teaching certificate;

c. Otherwise qualifies for certification; and

d. Agrees that six (6) semester hours of credit applicable toward the usual renewal requirement shall be completed by September 1 of the year of expiration.

2. To renew a certificate issued under subparagraph 1. of this paragraph, the applicant shall comply with the requirements for renewal established in subsection (2) of this section.

(2)(a) A teaching certificate described in this section shall be issued for a duration period of five (5) years and with provisions for a subsequent five (5) year renewal, as established in 16 KAR 4:060.

(b) Semester hour credit for certificate renewal shall be earned after the issuance of the certificate. Credit earned in excess of the minimum requirement for a renewal period shall accumulate and be carried forward to apply toward a subsequent renewal.

DAVID WHALEY, Board Chair

APPROVED BY AGENCY: December 12, 2016

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

CONTACT PERSON: Lisa K. Lang, General Counsel, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, email LisaK.Lang@ky.gov, phone (502) 564-4606, fax (502) 564-7080.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education Professional Standards Board
(As Amended at ARRS, March 6, 2017)

16 KAR 4:090. Reissuance.

RELATES TO: KRS 161.020, 161.027, 161.028, 161.030, 161.046, 161.048, 161.053

STATUTORY AUTHORITY: KRS ***161.020,*** 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020, 161.028, and 161.030 require ***the Education Professional Standards Board to promulgate administrative regulations establishing requirements and standards for obtaining and maintaining certification and for approval of an education preparation provider[~~that educators hold a certificate of legal qualification for his or her respective position to be issued upon completion of a program of educator preparation prescribed by Kentucky's Education Professional Standards Board (board); furthermore, an educator preparation provider is required to be approved for offering a preparation program corresponding to a particular certificate on the basis of standards and procedures established by the board. KRS 161.030 establishes additional testing and internship requirements for Kentucky certification~~]***. This administrative regulation establishes the reissuance requirements for a Kentucky certification that has lapsed.

Section 1. (1)(a) If a certificate has lapsed as a result of the applicant's failure to meet the renewal requirements, the certificate shall be reissued at a later date for a one (1) year period if the applicant completes at least six (6) semester hours of graduate credit applicable toward the planned fifth-year program.

(b) The applicant shall complete an additional nine (9) semester hours of credit applicable toward the planned fifth-year program by September 1 of the year of expiration to qualify for extending the certificate for the remaining four (4) years of the first five (5) year renewal period.

(c) At the end of the renewal period established in paragraph (b) of this subsection, the applicant shall have completed a planned fifth-year program that meets the requirements of 16 KAR 8:020 to qualify for the next five (5) year renewal. After the renewal period established in this paragraph, the regular renewal schedule of three (3) years of successful teaching experience with evidence of continuing growth documented in a portfolio as required by 16 KAR 4:060 or six (6) semester hours of additional graduate credit each five (5) year period shall apply.

(2) An applicant who has already completed the planned fifth-year program and whose certificate lapses shall have the certificate reissued after completing another six (6) semester hours of graduate credit. The certificate shall be issued for a five (5) year period and subject to the renewal schedule of three (3) years of successful teaching experience or completion by September 1 of the year of expiration of at least six (6) semester hours of

additional credit for each five (5) year period.

(3) Successful teaching experience shall be in a position directly corresponding to the type of certificate for which the application is being made**,** and employment shall be at least on a half-time basis.

(a) A full year of experience shall include at least 140 days of employment performed within the academic year***.[; and]***

(b) A half year of experience shall include at least seventy (70) days of employment performed within an academic semester.

DAVID WHALEY, Board Chair

APPROVED BY AGENCY: December 12, 2016

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

CONTACT PERSON: Lisa K. Lang, General Counsel, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, email LisaK.Lang@ky.gov, phone (502) 564-4606, fax (502) 564-7080.

GENERAL GOVERNMENT CABINET
Kentucky Board of Social Work
(As Amended at ARRS, March 6, 2017)

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 *the[~~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. ***The*** 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 ***or[/]***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 ***shall[~~may~~]*** submit a ***Provider or Sponsor*** Renewal ***Application for Continuing Education Approval[~~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***, of:***

1. Fifty (50) dollars 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[~~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 ***or[/]*** 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 ***4[3]***(1)(c)2.; and

(b) Pays an initial application fee of $250 made payable to the Kentucky State Treasurer.

(4) ***If the sponsor 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 sponsor is requesting approval to meet the requirements of the clinical social work supervision course required for board approved supervisors by 201 KAR 23:070, Section 4(1)(c)2., each presenter or instructor for the course shall:

(a) Hold a degree in social work;

(b) Hold an active social work license in the Commonwealth or 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)[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.

(7)[(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.

(8)[(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.

(9)[(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.

(10)[(8)] Sponsor Renewal. An approved sponsor ***shall[may]*** submit a ***Provider or Sponsor*** Renewal ***Application for Continuing Education Approval[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 ***that includes the:***

1. Certificate of completion or attendance;

2. Resume of each instructor; and

3. Program agenda indicating hours of instruction[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 ***or[/]*** Sponsor[Provider] Application for Continuing Education[Credit] Approval", **2/2017[10/2016]**[10/2010];

(b) "Provider ***or[/]*** 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.

GENERAL GOVERNMENT CABINET
Board of Licensure for Occupational Therapy
(As Amended at ARRS, March 6, 2017)

201 KAR 28:090. Renewals.

RELATES TO: KRS 319A.160

STATUTORY AUTHORITY: KRS 319A.070(1), (3)(a), (d), 319A.160(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319A.070(3) authorizes the board to promulgate administrative regulations establishing procedures for annual renewal of licenses. This administrative regulation establishes those procedures.

Section 1. (1) A person licensed as an OT/L or an OTA/L shall annually, on or before October 31, pay to the board a renewal fee as set forth in 201 KAR 28:110 for the renewal of the license and file an Annual OT/OTA Renewal Application. A license not renewed on or before October 31 of each year shall expire.

(2) A license issued to a person during the last ninety (90) days of a licensure period shall expire at the end of the subsequent licensure period.

Section 2. A sixty (60) day grace period shall be allowed beginning November 1[October 31], during which time an individual may renew his or her license upon payment of the late renewal fee as set forth in 201 KAR 28:110. A license not renewed on or before December 31 shall terminate[based on the failure of the individual

~~to renew in a timely manner~~]. Upon termination, the licensee shall no longer be eligible to practice occupational therapy in the commonwealth and shall be sent notice at the last known address available to the board of termination, and to cease and desist practice.

Section 3. After the sixty (60) day grace period, an individual with a terminated license shall have the license reinstated upon:

(1) Payment of the late renewal fee plus a reinstatement fee as set forth by 201 KAR 28:110;

(2) Completion of the Reinstatement Application for Licensure as an Occupational Therapist or Reinstatement Application for Licensure as an Occupational Therapy Assistant;

(3) Documentation of employment from the time of termination until the present;

(4) Documentation that licensure, certification, or registration in other states is in good standing;

(5) Documentation of current or initial certification by the National Board for Certification in Occupational Therapy or its equivalent;

(6) Completion of the board jurisprudence exam; and

(7) Proof of completion of continuing education as required on the Reinstatement Application for Licensure as an Occupational Therapist or Reinstatement Application for Licensure as an Occupational Therapy Assistant.

Section 4. Steps to renew an OT/L or OTA/L license shall include:

(1) Payment of the renewal fee as set forth by 201 KAR 28:110;

(2) Completion of the Annual OT/OTA Renewal Application, either online or by paper; ***and***[~~and~~]

(3) Completion of twelve (12) continuing competence units***[; and***

~~(4) Completion of the board jurisprudence exam~~)].

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Annual OT/OTA Renewal Application", June 2016[~~February 2015~~];

(b) "Reinstatement Application for Licensure as an Occupational Therapist", February 2015; and

(c) "Reinstatement Application for Licensure as an Occupational Therapy Assistant", February 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Board of Licensure for Occupational Therapy, 911 Leawood Drive, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.

KEVIN PRIDDY, COTA/L, Board Chair

APPROVED BY AGENCY: November 13, 2016

FILED WITH LRC: November 15, 2016 at noon

CONTACT PERSON: Kelly Walls, Board Administrator, Board of Licensure for Occupational Therapy, PO Box 1360, Frankfort, Kentucky 40602, phone 502-564-3296, fax 502-564-481, email Kelly.Walls@ky.gov.

GENERAL GOVERNMENT CABINET
Board of Alcohol and Drug Counselors
(As Amended at ARRS, March 6, 2017)

201 KAR 35:020. Fees.

RELATES TO: KRS 309.083, 309.0831, 309.0832, 309.0833, 309.084, 309.085(1)(a)

STATUTORY AUTHORITY: KRS 309.0813(1), (4), (5), (12), 309.085(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(4) requires the board to promulgate an administrative regulation governing the administration and grading of the written examination, which applicants shall be required to successfully complete. KRS 309.0813(12) requires the board to promulgate ***administrative regulations establishing initial registration, certification, and licensure fees and renewal fees[~~an administrative regulation establishing an initial registration, certification, or licensure fee and renewal fee~~]***. This administrative regulation establishes those fees.

Section 1. Application ***Fees[~~Fee~~]***. (1) The application fee for board review of an application for a licensed clinical alcohol and drug counselor, licensed clinical alcohol and drug counselor associate, certified alcohol and drug counselor, or registered alcohol and drug peer support specialist, KBADC Form 1, shall be fifty (50) dollars.

(2) The application fee shall be nonrefundable.

(3) An application shall lapse one (1) year from the date it is filed with the board office.

(4)(a) If an approved applicant applies one (1) or more times after the original application lapses, the applicant shall comply with the requirements of this subsection.

1. The applicant shall successfully complete the examination required by the board within two (2) years from the date the original application is filed.

2. If the applicant does not successfully complete the examination within the time period required by subparagraph 1. of this paragraph, the applicant shall update and refile the application prior to sitting for the examination again.

(b) The fee for refiling the application form shall be twenty (20) dollars.

Section 2. Comprehensive Examination ***Fees[~~Fee~~]***. (1)***[~~(a)~~]*** An applicant for registration as an alcohol and drug peer support specialist[~~shall take the comprehensive examination offered by the International Certification and Reciprocity Consortium and~~] shall pay ***an examination[~~a~~]*** fee of $150. The fee for retaking the comprehensive examination for registration shall be $150.

(2) An applicant for certification[~~shall take the comprehensive examination offered by the International Certification and Reciprocity Consortium and~~] shall pay ***an examination[~~a~~]*** fee of $200. The fee for retaking the comprehensive examination for certification shall be $200.

(3) An applicant for licensure[~~shall take the comprehensive examination offered by the International Certification and Reciprocity Consortium and~~] shall pay ***an examination[~~a~~]*** fee of $200. The fee for retaking the comprehensive examination for licensure shall be $200.

Section 3. Credentialing ***Fees[~~Fee~~]***. (1)(a) The registration fee for an alcohol and drug peer support specialist shall be $100.

(b) The certification fee for a certified alcohol and drug counselor shall be $200.

(c) The licensure fee for a licensed clinical alcohol and drug counselor or licensed clinical alcohol and drug counselor associate shall be $300.

(2) If the applicant successfully completes all requirements for registration, certification, or licensure, the fee established in subsection (1) of this section shall cover credentialing for the initial three (3) year period.

Section 4. Renewal Fees and Penalties. (1)(a) A registration, certificate, or license not renewed within ninety (90) days after the holder's renewal date shall be deemed cancelled in accordance with KRS 309.085(2).

(b) A person holding a cancelled registration shall not use the title "registered alcohol and drug peer support specialist" or hold himself or herself out as a registered alcohol and drug peer support specialist or engage in the practice of alcohol and drug peer support services.

(c) A person holding a canceled certificate shall not use the title "certified alcohol and drug counselor" or hold himself or herself out as a certified alcohol and drug counselor or engage in the practice of alcohol and drug counseling.

(d) A person holding a canceled license shall not use the title "licensed clinical alcohol and drug counselor" or hold himself or herself out as a licensed clinical alcohol and drug counselor or

engage in the practice of alcohol and drug counseling.

(e) A person holding a canceled license as a licensed clinical alcohol and drug counselor associate shall not use the title "licensed clinical alcohol and drug counselor associate" or hold himself or herself out as a licensed clinical alcohol and drug counselor associate or engage in the practice of alcohol and drug counseling.

(2) The fees and penalties established in this subsection shall be paid in connection with registration, certification, or licensure renewals.

(a) The renewal fee for registration shall be $100 for a three (3) year period, and shall accompany the Application for Renewal, KBADC Form 16.

(b) The late renewal fee, including penalty, for the ninety (90) day grace period shall be $150 for registration for a three (3) year period.

(c) The renewal fee for certification shall be $200 for a three (3) year period, and shall accompany the***[Renewal]*** Application ***for Renewal***.

(d) The late renewal fee, including penalty, for the ninety (90) day grace period shall be $250 for certification for a three (3) year period.

(e) The renewal fee for licensure shall be $300 for a three (3) year period, and shall accompany the***[Renewal]*** Application ***for Renewal***.

(f) The late renewal fee for the ninety (90) day grace period, as well as licensure for a three (3) year period, shall be a:

1. $300 fee; and
2. Penalty fee of fifty (50) dollars.

Section 5. Reinstatement of a Canceled Registration, Certificate, or Licensure. (1) A canceled registration may be reinstated within one (1) year of the anniversary date of issue of renewal by:

(a) Submitting a completed Application for Reinstatement [Reinstatement Application];

(b) Proof of completion of continuing education in accordance with 201 KAR 35:040 and of ten (10) hours of continuing education during the one (1) year period; and

(c) Payment of a $200 reinstatement fee for registration for a three (3) year period.

(2) A canceled certificate may be reinstated within one (1) year of the anniversary date of issue of renewal by:

(a) Submitting a completed Application for Reinstatement [Reinstatement Application];

(b) Proof of completion of continuing education in accordance with 201 KAR 35:040 and of twenty (20) hours of continuing education during the one (1) year period; and

(c) Payment of a $300 reinstatement fee, for certification for a three (3) year period.

(3) A canceled license may be reinstated within one (1) year of the anniversary date of issue of renewal by:

(a) Submitting a completed Application for Reinstatement [Reinstatement Application];

(b) Proof of completion of continuing education in accordance with 201 KAR 35:040 and of twenty (20) hours of continuing education during the one (1) year period; and

(c) Payment for licensure for a three (3) year period, which shall be a:

1. $300 fee; and
2. Penalty fee of $100.

Section 6. Duplicate Credential and ID Card Fees. (1) The fee for a duplicate credential shall be twenty (20) dollars.

(2) The fee for a duplicate ID card shall be ten (10) dollars.

Section 7. Inactive Status ***Fees[Fee]***. (1) The enrollment fee for voluntarily placing a registration, certificate, or license in inactive status in accordance with 201 KAR 35:080 shall be fifty (50) dollars.

(2) The annual renewal fee for a registration, certificate, or license enrolled in inactive status shall be twenty-five (25) dollars based on the renewal date.

(3)(a) The fee for reactivation of a registration shall be $100 for a three (3) year period commencing on the date the board approves the application for reactivation.

(b) The fee for reactivation of a certificate shall be $200 for a three (3) year period commencing on the date the board approves the application for reactivation.

(c) The fee for reactivation of a license shall be $300 for a three (3) year period commencing on the date the board approves the application for reactivation.

Section 8. Continuing Education Fees. (1) For purposes of this administrative regulation, a continuing education sponsor shall be an individual or entity that provides a program of continuing education to credential holders ***that[which]*** has been reviewed and approved by the board to meet the continuing education requirements set forth in 201 KAR 35:040.

(2) Approvals may consist of a single workshop or a program of courses and shall be effective for one (1) year from the date of approval.

(3) The fee for approval of an application for a single program provider shall be fifty (50) dollars.

(4) The fee for approval of an application for a continuing education sponsor providing a program of courses shall be $250.

(5) Continuing education sponsors who have received approval for their program of courses may apply for renewal of the approval in accordance with 201 KAR 35:040 and shall pay an annual renewal fee of $150.

(6)(a) The fee for review of an application for a substantial change in curriculum of an approved program shall be fifty (50) dollars.

(b) A substantial change shall be considered as the addition of a workshop or course to a pre-approved program, or changes to the content of a pre-approved workshop or program which is in excess of twenty (20) percent.

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

(a) "KBADC Form 1, Application", June 2015;

(b) "KBADC Form 16, Application for Renewal", June 2015; ***and***

(c) "KBADC Form 17, Application for Reinstatement", June 2015***.***~~; and~~

~~***(d)]***["KBADC Form 19, Reinstatement Application", June 2015; and~~

~~(e)~~]***["Continuing Education Sponsor Application", 2008.]***

(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, 8:00[~~8:30~~] a.m. to 4:30[~~5~~] p.m.

GEOFFREY WILSON, Board Chairperson

APPROVED BY AGENCY: December 15, 2016

FILED WITH LRC: December 15, 2016 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.

GENERAL GOVERNMENT CABINET
Board of Alcohol and Drug Counselors
(As Amended at ARRS, March 6, 2017)

201 KAR 35:025. Examinations.

RELATES TO: KRS 309.083(5), 309.0831(5), 309.0832(4), 309.0833

STATUTORY AUTHORITY: KRS 309.0813(1), (4), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(4) requires the board to promulgate an administrative regulation governing the administration and grading of the written examination, which applicants ***are[~~shall be~~]*** required to successfully complete. This administrative regulation establishes

those ***examination requirements[~~fees~~]***.

Section 1. Comprehensive Examination. (1) An applicant for registration as an alcohol and drug peer support specialist shall take the comprehensive examination offered by the International Certification and Reciprocity Consortium.

(2) An applicant for certification shall take the comprehensive examination offered by the International Certification and Reciprocity Consortium.

(3) An applicant for licensure shall take the comprehensive examination offered by the International Certification and Reciprocity Consortium.

Section 2. Remediation Plan. (1) If an applicant fails the examination, the applicant shall:

(a) Not retake the examination within ninety (90) days of the failed examination date;

(b) Submit a KBADC Form 19, Re-Examination Application; and

(c) Submit the examination fee for the respective examination listed in 201 KAR 35:020, Section 2.

(2) If the applicant fails the examination twice or more, the applicant shall submit a remediation plan after each failed examination:

(a) To address the deficiencies cited in the examination results; and

(b) Cosigned by the board-approved supervisor.

(3) Upon completion of the remediation plan approved by the board, the applicant may request permission to retake the examination by filing a KBADC Form 19, Re-Examination Application, and submitting the examination fee for the respective examination listed in 201 KAR 35:020, Section 2.

Section 3. Incorporation by Reference. (1) "KBADC Form 19, Re-Examination Application", December 2015, is incorporated by reference.

(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 40601, Monday through Friday, 8:00 a.m. 4:30 p.m.

GEOFFREY WILSON, Board Chairperson

APPROVED BY AGENCY: December 15, 2016

FILED WITH LRC: December 15, 2016 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.

GENERAL GOVERNMENT CABINET
Board of Alcohol and Drug Counselors
(As Amended at ARRS, March 6, 2017)

201 KAR 35:030. Code of Ethics.

RELATES TO: KRS 309.081

STATUTORY AUTHORITY: KRS 309.0813(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS ***309.0813(2)[~~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, ***or*** 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 ***that[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.

GENERAL GOVERNMENT CABINET
Board of Alcohol and Drug Counselors
(As Amended at ARRS, March 6, 2017)

201 KAR 35:050. Curriculum of study.

RELATES TO: KRS 309.083(4), (8)

STATUTORY AUTHORITY: KRS 309.0813(1), (5), (6), 309.083***(4)***, 309.0831***(4)***, 309.0832***(3)***, 309.0833***(1)***

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.083***(4)***, 309.0831***(4)***, 309.0832***(3)***, and 309.0833***(1)*** 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. ***Three (3) hours of domestic violence training;***

3. Two (2) hours of training in the transmission, control, treatment, and prevention of the human immunodeficiency virus;

4.[~~3.~~] Ten (10) hours of advocacy training;

5.[~~4.~~] Ten (10) hours of training in mentoring and education; and

6.[~~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) ***Licensure.***

(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~~]", ***March [~~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.

GENERAL GOVERNMENT CABINET
Board of Alcohol and Drug Counselors
(As Amended at ARRS, March 6, 2017)

201 KAR 35:070. Supervision experience.

RELATES TO: KRS ***309.0814,*** 309.083(4), 309.0831, 309.0832, 309.0833

STATUTORY AUTHORITY: KRS 309.0813(1), (3), (5), ***309.0814(1),*** 309.083***(3)***, 309.0831***(3)***, 309.0832***(10)***, 309.0833***(2)***, 309.086

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(1) requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.080 to 309.089. KRS 309.0813(3) requires the board to approve or disapprove those persons who shall be credentialed. This administrative regulation establishes the standards for the accumulation of required supervised work experience.

Section 1. (1)***(a)*** Peer Support Specialist Supervision. Peer support specialist supervision shall continue throughout the period of registration.

(b) A supervisor of a peer support specialist shall complete and submit KBADC Form 8, Peer Support Specialist Verification of Supervision, that documents the twenty-five (25) hours of direct supervision.

(2) Clinical Supervision ***for Certification and Licensure Applicants***. Clinical supervision shall consist of at least 300 hours and shall include a minimum of ten (10) hours in each of the following twelve (12) core functions:

(a) Screening;

(b) Intake;

(c) Client orientation;

(d) Assessment;

(e) Treatment planning;

(f) Counseling;

(g) Case management;

(h) Crisis intervention;

(i) Client education;

(j) Referral;

(k) Reports and recordkeeping; and

(l) Consultation.

(3)(a) Clinical supervision may occur in individual or in group settings.

(b) The methods of clinical supervision include:

1. Face-to-face;

2. Video conferencing; or

3. Teleconferencing.

(4) A minimum of 200 hours of clinical supervision shall be conducted face-to-face in an individual or group setting.

(5) Clinical supervisors shall complete and submit KBADC Form 13, Verification of Clinical Supervision, ***which documents the 300 hours of supervision that has occurred during the work experience,*** in the Application for Certification as an Alcohol and Drug Counselor, Application for Licensure as a Clinical Alcohol and Drug Counselor Associate, or Application for Licensure as a Clinical Alcohol and Drug Counselor***, which are incorporated by reference in 201 KAR 35:020[~~that documents the 300 hours of supervision that has occurred during the work experience~~]***.

(6) If the applicant qualifies for licensure, supervision obtained under KRS 309.083 prior to ***February 5, 2016[~~the effective date of this administrative regulation~~]*** shall be calculated toward the 300 hour supervision requirement under KRS 309.0832(10).

Section 2. Except as provided by Section 1(6) of this administrative regulation, a supervisory arrangement shall have the prior approval of the board, with both supervisor and supervisee submitting a Supervisory Agreement to the board. The supervisor and supervisee shall ***also*** submit to the board the description of the supervisory arrangement or a change in the supervisory arrangement at least thirty (30) days prior to the effective date of the arrangement or change unless extenuating circumstances prevent the submission the thirty (30) day requirement.

Section 3. (1) All supervision requirements shall:

(a) Be met with face-to-face individual or group weekly contact between supervisor[~~supevisor~~] and supervisee except as provided in subsection (2) of this section and Sections ***13 and 14[~~12 and 15~~]*** of this administrative regulation;

(b) Consist of not less than two (2) hours, two (2) times a month in the practice of alcohol and drug counseling; and

(c) Include additional supervision sessions, as needed.

(2) An alternative format of supervision, including two (2) way interactive video, may be substituted for the supervisory contact, required by subsection (1) of this section, upon specific approval by the board for certain types of circumstances, such as distance, weather, or serious injury or illness of the supervisor or supervisee.

(3) Upon a change of supervisor, a new plan for supervision shall be submitted by the supervisor and supervisee to the board for approval. This plan may require additional hours of supervision than was previously approved by the board.

(4) Upon termination of the supervisor-supervisee relationship,

the final report of supervision shall be submitted to the board within thirty (30) days of the termination.

Section 4. (1)***(a) A certified alcohol and drug counselor or licensed clinical alcohol drug counselor shall submit a Form 4, Request to Provide Supervision, to become approved by the board to provide supervision.***

(b) A certified alcohol and drug counselor or licensed clinical alcohol and drug counselor who has been approved by the board as a supervisor shall attend a board approved training session in supervisory practices within twelve (12) months of obtaining approval as a supervisor.

(2) A board approved supervisor shall obtain a minimum of three (3) continuing education hours in supervision theory or techniques in each three (3) year renewal cycle. The board shall suspend its approval of a supervisor if the supervisor does not complete the required continuing education.

(3) A certified alcohol and drug counselor or licensed clinical alcohol and drug counselor shall not be the supervisor of record for more than twelve (12) supervisees.

(4) A licensed clinical alcohol and drug counselor associate shall only be supervised by a licensed clinical alcohol and drug counselor.

Section 5. (1) The supervisor shall make all reasonable efforts to be assured that each supervisee's practice is in compliance with this administrative regulation.

(2) The supervisor shall report to the board an apparent violation of KRS 309.086 on the part of the supervisee.

(3) The supervisor shall inform the board immediately of a change in the ability to supervise or in the ability of a supervisee to function in the practice of alcohol and drug counseling in a competent manner.

(4) The supervisor shall control, direct, or limit the supervisee's practice to insure that the supervisee's[~~supevisee's~~] practice of alcohol and drug counseling is competent.

(5) The supervisor of record shall be responsible for the practice of alcohol and drug counseling by the supervisee. If the board initiates an investigation concerning a supervisee, the investigation shall include the supervisor of record.

(6) For each person supervised, the supervisor shall maintain a KBADC Form 13, Verification of Clinical Supervision, for each supervisory session that shall include the type, place, and general content of the session. This record shall be maintained for a period of not less than six (6) years after the last date of supervision.

Section 6. (1) The supervisor of record shall submit the Supervisor Log for each supervisee to the board on an annual basis with a KBADC Form 14, Supervision Annual Report or as directed otherwise by the board.

(2) The report shall include:

(a) A description of the frequency, format, and duration of supervision;

(b) An assessment of the functioning of the supervisee, including the strengths and weaknesses; and

(c) Other information which may be relevant to an adequate assessment of the practice of the supervisee.

Section 7. (1) If a supervisee has more than one (1) board-approved supervisor, the supervisors shall be in direct contact with each other at least once every six (6) months, and they shall provide supervisory plans and reports to the board and copies to each other.

(2) A request to have more than two (2) supervisors at one (1) time shall require a written request to the board, which shall include detailed information as to how the supervisors shall communicate and coordinate with each other in providing the required supervision.

Section 8. If the supervisee is a licensed clinical alcohol and drug counselor associate, or an applicant for a certificate as a certified alcohol and drug counselor, the supervisor of record shall:

(1) Review all alcohol and drug assessments and treatment plans;

(2) Review progress notes and correspondence on a regular basis to assess the competency of the supervisee to render alcohol and drug services;

(3) Jointly establish with the supervisee a supervisory plan that shall be submitted to the board and approved within thirty[~~thrity~~] (30) days of the beginning of the supervisory relationship. The plan shall:

(a) Be updated and revised, as needed, and submitted to the board annually;

(b) Include intended format and goals to be accomplished through the supervisory process; and

(c) Include methods that the supervisor and supervisee shall employ to evaluate the supervisory process;

(4) At least semi-annually, have direct observation of the supervisee's work, which may be accomplished through audiotaping, video camera, videotaping, one (1) way mirror, or as a cotherapist;

(5) Have direct knowledge of the size and complexity of the supervisee's caseload;

(6) Limit and control the caseload, as appropriate, to the supervisee's level of competence;

(7) Have knowledge of the therapeutic modalities and techniques being used by the supervisee;***[~~and~~]***

(8) Have knowledge of the supervisee's physical and emotional well-being if it has a direct bearing on the supervisee's competence to practice***; and***

(9) Submit a completed KBADC Form 7, Supervision Evaluation, within thirty (30) days of termination of a peer support special supervisory agreement.

Section 9. If the supervisee is a peer support specialist, the supervisor of record shall:

(1) Jointly establish with the supervisee a supervisory plan that shall be submitted to the board and approved within thirty (30) days of the beginning of the supervisory relationship. The plan shall:

(a) Be updated and revised, as needed, and submitted to the board annually;

(b) Include intended format and goals to be accomplished through the supervisory process; and

(c) Include methods that the supervisor and supervisee shall employ to evaluate the supervisory process;

(2) Review and countersign all peer recovery service plans;

(3) Review peer recovery notes and correspondence on an as-needed basis to assess the competency of the supervisee to render peer recovery services;

(4) At least once every two (2) months, have direct observation of the supervisee's work, which may be accomplished through audiotaping, video camera, videotaping, one (1) way mirror or direct observation;

(5) Have direct knowledge of the size and complexity of the supervisee's caseload;

(6) Limit and control the caseload, as appropriate, to the supervisee's level of competence;

(7) Have knowledge of the methods and techniques being used by the supervisee;***[~~and~~]***

(8) Have knowledge of the supervisee's physical and emotional well-being if it has a direct bearing on the supervisee's competence to practice***; and***

(9) Submit a completed KBADC Form 9, Supervision Evaluation for Peer Support Specialist, within thirty (30) days of termination of a peer support special supervisory agreement.

Section 10. (1) The supervisee shall:

(a) Keep the supervisor adequately informed at all times of his or her activities and ability to function; and

(b) Seek consultation from the supervisor, as needed, in addition to a regularly-scheduled supervisory session.

(2) The supervisee shall:

(a) Participate with the supervisor in establishing supervisory goals and in completing the regular supervisory reports;

(b) Be jointly responsible with the supervisor for ensuring that a supervisory report or plan has been sent to the board, in accordance with the reporting schedule established in Section 6(1) of this administrative regulation; and

(c) Report to the board an apparent violation on the part of the supervisor.

(3) Except as provided in Section 11 of this administrative regulation, a supervisee shall not continue to practice alcohol and drug counseling or peer support services if:

(a) The conditions for supervision set forth in the supervisory agreement are not followed;

(b) There is a death or serious illness of the board-approved supervisor ***that[, ~~which~~]*** results in the supervisor not being able to provide supervision; or

(c) The supervisory agreement is terminated by the board, the board-approved supervisor, or the supervisee for any reason ***other than the extenuating circumstances that allow temporary supervision in Section 11 of this administrative regulation***.

Section 11. Temporary Supervision. (1) In extenuating circumstances, if a supervisee is without supervision, the supervisee may continue working up to sixty (60) calendar days under the supervision of a qualified mental health provider as defined by KRS 202A.011(12), a certified alcohol and drug counselor, or a licensed clinical alcohol and drug counselor while an appropriate board-approved supervisor is sought and a new 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, the termination of the supervisor's employment, or termination of the supervisory agreement except for a violation of KRS 309.080 to 309.089, or 201 KAR Chapter 35.

(2)(a) Within ten (10) days of the establishment of the temporary supervisory arrangement, 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 establishment of the temporary supervisory arrangement.

(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.

(3) The temporary supervisory arrangement shall expire after sixty (60) days of the establishment of the temporary supervisory arrangement.

(4) To avoid the expiration of a temporary supervisory arrangement:

(a) A temporary alcohol and drug counselor shall submit a completed KBADC Form 3, Supervisory Agreement; or

(b) A peer support specialist shall submit a completed KBADC Form 6, Peer Support Specialist Supervisory Agreement.

Section 12. Identification of Provider and Supervisor of Record. The actual deliverer of a service shall be identified to the client, and the client shall be informed of the deliverer's credential and name of supervisor of record. A billing for a rendered service shall identify which service was performed by the registered alcohol and drug peer support specialist, applicant as a certified alcohol and drug counselor, licensed clinical alcohol and drug counselor associate, or other provider who is supervised by the board approved supervisor of record.

Section 13[~~12~~]. Supervision of a Disciplined Credential Holder. (1) The board shall appoint an approved supervisor to supervise a disciplined credential holder for the period of time defined by the board and a member of the board to serve as a liaison between the board and the appointed supervisor.

(2) The disciplined credential holder shall be responsible for paying the fee for supervision.

(3) The supervisor shall have completed the board approved training course in supervision.

(4) The supervisor shall:

(a) Review the originating complaint, agreed order, or findings of the disciplinary hearing;

(b) Meet with the disciplined credential holder and the board liaison to:

1. Summarize the actions and concerns of the board;

2. Review the goals and expected outcomes of supervision submitted by the board liaison;

3. Develop a specific plan of supervision approved by the board; and

4. Review the reporting requirements that shall be met during the period of supervision;

(c) Meet with the disciplined credential holder at least weekly, on an individual face-to-face basis for a minimum of one (1) hour unless modified by the board;

(d) Submit a quarterly report to the board which reflects progress, problems, and other information relevant to the need for board-mandated supervision;

(e) Make all reasonable efforts to insure that the disciplined credential holder's practice is in compliance with KRS 309.080 to 309.089, and 201 KAR Chapter 35;

(f) Report to the board any apparent violation on the part of the disciplined credential holder;

(g) Immediately report to the board in writing a change in the ability to supervise, or in the ability of the disciplined credential holder to function in the practice of peer recovery support or substance use disorders counseling in a competent manner;

(h) Review and countersign assessments, as needed or appropriate;

(i) Review and countersign service or treatment plans, as needed or appropriate;

(j) Have direct observation of the disciplined credential holder's work on an as-needed basis;

(k) Have direct knowledge of the size and complexity of the disciplined credential holder's caseload;

(l) Have knowledge of the therapeutic methods, modalities, or techniques being used by the disciplined credential holder; and

(m) Have knowledge of the disciplined credential holder's physical and emotional well-being if it has a direct bearing on the disciplined credential holder's competence to practice.

(5) The supervisor shall control, direct, or limit the disciplined credential holder's practice to ensure that the disciplined credential holder's practice is competent.

(6) The supervisor shall contact the board liaison with any concern or problem with the disciplined credential holder, his or her practice, or the supervision process.

(7) A final meeting shall be scheduled within thirty (30) days of the end of the established supervision period to summarize the supervision. The meeting shall include the supervisor, disciplined credential holder, and board liaison. A written summary of the supervision shall be submitted by the supervisor to the board two (2) weeks following this meeting with a copy to the board liaison.

Section 14[~~13~~]. Graduate Students in Programs Emphasizing Substance Use Disorders Counseling. Graduate-level students in programs that emphasize alcohol and drug counseling who are providing services in health care settings that provide alcohol and drug counseling including independent practice settings shall:

(1) Be supervised by a licensed clinical alcohol and drug counselor or certified alcohol and drug counselor;

(2) Be registered for practicum credit on the transcript in his or her course of study;

(3) Clearly identify their status as unlicensed trainees in the field of alcohol and drug counseling to all clients and payors;

(4) Give to all clients and payors the name of the supervising licensed clinical alcohol and drug counselor or certified alcohol and drug counselor responsible for the student's work; and

(5) Not accept employment or placement to perform the same or similar activities following the completion of their university-sanctioned placement, regardless of the job title given, unless the

student holds a certificate or license from the board.

Section 15[~~14~~]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "KBADC Form 3, Supervisory Agreement", June 2015;

(b) "KBADC Form 4, Request to Provide Supervision", June 2015;

(c) "KBADC Form 6, Peer Support Specialist Supervisory Agreement", June 2015;

(d) "KBADC Form 7, Supervision Evaluation", June 2015;

(e) "KBADC Form 8, Peer Support Specialist Verification of Supervision", June 2015;

(f) "KBADC Form 9, Supervision Evaluation for Peer Support Specialist", June 2015;

(g) "KBADC Form 13, Verification of Clinical Supervision", June 2015; and

(h) "KBADC Form 14, Supervision Annual Report", 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: December 15, 2016

FILED WITH LRC: December 15, 2016 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.

GENERAL GOVERNMENT CABINET
Office of Occupations and Professions
Board of Licensure for Massage Therapy
(As Amended at ARRS, March 6, 2017)

201 KAR 42:020. Fees.

RELATES TO: KRS 309.357, 309.362(2), (3)

STATUTORY AUTHORITY: KRS 309.355(3), 309.357

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(3) requires the board to promulgate administrative regulations to implement KRS 309.350 to 309.364. KRS 309.357 requires the board to establish reasonable fees for the licensure of massage therapists. KRS 309.362(2) and (3) authorize the issuance of an inactive license and reinstatement. This administrative regulation establishes the fees relating to massage therapy (MT) licensure.

Section 1. Fee Payments. (1) All fees established in Section 2 of this administrative regulation shall be:

(a) Made payable as required by KRS 309.356 to the State Treasury; and

(b) Paid by:

1. Cashier's check;
2. Certified check;
3. Money order;
4. Personal check; or
5. Online payment by credit card, debit card, or electronic check.

(2) A payment for an application fee that is incorrect shall be returned to the applicant and the application shall not be posted until the correct fee is received.

(3) The application fee and the initial licensure fee established in Section 2(1) of this administrative regulation shall be nonrefundable.

(4) If it is determined that a refund of any fee is required, the refund shall be issued to the applicant or licensee.

Section 2. Fees. (1) The fee for an initial massage therapist license shall be $125.

(2)(a) The biennial renewal fee for a massage therapist license renewed on or before the renewal date shall be $100.

(b) If the license is renewed after the renewal date and up to sixty (60) days after expiration of the license, the fee for late renewal shall be $150.

(c) If the license is renewed sixty-one (61) to ninety (90) days after the expiration of the license, the late renewal fee shall be $200.

(d) If a license is not renewed within ninety (90) days of expiration of the license, the applicant shall comply with KRS 309.357(6).

(3) A licensee shall be in good standing with the board at the time the licensee elects inactive status.

(4)(a) The annual renewal date for an inactive license shall remain the original issue date of the license.

(b) The annual renewal fee for an inactive license shall be thirty-five (35) dollars.

(5) If the inactive license is renewed after the renewal date and up to sixty (60) days after expiration of the license, the fee for late inactive renewal shall be $52.50[~~fifty-two (52) dollars and fifty (50) cents~~].

(6) If the inactive license is renewed sixty-one (61) to ninety (90) days after the expiration of the license, the late renewal fee shall be seventy (70) dollars.

(7) The application fee for moving a license from inactive to active status shall be fifty (50) dollars and shall not be prorated.

(8) A licensee who elects inactive status or an inactive licensee electing to activate his or her license shall complete and submit an Application for Inactive or Return to Active Status in addition to the fee referenced in subsection (7) of this section. An applicant shall affix a two (2) inch by two (2) inch or larger passport quality color photograph of the applicant to the Application for Inactive or Return to Active Status.

(9) A licensee who elects to give notice of the licensee's retirement and voluntarily surrender his or her massage therapy license shall complete and submit a notarized Voluntary Retirement Non-Renewal form.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Inactive or Return to Active Status", October 2016; and

(b) "Voluntary Retirement Non-Renewal", October 2016 [~~September 2015, is incorporated by reference~~].

(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, 8:00 a.m. to 4:30 p.m.

DENISE LOGSDON, Board Chair

APPROVED BY AGENCY: October 7, 2016

FILED WITH LRC: October 7, 2016 at 2 p.m.

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.

GENERAL GOVERNMENT CABINET
Office of Occupations and Professions
Board of Licensure for Massage Therapy
(As Amended at ARRS, March 6, 2017)

201 KAR 42:040. Renewal.

RELATES TO: KRS 309.357(3), (4), (5), (6), 309.361, 309.362

STATUTORY AUTHORITY: KRS 309.355(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(1) requires the board to administer and enforce the provisions of KRS 309.350 to 309.364 and authorizes licensure renewal. KRS 309.355(3) requires the board to promulgate administrative regulations to implement KRS 309.350 to 309.364. KRS 309.357(3) requires all licenses to be renewed. This administrative regulation establishes the requirements for renewal of licenses.

Section 1. (1) A license to practice massage therapy shall be renewed upon:

(a) Payment of the biennial renewal fee as established in 201 KAR 42:020, Section 2(2), on or before the anniversary date of issue of license;

(b) Submission to the board of the Application for Renewal form and the following written information:

1. Current complete home address, email address to receive communications from the board, and telephone number;

2. Current complete name, address, and telephone number of each location in which massage therapy service is provided;

3. A list indicating completion of the continuing education units taken during the licensure renewal period as required by 201 KAR 42:110. The list shall:

a. Itemize the number of clock hours credited for each course; and

b. Designate the courses that fulfill the three (3) required hours of ethics training; and

4. Confirmation that, since the license was issued or renewed, the licensee has not:

a. Been convicted of a felony;

b. Had his or her license disciplined and is not currently under disciplinary review in another state; or

c. Defaulted on the repayment obligation of financial aid programs administered by the Kentucky Higher Education Assistance Authority (KHEAA) pursuant to KRS 164.772; and

(c) Submission of a two (2) inch by two (2) inch or larger passport quality color photograph of the applicant to the board affixed to the Application for Renewal form. The photograph submitted with the application shall be taken within the previous six (6) months to reflect the current appearance of the applicant.

(2)(a) A licensee who has been convicted of a crime or who has been disciplined or is currently under disciplinary investigation or review by the board of another jurisdiction during the licensure period immediately preceding the submission of the Application for Renewal shall participate in an in-person interview with the board's Application Committee prior to renewal of the license. The purpose of this interview with the board's application committee shall be to find if the licensee met the requirement of good moral character established in KRS 309.358(3) and 335B.040. The interview shall be conducted pursuant to the board's authority under KRS 309.355(3), 309.362(1)(b), and 309.362(4).

(b) Each applicant for renewal who has been convicted of a crime or who has been disciplined by the board of another jurisdiction during the licensure period immediately preceding the submission of the Application for Renewal shall submit a recent background check performed by the Federal Bureau of Investigation. The required background check shall be applied for within the ninety (90) days preceding the date the Application for Renewal is submitted.

(3) If, upon a preliminary review, the board determines that an Application for Renewal shall be denied, notice of the preliminary decision shall be sent to the licensee and the licensee shall have thirty (30) days from the date of the letter to request a hearing in writing by certified mail with the board. If a request for hearing by the licensee is not received by the board within thirty (30) days of the letter, the licensee shall be found to have voluntarily withdrawn his or her Application for Renewal.

Section 2. A licensee convicted of a felony or disciplined by the board of another jurisdiction in the interim period between issuance and renewal of the license, or between renewal periods, shall submit notice of the conviction or discipline to the board within sixty (60) days of the discipline or conviction.

Section 3. If payment and complete information are not received by the board on or before the anniversary date of the issuance of the license, the license shall expire and the person shall not practice nor represent himself or herself as a massage therapist in Kentucky.

Section 4. (1) An expired license shall be renewed within ninety (90) days of expiration if the applicant submits:

(a)[~~(1)~~] A completed Application for Renewal form;

(b)[~~(2)~~] Documentation of successful completion of twenty-four (24) hours of continuing professional education, which:

1.[~~(a)~~] Includes studies in ethics, business practices, science, and techniques related to massage therapy;

2.[~~(b)~~] Have been credited within two (2) years prior to the renewal deadline; and

3.[~~(c)~~] Have not been previously used within the same renewal period to satisfy Kentucky license renewal requirements; and

(c)[~~(3)~~] The appropriate fee for renewal, as required by 201 KAR 42:020, Section 2(2), (5), or (6).

(2)(a) A written request for an extension of time to file a completed Application for Renewal form shall be submitted to the board no later than ninety (90) days after the expiration of the license.

(b) An applicant submitting an Application for Renewal form later than ninety (90) days after the expiration date shall attach a written explanation for the late filing to the form. An Application for Renewal submitted later than ninety (90) days without a written explanation for the late filing shall be considered incomplete.

(c) The board shall permit late renewal beyond ninety (90) days after the expiration of the license for an applicant submitting documented proof of a medical disability or illness, or active military service that precluded the timely submission of an Application for Renewal form.

(d) The board shall not waive the late renewal fee required by KRS 309.357(6)(a).

Section 5. (1) Upon initial licensing, a licensee shall be furnished a wall certificate which shall be displayed at the primary massage therapy service location.

(2) A licensee shall provide verification of current licensure upon request if he or she is currently engaged in the practice of massage therapy, intends to engage within a reasonable time in the practice of massage therapy, or has engaged in the practice of massage therapy immediately prior to the request.

(3) Official verification of licensure status shall be available on the board's Web site at http://bmt.ky.gov.

Section 6. Reactivation Requirement for Inactive Status Massage Therapist. (1)(a) Before the expiration of five (5) years of inactive status, a licensee requesting to return to active status shall:

1. Provide proof to the board of continuing education required by KRS 309.362(3). At least three (3) of the continuing education hours submitted shall be focused on the area of ethics;

2. Complete the Application for ***Inactive or Return to Active Status, as required by 201 KAR 42:020, Section 2(8)[~~Renewal~~]***; and

3. Pay the fee prescribed by 201 KAR 42:020, Section 2(7).

(b) The continuing education hours provided pursuant to paragraph (a)1 of this subsection may be used for the next regular renewal period.

(2) After more than five (5) years of inactive status, a person requesting to return to active status shall reapply as required by KRS 309.362(3).

Section 7. Incorporation by Reference. (1) "Application for Renewal", October 2016[~~September 2015~~], is incorporated by reference.

(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 40602,[~~,~~] Monday through Friday, 8:00 a.m. to 4:30 p.m.

DENISE LOGSDON, Chair

APPROVED BY AGENCY: October 7, 2016

FILED WITH LRC: October 7, 2016 at 2 p.m.

CONTACT PERSON: J. Marcus Jones, Board Counsel, Office of the Attorney General, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601. phone (502) 696-5635, fax (502) 564-6801, email marcus.jones@ky.gov.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, March 6, 2017)

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

RELATES TO: KRS 150.010, 150.177, 150.180, 150.411(3), 150.990, 237.110

STATUTORY AUTHORITY: KRS 150.025(1), 150.170, 150.175, 150.390(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.170 authorizes exemptions for certain people from hunting license and permit requirements. KRS 150.175 authorizes the kinds of licenses and permits to be issued by the department. KRS 150.390(1) prohibits the taking of deer in any manner contrary to any provisions of KRS Chapter 150 or Title 301 KAR. This administrative regulation establishes deer hunting seasons and zones, legal methods of taking, and checking and recording requirements for deer hunting.

Section 1. Definitions. (1) "Additional deer permit" means a permit that allows the holder to take up to two (2) additional deer beyond those allowed by the statewide permit in the following combinations:

(a) One (1) antlered deer and one (1) antlerless deer; or

(b) Two (2) antlerless deer.

(2) "Adult" means a person who is at least eighteen (18) years of age.

(3) "Air gun" means a pneumatic gun fired by a charge of compressed air.

(4) "Antlered deer" means a male or female deer, excluding male fawns, with a visible antler protruding above the hairline.

(5)[(4)] "Antlerless deer" means a male or female deer with no visible antler protruding above the hairline.

(6)[(5)] "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.

(7)[(6)] "Arrow" means the projectile fired from a bow or crossbow. [(7) "Barbed broadhead" means a point or portion of a blade projecting backward from a broadhead designed to hold an arrow within an animal.]

(8) "Centerfire" means a type of gun that detonates a cartridge by the firing pin striking a primer in the middle of the end of the cartridge casing.

(9) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without aid from the archer.

(10)[(9)] "Deer" means a member of the species Odocoileus virginianus.

(11)[(10)] "Firearm" means a breech or muzzle-loading rifle, shotgun, or handgun. [(11) "Fully automatic firearm" means a firearm that fires more than one (1) time with a single pull of the trigger.]

(12) "License year" means the period from March 1 through the following last day of February.

(13) "Modern gun" means an air gun,[a] rifle, handgun, or shotgun that is loaded from the rear of the barrel.

(14) "Muzzle-loading gun" means a rifle, shotgun, or handgun that is loaded from the discharging end of the barrel or discharging end of the cylinder.

(15)["Shotshell" means ammunition containing more than one (1) projectile.

(16)] "Statewide deer permit" means a permit, which, in conjunction with appropriate licenses, seasons, and methods, allows the holder to take:

(a) One (1) antlered deer and one (1) antlerless deer; or

(b) Two (2) antlerless deer.

(16)[(17)] "Statewide deer hunting requirements" means the season dates, zone descriptions, bag limits, and other requirements[and restrictions] for deer hunting established in this administrative regulation.

(17)[(18)] "Youth" means a person under the age of sixteen (16) by the date of the hunt.

(18)[(19)] "Zone" means an area consisting of counties designated by the department within which deer hunting season dates and limits are set for the management and conservation of deer in Kentucky.

Section 2. License and Deer Permit Requirements. (1) Unless exempted by KRS 150.170, a person shall carry proof of purchase of a valid Kentucky hunting license and valid deer permit while hunting.

(2) In lieu of a statewide deer permit or a license or permit that grants statewide deer hunting privileges, a person possessing a valid junior statewide hunting license shall not use more than two (2) junior deer hunting permits.

(3) An additional deer permit shall not be valid unless accompanied by a valid Kentucky hunting license and a statewide deer permit or a license or permit that grants statewide deer hunting privileges.

Section 3. Hunter Restrictions. (1) A deer hunter shall not:

(a) Take a deer except during daylight hours;

(b) Use dogs, except leashed tracking dogs to recover a wounded deer;

(c) Take a deer that is swimming;

(d) From a vehicle, boat, or on horseback, take a deer, except that a hunter with a disabled hunting exemption permit issued by the department may use a stationary vehicle as a hunting platform; and

(e) Possess or use a decoy or call powered by electricity from any source.

(2) A person[deer hunter] shall only use the equipment established in paragraphs (a) through (e) of this subsection to take a deer:

(a) A crossbow or archery equipment loaded with a broadhead of seven-eighths (7/8) inch or wider upon expansion;

(b) A firearm:

1. With an action that fires a single round of ammunition upon each manipulation of the trigger; and

2. Loaded with centerfire, single projectile ammunition designed to expand upon impact;

(c) A muzzle-loading gun;

(d) A shotgun loaded with a shell containing single projectile ammunition designed to expand upon impact; or

(e) An air gun:

1. Of .35 caliber or larger;

2. Charged by an external tank; and

3. Loaded with single projectile ammunition designed to expand upon impact.

(3) A person shall only use a weapon that complies with the appropriate season established in Section 5 of this administrative regulation to take a deer.

(4) A crossbow shall contain a working safety device.

(5) A person shall not use a magazine capable of holding more than ten (10) rounds to take a deer[not take a deer with any device except a firearm, crossbow, or archery equipment as authorized by Section 5 of this administrative regulation.

(3) A person shall not use any of the following items to take a deer:

(a) Rimfire ammunition;

(b) A fully automatic firearm;

(c) A firearm with a magazine capacity greater than ten (10) rounds;

(d) Full metal jacketed ammunition;

(e) Tracer bullet ammunition;

(f) A shotshell containing more than one (1) projectile;

(g) An arrow or crossbow bolt without a broadhead;

(h) A broadhead smaller than seven-eighths (7/8) inch wide;

(i) A barbed broadhead;

(j) A crossbow without a working safety device;

(k) A chemically treated arrow;

(l) An arrow with a chemical attachment;

~~(m) Multiple projectile ammunition; or~~
~~(n) Any weapon that is not consistent with the appropriate season established in Section 5 of this administrative regulation~~].

Section 4. Hunter Orange Clothing Requirements. (1) During the modern gun deer season, muzzle-loader season, and any youth gun[~~firearm~~] season, a person hunting any species during daylight hours and any person accompanying a hunter, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest except while hunting waterfowl.

(2) During an elk firearm season as established in 301 KAR 2:132, a person hunting any species and any person accompanying a hunter within the elk restoration zone, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest except while hunting waterfowl.

(3) The hunter orange portions of a garment worn to fulfill the requirements of this section:

(a) May display a small section of another color; and

(b) Shall not have mesh weave openings exceeding one-fourth (1/4) inch by any measurement.

(4) A camouflage-pattern hunter orange garment worn without additional solid hunter orange on the head, back, and chest shall not meet the requirements of this section.

Section 5. Statewide Season Dates. (1) A deer hunter may use archery equipment to hunt deer statewide from the first Saturday in September through the third Monday in January.

(2) A deer hunter may take deer with a modern gun[~~firearm~~] statewide beginning the second Saturday in November for:

(a) Sixteen (16) consecutive days in Zones 1 and 2; and

(b) Ten (10) consecutive days in Zones 3 and 4.

(3) A deer hunter may use a muzzle-loading gun to hunt deer statewide:

(a) For two (2) consecutive days beginning the third Saturday in October;

(b) For nine (9) consecutive days beginning the second Saturday in December; and

(c) During any season in which a modern gun may be used to take deer.

(4) A deer hunter may use a crossbow to hunt deer statewide:

(a) From October 1 through the end of the third full weekend in October;

(b) From the second Saturday in November through December 31; and

(c) During any season in which a gun[~~firearm~~] may be used to take deer.

(5) A legal resident hunter sixty-five (65) years or older may hunt with a crossbow from the first Saturday in September through the third Monday in January.

(6) Youth gun[~~firearm~~] season. For two (2) consecutive days beginning on the second Saturday in October, a youth deer hunter:

(a) May take antlered or antlerless deer and shall use a legal method to do so; and

(b) Shall comply with this administrative regulation and all other statewide deer hunting requirements.

(7) There shall be a free youth weekend for two (2) consecutive days beginning on the Saturday after Christmas during which a youth:

(a) Shall not be required to have a hunting license or deer permit;

(b) May take antlered or antlerless deer and shall use a legal method to do so; and

(c) Shall comply with this administrative regulation and all other statewide deer hunting requirements.

Section 6. Zones. (1) Zone 1 shall consist of Anderson, Ballard, Boone, Bracken, Bullitt, Caldwell, Calloway, Campbell, Carlisle, Carroll, Christian, Crittenden, Franklin, Fulton, Gallatin, Grant, Graves, Green, Hardin, Harrison, Henry, Hickman, Hopkins, Jefferson, Kenton, Larue, Livingston, Lyon, Marshall, McCracken, Nelson, Oldham, Owen, Pendleton, Robertson, Scott, Shelby, Spencer, Trigg, Trimble, Washington, Webster, and Woodford Counties.

(2) Zone 2 shall consist of Bourbon, Boyd, Carter, Fayette, Fleming, Grayson, Greenup, Hart, Henderson, Jessamine, Lawrence, Lewis, Logan, Marion, Mason, McLean, Mercer, Muhlenberg, Nicholas, Ohio, Todd, and Union Counties.

(3) Zone 3 shall consist of Adair, Allen, Barren, Bath, Boyle, Breckinridge, Butler, Casey, Clark, Cumberland, Daviess, Edmondson, Elliott, Estill, Hancock, Johnson, Lincoln, Madison, Meade, Metcalf, Monroe, Montgomery, Morgan, Powell, Rowan, Simpson, Taylor, Warren, and Wolfe Counties.

(4) Zone 4 shall consist of Bell, Breathitt, Clay, Clinton, Floyd, Garrard, Harlan, Jackson, Knott, Knox, Laurel, Lee, Leslie, Letcher, Magoffin, Martin, McCreary, Menifee, Owsley, Perry, Pike, Pulaski, Rockcastle, Russell, Wayne, and Whitley Counties.

Section 7. Season and Zone Limits. (1) A person shall not take more than four (4) deer statewide in a license year except:

(a) As authorized in 301 KAR 2:111, 2:176, 2:178, and 3:100; and

(b) A person may take an unlimited number of antlerless deer in Zone 1 if the person has purchased the appropriate additional deer permits.

(2) A person shall not take more than one (1) antlered deer per license year, regardless of the permit type used, except as established in 301 KAR 2:111, 2:178, and 3:100.

(3) In Zone 3, a person may take two (2) deer with a gun[~~firearm~~].

(4) In Zone 4, a person may take:

(a) Only two (2) deer with a gun[~~firearm~~]; and

(b) Only antlered deer during:

1. Modern gun[~~firearm~~] season;

2. Early muzzleloader season; and

3. The first six (6) days of the December muzzleloader season.

(5) The aggregate bag limit for Zones, 2, 3, and 4 shall be four (4) deer per hunter.

Section 8. Supervision of Youth Gun[~~Firearm~~] Deer Hunters. (1) An adult shall:

(a) Accompany a person under sixteen (16) years old; and

(b) Remain in a position to take immediate control of the youth's gun[~~firearm~~].

(2) An adult accompanying a youth hunter shall not be required to possess a hunting license or deer permit if the adult is not hunting.

Section 9. Harvest Recording. (1) Immediately after taking a deer, and prior to moving the carcass, a person shall record, in writing:

(a) The species taken:

(b) The date taken:

(c) The county where taken; and

(d) The sex of the deer taken on one (1) of the following:

1. The hunter's log section on the reverse side of a license or permit;

2. The hunter's log produced in a hunting guide;

3. A hunter's log printed from the Internet;

4. A hunter's log available from any KDSS agent; or

5. An index or similar card.

(2) The person shall retain and possess the completed hunter's log while the person is in the field during the current hunting season.

Section 10. Checking a Deer. (1) A person shall check a harvested deer before ***11:59 p.m.[~~midnight~~]*** on the day the deer is recovered by:

(a) Calling[~~the toll free telecheck number at~~] (800) 245-4263 and providing the requested information; or

(b) Completing the online check-in process at fw.ky.gov.

(2) A person who has checked in a deer shall record the confirmation number on a hunter's log.

(3) If a hunter removes the hide or head of a harvested deer before the deer is checked in, then the hunter shall retain the deer parts established in paragraphs (a) and (b) of this subsection:

(a) For antlered deer, the:

1. Head with antlers; or
2. Testicles, scrotum, or penis attached to the carcass; or
(b) For antlerless deer, the:
1. Head; or
2. Udder or vulva attached to the carcass[~~or on the department's Web site at fw.ky.gov:~~
~~1. Before midnight on the day the deer is recovered; and~~
~~2. Prior to processing or removing the hide or head from the carcass;~~
~~(b) Providing the information requested by the automated check-in system; and~~
~~(c) Writing the confirmation number given by the system on the hunter's log authorized in Section 9 of this administrative regulation~~].
(4)[~~(2)~~] If a hunter transfers possession of a harvested deer, the hunter shall attach to the carcass a hand-made tag that contains the following information:
(a) The confirmation number;
(b) The hunter's name; and
(c) The hunter's telephone number.
(5)[~~(3)~~] A person shall not provide false information while:
(a) Completing the hunter's log;
(b) Checking a deer; or
(c) Creating a carcass tag.

Section 11. Transporting and Processing Deer. (1) A person shall:
(a) Not transport an unchecked deer out of Kentucky;
(b) Have proof that a deer or parts of deer brought into Kentucky were legally taken;
(c) Not sell deer hides except to a licensed:
1. Fur buyer;
2. Fur processor; or
3. Taxidermist.
(2) A taxidermist or an individual who commercially butchers deer shall not accept a deer carcass or any part of a deer without a valid disposal permit issued by the department pursuant to KRS 150.411(3) or a proper carcass tag as established in Section 10 of this administrative regulation.
(3) An individual who commercially butchers deer shall keep accurate records of the hunter's name, address, confirmation number, and date received for each deer in possession and retain the records for a period of one (1) year.

GREGORY K. JOHNSON, Commissioner
DON PARKINSON, Secretary
APPROVED BY AGENCY: January 9, 2017
FILED WITH LRC: January 12, 2017 at 10 a.m.
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.

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(As Amended at ARRS, March 6, 2017)

804 KAR 4:370. Entertainment destination center license.

RELATES TO: KRS 148.853(2)(b), 241.060(1), 243.030(21), (35)[~~(34)~~], 243.040, 243.050
STATUTORY AUTHORITY: KRS 241.060(1), 243.030(21), (35)[~~(34)~~], 243.040
NECESSITY, FUNCTION, AND CONFORMITY: KRS ***241.060(1)*** ***[241.060]*** authorizes the board to promulgate administrative regulations regarding matters over which the board has jurisdiction. KRS 243.030(21) and (35)[~~(34)~~] authorizes the department [~~of Alcoholic Beverage Control~~] to issue an entertainment destination center license. This administrative regulation defines the term entertainment destination center and establishes the privileges and responsibilities of an entertainment destination center license.

Section 1. Definition.[~~Definitions. (1)~~] "Entertainment destination center" or "EDC" means premises:
(1) That meet the incentive qualifications for an entertainment destination center project as set forth in KRS ***148.853(2)(b)1.[148.853(2)(b)(1)]***;
(2) Located in a wet county or city that has enacted an ordinance that:
(a) Determines an entertainment destination center licensed premises would aid economic growth and tourism in the county or city; and
(b) Defines the geographic boundaries of the EDC; or
(3) That contain a minimum of 100,000 square feet of building space, located within one (1) mile of:
(a) An existing tourism attraction; or
(b) A convention center.

Section 2. Sales by EDC Licensee. An EDC licensee may sell alcoholic beverages by the drink at one (1) or more nonpermanent locations within any common area of the EDC.

Section 3. Sales by Other Licensed Businesses. (1) Each business located within an EDC that sells alcoholic beverages shall hold the necessary alcoholic beverage license or licenses for its premises.
(2) A licensee within or adjacent to the EDC may sell alcoholic beverages from one (1) or more nonpermanent locations within any common area of the EDC if:
(a) The licensee holds a supplemental bar license for each nonpermanent location; and
(b) The licensee holds written permission for these sales by the EDC licensee.

Section 4. Drink Consumption in Common Areas and Other Licensed Premises. (1) A licensee located in or adjacent to the EDC may allow patrons to leave its premises with alcoholic beverage drinks and consume those drinks at other licensed premises or any EDC common area if the EDC licensee:
(a) Possesses the common area by deed, lease, or permit;
(b) Provides adequate security for the common area;
(c) Ensures that any portion of a public thoroughfare included in a common area is controlled in a manner that ensures public safety and pedestrian protection from vehicular traffic; and
(d) Has granted written permission for this conduct.
(2) The EDC licensee shall prohibit patrons from taking alcoholic beverages outside the physical boundaries of the EDC.
(3) If the board suspends or revokes the EDC license, all retail drink sales and consumption in any EDC common area shall be prohibited.

Section 5. Minors in the Common Area. In addition to authorized businesses listed in KRS 244.085(6) and (7), minors shall be permitted in EDC common areas if allowed by the EDC licensee.

Section 6. Additional Storage Location. As permitted by the EDC licensee in a written agreement, a licensee located in the EDC may store alcoholic beverages at an identified storage location in the EDC separate from its licensed premises.[~~a facility:~~
~~(a)1. Located in a city of the first class or in a county containing a city of the first class;~~
~~2. Located within an urban-county government under KRS Chapter 67A;~~
~~3. Located within a city with a population of 20,000 or greater based on the most recent federal decennial census and meeting the incentive qualifications for an entertainment destination center project as set forth in KRS 148.853(2)(b)(1); or~~
~~4. Located within a county containing a city with a population equal to or greater than 20,000 based on the most recent federal decennial census and meeting the incentive qualifications for an entertainment destination center project as set forth in KRS 148.853(2)(b)(1);~~
~~(b) Containing a minimum of 100,000 square feet of building space located within 2,000 feet of:~~

~~1. An existing tourism attraction; or~~

~~2. A major convention facility measured from closest property line to closest property line; and~~

~~(c) Containing a combination of entertainment destination venues including:~~

~~1. Nightclubs;~~

~~2. Restaurants;~~

~~3. Leisure time activities; or~~

~~4. Specialty retail stores.~~

~~(2) "Major convention facility" means an establishment licensed under KRS 243.082 as a convention center.~~

~~(3) "Physical confines of the center" means:~~

~~(a) A portion of a public thoroughfare that is:~~

~~1. Adjacent to or within the entertainment destination center; and~~

~~2. Closed to vehicular traffic;~~

~~(b) An area designated by the lease as a common area; or~~

~~(c) An area included in the leased space or common areas and defined by a physical barrier, which would preclude motor vehicle traffic and limit pedestrian accessibility, as approved by the Department of Alcoholic Beverage Control.~~

~~Section 2. An entertainment destination center license shall authorize the licensee to sell alcoholic beverages by the drink at one (1) or more nonpermanent locations within common areas of the entertainment destination center over which the licensee, by lease or ownership, has exclusive control.~~

~~Section 3. (1) Each lessee of premises located within an entertainment destination center that intends to sell alcoholic beverages by the drink at retail shall apply for and obtain the necessary on-premises licenses under KRS 243.030 and 243.040.~~

~~(2) If permitted by the owner or lessee of the entertainment destination center in the lease, a licensed retail drink licensee may also sell alcoholic beverages from one (1) nonpermanent facility located within the boundaries of the entertainment destination center's licensed premises.~~

~~(3) Each retail drink licensee shall obtain a supplemental bar license for the nonpermanent facility.~~

~~Section 4. (1) On Thursday, Friday, and Saturday of each week, between the hours of 6 p.m. and up to 4 a.m., and during any other days and times as the owner or lessee of the entertainment destination center may determine and which are permitted by local ordinance and state statute, a licensee within the entertainment destination center may allow patrons to leave the individually licensed premises with an alcoholic beverage drink and enter other licensed premises and the common areas of the center, if adequate security is provided by the entertainment destination center licensee at each point of ingress and egress.~~

~~(2) Each licensee shall serve all alcoholic beverages in containers bearing the licensee's trademark, trade name, logo, or other identifying markings unique to that licensee.~~

~~(3) Each licensee, including the entertainment destination center licensee, shall prohibit patrons from taking alcoholic beverages outside the physical confines of the center.~~

~~(4) At times other than those specified in subsection (1) of this section, and in accordance with local ordinance and state statute, the entertainment destination center licensee may permit alcoholic beverages to be consumed in nonpermanent locations and common areas if it provides adequate security at each point of ingress and egress.~~

~~(5) During those times the entertainment destination center is operating pursuant to subsection (1) or (4) of this section, the entertainment destination center licensee shall ensure that minors can be easily distinguished from other patrons through use of identity bracelets, hand stamps, badges, or other visible means.~~

~~(6) Each licensee of the center shall cause to be posted signs indicating the hours and days when alcoholic beverages may be consumed in the common areas pursuant to subsection (1) of this section and times when that consumption is prohibited.~~

~~(7) The entertainment destination center licensee shall be solely responsible for notifying the department of the dates and times during which alcoholic beverages shall be sold in the nonpermanent retail locations and common areas pursuant to subsections (1) and (4) of this section.~~

~~Section 5. The holder of the entertainment destination center license shall be subject to the restrictions and prohibitions established in KRS Chapters 243 and 244.~~

~~Section 6. (1) The entertainment destination center license shall not be a quota license and shall not be transferable to any other premises.~~

~~(2) A licensee who obtains an alcoholic beverage license for permanent premises within the center shall not be prohibited from holding a retail drink quota license.~~

~~(3)(a) Except as provided in paragraph (b) of this subsection, a licensee in the center shall not hold a retail package alcoholic beverage license.~~

~~(b) A liquor package licensee with an existing contractual commitment may remain at its licensed premises after the entertainment destination center license is issued.~~

~~Section 7. (1) Except as provided in this administrative regulation, all statutes and administrative regulations governing the retail sale of alcoholic beverages by the drink and the consumption of alcohol by patrons shall be applicable to all retail establishments contained within the physical confines of the center.~~

~~(2)(a) A licensee shall be solely responsible for alcohol violations occurring on its licensed premises, including its nonpermanent location.~~

~~(b) The entertainment destination center licensee shall be solely responsible for alcohol violations occurring at its nonpermanent locations, kiosks, or in the common areas.~~

~~(3) Proceedings relating to applications, renewals, suspensions, or revocations of the license created by this administrative regulation shall be conducted in the same manner as for any retail licensee, in accordance with the provisions of KRS Chapters 243 and 13B.~~

~~(4) If the board suspends the entertainment destination center license, all retail drink sales at its nonpermanent locations, kiosks, or common areas shall be suspended.~~

~~(5) If the alcoholic beverage license of an individual tenant of the center is suspended, the retail licensee shall not sell alcoholic beverages for the duration of the suspension from either its permanent or nonpermanent locations.~~]

CHRISTINE TROUT, Commissioner
DAVID A. DICKERSON, Secretary
APPROVED BY AGENCY: January 13, 2017
FILED WITH LRC: January 13, 2017 at 11 a.m.
CONTACT PERSON: Steve Humphress, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 782-1026, fax (502) 564-7479, email Steve.Humphress@ky.gov.

PUBLIC PROTECTION CABINET
Department of Insurance
Commissioner's Office
(As Amended at ARRS, March 6, 2017)

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.

RELATES TO: KRS 91A.080, 304.2-040, 304.2-080, 304.2-110, 304.2-150, 304.2-160, 304.4-010
STATUTORY AUTHORITY: KRS 304.2-110
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the commissioner to promulgate administrative regulations to aid in the effectuation of any provision of the Insurance Code, as defined in KRS 304.1-010***, and for which the current fee requirements are now contained in 806 KAR 4:010, Fees of the Department of Insurance***. This administrative regulation repeals 806 KAR 2:010, Seal facsimile, which is no

longer necessary due to changes in technology and the manner in which licenses are issued, and the Department of Insurance has adopted the Commonwealth of Kentucky seal; 806 KAR 2:020, Interests and rewards prohibited, which primarily restates the statutory prohibitions of direct and indirect interests of Department of Insurance employees, unnecessarily requires the completion of an affidavit disclosing prohibited interests that disqualify an individual from being considered or maintaining employment under KRS 304.2-080, and exceeds the limits of KRS 304.2-080 by prohibiting an individual's family members from having a connection or financial interest in an insurance related entity or transaction; 806 KAR 2:030, Copies of administrative regulations; fee, which conflicts with the requirements of KRS 304.4-010; 806 KAR 2:040, Records of certificates of authority; licenses, which is no longer necessary because KRS 369.107 mandates legal effect and enforceability for electronic records and signatures by specifically providing "[i]f a law requires a record to be in writing, an electronic record satisfies the law" with a similar provision for signatures; and 806 KAR 2:050, Complaints, which restates the statutorily required duties of the commissioner under KRS 304.2-160 and KRS 304.2-165 to review complaints and make findings, includes an unnecessary statement of judicial authority, and requires the commissioner to use a standard of review ("guided by the common and accepted practice in the insurance industry"), which conflicts with current statutes and administrative regulations that should ultimately be determinative of the justification of a complaint.

Section 1. The following administrative regulations are hereby repealed:

(1) 806 KAR 2:010, Seal facsimile;

(2) 806 KAR 2:020, Interests and rewards prohibited,

(3) 806 KAR 2:030, Copies of administrative regulations; fee;

(4) 806 KAR 2:040, Records of certificates of authority; licenses; and

(5) 806 KAR 2:050, Complaints.

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

APPROVED BY AGENCY: December 14, 2016

FILED WITH LRC: December 14, 2016 at 3 p.m.

CONTACT PERSON: Patrick D. O'Connor II, Kentucky Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-2669, email Patrick.OConnor@ky.gov.

PUBLIC PROTECTION CABINET
Department of Insurance
Agent Licensing Division
(As Amended at ARRS, March 6, 2017)

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. ***To determine if the applicant has demonstrated good cause, the commissioner shall weigh the justification provided against any other issues, such as if the applicant had submitted any prior good cause excuses for the same request. Some examples of good cause include:***

a. Personnel related issues, such as the individual responsible for responding was transferred, terminated, or became incapacitated due to illness;

b. A need to obtain information that was not immediately available and had to be requested from other sources;

c. A lack of sufficient resources to respond to large requests; and

d. Information technology (IT), operational, or equipment malfunctions causing unexpected delays.

(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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(As Amended at ARRS, March 6, 2017)

902 KAR 10:085. Kentucky on-site sewage disposal systems.

RELATES TO: KRS 194A.050(2), 211.015, 211.350-211.380, 211.990(2)**, *Chapter 322***
STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3), 211.180(1)(d), 211.350, 211.351
NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.180(1)(d) requires the cabinet to regulate the construction, installation, or alteration of any on-site sewage disposal system, except for a system with a surface discharge, regulated by KRS 224.10-100(19). This administrative regulation establishes uniform standards for on-site sewage disposal systems***[. The function of this administrative regulation is]*** to assure ***that*** the construction, installation, or alteration of an on-site sewage disposal system is performed in such a manner as to protect public health and the environment.

Section 1. Definitions. (1) "Alter" means to make a physical change in the original design, sizing, layout, components, location, or method of operation, individually or in combination, of an existing on-site sewage disposal system, as a result of necessary repair or change in wasteload volume or characteristics.

(2) "Approved" means acceptable to the cabinet for the proposed use.

(3) "Area subject to flooding[~~"~~] damage" means an area:

(a) Subject to surface ponding of rainfall runoff one (1) or more times each year[~~,~~] for more than seven (7) consecutive days;

(b) In a floodplain or drainageway with visible evidence of stream scouring, pot-holing, ***or*** gully or ravine formation; or

(c) Within a karst depression subject to backwater flooding from a subsurface conduit.

(4) "Artificial drainage system" means:

(a) A manmade system of surface ditching or berming to divert surface water run-off;

(b) A curtain or vertical drain for interception and diversion of lateral groundwater flow; or

(c) Underdrain for lowering the level of a high water table.

(5) "Blackwater" means wastewater containing liquid or[~~and~~] solid waste generated through use of a urinal, water closet, garbage disposal, or a similar sanitary fixture[~~used in a residential, commercial, institutional, or recreational facility~~].

(6) "BOD-5" means five (5) day biochemical oxygen demand.

(7) "Cabinet" is defined by[~~at~~] KRS 211.015(1)(a).

(8) "Certified inspector" means an individual certified under the provisions of KRS 211.360.

(9) "Certified installer" means an individual certified under the provisions of KRS 211.357.

(10) "Clay" means a mineral soil separate consisting of particles less than 0.002 mm in equivalent diameter.

(11) "Cluster system" means a system designed to:

(a) Accept effluent from more than one (1) structure's or facility's sewage pretreatment unit; and

(b) Transport the collected effluent through a sewer system to one (1) or more common subsurface soil treatment and dispersal system of conventional, modified, or alternative design.

(12) "Effluent" means the liquid discharge of a septic tank or other sewage pretreatment unit.

(13) "FOG" means fats, oils, and grease.

(14) "Gravelless pipe" means large diameter perforated piping encased in a synthetic filter material and[~~,~~] designed for use in a lateral field trench without trench rock or gravel fill material.

(15) "Grease" is defined by[~~at~~] KRS 211.970(3).

(16) "Grease trap" is defined by[~~at~~] KRS 211.970(4).

(17) "Greywater" or "graywater"***:***

(a) Means wastewater generated by hygiene activities including wastewater from laundry, lavatory sinks, showers, bath tubs, and laundry tubs, but excluding kitchen sinks and food preparation sinks***; and***

(b)[. Greywater] Does not ***mean or*** include[~~in a residential, commercial, institutional, or recreational facility, excluding~~] blackwater.

(18) "Karst" means a type of topography formed over limestone, dolomite, or other soluble rock, by dissolving or solution, and characterized by sinkholes, caves, and underground drainage. Groundwater flow in karst occurs principally in conduits and is turbulent.

(19) "Landscape position" means the location of an area on a site being evaluated for the proposed installation of an on-site sewage disposal system[~~,~~] relative to the surrounding topographic relief of the land surface. Landscape positions are defined as***[follows]***:

(a) Hill or ridge top: the relatively level area occupying the summit of a hill or ridge;[~~,~~]

(b) Shoulder slope: the transitional area immediately adjacent to the hill or ridge top where the slope begins to increase downward;[~~,~~]

(c) Side slope: the slightly to steeply sloping portion of a hillside lying between the shoulder and foot slopes;[~~,~~]

(d) Foot slope: the slightly to steeply sloping portion of a hillside near the base or lowest point of elevation;[~~,~~]

(e) Toe slope: the lowest point of elevation at the base of a hillside; generally concave in cross-sectional profile;[~~,~~]

(f) Terrace, natural: a naturally occurring elevated shelf of level to slightly sloping character adjacent to current or former streams and drainageways;[.]

(g) Terrace, artificial: a manmade elevated shelf or bench created by excavating into a slope[,] or placing fill[,] along the contour;[.]

(h) Flood plain: level to slightly sloping areas adjacent to streams or other bodies of water subject to flooding for extended periods, or other flood-prone areas such as sinkholes or other surface depressions;[.]

(i) Depressions: sinkholes or other areas with a concave or cupped cross-sectional profile and lacking surface drainage outlets;[.]

(j) Drainageway: an area in the landscape with slight to steeply sloping sides ***that[~~which~~]*** causes accumulation of surface and groundwater and channels it to surface or subsurface drainage outlets;[.]

(k) Convex slope: a sloping area with a humped or upwardly bowed cross-sectional profile ***that[~~which~~]*** promotes dispersal of surface and groundwater; and[.]

(l) Concave slope: a sloping area with a cupped or downwardly bowed cross-sectional profile ***that[~~which~~]*** causes accumulation of surface and groundwater.

(20) "Lateral field" means that portion of an on-site sewage treatment and dispersal system ***that[~~which~~]*** consists of subsurface trenches or beds containing materials, components, or devices for maintaining exposed soil surfaces and a means to distribute effluent to those surfaces.

(21) "Leaching chamber" means a specially designed component for use in lateral fields, which forms an open bottomed chamber or conduit over the soil absorption surface.

(22) "Low pressure pipe system" or "LPP system" means an on-site sewage disposal system consisting of a sewage pretreatment unit, a dosing tank with pump or siphon, a pressurized supply line, manifold, lateral field, and necessary control devices and appurtenances. [~~(22) "Leaching chamber" means a specially designed component for use in lateral fields which forms an open bottomed chamber or conduit over the soil absorption surface.~~]

(23) "Mottling" means spots or blotches of different colors or hues interspersed with the dominant color of a soil, created by ***the following*** three (3) basic processes:

(a) Groundwater saturation of the soil for varying periods of time, causing reducing conditions to occur ***that[~~which~~]*** chemically bleach or fade soil colorants[,] evidenced by soft concretions or soil color of chroma two (2) or less by Munsell notation;

(b) Parent material weathering[,] evidenced by relic fragments of more durable parent material encapsulated within a mottle of weathering mineral material; or

(c) Mechanical disturbance of soils by cutting, filling, ***soil*** compaction, landslide, or other means[,] evidenced in commingling of soil types and destruction of original internal drainage pathways.

(24)[~~"Overflow piping" means a system composed of a supported, vertically-oriented tee connected to a nonperforated gravity flow plastic pipe that conducts overflow to distribution boxes of the lateral field.~~

~~(25)~~] "On-site sewage disposal system" or "on-site sewage system" or "on-site system" means a system installed on a parcel of land, under the control or ownership of a person, that[~~which~~] accepts sewage for treatment and ultimate disposal under the surface of the ground, including:

(a) A conventional system consisting of a sewage pretreatment unit, distribution devices, and lateral piping within rock-filled trenches or beds;

(b) A modified system consisting of a conventional system enhanced by shallow trench or bed placement, artificial drainage systems, dosing, alternating lateral fields, fill soil over the lateral field, or other necessary modifications to the site, system, or wasteload to overcome site limitations;

(c) An alternative system consisting of a sewage pretreatment unit, necessary site modifications, wasteload modifications, and a subsurface soil treatment and dispersal system using[~~other~~] methods and technologies other than a conventional or modified system to overcome site limitations;

(d) A cluster system; and

(e) A holding tank ***that[~~which~~]*** provides limited pretreatment and storage for off-site disposal where site limitations preclude immediate installation of a subsurface soil treatment and dispersal system[,] or connection to a municipal sewer.

(25) "Overflow piping" means a system composed of a supported, vertically-oriented tee connected to a nonperforated gravity flow plastic pipe that conducts overflow to distribution boxes of the lateral field.

(26) "Parent material" means weathering fragments of bedrock underlying a soil, colluvial or alluvial deposits, loess deposits, or glacial tills from which the soil is being formed.

(27) "Perched water table" means a saturated zone as identified by free water,[~~or~~] soft concretions, or soil color of chroma 2 or less[,] overlying an impermeable horizon and generally above the permanent water table.

(28) "Permanent water table" means the zone of soil and parent material saturation by groundwater ***that[~~which~~]*** remains relatively constant unless acted upon by artificial means of drainage or severe weather conditions. This zone is evidenced by free water or soil colors of black (due to high organic content), grays, blues, or olive greens.

(29) "Permeability test" means a scientific procedure using lysimeters and other instrumentation to determine the saturated hydraulic conductivity of site specific soil horizons.

(30) "Person" is defined by KRS 211.970(6)[~~at KRS 211.972(6)~~].

(31) "Plastic limit" means the moisture content at which a soil changes from a semisolid to plastic.

(32) "Professional engineer" means an engineer licensed under the provisions of KRS Chapter 322.

(33) "Puddling" means the creation of a thin restrictive horizon atop and within an exposed soil surface by deposition of waterborne silt or clay-sized soil particles.

(34) "Repair area" means an area, either in its natural state or[~~which is~~] capable of being modified[,] consistent with this administrative regulation***, which[~~that~~]***[~~, which~~] is reserved for the installation of an additional lateral field and is not covered with permanent structures or impervious materials, consistent with this administrative regulation.

(35)(a) "Residential septic tank effluent" means the liquid discharge having the constituency and strength typical of liquid discharges from a domestic household septic tank pretreatment unit that[~~. Effluent from a residential septic tank~~] is generally considered to have waste strength values equal to or less than the following monthly averages:

1. Twenty (20) mg/l of FOG;
2.[,] 250 mg/l of BOD-5;[,] and
3. 155 mg/l of TSS.

(b) Monthly average is equal to the sum of measurements taken over thirty (30) consecutive days, with at least six (6) measurements occurring on six (6) separate days, divided by the number of measurements taken during the thirty (30) day period.

(36) "Restrictive horizon" means a soil horizon relatively impervious to the movement of groundwater or effluent[,] and includes:

(a) Mineralogically-cemented soil aggregates such as fragipans or iron pans;[~~or~~]

(b) Naturally-formed structureless soils (massive structural grade);[~~or~~]

(c) Naturally-formed horizontally structured soil (platy structure); [~~or~~]

(d) Claypan, a compact, slowly permeable layer in the subsoil having a much higher clay content than the overlying material[,] from which it is separated by a sharply-defined boundary. Clay pans are usually hard when dry[,] and plastic and sticky when wet; or

(e) Structurally ***[-]***destroyed soils ***in which[~~where~~]*** mechanical compression forces the plastic limit of the soil to be exceeded, such as traffic pans, plow plans, and compacted fill.

(37) "Rock" means the consolidated or partially consolidated mineral matter or aggregate, including weathered rock not

exhibiting soil properties, and exposed at the surface or overlain by soil.

(38) "Sand" means a mineral soil separate consisting of particles between two (2) and 0.05 mm in diameter.

(39) "Seasonal high water table" means the upper level of a zone of soil and parent material saturation over restrictive horizons or the permanent water table***[, which may vary with weather conditions]***.

(40)[~~"Soil compaction" means permanent damage to, or destruction of, natural soil structural features by mechanical compression or puddling, which restricts or prevents natural air and water movement through the soil.~~

~~(41) "System replacement area" means a parcel of land, under the control of an on-site system owner, reserved for system alteration, expansion, or replacement.~~

~~(42)~~]***[~~"Secretary" is defined by~~[at] KRS 211.015(1)(c).~~***

~~(41)~~[~~(43)~~] "Sewage" means ***blackwater, greywater, or a combination of*** blackwater and greywater wastes generated in a residential, commercial, institutional, or recreational facility.

~~(41)~~***~~(42)~~***[~~(44)~~] "Sewage pretreatment unit" is defined by[~~at~~] KRS 211.970(9).

~~(42)~~***~~(43)~~***[~~(45)~~] "Silt" means a mineral soil separate consisting of particles between 0.05 mm and 0.002 mm in diameter.

~~(43)~~***~~(44)~~***[~~(46)~~] "Sinkhole" means a naturally ***[-]***occurring depression in soil or bedrock:

(a) Formed in a karst area by the removal of earth material from below the land surface;

(b)[,] Circumscribed by a closed topographic contour;[,] and

(c) Lacking a surface drainage outlet.

~~(44)~~***~~(45)~~***[~~(47)~~] "Sinkhole sideslope midpoint" means the line of equal elevation along the midpoint between the footslope and the shoulder slope.

~~(45)~~***~~(46)~~***[~~(48)~~] "Sinkhole throat" means an outlet for a sinkhole allowing runoff from the drainage basin of the sinkhole to flow directly into the ground.

~~(46)~~***~~(47)~~***[~~(49)~~] "Site" means an area or parcel of land, under the control of any person, on which ***an*** on-site sewage disposal ***system[system(s)]*** serving any structures or facilities ***is[are]*** to be located.

~~(47)~~***~~(48)~~***[~~(50)~~] "Slope" means the deviation of the surface of the land from true horizontal, measured as the rise or fall in feet and inches from a fixed point to another point 100 feet distant,[~~normally~~] expressed as a percentage of slope.

~~(48)~~***~~(49)~~***[~~(51)~~] "Soil" means the naturally occurring unconsolidated mineral and organic material of the land surface[,] consisting of:

(a) Sand, silt, and clay minerals;

(b)[,] Variable amounts of organic materials;[,] and

(c) Void areas between mineral and organic matter particles.

~~(49)~~***~~(50)~~***[~~(52)~~] "Soil absorption" means the movement of effluent into and through interconnected voids within the soil.

~~(50)~~***~~(51)~~*** "Soil compaction" means permanent damage to, or destruction of, natural soil structural features by mechanical compression or puddling that restricts or prevents natural air and water movement through the soil.

~~(51)~~***~~(52)~~***[~~(53)~~] "Soil horizon" means a layer of soil, soil material, rock fragments, and other unconsolidated material approximately parallel to the land surface and differing from adjacent genetically related layers in:

(a) Physical, chemical, and biological properties; or

(b) Characteristics such as:

1. Color;

2.[,] Structure;

3.[,] Texture;

4.[,] Consistence; and

5.[,] pH.

~~(52)~~***~~(53)~~***[~~(54)~~] "Soil map" means a map showing the distribution of soil series or other soil mapping units in relation to the prominent physical and cultural features of the earth's surface.

~~(53)~~***~~(54)~~***[~~(55)~~] "Soil morphology" means the physical constitution, particularly the structural properties, of a soil profile as exhibited by the:

(a) Kinds, thickness, and the arrangement of the horizons in the profile; and

(b)[~~, and by the~~] Texture, structure, uniformity, and internal soil drainage of each horizon.

~~(54)~~***~~(55)~~***[~~(56)~~] "Soil series" means a basic unit of soil classification,***[~~and~~]*** consisting of soils ***that[~~which~~]*** are essentially alike in all major profile characteristics.

~~(55)~~***~~(56)~~***[~~(57)~~] "Soil structure" means the combination or arrangement of individual soil particles into definable aggregates, or peds, which are characterized and classified on the basis of size, shape, and degree of distinctness.

~~(56)~~***~~(57)~~***[~~(58)~~] "Soil survey" means the systematic examination, description, classification, and mapping of soils in an area.

~~(57)~~***~~(58)~~***[~~(59)~~] "Soil tests" means tests and evaluations of soil morphology and land features required to complete a site evaluation for a proposed site.

~~(58)~~***~~(59)~~***[~~(60)~~] "Soil texture" means the relative proportions of sand, silt, and clay in a soil[,] and may include particles greater than two (2) mm in diameter, such as gravel, cobblestones, flagstones, and chert.

~~(59)~~***~~(60)~~***[~~(61)~~] "Subdivision" means the separation of a parcel or tract of land into two (2) or more parcels or tracts for the purpose of development into residential, commercial, or public building sites.

~~(60)~~***~~(61)~~***[~~(62)~~] "Subsoil" means[~~, in general,~~] that part of the soil below the A horizon.

~~(61)~~***~~(62)~~***[~~(63)~~] "Subsurface soil treatment and dispersal system" means the[~~that~~] portion of an on-site sewage disposal system that[~~which~~] accepts effluent from a sewage pretreatment unit for further treatment by microbial, plant, and animal life within the soil[,] as well as treatment by filtration, chemical decomposition, and bonding within the soil[~~itself~~], and consists of:

(a) Devices, components, and piping to:

1. Transport effluent under pressure or by gravity flow; and

2. Distribute the effluent to the soil absorption surfaces;

(b) Trenches, beds, chambers, mounds, lagoons, artificial marshes, separately or in combination, that[~~which~~] form or enclose the soil absorption surfaces; and

(c) Rock, gravel, or other fill materials required within the system, including barrier materials, and fill soil within or over the system.

~~(62)~~***~~(63)~~*** "System replacement area" means a parcel of land under the control of an on-site system owner and reserved for system alteration, expansion, or replacement.

~~(63)~~***~~(64)~~*** "Textural class" means soil groupings based upon a specified range in texture.

~~(64)~~***~~(65)~~*** "Topsoil" means[~~:~~

~~(a)~~] the A or Ap horizon[,] as defined in the Soil Survey Manual, 1993, Soil Survey Division Staff, USDA Handbook No. 18***, located at the Web site: nrcs.usda.gov/Internet/FSEDOCUMENTS/nrcs142p2050993***.

~~(65)~~***~~(66)~~*** "TSS" means total suspended solids or a measure of solid material, including organic and inorganic, that are suspended or dissolved in wastewater, effluent, or water bodies and related to both specific conductance and turbidity.

~~(66)~~***~~(67)~~*** "Variance" means a waiver of certain specified requirements of this administrative regulation granted by the cabinet.

Section 2. Site Approval Procedures. (1) Individual site approval procedures.

(a) A person seeking approval of an individual site for the installation of an on-site sewage disposal system or alteration of an existing lateral field shall submit:

1. The required fee; and

2. A completed application including a basic site plan drawing showing the***[~~following information~~]***:

a.[~~(i)~~] Specific address or location of the site;

b.[~~(ii)~~] Site boundary lines and dimensions of the site;

c.[~~(iii)~~] Location of:

(i) Existing structures;

(ii)[,] Sewage disposal systems;

(iii)[,] Wells;

(iv)[,] Ponds;
(v)[,] Streams;
(vi)[,] Easements;
(vii)[,] Roads;[,] and
(viii) Drives; and

d.[(iv)] Proposed or existing location of the structure to be served by the system[,] and proposed system location.

(b) A person seeking approval shall establish an appointment time and date for the site evaluation[,] if the person desires to be present during the evaluation.

(c) Property boundaries shall be clearly identified.

(d) If the site evaluation reveals that the applicable requirements of this administrative regulation are met, the area designated for system installation shall be clearly marked by the certified inspector or professional engineer[by] using flags or other suitable, readily observable markers.

(e) The location of the designated area shall be recorded on a property drawing by showing distances to existing set points.

(f) The person seeking approval shall receive a copy of the:

1.[The] Site Evaluation Form including the overall evaluation rating;

2. Drawing showing the location of the designated lateral field area; and

3. Written requirements relative to site limitations.

(g)[(e)] After the site evaluation has been conducted, a permit to construct, install, or alter an on-site sewage disposal system shall be obtained prior to construction of any portion of that system.

(h) An application for a construction permit shall be submitted and accompanied by a detailed drawing of the proposed system or alteration, including all necessary specifications, and required permit fees.

(i) A permit shall be issued only by a certified inspector and only to a certified installer or homeowner as provided in 902 KAR 10:110[,] and shall expire one (1) year from date of issuance unless an extension is granted by the cabinet.

(2) Subdivision approval procedures.

(a) A person seeking approval for a subdivision ***[developed after the effective date of this administrative regulation]***[,] and for all existing subdivisions of record shall follow the procedures for approval ***established[outlined]*** in subsection (1)(a), (b), and (c) of this section. Each individual lot or site shall be evaluated individually.

(b) If a site evaluation reveals that an individual on-site sewage disposal system is unapprovable due to site characteristics, the applicant shall be advised as to[other] alternatives[,] if available.

(c) If a cluster system is proposed, legal documents relative to ownership, operation, and maintenance of the system in perpetuity shall be submitted.

(d) A local health department may adopt more specific requirements for subdivision approval[,] within its jurisdiction[,] if not in conflict with this administrative regulation.

Section 3. Site Evaluation Standards. (1) A certified inspector or professional engineer shall evaluate each proposed site. Pursuant to[Based upon the factors contained in] subsections (2) through ***(9)[(8)]*** of this section, an official site evaluation form shall be completed classifying each factor as:

(a) SUITABLE (S);
(b)[,] PROVISIONALLY SUITABLE (PS);[,] or
(c) UNSUITABLE (U).

(2) Topography.

(a) Uniform slopes fifteen (15) percent or less shall be considered SUITABLE with respect to topography.

(b) Uniform slopes greater than[between] fifteen (15) percent and up to and including thirty (30) percent shall be considered PROVISIONALLY SUITABLE with respect to topography.

1. Slopes within this range may require installation of curtain drains, vertical drains, or other approved drainage methods upslope from the lateral field.

2. Usable areas larger than normally required may be needed in this slope range.

(c) Slopes greater than thirty (30) percent shall be considered UNSUITABLE except slopes greater than thirty (30) percent may be classified as PROVISIONALLY SUITABLE if:

1. The soil characteristics are classified as either SUITABLE or PROVISIONALLY SUITABLE to a depth of at least thirty (30) inches;

2. Surface water run-off is diverted around the lateral field;

3.[If necessary,] Groundwater or perched water table flow is intercepted and diverted through:

a. Curtain drains;
b.[,] Vertical drains;[,] or
c. Other approved drainage methods; and

4. There is sufficient ground area available to install the on-site sewage disposal system with approved modification.

(d) Complex slope patterns and slopes dissected by gullies and ravines shall be considered UNSUITABLE with respect to topography.

(3) Landscape position.

(a) Convex hill or ridge tops, shoulder slopes, and side slopes shall be considered SUITABLE with respect to landscape position.

(b) Convex foot slopes and natural terraces shall be considered PROVISIONALLY SUITABLE with respect to landscape position.

(c) Concave hill or ridge tops, shoulder, side, foot, and toe slopes, drainageways, depressions, and terraces may be considered PROVISIONALLY SUITABLE if:

1. The soil characteristics are classified as either SUITABLE or PROVISIONALLY SUITABLE;

2. Surface water run-off is diverted around the lateral field; and

3. Groundwater flow is intercepted and diverted through curtain or vertical drains.

(d) If the provisions in paragraph (c) of this subsection cannot be met, the landscape position shall be classified UNSUITABLE.

(e) An area closer than seventy (70) feet to an open sinkhole throat,[or] downslope from the sinkhole sideslope midpoint, or ***an area*** subject to flooding damage shall be considered UNSUITABLE with respect to landscape position.

(4) Soil characteristics[,] or morphology.

(a) Backhoe pits may be required for site evaluation.

1. If backhoe pits are not required, at least[of] four (4) soil borings shall be taken in the area to be used for lateral fields.

2. Backhoe pits or borings shall be excavated to a depth of forty-two (42) inches or as required to determine the soil characteristics.

(b) Each excavated test hole or pit shall be backfilled to grade upon completion of the soil evaluation.

(c) Soil boring cores or exposed soil horizons in backhoe pits shall be evaluated and a determination made as to the suitability of the soil to treat and disperse effluent. Evaluation of soil characteristics shall be performed according to procedures ***established[outlined]*** by the Soil Survey Manual, 1993, Soil Survey Division Staff, USDA Handbook No. 18, as follows:

1.[(a)] Texture. The texture of the different horizons of soils may be classified into four (4) general groups:

a.[. 1.] SOIL GROUP I - sandy texture soils containing more than seventy (70) percent sand-sized particles in the soil mass. These soils are usually without sufficient clay to be cohesive. The sandy group includes the sand and loamy sand soil textural classes and shall generally be considered SUITABLE with respect to texture.

b.[2.] SOIL GROUP II - coarse loamy texture soils containing no more than twenty-seven (27) percent clay-sized particles in the soil mass. They exhibit slight or no stickiness. The coarse loamy group includes sandy loam and loam soil textural classes and shall generally be considered SUITABLE with respect to texture.

c.[3.] SOIL GROUP III - fine loamy texture soils containing less than forty (40) percent clay-sized particles in a soil mass. They exhibit slight to moderate stickiness. The fine loamy group includes sandy clay loam, silt, silt loam, clay loam, and silty clay loam textural classes and shall generally be considered PROVISIONALLY SUITABLE with respect to texture.

d.[4.] SOIL GROUP IV - clayey texture soils contain forty (40) percent or more clay-sized particles and include sandy clay, silty clay, and clay.

(i)[a.] Soil materials with 1:1 kaolinitic or mixed mineralogy

clays shall generally be considered PROVISIONALLY SUITABLE as to texture.

(ii)[~~b.~~] Soil materials with 2:1 clays and montmorillonitic mineralogy shall generally be considered UNSUITABLE as to texture.

(iii)[~~c.~~] Soil mineralogy information may be obtained from proper soil classification and correlation of the site ***by soil mapping*** or by laboratory tests listed in the Soil Survey Laboratory Methods Manual, 1996, National Soil Survey Center, NRCS-USDA, Soil Survey Investigations Report No. 42***, located at the Web site: nrcs.usda.gov/Internet/FSEDOCUMENTS/stelprdb1253872***.

e.[~~5.~~] The soil texture shall be estimated by field testing. Laboratory estimation of texture by particle-size analysis may be substituted for field testing if conducted in accordance with approved standard procedures such as those listed in the Soil Survey Laboratory Methods Manual, 1996, National Soil Survey Center, NRCS-USDA, Soil Survey Investigations Report No. 42, at the property owner's expense;

2.[~~. (b)~~] Structure. The four (4) kinds of soil structure most significant in movement of sewage effluent through soils are:

a.[~~1.~~] Block-like soil structure - block-like soil structure shall be considered PROVISIONALLY SUITABLE. Some rocks even though weathered, such as shales or creviced or fractured rocks, exhibit block-like structure. Rock shall be considered UNSUITABLE as to structure;

b.[~~. 2.~~] Prismatic soil structure - prismatic soil structure is generally considered PROVISIONALLY SUITABLE unless it is associated with fragipans, which shall be considered UNSUITABLE;

c.[~~. 3.~~] Platy soil structure - if Group II, III, and IV soils fall out into plate-like sheets, then the soil would have platy structure which shall be considered UNSUITABLE; and

d.[~~. 4.~~] Absence of soil structure - soils ***that[~~which~~]*** are massive or single grain and exhibit no structural aggregates shall be considered UNSUITABLE.

(5) Internal soil drainage.

(a) Internal soil drainage characteristics shall be determined by [~~the following procedures:~~

~~1.~~] comparison of moist soil samples collected throughout the soil profile[~~,~~] to a minimum depth of forty-two (42) inches[~~,~~] to standard Munsell notation soil color charts to establish color hue, value, and chroma with:

1.[~~; and 2.~~] Observation of soil profile for evidence of chroma 2 or less, with or without mottling, characterized as to abundance and contrast; or

2.[~~3.~~] Observation of freestanding water table.

(b) Soils exhibiting colors or mottling of greater than chroma 2 with no freestanding water table to a depth of forty-two (42) inches shall be considered SUITABLE with respect to internal drainage[~~,~~] if soil texture and structure are classified as either SUITABLE or PROVISIONALLY SUITABLE.

(c) Soils exhibiting colors or mottling of chroma 2 or less or freestanding water table starting at a depth of less than forty-two (42) inches but greater than or equal to twenty-four (24) inches shall be considered PROVISIONALLY SUITABLE with respect to internal drainage[~~,~~] if soil texture and structure are classified SUITABLE or PROVISIONALLY SUITABLE.

(d) Soils exhibiting colors or mottling of chroma 2 or less or freestanding water table at a depth of less than twenty-four (24) inches may be classified as PROVISIONALLY SUITABLE, if:

1. Soil texture and structure are classified SUITABLE or PROVISIONALLY SUITABLE; and

2. Curtain drains, vertical drains, or other approved methods are installed to intercept lateral water movement, or to lower and maintain the freestanding water table level to a depth of greater than twenty-four (24) inches.

(e) Soils exhibiting colors or mottling of chroma 2 or less or freestanding water table at a depth of less than twenty-four (24) inches ***that[~~which~~]*** cannot meet the criteria listed in paragraph (d)1. of this subsection shall be considered UNSUITABLE.

(6) Soil depth.

(a) Presence of bedrock or large flagstones, also known as [~~"~~]floaters[~~"~~], shall be determined by probing the site and through direct observation of the soil profile. Soil depth shall be considered the vertical distance from the existing ground surface to:

1. Solid, fractured, or rippable bedrock;

2. Weathered parent material; or

3. Large flagstones that[~~which~~] occupy more than thirty (30) percent of the exposed soil profile.

(b) Soil depths forty-two (42) inches or greater shall be considered SUITABLE as to depth.

(c) Soil depths less than forty-two (42) inches, but at least twenty-four (24) inches, shall be considered PROVISIONALLY SUITABLE as to depth.

(d) Soil depths less than twenty-four (24) inches shall be classified UNSUITABLE as to depth.

(e) If special system design and installation modifications can be made to provide at least eighteen (18) inches of undisturbed naturally occurring soil between the bottom of the lateral field, the soils may be reclassified PROVISIONALLY SUITABLE as to depth.

(7) Restrictive horizons.

(a) Soils in which restrictive horizons are at forty-two (42) inches in depth or greater shall be considered SUITABLE.

(b) Soils in which restrictive horizons are at depths less than forty-two (42) inches, but at least twenty-four (24) inches, shall be considered PROVISIONALLY SUITABLE.

(c) Soils in which restrictive horizons are at depths less than twenty-four (24) inches may be classified PROVISIONALLY SUITABLE[~~,~~] if special system design and installation modifications can be made to provide at least eighteen (18) inches of undisturbed naturally occurring soil between the bottom of the lateral field and the restrictive horizon.

(d) Soils in which restrictive horizons are at depths less than twenty-four (24) inches, which cannot meet the provisions in paragraph (c) of this subsection, shall be considered UNSUITABLE.

(8) Available space.

(a) Sites that[~~which~~] have two (2) times the usable land area required to permit the installation of an approved on-site sewage disposal system, in addition to the land area to be occupied by existing or proposed structures[~~,~~] or other natural or manmade features of the site ***that[~~which~~]*** are not compatible with system installation shall be classified SUITABLE as to available space.

(b) Sites ***that[~~which~~]*** have the usable land area required to permit the installation of an approved on-site sewage disposal system[~~,~~] and the usable land area required to permit the installation of an equivalent approved system, in addition to the land area to be occupied by existing or proposed structures[~~,~~] or other natural or manmade features of the site ***that[~~which~~]*** are not compatible with system installation, shall be classified PROVISIONALLY SUITABLE as to available space.

(c) All other sites shall be classified UNSUITABLE as to available space.

(9) Determination of overall site suitability. The criteria in subsections (2) through (8) of this section shall be SUITABLE, PROVISIONALLY SUITABLE, or UNSUITABLE as indicated. If all criteria are classified the same, that classification shall[~~will~~] prevail. If there is a variation in classification of the several criteria, the lowest classification shall determine the overall site classification.

(a) Topography classified as UNSUITABLE may be reclassified PROVISIONALLY SUITABLE under the provisions of subsection (2) of this section.

(b) If the landscape position, soil texture, soil structure, internal drainage, or depth to restrictive horizon is classified as UNSUITABLE[~~,~~] and cannot be reclassified as PROVISIONALLY SUITABLE through modification, the overall classification shall be UNSUITABLE regardless of the other criteria[~~,~~] unless the provisions of Section 4(6) of this administrative regulation are met.

(c) Soil depth classified as UNSUITABLE may be reclassified as PROVISIONALLY SUITABLE under the provisions of subsection (6)(e) of this section.

Section 4. Site Classification and System Restrictions. (1) Restrictions shall be placed upon on-site sewage systems approved for use due to site limitations or daily waste load volume.

The restrictions shall be determined by the ***[following]*** conditions[,] ***established in subsections (2) through (7) of this section,*** and the modified or alternative system listed shall be considered as the minimum acceptable.

(2) A site with an overall evaluation rating of SUITABLE, a conventional subsurface soil treatment, and dispersal system twenty four (24) inches deep[,] shall not be permitted without the approval of the local health department or the Department for Public Health.

(3) A site with an overall rating of PROVISIONALLY SUITABLE due to:

(a) Depth to rock, water table, or restrictive horizon.

1. Twenty-four (24) inches but less than forty-two (42) inches - a six (6) to twenty-three (23) inch deep modified conventional trench, or other approved system with a minimum separation distance of eighteen (18) inches between trench bottoms and rock, water table, or restrictive horizon. A minimum separation distance of twelve (12) to eighteen (18) inches between trench bottoms and rock, water table, or restrictive horizon may be considered with additional approved treatment technology.

2. Eighteen (18) inches to less than twenty-four (24) inches:

a.[-] A mound system;

b. Other approved system that maintains a minimum separation distance of eighteen (18) inches between trench bottoms and rock, water table, or restrictive horizon; or

c.[,] Sufficient filling of the area with suitable soil to allow installation of a modified or alternative system after a one (1) year settling period.

3. A minimum separation distance of twelve (12) to eighteen (18) inches between trench bottoms and rock, water table, or restrictive horizon may be considered[~~on a case-by-case basis~~] with additional approved treatment technology such as:

a. Peat filter systems;

b.[,] Sand filter systems;

c.[,] Aerobic units;

d.[~~, and~~] Drip irrigation systems;

e.[,] Two (2) tanks in a series;

f.[-] Dual compartment septic tanks;

g.[,] Approved effluent filters; or

h.[~~, and~~] Constructed wetlands cells.

4.[~~3.~~] Less than eighteen (18) inches - filling of the area with suitable soil to sufficient depth to allow modified or alternative system installation after a one (1) year settling period. A minimum separation distance of eighteen (18) inches between trench bottoms and rock, water table, or restrictive horizon shall be maintained on a fill and wait system.

(b) Soil texture or structure.

1. Soil Group III - any approved system.

2. Soil Group IV - a conventional trench system modified by the use of additional pretreatment as ***established[~~outlined~~]*** in Section 6(2) of this administrative regulation.

a. The system may be required to be modified by:

(i) The use of alternating lateral fields;

(ii)[~~by~~] Dosing tank and pump or siphon;

(iii)[~~by~~] Dosed alternating lateral fields;

(iv)[~~by~~] Dosed automatic alternating lateral fields;

(v)[~~or by~~] The use of an LPP system;

(iv) By a lagoon and lateral field system; or

(vii)[(vi)][~~by~~] Other systems approved by the cabinet for use in Group IV textured soil.

b. Gravity flow distribution systems in this soil group shall use equal flow distribution boxes only.

(4) If available space for the installation of an approved system is inadequate:

(a) Installation of permanent one and six-tenths (1.6) gallon or less low-volume flush water closets or nonwater carriage toilet devices shall be required; and[-]

(b) As much lateral footage of the most space efficient approved system, but no less than fifty (50) percent of the required minimum lateral footage for that system, discharging into a holding tank that[~~which~~] is at least equal in capacity to the required pretreatment unit shall be required.

(5) If a PROVISIONALLY SUITABLE rating was obtained, which may be affected by a combination of site limitations, the on-site system, whether conventional, modified, or alternative, which shall[~~will~~] overcome all limitations involved shall be installed.

(6) A site classified as UNSUITABLE may be used for on-site sewage disposal systems[,] if engineering, hydrogeologic, and soil studies indicate to the cabinet that a suitable on-site sewage disposal system can reasonably be expected to function satisfactorily. The site may be reclassified as PROVISIONALLY SUITABLE upon submission to the cabinet of adequate substantiating data to indicate that:

(a) An on-site sewage disposal system may[~~can~~] be installed so that the effluent shall[~~will~~] receive adequate treatment and proper disposal;

(b) The effluent shall[~~will~~] not contaminate any drinking water supply, groundwater, perched water, or surface water;

(c) The effluent shall[~~will~~] not be exposed on the ground surface.

(7) A site originally classified as UNSUITABLE due to soils that have been structurally damaged may be upgraded to PROVISIONALLY SUITABLE if ***[~~the following conditions are met~~]***:

(a) Structural damage ***shall be*** limited to a maximum depth of six (6) inches from the original ground surface;

(b) Trench depth at least six (6) inches deeper than the damaged layer;

(c) Required vertical separation distances to rock, water table, or other restrictive horizons ***shall be*** maintained;

(d) Soil rectification ***shall be*** performed using one (1) of the following methods:

1. Mechanical renovation with a chisel plow or other similar device if damaged soil is adequately improved by lifting from two (2) inches below the damaged layer; or

2. Removal of damaged soil and replacement with a Group III or better soil with a SUITABLE or PROVISIONALLY SUITABLE structure; and

(e)***[~~Reevaluation by~~]*** A certified inspector ***reevaluates*** following soil rectification and prior to system installation.

Section 5. Approval of Consultants. (1) The cabinet may grant limited approval to an eligible individual to perform tentative site evaluations only for proposed subdivisions for which on-site sewage disposal systems are intended.

(a) Individuals eligible for approval as consultants shall include:

1. Professional engineers;

2. Registered architects;

3. Soil scientists;

4. Professional geologists; and

5. Certified inspectors whose certifications have not been suspended or revoked.

(b) The cabinet may require attendance at training seminars and competency testing as a condition of maintaining approved status.

(2) To be eligible for approval as a consultant, the individual shall possess a valid professional registration, license, certificate, or other similar document, issued by the respective profession's registration, licensure, or certification board, agency, committee, or other body recognized by the state of Kentucky.

(3) If suspension or revocation proceedings are initiated by the cabinet[,] in accordance with KRS 211.360(3), the certified individual may request a hearing before the cabinet[,] in accordance with KRS 211.360(4)[,] to present evidence on his behalf as to why the intended action should not be taken.

(4) If the cabinet has suspended or revoked certification for cause, the cabinet shall provide notification to the appropriate professional body with which the person affected is registered, licensed, or certified.

Section 6. System Sizing Standards. (1) Design waste flows. Daily waste flow volumes for system design and sizing purposes shall be computed for each residential unit, business or commercial facility, or other public facility[,] based upon the design flow per designated flow unit listed in Table 1 multiplied by the number of flow units involved.

(a) If approved permanent nonwater carriage water closet type devices, such as composting, incinerator, or oil carriage toilets, are installed exclusively in a residence[~~and if no other blackwater type wastes are created~~], the daily design waste flow unit for that specific residence may be reduced to the amount[~~figure given~~] in Table 1, Column B.

(b) If an approved greywater system is installed so that all greywater is separated from the onsite sewage disposal system and no other greywater type wastes are created, the daily design waste flow for the onsite sewage disposal system for that specific residence may be reduced to the amount in Table 1, Column B.

(c) If a residence meets the criteria of paragraphs (a) and (b) of this subsection, the design daily waste flow for onsite sewage disposal system for that residence may be reduced to the amount in Table 1, Column C.

(d) A daily waste flow unit reduction shall not be granted for installation of nonpermanent flow reduction devices, such as showerheads, showerhead or faucet inserts, suds-saver type automatic washing machines, or other similar devices. Use of water saving devices, such as low-volume flush water closets, may be required by the cabinet if necessary due to site limitations.

(e)[~~(c)~~] An on-site sewage system that receives a design daily waste flow of 2,000 gallons or more shall be designed to provide dosing of the lateral field through the use of dosing tanks and pumps or siphons, or through the installation of an LPP system.

(f)[~~(d)~~] An applicant proposing to use an on-site sewage disposal system for a nonresidential source of sewage shall provide the following information to the cabinet:

1. Data to show the sewage does not contain industrial wastewater;

2. Data to establish the potential sewage strength and to identify chemicals found in the sewage that are not typically found in residential sewage; and

3. A design to provide pretreatment of the sewage to at least residential septic tank effluent quality.

(g)[~~(e)~~] The following businesses or facilities shall not be approved for disposal of waste waters into an on-site sewage disposal system due to the nature of the wastes generated or the high volume of wastewater created:

1. Laundromats, except on an experimental basis as provided under ***subsection (16) of this section[~~Section 6(16)~~]***[~~(14)~~]***[~~of this administrative regulation~~]***;

2. Car washes;

3. Kill room wastes from livestock slaughterhouses;

4. Embalming wastes from funeral parlors or mortuaries; and

5. Industrial or process wastes from factories.

Table 1
Design Daily Waste Flow

		Gallons/Unit/Day		
Source of Sewage Dwelling Units	Units	Standard	Column B	Column C
Single family residences	Each bedroom	110[~~120~~]	83[~~90~~]	55
Hotels or motels	Each room	90[~~100~~]		
Apartments/condominiums/townhouses	Each bedroom	110[~~120~~]		
Rooming houses	Each bedroom	110[~~120~~]		
Mobile home parks	Space	270[~~300~~]		
Commercial/industrial:				
Retail stores	Each toilet room	180[~~200~~]		
Malls, shopping centers	Each 1000 sq. ft.	180[~~200~~]		
Offices and tattoo studios	Employee	15[~~20~~]		
Medical offices (with laboratories)	Employee	45[~~50~~]		
Dental offices (with water rinse units)	Exam chair	225[~~250~~]		
Dental offices (with suction units)	Exam chair	45[~~50~~]		
Veterinary office (add for animal grooming) (add for animal boarding)	Clinic per animal per animal	225[~~250~~] 10 10		
Dog kennels	per dog	5		
Industrial buildings (Add for showers)	Employee/shift (does not include process water or cafeteria) Employee/shift	15[~~20~~] 10		
Construction site	Employee/shift	15[~~20~~]		
Visitor center	Visitor	4[~~5~~]		
Barber shops	Chair	65[~~75~~]		
Beauty shops	Chair	115[~~125~~]		
Laundromats: (experimental only)	Machine	300		
Eating and drinking establishments:				
Restaurant (does not include bar or lounge)	Meal/seat	15		
Bar or lounge	Seat	15[~~20~~]		
Drive-in (no public restrooms)	Establishment	450[~~500~~]		
Drive-in (with public restrooms)	Car stall	15[~~20~~]		
Food markets:				
Prepackaged/Catering	Store or establishment	225[~~250~~]		
Food processing/Retail/Manufacturing: (with eat-in delicatessen) (with carryout delicatessen)	Store Meal/seat Store	900[~~1,000~~] 15 Additional 225[~~250~~]		
Rabbit or fish processors (with solid waste separation)	Employee/shift per animal or fish processed	15[~~20~~] 0.5		

Institutional (includes food service):				
Hospitals and surgical centers	Each bed	270[~~300~~]		
Mental	Each bed	90[~~100~~]		
Prison or jail	Each inmate bed	90[~~100~~]		
Nursing home, rest home	Each resident bed	90[~~100~~]		
Schools and Churches (includes food service):				
Elementary, day care, kindergarten	Student	20[~~25~~]		
High school	Student	30[~~35~~]		
College	Student	30[~~35~~]		
Boarding school	Student	55[~~60~~]		
Churches: (without kitchen facilities) (with kitchen facilities)	 Average attendance/person Average attendance/person	 3 4[~~5~~]		
Recreational:				
Recreational vehicle park (sewer hook-ups to each space) (with central bath only) Dump station only	 Space Space Space	 115[~~125~~] 65[~~75~~] 20[~~25~~]		
Day camp (no meals)	Person	15		
Residential camp (includes cafeteria)	Person	55[~~60~~]		
Resorts/housekeeping cabin	Bedroom	110[~~120~~]	83	55
Tent camping areas w/central bath	Space	65[~~75~~]		
Country clubs (does not include food service)	Member	10[~~15~~]		
Golf courses	Average attendance/person	8[~~10~~]		
Swimming pools	Design capacity/person	8[~~10~~]		
Picnic parks, sports facilities, ball parks:				
(with toilet only) (with food service)	Average attendance/person Average attendance/person	4[~~5~~] 7[~~8~~]		
Movie theaters	Seat	4[~~5~~]		
Drive-in theaters (includes food service)	Space	12[~~15~~]		
Skating rink/dance hall	Person (based on rated capacity)	8[~~10~~]		
Bowling alley	Lane	90[~~100~~]		
Transportation:				
Airport, bus or rail depot	Passenger	4[~~5~~]		
Auto service station	Each water closet or urinal	225[~~250~~]		

(2) Residential pretreatment units. A septic tank in a single-family residence on-site sewage disposal system shall meet the minimum working liquid capacities in paragraphs (a) to (c) of this subsection, based on the number of bedrooms involved. An aerobic or other type of approved pretreatment unit shall be sized according to its rated treatment capacity in gallons per day, based upon the design daily waste flow per design unit given in Table 1.

(a) On a Soil Group IV site, additional pretreatment shall be provided by use of one (1) of the following methods:

1. Installation of multiple septic tanks in series. The first tank receiving raw sewage from the residence shall be of the required minimum capacity in Table 2. Additional tanks shall be installed in series as needed to provide a total capacity equal to the required minimum plus an additional fifty (50) percent;

2. Installation of an aerobic pretreatment unit. An aerobic unit that does not include an integral trash or primary settling chamber in its construction shall be provided by the series installation of a minimum 1,000 gallon septic tank to receive raw sewage, with effluent discharging into the aerobic unit;[.]

3. Installation of multiple compartment septic tanks. The first compartment[,] receiving raw sewage from the residence shall be of the required minimum capacity in Table 2. The second compartment shall have a total capacity equal to at least fifty (50) percent of the first compartment; or[.]

4. Permanent installation of effluent filters. The effluent filter shall be a maximum screen size of one-sixteenth (1/16[*/*]) inch and shall be installed either inside or following a properly-sized septic tank. Access to filters shall be provided to finished grade.

(b) Subsurface flow constructed wetlands on-site sewage disposal systems shall include one (1) of the following pretreatment options:

1. Two (2) septic tanks in series and an approved commercial-sized filter located at the outlet end of the second tank;

2. A two (2) compartment septic tank and an approved commercial-sized filter located at the outlet end of the second compartment; or

3. An aerobic unit and an approved commercial-sized filter installed internally or externally on the outlet pipe.

(c) A pretreatment unit for subsurface flow constructed wetlands shall be sized the same as a pretreatment unit for Group IV textured soil.

(d) If required minimum tank capacities for residential systems exceed 1,000 gallons and larger capacity tanks are unavailable, serial installation of multiple tanks is permitted to obtain the necessary capacity. The first tank in series shall have a minimum capacity of 1,000 gallons.

Table 2
Minimum Capacity of Pretreatment Units

Number of Bedrooms	Gallon Capacity (Without Garbage Disposal)	Gallon Capacity (With Garbage Disposal)
3 or less	1,000	1,250
4	1,250	1,500
5	1,500	1,750
Each Additional	250	250

(3) Commercial and public facility pretreatment units.

(a) Minimum working liquid capacities for a septic tank for a commercial or public facility on-site sewage disposal system shall be determined by multiplying the daily design waste flow per unit times the total number of units, plus an additional fifty (50) percent

of that figure for solids storage;[.] (Gallons/unit/day X Number of Units) + 50% = MINIMUM CAPACITY REQUIRED.

(b) Commercial facility system installation shall be subject to procedures and requirements ***established[~~listed~~]*** in subsection (2) of this section relative to:

1. Sites with soils in Soil Group IV;
2. Subsurface flow constructed wetlands;
3. Aerobic and other types of pretreatment units; and
4. Use of multiple tanks in series to obtain required capacity.

(c) An establishment with food preparation or food processing facilities shall install adequately ***[-]***designed and approved pretreatment units to reduce FOG, BOD-5, and TSS to a level typically found in residential septic tank effluent. The applicant shall be required to submit data from comparable facilities to determine the establishment's potential effluent strength.

(d)1. A commercial or public facility engaged in the manufacture, processing, preparation, or service of food or food products shall use[~~be provided with~~] an approved grease trap.

2. Wastewater drain piping from food processing equipment; sinks for washing of food, equipment and utensils; dishwashers; and floor drains in food preparation and processing areas shall be separated from other wastewater piping[,] and shall discharge into a grease trap prior to entrance into an on-site sewage disposal system.

3. Grease trap capacity shall be a minimum of 500 gallons for daily waste flows of 6,000 gallons or less[,] and 1,000 gallons for daily waste flows greater than 6,000 gallons.

4. A grease trap shall be placed outside of the structure and shall be located as close as practicable to the source of the wastewater to prevent separation of grease prior to entry into the grease trap.

(4) Sizing of gravity distribution lateral fields. Gravity distribution lateral fields for an on-site sewage disposal system shall be sized based upon the design daily waste flow for the residence, commercial or public facility involved, as determined from Table 1. The total daily waste flow multiplied by the linear footage requirement per gallon found in Table 3 for the specific site soil characteristics[,] shall determine the minimum linear footage of lateral trench required.

Table 3
Application Rates for Gravity Distribution Lateral Fields Based on Two (2) Foot Conventional Trench Width

Soil Group	Soil Texture Classes	Application Rate Gal/Sq. Ft./Day	Linear Ft. Per Gallon
I Sands	Sand	1.2	.42
	Loamy Sand	.9	.56
II Coarse loams	Sandy Loam	.7	.72
IIIa. Fine loams (with suitable structure)	Sandy Clay Loam	.5	1.0
	Silt Loam		
	Silt		
	Clay Loam		
	Silty Clay Loam		
IIIb. Fine loams (with provisionally suitable structure)	Sandy Clay Loam	.37	1.35
	Silt Loam		
	Silt		
	Clay Loam		
	Silty Clay Loam		
IV Clays (Kaolinitic or mixed mineralogy with provisionally suitable structure)	Sandy Clay	.27	1.85
	Silty Clay		
	Clay		

(5) Sizing of LPP distribution lateral fields. LPP distribution lateral fields for on-site sewage disposal systems shall be sized based upon the calculated total design daily waste flow for the residence, commercial, or public facility involved, as determined from Table 1. The total daily waste flow divided by the allowable daily loading rate found in Table 4, for the specific site soil characteristics, shall determine the minimum square footage of absorption area required.

Table 4
Application Rates for Low Pressure Pipe (LPP) Lateral Fields

Soil Texture Group	Soil Texture Classes	Rate Gal/ Sq.Ft./Day
I Sands	Sand	0.5
	Loamy Sand	
II Coarse Loams	Sandy Loam	0.4
	Loam	
IIIa. Fine Loams (with suitable structure)	Sandy Clay Loam	0.3
	Silt Loam	
	Silt	
	Clay Loam	
	Silty Clay Loam	
IIIb. Fine Loams (with provisionally suitable structure)	Sandy Clay Loam	0.1714
	Silt Loam	
	Silt	
	Clay Loam	
	Silty Clay Loam	
IV Clays (Kaolinitic or mixed mineralogy with provisionally suitable structure)	Sandy Clay	0.1
	Silty Clay	
	Clay	

(6) Sizing of gravelless pipe systems.

(a) Gravelless pipe in eight (8) and ten (10) inch internal diameter sizes[,] may be used in lieu of standard lateral trenches for conventional and modified conventional lateral field applications.

(b) Linear footage requirements listed in Table 3 shall apply to gravelless pipe.

(c) Gravelless pipe shall not be permitted in Group IV textured soils.

(7) Sizing of gravity distribution lateral beds. If lateral beds are permitted in lieu of standard two (2) foot wide lateral trenches, the required total length of standard lateral trench shall be calculated from Tables 1 and 3 information. That figure shall be multiplied by the percentage shown on Table 5[,] for the bed width intended for use. The number of linear feet resulting shall be the amount required for installation for that particular bed width.

Table 5
Lateral Bed Length Requirements for Gravity Distribution Systems Based on Bed Width

Bed Width	Multiply Total Linear Footage of Two (2) Foot Wide Trench Required By:
3'	70%
4'	55%
5'	45%
6'	40%
7'	35%
8'	32%
9'	30%
10'	28%
11'	27%
12' or wider	26%

(8) Sizing of leaching chamber systems. Leaching chamber systems may be used in lieu of standard lateral trenches. Linear footage requirements for chambers shall be based on nominal internal chamber width as follows:

(a) In trench configuration – for nominal widths of:

1. Fifteen (15) to twenty-one (21) inches, 100 percent of Table 3;

2. Twenty-two (22) to twenty-seven (27) inches, seventy (70) percent of Table 3;

3. Twenty-eight (28) to thirty (30) inches, sixty (60) percent of Table 3;

4. Thirty-one (31) to thirty-six (36) inches, fifty-five (55) percent of Table 3;

5. Thirty-seven (37) to forty-one (41) inches, fifty (50) percent of Table 3; and

6. Forty-two (42) to forty-four (44) inches, forty-five (45) percent of Table 3;[~~required linear footage.~~]

(b) In bed configuration - for chamber widths eighty-five (85) percent of Table 5 linear footage requirements based on total bed width to nearest foot; and[,]

(c) Other chamber designs including those with nominal widths outside the ranges listed in paragraph (a) of this subsection shall be sized on a case-by-case basis ***to allow for technological advancements***.

(9) Sizing of gravity distribution alternate lateral fields or beds. If alternate gravity distribution lateral fields or beds are used, the individual alternate lateral fields or beds shall each contain one-half (1/2) of the total linear footage required for the system[,] and shall be alternated in use on a yearly basis by use of an approved alternating valve or device.

(10) Sizing of dosed gravity distribution automatic alternating lateral fields or beds.

(a) If dosed automatic alternating lateral fields or beds are used, the individual alternating lateral fields or beds shall each contain one-half (1/2) of the total linear footage required for the system.

(b) Dosed automatic alternating lateral field or bed systems shall be designed and operated so as to alternate between lateral fields or beds with doses of effluent, by[~~of~~] two (2) or more dosing siphons or pumps controlled by an automatic alternating device[,] or by simultaneous dosing.

(11) Sizing of combination evaporation-absorption lagoon and lateral field systems.

(a) On sites with Group IV soils where a conventional lateral field system or alternative system cannot be installed due to heavy clay soils with poor or no structure conditions, a combination evaporation-absorption lagoon and shallow lateral field system may be considered for installation.

(b) Total daily waste flow shall be determined by using Table 1[,] and the total square footage of lagoon waste surface area shall be calculated by multiplying the total gallons of waste flow per day by five (5) square feet per gallon.

(c) Effluent entering the lagoon shall have passed through a properly sized pretreatment unit[,] according to the provisions of Table 2 and subsection (3)(a) of this section.

(d) The overflow from the lagoon shall be directed to an approved lateral field according to the provisions of Section 4 of this administrative regulation. Lagoon overflow lateral field size for two (2) foot wide gravel field trenches shall be calculated by multiplying the total daily waste flow in gallons by one-tenth (.10) linear feet per gallon.

(12) Sizing of mound systems.

(a) Mound systems shall be designed and sized based upon the information and criteria given in the United States Environmental Protection Agency publication EPA 625/1-80-012 ***["]***Design Manual, On-site Wastewater Treatment and Disposal Systems," Chapter 7.2.4 on Mound Systems***, located at the Web site: nepis.epa.gov/Exe/ZyPDF.cgi/300043XO.PDF?Dockey=300043XO.PDF, and may require soil permeability testing if necessary***.

(b) All mound systems shall use pressure distribution of effluent in the absorption area.

(c) Mound fill material shall be coarse ASTM C-33 sand that meets the following criteria:

1. Less than twenty (20) percent, by weight, greater than two (2) mm in diameter; and

2. Less than five (5) percent, by weight, less than 0.053 mm in diameter.

(d) The design loading or filtration rate shall be one (1.0) gpd/sq.ft. for residential septic tank effluent.

(e) The sand fill material shall not be included in the measurement of the vertical separation distance between the absorption area and a:

1. Restrictive horizon;

2.[,] Rock;[,] or

3. Water table.

(13) Sizing of subsurface flow constructed wetlands systems.

(a) Constructed wetlands cells shall contain a minimum of one and three-tenths (1.3) cubic feet of fill material for each one (1) gallon of total daily waste flow.

(b) Total interior square footage shall be based on one and three-tenths (1.3) cubic feet per one (1) gallon of total daily design wasteflow; if twelve (12) inches of fill material is used, then the square footage equals the cubic footage.

(c) The length to width ratio of the cell shall range between three (3) to one (1) and five (5) to one (1) for gravity flow.

(d) The length to width ratio for pressure distribution shall be determined based on system size and available installation area.

(e) The overflow lateral field footage shall be calculated by using fifty (50) percent of the standard sizing for the chosen type of system**,** and[,] all approved lateral field types shall be acceptable.

(14) Sizing of drip treatment and disposal systems. Drip treatment and disposal systems shall be:

(a) Designed and sized based upon the information contained in Drip Irrigation Treatment and Disposal System Design Standards;

(b) Installed in a location in which the county or district board of health has adopted an Operation and Maintenance Ordinance; and

(c) Approved for inspection upon receipt of a Declaration of Covenants, Conditions, and Restrictions form completed by the prospective owner and incorporated into the property deed in order to inform future owners.

(15) Sizing of residential greywater[~~laundry~~] waste systems. If greywater is to be separated from the blackwater sewer, the[~~If improved system performance may be attained by separating laundry greywater waste flows from other residential waste flow for new system installations, or as repair for existing systems,~~] separation shall be accomplished ***as established in paragraphs (a) through (e) of this subsection.[~~in the following manner:~~]***

(a) Greywater[~~sewer for the washing machine~~] shall be separated from the main house sewer***.[;]***

(b) A residential[~~laundry~~] greywater waste system shall be installed according to the results of the site evaluation of the greywater installation area and ***[~~the following shall apply~~]***:

1. A septic tank is not required for a greywater waste system;

2. A distribution device is not required for the greywater waste system;

3. A twelve (12) inch separation from the bottom of the greywater absorption system to rock, water table, or restrictive horizon is ***allowed[~~permitted~~]***;

4. Cover over the greywater absorption waste system shall prevent ponding or surfacing of greywater;

5. A valve shall be installed to divert greywater back into the onsite sewage disposal system, except in a laundry greywater system;

6. The system shall have 100 percent system replacement area available;

7. The minimum setback distances listed in Table 7 shall apply to the greywater absorption area;

8. The system shall accept domestic type flows with the consistency and strength typical of greywater from domestic households, the source being:

a. Bathing;

b. Showering;

c. Washing clothes; or

d. Laundry sinks;

9. The system shall not contain water used to wash materials soiled with:

a. Human excreta;

b. Infectious substances;

c. Cleaning chemicals other than soap;

d. Water softener backwash; or

e. A hazardous household product; and

10. Greywater shall not be applied directly to the surface of the ground or above grade without receiving written approval from the Energy and Environment Cabinet.

(c) Sizing of the absorption area shall be based on fifty-five (55) gallons per day per bedroom and the Application Rate in Table 3 to calculate the total area of the bottom of the absorption designs except in a laundry greywater system.

(d) For only a laundry greywater system, the sizing shall be based[~~calculated~~] on fifteen (15) percent of total daily waste flow and the Application Rate in Table 3 to calculate the total area of the bottom of the subsurface absorption designs[~~multiplied by the linear feet per gallon specified in Table 3 for a conventional two (2) foot wide trench~~].

(e)[~~(d)~~] On a new system installation permitting laundry wasteflow separation:

1. For Soil Groups I to III, a fifteen (15) percent reduction in the primary system lateral field requirement shall be allowed; and

2. For Soil Group IV, a system size reduction shall not be allowed.

(16)[~~(15)~~] The cabinet shall size an experimental or alternative system not covered by this administrative regulation, based upon:

(a) Site characteristics;

(b) Effluent characteristics;

(c) Pretreatment processes;

(d) Technology used; and

(e) Other demonstrable factors.

(17)[~~(16)~~] Sizing of dosing tanks. Dosing tanks shall be of sufficient capacity to hold:

(a) Two (2) times the total design daily waste flow calculated from Table 1; or

(b) One (1) times the total design daily waste flow calculated from Table 1 with the ***[~~following~~]*** requirements ***established in subparagraphs 1. through 3. of this paragraph[:~~,~~]***

1. Dual alternating pumps shall be utilized ***and[~~where~~]*** the pumps automatically alternate each pump cycle***.[;~~,~~]***

2. Dual pumps shall be controlled with an automatic override so that in the event one (1) pump fails, the other shall automatically take over until the failed pump can be replaced***.[;~~ and~~]***

3. A pump failure alarm shall be installed so that in the event one (1) pump fails, the alarm is activated and the failed pump ***shall[~~may~~]*** be replaced as soon as possible.

(18)[~~(17)~~] Use of holding tanks.

(a) A holding tank shall be permitted only***[~~under the following conditions~~]***:

1. ***If*** written official verification is submitted to the cabinet that a municipal sewer system shall[~~will~~] be available within a two (2) year period;

2. ***If*** a commercial or public facility has a daily wasteflow of less than 200 gallons per day;

3. During a one (1) year waiting period for soil to settle in an area that has been filled with topsoil, in accordance with Section 7(5) of this administrative regulation;

4. To repair an existing septic system if no other means of repair is available;

5. To expand an existing system for a single family residence if no other means of expanding the system is available; or

6. In accordance with Section 4(4)(b) of this administrative regulation.

(b) If a holding tank is permitted:

1. Water closets with flush volume of one and six-tenths (1.6) gallons or less shall be installed;

2. An audible and visible alarm system shall be installed:

a. Within the structure served; or

b. In a high pedestrian traffic area[~~,~~] within sight of the structure served;

3. The applicant shall submit with the permit application a copy of a contract with a licensed septic tank cleaning company[~~,~~] or other management entity[~~,~~] for servicing the holding tank[~~,~~] and shall thereafter maintain servicing records available for cabinet inspection; and

4. The local health department may require the owner to post a cash performance bond.

(19)[~~(18)~~] Sizing of holding tanks. Holding tanks shall be sized as ***established in paragraphs (a) and (b) of this subsection.[~~follows:~~]***

(a) Holding tanks installed to repair an existing system,[~~or~~] as an addition to a new system, or added to expand an existing system[~~,~~] shall be sized the same as the required pretreatment unit.

(b) All other holding tanks shall be sized to hold a minimum seven (7) days wasteflow for the structure served.

Section 7. System Installation Standards. (1) System layout standards.

(a)1. A system shall be designed, laid out, and installed in the designated area set aside during the site evaluation**,** and[~~,~~] installation of the system in any other area is prohibited without the written consent of the local health department certified inspector.

2. If the markers used to designate the system area cannot be identified, the certified inspector or professional engineer who conducted the site evaluation shall revisit the property to reestablish the original designated area and confirm that it has not been altered.

3.[~~(b)~~] Layout of the system on the site by the certified installer shall be accomplished by using suitable stakes or markers to locate excavation sites for system components, and shooting of surface grades to establish necessary excavation depths to assure proper elevation "fall" in the system.

4. Lateral trenches or beds shall be laid out to follow parallel to the surface contour lines of the site.

(b)***1.***[~~(c)~~] Maximum length for individual lateral trenches or beds for gravity distribution systems shall be no more than 200 feet.

2. Maximum length for individual lateral trenches in LPP systems shall be seventy (70) feet.

(c)[~~(d)~~] Individual lateral lines or beds receiving effluent from an equal flow distribution box shall be of equivalent size within ten (10) percent of the longest line or bed.

(d)1.[~~(e)~~] Lateral trenches, and leaching chambers two (2) feet wide or less, for gravity distribution systems shall be spaced a minimum of eight (8) feet on centers;

2. Lateral trenches for LPP systems shall be spaced a minimum of five (5) feet on centers;

3. Lateral beds, and leaching chambers greater than two (2) feet wide, for gravity distribution systems shall be spaced a minimum of eight (8) feet from side wall to side wall;

4. Spacing shall be increased two (2) feet on all sites with slopes greater than fifteen (15) percent and up to and including twenty (20) percent; and

5. On slopes greater than twenty (20) percent, each five (5) percent increase in slope, or fraction thereof, shall require an additional spacing of two (2) feet for lateral trenches.

(e)[~~(f)~~] Lateral line spacing in gravity distribution bed systems shall be as ***established in subparagraphs 1. through 3. of this paragraph.[~~follows:~~]***

1. For beds of four (4) to six (6) feet in width, one (1) lateral line ***shall be*** placed on the centerline of the bed***.[;~~,~~]***

2. For beds of seven (7) to ten (10) feet in width, two (2) lateral lines ***shall be[~~,~~]*** spaced two and one-half (2 1/2) feet from the side walls***.[;~~,~~]***

3. For beds eleven (11) feet and wider, the two (2) ***lateral lines shall be[~~laterals~~]*** spaced two and one-half (2 1/2) feet from the side walls, and additional lateral lines ***shall be*** installed five (5) feet on centers, or fraction thereof, from the side wall laterals.

(2) Excavation standards.

(a) Only equipment necessary to the installation of an on-site sewage disposal system shall be permitted in the designated area set aside for that system. Equipment shall be operated so as to minimize travel over[~~,~~] and ***soil*** compaction of[~~,~~] the system area.

(b) Excavation of the lateral field, bed**,** or other subsurface soil absorption system portion of the total system area shall be restricted by the soil moisture conditions of that portion of the area at the intended depth of excavation for all soil texture classes.

1. Soil moisture conditions shall be determined by test excavation to the intended depth of the lateral trenches or beds.

2. A small portion of soil excavated from that depth shall be rolled between the thumb and fingers. If the soil can be rolled into a "wire" shaped form which does not easily crumble, the soil is too wet to work and will compact and seal absorption surfaces. If a

"wire" form cannot be rolled and the soil crumbles, excavation can proceed.

(c) Excavation for septic tanks or other pretreatment units, distribution boxes, alternating valves or devices, and all nonperforated piping used to conduct effluent to other components through gravity flow means[,] shall be done only after shooting of grades to assure a positive gradient from the outlet of the pretreatment unit through all components to the distribution ***box or device. The[box(es) or device(s). Such]*** determinations of grade shall take into account the intended excavation depth from grade of lateral trenches or beds.

(d)1. Excavations for placement of all components shall be made to the necessary depth for installation and shall be dug level in undisturbed earth.

2. If filling is required to level or raise components to the proper grade, except for lateral trenches or beds, tamped gravel, sand, or compacted soil shall be used for bedding purposes.

3. If[When] installation occurs in stony areas, large stones, flagstones, and boulders[,] shall be removed from the component placement excavations to prevent component damage[,] and the cavities created by their removal shall be filled with tamped gravel, sand, or compacted soil if they are located on the bottom surface of the excavation.

(e)1. Excavations for lateral trenches or beds shall be made to the depth specified by the site evaluation results.

2. Maximum trench or bed depth from grade for an on-site sewage treatment and dispersal system shall be twenty-four (24) inches.

3. Minimum trench or bed depth for modified gravity and dosed gravity distribution systems shall be six (6) inches from grade.

4. Minimum trench depth for LPP systems shall be six (6) inches from grade.

5. Trench width for LPP systems shall be a minimum of twelve (12) inches.

6. Minimum trench width for gravelless pipe shall be eighteen (18) inches to a maximum of twenty-four (24) inches.

7. Minimum or maximum trench width shall be as per manufacturer's specifications for leaching chambers***.[;]*** but in no instance shall the trench width exceed the chamber width by more than eight (8) inches.

(f) Lateral trench and bed bottom grades shall be as ***established[shown]*** in Table 6:

Table 6
Maximum Grades for Trench and Bed Bottoms

Distribution Method	Type	Maximum Grade inches/200 feet
Hillside or drop box [(also serial distribution)]	Trench	2"
Equal Flow Box	Trench	4"
	Bed	Level to 1" in all directions from center
Gravelless Pipe	Trench	Level
Low Pressure Pipe	Trench	Level
	Bed (Mound)	Level
Leaching Chambers (using any of the above methods except low pressure) (using low pressure pipe)	Trench layout	4"
	Bed Layout	Level
	Trench	Level

(g)1. Excavations for curtain drains[,] or vertical drains to intercept or lower groundwater tables shall be made to the depth determined by the site evaluation.

2. Curtain drain excavations shall maintain the required depth in all parts upgrade from the lowest lateral line and then be graded to drain to the surface or to a pumped catchment basin.

3. Vertical drain excavations shall encircle the entire soil absorption field area.

4. Pretreatment units may be included within the curtain drained or vertical drained area.

(h)1. Excavations for distribution leaders[,] or nonperforated pipe[,] from a distribution box on gravity distribution systems[,] shall be made so as to provide a "benched" distribution corridor above the trench or bed bottom.

2. This "benched" corridor shall be bedded in undisturbed earth, and shall be excavated so as to provide a "bench" height of six (6) inches above the elevations of the trench or bed bottoms.

3. Benching of the distribution corridor shall be used to reduce the possibility of "short circuiting" of effluent and effluent ponding around distribution boxes.

(i)1. Excavation of evaporation/absorption lagoons shall be made to provide uniformly***[-]***level lagoon bottoms and to provide a wastewater depth below the overflow outlet of four and one-half (4 1/2) feet[,] and a freeboard of two (2) feet.

2. Containment berming, dikes, dams, and liners shall be of Group IV soil texture and installed so as to provide a minimum of eighteen (18) inch separation from the inside wall and bottom of the lagoon to rock and shall be "keyed" into the original soil at least one (1) foot deep and two (2) feet wide at the base.

3. Berms, dikes, or dams shall be constructed on a two (2) feet vertical to one (1) foot horizontal slope.

4. To prevent entrance by unauthorized persons, a lagoon shall be enclosed within a minimum six (6) foot high chain-link fence or equivalent (no climb) open weave designed fence with a locked gate.

(j)1. Constructed wetlands cell bottoms shall be excavated uniformly level and prepared so that no coarse materials are exposed.

2. Soil berming used for constructed wetlands shall be constructed so that the berming is stable and soil sloughing does not occur.

3. The outside walls shall have a slope of one (1) foot vertical to three (3) feet horizontal.

4. The inside walls shall have a minimum slope of one (1) foot vertical to two (2) feet horizontal.

5. Vegetation shall be established on berming as soon as possible.

(3) Component installation standards.

(a)1. Septic tanks and other pretreatment units, dosing tanks, and holding tanks shall be installed level.

2. Connections to the unit ***that[which]*** conduct sewage or effluent[,] and unit joints or seams[,] shall be watertight.

3. Manufacturer's instructions on installation and piping and electrical connections to the unit, shall be followed by the installer.

4. A unit showing structural damage on delivery[,] or damaged in placement shall be replaced with an undamaged unit.

5. Patching of minor damage ***that[which]*** does not affect the structural integrity, watertightness, or function of the unit ***shall be done[may be permitted]*** under the supervision of the certified inspector.

(b)1. The certified installer shall provide access to finished grade above the outlet end manhole on each septic tank[,] through the use of suitable manhole risers of a minimum eighteen (18) inches internal dimension to allow removal of the tank manhole lid.

2. The manhole risers shall be provided with tamper-resistant lids or covers. Lids or covers of precast concrete, cast iron, or steel shall be considered tamper-resistant if weighing sixty (60) pounds or more and require a vertical lift for removal.

3. Lids or covers of sheet metal, plastic, or fiberglass shall be attached by bolts or other suitable fastener requiring a tool for removal.

(c) An approved distribution device shall be used in a gravity flow system.

(d)1. Distribution boxes[,] and alternating valves or devices[,] shall be installed level,[,] and each piping connection shall be rendered watertight.

2. A component showing structural damage on delivery[,] or damaged in placement shall be replaced with an undamaged component.

(e)1. An equal flow distribution box shall be installed on a stable base to prevent settling.

2. A plastic or fiberglass equal flow or level box shall be securely anchored to a poured concrete base a minimum of four (4) inches thick and extending on all sides of the box side walls at least four (4) inches.

(f) Outlet piping of an equal flow box shall be extended past the inside side wall of the box at least three-fourths (3/4) of an inch but no greater than one (1) inch to allow attachment of water leveling devices.

(g)1. Approved nonperforated pipe shall be used as leader piping to connect an outlet in a distribution box to each perforated lateral line in the gravity distribution system[,] and shall extend two (2) feet into all trenches or beds before connection to perforated lateral line.

2. The leader piping excavation shall be manually filled with tightly***[-]*** tamped soil.

(h) Leader piping connected to equal flow boxes shall be installed at no greater than one-eighth (1/8) inch per foot slope for the first five (5) feet of run from the box to restrict the flow velocity of effluent.

(i) Lateral lines for conventional gravity distribution trenches or beds shall be laid as ***established in subparagraphs 1. through 4. of this paragraph.[follows:]***

1. A six (6) inch deep layer of approved trench rock or other fill material ***shall be[is]*** carefully placed in the trench or bed to prevent sealing of absorption surfaces from fill impact, and leveled***.[;]***

2. Lateral piping ***shall be[is]*** placed and leveled on the trench fill material in the center of the trench (or properly spaced in beds) [,] and retained in place to prevent movement, while additional trench fill material is added to a point two (2) inches above the top of the top of the lateral piping, for a total of twelve (12) inches of trench fill material***.[;]***

3.[Other methods of lateral piping and trench rock placement may be approved by the cabinet upon demonstration of equivalent compliance.

4.] A four (4) inch layer of approved barrier material, whole straw, or a single layer of synthetic filter fabric[,] ***shall then be[is then]*** placed over the trench fill material to prevent entry of backfill soil fines***.[; and]***

4. Other methods of lateral piping and trench rock placement may be approved by the cabinet upon demonstration of equivalent compliance.

(j) Lateral lines for LPP systems shall be laid as ***established in subparagraphs 1. through 6. of this paragraph.[follows:]***

1. At the beginning of each trench and at twenty (20) foot intervals thereafter, barrier walls of undisturbed earth or compacted earthfill at least one (1) foot thick shall be placed from sidewall to sidewall of the trench to the level at which lateral piping is to be installed***.[;]***

2. Six (6) inches of pea gravel or approved alternate trench rock shall be placed in the trench and leveled***.[;]***

3. Lateral piping shall be laid in place and assembled, or may be preassembled, and leveled***.[;]***

4. Trench earth barrier walls shall be completed to ground surface and additional pea gravel or other trench fill material carefully placed over the laterals to a height of two (2) inches over the top of the piping***.[;]***

5.[Other methods of lateral piping and trench rock or pea gravel placement shall be approved by the cabinet upon demonstration of equivalent compliance.

6.] A two (2) inch layer of approved barrier material, whole straw, or a single layer of synthetic filter fabric shall be placed over the pea gravel to prevent entry of backfill soil fines***.[; and]***

6. Other methods of lateral piping and trench rock or pea gravel placement shall be approved by the cabinet upon demonstration of equivalent compliance.

(k) Lateral lines for gravelless pipe systems shall be installed as ***established in subparagraphs 1. through 7. of this paragraph.[follows:]***

1. ***Plastic shipping and storage bags shall be removed from pipe, but filter wrap shall not be removed.***

2. Gravelless pipe with the top stripe up shall be laid out. Filter wrap shall be rolled back from ends of each section of pipe to allow proper connection of pipe sections and reducer connectors or end caps.

3. Pipe sections shall be joined together with approved connectors, making sure top stripes shall be in direct alignment on both sections to be joined. Joints shall be taped with plastic tape supplied by the pipe manufacturer to seal the joints. Filter wrap ends shall be pulled back over joints and shall tape them together.

4. Offset reducer connectors shall be fitted of size four (4) by eight (8) inches or four (4) by ten (10) inches, to inlet ends of joined pipe sections and located at the four (4) inch inlet at the top of pipe in alignment with top stripes. Joints shall be taped to seal. Filter wrap shall be left loose at this time.

5. End caps shall be fitted on the other end of joined pipe sections. Joints shall be sealed with tape. Filter wrap shall be pulled over the end joint and taped in place.

6. Joined lateral pipe sections shall be laid into trenches with the top stripe directly up. Solid smooth wall header piping shall be connected from distribution box outlets to four (4) inch inlet on offset reducer connector. Header pipe shall be inserted four (4) inches into the connector, and joints shall be sealed with tape. Filter wrap shall be pulled over the end of the reducer cap and around four (4) inches of header piping and shall be taped in place.

7. Each pipe section shall be centered and supported with handfilled soil.

[Remove plastic shipping and storage bags from pipe, but][;][do not remove filter wrap;][.]

[2. Lay out gravelless pipe with top stripe UP. Roll filter wrap back from ends of each section of pipe to allow proper connection of pipe sections and/or reducer connectors or end caps;][.]

[3. Join pipe sections together with approved connectors, making sure top stripes are in direct alignment on both sections to be joined. Tape joint with plastic tape supplied by pipe manufacturer to seal joint. Pull filter wrap ends back over joint and tape them together;][.]

[4. Fit offset reducer connectors, of size four (4) by eight (8) inches or four (4) by ten (10) inches, to inlet ends of joined pipe sections and locate four (4) inch inlet at top of pipe in alignment with top strips; tape joints to seal. Leave filter wrap loose at this time;][.]

[5. Fit end caps on other end of joined pipe sections, seal joints with tape, pull filter wrap over end joint and tape in place;][.]

[6. Lay joined lateral pipe sections into trenches with top stripe directly UP. Connect solid smooth wall header piping from distribution box outlets to four (4) inch inlet on offset reducer connector, inserting header pipe four (4) inches into connector, and seal joint with tape. Pull filter wrap over end of reducer cap and around four (4) inches header piping and tape in place; and]

7.[(l)] Center and support each pipe section with handfilled soil.

(l) Installation of constructed wetland components shall be as ***established in subparagraphs 1. through 18. of this paragraph.[follows:]***

1. Cell framing shall be structurally supported by spiking, mortaring, bolting, or other approved means***.[;]***[.]

2. A liner shall be installed in each cell and shall be watertight after installation***.[;]***[.]

3.a. A manufactured liner shall be installed to conform to the shape of the cell***,***[,] and wrinkles ***shall be*** smoothed prior to the placement of fill material.

b. The certified installer shall inspect the installed liner for holes or cuts.

c. If the liner requires perforation to allow piping to pass through, the liner shall be watertight after the piping is installed.

d. A liner shall be protected from sunlight before and after installation***.[;]***[.]

4.a. A clay liner may be installed in a second cell application for residential use only if naturally-occurring Group IV textured soil is present.

b. The berming of the clay liner shall be keyed into the original soil by six (6) to twelve (12) inches.

c. The clay liner shall be compacted***.[;]***[.]

5. Cell fill material shall be installed level, at a uniform depth ranging between twelve (12) and eighteen (18) inches, based on

the plant species selected.***[;]***[.]

6. The cell shall be constructed to provide a water depth equal to the cell fill material depth.***[;]***[.]

7. Two (2) inches of approved cover material shall be placed over the cell fill material;[.]

8. Inlet and outlet headers shall be located at the bottom, center, or top of the fill material.***[;]***[.]

9. Inlet and outlet headers shall be located within one (1) foot from the cell end walls for gravity flow.***[;]***[.]

10. Inlet headers shall be located within three (3) feet from the cell end walls for pressure distribution.***[;]***[.]

11. If a header is located at an elevation that may cause siphoning of the effluent from a cell, approved antisiphon methods shall be used.***[;]***[.]

12. If perforated horizontal header piping is used, the header pipe shall be installed level with the holes located one (1) inch from the pipe bottom at the same elevation.***[;]***[.].

13. If perforated horizontal inlet header piping is used, access to cover material grade shall be provided for clean out.***[;]***[.]

14. Each header shall be covered with two (2) to four (4) inches of approved cover material.***[;]***[.]

15. Water level control devices may be installed at the ends of the cells with[;] the design of these devices in compliance[~~shall comply~~] with the construction standards of 902 KAR 10:081.***[;]***[.]

16.a. At least two (2) access ports of at least four (4) inch diameter pipe shall be installed in each cell.

b. At least one (1) access port shall be located one-third (1/3) of the distance from the inlet end wall to outlet end wall.

c. At least one (1) access port shall be located within six (6) inches of the outlet header.

d. If water level control devices are not used, at least one (1) of the access ports in each cell shall be at least six (6) inches in diameter.

e. Access ports shall have holes located at the same depth as the cell fill material to allow the effluent to enter the access port.

f. Access ports shall be equipped with removable lids or caps.***[;]***[.]

17. Plants shall be installed and spaced as required for the specific plant species. The permit holder shall be responsible for the installation of suitable wetland plants with hydrophilic plants preferred.***[; and]***[.]

18. The overflow lateral field shall be installed as required for lateral trenches, beds, and components. Required vertical separation distances between overflow lateral trench or bed bottoms and any restrictive horizon, water table, or bedrock, as determined by the site evaluation results, shall be maintained.

(m) Leaching chambers shall be installed according to manufacturer's specification unless the specifications are less restrictive or conflict with ***902 KAR Chapter 10*** [~~these~~] ***[administrative regulations]***, in which case the administrative regulations shall take precedence, except that reduced backfill cover[,] of six (6) inches or more[,] over the leaching chamber ***shall be allowed[~~may be permitted~~]***.

(n) Effluent piping to an evaporation/absorption lagoon and overflow piping to the lateral field system shall be installed as ***established in subparagraphs 1. through 3. of this paragraph. [~~follows:~~]***

1. Nonperforated gravity flow or pressurized piping shall be laid in an excavated trench into the lagoon and anchored to a poured concrete, three (3) foot square, four (4) inch thick apron. The inlet shall be a tee laid on its side.***[;]***[.]

2. For overflow piping, the overflow shall be located at the point within the lagoon farthest from the inlet apron. The upper leg of the tee shall be screened**,** and the lower leg ***shall extend[~~extended~~]*** downward to within three and one-half (3 1/2) feet of the lagoon bottom.***[; and]***[.]

3. Submerged piping into and out of a lagoon shall be provided with suitable water stops or leak collars with a minimum extension of twelve (12) inches on all sides of the pipe.

(4) Curtain and vertical drain installation standards.

(a) Curtain and vertical drains shall be installed as ***established in subparagraphs 1. through 3. of this paragraph.[~~follows:~~]***

1. After excavation and grading of drain trenches to the required depth, slotted plastic drainage pipe with slots around the entire pipe circumference shall be laid in the trench. The pipe shall be bedded in two (2) to four (4) inches of leveled trench rock fill material.***[;]***[.]

2. After bedding and grading the pipe to drain, approved trench rock fill material[,] for trenches twelve (12) inches or wider, or pea gravel[,] for trenches narrower than twelve (12) inches, shall be added to the trench to a point four (4) inches below grade.***[; and]***[.]

3. Barrier material approved for use in lateral trenches shall be placed over the drain trench fill material.

(b) Vertical drains may be used if more permeable soil horizons exist below a restrictive horizon[,] and shall be installed as ***established in subparagraphs 1. through 3. of this paragraph. [~~follows:~~]***

1. After excavation to the required depth the trenches shall be filled with crushed rock or pea gravel as in curtain drains, pursuant to[~~the points listed in~~] paragraph (a)2 of this subsection, as applicable.***[;]***

2.[.] Drainage piping shall be unnecessary in vertical drains ***because[~~since~~]*** drainage is encouraged downward through the restrictive horizon to more permeable soils.***[; and]***

3.[~~.~~ 2.] Barrier material approved for use in lateral trenches shall be placed over the drain trench fill material.

(5) Filling, backfilling and finish grading standards.

(a) On a site requiring the placement of fill soil before an on-site sewage disposal system can be installed, the***[~~following~~]*** requirements ***established in subparagraphs 1. through 5. of this paragraph*** shall apply.***[:]***

1. Surface vegetation shall be removed and the original soil surface layer ***shall be*** tilled to a depth of two (2) inches prior to placement of fill.***[;]***[.]

2. Soil fill material shall meet or exceed the textural class characteristics of Soil Group III ***established[~~outlined~~]*** in Section ***(3)(4)(c)1.[~~4(4)(a)~~]*** of this administrative regulation and shall not be obtained from a restrictive horizon.***[;]***[.]

3. Soil fill material shall be placed in the area to be filled by methods acceptable to the cabinet, to prevent stratification and unnecessary ***soil*** compaction.***[;]***[.]

4. Soil fill shall be:

a. Protected by establishing a fast growing ground cover;

b. Allowed to settle for a period of one (1) year; and

c. Reevaluated prior to system installation.***[; and]***[.]

5. Depth of soil fill required shall be determined by the site evaluation, based upon minimum separation distances between lateral trench bottoms and restrictive horizons, bedrock, or water tables.

(b)1. Backfilling around and over septic tanks and other pretreatment units, dosing tanks, holding tanks, distribution boxes, LPP manifolds, alternating valves and devices, and nonperforated effluent piping and distribution leader piping, shall be accomplished by filling and tamping by layers.

2. During filling and tamping, care shall be taken to prevent shifting, tilting, misalignment**,** or damage to system components, watertight joints, seams, or connections.

3. The location of each component shall be clearly marked by staking or flagging after backfilling and prior to final grading.

(c)1. If manufacturer's installation instructions require specific backfilling procedures to protect component warranties, prevent damage, or prevent flotation of the component due to ground water pressure, those procedures shall be followed.

2. Soil for backfilling gravelless pipe trenches shall be loose and friable. Soil aggregates, clods**,** or clumps, used for backfill in contact with pipe and filter wrap[,] shall be no larger than one-half (1/2) inch in any dimension**.** Large clods or clumps of soil for backfill shall not be used.

3. If soil excavated from trenches is unable to[~~will not~~] meet ***the criteria established in this paragraph[~~this criteria~~]***, suitable backfill soil shall be obtained elsewhere.

(d)1. Backfilling of lateral trenches or drainage trenches shall be accomplished with minimal compaction of soil fill, and soil fill material shall be left mounded four (4) to six (6) inches above grade over trenches to allow for settling.

2. Backfilling over lateral beds shall be accomplished through

the use of lightweight wheeled or crawler type tractors to minimize ***soil*** compaction, and soil fill material shall be left mounded four (4) to six (6) inches above grade to allow for settling.

(e) Backfilling shall not be done until after the system has been inspected and approved to that point of construction by a certified inspector.

(f) On sites ***in which[where]*** additional fill soil is required over the lateral field due to shallow depth of installation, the***[following]*** procedures ***established in subparagraphs 1. through 3. of this paragraph*** shall apply***.[:]***

1. The requirements of paragraph (a)1 through 3 of this subsection ***shall apply[;]***

2. Fill shall be extended on all sides of the lateral field to a minimum distance of ten (10) feet, except on sloping sites where the fill on each end of the system shall expand outward to a minimum of fifteen (15) feet at the lowest point downslope, and the fill at the downslope side of the system shall be increased to a minimum of fifteen (15) feet beyond the system***.[; and]***

3. Minimum depth of fill shall be as required by the site evaluation, but not less than ten (10) inches of settled soil over the trench rock fill material[,] or top of the gravelless pipe (for leaching chambers six (6) inches minimum) and that depth shall extend over the entire lateral field to a point at least two (2) feet beyond the sidewall of any trench, bed, or chamber, at which point the remainder of the fill may be tapered to original grade out to the minimum distances specified in subparagraph 2 of this paragraph.

(g)1. Finish grading over the on-site sewage system shall be performed to minimize ***soil*** compaction through the use of lightweight equipment.

2. Grading shall be restricted to work necessary to provide positive surface drainage away from the system, especially the lateral field.

3. Final grading over staked or flagged system components shall be accomplished manually[,] or with lightweight equipment, using extreme care to prevent damage to or misalignment of components.

(h) Finish grading work ***that[which]*** removes soil from the system area, or ***that[which]*** results in that area being used to dispose of excess soil graded from other areas on the site, shall be prohibited.

(i) Finish grading on other areas of the site shall be done in such a manner as to divert surface water run-off from driveways, patios, downspouts, slopes, ditches, gullies, etc., away from the area where the system is installed. If site conditions are such that normal grading procedures cannot divert the run-off, diversion ditches, swales, berms, or other diversion drainage means shall be constructed to divert run-off away from the system.

Section 8. System Setback Restrictions. (1) Minimum setback distances for installation of on-site sewage disposal systems from structures, water supplies, roads, streams, bodies of water, and other structural or topographic features are listed in Table 7.[:]

Table 7
Minimum Setback Distances for On-site Sewage Disposal Systems

Structure or Topographic Feature	Minimum Distance (Ft.) from Pretreatment Unit, Constructed Wetland Cell, or Holding Tank	Minimum Distance (Ft.) from Side wall of Lateral Trench, Bed, or Lagoon
Property lines	5	5 (50 for lagoons)
Building foundations	10	10
Basements, cemeteries	20	20
Basements (Downslope from system)	20	30 (5-15% Slope) 40 (15-25% Slope) 50 (25% and Higher)
Wells	50	70
Wells (Properly plugged/abandoned)	20	20
Cisterns	50	70
Cisterns (Upslope from system with bottom at higher elevation than system)	10	10
Natural Lakes or Impoundments (Shoreline)	25	50
Streams	25	25
Springs (Upslope from system)	25	50
(Upslope with curtain interceptor drain)	10	20
(Downslope from system)	50	70
Drainage Ditches, Cutbanks (Downslope)	10	25
Curtain or vertical drain (Upslope and Sides) (Downslope)	10 25	10
Sinkhole Throat (Open)	70	70
Buried Water Lines or Utility Lines	10	10
Utility Easements	10	10
Driveways, parking lots, or paved areas	10	5
Geothermal Vertical	50	70
Geothermal Horizontal (Downslope)	10	10 (upslope and sides) 25
Inground swimming pools	10	20
Mine Openings and Air Shafts	50	70
Livestock pens, feed lots, corrals, etc.	10	10

(2) Lagoon setback distances shall be measured from the inside berm wall at a point four and one-half (4.5) feet vertically from the lagoon bottom.

Section 9. System Installation Inspection. (1) Every on-site sewage disposal system installed, constructed, altered, or repaired shall be inspected by a certified inspector.

(2) The inspection sequence performed shall be as ***established in paragraphs (a) through (g) of this subsection.[follows:]***

(a)1. The certified installer shall complete an installer's affidavit for every system[except a subsurface flow constructed wetland system], recording all grade shot readings of all excavation work and[,] certifying by ***the certified installer's[his]*** signature that the work has been performed in compliance with this administrative regulation; or

2. In lieu of the installer's affidavit, the certified installer shall[may] request an initial inspection be performed by a certified inspector.

(b)1. An initial inspection shall consist of shooting of grades in all excavations to determine compliance with this administrative regulation***.[;]***

2.[. (b)] For subsurface flow constructed wetland systems, an initial inspection shall be made by a certified inspector to determine compliance with excavation standards.

a.[1.] An installer's affidavit in lieu of the initial inspection shall not be accepted.

b.[2.] The liner shall be in place in the cell prior to the initial inspection unless special cell preparation is needed prior to placement of the liner***.[; and]***[.]

3. All components and the overflow lateral field shall be inspected.

(c)1. The certified installer shall request an installation inspection[, to] be scheduled and completed by a certified inspector[,] before the system is backfilled.

2. To facilitate inspection of lateral fields and constructed wetland system cells, the certified installer shall provide direct access to trench, bed, or cell bottoms to allow accurate shooting of grade and elevation.

3. Direct access shall be provided through the use of ports, piping, or other methods acceptable to the certified inspector[,] and at locations within the lateral field the inspector deems necessary.

(d) The installation inspection shall consist of:

1. Examination of system components, including constructed wetland systems plants, as to type, size or capacity, approved status, materials, and connections;

2. Examination of installation as to proper placement, proper grade, or level;

3. Conduct "water leveling" method on equal flow distribution boxes;

4. Testing of dosing devices, low pressure systems, and alarm systems;

5. Shooting of trench, bed, constructed wetland cell, or lagoon bottom grade and elevation;

6. Examination of installation of lateral lines, trench, and constructed wetland cell fill material depth, trench barrier material, constructed wetland cell cover material depth and placement, and water depth; and

7.***[Perform]*** Other necessary examinations and checks to determine compliance with this administrative regulation relative to all site and system modifications required.

(e) A constructed wetland system shall not be approved before it is complete, including plant installation.

(f) An approved system shall be backfilled in accordance with this administrative regulation.

1. The certified installer shall:

a. Assure proper backfilling;

b. After completion of backfilling, perform or supervise finish grading; and

c. Request a final inspection[,] if additional fill soil is required after completion of finish grading.

2. The owner shall, during subsequent occupancy and system usage, protect the system from damage, disruption, or unnecessary surface water drainage.

(g) A system not meeting approval shall be reconstructed as needed to meet compliance requirements.

Section 10. Responsibilities. (1) The construction, operation, and maintenance of on-site sewage disposal systems, whether conventional, modified, or alternative systems, shall be the responsibility of the owner, developer, certified installer, or user of the system as applicable in the circumstances.

(2) Actions of the cabinet and certified inspectors[,] engaged in the evaluation and determination of measures required to effect compliance with the provisions of this administrative regulation shall in no way be taken as a guarantee that on-site sewage disposal systems approved and permitted shall[~~will~~] function in a satisfactory manner for any given period of time, or that such agents or employees assume any liability for damages, consequential or direct, which are caused[,] or[~~which~~] may be caused[,] by a malfunction of ***the[~~such~~]*** systems.

Section 11. Prohibited Practices. The following practices shall be prohibited[,] and their use shall result in immediate voiding of permits or site evaluations:

(1) Use of unapproved system components in lieu of replacement with approved components;

(2) Except as provided in Section 13 of this administrative regulation, use of seepage pits, cesspools, ***or[~~and~~]*** dry wells;

(3) Use of improperly constructed or designed systems[,] in lieu of redesign or reconstruction;

(4) Placement of lateral field within less than twelve (12) inches of, or below, the upper limits of a restrictive horizon or water table;

(5) Placement of lateral field within less than twelve (12) inches of, or into, bedrock***;[,]***

(6) Dynamiting, ripping, or otherwise removing bedrock to install a lateral field;

(7) Cutting, filling, or otherwise altering the original grade or soil characteristics of the area upon a site staked or flagged off for system installation, except if the work is a requirement of this administrative regulation;

(8) Allowing use of the area staked or flagged off for system installation as a material or soil stockpile, vehicle or heavy equipment parking area or roadway, or other unauthorized use ***that[~~which~~]*** may damage or alter the soil or site characteristics; or

(9) Construction of evapotranspiration lagoons in Group I, Group II, or Group III textured soil.

Section 12. Variances. (1) The owner of a site where an on-site sewage disposal system is proposed to be installed may request, in writing, to the local board of health[,] or its designated agent, a variance to specific portions of this administrative regulation.

(2) A written request shall include:

(a) Pertinent information about the site;

(b) The specific portion of the administrative regulation requested for waiver;

(c) The specific reasons for the request; and

(d) Documented evidence justifying the granting of the variance.

(3) A request shall be acted upon by the local board of health[,] or its designated agent as soon as practicable. A written decision, either denying the variance with reasons for denial, or granting the variance with or without stipulations or restrictions, shall be presented to the applicant within five (5) working days of the decision.

(4) An applicant for a variance may appear with counsel or expert professional witnesses[,] or both[,] before the local board of health or its agent[,] for the purpose of presenting the request or to appeal a decision.

(5) If a hearing is requested, the local board of health or its agent shall:

(a) Set a time and date for the hearing, as soon as practicable; and

(b) Notify the applicant, in writing, within five (5) working days of receipt of the request and at least two (2) days prior to the date of hearing, of the time and date for the hearing.

(6) A decision regarding a variance shall be based upon evidence presented by:

(a) The applicant;

(b) The certified inspector for the site in question; and

(c) Expert professional witnesses.

(7) A decision regarding a variance shall be influenced by:

(a) The requirements of the On-site Sewage Systems Law, KRS 211.350 to 211.380, and related law; and

(b) The presence or absence of reasonable assurance, derived from evidence presented, that the granting of the variance shall not result in the creation of:

1. Groundwater contamination;

2. Effluent surfacing;

3. A public health hazard; or

4. A public health nuisance.

(8) A variance shall not be granted***[~~for the following~~]***:

(a) ***To waive[~~Waiver~~]*** of site evaluation or system inspection;

(b) ***To reduce[~~Reduction of~~]*** required system size if a modified or alternative system is able to provide an equivalent system in the available area on the site;

(c) If site or system modification or an alternative system can overcome a site limitation; ***or***

(d) ***For*** a practice prohibited by Section 11 of this administrative regulation.

(9) A variance shall be made a permanent record[,] and filed at the local health department in the county where the site is located.

(10) A variance request shall be acted upon and a final decision made by the local board of health[,] or its agent[,] prior to the issuance of a permit to install the proposed on-site sewage disposal system.

Section 13. Exemption. (1) On-site sewage systems shall be governed by the provisions of KRS 211.355(3) and this section.

(2) The repair or alteration of an on-site sewage treatment system shall be permitted if:

(a) A municipal or public sewage treatment system is not available; and

(b) Repair or alteration is required because of:

1. Malfunction;

2. Damage; or

3. Upgrade.

(3) In the repair or alteration of an on-site sewage system utilizing a seepage pit, an owner shall be permitted to:

(a) Clean;

(b) Service; and

(c) Repair, alter, reconstruct, or replace:

1. Any system component leading to a pit, such as pipes and septic tanks;

2. Pit rings; or

3. Any other component repair ***that[~~which~~]*** would not require the drilling of a new pit.

(4) With regard to a single-family dwelling only, if a municipal or public sewage treatment system is not available, a seepage pit may be installed as an on-site sewage disposal system in the development of a vacant lot, purchased on or before May 1, 1992, if bona fide construction began by December 25, 1992.

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Drip Irrigation Treatment and Disposal System Design Standards", 1/2017; and

(b) Form "DFS-450, Declaration of Covenants, Conditions, and Restrictions", 1/2017.

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

HIRAM C. POLK, JR., MD, Commissioner
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: January 9, 2017

FILED WITH LRC: January 10, 2017 at 3 p.m.

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40602, phone 502-564-7905, fax 502-564-7573, email Tricia.Orme@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(As Amended at ARRS, March 6, 2017)

902 KAR 20:091. Facilities specifications, operation and services; community mental health center.

RELATES TO: KRS 17.500, 198B.260, 202A.011(4), 202B.010(6), 205.6313, 210.370, 210.410, 210.450, 216B.010, 216B.015, 216B.030, 216B.105, 216B.990, 222.211, 309.080, 309.130, 311.560***[(4)]***, 314.011(8), 314.042(8), 319.056, 319.064, 319C.010, 320.210(2), 335.080, 335.100, 335.300, 335.500, 439.3401, 645.020(5), ***42 C.F.R. Part 2,*** 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320d-2 – 1320d-8, 42 U.S.C. 290ee-3

STATUTORY AUTHORITY: KRS 210.450(1), 216B.010, 216B.042***, 216B.105***

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 and 216B.105 require the Kentucky Cabinet for Health and Family Services to regulate health facilities and services. KRS 210.450(1) requires the secretary to promulgate administrative regulations to establish[~~prescribing~~] standards for qualification of personnel, quality of professional service, and personnel management operations. This administrative regulation establishes licensure requirements for the operation and services, and facility specifications of a community mental health center. In addition, this administrative regulation establishes standards for community mental health centers that elect to provide primary care services pursuant to KRS 210.410 and KRS 205.6313.

Section 1. Definitions. (1) "Behavioral health professional" means:

(a) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc. or the American Osteopathic Board of Neurology and Psychiatry;

(b) A physician licensed in Kentucky to practice medicine or osteopathy in accordance with KRS 311.571;

(c) A psychologist licensed and practicing in accordance with KRS 319.050;

(d) A certified psychologist with autonomous functioning or licensed psychological practitioner practicing in accordance with KRS 319.056;

(e) A clinical social worker licensed and practicing in accordance with KRS 335.100;

(f) An advanced practice registered nurse licensed and practicing in accordance with KRS 314.042;

(g) A psychiatric nurse as defined by subsection (22) of this section;

(h) A physician assistant licensed under KRS 311.840 to 311.862;

(i) A marriage and family therapist licensed and practicing in accordance with KRS 335.300;

(j) A professional clinical counselor licensed and practicing in accordance with KRS 335.500; or

(k) A licensed professional art therapist as defined by KRS 309.130(2).

(2) "Behavioral health professional under clinical supervision" means a:

(a) Psychologist certified and practicing in accordance with KRS 319.056;

(b) Licensed psychological associate licensed and practicing in accordance with KRS 319.064;

(c) Marriage and family therapist associate as defined by KRS 335.300(3);

(d) Social worker certified and practicing in accordance with KRS 335.080;

(e) Licensed professional counselor associate as defined by KRS 335.500(4); or

(f) Licensed professional art therapist associate as defined by KRS 309.130(3).

(3) "Center" means a community mental health center.

(4) "Certified alcohol and drug counselor" is defined by KRS 309.080(2).

(5) "Certified prevention specialist" means an individual who is currently certified as a certified prevention specialist by the Kentucky Certification Board for Prevention Professionals.

(6) "Client" means an individual described by KRS 210.410(2).

(7) "Community mental health center" means a program established pursuant to KRS Chapter 210.

(8) "Community support associate" means a paraprofessional who meets the application, training, and supervision requirements of 908 KAR 2:250.

(9)[~~(2) "Clinical psychologist" means a clinical psychologist certified or licensed pursuant to KRS 319.050(7), 319.056(2), (4), or 319.064(5).~~

~~(3)~~] "Crisis stabilization unit" means a community-based facility operated by or under contract with a center to provide emergency services as described in Section 8 of this administrative regulation to[~~no more than twelve (12)~~] clients who require overnight stays.

(10)[~~(4)~~] "Designated regional service area" means the geographical area to be served by the community mental health center.

(11) "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).

(12) "Licensed behavior analyst" is defined by KRS 319C.010(6).

(13) "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(4).

(14) "Licensed clinical alcohol and drug counselor associate" is defined by KRS 309.080(5).

(15)[~~(5) "Licensed marriage and family therapist" means an individual licensed in accordance with KRS 335.300(2).~~

~~(6) "Licensed professional clinical counselor" means and individual licensed in accordance with KRS 335.500(3).~~

~~(7)~~] "Licensee" means the governing body legally responsible for the community mental health center.

(16) "Mechanical restraint" means any device attached or adjacent to a client's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body.

(17) "Mental health associate" means an individual who meets the mental health associate requirements established in the Community Mental Health Center Behavioral Health Services Manual incorporated by reference in 907 KAR 1:044, Section 13.

(18) "Patient" means a client, as described by KRS 210.410(2), or any other individual who seeks primary care services from a community mental health center.

(19) "Peer support specialist" means a paraprofessional who meets the application, training, examination, and supervision requirements of 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240.

(20)[~~(8)~~] "Plan of care" means a written plan that delineates the services to be provided to a client, and includes the short- and long-term goals of the plan.

(21) "Professional equivalent" means an individual who meets the professional equivalent requirements established in the Community Mental Health Center Behavioral Health Services Manual incorporated by reference in 907 KAR 1:044, Section 13.

(22)[~~(9)~~] "Psychiatric nurse" means a registered nurse who:

(a) Has a master's of science degree in nursing with a specialty in psychiatric or mental health nursing;

(b) Is a graduate of a four (4) year educational program with a bachelor of science degree in nursing and a minimum of one (1) year of experience in a mental health setting;

(c) Is a graduate of a three (3) year educational program with two (2) years of experience in a mental health setting; or

(d) Is a graduate of a two (2) year educational program with an associate degree in nursing and three (3) years of experience in a mental health setting.

(23) "Time out" means a treatment intervention that separates a client from others in a nonsecure area for a time-limited period to permit the client time to regain control over his or her behavior[~~(10) "Qualified social worker" means a social worker with a master's degree from an accredited school of social work who is licensed or exempt from licensure pursuant to KRS Chapter 335.~~

~~(11) "Time out" means a treatment intervention that separates a client from others in a nonsecure area for a time-limited period to permit the client time to regain control over his behavior~~].

Section 2. Scope of Operation and Services. (1) A community mental health center:

(a) Shall provide a comprehensive range of accessible and coordinated behavioral health (mental health and substance abuse services) and[~~mental retardation~~] services for individuals with an intellectual or developmental disability, including direct or indirect[~~mental health or mental retardation~~] services[,] to the population of a designated regional service area, as required by KRS 210.370 to 210.480; and

(b) May provide primary care services:

1. As permitted by KRS 210.410; and

2. In accordance with the requirements established in Section 7 of this administrative regulation.

(2) A center's services, including primary care services if provided, shall be available to the client population described by KRS 210.410(2).

Section 3. Administration and Operation. (1) Licensee.

(a) The licensee shall be legally responsible for:

1. The center;

2. The establishment of administrative policy; and

3. Compliance with federal, state, and local law pertaining to the operation of the center.

(b) To obtain or renew a license to operate a center, the licensee shall comply with the requirements of this administrative regulation and the requirements of relevant statutes and administrative regulations.

(2) Executive director. The licensee shall designate an executive director, qualified by training and experience, who shall be responsible for:

(a) The total program of the center and its affiliates in accordance with the center's written policies; and

(b) Evaluation of the program as it relates to the client's needs.

(3) Policies. The licensee shall establish written policies for the administration and operation of the center, which shall be available to staff and which shall include:

(a) A description of the organizational structure specifying the:

1. Responsibility, function, and interrelations of each organizational unit;[,] and

2.[~~the~~] Lines of administrative and clinical authority;

(b) The appropriate method and procedure for storage, dispensing, and administering of a drug or biological agent;

(c) Client grievance procedure;

(d) Confidentiality and use of client records in accordance with federal, state, and local statutes and regulations, including subsection (4) of this section; and

(e) Personnel policy, including:

1. A job description and qualifications for each personnel category;

2. Wage scale, hours of work, vacation and sick leave;

3. A plan for orientation of personnel to the policies and objectives of the center,[~~and for~~] on-the-job training, if necessary, and ongoing in-service training programs related to the employee's job activities; and

4. Annual[~~Periodic~~] evaluation of employee performance.

(4) Client records. A client record shall be maintained for each individual receiving services.

(a) Each entry shall be current, dated, signed, and indexed according to the service received.[;]

(b) Ownership.

1. Client records shall be the property of the center.

2. The original client record shall not be removed from the center except by court order or subpoena.

3. Copies of a client record or portions of the record may be used and disclosed as established by paragraph (d) of this subsection.

(c) A client record shall be retained for at least six (6)[~~five (5)~~] years or, in the case of a minor, three (3) years after the client reaches the age of majority, whichever is longer.

(d) Confidentiality and security: use and disclosure.

1. The center shall maintain the confidentiality and security of client records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 1320-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by Subparts A and C of 45 C.F.R. Part 164, or as provided by applicable federal or state law, including 42 U.S.C. 290ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

2. The center may use and disclose client records. Use and disclosure shall be as established or required by:

a. HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164; or

b. 42 U.S.C. 290ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

3. A center may establish higher levels of confidentiality and security than required by HIPAA, 42 U.S.C. 1320d-2 to 1320-8, and 45 C.F.R. Parts 160 and 164, or 42 U.S.C. 290ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

(e)[~~; (c) Each client record shall be kept in a locked file and treated as confidential. Information contained in a client record shall:~~

~~1. Be disclosed to an authorized person; and~~

~~2. Not be disclosed to an unauthorized person;~~

~~(d)~~] Each client record shall contain:

1. An identification sheet;

2. Information on the purpose for seeking a service;

3. A history of findings and treatments rendered;

4. Screening information pertaining to the problem;
5. Staff notes on services provided;
6. Pertinent medical, psychiatric, and social information;
7. Disposition;
8. Assigned status;
9. Assigned personnel[~~therapists~~]; and
10. A termination summary[~~study~~] recapitulating findings and events during treatment, clinical impressions, and condition on termination.

Section 4. Staff Requirements. (1)[~~(5) Personnel.~~] A community mental health center shall employ the following full-time personnel:

(a) An executive director as required by Section 3(2) of this administrative regulation who:

1. May serve in a dual role as the center's program director;

2. Shall meet the education requirements established by the center's governing board for the executive director, or have a master's degree in business administration or a human services field or a bachelor's degree in a human services field, including:

a. Social work;
b. Sociology;
c. Psychology;
d. Guidance and counseling;
e. Education;
f. Religion;
g. Business administration;
h. Criminal justice;
i. Public administration;
j. Child care administration;
k. Christian education;
l. Divinity;
m. Pastoral counseling;
n. Nursing;
o. Public health; or
p. Another human service field related to working with children with severe emotional disabilities or clients with severe mental illness; and

3.a. Shall have two (2) years of prior supervisory experience in a human services program for an executive director with a master's degree;

b. Shall have a minimum of two (2) years of prior experience in a human services program plus two (2) years of prior supervisory experience in a human services program for an executive director with a bachelor's degree; or

c. Shall meet the experience requirements established by the center's governing board for the executive director;

(b)[~~1.~~] A program director who:

1. Shall be a:

a. Psychiatrist;

b. Certified[~~or licensed~~] psychologist with autonomous functioning, licensed psychological practitioner, or licensed psychologist;

c. Psychiatric nurse;

d. Licensed professional clinical counselor;

e. Licensed marriage and family therapist; or

f. Licensed clinical[~~Qualified~~] social worker or certified social worker;

2. May serve as[~~. 2. The program director may be~~] the executive director; and

3. Shall be responsible for maintenance of the center's therapeutic milieu;

(c) A medical director[~~(b)1. A board-certified or board-eligible psychiatrist~~] who shall:

1. Be a board certified or board eligible psychiatrist licensed in the state of Kentucky;

2.[~~a.~~] Be responsible for treatment planning; and

3.[~~b. Provide psychiatric service as indicated by client needs; and~~

~~c.~~] Supervise and coordinate the provision of psychiatric services by the center;

(d) A licensed psychologist or licensed psychological practitioner pursuant to KRS 319.050, 319.056, or 319.064;

(e) A sufficient number of personnel to provide services as described in Section 5 of this administrative regulation; and

(f) A records librarian or a designated staff person who shall assure that client records are maintained and that information is immediately retrievable.

(2) Background checks.

(a) The executive director and all personnel of a center shall:

1. Have a criminal record check performed upon initial hire through the Administrative Office of the Courts or the Kentucky State Police;

2. Not have a criminal conviction or plea of guilty to a:

a. Sex crime as specified in KRS 17.500;

b. Violent crime as specified in KRS 439.3401;

c. Criminal offense against a minor as specified in KRS 17.500; or

d. Class A felony; and

3. Not be listed on the following:

a. Central registry established by 922 KAR 1:470;

b. Nurse aide or home health aide abuse registry established by 906 KAR 1:100; or

c. Caregiver misconduct registry established by 922 KAR 5:120.

(b) A center may use the Kentucky national background check program established by 906 KAR 1:190 to satisfy the background check requirements of paragraph (a) of this subsection.

(c) A center shall perform annual criminal record and registry checks as described in paragraph (a) of this subsection on a random sample of at least fifteen (15) percent of all personnel who have not been subject to the annual background check during the previous three (3) year period.

(d) A center may use the Kentucky national background check program established by 906 KAR 1:190 to satisfy the annual background check requirements of paragraph (c) of this subsection upon implementation of the continuous assessment service, also referred to as rap back.[~~2. This position may be filled by more than one (1) psychiatrist if the total hours worked are equivalent to one (1) full-time position;~~

~~(c) A clinical psychologist who shall provide evaluation and screening services for the client and individual or group therapy;~~

~~(d) A licensed professional clinical counselor who shall provide evaluation and screening services for the client and individual or group therapy;~~

~~(e) A licensed marriage and family therapist who shall provide evaluation and screening services for the client and individual or group therapy;~~

~~(f) A psychiatric nurse who shall provide or supervise nursing service for psychiatric care;~~

~~(g) A qualified social worker who shall provide social services as required; and~~

~~(h) A person who shall assure that client records are maintained and that information is immediately retrievable.~~]

Section 5[~~4~~]. Services. (1) The center shall provide services in the designated regional service area directly or through contract.

(2) Direct services. The center shall provide services as described in subsection (4) of this section and offer a sufficiently wide range of treatment to meet client needs, which may include behavioral health services described in subsection (5) of this section[~~including:~~

~~(a) Individual therapy;~~
~~(b) Family therapy;~~
~~(c) Group therapy;~~
~~(d) Play therapy;~~
~~(e) Behavior modification; and~~
~~(f) Chemotherapy~~].

(3) Plan of care.

(a) Each client receiving direct treatment under the auspices of a community mental health center shall have an individual plan of care signed by an independently licensed behavioral health professional[~~a clinically licensed or certified professional provider of the treatment~~].

(b) A medical service, including a change of medication, a diet restriction, or a restriction on physical activity shall be ordered by a physician or other ordering practitioner acting within the limits of his

or her statutory scope of practice.

(4) The center shall provide:

(a) Partial hospitalization or psychosocial rehabilitation services pursuant to KRS 210.410(1)(c)[~~A therapeutic program for a person who requires less than twenty-four (24) hour a day care, and more than outpatient care (i.e., partial hospitalization or day care)~~]. A psychiatrist shall be present on a regularly scheduled basis to provide consultant services to staff;

(b)1. Inpatient services pursuant to KRS 210.410(1)(a) through affiliation with a licensed[~~community~~] hospital for a person requiring full-time inpatient care; or

2. If the[~~. A~~] center[~~that~~] does not have an affiliation contract in effect, documentation of[~~shall be considered to be in compliance with this requirement if the center documents~~] a good faith effort to enter into an affiliation contract;

(c) Outpatient services pursuant to KRS 210.410(1)(b)[~~service~~] on a regularly scheduled basis with arrangements made for a nonscheduled visit during a time of increased stress or crisis. The outpatient service shall provide diagnosis and evaluation of a psychiatric problem and a referral to other services or agencies as indicated by the client's needs;

(d) Emergency services pursuant to KRS 210.410(1)(d) [~~service~~] for the immediate evaluation and care of a person in a crisis situation on a twenty-four (24) hour a day, seven (7) day a week basis. All components of the emergency service shall be coordinated into a unified program that enables a client receiving an emergency service to be readily transferred to another service of the center as client needs dictate; and

(e) Consultation and education services pursuant to KRS 210.410(1)(e) for individuals,[~~for an individual and various~~] community agencies, and groups to increase the visibility, identifiability, and accessibility of the center and to promote services for intellectual disabilities and mental health disorders, substance use disorders, or co-occurring disorders[~~through the distribution of relevant mental health knowledge~~].

(5) Rehabilitative mental health and substance use services, which may be provided by a center in accordance with a plan of care, include the following:

(a) Screening that shall be provided by a behavioral health professional, behavioral health professional under clinical supervision, professional equivalent, mental health associate, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate practicing within his or her scope of practice to determine the:

1. Likelihood that an individual has a mental health, substance use, or co-occurring disorder; and

2. Need for an assessment;

(b) Assessment that shall:

1. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, licensed behavior analyst, licensed assistant behavior analyst working under the supervision of a licensed behavior analyst, professional equivalent, mental health associate, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate practicing within his or her scope of practice who gathers information and engages in a process with the client, thereby enabling the professional to:

a. Establish the presence or absence of a mental health, substance use, or co-occurring disorder;

b. Determine the client's readiness for change;

c. Identify the client's strengths or problem areas that may affect the treatment and recovery processes; and

d. Engage the client in developing an appropriate treatment relationship;

2. Establish or rule out the existence of a clinical disorder or service need;

3. Include working with the client to develop a plan of care if a clinical disorder or service need is assessed; and

4. Not include psychological or psychiatric evaluations or assessments;

(c) Psychological testing that shall:

1. Be performed by a licensed psychologist, licensed psychological associate, licensed psychological practitioner, or an individual who meets the requirements of KRS Chapter 319 related to the necessary credentials to perform psychological testing; and

2. Include a psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities, and interpretation and written report of testing results;

(d) Crisis intervention that:

1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to the client or another individual;

2. Shall consist of clinical intervention and support services necessary to provide:

a. Integrated crisis response;

b. Crisis stabilization interventions; or

c. Crisis prevention activities;

3. Shall be provided:

a. On-site at the center;

b. As an immediate relief to the presenting problem or threat; and

c. In a face-to-face, one-on-one encounter;

4. May be provided as a telehealth consultation;

5. May include:

a. Verbal de-escalation;

b. Risk assessment; or

c. Cognitive therapy;

6. Shall be provided by a:

a. Behavioral health professional;

b. Behavioral health professional under clinical supervision;

c. Professional equivalent;

d. Mental health associate;

e. Certified alcohol and drug counselor;

f. Licensed clinical alcohol and drug counselor; or

g. Licensed clinical alcohol and drug counselor associate;

7. Shall be followed by a referral to non-crisis services, if applicable; and

8. May include:

a. Further service prevention planning, including:

(i) Lethal means reduction for suicide risk; or

(ii) Substance use disorder relapse prevention; or

b. Verbal de-escalation, risk assessment, or cognitive therapy;

(e) Mobile crisis services that shall:

1. Be available twenty-four (24) hours a day, seven (7) days a week, every day of the year;

2. Be provided for a duration of less than twenty-four (24) hours;

3. Not be an overnight service;

4. Be a multi-disciplinary team based intervention that ensures access to acute mental health and substance use services and supports to:

a. Reduce symptoms or harm; or

b. Safely transition an individual in an acute crisis to the appropriate, least restrictive level of care;

5. Involve all services and supports necessary to provide:

a. Integrated crisis prevention;

b. Assessment and disposition;

c. Intervention;

d. Continuity of care recommendations; and

e. Follow-up services;

6. Be provided face-to-face in a home or community setting by a:

a. Behavioral health professional;

b. Behavioral health professional under clinical supervision;

c. Professional equivalent;

d. Mental health associate;

e. Certified alcohol and drug counselor;

f. Licensed clinical alcohol and drug counselor; or

g. Licensed clinical alcohol and drug counselor associate; and

7. Ensure access to a board certified or board-eligible psychiatrist twenty-four (24) hours a day, seven (7) days a week, every day of the year;

(f) Day treatment that shall:

1. Be a nonresidential, intensive treatment program designed for youth who:

a. Have a substance use disorder, mental health disorder, or co-occurring disorder;

b. Are under twenty-one (21) years of age; and

c. Are at high risk of out-of-home placement due to a behavioral health issue;

2. Consist of an organized, behavioral health program of treatment and rehabilitative services for substance use disorder, mental health disorder, or a co-occurring disorder;

3. Have unified policies and procedures that address:

a. The program's philosophy;

b. Admission and discharge criteria;

c. Admission and discharge process;

d. Staff training; and

e. Integrated case planning;

4. Include the following:

a. Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;

b. Behavior management and social skill training;

c. Independent living skills that correlate to the age and development stage of the client; and

d. Services designed to explore and link with community resources before discharge and to assist the client and family with transition to community services after discharge;

5. Be provided as follows:

a. In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);

b. On school days and during scheduled school breaks;

c. In coordination with the child's individual educational plan or Section 504 plan if the child has an individual educational plan or Section 504 plan;

d. By personnel that includes the following practicing within his or her scope of practice:

(i) Behavioral health professional;

(ii) Behavioral health professional under clinical supervision;

(iii) Professional equivalent;

(iv) Mental health associate;

(v) Certified alcohol and drug counselor;

(vi) Licensed clinical alcohol and drug counselor;

(vii) Licensed clinical alcohol and drug counselor associate; or

(viii) Peer support specialist; and

e. According to a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider; and

6. Not include a therapeutic clinical service that is included in a child's individualized education plan;

(g) Peer support that shall:

1. Be provided by a peer support specialist;

2. Be structured and scheduled nonclinical therapeutic activity with a client or group of clients;

3. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills; and

4. Be identified in the client's plan of care;

(h) Intensive outpatient program services that shall:

1. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;

2. Be provided at least three (3) hours per day at least three (3) days per week;

3. Include the following:

a. Individual outpatient therapy;

b. Group outpatient therapy;

c. Family outpatient therapy unless contraindicated;

d. Crisis intervention; or

e. Psycho-education during which the client or client's family member shall be:

(i) Provided with knowledge regarding the client's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and

(ii) Taught how to cope with the client's diagnosis or condition in a successful manner;

4. Include a treatment plan that shall:

a. Be individualized; and

b. Focus on stabilization and transition to a lower level of care;

5. Be provided by the following practicing within his or her scope of practice:

a. Behavioral health professional;

b. Behavioral health professional under clinical supervision;

c. Professional equivalent;

d. Mental health associate; or

e. Certified alcohol and drug counselor;

6. Include access to a board-certified or board-eligible psychiatrist for consultation;

7. Include access to a psychiatrist, other physician, or advanced practice registered nurse for medication prescribing and monitoring; and

8. Be provided in a setting with a minimum client-to-staff ratio of ten (10) clients to one (1) staff person;

(i) Individual outpatient therapy that shall:

1. Be provided to promote the:

a. Health and well-being of the client; or

b. Recovery from a substance related disorder;

2. Consist of a face-to-face therapeutic intervention with the client provided in accordance with the client's plan of care, which may be provided as a telehealth consultation;

3. Be aimed at:

a. Reducing adverse symptoms;

b. Reducing or eliminating the presenting problem of the client; and

c. Improving functioning;

4. Not exceed three (3) hours per day; and

5. Be provided by the following personnel practicing within his or her scope of practice:

a. Behavioral health professional;

b. Behavioral health professional under clinical supervision;

c. Licensed behavior analyst;

d. Licensed assistant behavior analyst working under the supervision of a licensed behavior analyst;

e. Professional equivalent;

f. Mental health associate;

g. Certified alcohol and drug counselor;

h. Licensed clinical alcohol and drug counselor; or

i. Licensed clinical alcohol and drug counselor associate;

(j) Group outpatient therapy that shall:

1. Be provided to promote the:

a. Health and well-being of the client; or

b. Recovery from a substance related disorder;

2. Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the client's plan of care, and which may be provided as a telehealth consultation;

3. Excluding multi-family group therapy, be provided in a group setting of nonrelated individuals, not to exceed twelve (12) individuals in size. For group outpatient therapy, a nonrelated individual means any individual who is not a:

a. Spouse;

b. Significant other;

c. Parent or person with custodial control;

d. Child;

e. Sibling;

f. Stepparent;

g. Stepchild;

h. Step-brother;

i. Step-sister;

j. Father-in-law;

k. Mother-in-law;

l. Son-in-law;

m. Daughter-in-law;

n. Brother-in-law;

o. Sister-in-law;

p. Grandparent; or

q. Grandchild;

4. Focus on the psychological needs of the client as evidenced in the client's plan of care;

5. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal

judgment;

6. Not include:

a. Physical exercise;

b. A recreational activity;

c. An educational activity; or

d. A social activity;

7. Not exceed three (3) hours per day per client unless additional time is medically necessary in accordance with 907 KAR 3:130;

8. Ensure that the group has a deliberate focus and defined course of treatment;

9. Ensure that the subject of group outpatient therapy shall be related to each client participating in the group; and

10. Be provided by one (1) or more of the following personnel practicing within his or her scope of practice, and who shall maintain individual notes regarding each client within the group in the client's record:

a. Behavioral health professional;

b. Behavioral health professional under clinical supervision;

c. Licensed behavior analyst;

d. Licensed assistant behavior analyst working under the supervision of a licensed behavior analyst;

e. Professional equivalent;

f. Mental health associate;

g. Certified alcohol and drug counselor;

h. Licensed clinical alcohol and drug counselor; or

i. Licensed clinical alcohol and drug counselor associate;

(k) Family outpatient therapy that shall:

1. Consist of a face-to-face behavioral health therapeutic intervention, which may be provided as a telehealth consultation, and shall be provided through scheduled therapeutic visits between the therapist, the client unless the corresponding current procedural terminology code establishes that the recipient is not present, and at least one (1) member of the client's family;

2. Address issues interfering with the relational functioning of the family;

3. Seek to improve interpersonal relationships within the client's home environment;

4. Be provided to promote the health and well-being of the client or recovery from a substance use disorder;

5. Not exceed three (3) hours per day per client unless additional time is medically necessary in accordance with 907 KAR 3:130; and

6. Be provided by the following personnel practicing within his or her scope of practice:

a. Behavioral health professional;

b. Behavioral health professional under clinical supervision;

c. Professional equivalent;

d. Mental health associate;

e. Certified alcohol and drug counselor;

f. Licensed clinical alcohol and drug counselor; or

g. Licensed clinical alcohol and drug counselor associate;

(l) Collateral outpatient therapy that shall consist of a face-to-face behavioral health consultation on behalf of a client under the age of twenty-one (21) and may be provided as a telehealth consultation:

1. With a:

a. Parent;

b. Caregiver;

c. Person who has custodial control;

d. Household member;

e. Legal representative;

f. School staff person; or

g. Treating professional;

2. Provided by the following personnel practicing within his or her scope of practice:

a. Behavioral health professional;

b. Behavioral health professional under clinical supervision;

c. Licensed behavior analyst;

d. Licensed assistant behavior analyst working under the supervision of a licensed behavior analyst;

e. Professional equivalent;

f. Mental health associate;

g. Certified alcohol and drug counselor;

h. Licensed clinical alcohol and drug counselor; or

i. Licensed clinical alcohol and drug counselor; and

3. Provided upon the written consent of a parent, caregiver, or person who has custodial control of a client under the age of twenty-one (21). Documentation of written consent shall be signed and maintained in the client's record;

(m) Service planning that shall be provided by a behavioral health professional, behavioral health professional under clinical supervision, licensed behavior analyst, licensed assistant behavior analyst working under the supervision of a licensed behavior analyst, professional equivalent, or mental health associate to:

1. Assist a client in creating an individualized plan for services needed for maximum reduction of the effects of a mental health disorder;

2. Restore a client's functional level to the client's best possible functional level; and

3. Develop a service plan that:

a. Shall be directed by the client; and

b. May include:

(i) A mental health advance directive being filed with a local hospital;

(ii) A crisis plan; or

(iii) A relapse prevention strategy or plan;

(n) Screening, brief intervention, and referral to treatment for substance use disorders that shall:

1. Be an evidence-based early intervention approach for an individual with non-dependent substance use prior to the need for more extensive or specialized treatment;

2. Consist of:

a. Using a standardized screening tool to assess the individual for risky substance use behavior;

b. Engaging a client who demonstrates risky substance use behavior in a short conversation, providing feedback and advice; and

c. Referring the client to therapy or other services that address substance use if the client is determined to need additional services; and

3. Be provided by the following personnel practicing within his or her scope of practice:

a. Behavioral health professional;

b. Behavioral health professional under clinical supervision;

c. Professional equivalent;

d. Mental health associate;

e. Certified alcohol and drug counselor;

f. Licensed clinical alcohol and drug counselor;

g. Licensed clinical alcohol and drug counselor associate; or

h. Certified prevention specialist;

(o) Assertive community treatment for mental health disorders that shall:

1. Include:

a. Assessment;

b. Treatment planning;

c. Case management;

d. Psychiatric services;

e. Medication prescribing and monitoring;

f. Individual and group therapy;

g. Peer support;

h. Mobile crisis services;

i. Mental health consultation;

j. Family support; and

k. Basic living skills;

2. Be provided by a multidisciplinary team of at least four (4) professionals, including:

a. A psychiatrist;

b. A nurse;

c. A case manager;

d. A peer support specialist; and

e. Any other behavioral health professional, behavioral health professional under clinical supervision, professional equivalent, or mental health associate; and

3. Have adequate staffing to ensure that no caseload size exceeds ten (10) participants per team member;

(p) Comprehensive community support services that shall:

1. Consist of activities needed to allow an individual with a mental health disorder to live with maximum independence in the community through the use of skills training as identified in the client's treatment plan;

2. Consist of using a variety of psychiatric rehabilitation techniques to:

a. Improve daily living skills;

b. Improve self-monitoring of symptoms and side effects;

c. Improve emotional regulation skills;

d. Improve crisis coping skills; and

e. Develop and enhance interpersonal skills; and

3. Be provided by a:

a. Behavioral health professional;

b. Behavioral health professional under clinical supervision;

c. Community support associate;

d. Licensed behavior analyst;

e. Licensed assistant behavior analyst working under the supervision of a licensed behavior analyst;

f. Professional equivalent; or

g. Mental health associate;

(q) Therapeutic rehabilitation program for an adult with a severe mental illness or child with a severe emotional disability that shall:

1. Include services designed to maximize the reduction of mental illness or emotional disability and restoration of the client's functional level to the individual's best possible functioning;

2. Establish the client's own rehabilitative goals within the person-centered plan of care;

3. Be delivered using a variety of psychiatric rehabilitation techniques focused on:

a. Improving daily living skills;

b. Self-monitoring of symptoms and side effects;

c. Emotional regulation skills;

d. Crisis coping skills; and

e. Interpersonal skills; and

4. Be provided individually or in a group by a:

a. Behavioral health professional;

b. Behavioral health professional under clinical supervision;

c. Peer support specialist;

d. Professional equivalent; or

e. Mental health associate;

(r) Partial hospitalization that shall:

1. Be provided by the following practicing within his or her scope of practice:

a. Behavioral health professional;

b. Behavioral health professional under clinical supervision;

c. Professional equivalent;

d. Mental health associate; or

e. Certified alcohol and drug counselor;

2. Be a short-term (average of four (4) to six (6) weeks), less than twenty-four (24) hour, intensive treatment program for an individual who is experiencing significant impairment to daily functioning due to substance use disorder, mental health disorder, or co-occurring disorder;

3. Be provided to an adult or a child;

4. Ensure that admission criteria for partial hospitalization is based on an inability to adequately treat the individual through community-based therapies or intensive outpatient services;

5. Consist of individual outpatient therapy, group outpatient therapy, family outpatient therapy, or medication prescribing and monitoring;

6. Typically be provided for at least four (4) hours per day and focused on one (1) primary presenting problem, which may include substance use, sexual reactivity, or another problem; and

7. Include the following personnel for the purpose of providing medical care if necessary:

a. An advanced practice registered nurse;

b. A physician assistant or physician available on site; and

c. A board-certified or board-eligible psychiatrist available for consultation;

(s) Residential treatment services for substance use disorders as described in Section 6 of this administrative regulation;

(t) Targeted case management services that shall:

1. Include services to one (1) or more of the following target groups:

a. An adult or a child with substance use disorder;

b. An adult or child with co-occurring mental health or substance use disorder and chronic or complex physical health issues;

c. A child with a severe emotional disability; or

d. An adult with severe mental illness;

2. Be provided by a case manager who meets the requirements of 908 KAR 2:260; and

3. Include the following assistance:

a. Comprehensive assessment and reassessment of client needs to determine the need for medical, educational, social, or other services. The reassessment shall be conducted annually or more often if needed based on changes in the client's condition;

b. Development of a specific care plan that shall be based on information collected during the assessment and revised if needed upon reassessment;

c. Referral and related activities, which may include:

(i) Scheduling appointments for the client to help the individual obtain needed services; or

(ii) Activities that help link the client with medical, social, educational providers, or other programs and services that address identified needs and achieve goals specified in the care plan;

d. Monitoring, which shall be face-to-face and occur no less than once every three (3) months to determine that:

(i) Services are furnished according to the client's care plan;

(ii) Services in the care plan are adequate; and

(iii) Changes in the needs or status of the client are reflected in the care plan; and

e. Contacts with the client, family members, service providers, or others are conducted as frequently as needed to help the client:

(i) Access services;

(ii) Identify needs and supports to assist the client in obtaining services; and

(iii) Identify changes in the client's needs; or

(u) Pregnant women substance use prevention services or substance use case management services.

(6) Quality assurance and utilization review.

(a) The center shall have an on-going, written quality assurance and[~~a~~] utilization[~~and~~] review program that:

1. Includes effective mechanisms for reviewing and evaluating client care and, if applicable, patient care in order to identify problems or opportunities to improve care;

2. Provides for appropriate responses to findings;

3. Assigns responsibility for monitoring and evaluating client and, if applicable, patient care;

4. Delineates the scope of care provided by the center;

5. Identifies the aspects of care that the center provides;

6. Identifies indicators and appropriate clinical criteria that can be used to monitor these aspects of care;

7. Collects and organizes data for each indicator;

8. Contains written procedures for taking appropriate corrective action;

9. Assesses the effectiveness of the actions taken to correct problems and documents the improvement in care; and

10. Communicates relevant information to other individuals, departments, or services as to the quality assurance program[~~plan for the evaluation of the service needs of each client~~].

(b) The need for continuing services[~~a service element for each individual~~] shall be evaluated immediately upon a change in a client's service needs or a change in the client's condition[~~with sufficient frequency~~] to ensure that proper arrangements have been made for:

1. Discharge;

2.[~~, for~~] Transfer;[~~to other elements of service,~~] or

3. Referral to another service provider, if appropriate.

(7)[~~(6)~~] Medications.

(a)1. If a center uses electronic prescribing, the center shall maintain a paper copy of each prescription.

2. If a center does not use electronic prescribing, the center shall document each prescription on a form designated specifically

for medications.[~~A treatment involving medication or chemotherapy shall be administered under the direction of a licensed physician or other qualified practitioner, acting within the scope of his practice, and:~~

~~(a) Medication or chemotherapy used in treatment shall be recorded in the staff notes on a special medications chart in the client record;~~]

(b) Documentation[~~A copy~~] of the prescription shall be kept in the client record.[~~;~~]

(c) Blood or another laboratory test or examination shall be performed in accordance with accepted medical practice.[~~on each individual receiving medication prescribed or administered by the center;~~]

(d) Drug supplies shall be stored under proper sanitary, temperature, light, and moisture conditions.[~~;~~]

(e) Medication kept by the center shall be properly labeled.[~~;~~]

(f) A medication shall be stored in the originally received container unless transferred to another container by a pharmacist or another person licensed to transfer the medication.[~~; and~~]

(g) Medication kept in the center shall be kept in a locked cabinet.

1. A controlled substance shall be kept under double lock (e.g., in a locked box in a locked cabinet).

2. There shall be a controlled substances record, in which is recorded:

a. The name of the patient;

b. The date, time, dosage, balance remaining, and method of administration of each controlled substance;

c. The name of the prescribing physician or other ordering practitioner acting within the limits of his statutory scope of practice; and

d. The name of the nurse who administered it, or staff who supervised the self-administration.

3. Except for medication to be self-administered in a crisis stabilization unit, access to the locked cabinet shall be restricted to a designated medication nurse or other authorized personnel. Medication to be self-administered in a crisis stabilization unit shall be made available to the patient at the time of administration.

Section 6. Residential Treatment Services for Substance Use Disorders. (1) If a center licensed under this administrative regulation provides residential services to clients with a substance use disorder, the center shall obtain separate licensure as a residential alcohol and other drug abuse treatment program pursuant to 908 KAR 1:370.

(2) In addition to meeting the requirements of 908 KAR 1:370 for residential treatment programs, a center that provides residential services for substance use disorders shall:

(a) Provide intensive treatment and skills building in a structured and supportive environment;

(b) Assist the client in abstaining from alcohol or substance use and in entering alcohol or drug addiction recovery;

(c) Provide services in a twenty-four (24) hour a day, live-in facility that offers a planned and structured regimen of care aimed at treating individuals with addiction or co-occurring mental health and substance use disorders;

(d) Assist the client in making necessary changes to enable the individual to live drug- or alcohol-free;

(e) Provide services under the medical direction of a physician; and

(f) Provide continuous nursing services in which a registered nurse shall be:

1. On-site during traditional first shift hours, Monday through Friday;

2. Continuously available by phone after hours; and

3. On-site as needed in follow-up to telephone consultation after hours.

Section 7. Primary Care Services. (1) Basic services. The center may provide a variety of preventive, medical diagnostic, laboratory, x-ray, treatment, and therapeutic (physical, occupational, and speech therapy) services by appropriately licensed or certified health professionals to meet the usual physical health care needs of:

(a) The center's clients as described by KRS 210.410(2) to help ensure continuity of care; and

(b) Other individuals seeking primary care services from the center.

(2) Referrals. If a center provides primary care services to its clients, the center shall provide appropriate referrals for clients who require services that are above the level of basic primary care services not provided by the center.

(3) Policies.

(a) Administrative policies. A center that provides primary care services shall have written administrative policies in addition to the requirement established in Section 3(3) of this administrative regulation, including:

1. A description of organizational structure for the delivery of primary care services, which may include therapeutic services, staffing, and allocation of responsibility and accountability;

2. A description of referral linkages with inpatient facilities and other providers;

3. Policies and procedures for the guidance and control of personnel performances;

4. A description of primary care and therapeutic services directly provided by the center, which may include the provision of services in a home- or community-based setting;

5. A description of the administrative and patient health records and reports; and

6. A policy to specify the provision of emergency medical services.

(b) Patient care policies.

1. Patient care policies shall be developed by the center's medical director required by subsection (4)(b) of this section and other professional staff for all medical aspects of the center's program, including written protocols for standing orders, rules of practice, and medical directives that apply to services provided by the center.

2. The protocols shall be signed by the medical director.

3. A system shall be established to ensure that, if feasible, the patient shall be always cared for by the same health professional or health team, to assure continuity of care.

(c) Patient rights policies. The center shall adopt written policies regarding the rights and responsibilities of patients. These patient rights policies shall assure that each patient shall be:

1. Informed of these rights and of all rules and requirements of 902 KAR Chapter 20 governing patient conduct and responsibilities, including a procedure for allowing the patient to voice a grievance or recommend changes in policies and services. Upon the patient's request, a grievance or recommendation shall be conveyed within a reasonable time to a decision making level within the organization with the authority to take corrective action;

2. Informed of services available at the center;

3. Informed of his or her medical condition, unless medically contraindicated as documented in his or her health record;

4. Afforded the opportunity to participate in the planning of his or her medical treatment and to refuse to participate in experimental research;

5. Encouraged and assisted to understand and exercise his or her patient rights;

6. Assured confidential treatment of his or her records and shall be afforded the opportunity to approve or refuse release of the records to any individual not involved in the patient's care, except as required by applicable law or third-party payment contract; and

7. Treated with consideration, respect, and full recognition of his or her dignity and individuality, including privacy in treatment and in the care of his or her personal health needs.

(4) Personnel.

(a) Primary care provider team. Each center that provides primary care services shall be staffed with at least:

1. One (1) full-time advanced practice registered nurse or physician assistant;

2. One (1) physician who:

a. Except in extraordinary circumstances as documented in the center's records, shall be present no less than once in every two

(2) week period to provide medical direction, medical care services, consultation, and supervision; and

b. Shall be available through direct telecommunication for consultation, assistance with medical emergencies, or patient referral. If a center is staffed with a full-time physician who provides medical care services on-site, the requirement for at least one (1) full-time advanced practice registered nurse or physician assistant shall be waived; and

3. Core staff of appropriately licensed or certified health professionals as necessary to carry out services provided.

(b) Medical Director. A medical director responsible for oversight of a center's primary care services shall:

1. Be a licensed physician;

2. Be responsible for all physical health aspects of the center;

3. Provide direct medical services in accordance with the Medical Practice Act, KRS Chapter 311; and

4. If the medical director responsible for the physical health aspects of the center is not a board certified or board eligible psychiatrist licensed in Kentucky, coordinate care and treatment decisions with the center's psychiatrist for all primary care services delivered to the center's clients.

(c) Physicians. A physician employed by or under contract with the center to perform services as described in paragraph (a)2 of this subsection shall be:

1. Qualified to practice general medicine, including as a general practitioner, family practitioner, obstetrician – gynecologist, pediatrician, or internist; and

2. A member of the medical staff or hold courtesy staff privileges at one (1) or more hospitals with which the center has a formal transfer agreement.

(d) In-service training.

1. All center personnel who provide primary care services shall participate in ongoing in-service training programs relating to their respective job activities.

2. The training programs shall include:

a. Thorough job orientation for new personnel;

b. Regular in-service training emphasizing professional competence and the human relationship necessary for effective health care; and

c. On-the-job training, if necessary.

(5)(a) The confidentiality and retention of client records shall be maintained in accordance with Section 3(4) of this administrative regulation.

(b) The center shall maintain a health record for each patient. The health record shall include:

1. The patient's medical and social history, including data obtained from other providers;

2. A description of each primary care visit or contact, including the condition or reason necessitating the visit or contact, assessment, diagnosis, services provided, medications and treatments prescribed, and disposition made;

3. Reports of all laboratory, x-ray, and other test findings; and

4. Documentation of all referrals made, including the reason for the referral, to whom the patient was referred, and any information obtained from the referral source.

(c) Transfer of records. The center shall:

1. Establish systematic procedures to assist in continuity of care if the patient moves to another source of care; and

2. Upon proper release, transfer health records or an abstract if requested.

(6) Linkage agreements.

(a) The center shall have linkages through written agreements with providers of other levels of care that may be medically indicated to supplement the services available in the center. These linkages shall include:

1. Hospitals; and

2. Emergency medical transportation services in the service area.

(b) Linkage agreements with inpatient care facilities shall incorporate provisions for:

1. Appropriate referral and acceptance of patients from the center;

2. Appropriate coordination of discharge planning with center staff; and

3. The discharge summary for each patient referred to be requested by the center.

(c) The written transfer agreements shall include designation of responsibility for:

1. Transfer of information;

2. Provision of transportation;

3. Sharing of services, equipment, and personnel;

4. Provision of total care or portions thereof in relation to center and agency capability; and

5. Patient record confidentiality pursuant to all applicable federal and state law.

(d) A linkage agreement shall not be required to transfer health records to any other treating health care facility or provider.

(7) Quality assurance program. The center shall have an ongoing, written quality assurance program established in accordance with Section 5(6)(a) of this administrative regulation.

Section 8[~~5~~]. Crisis Stabilization. (1) Emergency services provided in a crisis stabilization unit shall include the following:

(a) A mental status evaluation and physical health questionnaire of the client upon admission;

(b) A treatment planning process;

(c) Procedure for crisis intervention; and

(d) Discharge and aftercare planning processes.

(2) A program shall have a written policy concerning the operation of a crisis stabilization unit including:

(a) Staffing.

1. At least one (1) direct-care staff member shall be assigned direct-care responsibility for:

a. Every four (4) clients during normal waking hours; and

b. Every six (6) clients during normal sleeping hours;

2. Administrative oversight of the program shall be provided by a staff member who shall be:

a. A person licensed or certified to provide mental health services independent of clinical supervision;

b. A qualified mental health professional as defined in KRS 202A.011(12); or

c. A person qualified to be program director under Section 4(1)(b)[~~3(5)(a)~~] of this administrative regulation***; and[~~.~~]***

3. The center shall provide a training program for direct care staff pertaining to the care of a client in a crisis stabilization unit.

(b) Criteria to assure that each client in a crisis stabilization program shall be:

1. In either one (1) of two (2) separate programs, child or adult, separated by physical location. A children's program may serve a resident up to age twenty-one (21) if it is more developmentally appropriate for that resident;

2. In need of short-term behavior management and at risk of placement in a higher level of care;

3. Able to take care of his own personal needs, if an adult;

4. Medically able to participate in services; and

5. Served in the least restrictive environment available in the community.

(c) Referrals for physical health services to include diagnosis, treatment, and consultation for acute or chronic illnesses occurring during the client's stay in the crisis stabilization unit or for problems identified during the admission assessment.

(d) Rights of a crisis stabilization client, to include:

1. A description of the client's rights and the means by which these rights are protected and exercised.

2. At the point of admission, the program shall provide the statement of rights and responsibilities to the:

a. Client; and

b. In addition to the client, client's[~~his~~] parents,[~~if he is a child, his~~] guardian, or other legal representative if the client is a minor or incapacitated[~~with a clearly written and readable statement of rights and responsibilities~~].

3. The statement shall:

a. Be written in language that is understandable;

b. Be read to the client or if the client is a minor, client's[~~and his~~] parents,[~~if he is a child, his~~] guardian, or other legal representative if requested or if either cannot read; and

c.[~~shall~~] Cover the following:

(i)[~~a.~~] The right to treatment, regardless of race, religion, or ethnicity;

(ii)[~~b.~~] The right to recognition and respect of personal dignity in the provision of all treatment and care;

(iii)[~~c.~~] The right to be provided treatment and care in the least restrictive environment possible;

(iv)[~~d.~~] The right to an individualized plan of care;

(v)[~~e.~~] The right of the client, including the client's[~~and his~~] parents or guardian if the client is a minor,[~~if he is a child, or his legal representative,~~] to participate in treatment planning;

(vi)[~~f.~~] The nature of care, procedures, and treatment provided[~~that he shall receive~~];

(vii)[~~g.~~] The right to an explanation of risks, side effects, and benefits of all medications and treatment procedures used; and

(viii)[~~h.~~] The right, to the extent permitted by law, to refuse the specific medications or treatment procedures and the responsibility of the facility if the client refuses treatment, to seek appropriate legal alternatives or orders of involuntary treatment, or, in accordance with professional standards, to terminate the relationship with the client upon reasonable notice.

4.[~~3.~~] The statement of rights and responsibilities[~~of clients shall be written in language which is understandable to the client, and his parents, if he is a child, his guardian or other legal representative, and~~] shall be posted in appropriate areas of the facility.

5.[~~4.~~] The written policies and procedures[~~policy and procedure~~] concerning client[~~the clients'~~] rights shall assure and protect the client's[~~client~~] personal privacy within the constraints of his or her plan of care, including[~~. These rights to privacy shall include~~]:

a. Visitation by family or significant others in a suitable area of the facility; and

b. Telephone communications with family or significant others at a reasonable frequency.

6.[~~5.~~] If a privacy right is limited, a full explanation shall be given to the client or the client's parent or guardian if the client is a minor[~~and his parents, if he is a child, or his guardian or other legal representative, shall receive a full explanation~~]. A limitation to a privacy right shall be documented in the client's record.

7. Information shall be provided to[~~6.~~] the client, or the client's parent or guardian if the client is a minor, regarding[~~and his parents, if he is a child, his guardian, or other legal representative, shall be informed of~~] the use and disposition of a product of special observation and audio visual techniques, which may include the following[~~such as~~]:

a. One (1) way vision mirror;

b. Audio recording;

c. Video tape recording;

d. Television;

e. Movie; or

f. Photograph.

8.a.[~~7.~~] Written policy and procedure developed in consultation with professional and direct-care staff shall provide for behavior management of a child client, including the use of a time-out room.

b.[~~The policy and procedure for use of a time-out room shall be approved by the Department for Mental Health and Mental Retardation.~~] Behavior management techniques shall be explained fully to each client and the client's parent[~~his parents~~], or[~~his~~] guardian, or other legal representative if the client is a child or otherwise incapacitated.

9.[~~8.~~] The facility shall prohibit cruel and unusual behavioral management measures, including corporal punishment, the use of a seclusion room, and mechanical restraint[~~as defined in 902 KAR 20:320~~].

10.[~~9.~~] Written policy shall prohibit a client from administering a disciplinary measure upon another client and shall prohibit a person other than professional or direct-care staff from administering a disciplinary measure to a child client.

(e) If therapeutic holds are used[~~The use of therapeutic holds~~] as a safe behavioral management technique, the facility shall have a[~~. The~~] policy that shall describe:

1. Criteria for appropriate use of therapeutic holds;

2. Documentation requirements; and

3. The requirement for completion of a training course approved by the Department for Behavioral Health, Developmental and Intellectual Disabilities[~~of Mental Health and Mental Retardation,~~] prior to using therapeutic holds.

(f) The requirement that a licensed psychiatrist shall be available to evaluate, provide treatment and participate in treatment planning on a regular basis.

(g) The procedure for proper management of pharmaceuticals, consistent with the requirements of Section ***5(7)[4(6)]*** of this administrative regulation.

(h) Except for a program accredited by the Joint Commission[~~for Accreditation of Health Organizations~~] or the Commission on Accreditation of Rehabilitation Facilities, general procedures that address the following:

1. Procedures to be followed by staff in the event of a medical emergency of a client;

2. Proper nutrition;

3. Emergency preparedness;

4. Security; and

5. School attendance for children.

(3) Facility requirements for a crisis stabilization unit.

(a) A living unit shall be located within a single building and shall include:

1. Bedrooms.

a. More than four (4) clients shall not sleep in a bedroom.

b. A bedroom shall be equipped with a bed for each client.

c. A bed shall:

(i) Be at least thirty-six (36) inches wide and at least five (5) feet in length;

(ii)[~~and shall~~] Be long and wide enough to accommodate the client's size;

(iii)[~~. d. A bed shall~~] Have a mattress cover, two (2) sheets, a pillow, and bed covering as is required to keep the client comfortable;

(iv)[~~. e. A bed shall~~] Be equipped with a support mechanism and a clean mattress; and

(v)[~~. f. A bed shall~~] Be placed so that a client shall not experience discomfort because of proximity to a radiator or heat outlet, or exposure to a draft.

d.[~~g.~~] There shall be separate sleeping quarters for males and females.

e.[~~h.~~] A client shall not be housed in a room, a detached building, or other enclosure that has not previously been inspected and approved for residential use by the licensure agency and the Department of Housing, Buildings and Construction.

2. Bathrooms.

a. For every eight (8) residents, each living unit shall have at least one (1):

(i) Wash basin with hot and cold water;

(ii)[~~, one (1)~~] Flush toilet;[~~,~~] and

(iii)[~~one (1)~~] Bath or shower with hot and cold water[~~for every eight (8) resident clients~~].

b. If separate toilet and bathing facilities are not provided, males and females shall not be permitted to use those facilities at the same time.

3. Living area.

a. The living area shall provide comfortable seating for all clients housed within the living unit.

b. Each living unit shall be equipped with a:

(i) Working sink; and

(ii)[~~,~~] Stove and refrigerator, unless a kitchen is directly available within the same building as the living unit.

c. A living unit shall house a maximum of sixteen (16)[~~twelve (12)~~] clients.

Section 9[~~6~~]. Facility Specifications. (1) A facility housing a community mental health center or a crisis stabilization unit shall be a general purpose building of safe and substantial construction and shall be in compliance with applicable state and local laws relating to zoning, construction, plumbing, safety, and sanitation. The following shall apply if relevant and as adopted by the respective agency authority:

(a) Requirements for fire safety pursuant to 815 KAR 10:060; and

(b) Requirements for making a building or facility accessible to and usable by an individual with disabilities, pursuant to KRS 198B.260 and administrative regulations promulgated thereunder.

(2) Prior to occupancy, the facility shall have final approval from appropriate agencies.

(3) A facility shall be currently approved by the Department of Housing, Buildings and Construction in accordance with 815 KAR 10:060, before relicensure is granted by the licensure agency.

ROBERT S. SILVERTHORN, JR., Inspector General
VICKIE YATES BROWN GLISSON, Secretary
APPROVED BY AGENCY: October 28, 2016
FILED WITH LRC: November 1, 2016 at 10 a.m.
CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(As Amended at ARRS, March 6, 2017)

902 KAR 20:280.[~~Standards for~~] Prescribed pediatric extended care centers.

RELATES TO: KRS 198B.260, 216.875, 216.880, 216.885, 311.571, 314.041, 319.010(3), 327.010(2), 334A.020, 335.090, 620.030

STATUTORY AUTHORITY: KRS ***216B.042(1)[~~216.042~~]***, 216.890

NECESSITY, FUNCTION, AND CONFORMITY: KRS ***216B.042(1)[~~216.042~~]*** requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services[~~mandates that the Kentucky Cabinet for Human Resources regulate health facilities and health services~~]. KRS 216.890 requires the Cabinet for Health and Family Services to promulgate administrative regulations to implement the provisions of KRS 216.875 to 216.890, which include standards related to the operation of prescribed pediatric extended care (PPEC) centers. This administrative regulation establishes the requirements for prescribed pediatric extended care centers[~~mandates that the Kentucky Cabinet for Human Resources promulgate standards to regulate prescribed pediatric extended care (PPEC) services~~].

Section 1. Definitions. (1) "Child life specialist" means an individual who has:

(a) A minimum bachelor's degree with an educational emphasis on:

1. Human growth and development;

2. Education, which may include early childhood education;

3. Psychology; or

4. A related field of study; and

(b) Current experience in planning and implementing developmental stimulation programs for children.

(2) "Developmentalist" means a master's prepared individual with current experience in:

(a) Transdisciplinary evaluation; and

(b) Treatment planning for children who are at risk for or experiencing developmental delay.

(3) "Medical director" means a board certified pediatrician who ***[~~shall~~]***:

(a) ***Serves[~~Serve~~]*** as the liaison between the PPEC center and the medical community;

(b) ***Reviews[~~Review~~]*** the quality and appropriateness of PPEC center services; and

(c) ***Is[~~Be~~]*** available for consultation to PPEC center staff.

(4) "Medically dependent or technologically dependent child" is defined by KRS ***216.875(6)[~~216.875~~]***.

(5) "Nursing director" means a registered nurse who:

(a) Is licensed pursuant to KRS 314.041;

(b) Is responsible for providing continuous supervision of PPEC center services; and

(c) Manages the daily operations of the facility.

(6) "Occupational therapist" is defined by KRS 319A.010(3).

(7) "Physical therapist" is defined by KRS 327.010(2).

(8) "Prescribed pediatric extended care center" or "PPEC center" is defined by KRS 216.875(1).

(9) "Prescribing physician" means a physician who:

(a) Is licensed in Kentucky to practice medicine or osteopathy in accordance with KRS 311.571; and

(b) Signs the order admitting a child to the PPEC center.

(10) "Primary care provider" means a health care practitioner who:

(a) Is licensed to practice in Kentucky;

(b) Maintains overall responsibility for a child's medical management; and

(c) Is available for consultation and collaboration with PPEC center staff.

(11) "Protocol of care" means a comprehensive plan for implementation of the following services:

(a) Medical;

(b) Nursing;

(c) Psychosocial;

(d) Developmental; and

(e) Educational therapies.

(12) "Social worker" means an individual who is:

(a) Licensed pursuant to KRS 335.090; and

(b) A graduate of a school of social work accredited by the Council on Social Worker Education.

(13) "Speech-language pathologist" is defined by KRS ***334A.020(3)[~~334A.020~~]***[~~"Developmentalist" is a master's prepared individual with current experience in transdisciplinary evaluation and treatment planning for children who are at risk for or experiencing developmental delay.~~

~~(2) "Protocol of care" is the comprehensive plan for implementation of medical, nursing, psychosocial, developmental, and educational therapies to be provided by the PPEC. An individualized protocol of care shall be developed upon admission and shall be revised to include recommended changes in the therapeutic plans. The disposition to be followed in the event of emergency situations shall be specified in the protocol of care.~~

~~(3) "Prescribing physician" is the physician, licensed pursuant to KRS 311.571, who signs the order admitting the child to the PPEC.~~

~~(4) "Primary physician" is the physician, licensed pursuant to KRS 311.571, who maintains overall responsibility for the child's medical management and is available for consultation and collaboration with the PPEC staff.~~

~~(5) "Medical director" is a board certified pediatrician who serves as the liaison between the PPEC and the medical community, reviews the quality and appropriateness of PPEC services, and is available for consultation to the PPEC staff.~~

~~(6) "Nursing director" is a licensed registered nurse, pursuant to KRS 314.041, responsible for providing continuous supervision of PPEC services and managing the daily operations of the facility.~~

~~(7) "Occupational therapist" means a person who is licensed pursuant to KRS 319A.080.~~

~~(8) "Speech pathologist" means a person who is licensed pursuant to KRS 334A.050.~~

~~(9) "Social worker" means a person who is licensed pursuant to KRS 335.090, if applicable, and who is a graduate of a school of social work accredited by the Council on Social Worker Education.~~

~~(10) "Physical therapist" means a person who is licensed pursuant to KRS 327.050.~~

~~(11) "Child life specialist" is an individual with baccalaureate preparation in child life, early childhood education, or a related field and current experience in planning and implementing developmental stimulation programs for children~~].

Section 2. Scope of Operation and Services. A PPEC center

shall be[The prescribed pediatric extended care (PPEC) center is] a nonresidential health care service that provides:

(1) A[which provides an important] link in the continuum of care for medically dependent or technologically dependent children; and

(2)[. The (PPEC) center provides] The following triad of[necessary] services for[dependent] children and their parents:

(a) Day health care;

(b)[,] Developmental interventions;[,] and

(c) Parent[Parental] training programs.

Section 3. Applicability. Each PPEC center[(1) All prescribed pediatric extended care facilities] shall:

(1) Be equipped and staffed to accommodate no fewer than three (3) medically dependent or technologically[medically/technologically] dependent children;

(2) Be in compliance with this administrative regulation and federal, state, and local laws and regulations pertaining to the operation of PPEC centers;

(3)[and shall meet standards established herein.

(2) All PPEC facilities shall] Have a minimum full-time equivalent staff of two (2) registered nurses and one (1) nursing assistant; and

(4) Meet the following ratios[. Thereafter, the ratio of staff to children shall be maintained at]:

3-12 children	2 RNs[RN's] plus 2 others
13-18 children	2 RNs, 1 LPN,[3 RN's] plus 3 others
19-24 children	2 RNs, 2 LPNs,[4 RN's] plus 4 others

If the PPEC center has a census of more than twenty-four (24) children, the number of registered nurses and other staff shall increase by one (1) each for up to six (6) additional children enrolled.

Section 4. Criteria for Admission. Each child admitted to a PPEC center shall meet at least the following criteria:

(1) An infant or child[Infants and children] considered for admission to the PPEC center[facility] shall be medically dependent or technologically dependent[those] with a complex condition[medical conditions] requiring continual care, which may include:

(a)[including but not limited to,] Supplemental oxygen;

(b)[,] Ventilator dependence;

(c)[,] Cystic fibrosis;

(d)[,] Apnea;

(e)[,] Spinal cord injury; or

(f)[and] Malignancy;

(2) An infant or child shall not, prior to admission, present significant[, etc.

(2) Children with] risk of infection to other children or personnel. The medical and nursing director may review, on a case-by-case basis, any child with a suspected infectious disease to determine appropriateness of admission;[shall not be admitted unless authorized by the prescribing physician.]

(3) The child shall be medically stabilized, require skilled nursing care or other interventions, and be appropriate for outpatient care; and

(4) The primary care provider[physician], in consultation with the parent or legal guardian[parent(s) or legal guardian(s)], shall be responsible for recommending[recommend] placement in a PPEC center upon[facility, taking into] consideration of[the] medical, emotional, psychosocial, and environmental factors.[(4) The child shall be medically stabilized, require ongoing nursing care, and other interventions.]

Section 5. Preadmission Conference. (1) If a[the] child meets the admission criteria established in Section 4 of this administrative regulation, the primary care provider or designee[physician or his/her designate] shall contact the medical or nursing director of the PPEC center to schedule a preadmission conference.

(2)[(a)] If a[the] child is hospitalized at the time of referral, preadmission planning shall include:

(a) The parent or legal guardian; and

(b)[parent(s) or guardian(s),] Relevant hospital medical, nursing, social services, and developmental staff to assure that the discharge plans shall be implemented upon admission to the PPEC center[accommodated following placement in the PPEC].

(3)[(b)] If a[the] child is not hospitalized at the time of referral, preadmission planning shall be conducted with the:

(a) Primary care provider;

(b) Parent or legal guardian;

(c)[physician, parent(s) or guardian(s),] PPEC center representatives; and

(d) Representatives of other relevant agencies as determined by the primary care provider[physician,] and nursing director[of the PPEC].

(4) A[(c)] preadmission planning conference shall:

(a) Be scheduled at least[within] seventy-two (72) hours prior to placement; and

(b) Allow sufficient time to assure that the therapeutic plan can be implemented upon placement in the PPEC center.

(5)[(d)] The protocol of[for] care shall:

(a) Be developed under the direction of the PPEC center's nursing director during the preadmission planning conference;

(b) Specify the treatment plan needed to accommodate the medical, nursing, psychosocial, and educational needs of the child and family;

(c) Identify specific goals for care, including plans for achieving those goals;

(d) Include a schedule for evaluation of progress;

(e) Include procedures to follow in an emergency situation;

(f) Include[by the PPEC staff following preadmission planning.

(e) The protocol for care shall include specifications of] criteria for discharge from the PPEC center; and

(g) Be signed by the:

1. Physician;

2. Authorized representative of the PPEC center; and

3. Parent or legal guardian.

(6)[(2)] A consent form[,] outlining the purpose of the PPEC center[a PPEC facility], family responsibilities, authorized treatment,[and] appropriate liability release[releases], and emergency disposition plans shall be:

(a) Signed by the parent or legal guardian;[parent(s) or guardian(s)] and

(b) Witnessed prior to admission to the PPEC center[facility].

(7) A copy of the consent form shall be:

(a) Provided to the parent or legal guardian; and

(b) Maintained in the child's medical record[The parent(s) or guardian(s) and the PPEC facility shall be provided a copy of the consent form].

Section 6. Admission Procedure. (1)[Infants and children shall be considered for admission to the PPEC facility if they have complex medical conditions requiring skilled nursing care, e.g., children with conditions including but not limited to, supplemental oxygen, ventilator dependence, cystic fibrosis, apnea, spinal cord injury and malignancy, etc.

(2)] In consultation with the parent or legal guardian[parent(s) or legal guardian(s)], a child may be referred to the PPEC center medical or nursing director for determination of placement.

(2)(a) Each child admitted to a PPEC center[(3) All children placed in the PPEC facility] shall be admitted in accordance with[have documentation of] a physician's written order placed in the child's medical record.

(b) A copy of the order shall be provided to the child's parent or legal guardian[parent(s) or guardian(s)]. [(4) Prior to placement, preadmission planning conferences shall be held for the purpose of developing a protocol for care.

(5) The protocol for care shall be developed under the direction of the PPEC nursing director and shall specify the treatment plan needed to accommodate the medical, nursing, psychosocial and educational needs of the child and family. Specific goals for care shall be identified. Plans for achieving the goals shall be determined and a schedule for evaluation of progress shall be established. The protocol shall include specific discharge criteria.

(6) The protocol shall be signed by the physician, authorized representative of the PPEC and parent(s) or guardian(s). Copies of the protocol shall be given to the parent(s) or guardian(s). Copies

~~of the protocol shall be given to the parent(s) or guardian(s) primary physician, PPEC staff and other agencies as appropriate.~~

~~(7) A consent form, outlining the purpose of a PPEC facility, family responsibilities, authorized treatment, appropriate liability releases, and emergency disposition plans shall be signed by the parent(s) or guardian(s) and witnessed prior to admission to the PPEC facility. The parent(s) or guardian(s) and the facility shall be provided a copy of the consent form.~~]

Section 7. Provision of Services. (1) Medical staff services.

(a) Each child[~~Children shall be~~] admitted to a[~~the~~] PPEC center shall be admitted upon prescription by the:

1. Child's prescribing[~~primary~~] physician; or

2.[~~by the~~] Medical director.

(b) The child's primary care provider[~~physician~~] shall maintain responsibility for the overall medical therapeutic plan[~~and shall be available for consultation and collaboration with the PPEC medical and nursing personnel~~].

(c) The medical director shall participate in review[~~reviews~~] of the protocol of[~~for~~] care. Prescribed therapies shall be adjusted in consultation with the primary care provider[~~physician~~] to accommodate the child's condition.

(d) The PPEC center shall coordinate the prescribed therapies for the child.

(2) Nursing staff services.

(a) A PPEC center nursing staff member shall participate in preadmission planning.

(b) Nursing personnel, under the direction of the nursing director, shall be responsible for implementing the nursing care.

(c) Nursing personnel shall be responsible for monitoring and documenting the effects of prescribed therapies.

(d) Nursing personnel shall inform the primary care provider[~~physician~~] and medical director of the results of therapeutic interventions.

(e) Nursing personnel shall participate in interdisciplinary staff meetings[~~staffings~~] regarding the child's progress.

(f) Nursing personnel shall assure that the PPEC center provides an environment conducive to the:

1. Stabilization of the child's medical condition; and

2.[~~the~~] Promotion of the child's development.

(g) Nursing personnel shall be responsible for maintaining the child's record in accordance with facility policies and procedures.

(h) Nursing personnel shall instruct the parent or legal guardian[~~parent(s) or guardian(s)~~] in how to provide the necessary therapies in the home.

(3) Developmental services.

(a)1. Each child shall have a functional assessment and an individualized program plan to accommodate the child's developmental needs.

2. The following functional areas shall be included as appropriate:

a. Self-care;

b.[~~,~~] Communication skills;

c.[~~,~~] Social skills;

d.[~~,~~] Motor skills;

e. Cognitive[~~, Preacademic~~] areas;

f.[~~,~~] Play; and

g.[~~with toys/objects,~~] Growth and development appropriate for age.

(b) The child's program plan shall:

1. Include specific programs and action steps to facilitate developmental progress;

2.[~~and shall~~] Be reviewed at least quarterly;

3. Include[~~. (c) The child's developmental and educational needs shall be incorporated into the protocol for care.~~

~~(d) The child's program plan shall include:~~

~~1.~~] measurable goals in need areas, or goals to enhance and normalize independent functioning in daily activities;

4. Describe the child's[~~. 2. A description of the patient's~~] strengths and present performance level with respect to each goal;

5. Document[~~3.~~] skill areas in priority order; and

6. Include[~~4.~~] anticipatory planning for specific areas identified as at-risk for future problems.

(c)[~~(e)~~] The child life specialist shall participate in[~~regularly scheduled~~] interdisciplinary staff meetings[~~staffings~~].

(d) Each PPEC center shall:

1. Include the parent or legal guardian[~~(f) A program for parent(s) or guardian(s) shall be provided to prepare parent(s) or guardian(s) to accommodate the child's developmental needs.~~

~~(g) The PPEC shall provide parent(s) or guardian(s) education services by including them~~] in care-related conferences; and

2. Train the parent or legal guardian on[~~and teaching them~~] how to:

a. Perform necessary therapies; and

b.[~~how to~~] Meet the developmental and psychosocial needs of their child at home.

(e)[~~(h)~~] PPEC center staff shall:

1. Make referrals to appropriate resources;

2. Refer[~~, Facilitate access~~] to community, social, educational, and financial services;[~~,~~] and

3. Refer or[~~shall~~] provide counseling to enhance coping skills, interpersonal relationships, and family functioning.

(4) Nutritional services.

(a) Therapeutic diets shall be maintained in the child's[~~patients~~] file.

(b)[~~The services of~~] A registered dietician shall be available to provide assistance with:

1.[~~regarding the~~] Nutritional needs;

2.[~~, the~~] Special diets of individual children;[~~,~~] and

3.[~~to assist in~~] The development of policies and procedures for the handling, serving, and storage of food.

(c) All food and formula, except for specialized formula, shall be provided by PPEC center staff under the supervision of the nursing director.

(d) Prepared foods shall be:

1. Kept under refrigeration with identifying dates; and

2. Labeled with the child's name[~~patient names~~].

Section 8. Quality Assurance. (1) Each[~~The~~] PPEC center shall have a[~~ensure that there is an effective,~~] quality assurance program to evaluate the provision of patient care.

(2) The quality assurance program shall:

(a) Be ongoing; and

(b) Have a written plan of implementation.

(3)(a) All organized services related to patient care, including services furnished by a contractor, shall be evaluated at least every six (6) months[~~, semiannually~~].

(b) Nosocomial infections and medication therapy shall be evaluated.

(c) Evidence of[~~parent(s) or guardian~~] involvement by the parent or legal guardian shall be evaluated at least every six (6) months[~~semiannually~~].

Section 9. Administration. (1) Each PPEC center shall develop, implement, and maintain written policies and procedures governing all child care and related medical or other services provided[~~The administrative structure of the PPEC shall include a policy and procedure manual which reveal all operational aspects of the service~~].

(2) Personnel policies and procedures shall specify qualifications and required ratios for staff[~~of staff members~~] employed by the PPEC center.

(3) Each PPEC center shall:

(a) Maintain a personnel record for each employee;

(b) Develop and maintain a current job description for each employee;

(c) Provide each employee with access to written personnel policies governing conditions of employment; and

(d) Provide an[~~shall include: a current personnel file, positions descriptions, employee benefits, policies for overtime, compensatory time, performance evaluations, termination of employment.~~

~~(3) A formal~~] orientation and development program[~~is required~~] for all PPEC center employees[~~and staff~~].

(4)[~~The facility shall be administered on a sound financial basis consistent with good business practice. Financial records which~~

identify all income by source and describe all expenditures by category in such a manner as to be auditable by commonly recognized procedures.

(5)] Policies and procedures pertaining to PPEC center services shall:

(a) Be available to the public; and

(b)[shall] Include[: (a)] a procedure manual with specifications for each therapeutic intervention. The manual shall be:

1. Available for use by all staff involved in the care of the children; and

2.[the manual shall be] Reviewed every six (6) months to assure that procedures conform to prevailing and acceptable treatment modalities.

(5) Each PPEC center shall maintain[(b)] an admission and discharge register that:

(a) Lists children[, listing clients] admitted by name with identifying information about each and the source from which the child was admitted;

(b) Identifies[,] the reason for disposition; and

(c) Identifies[, adequate identifying information and] the place to which the child[individual] is to be discharged.

(6) Each PPEC center shall maintain;

(a)[(c)] A daily census record;

(b)[(d)] An accident and incident record; and

(c)[(e)] A complete medical and nursing history[shall be maintained] for each child.

(7) Each PPEC center shall:

(a) Conduct a[; (f) Periodic] review of each child's protocol of care quarterly and revise upon a change in the child's condition; and

(b) Include any recommendations or revisions to the protocol based on[to update the protocol in] consultation with other professionals involved in the child's care.

(8) Any changes in the orders shall be documented and signed by the primary care provider.

(9)[physician; (g)] Prior to a discharge, a conference[conferences] involving PPEC center staff, the primary care provider[physician], the parent or legal guardian,[parent(s) or guardian(s)] and staff of other agencies involved in the patient's care shall be held to discuss postdischarge care and follow-up.

(10)[; (h)] A discharge order written by the primary care provider[physician] shall be documented and entered in the child's record.

(11) A discharge summary, including[which includes] the reason for discharge, shall also be included in the child's record.

(12)[(i)] Except in an emergency situation[situations], other agencies involved in the care of the child[patient/family] shall be notified prior to the discharge date.

(13) Each PPEC[(j) The] center shall have linkage agreements through written agreements with providers of other levels of care that[which] may be medically needed to supplement the services available at the center.

(14) Each PPEC[(k) The] center shall have written policies to ensure[which assure] the reporting of cases of abuse, neglect, or exploitation of children to the Cabinet for Health and Family Services pursuant to KRS 620.030[Human Resources pursuant to KRS 199.335].

Section 10. Personnel. (1) A board certified pediatrician shall serve as the medical director for the PPEC center[facility]. Responsibilities of the medical director shall include:

(a) Participation in preadmission planning to establish a protocol of care as described in Section 5(5) of this administrative regulation [with the primary physician, parent(s) or guardian(s) and staff of the PPEC center];

(b)[Periodic] Review of services to assure acceptable levels of quality of care;

(c) Maintenance of a liaison role with the medical community;

(d) Advisement on the development of new programs and modifications of existing programs; and

(e) Assurance that medical consultation shall be available if the medical director is absent[in the event of his/her absence].

(2) A nursing director shall be employed to provide continuous supervision of PPEC center services. The nursing director[and] shall be responsible for:

(a) Daily operations of the PPEC center;

(b)[facility.

(a) In addition the nursing director shall be responsible for:

1.] All services rendered at the center;

(c)[2.] Personnel management;

(d)[3.] Organization and implementation of in-service education programs for staff;

(e)[4.] Assistance to the medical director in determining patient eligibility for admission to PPEC center;

(f)[5.] Assurance of adequate nursing representation at preadmission conference;

(g)[and 6.] Supervision of all patient records; and

(h) Documentation of the PPEC center's activities to assure compliance with[to] rules and administrative regulations.

(3)[(b) Credentials and training.

1. Registered nurse with a current license in the state of Kentucky.

2.] Nursing services shall be provided within the nurse's[their respective] scope of practice pursuant to KRS Chapter 314 and any administrative regulations promulgated thereunder.

(4)[3.] The nursing director shall have at least two (2) years nursing experience of which at least six (6) months shall have been spent in a pediatric intensive care,[or] neonatal intensive care setting, PPEC center, or similar care setting in which the nurse provided care to medically fragile children[during the previous five (5) years].

(5)[(3)] Staffing.

(a) The PPEC center shall employ nursing and ancillary staff that are necessary to:

1. Provide the services essential to the center's operation; and

2. Meet the level of care needs of the children enrolled.

(b) There shall be an individual personnel record for each person employed by the center, which includes the following:

1. Resume with employee's training and experience;
2. Evidence of current licensure or registration;
3. Reports of all accidents occurring on duty; and
4. Current certification in basic life support.

(c) The following categories of personnel shall be available to the PPEC center on an in-house or consultant basis:

1. Developmentalist;[.]
2. Child life specialist;[.]
3. Occupational therapist;[.]
4. Physical therapist;[.]
5. Speech-***language*** pathologist; and[.]
6. Social worker.

Section 11. In-service Training for Staff,[/] Parents, and Legal Guardians[Guardian(s)]. (1) Monthly staff development programs appropriate to the category of personnel shall be conducted to maintain quality patient care.

(2) All staff development programs shall be documented.

(3) All personnel shall[be expected to] maintain current certification in basic life support.

(4) Each new employee shall participate in orientation to acquaint the employee with the philosophy, organization, program, practices, and goals of the PPEC center[facility].

(5) A comprehensive orientation to acquaint the parent or legal guardian[parent(s) and/or guardian(s)] with the philosophy and services shall be provided at the time of the child's placement in the PPEC center.

(6) Staff development programs shall be provided to:

(a) Facilitate the ability of the staff to function as a member of an interdisciplinary team that[which] includes health professionals and the parent or legal guardian;[parent(s) and/or guardian(s).]

(b) Improve communication skills to facilitate a collaborative relationship between the parent or legal guardian[parent(s) and/or guardian(s)] and professionals;[.]

(c) Increase understanding of the effects that childhood illness has on the child's development and the parent or guardian;[parent(s) and/or guardian(s).]

(d) Increase understanding of and how to cope[coping] with the

effects of childhood illnesses;

(e)[and shall] Cover a variety of topics including:

1. Issues of death and dying;

2. Awareness of services available at the following:

a. Hospital;

b.[,] School; and

c.[,] Community, state, and professional organizations;[,] and

3. Fostering of advocacy skills; and[.]

(f)[(e)] Develop case management skills to assist the family in:

1. Setting priorities; and

2. Planning and implementing the child's care at home.

(7) Each PPEC center shall[(f)] provide training in the implementation of new technology. [(g) Develop a comprehensive protocol for care which includes the medical, nutritional, developmental and psychosocial needs of medically/ technologically dependent children.

(h) Prepare for management of emergency situations.]

Section 12. Physical Environment. (1) The building shall:

(a) Be suitable for the purpose intended; and

(b)[should] Maintain a minimum of sixty (60) square feet of space per child, exclusive of the following:

1. Kitchen;

2.[,] Bathroom;

3.[,] Storage areas;

4.[,] Stairways;

5.[,] Unfinished basements; and

6. Attics.

(2) The PPEC center shall conform to or exceed the minimum standards for day care centers as specified in the most current version of the Kentucky Building Code***, incorporated by reference in 815 KAR 7:120***.

(3)[ventilation system shall be designed and balanced to provide the general pressure relationships shown in Table 1, Section 14 of this administrative regulation.

(3) The lighting levels for the facility shall comply with the requirements in Table 2, Section 14 of this administrative regulation.

(4)] Plumbing approval. Prior to licensure[and relicensure], all specifications shall be approved by the Kentucky Division of Plumbing, Department of Housing, Buildings and Construction.

(4)[(5)] Transportation. Emergency transportation to a hospital[(with a pediatric unit)] shall be achieved within twenty (20)[in ten (10)] minutes normal driving time or less, with a PPEC center staff member accompanying the child unless the child's parent or legal guardian is immediately available to accompany the child to the hospital.

(5)[(6)] Unless medically contraindicated, the PPEC center shall maintain[facility shall be maintained as] a temperature range of seventy-two (72) degrees to eighty (80) degrees Fahrenheit.

(6)[(7)] Accessibility. Each[The] PPEC center shall meet requirements for making buildings and facilities accessible to and usable by persons with a disability[the physically handicapped] pursuant to KRS 198B.260 and ***815 KAR Chapter 7[administrative regulations promulgated by the Department of Housing, Buildings and Construction]***[thereunder].

(7)[(8)] Fire safety. Each[The] PPEC center shall:

(a) Be approved by the State Fire Marshal's office prior to[before] licensure; and

(b) Retain a copy of the current fire inspection report on file[relicensure is granted by the licensure agency].

(8)[(9)] Housekeeping and maintenance services.

(a) Housekeeping. Each PPEC[The] center shall:

1. Maintain a clean and safe facility free of unpleasant odors; and

2. Ensure that[,] odors are[shall be] eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans, and other sources.

(b) Maintenance. The premises shall be well kept and in good repair as follows[. Requirements shall include]:

1. The center shall insure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps, and fences are in good repair;[,]

2. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing, and electrical fixtures shall be in good repair;[,]

3. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly;[,]

4. A pest control program shall be in operation in each center.[the centers] Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock;[,]

5.a. Sharp wastes, including needles, scalpels, razors, or other sharp instruments used for patient care procedures shall be segregated from other wastes and aggregated in puncture resistant containers immediately after use.

b. Needles and syringes shall not be recapped, cut, dismantled, or destroyed after use, but shall be placed intact directly into a puncture resistant container.

c. The containers of sharp wastes shall either be incinerated, on site or off site, or disposed of in a sanitary landfill approved pursuant to 401 KAR ***47:005 through 401 KAR 47:180[47:080]***; and [rendered nonhazardous by a technology of equal or superior efficacy, which is approved by both the Cabinet for Human Resources and the Natural Resources and Environmental Protection Cabinet.]

6. The center shall establish a written policy for the handling and disposal of all infectious, pathological, and contaminated waste if the center generates them. Any incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:020 or 401 KAR 61:010.

a.(i) Infectious waste shall be placed in double impervious plastic bags and each bag shall be two (2) mils in thickness.

(ii) A bag, when full, shall not exceed twenty-five (25) pounds.

(iii) All bags shall be securely closed and a tag, which reads "INFECTIOUS WASTE" and identifies the center from which the waste is being removed,[and] shall be attached to the bag in a conspicuous manner.

b. The following wastes shall be disposed of by incineration[or], be autoclaved before disposal, or be carefully poured down a drain connected to a sanitary sewer:

(i) Blood;

(ii)[,] Blood specimens;

(iii)[,] Used blood tubes;[,] or

(iv) Blood products.

Section 13. Emergency Procedures. (1)[A copy of the current annual fire inspection report, shall be on file with the licensing agency.

(2)] There shall be a working telephone, which is neither locked nor a pay station, in the center.

(2)[(3)] Emergency telephone numbers shall be posted on or in the immediate vicinity of all telephones.

[Section 14. Appendix.

TABLE 1 - PRESSURE RELATIONSHIPS AND VENTILATION FOR PPEC CENTERS			
Area Designation	Pressure Relationship to Adjacent Areas	Minimum Air Changes of Out-door Air Per Hour	Minimum Total Air Changes Per Hour
Patient room	0	1	4
Patient area corridor	0	2	4
Treatment room	0	2	4
Physical therapy and hydrotherapy if applicable	N	2	-
Dining and recreation areas	0	2	4
Soiled workroom	N	2	4
Clean workroom	P	2	4

~~Toilet room~~	~~N~~	~~-~~	~~10~~
~~Bedpan room, if applicable~~	~~N~~	~~-~~	~~10~~
~~Bathroom~~	~~N~~	~~-~~	~~10~~
~~Janitor's closet~~	~~N~~	~~-~~	~~10~~
~~Linen and trash chute rooms~~	~~N~~	~~-~~	~~10~~
~~Food preparation center~~	~~0~~	~~2~~	~~10~~
~~Dishwashing area~~	~~N~~	~~-~~	~~10~~
~~Dietary day storage~~	~~0~~	~~-~~	~~2~~
~~Laundry, general~~	~~0~~	~~2~~	~~10~~
~~Soiled linen sorting and storage~~	~~N~~	~~-~~	~~10~~
~~Clean linen storage~~	~~P~~	~~2~~	~~2~~

~~P=Positive N=Negative O=Equal -=Optional~~

~~TABLE 2 - LIGHTING LEVELS FOR PPEC CENTERS~~	
~~Area~~	~~Foot-candles*~~
~~Administrative and lobby areas, day~~	~~50~~
~~Administrative and lobby areas, night~~	~~20~~
~~Corridors and interior ramps~~	~~20~~
~~Corridor night lighting~~	~~3~~
~~Dining area and kitchen~~	~~30~~
~~Doorways~~	~~10~~
~~Exit stairways and landings~~	~~5~~
~~Janitor's closet~~	~~15~~
~~Nurses' station, general, day~~	~~50~~
~~Nurses' station, general, night~~	~~20~~
~~Nurses' desk, for charts and records~~	~~70~~
~~Nurses' medicine cabinet~~	~~100~~
~~Patient care unit (or room), general~~	~~10~~
~~Patient care room, reading~~	~~30~~
~~Recreation area (floor level)~~	~~50~~
~~Stairways other than exists~~	~~30~~
~~Toilet and bathing facilities~~	~~30~~
~~Utility room, general~~	~~20~~
~~Utility room, work counter~~	~~50~~

~~*Minimum on task at any time~~]

ROBERT S. SILVERTHORN, JR., Inspector General
VICKIE YATES BROWN GLISSON, Secretary
APPROVED BY AGENCY: January 9, 2017
FILED WITH LRC: January 10, 2017 at 3 p.m.
CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Prevention and Quality Improvement
(As Amended at ARRS, March 6, 2017)

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 ***6.[~~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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Community Alternatives
(As Amended at ARRS, March 6, 2017)

907 KAR 1:045. Reimbursement provisions and requirements regarding community mental health center services.

RELATES TO: KRS 205.520(3), ***205.8451,*** 210.370***, 210.380, 42 C.F.R. 400.203, 413, 438.2, 42 U.S.C. 1396n(c), 1396r-8(a)***
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) ***"1915(c) home and community based waiver services provider" means a Kentucky Medicaid program established pursuant to, and in accordance with, 42 U.S.C. 1396n(c).***

(2) "Allowable costs" means that portion of a facility's cost that may be allowed by the department for reimbursement purposes.

(3) "Community board for mental health or individuals with an intellectual disability" means a board established pursuant to KRS 210.380.

(4)[(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.

(5)[(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.

(6)[(4)][(2)] "Department" means the Department for Medicaid Services or its designee.

(7)[(5)][(3)] "Enrollee" means a recipient who is enrolled with a managed care organization.

(8)[(6)][(4)] "Federal financial participation" is defined by 42 C.F.R. 400.203.

(9)[(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.

(10)[(8)] "Federal Register" means the official journal of the United States federal government that publishes government agency rules and public notices.

(11)[(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.

(12)[(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.

(13)[(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.

(14) "Kentucky-specific Medicare Physician Fee Schedule" means the list of current reimbursement rates for physician services established by the department in accordance with 907 KAR 3:010, Section 3.

(15)[(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.

(16)[(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.

(17)[(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.

(18)[(15)] "Medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(19)[(16)] "Medicare Economic Index" means a measure of inflation:
(a) Associated with the costs of physicians' practices; and
(b) Published in the Federal Register.

(20)[(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.

(21)[(18)] "Payment plan request" means a request to pay an amount owed to the department over a period of time ***that is agreed to[approved]*** by the department.

(22)[(19)] "Primary care services" means services covered as established in 907 KAR **1:047[1:046]**.

(23)[(20)][(6)] "Provider" is defined by KRS 205.8451(7).

(24)[(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).

(25)[(22)][(7)] "Recipient" is defined by KRS 205.8451(9).

(26)[(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)(b)[~~(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)(b)[~~(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)***1.*** 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 ***subsection[~~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 ***if[~~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 ***the research costs[~~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 and report[~~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 ***a*** 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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(As Amended at ARRS, March 6, 2017)

907 KAR 1:047. Community mental health center primary care services.

RELATES TO: KRS 205.520, ***205.622, 205.8451(9),*** 210.410, ***319A.010(3), (4), 327.010(2), 334A.020(3), 369.101 – 369.120, 42 C.F.R. 400.203, 431.17, 438.2, 493, 45 C.F.R. 164, 42 U.S.C. 12101 et seq., 13964-8(a)***

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; ***and*** ~~***[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 ***Prohibited***. (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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Commissioner's Office
(As Amended at ARRS, March 6, 2017)

907 KAR 4:020. Kentucky Children's Health Insurance Program Medicaid Expansion Title XXI of the Social Security Act.

RELATES TO: KRS 205.510-205.647[~~205.645~~], 205.6481-205.6497, ***211.461 - 211.466, 304.5-040, 304.17A-005(8), (14),*** 42 C.F.R. 432, 433, 435, 436, ***440.230,*** 457, 42 U.S.C. ***1396,*** 1397aa-jj

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3) 205.6485, 42 U.S.C. 1397aa-jj[~~, EO 2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY:[~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.~~] KRS 194A.030(2) requires the Cabinet for Health and Family Services, Department for Medicaid Services, to administer Title XIX of the Federal Social Security Act, 42 U.S.C. 1396 to 1396v. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet; and to implement programs mandated by federal law or to qualify for the receipt of federal funds. KRS 205.6485 authorizes the cabinet to establish the Kentucky Children's Health Insurance Program (KCHIP) to provide health care coverage and other coordinated health care services to children of the Commonwealth who are uninsured and otherwise not eligible for health insurance coverage. This administrative regulation establishes the KCHIP eligibility criteria, covered services, application requirements, grievance and appeal rights for recipients, and the requirements for providers who wish to participate with the Commonwealth to provide health care coverage to KCHIP members through an expansion of the Title XIX Medicaid Program.

Section 1. Definitions. (1) "Cabinet" means the Kentucky Cabinet for Health and Family Services or its designee.

(2) "Child" means an individual under the age of nineteen (19) years.

(3) "Creditable coverage" is defined ***by[~~in~~]*** KRS 304.17A-005(8)[~~(7)~~](a)1-3 and 5-10.

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

(5) "Excepted benefits" is defined ***by[~~in~~]*** KRS 304.17A-005(14)[~~(11)~~].

(6) "Health insurance" is defined ***by[~~in~~]*** KRS 304.5-040.

(7) "KCHIP" means the Kentucky Children's Health Insurance Program administered in accordance with 42 U.S.C. 1397aa to jj.

Section 2. Eligibility Criteria. (1) A child shall be eligible for KCHIP if the child:

(a) Is a resident of Kentucky meeting the conditions for determining state residency under 42 C.F.R. 435.403;

(b) Is an alien who meets the requirement established in 907 KAR 20:005;

(c) Meets the technical[~~and income~~] requirements of 907 KAR 20:005;

(d)[~~1:011, Section 2(3)(h) and meets the following requirements:~~

~~1.~~] Provides to the department the information required in Section 4 of this administrative regulation;

(e)[~~2.~~] Meets the continuing eligibility requirements[~~requirement~~] established in 907 KAR 20:010, Section 2[~~1:605, Section 3~~];

(f)[~~3.~~] Meets the relative responsibility requirements established in[~~of~~] 907 KAR 20:040[~~1:660~~];

(g)[~~and 4.~~] Is not eligible for Medicaid pursuant to 907 KAR 20:005 or 907 KAR 20:100; and

(h)[~~; or (b)~~] Is an optional targeted low-income child as defined in 42 U.S.C. 1397jj(b) who[~~and meets the following requirements~~]:

1. Has family income that[~~which~~] does not exceed 159[~~150~~] percent of the federal poverty guidelines[~~,~~] updated annually in the Federal Register by the United States Department of Health and Human Services under authority of 42 U.S.C. 9902(2); and

2. Does not have creditable coverage and[~~but~~] may be covered by excepted benefits.

(2) Eligibility for KCHIP shall be determined by the department. Upon receipt of eligibility information defined in subsection (1) of this section, the department shall determine if a child is eligible for benefits pursuant to 42 U.S.C. 1396 or 1397aa to jj.

Section 3. Covered Services. (1) Health services shall be considered medically necessary in accordance with:

(a) 907 KAR 3:130; and

(b) 42 C.F.R. 440.230.

(2) Amount and duration of benefits covered by KCHIP shall be as established in Title 907 KAR[~~Chapters 1 and 3~~].

(3) A medical service shall be covered through KCHIP Phase II if an individual is determined eligible for KCHIP benefits in accordance with Section 2 of this administrative regulation.

(4) Preventive and remedial public health services shall be provided to KCHIP Phase II members in accordance with 907 KAR 1:360.

(5) KCHIP Phase II shall be the payor of last resort.

Section 4. KCHIP Application Requirements. The following information shall be required from a child or responsible party for KCHIP enrollment:

(1) A child's demographics that[~~which~~] shall include:

(a) Name;

(b)[,] Address;

(c)[,] Sex;

(d)[,] Date of birth;

(e)[,] Race;[,] and

(f) Social Security number;

(2) Monthly gross earned income, if any, of a parent and a child for whom information is being submitted;

(3)[,] An employer type and address, if any;[~~, and~~]

(4) Frequency of income;

(5)[~~(3)~~] Name and address of a health insurance provider who[~~:~~ ~~(a)~~] currently provides creditable coverage[~~; or~~

~~(b) Provided creditable coverage during the six (6) months prior to the date the information in this section is submitted to the department~~];

(6)[~~(4)~~] Creditable coverage policy number, policy holder's name, Social Security number, and individuals covered by the plan;

(7)[~~(5)~~] Unearned income, if any, received weekly, biweekly, bimonthly, quarterly, or annually;

(8)[~~(6)~~] Name and age of a child or disabled adult for whom care is purchased in order for a parent or responsible person to work; and

(9)[~~(7)~~] Signature, date, and telephone number of a person submitting the information for a child.

Section 5. Provider Participation Requirements. A provider's enrollment, disclosure, and documentation for participation in KCHIP shall meet the requirements of:

(1) 907 KAR 1:671; and

(2)[,] 907 KAR 1:672[~~, and if a KenPAC provider, 907 KAR 1:320~~].

Section 6. Grievance, Hearing, and Appeal Rights. (1) If dissatisfied with an action taken by the department as to the application of Sections 1 through 5 of this administrative regulation, a child, the child's parent, or the child's guardian shall be entitled to a grievance, hearing, or appeal with the department, to be conducted in accordance with:

(a) 907 KAR 1:560, if pertaining to initial eligibility;[,] or

(b) 907 KAR 1:563, if pertaining to a covered service.

(2) If a service is provided by a managed care organization, a dispute resolution between a provider and a child, the child's parent, or the child's guardian shall be in accordance with:

(a) KRS 211.461 through 211.466; and

(b) 907 KAR 17:010[~~907 KAR 1:563~~].

(3) A KCHIP Phase II[~~-~~] eligible child or a responsible party shall be informed[,] in writing[,] of the right[~~his rights~~] to and procedures for due process by the cabinet:

(a) At the time[~~When~~] information to obtain KCHIP Phase II approval is submitted;

(b) If there is a change in eligibility status; or

(c) As required by federal and state laws.

Section 7. Quality Assurance and Utilization Review. The department shall evaluate the following[,] on a continuing basis:

(1)[,] Access to services;

(2)[,] Continuity of care;

(3) [,] Health outcomes;[,] and

(4) Services arranged or provided as established in 907 KAR Chapter 17[~~1:705~~].

STEPHEN P. MILLER, Commissioner
VICKIE YATES BROWN GLISSON, Secretary
APPROVED BY AGENCY: November 9, 2016
FILED WITH LRC: November 15, 2016 at 9 a.m.
CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Commissioner's Office
(As Amended at ARRS, March 6, 2017)

907 KAR 4:030. Kentucky Children's Health Insurance Program Phase III Title XXI of the Social Security Act.

RELATES TO: KRS 205.6481 – 205.6497[~~Chapter 45A, 205.510-205.645~~], ***211.461 – 211.466, 281.010(25), 304.5-040, 304.17A-005(8), (14), 42 C.F.R. 435.403, 440.230,*** 42 U.S.C. ***1396,*** 1397aa

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6481-205.6497, 42 U.S.C. 1397aa[~~, EO 2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY:[~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services. The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Kentucky Children's Health Insurance Program.~~] KRS 205.6485 authorizes the cabinet, by administrative regulations, to establish the Kentucky Children's Health Insurance Program (KCHIP) to provide health care coverage and other coordinated health care services to children of the Commonwealth who are uninsured and otherwise not eligible for health insurance coverage. This administrative regulation establishes the KCHIP Phase III eligibility criteria, quality assurance and utilization review, covered services, the approval process, grievance and appeal rights, and the requirements for delivery of health services for providers who wish to participate with the Commonwealth to provide health care coverage for KCHIP Phase III members through the provision of a separate health insurance program under Title XXI.

Section 1. Definitions. (1) "Cabinet" means the Kentucky Cabinet for Health and Family Services or its designee.

(2) "Child" means an individual under the age of nineteen (19) years.

(3) "Creditable coverage" is defined ***by[~~in~~]*** KRS 304.17A-005(8)[~~(6)~~](a)1-3 and 5-10.

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

(5) "Excepted benefits" is defined ***by[~~in~~]*** KRS 304.17A-005(14).

(6) "Health insurance" is defined ***by[~~in~~]*** KRS 304.5-040.

(7) "KCHIP" means the Kentucky Children's Health Insurance Program in accordance with 42 U.S.C. 1397aa through 42 U.S.C. 1397jj.

Section 2. Eligibility Criteria. (1) A child shall be eligible for KCHIP Phase III if the child:

(a) Is a resident of Kentucky meeting the conditions for determining state residency under 42 C.F.R. 435.403;

(b) Is an alien who meets the requirements established in 907 KAR 20:005;[~~1:011(5)(12)(a).~~]

(c) Is not an inmate of a public institution or a patient in an institution for mental diseases[~~disorders~~];

(d) Is not eligible for Medicaid pursuant to 907 KAR 20:005 or 907 KAR 20:100[1:011]; and

(e) Is a targeted low-income child as defined in 42 U.S.C. 1397jj(b) who:

1. Has family income that[which] does not exceed 213[200] percent of the federal poverty guidelines[,] updated annually in the Federal Register by the United States Department of Health and Human Services under the authority of 42 U.S.C. 9902(2);

2. Does not have creditable coverage and may be covered by excepted benefits;

3.[Did not have creditable coverage within six (6) months prior to applying for KCHIP, unless the coverage was terminated for other than voluntary reasons or the coverage was Medicaid;

4.] Provides to the department the information required in Section 4(4) of this administrative regulation;

4.[5.] Meets the continuing eligibility requirements established in 907 KAR 20:010, Section 2[1:605, Section 3]; and

5.[6.] Meets the relative responsibility requirements established in[of] 907 KAR 20:040[1:660].

(2)(a) Eligibility for KCHIP Phase III shall be determined by the department.

(b) Upon receipt of the eligibility information ***established[listed]***[defined] in subsection (1) of this section, the department shall determine if a child is eligible for benefits pursuant to 42 U.S.C. 1396 or 1397bb.

Section 3. Covered Services. (1) Health services shall be considered as medically necessary in accordance with[if services are]:

(a) 907 KAR 3:130[Reasonable and necessary to diagnose and provide preventive, palliative, curative, or restorative treatment for physical or mental conditions;

(b) In accordance with professionally recognized standards of health care generally accepted at the time services are provided]; and

(b)[(c) In accordance with] 42 C.F.R. 440.230.

(2) Covered services shall exclude:

(a) EPSDT special services as ***established[defined]*** in 907 KAR 11:034[1:034], Section 7;

(b) Human service transportation delivery as defined ***by KRS 281.010(25) and as required by[in]*** 603 KAR 7:080; and

(c) Locally authorized medical transportation as ***established[defined]*** in 907 KAR 1:060, Section 4.

(3) The amount and duration of benefits covered by KCHIP Phase III shall be as established in Title 907 KAR[Chapters 1 and 3] excluding the services identified in subsection (2) of this section.

(4) A medical service shall be covered through KCHIP Phase III if the individual is determined eligible for KCHIP benefits in accordance with Section 2 of this administrative regulation.

(5) Preventive and remedial public health services shall be provided to KCHIP Phase III members in accordance with 907 KAR 1:360.

(6) KCHIP Phase III shall be the payor of last resort.

Section 4. KCHIP Phase III Approval Process. The following information shall be required from a child or responsible party for KCHIP Phase III enrollment:

(1) A child's demographics that[, which] shall include:

(a) Name;

(b)[,] Address;

(c)[,] Sex;

(d)[,] Date of birth;

(e)[,] Race;[,] and

(f) Social Security number;

(2) Monthly gross earned income, if any, of a parent and a child for whom information is being submitted, an employer type and address, if any, and frequency of income;

(3) The name and address of a health insurance provider who currently provides creditable coverage;[or who provided creditable coverage during the six (6) months prior to the date the information in this section is submitted to the department;]

(4) The creditable coverage policy number, policy holder's name, Social Security number, and individuals covered by the plan;

(5) Unearned income, if any, received weekly, biweekly, bimonthly, quarterly, or annually;

(6) The name and age of a child or disabled adult for whom care is purchased in order for a parent or responsible person to work; and

(7) The signature, date, and telephone number of the person submitting the information for a child.

Section 5. Provider Participation Requirements. A provider's enrollment, disclosure, and documentation for participation in KCHIP Phase III shall meet the requirements established in:

(1)[of] 907 KAR 1:671; and

(2)[,] 907 KAR 1:672[, and 907 KAR 1:320].

Section 6. Complaint, Grievance and Appeal Rights. (1) If dissatisfied with an action taken by the cabinet, the child, the child's[his] parent, or the child's guardian shall be entitled to a complaint, grievance, or appeal with the cabinet[,] to be conducted in accordance with:

(a) 907 KAR 1:560; or

(b) 907 KAR 1:563.

(2) If a service is provided by a managed care organization, a dispute resolution between a provider and a child, the child's[his] parent, or the child's guardian shall be in accordance with:

(a) KRS 211.461 through 211.466; and

(b) 907 KAR 17:010[907 KAR 1:563].

(3) A KCHIP Phase III[-] eligible child or a responsible party shall be informed[,] in writing[,] of the right[his rights] to and procedures for due process by the cabinet:

(a) At the time information to obtain KCHIP Phase III approval is submitted;

(b) If there is a change in eligibility status; or

(c) As required by federal and state laws.

Section 7. Quality Assurance and Utilization Review. The department shall evaluate the following[,] on a continuing basis:

(1)[,] Access to services;

(2)[,] Continuity of care;

(3)[,] Health outcomes;[,] and

(4) Services arranged or provided as established in 907 KAR Chapter 17[1:705].

STEPHEN P. MILLER, Commissioner
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: November 9, 2016

FILED WITH LRC: November 15, 2016 at 9 a.m.

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

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(Amended After Comments)

201 KAR 9:270. Professional standards for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone.

RELATES TO: KRS 311.530-311.620, 311.990
STATUTORY AUTHORITY: KRS 311.565(1)(a)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the board to promulgate administrative regulations to regulate the conduct of its licensees. This administrative regulation establishes the professional standards for physicians practicing in Kentucky who prescribe or dispense Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone.

Section 1. Minimum Qualifications for Prescribing or Dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone. A licensed physician shall not prescribe or dispense Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone unless that physician possesses the minimum qualifications established in this section. (1) The physician shall obtain and maintain in good standing a waiver and license as issued by the Drug Enforcement Administration (DEA) to prescribe Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for the treatment of opioid dependence in the Commonwealth of Kentucky.

(2) The physician shall successfully complete the approved educational programs required by this subsection.

(a) The prescribing physician shall be a DEA-licensed prescriber of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone and shall have obtained Buprenorphine certification through completion of a Substance Abuse and Mental Health Services Administration ("SAMHSA") certified course.

(b) For each three (3) year continuing education cycle, each DEA-licensed prescriber of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone shall complete at least twelve (12) hours of continuing medical education certified in Category I specific to addiction medicine as part of the required continuing medical education hours set forth in 201 KAR 9:310.

(3) The physician shall enroll in the Kentucky Health Information Exchange to the extent necessary to query and pull information from the Kentucky Health Information Exchange. The physician shall not report the prescribing or dispensing of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for medically-supervised withdrawal or as maintenance treatment for a patient diagnosed with opioid dependence into the Kentucky Health Information Exchange unless otherwise required by law.

Section 2. Professional Standards for Prescribing or Dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for Medically-Supervised Withdrawal or the Treatment of Opioid Dependency. (1)(a) Except as provided in **paragraphs[~~paragraph~~]** (b) **and (c)** of this subsection, Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone shall only be prescribed or dispensed for medically-supervised withdrawal or as a maintenance treatment for a patient diagnosed with opioid dependence.

(b) Transdermal delivery and buccal film delivery of Buprenorphine-Mono-Product may be used for treatment of pain in patients with pain severe enough to require daily, around-the-clock, long-term opioid treatment and for whom alternative treatment options are ineffective, not tolerated, or would be otherwise inadequate to provide sufficient management of pain. Transdermal delivery and buccal film delivery of Buprenorphine-Mono-Product shall not be prescribed or dispensed as an as-needed (prn) analgesic.

(c) Intravenous and intramuscular delivery of Buprenorphine-Mono-Product may be administered in a physician's office or other healthcare facility for treatment of acute pain severe enough to require an opioid analgesic and for which alternate treatments have not been tolerated or are expected not to be tolerated, or have not provided adequate analegesia or are not expected to provide adequate analgesia.

(2) Buprenorphine-Mono-Product shall not be prescribed or dispensed **for medically-supervised withdrawal or as a maintenance treatment for a patient diagnosed with opioid dependence**, except:

(a) To a pregnant patient;

(b) To a patient with demonstrated hypersensitivity to naloxone; or

(c) As an **implant-delivered or** injectable treatment **administered** in a physician's office or other healthcare facility.

(3)(a) Except as provided in paragraph (b) of this section, Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone shall not be prescribed or dispensed to a patient who is also being prescribed benzodiazepines, other sedative hypnotics, stimulants or other opioids, without consultation of a physician who is certified by the American Board of Addiction Medicine, the American Board of Medical Specialties (ABMS) in psychiatry, or an American Osteopathic Association (AOA) certifying board in addiction medicine or psychiatry.

(b) A physician may prescribe or dispense Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone to a patient who is also being prescribed benzodiazepines, other sedative hypnotics, stimulants, or other opioids, without consultation in order to address an extraordinary and acute medical need not to exceed a combined period of thirty (30) days.

(4) Each licensed physician who prescribes or dispenses Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for medically-supervised withdrawal or for the treatment of Opioid dependence shall fully comply with the professional standards established in this subsection.

(a) Prior to initiating treatment, the prescribing or dispensing physician shall:

1. Obtain and record a complete and appropriate evaluation of the patient which shall at a minimum include:

a. The patient's history of present illness;

b. The patient's history of substance use;

c. The patient's social and family history;

d. The patient's past medical and psychiatric histories;

e. A physical examination of the patient;

f. The patient's injection use history, which shall include screening for HIV and hepatitis serology; and

g. Appropriate laboratory tests, which shall include a CBC, a drug screen, and a CMP;

2. Obtain the patient's consent and authorizations in order to obtain the patient's prior medical records.

a. Upon receipt of the medical records, the prescribing or dispensing physician shall review and incorporate the information from the records into the evaluation and treatment of the patient.

b. If the prescribing or dispensing physician is unable, despite best efforts, to obtain the patient's prior medical records, the physician shall document those efforts in the patient's chart;

3. Obtain and review a KASPER report for that patient for the twelve (12) month period immediately preceding the initial patient encounter and appropriately utilize that information in the evaluation and treatment of the patient;

4. Explain treatment alternatives and the risks and the benefits of treatment with Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone to the patient;

5. Obtain written informed consent from the patient in a manner that meets professional standards; and

6. If the patient is a female of child-bearing age and ability, meet the requirements of paragraph (b) of this subsection.

(b) The requirements of this paragraph shall apply to the treatment of a female of child-bearing age and ability.

1. Prior to initiating treatment, the physician shall require that the patient first submit to a pregnancy test and the physician shall provide counseling as to the risk of neonatal abstinence syndrome which shall be consistent with patient education material on neonatal abstinence syndrome from the American Congress of Obstetricians and Gynecologists, American Academy of Pediatrics, American Society of Addiction Medicine (ASAM) and the Kentucky Department for Public Health, and offer means to prevent pregnancy.

2.a. A physician shall not prescribe or dispense Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone to a patient who is pregnant or breastfeeding unless the prescribing physician first obtains and documents consultation with another physician for an opinion as to whether the potential benefit of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone use outweighs the potential risk of use.

b. The consultation shall be obtained from a physician who is certified by the American Board of Addiction Medicine, the American Board of Medical Specialties (ABMS) in psychiatry, or an American Osteopathic Association (AOA) certifying board in addiction medicine or psychiatry or from an obstetrician or maternal-fetal medicine specialist who is also qualified to prescribe buprenorphine.

(c) Except as provided by paragraph (d) of this subsection, while initiating treatment with Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone, the prescribing or dispensing physician shall comply with the requirements of this paragraph.

1. The prescribing or dispensing physician shall recommend to the patient an in-office observed induction protocol.

a. Except as provided in clause b. of this subparagraph, the prescribing or dispensing physician shall conduct the in-office observed induction protocol.

b. If an in-office observed induction does not occur, the prescribing or dispensing physician shall appropriately record the circumstances in the patient chart and shall implement a SAMHSA-recognized or ASAM-recognized home-based induction protocol.

2. The prescribing or dispensing physician shall document the presence of opioid withdrawal before the first dose is given by using a standardized instrument, such as the clinic opioid withdrawal scale (COWS) or other similarly recognized instrument.

3. The prescribing or dispensing physician shall initiate treatment with a dose not to exceed the dose equivalency of four (4) milligrams buprenorphine generic tablet, which:

a. May be followed by subsequent doses if withdrawal persists and is not improving; and

b. Shall not exceed the dose equivalency of sixteen (16) milligrams buprenorphine generic tablet on the first day of treatment.

(d) If the patient is transferred from another treatment provider and has previously experienced withdrawal without a relapse, the prescribing or dispensing physician shall:

1. Document that fact;

2. Educate the patient about the potential for precipitated withdrawal; and

3. Continue maintenance treatment of the patient on the same dosage as established by the previous treatment provider and then as provided in paragraph (e) of this subsection.

(e) After initial induction of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone, the prescribing or dispensing physician shall meet the requirements established in this paragraph.

1. If the physician prescribes or dispenses Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone medication, the physician shall implement a treatment plan that requires objective behavioral modification by the patient. The behavioral modification shall include the patient's participation in a behavioral modification program that may include counseling or a twelve (12) step facilitation.

2. The physician shall prescribe or dispense to the patient an amount of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone that:

a. Is necessary to minimize craving and opiate withdrawal;

b. Does not produce opiate sedation;

c. Is to be taken no more frequently than once daily; and

d. Is able only to supply the patient until the next physician visit, which shall be scheduled as required by subparagraph 3. of this paragraph.

3.a. The prescribing or dispensing physician shall ensure that the patient is seen by the physician:

(i) No later than ten (10) days after induction and then at intervals of no more than ten (10) days for the first month after induction; and

(ii) At intervals of no more than fourteen (14) days for the second month after induction.

b.(i) If the patient demonstrates objective signs of positive treatment progress, the prescribing or dispensing physician shall ensure that the patient is seen at least once monthly thereafter.

(ii) If two (2) years after initiation of treatment, the patient is being prescribed Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for opioid dependence and the patient has demonstrated objective signs of positive treatment progress, including documented evidence that the patient has been compliant with the treatment plan and all treatment directives for at least two (2) years, then the prescribing or dispensing physician may require that the patient be seen only by the prescribing or dispensing physician at least once every three (3) months.

(iii) The prescribing or dispensing physician shall see the patient in shorter intervals if the patient demonstrates any noncompliance with the treatment plan.

c. If extenuating circumstances arise that require a patient to unexpectedly reschedule a physician visit, the prescribing or dispensing physician shall make best efforts to see the patient as soon as possible and document the circumstances in the patient chart.

4. Every three (3) months after initiation of treatment, the prescribing or dispensing physician shall evaluate the patient to determine whether the patient's dosage should be continued or modified and shall appropriately document that evaluation and clinical reasoning in the patient's chart.

5. At least once every three (3) months, the prescribing or dispensing physician shall obtain KASPER reports to help guide the treatment plan.

a. If the KASPER indicates any abnormal findings, the prescribing or dispensing physician shall incorporate those findings into appropriate clinical reasoning to support the continuation or modification of treatment and shall accurately document the same in the patient record.

b. Appropriate clinical reasoning may include adjustment of dose strength or frequency of visits, increased screening, a consultation with a specialist, or an alternative treatment.

c. Every twelve (12) months following initiation of treatment, if a patient's prescribed daily therapeutic dosage exceeds the dose equivalency of sixteen (16) milligrams buprenorphine generic tablet per day and the prescribing or dispensing physician is not certified by the American Board of Addiction Medicine, the American Board of Medical Specialties (ABMS) in psychiatry, or an American Osteopathic Association (AOA) certifying board in addiction medicine or psychiatry, then the prescribing or dispensing physician shall refer the patient for consultation by a physician who is certified by the American Board of Addiction Medicine, the American Board of Medical Specialties (ABMS) in psychiatry, or an American Osteopathic Association (AOA) certifying board in addiction medicine or psychiatry for an opinion as to whether continued treatment and dosage is appropriate and shall accurately document the results of that consultation in the patient chart.

d. The prescribing or dispensing physician shall adjust dosages according to the individual patient's condition and within acceptable and prevailing medical standards, with the goal of improving the patient's quality of life and ability to function in the community.

e. Every twelve (12) months following initiation of treatment, the prescribing or dispensing physician shall evaluate for and document the medical necessity for continued treatment at the established dose.

f. The prescribing or dispensing physician shall obtain at least

eight (8) drug screens from the patient within each twelve (12) month period of treatment in order to help guide the treatment plan. For patients who have demonstrated objective signs of positive treatment progress for at least two (2) years from the date of initiation of treatment, including documented evidence that the patient has been compliant with the treatment plan and all treatment directives, the prescribing or dispensing physician shall obtain at least six (6) drug screens from the patient within each twelve (12) month period of treatment in order to help guide the treatment plan.

(i) At least two (2) of the drug screens shall be random and shall be coupled with a pill count.

(ii) Each drug screen shall at a minimum screen for buprenorphine, methadone, oxycodone, other opioids, THC, benzodiazepines, amphetamines, and cocaine.

(iii) If a drug screen indicates any abnormal findings, the prescribing or dispensing physician shall incorporate those findings into appropriate clinical reasoning to support the continuation or modification of treatment and shall accurately document the same in the patient record.

(iv) Appropriate clinical reasoning may include adjustment of dose strength or frequency of visits, increased screening, a consultation with a specialist, or an alternative treatment.

6. The prescribing or dispensing physician shall document a plan for handling any lost or stolen medication, which:

a. Shall not provide for the automatic replacement of medication prior to the specified interval date; and

b. If the prescribing or dispensing physician determines that it is necessary to minimize improper or illegal diversion of medications under the circumstances, shall require the patient to first report the lost or stolen medications to police or other law enforcement agencies.

Section 3. Violations. Failure to comply with or a violation of the professional standards established in Section 2 of this administrative regulation shall constitute a "departure from, or failure to conform to the standards of acceptable and prevailing medical practice within the Commonwealth of Kentucky," in violation of KRS 311.595(12) and (9), as illustrated by KRS 311.597(4) and may constitute a violation of KRS 311.595(9), as illustrated by KRS 311.597(3), subjecting the licensed physician to sanctions authorized by KRS 311.595.

RANDEL C. GIBSON, D.O., President

APPROVED BY AGENCY: March 13, 2017

FILED WITH LRC: March 14, 2017 at 10 a.m.

CONTACT PERSON: Leanne K. Diakov, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax (502) 429-7118, email Leanne.diakov@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leanne K. Diakov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: It was necessary to promulgate this regulation to establish the requirements for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish the requirements for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish the requirements for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

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

(a) How the amendment will change this existing administrative regulation: As originally promulgated, the regulation allowed for the transdermal delivery of Buprenorphine-Mono-Product for treatment of pain. Since promulgation a new product has come into existence which provides for buccal film delivery of Buprenorphine-Mono-Product for treatment of pain. The amendment accommodates the new product and now allows for both transdermal delivery and buccal film delivery of Buprenorphine-Mono-Product and also clarifies that such methods are limited to treatment of pain in patients with pain severe enough to require daily, around-the-clock, long-term opioid treatment for whom alternative treatment options are ineffective, not tolerated, or would be otherwise inadequate to provide sufficient management of pain.

(b) The necessity of the amendment to this administrative regulation: It is necessary to amend the regulation in order to include buccal film delivery of Buprenorphine-Mono-Product.

(c) How the amendment conforms to the content of the authorizing statutes: The amended regulation acts specifically to further clarify the acceptable and prevailing medical practices for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: This amended regulation acts specifically to further clarify the acceptable and prevailing medical practices for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect all physicians licensed in the Commonwealth of Kentucky who prescribe or dispense Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Physicians do not have to take any actions to comply with the amendments.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits to the physician include having professional standards for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone which will help curb the prescription drug epidemic in the Commonwealth of Kentucky.

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

(a) Initially: There are no costs associated with the amendments.

(b) On a continuing basis: There are no costs associated with the amendments.

(6) What is the source of funding to be used for the implementation and enforcement of this administration regulation: There are no costs associated with the amendments.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311.565(1)(a)

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

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

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amended After Comments)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640, 532.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections.

Section 1. Incorporation by Reference. (1) "Department of Corrections Policies and Procedures," **March 14[~~January 12~~]**, 2017 [~~November 7, 2016~~], are incorporated by reference. Department of Corrections Policies and Procedures include:

1.2 News Media (Amended 6/10/14)
1.4 The Monitoring and Operation of Private Prisons (Amended 5/15/08)
2.1 Inmate Canteen (Amended 2/26/16)
2.12 Abandoned Inmate Funds (Amended 2/26/16)
3.1 Code of Ethics (Amended 12/10/13)
3.5 Sexual Harassment and Anti-Harassment (Amended 12/10/13)
3.9 Student Intern Placement Procedure (Amended 11/7/16)
3.10 Appearance and Dress for Nonuniformed Staff (Amended 9/13/10)
3.11 Drug Free Workplace Employee Drug Testing (Amended 12/10/13)
3.1 Employee Time and Attendance Requirements (Amended 6/14/16)
3.17 Uniformed Employee Dress Code (Amended 1/12/17[~~2/26/16~~])
3.22 Staff Sexual Offenses (Amended 12/10/13)
3.23 Internal Affairs Investigation (Added 8/25/09)
5.1 Research and Survey Projects (Amended 12/10/13)
5.3 Program Evaluation and Measurement (Amended 6/9/15)
6.1 Open Records Law (Amended 5/14/07)
6.2 Inmate Record (Added 11/7/16)
8.2 Fire Safety (Amended 3/14/14)
8.7 Notification of Extraordinary Occurrence (Amended 3/14/14)
9.4 Transportation of Inmates to Funerals or Bedside Visits (Amended 6/9/15)
9.6 Contraband (Amended 2/26/16)
9.8 Search Policy (Amended 5/13/14)
9.13 Transport to Court - Civil Action (Amended 07/09/07)
9.18 Informants (Amended 9/13/10)
9.19 Found Lost or Abandoned Property (Amended 10/14/05)
10.2 Special Management Inmates (Amended 1/12/17[~~2/26/16~~])
10.3 Safekeepers and Contract Prisoners (Amended 9/15/04)
11.2 Dietary Procedures and Compliance (Amended 1/12/17[~~3/14/14~~])
11.4 Alternative Dietary Patterns (Amended 1/12/17[~~3/14/14~~])
13.1 Pharmacy Policy and Formulary (Amended 1/15/15)
13.2 Health Maintenance Services (Amended 2/26/16)
13.3 Medical Alert System (Amended 3/14/14)
13.5 Advance Healthcare Directives (Amended 6/14/16)
13.6 Sex Offender Treatment Program (Amended 11/7/16)
13.7 Involuntary Psychotropic Medication (Amended 10/14/05)
13.8 Substance Abuse Program (Amended 10/12/12)
13.9 Dental Services (Amended 10/14/05)
13.10 Serious Infectious Disease (Amended 3/14/14)
13.11 Do Not Resuscitate Order (Amended 8/9/05)
13.12 Suicide Prevention and Intervention Program (Added 8/25/09)
13.13 Behavioral Health Services (Amended 11/7/16)
13.15 Inmate Observer Program (Added 8/12/16)
14.1 Investigation of Missing Inmate Property (Amended 10/14/05)
14.2 Personal Hygiene Items (Amended 8/20/13)
14.3 Marriage of Inmates (Amended 1/12/17[~~2/26/16~~])
14.4 Legal Services Program (Amended 3/14/14)
14.5 Board of Claims (Amended 10/14/05)
14.6 Inmate Grievance Procedure (Amended 1/12/17[~~6/14/16~~])
14.7 Sexual Abuse Prevention and Intervention Programs (Amended 6/14/16)
14.8 Lesbian, Gay, Bisexual, Transgender, and Intersex Offenders (Added 3/14/17)
15.1 Hair, Grooming and ID Card Standards (Amended 8/12/16)
15.2 Rule Violations and Penalties (Amended 8/12/16)
15.3 Meritorious Good Time (Amended 11/7/16)
15.4 Program Credit (Amended 6/12/12)
15.5 Restoration of Forfeited Good Time (Amended 2/26/16)
15.6 Adjustment Procedures and Programs (Amended 11/7/16)
15.7 Inmate Accounts (Amended 10/14/16)
15.8 Possession or Use of Unauthorized Substance and Substance Abuse Testing (Amended 1/12/17[~~10/14/05~~])
16.1 Inmate Visits (Amended 1/12/17[~~10/12/12~~])
16.2 Inmate Correspondence (Amended 11/7/16)
16.3 Inmate Access to Telephones (Amended 10/12/12)
16.4 Inmate Packages (Amended 8/12/16)
16.5 Video Visitation (Added 8/12/16)
17.1 Inmate Personal Property (Amended 6/14/16)
17.2 Assessment Center Operations (Amended 6/9/15)
17.3 Controlled Intake of Inmates (Amended 3/14/14)
17.4 Administrative Remedies: Sentence Calculations (Amended 8/12/16)

18.1 Classification of the Inmate (Amended 1/15/15)
18.2 Central Office Classification Committee (Amended 8/20/13)
18.3 Confinement of Youthful Offenders (Added 6/9/15)
18.5 Custody and Security Guidelines (Amended 6/14/16)
18.7 Transfers (Amended 5/13/16)
18.9 Out-of-state Transfers (Amended 2/26/16)
18.11 Placement for Mental Health Treatment in CPTU or PCU (Amended 6/14/16)
18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill (Amended 2/15/06)
18.13 Population Categories (Amended 2/26/16)
18.15 Protective Custody (Amended 2/26/16)
18.16 Information to the Parole Board (Amended[~~Effective~~] 3/14/14)
18.17 Interstate Agreement on Detainers (Amended 07/09/07)
18.18 International Transfer of Inmates (Amended 5/14/07)
19.1 Governmental Services Program (Amended 10/12/12)
19.2 Sentence Credit for Work (Amended 2/26/16)
19.3 Inmate Wage/Time Credit Program (Amended 1/15/15)
20.1 Educational Programs and Educational Good Time (Amended 8/25/09)
21.1 Library Services (Added 3/14/14)
22.1 Privilege Trips (Amended 10/14/05)
22.2 Recreation and Inmate Activities (Added 3/14/14)
23.1 Religious Programs (Amended 8/12/16)
25.2 Public Official Notification of Release of an Inmate (Amended 10/14/05)
25.3 Prerelease Program (Effective 11/15/06) [~~25.4 Institutional Inmate Furloughs (Amended 07/09/07)~~]
25.6 Community Service Center Program and Jail Placement (Amended 11/7/16)
25.10 Administrative Release of Inmates (Amended 8/12/16)
25.11 Victim Services Notification (Amended 8/25/09)
25.12 Home Incarceration Program (Added 8/12/16)
26.1 Citizen Involvement and Volunteer Service Program (Amended 10/12/12)

(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: March 14, 2017
FILED WITH LRC: March 14, 2017 at 2 p.m.
CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.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 Kentucky Department of Corrections (DOC) including the rights and responsibilities of employees and the inmate population.
(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035, 197.020, 439.470, 439.590, 439.640, and 532.260 and to meet American Correctional Association (ACA) standards requirements.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of the Kentucky Department of Corrections. The authorizing statutes permit the Secretary of the Cabinet or his delegate and the Commissioner to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky Department of Corrections.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference establish the policies and procedures that govern the operations of the Department of Corrections and its institutions. It provides direction and information to Corrections employees and inmates concerning the operations of the department.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment maintains the Kentucky Department of Corrections compliance with ACA standards and updates practices for the department and its institutions.
(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020 and update practices for the department and its institutions.
(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes permit the Secretary of the Cabinet or his delegate and the Commissioner to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky Department of Corrections.
(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and inmates information concerning the effective and orderly management of the state correctional institutions.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Kentucky Department of Corrections, 3,992 employees, 24,154 inmates, visitors, volunteers, and others who enter state correctional institutions.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff and inmates will have to follow the changes made in the policies and procedures. The institutional employees and inmates of the Department of Corrections will have to change their actions to comply with any operational changes made by this amendment. Others who enter correctional institutions will have to comply with policies and procedures concerning entry, search, contraband and others when they enter an institution.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that the amendment to this administrative regulation will increase current costs.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the state correctional institutions.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: CPP 3.17 changes causing the DOC and American Flag patches to be on each side of the jacket and the uniform. Initial costs are expected to increase by approximately $50,000. No increase in funding is anticipated to cover this cost.
(b) On a continuing basis: These patches will cost approximately $5,000 to $10,000 at the most on an annual basis after the first year. No increase in funding is anticipated.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Corrections budgeted funds for the biennium.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is anticipated.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The regulation establishes fees for inmates, e.g. health services co-pays, photo ID fee, etc. The amendment does not increase any fees.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendments to this regulation impact the operation of the Kentucky Department of Corrections and each state correctional institution.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020, 439.470, 439.590, 439.640, and 532.260 and to meet American Correctional Association (ACA) standards requirements.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The regulations involves limited fees for medical co-pays, replacement id cards, and other similar items. The revenue is very minimal in comparison to the funds budgeted to the department.

(c) How much will it cost to administer this program for the first year? The amendments to this regulation impact how the Kentucky Department of Corrections and state correctional institutions operate. The costs for the amendments are not expected to increase the Kentucky Department of Corrections budgeted funds for the biennium. The uniform patch change to include both the DOC patch and American Flag patch on the jacket and the uniform is expected to increase costs by approximately $50,000 for the initial set up.

(d) How much will it cost to administer this program for subsequent years? The amendments to this regulation impact how the Kentucky Department of Corrections and state correctional institutions operate. The costs for the amendment are not expected to increase costs for the Kentucky Department of Corrections budgeted funds for the biennium. The costs for the patches are expected to be approximately $5,000 to $10,000 at the most on an annual basis after the first year.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(Amended After Comments)

902 KAR 20:081. Operations and services; home health agencies.

RELATES TO: KRS 216.935, 216B.010-216B.130, 216B.990, 311.560(4), 314.011(8), 314.042(8), 320.210(2), 45 C.F.R. 160, 164, 42 U.S.C. 1320d

STATUTORY AUTHORITY: KRS 216B.042, 216B.105

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 and 216B.105 require[~~that~~] the[~~Kentucky~~] Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient[~~regulate~~] health facilities and health services. This administrative regulation establishes the minimum[~~provides~~] licensure requirements for the operation of and services provided by home health agencies.

Section 1. Definitions. (1) "Coordination agreement [~~agreements~~]" means an agreement[~~agreements~~] to coordinate health care services within the service area of the agency.

(2) "Home health agency" is defined by KRS 216.935(2).

(3) "Home health aide" is defined by KRS 216.935(1)[~~means a person who provides personal care and other related health services, as ordered by the attending physician. (a) Selection of home health aides shall take into account the ability to:~~

~~1. Read and write;~~

~~2. Understand and carry out instructions;~~

~~3. Record messages; and~~

~~4. Keep simple records.~~

~~(b) Other factors to consider.~~

~~1. Emotional and mental maturity; and~~

~~2. Interest in and sympathetic attitude toward caring for the sick at home~~].

(4)[~~(3)~~]**["Intermittent nursing service" means skilled nursing care provided less than eight (8) hours each day and fewer than seven (7) days each week except in special circumstances]**[~~service up to a few hours a day, one (1) day or several days per week or month. On occasion, service may be provided more frequently for more time per day up to seven (7) days per week~~]**[~~.~~**

(5)][~~(4)~~] "Medical social worker" means an individual who:

(a)[~~a person who~~] Has a baccalaureate degree in social work, psychology, sociology, or other field related to social work;

(b)[~~and~~] Has at least one (1) year of social work experience in a health care setting; and

(c) Is licensed by the Kentucky Board of Social Work.[~~Such person shall be appropriately licensed, if required, by the State Board of Examiners of Social Work of Kentucky~~.]

(5)[(6)][~~(5)~~] "Occupational therapist" is defined by KRS 319A.010(3)[~~means a person who is registered by the American Occupational Therapy Association or a graduate of a program in occupational therapy approved by the Council on Medical Education of the American Medical Association in collaboration with the American Occupational Therapy Association and who is engaged in the required supervised clinical experience period prerequisite to registration by the American Occupational Therapy Association~~].

(6)[(7)][~~(6)~~] "Physical therapist" is defined by KRS 327.010(2) [~~means a person who is currently licensed by the Kentucky State Board of Physical Therapy~~].

(7)[(8)][~~(7)~~] "Qualified medical social worker" means an individual who:

(a)[~~a person who~~] Has a master's degree from a school of social work accredited by the Council on Social Work Education;

(b)[~~and who~~] Has social work experience in a hospital, outpatient clinic, medical rehabilitation, medical care or mental health program; and

(c) Is licensed by the Kentucky Board of Social Work.[~~Such person shall be appropriately licensed, if required, by the State Board of Examiners of Social Work of Kentucky.~~]

(8)[(9)][~~(8)~~] "Speech-language pathologist" is defined by KRS 334A.020(3)[~~means a person who:~~

~~(a) Meets the education and experience requirements for a certificate of clinical competence in the appropriate area (speech pathology or audiology) granted by the American Speech and Hearing Association; or~~

~~(b) Meets the educational requirements for certification and is in the process of accumulating the supervised experience required for certification~~].

Section 2. Scope. A home health agency shall provide **part-time or**[~~is a public agency or private organization, or a subdivision of such an agency or organization which provides~~] intermittent health and health related services[~~,~~] to a patient in his or her[~~patients in their~~] place of residence, either singly or in combination as required by a plan of care[~~treatment~~] prescribed by

a licensed physician.

Section 3. Administration and Operation. (1) The licensee shall be legally responsible for:

(a) The operation of the home health agency; and

(b)[for] Compliance with federal, state, and local laws and regulations pertaining to the operation of the service.

(2) The licensee shall establish policies for the administration and operation of the service. The policies shall include the following:

(a) Acceptance of patients. The policy shall assure that the acceptance of patients is based on medical, nursing, and social information provided by the:

1. Physician[physicians] responsible for the patient's care;

2.[, by] Institutional personnel; and

3.[by] Staff of the home health agency.

(b) Establishment and review of the plan of care[treatment]. The policy shall assure that services and items[to be] provided are specified under a plan of care:

1.[treatment] Established, signed, and[regularly] reviewed by the physician who is responsible for the care of the patient; and

2. Developed by the physician and appropriate professional staff [or other personnel] acting within the limits of his or her[their] statutory scope of practice.

(3) Home health services shall be available to the total population regardless of age, sex, and ethnic background.

(4)(a) The status of each patient and the[total] plan of care shall be reviewed[by the attending physician, or other personnel acting within the limits of their statutory scope of practice, in consultation with agency professional personnel] at such intervals as the severity of the patient's illness requires[,] but no less frequently than[in any instance, at least once] every two (2) months, with a maximum of sixty (60) days, by home health agency staff and the physician.

(b) Verbal authorization to change the plan of care[treatment] shall be:

1. Put in writing, signed, and dated with the date of receipt by the registered nurse or other appropriate professional staff responsible for furnishing or supervising the order services; and

2.[reviewed and] Signed by the physician within **thirty (30)[twenty-one (21)]** days after the verbal order is issued.

(5) Clinical records.

(a) The home health agency shall maintain a clinical record for each patient that:

1.[which] Covers the services the agency provides directly and those provided through arrangements with another agency; and

2.[which] Contains pertinent past and current medical, nursing, and social information, including the plan of care.

(b) Ownership.

1. Medical records shall be the property of the home health agency.

2. The original medical record shall not be removed except by court order.

3. Copies of medical records or portions thereof may be used and disclosed in accordance with the requirements established in this administrative regulation.

(c) Confidentiality and Security: Use and Disclosure.

1. The agency shall maintain the confidentiality and security of medical records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, or as provided by applicable federal or state law.

2. The home health agency may use and disclose clinical records. Use and disclosure shall be as established or required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, or as established in this administrative regulation.

3. This administrative regulation shall not be construed to forbid the agency from establishing higher levels of confidentiality and security than those required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164[treatment. All records must be confidential].

(6) Original drug orders and changes in orders. The following shall be signed by the physician or other prescribing practitioner acting within the statutory scope of his or her license[ordering personnel acting within the limits of their statutory scope of practice] and incorporated in the patient record maintained by the agency:

(a) The original drug order[orders for drugs]; and

(b) Changes in orders for the administration of[those] drugs subject to federal and state controlled substance acts, and other legend drugs[, i.e., requiring prescriptions].

(7) Verbal authorization for an original order for drugs or a change order[to change drug orders] shall be reviewed and signed by the same prescribing practitioner[ordering personnel] within **thirty (30)[twenty-one (21)]** days after the order is issued.

(8)[(7)] Evaluation.

(a) The agency shall have procedures that[which] provide for a systematic evaluation of the agency's[its] program at least once every two (2) years.

(b) The agency staff shall conduct the evaluation.

(c) The program evaluation shall include[: (a)] measures to determine whether the policies established are followed, including:

1.[in providing services. These shall include] A review of patient records on a sample basis[in order] to determine that services are being used appropriately and the extent to which the needs of the patients the agency serves are being met both quantitatively and qualitatively; and

2.[(b)] A mechanism for reviewing overall management aspects of the agency's services[its service] to assure economy and efficiency of operations.

(9)[(8)] Planning. Each agency shall develop and annually review a long range plan which includes:

(a) Assessment of needs for services in the service area of the agency;[.]

(b) Identification of agency's role in meeting those needs;[.]

(c) Staff expansion for a two (2) year period;[.]

(d) Establishment of goals and objectives; and[.]

(e) Coordination of volunteer services, community education, and community development activities if these services are provided by the agency.

(10)[(9)] Subdivision operating as home health agency.

(a) If[When] a subdivision of an agency, including[(e.g.,] the home care department of a hospital or the nursing division of a health department,[)] applies for a license, the subdivision shall:

1.[rather than the parent organization must] Be licensed as a home health agency; and

2. Maintain records of the subdivision's[in such a way that subdivision] activities, ensuring that[and] expenditures attributable to the services provided are identifiable.

(b) The parent organization shall determine who:

1. Signs each[the] coordination agreement[agreements] and other official documents;[,] and

2. Receives and disburses[receive and disburse] funds.

Section 4. Personnel; Supervision and Training. (1) Personnel policies. The agency shall have written policies available to staff concerning qualifications, responsibilities, and conditions of employment for each type of personnel (including whether licensure[where this] is required by state law). The policies shall[be written and available to staff and] cover:

(a) Wage scales, hours of work, vacation, and sick leave;

(b)[Preemployment criminal conviction information;

(c)] A plan for a preemployment[and periodic] medical examination and follow-up medical examination no less than every three (3) years thereafter **for agency staff who serve patients in their place of residence**;

(c) Annual[,] tuberculin screening conducted pursuant to 902 KAR 20:205[test and/or chest x-ray,] and other appropriate tests;

(d) Plans for orientation and for on-the-job training[, where necessary];

(e) Annual[Periodic] evaluation of employee performance;[and]

(f) Job descriptions for each category of health personnel which are specific to[and include] the type of activity each may carry out;

(g) Pre-employment abuse registry checks conducted pursuant

to KRS 216.937 and KRS 209.032; and

(h) Pre-employment criminal background checks in which the agency shall not employ an individual in a position that involves providing direct services if the individual has been convicted of a:

1. Felony offense related to:

a. Theft;

b. Abuse, possession, or sale of illegal drugs;

c. Abuse, neglect, or exploitation of a child or an adult; or

d. A sexual crime; or

2. Misdemeanor offense related to abuse, neglect, or exploitation of an adult.

(2) Agency supervision. The home health agency shall designate a physician or registered nurse to supervise the agency's performance in providing home health services in accordance with the:

(a) Orders of the physician responsible for the care of the patient; and

(b)[~~under a~~] Plan of care[~~treatment~~] established by the[~~such~~] physician.

(3) Supervision of therapy services.

(a) If the[~~When~~] services of aides or other personnel providing supplementary services are utilized in providing home health services, the staff[~~they~~] shall be trained and supervised by appropriate professional personnel.

(b) If[~~When such~~] supervision is less than full-time,[~~e.g., for a limited number of hours or days each week,~~] the supervision shall:

1. Be provided on a planned basis; and

2.[~~shall be frequent enough to~~] Assure adequate review of each individual plan of care[~~treatment plans~~] and progress.

(4) Supervision of home health aides.

(a) A registered nurse shall provide direct supervision as described in this subsection[~~necessary~~] and be readily available at other times by telephone.

(b) The supervisor shall evaluate[~~be constantly evaluating~~] the home health aide closely to ensure the aide's competence in providing care, including the aide's ability to:

1.[~~in terms of the aide's ability to~~] Carry out assigned duties;

2.[~~, to~~] Relate well to the patient;[~~,~~] and

3.[~~to~~] Work effectively as a member of a team of health workers.

(c) If the patient receives skilled nursing care or another skilled service, the registered nurse[~~,~~] or appropriate professional staff member[~~, if other services are provided,~~] shall make a supervisory visit to the patient's residence at least every two (2) weeks[~~either~~] when the aide is:

1. Present to observe and assist;[~~,~~] or

2.[~~when the aide is~~] Absent to assess relationships and determine whether goals are being met.

(d) If home health aide services are provided to a patient who is not receiving skilled nursing care or another skilled service, the registered nurse shall make a supervisory visit to the patient's residence at least every sixty (60) days and the supervisory visit shall occur while the home health aide is providing patient care.

(5) Training of home health aides. The home health agency shall ensure[~~require~~] that each home health aide successfully completes the aide training and competency evaluation program, including training in[~~aides receive or have received a basic training program for home health aides. A home health aide shall be trained in~~]:

(a) Methods of assisting patients to achieve maximum self-reliance;

(b) Principles of nutrition and meal preparation;

(c) The aging process and the emotional problems of illness;

(d) Procedures for maintaining a clean, healthful, and pleasant environment;

(e) Awareness of changes in the patient's condition that should be reported;

(f) Work of the agency and the health team; and

(g) Ethics, confidentiality, and recordkeeping.

Section 5. Provision of Services. (1) The home health agency shall provide:

(a) **Part-time or** intermittent skilled nursing services; and

(b) Other services for restoring, maintaining, and promoting health or[~~and/or~~] rehabilitation with minimum disruption of daily living, including:

1. At least one (1) other therapeutic service (physical, speech, or occupational therapy);

2. Medical social services; or

3. Home health aide services.

(2)[~~Services shall range from skilled nursing services to basic health related services to unskilled supportive services.~~

~~(3)~~] Services shall be available five (5) days a week with back-up arrangements for weekend and emergency services.

(3)[~~(4)~~] In addition to the[~~intermittent skilled nursing~~] services described in subsection (1) of this section, the agency may[~~shall~~] provide:

(a)[~~home health aide services,~~] Medical supplies; or

(b)[~~and~~] Equipment services.

(4) The following conditions shall be met for the provision of [~~When a home health agency provides~~] therapeutic and medical social services[~~, the following conditions shall be met~~]:

(a) Physical, speech, or occupational therapy.[~~When~~] An agency that provides or arranges for physical, speech, or occupational therapy directly or under a contractual arrangement shall provide the service[~~, shall be given~~] in accordance with a physician's written order[~~orders~~] by or under the supervision of a therapist defined by [~~meeting the respective qualifications as set forth in~~] Section 1**(5), (6), or (8)**[~~(5),~~]**[~~(6), (7), or (9)~~]**[~~and (8)~~] of this administrative regulation.

(b) Respiratory therapy.[~~When~~] An agency that provides or arranges for respiratory therapy directly or under a contractual arrangement shall provide the service[~~, services shall be given~~] in accordance with a physician's written order[~~,~~] by or under the supervision of a licensed nurse with experience and[~~and/or~~] training in the field of respiratory therapy.

(c) Medical social services.[~~When~~] An agency that provides or arranges for medical social services directly or under a contractual arrangement shall provide the service[~~, services shall be given~~] in accordance with a physician's written order by a[~~qualified~~] medical social worker or a qualified medical social worker as defined by Section 1**(4) or (7)[~~(5) or (8)~~]**[~~meeting the qualifications set out in Section 2~~] of this administrative regulation.

(5) Home health aide services. A visit by a[~~Visits of the~~] home health aide for the provision of[~~providing~~] personal care and other related health services shall[~~must~~] be:

(a) Ordered by a[~~the~~] physician; and

(b) Included in a plan of care[~~treatment~~] approved by the physician.

(6) Services arranged[~~for~~] with another[~~licensed~~] provider. [~~When~~] A home health agency that makes arrangements for the provision of home health services by another agency shall establish [~~which is a licensed provider of services, there shall be~~] a written agreement that[~~which~~]:

(a) Identifies each service provided under the agreement;

(b) Ensures that the[~~Designates the services which are being arranged for.~~] services shall be provided[~~are to be~~] within the scope and limitations set forth in the plan of care;

(c) Allows for[~~treatment. Such~~] services to[~~may~~] be altered only upon the specific order[~~orders~~] of the initiating home health agency [~~issued~~] as the[a] result of a change made by the physician in the patient's plan of care[~~treatment~~];

(d)[~~(b)~~] Describes how the contracted personnel shall[~~, where applicable, are to~~] be supervised;

(e) Requires contract personnel to record[~~and (c) Provides for the recording of the~~] progress notes and observations[~~of the contracted personnel~~] in the home health agency records for purposes of planning and evaluating patient care;

(f) Assures that the contract agency's staff and services meet the requirements established in this administrative regulation for personnel qualifications, functions, supervision, orientation, and training; and

(g) Specifies the period of time the written agreement shall be in effect and how frequently the agreement shall be reviewed.

(7)[~~Services arranged for with a nonlicensed provider. When a home health agency arranges for services with an agency that is not a licensed provider of services, a contract shall be written. The~~

~~contract shall:~~

~~(a) Designate the services which are being arranged;~~

~~(b) Specify the period of time the contract is to be in effect and how frequently it is to be reviewed;~~

~~(c) Describe how the contracted personnel are to be supervised;~~

~~(d) State that home health services provided to the patient are in accordance with a plan established by the patient's physician in conjunction with home health agency staff and, when appropriate, others involved in the patient's care. Services provided shall be within the scope and limitations set forth in the plan and shall not be altered in type, scope, or duration by the secondary agency; and~~

~~(e) Assure that personnel and services contracted for meet the same requirements as those specified for home health agency personnel and services, including personnel qualifications, functions, supervision, orientation, basic training program for home health aides, and in-service training.~~

~~(8)~~] Service agreements with other health care facilities. A home health agency shall establish a coordination agreement defined by Section 1(1)[~~agreements as defined in Section 2~~] of this administrative regulation[~~shall be developed~~] with[~~the major~~] health care providers in the agency's service area including[~~:~~] hospitals and long-term care facilities[~~, skilled, intermediate and personal care facilities and family care homes~~].

ROBERT S. SILVERTHORN, JR., Inspector General
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: March 14, 2017

FILED WITH LRC: March 14, 2017 at 3 p.m.

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephanie Brammer-Barnes, Internal Policy Analyst, Office of Inspector General, phone 502-564-2888, email stephanie.brammer@ky.gov., and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum licensure requirements for the operation of and services provided by home health agencies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.042(1) which requires the Cabinet for Health and Family Services to establish licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042(1) by establishing the minimum licensure requirements for the operation of and services provided by home health agencies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the minimum licensure requirements for the operation of and services provided by home health agencies.

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

(a) How the amendment will change this existing administrative regulation: Currently, a registered nurse or other appropriate professional staff is required to make a supervisory visit to a patient's residence at least every two (2) weeks to observe and assist a home health aide or otherwise assess whether goals are being met in the aide's absence. The amendment aligns 902 KAR 20:081 with federal certification standards for home health agencies by eliminating the more stringent state requirement related to the frequency of supervisory visits. Specifically, this amendment removes the requirement for the supervisory visit to occur at least every two (2) weeks and replaces such with a requirement for the visit to occur at least every sixty (60) days if the patient does not receive skilled nursing care or another skilled service. A supervisory visit must continue to be made at least every two (2) weeks if the patient receives skilled nursing care or another skilled service. This distinction in the frequency of supervisory visits is consistent with the requirement in federal certification standards for home health agencies. This amendment further clarifies that "periodic" medical examinations required of home health agency staff must occur no less than every three (3) years, establishes the criminal offenses resulting in a prohibition against employment in a home health agency, and makes technical changes to comply with the drafting requirements of KRS Chapter 13A. Upon consideration of feedback received during the public comment period, this "amended after comments" administrative regulation deletes the definition of "intermittent nursing service" from Section 1(4) and clarifies in Section 2(1) that home health agencies must provide part-time or intermittent health and health related services; adds the phrase "part-time" in Section 5(1) to clarify that home health agencies must provide part-time or intermittent skilled nursing services in addition to other services; extends the timeframe from twenty-one (21) to thirty (30) days to secure the signature of the physician after a verbal authorization is made to change the plan of care; extends the timeframe from twenty-one (21) to thirty (30) days to secure the signature of the ordering personnel after a verbal authorization to change a drug order; and clarifies that a medical examination applies only to home health personnel who serve patients in their residence.

(b) The necessity of the amendment to this administrative regulation: This amendment and the amended after comments administrative regulation is necessary to align 902 KAR 20:081 for consistency with federal certification standards related to how often supervisory visits are performed on home health aides.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment and amended after comments administrative regulation conforms to the content of KRS 216B.042(1)(b) by establishing the minimum licensure requirements for the operation of and services provided by home health agencies.

(d) How the amendment will assist in the effective administration of the statutes: This amendment and amended after comments administrative regulation assists in the effective administration of KRS 216B.042(1)(b) by establishing the requirements for licensure as a home health agency.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts home health agencies. There are currently 114 licensed home health agencies.

(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: Home health agencies will be allowed to perform the home health aide supervisory visit at least every sixty (60) days rather than every two (2) weeks if the patient does not receive skilled nursing care or another skilled service. This provision is consistent with the federal certification standard for supervisory visits.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): By allowing home health agencies to perform the home health aide supervisory visit at least every sixty (60) days rather than every two (2) weeks if a patient does not receive skilled nursing care or another skilled service, home health agencies may experience a cost savings.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As stated previously, this amendment and amended after comments administrative regulation aligns 902 KAR 20:081 with federal certification

standards for home health agencies by removing a more stringent state requirement related to the frequency of supervisory visits.

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

(a) Initially: No costs are necessary to implement this amendment.

(b) On a continuing basis: No costs are necessary to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of the licensure function is from federal and state matching funds of general and agency appropriations.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities which elect to be regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment impacts home health agencies. There are currently 114 licensed home health agencies.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? No additional costs are necessary to implement this amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. Part 484.1 - 484.55 establish the requirements for federal certification of home health agencies.

2. State compliance standards. This administrative regulation is necessary to comply with KRS 216B.042(1) which requires the Cabinet for Health and Family Services to establish licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations, 42 C.F.R. Part 484.1 - 484.55, establish requirements considered necessary to ensure the health and safety of home health agency patients.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment aligns 902 KAR 20:081 with federal certification standards for home health agencies by eliminating the more stringent state requirement related to the frequency of supervisory visits. Specifically, this amendment removes the requirement for the supervisory visit to occur at least every two (2) weeks and replaces such with a requirement for the visit to occur at least every sixty (60) days if the patient does not receive skilled nursing care or another skilled service. A supervisory visit must continue to be made at least every two (2) weeks if the patient receives skilled nursing care or another skilled service. This distinction in the frequency of supervisory visits is consistent with the requirement in federal certification standards for home health agencies, see 42 C.F.R. 484.36(d).

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Commissioner's Office
(Amended After Comments)

907 KAR 17:035. External independent third-party review.

RELATES TO: KRS 194A.025(3), 205.646, 42 C.F.R. 438

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.646, 42 C.F.R. Part 438

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. In accordance with KRS 205.646, this administrative regulation establishes provisions regarding a Medicaid provider's right to an external independent third-party review of a managed care organization's adverse final decision of a provider's appeal of a denial of a claim for reimbursement or a service.

Section 1. Managed Care Organization Notice to Provider. (1) If an MCO issues an adverse final decision to a provider of a denial, in whole or in part, of a health care service, or claim for reimbursement as referenced in KRS 205.646(2), the MCO shall notify the provider in writing of the provider's right to an external independent third-party review pursuant to KRS 205.646. (2) The MCO's notice shall:

(a) Comply with the requirements established in KRS 205.646(3) regarding an external independent third-party review; and

(b) State the reason for the adverse decision.

Section 2. External Independent Third-Party Review Preliminary Requirements. (1)(a) To request an external independent third-party review afforded to a provider pursuant to KRS 205.646(2), a provider shall submit a written request for external independent third-party review to the MCO within sixty (60) calendar days of receiving the MCO's final decision resulting from the MCO's internal appeal process.

(b) The sixty (60) day count shall begin on the:

1. Date that the notice was received electronically, if received electronically;

2. Date that the notice was received via fax, per the date and time documented on the fax transmission, if the notice was faxed; or

3. Post mark date on the envelope containing the notice, if the notice was sent via postal mail. An additional three (3) days shall be added when the service is by mail.

(c) A request for an external independent third-party review shall be sent to the MCO:

1. Electronically;
2. By fax; or
3. By postal mail.

(2) A provider's request for an external independent third-party review shall:

(a) Identify each specific issue and dispute directly related to the adverse final decision issued by the MCO;

(b) State the basis on which the MCO's decision on each issue is believed to be erroneous;

(c) Limit dispute to the information the provider submitted for the MCO internal appeal and contained in the MCO's final decision; and

(d)[(c)] State the provider's designated contact information, including name, phone number, mailing address, fax number, and email address.

(3) Within five (5) business days of receiving a provider's request for an external independent third-party review, the MCO shall:

(a) Confirm in writing to the provider's designated contact the MCO's receipt of the external independent third-party review request from the provider;

(b) Notify the department of the provider's request for an external independent third-party review; and

(c) Notify the enrollee of the provider's request for an external independent third-party review, if related to the denial of a health care service.

(4)(a) An external independent third-party review shall not be granted regarding a claim about which the enrollee has already requested an administrative hearing pursuant to 907 KAR 17:010.

(b) If an enrollee files a request for an administrative hearing pursuant to 907 KAR 17:010 regarding a claim about which a provider has already filed a request for an external independent third-party review, the external independent third-party review shall be held in abeyance until the enrollee's appeal has been fully adjudicated.

(5) Upon receiving a request for an external independent third-party review, the department shall:

(a) Assign the review to an external independent third-party reviewer; and

(b) Notify the:

1. MCO of the external independent third-party reviewer; and
2. Provider's designated contact of the external independent third-party reviewer.

(6) The department shall deny a request to initiate the external independent third-party review process, or a part thereof, if a party fails to:

(a) Exhaust the MCO's internal appeal process in accordance with 907 KAR 17:015; or

(b) Submit a timely request for an external independent party review in accordance with this administrative regulation.

(7) Within fifteen (15) business days of a provider's request for an external independent third-party review, the MCO shall:

(a) Submit to the department **a record on appeal, which shall consist of:**

1. All documentation submitted by the provider in the MCO's internal review process; and

2. Any other information contained in the MCO's final decision;[all documentation submitted by the provider in the provider's MCO internal appeal process, in addition to any other information related to the MCO's final decision; and]

(b) Designate a contact, including name, phone number, mailing address, fax number, and email address**;**

(c) Submit a copy of the provider's appeal request;

(d) Submit the MCO's final decision from its internal review process; and

(e) Include with the submission an attestation that the submitted documents required by paragraphs (a) through (d) of this subsection are accurate and complete.

Section 3. External Independent Third-Party Review. (1) The following shall be the categories of external independent third-party reviews:

(a) Medical necessity. A claim involving a medical necessity determination; or

(b) Service coverage requirements including:

1. A claim involving whether the given service is covered by the Medicaid program; or

2. A claim involving whether the provider followed the MCO requirements for the covered service.

(2)(a) A claim involving a medical necessity determination shall be reviewed by a clinician or clinicians who:

1. Have clinical expertise regarding the subject matter; and
2. Are currently licensed regarding the subject matter.

(b) A claim involving service coverage requirements shall be reviewed by the department.

(3) There shall be no more than one (1) claim reviewed per external independent third-party review unless the department determines that reviewing multiple claims related to one (1) member is expedient and appropriate.

(4) The documentation to be reviewed by an external independent third-party reviewer shall be limited to the documentation referenced in Section 2(7) of this administrative regulation.

(5)(a) An external independent third-party reviewer shall:

1. Except as established in paragraph (c) of this subsection, conduct an external independent third-party review and issue a final decision within thirty (30) calendar days from the receipt of the documentation referenced in Section 2(7) of this administrative regulation; and

2. Issue the final decision to:

a. The provider's designated contact;

b. The MCO's designated contact; and

c. The department.

(b) Within ten (10) business days of receiving the final decision of the external independent third party reviewer, the MCO shall notify the enrollee of the final decision, if related to the denial of a health care service.

(c) An extension of up to fourteen (14) calendar days on a final decision of an external independent third-party review may be allowed upon agreement of both parties.

Section 4. Right to an Administrative Hearing. (1) Upon the issuance of a final decision by an external independent third-party reviewer, the department shall notify in writing the MCO and the provider's designated contact of the right of the party that received an adverse final decision to appeal the decision by requesting an administrative hearing pursuant to 907 KAR 17:040.

(2)(a) A request for an appeal referenced in subsection (1) of this section shall be sent to the department within thirty (30) calendar days of receipt of the department's written notice referenced in subsection (1) of this section.

(b) The request for an appeal shall be sent to the department:

1. Electronically;
2. By fax; or
3. By postal mail.

STEPHEN P. MILLER, Commissioner
VICKIE YATES BROWN GLISSON, Secretary
APPROVED BY AGENCY: March 14, 2017
FILED WITH LRC: March 14, 2017 at 3 p.m.

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Donna Little, phone (502) 564-4321, ext. 2015, email donna.little@ky.gov., or Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements regarding external independent third-party reviews in accordance with KRS 205.646. An external independent third-party review is an appeal

option for a Medicaid provider that has received an adverse final decision from a managed care organization (MCO) that "denies, in whole or in part, a health care service rendered by the provider to an enrollee of the Medicaid managed care organization." The party that receives an adverse decision from the review, whether it be the provider or the MCO, will then have the option to request an administrative hearing conducted by the Cabinet for Health and Family Services. A separate administrative regulation (907 KAR 17:040) is being promulgated concurrently with this administrative regulation to establish the administrative hearing provisions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with a mandate, established in KRS 205.646, to establish the Medicaid external independent third-party review option for Medicaid providers who have received an adverse final decision from a managed care organization (MCO) regarding a health care service or claim for reimbursement.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 205.646 by establishing the Medicaid external independent third-party review option for Medicaid providers who have received an adverse final decision from a managed care organization (MCO) regarding a health care service or claim for reimbursement.

(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 the Medicaid external independent third-party review option for Medicaid providers who have received an adverse final decision from a managed care organization (MCO) regarding a health care service or claim for reimbursement.

(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 Amended After Comments administrative regulation amends Section 2(2) to state that a provider's request for an external independent third-party review shall limit dispute to the information the provider submitted for the MCO internal appeal and contained in the MCO's final decision. Additionally, it amends Section 2(7)(a) to require the MCO to submit a record on appeal, to specify what is included in a record on appeal, and to require the MCO to submit a copy of the provider's appeal request, the MCO's final decision from its internal review process; and an attestation that the submitted documents are accurate and complete.

(b) The necessity of the amendment to this administrative regulation: The amended after comments changes are necessary to address comments received during the public comment period and to establish similar provisions in this administrative regulation and in 907 KAR 17:040.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 205.646 by establishing the Medicaid external independent third-party review option for Medicaid providers who have received an adverse final decision from a managed care organization (MCO) regarding a health care service or claim for reimbursement.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing the Medicaid external independent third-party review option for Medicaid providers who have received an adverse final decision from a managed care organization (MCO) regarding a health care service or claim for reimbursement.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All Medicaid providers and all five (5) managed care organizations 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 entities will have to develop procedures to adhere to this Administrative Regulation. Medicaid providers will need to create an internal process that determines who, within their office, will request the external independent third-party review. Medicaid managed care organizations will have to create a new process, internally, which allows providers to submit the request for the external independent third-party review to the MCO. Medicaid managed care organizations will also need to revise all of their adverse determination letters and be prepared to submit denial documentation to the Department upon request from the providers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Department for Medicaid Services is unable to determine the cost to the provider or MCO. For providers, it will be an added administrative step. For managed care organization, there will be an added administrative step as well as the added cost of revising all adverse determination letters.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): If the provider wins the appeal, they will receive reimbursement for a previously denied claim.

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

(a) Initially: DMS estimates that this administrative regulation will increase DMS's costs by $4.95 million ($3.71 million federal funds/$1.24 million state funds) annually. In order to estimate a partial potential cost estimate for the external third- party review, the Department reviewed the number of similar appeals that were upheld against the MCOs in favor of the appealing providers which was approximately 30,000 per year. The Department has modified its existent contract with the contractor Island Peer Review Organization (IPRO) based on approximately one-third of the given number of similar appeals made the year before. The contract modification will pay IPRO $495 per case review; thus the contract modification for the SFY 2017 contract allows for 10,000 case reviews for a total increase in the budget of $4,950,000. This increase is funded at a 75/25 split with CMS paying the larger federal share. Further, there are two positions being created for administrative assistants within DMS. Finally, the Department is using two nurses from Community Alternatives for the independent reviews initiated for plan delivery rules and coverage denials review. These two medical professionals, if needed full time, will require a $45,000 base salary plus 67% for state benefits per year for each positions. The total cost of both medical professionals can also be funded using 75% federal funds and 25% state funds.

(b) On a continuing basis: The response to the question in (a) also applies here.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: DMS was not allocated any funds to implement the administrative regulation. However, the DMS contract with IPRO, the external quality review organization, has been increased to allow for IPRO to conduct the external independent third-part reviews related to medical necessity. Additionally, DMS will be hiring additional staff to administer the additional administrative work.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fee.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.646.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The Department for Medicaid Services (DMS) anticipates no revenue for state or local government will result from the Amended After Comments version.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS anticipates no revenue for state or local government will result from the Amended After Comments version.

(c) How much will it cost to administer this program for the first year? DMS estimates that this administrative regulation will increase DMS's costs by $4.95 million ($3.71 million federal funds/$1.24 million state funds) annually. In order to estimate a partial potential cost estimate for the external third- party review, the Department reviewed the number of similar appeals that were upheld against the MCOs in favor of the appealing providers which was approximately 30,000 per year. The Department has modified its existent contract with the contractor Island Peer Review Organization (IPRO) based on approximately one-third of the given number of similar appeals made the year before. The contract modification will pay IPRO $495 per case review; thus the contract modification for the SFY 2017 contract allows for 10,000 case reviews for a total increase in the budget of $4,950,000. This increase is funded at a 75/25 split with CMS paying the larger federal share. Further, there are two positions being created for administrative assistants within DMS. Finally, the Department is using two nurses from Community Alternatives for the independent reviews initiated for plan delivery rules and coverage denials review. These two medical professionals, if needed full time, will require a $45,000 base salary plus 67% for state benefits per year for each positions. The total cost of both medical professionals can also be funded using 75% federal funds and 25% state funds.

(d) How much will it cost to administer this program for subsequent years? The response in (c) also applies here.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Commissioner's Office
(Amended After Comments)

907 KAR 17:040. Appeal and administrative hearing post external independent third-party review.

RELATES TO: KRS 194A.025(3), 205.646, 42 C.F.R. 438

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.646, 42 C.F.R. Part 438

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. In accordance with KRS 205.646, this administrative regulation establishes provisions regarding a Medicaid provider's and managed care organization's right to an administrative hearing following an external independent third-party review.

Section 1. Administrative Hearing Notice and Preliminary Requirements. (1) Upon the issuance of a final decision by an external independent third-party reviewer pursuant to 907 KAR 17:035, the department shall notify in writing the MCO and the provider of the right of the party that received an adverse final decision to appeal the decision by requesting an administrative hearing pursuant to this administrative regulation.

(2)(a) A written request for an administrative hearing referenced in subsection (1) of this section shall be sent to the department within thirty (30) calendar days of receipt of the department's written notice referenced in subsection (1) of this section.

(b) The request for an administrative hearing shall be sent to the department:

1. Electronically;
2. By fax; or
3. By postal mail.

(3) A provider or MCO request for an administrative hearing shall:

(a) Identify each specific issue and dispute directly related to the adverse final decision issued by the external independent third-party reviewer;

(b) State the basis on which the external independent third-party reviewer's decision on each issue is believed to be erroneous;

(c) **Limit disputes to the information contained in the record on appeal, as required by 907 KAR 17:035, Section 2(7)(a), and contained in the external independent third-party reviewer's decision;**

(d) State the name, mailing address, and telephone number of individuals who may be contacted about the request for an administrative hearing; and

(e)[(d)] State the mailing address, fax number, email address, or other contact information to which the MCO's confirmation of receipt of the request shall be sent.

(4) The department shall forward to the hearing officer an administrative record **on appeal** that shall include:

(a) The notice of action taken;

(b) The statutory or regulatory basis for the action taken;

(c) The decision following the external **independent** third**-**party review; and

(d) **The record on appeal as required by 907 KAR 17:035, Section 2(7)(a)[All documentary evidence provided by:**

1. The provider;

2. The provider's billing agent;

3. The provider's subcontractor;

4. The provider's fiscal agent; or

5. Another provider-authorized individual].

(5) The department shall deny a request to initiate the administrative hearing appeal process, or a part thereof, if a party fails to:

(a) Exhaust the external **independent** third-party review process in accordance with 907 KAR 17:035; or

(b) Submit a timely request for administrative hearing in accordance with subsection (2) of this section.

Section 2. Administrative Hearing. (1)(a) A hearing officer shall establish the date, time, and location of an administrative hearing.

(b) The administrative hearing shall be held in Frankfort, Kentucky.

(c) The hearing officer shall comply with the notice requirements established in KRS 13B.050.

(d) An administrative hearing date shall be scheduled to occur no later than sixty (60) calendar days from the date that the administrative hearing request was received by the department.

(e) An administrative hearing date may be extended beyond sixty (60) calendar days upon agreement of both parties.

(2) If a pre-hearing conference is requested by a party and

granted by the hearing officer, the conference shall comply with KRS 13B.070.

(3) An administrative hearing may be withdrawn if:

(a) The hearing officer receives a written statement from the appealing party requesting the withdrawal; or

(b) The appealing party makes a statement on the record at the hearing withdrawing the request for an administrative hearing.

(4) Upon the agreement of all parties, an administrative hearing may be conducted telephonically or by other electronic means.

(5) A hearing officer shall preside over an administrative hearing and shall conduct the administrative hearing in accordance with:

(a) KRS 13B.080; and

(b) KRS 13B.090.

(6) The issue considered at the hearing shall be limited to the **administrative record on appeal, as required by Section 1(4) of this administrative regulation**[~~**specific records and disputes raised or presented in the provider's initial appeal to the MCO**~~]**.**

(7) The hearing officer's decision shall be issued within sixty (60) calendar days after the close of the official record of the administrative hearing and shall include:

(a) The findings of facts, conclusions of law, and the final order solely based on the evidence on the record;

(b) The party that shall pay an administrative hearing fee in accordance with Section 3 of this administrative regulation; and

(c) Notice that judicial review on a final order is available to the parties in accordance with Section 4 of this administrative regulation.

(8) A hearing officer's decision shall constitute the final order in the matter for purposes of appeal.

Section 3. Administrative Hearing Fee. The party that receives an adverse final order shall pay a fee of $600 to the department within thirty (30) calendar days of the issuance of the final order.

Section 4. Judicial Review of the Final Order. (1) Judicial review of the hearing officer's final order is available pursuant to KRS 13B.140 and KRS 13B.150.

(2) Within twenty (20) days after the service of the petition for judicial review under subsection (1) of this section, the administrative hearings branch shall transmit a certified copy of the official record of the proceeding under review.

STEPHEN P. MILLER, Commissioner
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: March 14, 2017

FILED WITH LRC: March 14, 2017 at 3 p.m.

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Donna Little, phone (502) 564-4321, ext. 2015, email donna.little@ky.gov., or Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements regarding administrative hearings conducted by the Cabinet for Health and Family Services following an external independent third-party review. An external independent third-party review is an appeal option for a Medicaid provider that has received an adverse final decision from a managed care organization (MCO) that "denies, in whole or in part, a health care service rendered by the provider to an enrollee of the Medicaid managed care organization." The party that receives an adverse decision from the external independent third-party review, whether it be the provider or the MCO, will then have the option to request an administrative hearing conducted by the Cabinet for Health and Family Services. This administrative regulation is being promulgated concurrently with the administrative regulation (907 KAR 17:035) that establishes external independent third-party review provisions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with a mandate, established in KRS 205.646, to grant administrative hearings to either Medicaid providers or MCOs who receive an adverse decision from an external independent third-party review.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 205.646 by establishing an option for a Medicaid provider or MCO that receives an adverse decision from an external independent third-party review to receive an administrative hearing regarding the same matter.

(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 an option for a Medicaid provider or MCO that receives an adverse decision from an external independent third-party review to receive an administrative hearing regarding the same matter.

(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 Amended After Comments administration regulation amends Section 1(3)(c) to limit disputes to the information contained in the record on appeal and contained in the external independent third party reviewer's decision. It also amends Section 1(4) to require the department to forward to the hearing officer an administrative record on appeal and requires that administrative record on appeal to include the record on appeal as required by 907 KAR 17:035, Section 2(7)(a). Lastly, Section 2(6) is amended to limit the issue considered at the hearing to the administrative record on appeal.

(b) The necessity of the amendment to this administrative regulation: The amended after comments changes are necessary to address comments received during the public comment period and to establish similar provisions in this administrative regulation and in 907 KAR 17:035.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 205.646 by establishing an option for a Medicaid provider or MCO that receives an adverse decision from an external independent third-party review to receive an administrative hearing regarding the same matter.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing an option for a Medicaid provider or MCO that receives an adverse decision from an external independent third-party review to receive an administrative hearing regarding the same matter.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Medicaid providers and all five managed care organizations 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: A Medicaid provider or MCO that receives an adverse decision from an external independent third-party review and that wishes to appeal the decision may do so by submitting a request to the Department for Medicaid Services (DMS) – within thirty (30) days of receiving from DMS a notice of the right to such an administrative hearing – for an administrative hearing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Department for Medicaid Services is unable to determine the cost to the provider or MCO to file an appeal, i.e. – staff to gather the necessary information. However, the losing party

in every appeal will have to pay $600 to the state.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): If the provider wins the appeal, they will receive reimbursement for a previously denied claim.

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

(a) Initially: Depending on the volume of appeals, the Department for Medicaid Services and the Administrative Hearing Branch could have to hire additional staff to handle the volume of appeals. However, we are optimistic that the majority of the disputes will be resolved before reaching this step.

(b) On a continuing basis: Depending on the volume of appeals, the Department for Medicaid Services and the Administrative Hearing Branch could have to hire additional staff to handle the volume of appeals. However, we are optimistic that the majority of the disputes will be resolved before reaching this step.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: DMS was not allocated any funds to implement the functions required by this administrative regulation. KRS 205.646(6) allows the Department to establish reasonable fees, not to exceed $1,000, to defray expenses associated with an administrative hearing. The Department has set the fee at $600, which will be paid by the party that does not prevail, which will help offset the added costs.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: KRS 205.646(6) allows the Department to establish reasonable fees, not to exceed $1,000, to defray expenses associated with an administrative hearing. The Department has set the fee at $600, which will be paid by the party that does not prevail.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services and the Division of Administrative Hearings will be affected by this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.646.

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? Because the bill only allows the Department to charge through the administrative hearing process established in 907 KAR 17:040, the Department estimated that the party receiving an adverse determination should pay $600 to defray some of the costs associated with increasing the number of hearings in the Administrative Hearings Branch of CHFS. As the actual number of cases is at this time only an estimate, the Department made an initial assessment that something less than $1000 would help cover costs while not chilling the party's right to appeal the external independent third-party reviewer's determination.

(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? Because the bill only allows the Department to charge through the administrative hearing process established in 907 KAR 17:040, the Department estimated that the party receiving an adverse determination should pay $600 to defray some of the costs associated with increasing the number of hearings in the Administrative Hearings Branch of CHFS. As the actual number of cases is at this time only an estimate, the Department made an initial assessment that something less than $1000 would help cover costs while not chilling the party's right to appeal the external independent third-party reviewer's determination.

(c) How much will it cost to administer this program for the first year? The Department was not allocated any funds for this program. However, without knowing the number of appeals to be filed, the Department is not able to determine a cost.

(d) How much will it cost to administer this program for subsequent years? The Department was not allocated any funds for this program. However, without knowing the number of appeals to be filed, the Department is not able to determine a cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amended After Comments)

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

RELATES TO: KRS Chapters 194A, 199, 209, 209A, 620, 42 U.S.C. 1397-1397h

STATUTORY AUTHORITY: KRS 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to adopt all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. This administrative regulation repeals 922 KAR 3:010 and 922 KAR 3:020. These administrative regulations are not necessary due to the Social Services Block Grant being a funding source rather than a particular program and to the block grant's oversight in accordance with KRS Chapter **45.350-45.359[~~45A.350-45A.359~~]**. A program funded by the Social Services Block Grant is governed by the program's respective administrative regulation.

Section 1. The following administrative regulations are hereby repealed:

(1) 922 KAR 3:010, Limitations on use of grant funds; and

(2) 922 KAR 3:020, Grant services and eligibility.

ADRIA JOHNSON, Commissioner
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: March 8, 2017

FILED WITH LRC: March 9, 2017 at 3 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email Elizabeth.Caywood@ky.gov., and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 922 KAR 3:010 and 3:020.

(b) The necessity of this administrative regulation: This administrative regulation is necessary as a result of 922 KAR 3:010

and 922 KAR 3:020 due to the Social Services Block Grant being a funding source rather than a particular program and due to oversight of the block grant in accordance with KRS 45.350-45.359.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The only purpose of this administrative regulation is to repeal 922 KAR 3:010 and 922 KAR 3:020.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The only purpose of this administrative regulation is to repeal 922 KAR 3:010 and 922 KAR 3:020.

(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 administrative regulation is not an amendment.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is not an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The only purpose of this administrative regulation is to repeal 922 KAR 3:010 and 922 KAR 3:020 due to the Social Services Block Grant being a funding source rather than a particular program and due to the grant's oversight in accordance with KRS 45.350-45.359. No other block grant administered by this department has a like 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 only purpose of this administrative regulation is to repeal 922 KAR 3:010 and 922 KAR 3:020. Service provision to Kentucky's citizenry is unchanged.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The only purpose of this administrative regulation is to repeal 922 KAR 3:010 and 922 KAR 3:020.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The only purpose of this administrative regulation is to repeal 922 KAR 3:010 and 922 KAR 3:020.

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

(a) Initially: There is no cost associated with the repeal of 922 KAR 3:010 and 922 KAR 3:020.

(b) On a continuing basis: There is no ongoing cost associated with the repeal of 922 KAR 3:010 and 922 KAR 3:020.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 922 KAR 3:010 and 922 KAR 3:020 govern Kentucky's award of the federal Social Services Block Grant. The block grant and its uses are not impacted by the repeal of this administrative regulation. There is no funding source associated with the repeal of 922 KAR 3:010 and 922 KAR 3:020.

(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 only purpose of this administrative regulation is to repeal 922 KAR 3:010 and 922 KAR 3:020. There is no fee or funding impact.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There is no fee associated with the repeal of 922 KAR 3:010 and 922 KAR 3:020.

(9) TIERING: Is tiering applied? There is no tiering applied in the repeal of 922 KAR 3:010 and 922 KAR 3:020.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
42 U.S.C. 1397-1397h

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

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1397-1397h

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The only purpose of this administrative regulation is to repeal 922 KAR 3:010 and 922 KAR 3:020.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The only purpose of this administrative regulation is to repeal 922 KAR 3:010 and 922 KAR 3:020.

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 no longer have these obsolete administrative regulations under its purview.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The only purpose of this administrative regulation is to repeal 922 KAR 3:010 and 922 KAR 3:020.

(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 only purpose of this administrative regulation is to repeal 922 KAR 3:010 and 922 KAR 3:020. This repealer will generate no new revenue in its 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 repealer creates no new revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? This repealer will create no new costs in the first year.

(d) How much will it cost to administer this program for subsequent years? This repealer will create no new costs in subsequent years.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amended After Comments)

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

RELATES TO: KRS Chapter 13B, 209
STATUTORY AUTHORITY: KRS 194A.050(1), 209.032(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to adopt all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities

vested in the cabinet. KRS 209.032(5) requires the cabinet to promulgate administrative regulations necessary to implement a central registry of substantiated findings. This administrative regulation establishes the caregiver misconduct registry, due process prior to the addition of an individual to the registry, and error resolution for correction of the cabinet's records.

Section 1. Definitions. (1) "Abuse" is defined by KRS 209.020(8).

(2) "Adult" is defined by KRS 209.020(4).

(3) "Cabinet" means the Cabinet for Health and Family Services.

(4) "Employee" is defined by KRS 209.032(1)(a).

(5) "Exploitation" is defined by KRS 209.020(9).

(6) "Good cause" means justification for failure to carry forward with a legal obligation related to an appeal, including:

(a) An appellant's inability to comprehend the cabinet's written statement describing appeal rights; or

(b) A cabinet-sanctioned determination that the appellant or the appellant's legal representative is not at fault for failure to:

1. Submit a written request for appeal; or

2. Participate in a proceeding related to an administrative hearing.

(7) "Investigation" is defined by KRS 209.020(10).

(8)[~~(7)~~] "Near fatality" means an injury or condition, as certified by a physician, that places an adult in serious or critical condition.

(9)[~~(8)~~] "Neglect" is defined by KRS 209.020(16).

(10)[~~(9)~~] "Records" is defined by KRS 209.020(15).

(11)[~~(10)~~] "Secure methodology" means the deployment of technology to protect the application's authenticity and to keep user communications, browsing, and identity private in accordance with KRS 209.032.

(12)[~~(11)~~] "Validated substantiated finding of adult abuse, neglect, or exploitation" is defined by KRS 209.032(1)(b).

(13)[~~(12)~~] "Vulnerable adult services provider" is defined by KRS 209.032(1)(c).

Section 2. Caregiver Misconduct Registry. (1) The cabinet shall establish a caregiver misconduct registry that contains an individual:

(a) Who was**[providing care to an adult as]** an employee or a person acting with the expectation of compensation;

(b) Who was the perpetrator of adult abuse, neglect, or exploitation:

1. Pursuant to 922 KAR 5:070; and

2. Substantiated on or after July 15, 2014; and

(c) With a validated substantiated finding of adult abuse, neglect, or exploitation.

(2) An individual with a validated substantiated finding of adult abuse, neglect, or exploitation shall:

(a) Remain on the caregiver misconduct registry for a period of at least seven (7) years; and

(b) Be removed from the caregiver misconduct registry:

1. In accordance with the error resolution process described in Section 6[~~5~~] of this administrative regulation if an error is confirmed; or

2. After a period of seven (7) years if:

a. No additional validated substantiated finding of adult abuse, neglect, or exploitation has occurred since the last finding for which the individual's name was placed on the caregiver misconduct registry; and

b. Cabinet records indicate that the incident for which the individual's name was placed on the caregiver misconduct registry did not relate to[~~:~~

~~(i)~~] an adult fatality or near fatality related to adult abuse or neglect[~~;~~

~~(ii) A criminal conviction related to the incident for which the individual's name was placed on the caregiver misconduct registry; or~~

~~(iii) A civil judicial determination related to adult abuse, neglect, or exploitation~~].

(3) The caregiver misconduct registry shall be available for a web-based query using a secure methodology by:

(a) A vulnerable adult services provider in accordance with KRS 209.032(2); and

(b) An individual in accordance with KRS 209.032(3).

(4) The caregiver misconduct registry shall be accessible through:

(a) The department's main webpage; or

(b) Another cabinet system, such as the Kentucky Applicant Registry and Employment Screening (KARES) Program established in accordance with 906 KAR 1:190.

(5) If an individual or a vulnerable adult service provider described in KRS 209.032(1)(c)11 does not have access to the internet, the individual or provider shall submit a signed and completed DPP-246, Caregiver Misconduct Registry Self-Query, to conduct a self-query in accordance with KRS 209.032(2) or (3).

Section 3. Notification of Finding. (1) If the cabinet finds that an employee or a person acting with the expectation of compensation has committed adult abuse, neglect, or exploitation in accordance with 922 KAR 5:070, the cabinet shall[~~:~~

~~(a)~~] send notice of the finding to the perpetrator by certified mail to the perpetrator's last known address[~~; or~~

~~(b) Give notice of the finding to the perpetrator, in person, with a witness signature to document that the perpetrator received the notice~~].

(2) The cabinet's notice of a finding of adult abuse, neglect, or exploitation to an employee or a person acting with the expectation of compensation shall include:

(a) The factual basis for the finding of adult abuse, neglect, or exploitation;

(b) The results of the investigation;

(c) The perpetrator's right to appeal the substantiated finding[~~Due process requirements~~] in accordance with[~~KRS Chapter 13B and~~] KRS 209.032 and this administrative regulation;

(d) A statement that a finding shall become a validated substantiated finding of adult abuse, neglect, or exploitation in accordance with KRS 209.032 and Section 5 of this administrative regulation; and

(e) A statement that a perpetrator of[~~the individual subject to~~] a validated substantiated finding of adult abuse, neglect, or exploitation shall be added to the caregiver misconduct registry.

(3)**(a)** The cabinet shall reserve the right, in its sole discretion, to amend, modify, or reverse its investigative finding of adult abuse, neglect, or exploitation at any time based upon:

1.[~~(a)~~] A review of the cabinet's records; or

2.[~~(b)~~] Subsequent discovery of additional information.

(b) If amendment, modification, or reversal of an investigative finding results in a substantiated finding of abuse or neglect of an adult, the cabinet shall act in accordance with Section 3(1) and 3(2) of this administrative regulation.

Section 4. Request for Appeal[~~Appeals~~]. (1) In accordance with KRS 209.032, if the cabinet makes a finding that**[~~an individual providing care to an adult as~~]** an employee or **a person acting** with the expectation of compensation has committed adult abuse, neglect, or exploitation, the individual shall have the right to appeal the substantiated finding through[~~be afforded an opportunity for~~] an administrative hearing.

(2) A request for appeal shall:

(a) Be submitted:

1. In writing by the appellant, with the assistance of the cabinet if the appellant is unable to comply without assistance; and

2. To the cabinet no later than thirty (30) calendar days from the individual's receipt of the notice in accordance with Section 3(1) of this administrative regulation;

(b) Describe the nature of the investigative finding;

(c) Specify the reason the individual disputes the cabinet's substantiated finding; and

(d) Include a copy of the notice of a substantiated finding in accordance with Section 3 of this administrative regulation if available.

(3) The cabinet shall not dismiss a request for appeal as untimely if an appellant demonstrates good cause.

(4) A final administrative decision made by the cabinet or cabinet's designee as a result of a previous appeal on the same issue or an unsubstantiated finding of adult abuse, neglect, or exploitation shall not be subject to review through an administrative hearing.

Section 5. Administrative Hearing. (1) An administrative hearing conducted by the cabinet or its designee shall be in accordance with KRS Chapter 13B and 209.032.

(2) The cabinet's investigative finding shall become a validated substantiated finding of adult abuse, neglect, or exploitation if the**[perpetrator~~or~~]**:

(a) **Perpetrator** does not request an administrative hearing in accordance with Section 4 of this administrative regulation;**[~~or~~]**

(b) **Perpetrator** fails to:

1. Participate in any stage of the proceedings after requesting an appeal in accordance with Section 4 of this administrative regulation; and

2. Demonstrate good cause**; or**

(c) Cabinet's substantiated finding is upheld through the administrative hearing process.

(3) The secretary or designee shall issue the final order in accordance with KRS 13B.120 and 209.032.

(4) A party aggrieved by the secretary's decision shall have the right to pursue judicial review in accordance with KRS 13B.140, 13B.150, and 209.032(1)(b).

(5) The proceedings of the administrative hearing shall be disclosed only by the authority of state or federal law.

(6) If the matter is not subject to the requirements of this section, the cabinet shall inform the person that the matter may be pursued through:

(a) A service complaint process described in 920 KAR 1:030 or 922 KAR 1:320; or

(b) The error resolution process in accordance with Section 6[~~5~~] of this administrative regulation.

Section 6[~~5~~]. Error Resolution. (1) In accordance with KRS 209.032(5)(a), an individual seeking error resolution shall:

(a) Submit a written request for record correction to the Commissioner of the Department for Community Based Services, 275 East Main Street (3W-A), Frankfort, Kentucky 40621;

(b) Specify the:

1. Date of the caregiver misconduct registry query which resulted in the error being identified; and

2. Error contained in the caregiver misconduct registry query results; and

(c) Provide documentation that verifies the error, if available.

(2) Within thirty (30) days of receipt of a request in accordance with subsection (1) of this section, the commissioner or designee shall:

(a) Determine whether an error exists; and

(b)1. If the cabinet confirms an error:

a. Correct the records; and

b. Notify the requesting individual that the records have been corrected; or

2. If the cabinet cannot confirm an error:

a. Notify the individual that an error cannot be confirmed based upon the information and documentation submitted with the request; and

b. Outline information or documentation that may verify an error pursuant to the individual's request, if any.

Section 7[~~6~~]. Incorporation by Reference. (1) The "DPP-246, Caregiver Misconduct Registry Self-Query", 11/14, is incorporated by reference.

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

ADRIA JOHNSON, Commissioner
VICKIE YATES BROWN GLISSON, Secretary
APPROVED BY AGENCY: March 8, 2017
FILED WITH LRC: March 9, 2017 at 3 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email Elizabeth.Caywood@ky.gov., and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the caregiver misconduct registry, due process prior to the addition of an individual to the registry, and error resolution for correction of the cabinet's records.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards for the operation of the caregiver misconduct registry, including due process and error resolution for correction of the cabinet's records.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing a caregiver misconduct registry for individuals who have a substantiated adult abuse, neglect, or exploitation finding.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes through its establishment of a caregiver misconduct registry.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will require that a perpetrator request an appeal, rather than automatically be granted an administrative hearing. If the perpetrator fails to request an appeal or participate in the administrative hearing process after requesting an appeal, the investigative finding becomes a validated substantiated finding of adult abuse, neglect or exploitation. In addition, this amendment will modify provisions pertaining to a perpetrator remaining permanently on the registry to those whose abuse or neglect was associated with an adult fatality or near fatality. The amendment also makes changes in accordance with the drafting and format requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to eliminate the requirement that an administrative hearing be conducted prior to each perpetrator being added to the caregiver misconduct registry. Many perpetrators do not wish to appeal the cabinet's finding; thus, requiring a hearing in these cases results in poor stewardship of limited resources and unnecessary delays in the perpetrator's placement on the caregiver misconduct registry. Elimination of this requirement will preserve administrative hearing resources within the cabinet and will ensure more timely addition of the perpetrator to the registry while still affording adequate due process to perpetrators. In addition, the amendment is necessary to remove criteria used in determining whether a perpetrator remains permanently on the caregiver misconduct registry; the criteria being removed cannot be practically and consistently applied.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute through its improvements of appeal processes afforded to perpetrators of adult abuse, neglect, or exploitation and through its correction of criteria used to retain a perpetrator's name on the caregiver misconduct registry permanently.

(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 update of due process requirements and retention policies used for the caregiver misconduct registry.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this

administrative regulation: Vulnerable adult service providers are impacted by this administrative regulation. From July 2014 through June 2016, the cabinet's Ombudsman's Office processed 429 caregiver misconduct issues. As of October 19, 2016, there were 166 individuals on the caregiver misconduct registry.

(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: Rather than being given an automatic administrative hearing, a perpetrator qualifying for placement on the caregiver misconduct registry will be required to request appeal. In addition, the criteria for a perpetrator's permanent retention on the caregiver misconduct registry will entail abuse or neglect associated with an adult fatality or near fatality.

(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 cost borne by the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative hearings associated with the caregiver misconduct registry will be more efficient, thereby preserving and best utilizing available resources and improving timeliness. Perpetrators retained permanently on the registry will be associated with adult abuse or neglect that resulted in an adult fatality or near fatality, thereby ensuring consistent application by the cabinet.

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

(a) Initially: There will be no new or additional cost borne by the administrative body.

(b) On a continuing basis: There will be no new or additional cost borne by the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this administrative regulation are funded through state general funds and the federal Social Services Block Grant.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because 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? The Cabinet for Health and Family 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 Chapter 13B, 209

(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 revenue in its 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 revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The administrative body does not project any new or additional cost associated with the amendment to this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? The administrative body does not project any new or additional cost associated with the amendment to 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:

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(Amendment)

201 KAR 2:074. Pharmacy services in hospitals or other organized health care facilities.

RELATES TO: KRS 315.010, 315.020, 315.030, 315.121
STATUTORY AUTHORITY: 315.002, 315.005, KRS 315.191(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1) authorizes the Kentucky Board of Pharmacy to establish requirements to regulate and control pharmacies. KRS 315.002 and 315.005 require standards of practice in all settings where drugs are handled and requires the board to insure the safety of all drug products provided to the citizens of Kentucky. This administrative regulation establishes requirements for pharmacy services in hospitals or other organized health care facilities.

Section 1. Definitions. (1) "Automated pharmacy system" means a mechanical system that performs operations or activities, other than compounding or administration, relative to the storage, packaging, counting, labeling, and dispensing of medications, and which collects, controls, and maintains all transaction information and shall be either:

(a) A decentralized automated pharmacy system that is located outside the pharmacy

(b) A centralized automated pharmacy system from which medications are prepared for final distribution that require the approval of a pharmacist.

(2) "Institutional pharmacy" means:[~~that portion of an acute care hospital licensed pursuant to 902 KAR 20:016 or a pharmacy serving an other organized health care facility engaged in the manufacture, production, sale, or distribution of drugs, medications, devices, or other materials used in the diagnosis or treatment of injury, illness, or disease.~~]

(a) Pharmacy in an acute care hospital licensed pursuant to 902 KAR 20:016;

(b) A pharmacy serving an other organized health care facility; or

(c) An onsite pharmacy serving an infusion center where medication is administered.

(3) "Investigational drug" means a drug that has not been approved for use in the United States, but for which an investigational drug application has been approved by the FDA.

(4) "Other organized health care facility" means a facility:

(a) With a primary purpose to provide medical care and treatment to inpatients; and

(b) That is:

1. An intermediate care facility;
2. A skilled nursing facility;
3. A hospital other than an acute care hospital licensed pursuant to 902 KAR 20:016;
4. A licensed personal care home;
5. A licensed family care home;
6. A nursing home;
7. A nursing facility;
8. An intermediate care facility for mental retardation; or
9. An Alzheimer's nursing home.

(5) "Unit dose distribution" means a system in which drug therapy profiles are maintained in the pharmacy and doses are scheduled, prepared, and delivered in a ready-to-administer form to the patient care area as the doses are needed.

Section 2. Pharmacy Administration. (1) General.

(a) The pharmacy, organized as a separate department or service, shall be directed by a pharmacist, who shall be thoroughly knowledgeable about institutional pharmacy practice and management.

(b) The director of pharmacy services shall be responsible for departmental management and the development and implementation of goals and objectives to meet the needs of the institution and shall be responsible to the chief executive officer of the institution or the chief executive officer's designee.

(c) If the director of pharmacy services is not employed full time, the institution shall establish an ongoing arrangement in writing with a pharmacist to provide services required by this administrative regulation and KRS 315.020(1).

(d) If a hospital pharmacy is decentralized, each decentralized section or separate organizational element shall be under the immediate supervision of a pharmacist responsible to the director of pharmacy services.

(2) Pharmacy personnel.

(a) The institutional pharmacy shall maintain additional pharmacists in cooperation with the institution's administration, either full time or part time, as required to operate safely and effectively to meet the needs of the patients.

(b) If nonpharmacist personnel are employed, nonpharmacist personnel shall perform all duties under the supervision of a pharmacist and shall not be assigned and shall not perform duties that are to be performed only by a pharmacist.

(3) Responsibilities.

(a)1. Lines of authority and areas of responsibility within the pharmacy shall be clearly defined.

2. Written job descriptions for all categories of pharmacy personnel shall be prepared and revised as necessary.

(b)1. There shall be policies and procedures to provide for selection of drugs as well as a distribution system to serve the needs of the patient.

2. Provision for procurement of drugs in an emergency situation shall be provided for.

(4) Supportive personnel.

(a) Sufficient supportive personnel (technical, clerical, and other) shall be available in order to optimize the participation of pharmacists in activities requiring professional judgment.

(b) The training and supervision of supportive personnel shall be the responsibility of the pharmacist.

(5) Availability.

(a) The services of a pharmacist shall be available continuously. If around-the-clock operation of the pharmacy is not feasible, the pharmacist shall be available on an on-call basis, and an adequate night drug cabinet shall be established. The pharmacy itself shall not be designated as the night drug cabinet.

(b) A hospital not having a full-time pharmacist, but in which drugs are prepackaged or relabeled or transferred from one (1) container to another, shall obtain a pharmacy permit and have at least a part-time pharmacist designated to perform those functions or to provide personal supervision of those functions.

Section 3. Physical Facility. (1) The institutional pharmacy shall have adequate space, equipment, and supplies sufficient to provide for safe and efficient drug storage, preparation, and distribution, patient education and consultation, drug information services, and proper management of the department.

(2) Legal requirements. The physical facility shall meet state and federal regulations and shall be accessible by authorized pharmacy personnel only.

(3)(a) A currently licensed hospital shall be exempt from the provisions of subsection (2) of this section if it:

1. Is authorized by the Department for Health and Human Services to provide pharmacy services; and
2. Does not currently possess a pharmacy permit.

(b) A currently licensed hospital exempt from the provisions of subsection (2) of this section shall permit access by authorized personnel only.

(4) Location. Locked storage or locked medication carts shall be provided for use in each nursing unit or service area.

(5) Reference materials. The pharmacy shall have current pharmaceutical reference materials in accordance with 201 KAR 2:090. References related to the following subjects shall also be available:

(a) Drug identification;
(b) Toxicology;
(c) Drug interactions;
(d) Parenteral drug compatibility; and
(e) Microbiology.

Section 4. Drug Distribution and Control. (1) General. The institutional pharmacy shall be responsible for the procurement, distribution, and control of all drugs and parenteral solutions used within the institution. Policies and procedures governing these functions shall be developed by the pharmacist with input from other involved hospital, infusion center or other organized health care facility staff (for example, nurses) and committees (for example, pharmacy and therapeutics committee and patient care committee).

(2) Dispensing. The pharmacist shall dispense medications only on the order of a licensed medical practitioner.

(3) Prescriber's order. The pharmacist shall review the medication order within a reasonable amount of time.

(4) Recordkeeping. The pharmacist shall maintain appropriate records of each medication order. The records shall be retained for the time and in the manner prescribed by state and federal law.

(5) Patient medication profile. A medication profile shall be maintained for all inpatients and for those ambulatory patients routinely receiving care at the institution. The pharmacist shall utilize this profile to properly review, schedule, prepare, and distribute medications except in an emergency situation.

(6) Labeling and packaging.

(a) Each licensee shall comply with U.S.P. Standards established pursuant to federal law and all state and federal laws and regulations regarding labeling and packaging.

(b) Labeling and packaging of medications used for outpatients shall meet the requirements of state and federal law.

(7) Dispensing. The pharmacist shall dispense medications by the unit dose distribution system if feasible. If the unit dose distribution system is not utilized, adequate safeguards shall be in place to protect patients.

(8) Stop orders. There shall be established written stop order policies or other methods of assuring that drug orders are not continued inappropriately in accordance with the status of the patient.

(9) Administration.

(a) Drugs shall be administered only upon order of a licensed medical practitioner.

(b) The institutional pharmacy shall participate in the establishment of policies and procedures regarding the administration of medications. Specific procedures shall be developed in cooperation with appropriate hospital, infusion center or other health care facility personnel and shall include personnel authorized to schedule, prepare, and administer medications.

(10)(a) Unused medication. The institutional pharmacy shall establish policies and procedures for the disposition of patients' unused medications.

(b) Medication in unit dose form may be reissued if package integrity has been maintained and the product has not expired.

(11) Hospital floor stocks.

(a) Floor stocks of drugs shall be kept as small as possible. The pharmacist in charge shall be responsible for authenticating the need for floor stock.

(b) A pharmacist shall review all orders distributed through floor stock within a reasonable amount of time.

(c) The pharmacist in charge shall be responsible for defining those areas of the hospital requiring floor stock (for example, emergency room, surgery, critical care, or medical or surgical wards).

(d) All drug storage areas within the hospital shall be routinely inspected by pharmacy personnel at least monthly, and documentation shall be maintained to ensure that:

1. Unusable items shall not be present; and

2. All stock items shall be properly labeled and stored.

(e) This subsection shall not apply to other organized health care facilities.

(f) This subsection shall apply to infusion centers where medications are administered with an onsite pharmacy.

(12) Drug recall. There shall be a system for removing from use a drug that has been recalled.

(13) Sample medications. The institutional pharmacy shall establish policies and procedures regarding medical representatives and the obtaining, storage, and dispensing of complimentary packages of medications.

(14) Emergency drugs.

(a) The institutional pharmacy shall establish policies and procedures for supplying emergency drugs.

(b) For expediency and efficiency, emergency drugs shall be limited in number to include only those whose prompt use and immediate availability are generally regarded by physicians as essential in the proper treatment of sudden and unforeseen patient emergencies.

(c) Emergency stocks shall be routinely inspected by pharmacy personnel on a monthly basis and documentation maintained to determine if contents have become outdated and if the stocks are being maintained at adequate levels.

(15) Investigational drugs.

(a) Policies and procedures controlling the use of investigational drugs (if used in the institution) shall be developed and followed.

(b) The pharmacy shall be responsible for storing, packaging, labeling, distributing, maintaining inventory records (including lot numbers and expiration date), and providing information about investigational drugs (including proper disposal).

(16) Controlled substances. All permit holders shall comply with state and federal laws regarding controlled substances.

Section 5. Assuring Rational Drug Therapy. (1) Appropriate clinical information about patients shall be available and accessible to the pharmacist for use in daily practice activities.

(2) The pharmacist shall be a member of the pharmacy and therapeutics committee and any other committees where input concerning the use of drugs is required.

(3) The pharmacist shall provide a means to ensure that patients receive adequate information about the drugs they receive. Patient education activities shall be in coordination with the nursing and medical staffs and patient education department, if any.

Section 6. Responsibility. The pharmacist-in-charge of a pharmacy utilizing an automated pharmacy system shall be responsible for:

(1) An initial validation of system accuracy prior to use for distribution to patients;

(2) Ensuring the system:

(a) Is properly maintained;

(b) Is in good working order;

(c) Accurately dispenses the correct strength, dosage form, and quantity of drug prescribed; and

(d) Complies with the recordkeeping, access, and security safeguards pursuant to all applicable state and federal laws;

(3) Assuring medications are reviewed prior to loading into an automated pharmacy system and distribution;

(4) Implementing an ongoing quality assurance program that monitors performance of the pharmacy compounding robotics, which is evidenced by written policies and procedures and requires a continued documented validation of doses distributed on a routine basis and annual review of the quality assurance program;

(5) Establishing policies and procedures if there is a system failure of an automated pharmacy system;

(6) Providing the board with prior written notice of installation or removal of an automated pharmacy system. This notification shall include the:

(a) Name and address of the pharmacy; and

(b) Initial location of the automated pharmacy system;

(7) Oversight for assigning, discontinuing, or changing personnel access to the system, including establishment of written policies and procedures for security and control;

(8) Reviewing personnel access on at least an annual basis;

(9) Assuring that the decentralized automated pharmacy

system stock is checked at least monthly in accordance with established policies and procedures, including checking for:

(a) Accuracy;

(b) Integrity of packaging; and

(c) Expiration dates;

(10) Maintaining in the pharmacy the following documentation relating to an automated pharmacy system:

(a) The name and address of the pharmacy or inpatient health care facility where the system is being used;

(b) The automated pharmacy system manufacturer's name, model, serial number, and software version;

(c) A description of how the system is used;

(d) Written quality assurance procedures and accompanying documentation of use to determine continued appropriate use of the system as established in subsections (7) and (8) of this section; and

(e) Written policies and procedures for system operation, safety, security, accuracy, emergency medication access, access, and malfunction which includes clearly defined down time and procedures; and

(11) Maintaining adequate security systems and procedures, evidenced by written policies and procedures to:

(a) Prevent unauthorized access;

(b) Maintain patient confidentiality;

(c) Allow user access modification; and

(d) Comply with federal and state laws.

Section 7. Standards. (1)(a) All events involving the contents of the automated pharmacy system shall be recorded electronically.

(b) Records shall be maintained by the pharmacy and be available to the board and shall include the following:

1. The date, time, and location of the system accessed;

2. Identification of the individual accessing the system;

3. Type of transaction;

4. Name, strength, dosage form, and quantity of drug accessed; and

5. Name of the patient for whom the drug was ordered, if applicable.

(2) All medications to be stocked into the centralized automated pharmacy system shall have been previously validated for bar code accuracy by a pharmacist, pharmacist intern, or certified pharmacy technician. Integrity and accuracy shall be validated by a pharmacist.

(3) The stocking of medications in a decentralized automated pharmacy system utilizing bar code technology shall be done by a pharmacist, pharmacist intern, or a certified pharmacy technician.

(4) The stocking of medications in a decentralized automated pharmacy system without bar code technology shall be done by a pharmacist, pharmacist intern, or a certified pharmacy technician. Integrity and accuracy shall be validated by a pharmacist.

(5) If a hospital licensed pursuant to 902 KAR 20:016 utilizes technology that validates appropriate drug, dose, dosage form, route of administration, time of administration, and patient at the exact time of medication administration, the stocking of the decentralized automated pharmacy system shall be done by a pharmacist, pharmacist intern, or certified pharmacy technician.

(6) A record of medications stocked in an automated pharmacy system shall be maintained for at least five (5) years and shall include:

(a) The name of the person repacking the medications; and

(b) Documentation of the pharmacist checking the medications.

(7) All containers of medications stored in the automated pharmacy system shall be packaged and labeled in accordance with federal and state laws.

(8) The automated pharmacy system shall provide a mechanism for securing and accounting for medications removed from and subsequently returned to the automated pharmacy system, in accordance with federal and state laws.

(9) All medications initially received in the pharmacy for use in an automated pharmacy system shall be quarantined until validation of bar code accuracy and existence of the item in the database powering automated pharmacy system by a certified pharmacy technician, pharmacist intern, or pharmacist.

(10) If a medication needs to be repackaged:

(a) A pharmacist, pharmacist intern, or certified pharmacy technician shall:

1. Perform the repackaging and validate the presence of an accurate bar code on the unit dose packaging; and

2. Document the repackaging process including:

a. Manufacturer;

b. Date and time of repackaging;

c. The person repackaging;

d. The lot number or batch number;

e. The expiration date; and

f. The quantity repackaged; and

(b) A pharmacist shall:

1. Validate for accuracy and integrity prior to the addition to the automated pharmacy system; and

2. Document the validation including:

a. The date and time of the validation;

b. The name of the pharmacist validating;

c. The lot number or batch number;

d. The expiration date; and

e. The quantity validated.

(11) A medication returned to the pharmacy from a patient care area shall follow the processes established pursuant to Section 4(10) of this administrative regulation.

(12) A medication distributed by the centralized automated pharmacy system shall be distributed in the delivery device utilized by that system.

(13) A medication distributed by an automated pharmacy system shall be accessed and administered by a professional licensed to administer medications.

SCOTT GREENWELL, R.Ph., President

APPROVED BY AGENCY: March 8, 2017

FILED WITH LRC: March 14, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 24, 2017, at 10:00 a.m. at the Board's office, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by five workdays prior to this 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 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 April 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Steve Hart, Executive Director, Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806; email Steve.Hart@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Steve Hart

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for pharmacy services in hospitals or other organized health care facilities.

(b) The necessity of this administrative regulation: KRS 315.005 authorizes the Board to regulate all permitted sites of pharmacy practice. This administrative regulation is necessary to articulate expectations of pharmacy care in hospitals and other organized health care facilities.

(c) How this administrative regulation conforms to the content of the authorizing statues: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations to regulate and control all matters pertaining to pharmacies. KRS 315.191(1)(f) authorizes the board to promulgate administrative regulations to control the

storage, retrieval, dispensing and refilling of prescription drug orders in pharmacies. This administrative regulation addresses pharmacy services in hospitals and other organized health care facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Individuals and permitted entities who are responsible for pharmacy services in hospitals and other organized health care facilities will understand what is required by the board to protect public health, safety and welfare.

(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 permits automated pharmacy systems in acute care hospitals, a pharmacy serving an other organized health care facility and infusion centers.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to provide a clear understanding of where automated pharmacy systems may be utilized.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations to regulate and control all matters pertaining to pharmacies. KRS 315.191(1)(f) authorizes the board to promulgate administrative regulations to control the storage, retrieval, dispensing and refilling of prescription drug orders in pharmacies. This administrative regulation establishes procedures for automated pharmacy systems in permitted facilities, and the storage, retrieval, dispensing and refilling of prescription drug orders from automated pharmacy systems.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will address where automated pharmacy services may be utilized through a pharmacy.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates approximately twelve (12) permitted facilities will be affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities that utilize an automated pharmacy system will have policies and procedure that shall be followed.

(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 expected costs that an entity would incur to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be increased convenience for entities and greater pharmacist involvement in patient care.

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

(a) Initially: No costs will be incurred.

(b) On a continuing basis: No costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is required for implementation of this administrative regulation. Enforcement of this regulation shall be accomplished through normal and customary inspections.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all entities that utilize automated pharmacy services.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Pharmacy 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 315.191(1)(a) and (f) authorize the board to promulgate administrative regulations to regulate and control pharmacies, pharmacists, and prescription drug orders.

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:056. Advanced practice registered nurse licensure and certification requirements.

RELATES TO: KRS 218A.205(3)(g), (7), 314.011, 314.042, 314.091, 314.103, 314.109, 314.161, 314.470

STATUTORY AUTHORITY: KRS 218A.205(3)(g), (7), 314.042, 314.103, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.205(3)(g) requires the board to establish by administrative regulation for licensees authorized to dispense or prescribe controlled substances the process for submitting a query on each applicant to the National Practitioner Data Bank. KRS 218A.205(7) requires the board to require for any applicant for an initial licensure that authorizes the prescribing or dispensing of controlled substances to complete a state and national criminal records check. KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.042 requires the licensure of an advanced practice registered nurse and authorizes the board to promulgate administrative regulations establishing licensing requirements. KRS 314.103 authorizes the board to require a criminal background investigation of an applicant or a nurse. This administrative regulation establishes the requirements for licensure, renewal, and reinstatement, education, and recognition of a national certifying organization.

Section 1. An applicant for licensure as an advanced practice registered nurse in Kentucky shall:

(1)(a) Complete an Application for Licensure as an Advanced Practice Registered Nurse as required by 201 KAR 20:370, Section 1(1);

(b) Provide a copy of a current active registered nurse license or validation of registered nurse licensure if the state of licensure does not issue licensure cards;

(c) Submit the fee required by 201 KAR 20:240, Section 1(2)(j); and

(d) Comply with the requirements established in KRS 314.042 and this administrative regulation.

(2) If the applicant is applying only for a license as an advanced practice registered nurse, the applicant shall also provide:

(a) A completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is within six (6) months of the date of the application;

(b) A report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;

(c) A certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

(d) A letter of explanation that addresses each conviction, if applicable.

(3) An applicant shall not be licensed until:

(a) A report is received from the FBI pursuant to the request submitted under subsection (2)(a) of this section and any conviction is addressed by the board; and

(b) A query is completed to the board's reporting agent to the National Practitioner Data Bank of the United States Department of Health and Human Services pursuant to KRS 218A.205(3)(g) and any relevant data on the applicant is received.

Section 2. Education and Clinical Experience. (1) An applicant for licensure as an advanced practice registered nurse shall complete an accredited education program that prepares a registered nurse for one (1) of the four (4) APRN roles established under Section 12(5) of this administrative regulation and clinical experience. This program shall conform to 201 KAR 20:062 or its substantial equivalence if from an out of state program.

(2)(a) If the applicant for licensure as an advanced practice registered nurse completed a program of study after January 1, 2005, the applicant shall hold a master's degree, doctorate, or postmaster's certificate awarding academic credit by a college or university related to the advanced practice registered nurse designation.

(b) If the applicant for licensure as an advanced practice registered nurse completed a program of study before January 1, 2005, the program shall be evaluated by the board on an individual basis to find if the program sufficiently prepares a student for advanced practice registered nursing by complying with the requirements of 201 KAR 20:062.

Section 3. National Certifying Organizations. (1) A nationally established organization or agency which certifies registered nurses for advanced practice registered nursing shall be recognized by the board if it meets the following criteria:

(a) The certifying body is an established national nursing organization or a subdivision of this type of organization;

(b) Eligibility requirements for certification are delineated;

(c) Certification is offered in a role as defined by KRS 314.042(2)(a) and in a population focus as defined by KRS 314.011 and with primary or acute care competencies;

(d) Scope and standards of practice statements are promulgated;

(e) Mechanism for determining continuing competency is established; and

(f) The certifying body is accredited by the American Board of Nursing Specialties or the National Commission for Certifying Agencies.

(2) The board recognizes the following national certifying organizations:

(a) American Nurses Credentialing Center;

(b) American Midwifery Certification Board;

(c) National Board of Certification and Recertification for Nurse Anesthetists;

(d) Pediatric Nursing Certification Board;

(e) National Certification Corporation;

(f) American Academy of Nurse Practitioners Certification Board[~~Program~~]; and

(g) American Association of Critical-Care Nurses Certification Corporation.

(3) The board recognizes the Oncology Nursing Certification Corporation only for an individual who has received certification prior to December 15, 2010 and who has continually renewed his or her Kentucky advanced practice registered nurse license since that date.

Section 4. Practice Pending Licensure. (1) A registered nurse who meets all the requirements for practice as an advanced practice registered nurse, and who holds a registered nurse temporary work permit issued pursuant to 201 KAR 20:110 pending licensure by endorsement or a privilege to practice as a registered nurse, shall be authorized to practice as an advanced practice registered nurse for a period of time not to exceed the expiration date of the temporary work permit.

(2) Authorization to practice pursuant to this section shall be in the form of a letter from the board acknowledging that the applicant has met all the requirements of this section. An applicant shall not practice until the authorization letter has been issued.

(3) An individual authorized to practice pursuant to subsection (1) of this section may use the title "APRN Applicant" or "APRN App.".

Section 5. License Renewal. (1) The advanced practice registered nurse license shall expire or lapse when the registered nurse license or privilege expires or lapses.

(2) To be eligible for renewal of the license as an advanced practice registered nurse, the applicant shall:

(a) Renew the registered nurse license or privilege on an active status;

(b) Submit a completed Annual Licensure Renewal Application: RN and APRN or a completed Annual Licensure Renewal Application: APRN with RN Compact License (not Kentucky) form, as applicable, and as required by 201 KAR 20:370, Section 1(1);

(c) Submit the current renewal application fee, as established in 201 KAR 20:240, Section 1(2)(k); and

(d) Maintain current certification by a recognized national certifying organization.

(3) An advanced practice registered nurse who fails to renew the registered nurse license or privilege or is otherwise unable to legally practice as a registered nurse shall not practice as or use the title of advanced practice registered nurse until:

(a) A current active license has been issued by the board or a privilege is recognized by the board; and

(b) The advanced practice registered nurse license has been reinstated.

(4) An advanced practice registered nurse shall provide to the board evidence of current certification by a recognized national certifying organization upon recertification and at the request of the board.

Section 6. License Reinstatement. (1) If a nurse fails to renew the advanced practice registered nurse license as prescribed by KRS 314.042 and this administrative regulation, the license shall lapse on the last day of the licensure period.

(2) To be eligible for reinstatement of the advanced practice registered nurse license, the applicant shall:

(a) Submit a completed Application for Licensure as an Advanced Practice Registered Nurse form as required by 201 KAR 20:370, Section 1(1);

(b) Submit the current reinstatement application fee, as established in 201 KAR 20:240, Section 1(2)(l); and

(c) Maintain current certification by a recognized national

certifying organization and submit evidence of current certification.

(3) If the applicant is applying for reinstatement of a license as an advanced practice registered nurse, the applicant shall also provide a:

(a) Completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is within six (6) months of the date of the application;

(b) Report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;

(c) Certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

(d) Letter of explanation that addresses each conviction, if applicable.

(4) The license shall not be issued until a report is received from the FBI and any conviction is addressed by the board.

Section 7. Certification or Recertification. (1)(a) An advanced practice registered nurse (APRN) shall maintain current certification or recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation throughout the licensure period.

(b) The APRN shall notify the board if certification or recertification has been obtained and to provide evidence of the recertification prior to the expiration date[~~The board shall conduct an audit to verify that an advanced practice registered nurse has met the requirements of subsection (1)(a) of this section~~].

(2)(a) A nurse who fails to attain current, active certification or recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation shall not practice or use the title of advanced practice registered nurse (APRN) until current certification or recertification is obtained.

(b)1. An APRN[~~whose certification or recertification lapses prior to the expiration of the APRN license and~~] who does not provide evidence of current certification or recertification prior to its expiration date[~~after a request by the board~~] shall have the APRN license voided. This action shall not be considered to be a disciplinary action. The board shall send notice to the APRN's address of record that the certification or recertification is about to lapse and a notice if the license has been voided.

2. The APRN may request a hearing on this action by submitting the request in writing. If the action is upheld or not challenged, the APRN may seek reinstatement of the license in accordance with Section 6 of this administrative regulation, except as provided in subparagraph 3 of this paragraph.

3. If, after the APRN license has been voided, the APRN provides evidence of current certification acquired before the certification expiration date and there are no complaints pending against the APRN pursuant to 201 KAR 20:161[~~that the certification had not lapsed~~], then the APRN shall meet the requirements of Section 6 of this administrative regulation except for Section 6(4) of this administrative regulation. A license may be issued prior to receipt of the FBI report.

(3) An advanced practice registered nurse whose certification lapses or is not renewed[~~who is decertified~~] by the appropriate national organization shall:

(a) Notify the board of that fact; and

(b) Not practice as or use the title of advanced practice registered nurse during the period of decertification.

Section 8. (1) An application shall be valid for a period of one (1) year from the date of submission to the board.

(2) After one (1) year from the date of application, the applicant shall be required to reapply.

Section 9. The requirements of this administrative regulation shall not prohibit the supervised practice of a nurse enrolled in:

(1) An accredited educational program for preparation for advanced practice registered nursing; or

(2) An advanced practice registered nurse refresher course.

Section 10. A registered nurse who holds himself or herself out as a clinical nurse specialist or is known as a clinical nurse specialist shall be required to be licensed as an advanced practice registered nurse if his or her practice includes the performance of advanced practice registered nursing[~~procedures~~].

Section 11. A nurse practicing as an advanced practice registered nurse who is not licensed as an advanced practice registered nurse by the board, an advanced practice registered nurse whose practice is inconsistent with the population focus to which he or she has been designated, or an advanced practice registered nurse who does not recertify and continues to practice as an advanced practice registered nurse shall be subject to the disciplinary procedures established in KRS 314.091.

Section 12. Dual designations. (1) An advanced practice registered nurse who wishes to practice in more than one (1) role designation shall complete an accredited educational program of study and clinical experience for each desired designation in compliance with the educational requirements established in KRS Chapter 314 and 201 KAR 20:062 and meet all the requirements for licensure for each designation.

(2) To apply for licensure for more than one (1) role designation, the applicant shall submit a separate application and fee for each desired designation.

(3) To renew each role designation, the APRN shall pay a separate licensure fee as set forth in 201 KAR 20:240, Section 1(2)(k).

(4) For the purposes of Section 7(2)(b) of this administrative regulation, if the APRN does not provide evidence of current recertification in a role designation, then that role designation shall be voided. The license shall not be voided if the other role designation is maintained. All other provisions of Section 7(2)(b) of this administrative regulation shall apply to the voided designation.

(5) Role designations shall be the Certified Registered Nurse Anesthetist, Certified Nurse Midwife, Certified Nurse Practitioner, and Clinical Nurse Specialist pursuant to KRS 314.042.

JIMMY ISENBERG, President

APPROVED BY AGENCY: February 9, 2017

FILED WITH LRC: February 28, 2017 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 25, 2017 at 10:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through April 30, 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, KY 40222, phone (502) 429-3309, fax (502) 564-4251, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for Advanced Practice Registered Nurse (APRN) licensure.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.042.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: This administrative regulation conforms to the content of KRS 314.042 which requires the Board to establish these requirements.

(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 APRN licensure requirements.

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

(a) How the amendment will change this existing administrative regulation: The amendment specifies how an APRN is to inform the Board of their national certification, which is a requirement for licensure. It also specifies what will occur if the APRN fails to provide evidence of certification.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to make these requirements clear to APRNs.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to make these changes.

(d) How the amendment will assist in the effective administration of the statutes: By clarifying the requirements and procedures.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: applicants for APRN licensure, number unknown, and currently licensed APRNs, approximately 7000.

(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:
APRNs will have to provide the Board with evidence of national certification.

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

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

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

(a) Initially: There is no additional cost.

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

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Nursing. KRS 314.131.

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

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:057. Scope and standards of practice of advanced practice registered nurses.

RELATES TO: KRS 218A.205(3)(a), 314.011(7), 314.011(8), 314.042, 314.193(2), 314.196

STATUTORY AUTHORITY: KRS 218A.205(3)(a), 314.131(1), 314.193(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.205(3)(a) requires the Board of Nursing to establish by administrative regulation mandatory prescribing and dispensing standards for licensees authorized to prescribe or dispense controlled substances. KRS 314.131(1) authorizes the board to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.193(2) authorizes the board to promulgate administrative regulations establishing standards for the performance of advanced practice registered nursing to safeguard the public health and welfare. This administrative regulation establishes the scope and standards of practice for an advanced practice registered nurse.

Section 1. Definitions. (1) "Collaboration" means the relationship between the advanced practice registered nurse and a physician in the provision of prescription medication, including both autonomous and cooperative decision-making, with the advanced practice registered nurse and the physician contributing their respective expertise.

(2) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances" or "CAPA-CS" means the written document pursuant to KRS 314.042(10).

(3) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Nonscheduled Legend Drugs" or "CAPA-NS" means the written document pursuant to KRS 314.042(8).

(4) "KASPER" means the Kentucky All Schedule Prescription Electronic Reporting system established in KRS 218A.202.

Section 2. (1) The practice of the advanced practice registered nurse shall be in accordance with the standards and functions defined in scope and standards of practice statements adopted by the board in subsection (2) of this section.

(2) The following scope and standards of practice statements shall be adopted:

(a) AACN Scope and Standards for Acute Care Nurse Practitioner Practice;

(b) AACN Scope and Standards for Acute Care Clinical Nurse Specialist Practice;

(c) Neonatal Nursing: Scope and Standards of Practice;

(d) Nursing: Scope and Standards of Practice;
(e) Pediatric Nursing: Scope and Standards of Practice;
(f) Psychiatric-Mental Health Nursing 2nd Edition: Scope and Standards of Practice;
(g) Scope of Practice for Nurse Practitioners;
(h) Standards of Practice for Nurse Practitioners;
(i) Scope of Nurse Anesthesia Practice;
(j) Standards for Nurse Anesthesia Practice;
(k) Standards for Office Based Anesthesia Practice;
(l) Standards for the Practice of Midwifery;
(m) Statement on the Scope and Standards of Oncology Nursing Practice: Generalist and Advanced Practice; and
(n) The Women's Health Nurse Practitioner: Guidelines for Practice and Education.

Section 3. In the performance of advanced practice registered nursing, the advanced practice registered nurse shall seek consultation or referral in those situations outside the advanced practice registered nurse's scope of practice.

Section 4. Advanced practice registered nursing shall include prescribing medications and ordering treatments, devices, and diagnostic tests which are consistent with the scope and standard of practice of the advanced practice registered nurse.

Section 5. Advanced practice registered nursing shall not preclude the practice by the advanced practice registered nurse of registered nursing practice as defined in KRS 314.011(6).

Section 6. (1)(a) A CAPA-NS and a CAPA-CS shall include the name, address, phone number, and license number of both the advanced practice registered nurse and each physician who is a party to the agreement. It shall also include the specialty area of practice of the advanced practice registered nurse.
(b) Pursuant to KRS 314.196(2), an advanced practice registered nurse shall use the Common CAPA-NS Form.
(2)(a) To notify the board of the existence of a CAPA-NS pursuant to KRS 314.042(8)(b), the APRN shall file with the board the Notification of a Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Nonscheduled Legend Drugs (CAPA-NS).
(b) To notify the board that the requirements of KRS 314.042(9) have been met and that the APRN will be prescribing nonscheduled legend drugs without a CAPA-NS, the APRN shall file the Notification to Discontinue the CAPA-NS After Four Years.
(c) To notify the board of the existence of a CAPA-CS pursuant to KRS 314.042(10)(b), the APRN shall file with the board the Notification of a Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS).
(3) For purposes of the CAPA-NS and the CAPA-CS, in determining whether the APRN and the collaborating physician are qualified in the same or a similar specialty, the board shall be guided by the facts of each particular situation and the scope of the APRN's and the physician's actual practice.
(4)(a) An APRN with a CAPA-CS shall report all of his or her United States Drug Enforcement Agency (DEA) Controlled Substance Registration Certificate numbers to the board when issued to the APRN by mailing a copy of each registration certificate to the board within thirty (30) days of issuance.
(b) Any change in the status of a DEA Controlled Substance Registration Certificate[~~number~~] shall be reported in writing to the board within thirty (30) days.

Section 7. Prescribing medications without a CAPA-NS or a CAPA-CS shall constitute a violation of KRS 314.091(1), except when a CAPA-NS has been discontinued pursuant to KRS 314.042(9) or the provisions of KRS 314.196(4)(b) apply.

Section 8. The board may make an unannounced monitoring visit to an advanced practice registered nurse to determine if the advanced practice registered nurse's practice is consistent with the requirements established by KRS Chapter 314 and 201 KAR Chapter 20, and patient and prescribing records shall be made available for immediate inspection.

Section 9. Prescribing Standards for Controlled Substances. (1)(a) This section shall apply to an APRN with a CAPA-CS if prescribing a controlled substance. It also applies to the utilization of KASPER.
(b) The APRN shall practice according to the applicable scope and standards of practice for the APRN's role and population focus. This section does not alter the prescribing limits set out in KRS 314.011(8).
(2) Prior to the initial prescribing of a controlled substance to a patient, the APRN shall:
(a) Obtain the patient's medical history and conduct an examination of the patient and document the information in the patient's medical record. An APRN certified in psychiatric/mental health shall obtain a medical and psychiatric history, perform a mental health assessment, and document the information in the patient's medical record;
(b) Query KASPER for all available data on the patient and maintain all KASPER report identification numbers and the date of issuance of each KASPER report
in the patient's record;
(c) Make a written treatment plan stating the objectives of the treatment and
further diagnostic examinations required;
(d) Discuss with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate:
1. The risks and benefits of the use of controlled substances, including the risk of tolerance and drug dependence;
2. That the controlled substance shall be discontinued when the condition requiring its use has resolved; and
3. Document that the discussion occurred and obtain written consent for the treatment.
(3) The treatment plan shall include an exit strategy, if appropriate, including potential discontinuation of the use of controlled substances.
(4) For subsequent or continuing long-term prescriptions of a controlled substance for the same medical complaint, the APRN shall:
(a) Update the patient's medical history and document the information in the patient's medical record;
(b) Modify the treatment plan as clinically appropriate; and
(c) Discuss the risks and benefits of any new controlled substances prescribed with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence.
(5) During the course of treatment, the APRN shall query KASPER no less than once every three (3) months for all available data on the patient before issuing a new prescription or a refill for a controlled substance. The APRN shall maintain all KASPER report identification numbers and the date of issuance of each KASPER report in the patient's record.
(6) These requirements may be satisfied by other licensed practitioners in a single group practice if:
(a) Each licensed practitioner involved has lawful access to the patient's medical record;
(b) Each licensed practitioner performing an action to meet these requirements is acting within the scope of practice of his or her profession; and
(c) There is adequate documentation in the patient's medical record reflecting the actions of each practitioner.
(7) If prescribing a controlled substance for the treatment of chronic, noncancer pain, the APRN, in addition to the requirements of this section, shall obtain a baseline drug screen or further random drug screens if the APRN:
(a) Finds a drug screen to be clinically appropriate; or
(b) Believes that it is appropriate to determine whether or not the controlled substance is being taken by the patient.
(8) If prescribing a controlled substance for the treatment of a mental health condition, the APRN shall meet the requirements of

this section.

(9) Prior to prescribing a controlled substance for a patient in the emergency department of a hospital that is not an emergency situation, the APRN shall:

(a) Obtain the patient's medical history, conduct an examination of the patient and document the information in the patient's medical record. An APRN certified in psychiatric/mental health shall obtain a medical and psychiatric history, perform a mental health assessment, and document the information in the patient's medical record;

(b) Query KASPER for all available data on the patient;

(c) Make a written treatment plan stating the objectives of the treatment and further diagnostic examinations required;

(d) Discuss the risks and benefits of the use of controlled substances with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence, and document that the discussion occurred and that the patient consented to the treatment.

(10) For each patient for whom an APRN prescribes a controlled substance, the APRN shall keep accurate, readily accessible, and complete medical records, which include:

(a) Medical history and physical or mental health examination;

(b) Diagnostic, therapeutic, and laboratory results;

(c) Evaluations and consultations;

(d) Treatment objectives;

(e) Discussion of risk, benefits, and limitations of treatments;

(f) Treatments;

(g) Medications, including date, type, dosage, and quantity prescribed;

(h) Instructions and agreements;

(i) Periodic reviews of the patient's file; and

(j) All KASPER report identification numbers and the date of issuance of each KASPER report.

(11) The requirement to query KASPER shall not apply to:

(a) An APRN prescribing or administering a controlled substance immediately prior to, during, or within the fourteen (14) days following an operative or invasive procedure or a delivery if the prescribing or administering is medically related to the operative or invasive procedure or the delivery and the medication usage does not extend beyond the fourteen (14) days;

(b) An APRN prescribing or administering a controlled substance necessary to treat a patient in an emergency situation; or

(c) An APRN prescribing a controlled substance:

1. For administration in a hospital or long-term-care facility with an institutional account, or an APRN in a hospital or facility without an institutional account, if the hospital, long-term-care facility, or licensee queries KASPER for all available data on the patient or resident for the twelve (12) month period immediately preceding the query within twelve (12) hours of the patient's or resident's admission and places a copy of the query in the patient's or resident's medical records during the duration of the patient's stay at the facility;

2. As part of the patient's hospice or end-of-life treatment;

3. For the treatment of pain associated with cancer or with the treatment of cancer;

4. To assist a patient when submitting to a diagnostic test or procedure;

5. Within seven (7) days of an initial prescription pursuant to subsection (1) of this section if the prescribing:

a. Is done as a substitute for the initial prescribing;

b. Cancels any refills for the initial prescription; and

c. Requires the patient to dispose of any remaining unconsumed medication;

6. Within ninety (90) days of an initial prescription pursuant to subsection (1) of this section if the prescribing is done by another licensee in the same practice or in an existing coverage arrangement, if done for the same patient for the same condition;

7. To a research subject enrolled in a research protocol approved by an institutional review board that has an active federal-wide assurance number from the United States Department of Health and Human Services, Office for Human Research Protections if the research involves single, double, or triple blind drug administration or is additionally covered by a certificate of confidentiality from the National Institutes of Health;

8. During the effective period of any disaster or situation with mass casualties that have a direct impact on the APRN's practice;

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

10. That is a Schedule IV controlled substance for no longer than three (3) days for an established patient to assist the patient in responding to the anxiety of a nonrecurring event; or

11. That is classified as a Schedule V controlled substance.

(12) Federal regulation 21 C.F.R. 1306.12(b) concerning the issuance of multiple prescriptions for Schedule II controlled substances shall not be utilized by APRNs in this state.

(13) An APRN may order a reverse KASPER report to review the APRN's prescribing practices and to verify the information contained in KASPER is correct.

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

(a) "AACN Scope and Standards for Acute Care Nurse Practitioner Practice", 2012 Edition, American Association of Critical-Care Nurses;

(b) "AACN Scope and Standards for Acute Care Clinical Nurse Specialist Practice", 2014 Edition, American Association of Critical-Care Nurses;

(c) "Neonatal Nursing: Scope and Standards of Practice", 2013 Edition, American Nurses Association/National Association of Neonatal Nurses;

(d) "Nursing: Scope and Standards of Practice", 2015 Edition, American Nurses Association;

(e) "Pediatric Nursing: Scope and Standards of Practice", 2015 Edition, American Nurses Association/Society of Pediatric Nursing/National Association of Pediatric Nurse Practitioners;

(f) "Psychiatric-Mental Health Nursing 2nd Edition: Scope and Standards of Practice", 2014, American Nurses Association/American Psychiatric Nursing Association;

(g) "Scope of Practice for Nurse Practitioners", 2013 Edition, American Association of Nurse Practitioners;

(h) "Standards of Practice for Nurse Practitioners", 2013 Edition, American Association of Nurse Practitioners;

(i) "Scope of Nurse Anesthesia Practice", 2013 Edition, American Association of Nurse Anesthetists;

(j) "Standards for Nurse Anesthesia Practice", 2013 Edition, American Association of Nurse Anesthetists;

(k) "Standards for Office Based Anesthesia Practice", 2015 Edition, American Association of Nurse Anesthetists;

(l) "Standards for the Practice of Midwifery"; 2011 Edition, American College of Nurse-Midwives;

(m) "Statement on the Scope and Standards of Oncology Nursing Practice: Generalist and Advanced Practice", 2013 Edition, Oncology Nursing Society;

(n) "The Women's Health Nurse Practitioner: Guidelines for Practice and Education", 2014 Edition, Association of Women's Health, Obstetric and Neonatal Nurses/Nurse Practitioners in Women's Health;

(o) "Notification of a Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS)", 12/2014, Kentucky Board of Nursing;

(p) "Notification of a Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Nonscheduled Legend Drugs (CAPA-NS)", 12/2014, Kentucky Board of Nursing;

(q) "Notification to Discontinue the CAPA-NS After Four Years", 8/2015, Kentucky Board of Nursing; and

(r) "Common CAPA-NS Form", 6/2015.

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

JIMMY ISENBERG, President

APPROVED BY AGENCY: February 9, 2017
FILED WITH LRC: February 28, 2017 at 1 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 25, 2017 at 10:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through April 30, 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the scope and standards of practice for Advanced Practice Registered Nurses (APRN).
(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.042.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 314.042 which requires the Board to establish these requirements.
(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 APRN scope and standards of practice.
(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 word "number" from the title of the DEA certificate.
(b) The necessity of the amendment to this administrative regulation: The amendment is necessary since the word is incorrect. The change in status would be to the certificate, not the number.
(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to make these changes.
(d) How the amendment will assist in the effective administration of the statutes: By clarifying the wording.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: currently licensed APRNs, approximately 7000.
(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: APRNs will not need to take any new actions.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost imposed by the amendment.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: There is no additional cost.
(b) On a continuing basis: There is no additional cost.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase is needed.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It does not.
(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Nursing
(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.
(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None
(c) How much will it cost to administer this program for the first year? No additional cost.
(d) How much will it cost to administer this program for subsequent years? No additional cost.
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-):
Expenditures (+/-):
Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(Amendment)

201 KAR 26:125. Health service provider designation.

RELATES TO: KRS 319.050(7)
STATUTORY AUTHORITY: KRS 319.032(2), 319.050(7)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.050(7) requires that the designation of "health service provider" shall be required[~~granted~~] for a licensed psychologist who supervises a psychological health care service. This administrative regulation establishes the requirements for the granting of that designation.

Section 1. (1) The designation "health service provider" shall refer to a licensed psychologist defined in KRS 319.050(7) who is authorized to supervise a certified psychologist, temporarily licensed psychologist, licensed psychological associate, or a graduate-level psychology student[~~, intern, or resident pursuing a~~

~~course of graduate study in psychology~~] in providing[~~delivering~~] psychological health care services.

(2) A licensed psychologist who does not have the designation "health service provider" shall not supervise psychological health care services.

Section 2. Psychological health care services shall include delivery of diagnosis, assessment, psychotherapy, treatment, or other therapeutic services to individuals, couples, families, or groups whose growth, adjustment, or functioning is impaired or who otherwise seek psychological health care services.

Section 3. A health service provider shall be a licensed psychologist who has completed appropriate training and supervised experience in psychological health service delivery at the doctoral level. The training and experience may occur in a variety of psychological health care delivery sites and:

(1) Shall include[~~, in addition to the supervised experience required for licensure as a licensed psychologist,~~] 1,800 hours of supervised experience within one (1) or more health care settings in which the provider delivered direct psychological health care services, pursuant to Section 2 of this administrative regulation, in addition to the 3,600 supervised experience hours required for licensure as a licensed psychologist under 201 KAR 26:190. Supervision shall be provided by a licensed psychologist with the health service provider designation approved by the board and shall consist of one (1) hour of individual supervision each week; or

(2) The licensed psychologist holds the Certificate of Professional Qualification (CPQ) issued by the Association of State and Provincial Psychology Boards (ASPPB) or a successor organization, or is board-certified by the American Board of Professional Psychology (ABPP) or a successor organization, or the licensed psychologist holds a Certificate from the National Register of Health Service Providers in Psychology or a successor organization and has a minimum equivalent of five (5) years of full time practice at the independent practice level and has had no disciplinary action taken by a licensure board or on record in the ASPPB data base.[~~Section 4. A licensed psychologist who does not have the designation "health service provider" shall not supervise psychological health care services.~~

~~Section 5. In addition to completion of a doctoral training program in an area of psychological health service delivery, a candidate for health service provider designation shall complete all supervised experience requirements in a health care setting as established in this administrative regulation, consistent with the requirements of 201 KAR 26:190~~].

JAMIE A. HOPKINS, Ph.D., HSPP, Chairperson

APPROVED BY AGENCY: March 15, 2017

FILED WITH LRC: March 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 25, 2017, at 1:00 p.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. 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 April 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Chessica Nation, Board Administrator, Kentucky Board of Examiners of Psychology, Department of Professional Licensing, 911 Leawood Drive, P. O. Box 1360, Frankfort, Kentucky 40601, phone (502) 782-8812, fax (502) 696-3925, email chessica.nation@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chessica Nation

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the requirements for becoming a health service provider.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the requirements for becoming a health service provider.

(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 continuing education requirement for a credential holder.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the criteria to become a health service provider.

(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 that the 1,800 hours of supervised experience for the health service provider designation is in addition the 3,600 hours required for licensure as a psychologist It also prohibits a temporary licensed psychology or licensed psychologist under supervision to obtain the designation "health service provider from paying, hiring or employing a supervisor.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify that the 1,800 hours of supervised experience for the health service provider designation is in addition the 3,600 hours required for licensure as a psychologist.

(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 equivalent course of study.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the understanding that the 1,800 hours of supervised experience for the health service provider designation is in addition the 3,600 hours required for licensure as a psychologist. It will also clarify the fact that a temporary licensed psychology or licensed psychologist under supervision to obtain the designation "health service provider shall not pay, hire or employ a supervisor.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently nine (9) certified psychologists, seventy-three (73) certified psychologist with autonomous functioning, three hundred forty (340) psychological associates, one hundred thirty (130) psychological practitioners, and nine hundred sixty (960) licensed psychologists. The Board is unsure of the number of possible applicants in the future.

(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 complete a continuing education course on suicide assessment, treatment, and management within the first year of licensure and then every six years thereafter.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will be the charge for the continuing education course.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A credential holder who falls within the allowable exemptions will not be required to take the continuing education course on suicide assessment, treatment, and management.

(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 Examiners of Psychology.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319.032(2), 319.050(7).

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

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

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(Amendment)

201 KAR 26:130. Grievance[~~Complaint~~] procedure.

RELATES TO: KRS 319.005, 319.082, 319.118, 319.990

STATUTORY AUTHORITY: KRS 319.032(1)(k)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(k) requires the board to promulgate regulations that establishes the procedure for investigating complaints or suspected violations of this chapter and notifying proper law enforcement authorities. KRS 319.005 prohibits unlicensed persons from engaging in the practice of psychology or using the title of psychologist, licensed psychologist, certified psychologist, licensed psychological practitioner or licensed psychological associate. KRS 319.082 delineates the causes for which disciplinary action may be taken against a licensed holder. KRS 319.118 authorizes the board to institute and maintain actions to restrain or enjoin violations. KRS 319.990 sets forth the criminal penalty for violations and authorizes prosecution of violators. KRS 319.032 authorizes the board to develop guidelines for use in complaints involving alleged sexual misconduct by a licensed holder, and for training of investigators in these matters. This administrative regulation is established to protect and safeguard the health and safety of the citizens of Kentucky and to provide procedures for filing, evaluating, and disposing of complaints.

Section 1. Definitions. (1) "Act" means Chapter 319 of the Kentucky Revised Statutes.

(2)[~~(4)~~] "Administrative[~~Formal~~] complaint" means a formal administrative pleading authorized by the board that sets forth charges against a licensed holder or applicant and commences a formal disciplinary proceeding in accordance with KRS Chapter 13B.

(3)[~~(2)~~] "Board" is defined in KRS 319.010(2), and for purposes of this administrative regulation, shall also refer to a hearing panel.

(4)[~~(3)~~]"Charge" means a specific allegation contained in any document issued by the board or hearing panel alleging a violation of a specified provision of the KRS Chapter 319 or the administrative regulations promulgated thereunder.

(5) "Grievance[~~Initiating complaint~~]" means any allegation alleging misconduct by a licensed holder or applicant or alleging that an unlicensed person is engaging in the practice of psychology or using the title of psychologist.

(6) "Order" means the whole or any part of a final disposition of a hearing.

(7) "Person" means any individual, partnership, corporation, association, or public or private organization of any character other than an agency.

(8) "Presiding officer" means the person appointed by the board to preside at a hearing pursuant to KRS 319.032(1)(h), and shall include either a hearing officer or a member of the hearing panel.

(9) "Respondent" means the person against whom an initiating or a formal complaint has been made.

Section 2. Grievance[~~Initiating Complaint~~]. (1) Source of grievance[~~initiating complaint~~]. A grievance[~~complaint~~] may be initiated by the board, by the public or by any governmental agency. A certified copy of a court record for a misdemeanor or felony conviction relating to the practice of psychology shall be considered a valid complaint.

(2) Form of a grievance[~~initiating complaint~~]. A grievance [~~initiating complaint~~] shall be in writing and shall clearly identify the person against whom the complaint is being made. Further, the grievance [~~complaint~~] shall contain the date, and shall identify by signature the person making the grievance[~~complaint~~], and shall contain a clear and concise statement of the facts giving rise to the grievance[~~complaint~~].

(3) Receipt of a grievance[~~initiating complaint~~]. A grievance [~~complaint~~] may be received by any board member, credential holder designated by the board, by the Office of the Attorney General, or by any staff member.

(4) Response[~~Reply~~] of respondent. A copy of the grievance [~~initiating complaint~~] shall be mailed to the respondent. The respondent shall file with the board a written response to the initiating complaint within fifteen (15) days of the date on which the grievance[~~initiating complaint~~] was mailed.

(5) Consideration of a grievance[~~initiating complaint~~]. At the next regularly-scheduled meeting of the board or as soon thereafter as practicable, the board or a panel of the board shall review the grievance[~~initiating complaint~~]and response. At that time, the board shall determine if an investigation is warranted, and if so, the board may appoint one (1) of its members or any agent or representative of the board to conduct an investigation of the grievance[~~complaint~~].

(6)[~~(a) If there is reasonable cause to believe that a license holder or applicant for a license is physically or mentally incapable of practicing psychology with reasonable skill and safety to clients,~~

~~the board may order the license holder or applicant to submit to an examination by a psychologist or a physician designated by the board to determine the license holder's or applicant's psychological or physical status to practice psychology.~~

~~(b) The expense of this examination shall be borne by the board.~~

~~(c) The board shall then consider the findings and conclusion of the examination and the final investigative report at its next regularly-scheduled meeting or soon thereafter.~~

~~(7)~~] Investigation.

(a) The person about whom the grievance[~~initiating complaint~~] has been considered shall be contacted. With the consent of the respondent, a meeting may be scheduled at which time he or she may respond further to the allegations of the grievance[~~initiating complaint~~]. The board and the respondent shall have the right to be represented at the meeting by legal counsel.

(b) Report of investigation. Upon the completion of the investigation, the person or persons making that investigation shall submit a written report to the board containing a succinct statement of the facts disclosed by the investigation.

(c) Consideration of grievance[~~complaint~~] and investigative report. Based on consideration of the grievance[~~complaint~~], the investigative report, if any, and the psychological or physical examination, if any, the board shall determine if there has been a prima facie violation of the Act. If the investigator is a member of the board, he or she shall not vote. If it is determined that the facts alleged in the grievance[~~complaint~~] or investigative report do not constitute a prima facie violation of the statute or administrative regulations, the board shall notify the person making the grievance[~~complaint~~] and the respondent that no further action shall be taken at the present time. If it is determined that there is a prima facie violation of KRS 319.082 or administrative regulations, the board shall issue an administrative[~~a formal~~] complaint against the license holder or applicant. In the case of a prima facie violation of KRS 319.005, the board shall file suit to enjoin the violator or shall seek criminal prosecution pursuant to KRS 319.990.

Section 3. Administrative[~~Formal~~] Complaint. If the board determines that the grievance[~~initiating complaint~~] shall be made a formal complaint, the following actions shall be initiated:

(1) Issuance of administrative[~~formal~~] complaint. The board shall provide the respondent with a written administrative[~~formal~~] complaint which shall set forth:

(a) Each offense charged;

(b) Notice of the respondent's right to be represented by counsel;

(c) Notice of the respondent's right to subpoena witnesses in the respondent's behalf; and

(d) Notice of the respondent's right to appeal after an adverse adjudication.

(2) Service of administrative[~~formal~~] complaint. Service of process shall be provided in accordance with KRS 13B.050(2).

(3) Issuance of hearing notice. Notice of the hearing shall be provided as required by KRS 13B.050(1) and (3).

Section 4. Administrative[~~Formal~~] Response. Within twenty (20) days of service of the formal complaint, the respondent shall file with the board a written response to the specific allegations set forth in the administrative[~~formal~~] complaint. Allegations not properly responded to shall be deemed admitted. The board may, for good cause, permit the late filing of a response.

Section 5. Allegations of Sexual Misconduct by a License Holder. (1) To assure confidentiality for the complainant, the alleged victim's name shall not be used in any written document. This individual shall be identified by initials only or by some other mechanism adopted by the board for identification.

(2) Upon request, the testimony of the alleged victim may be taken by deposition in order to assure his or her confidentiality.

(3) To protect the confidentiality of all parties, the board may issue an order restraining all parties and their representatives, including counsel, from any discussion or release of information about the allegations outside of the investigative and hearing processes.

(4) In accordance with the provisions of KRS 319.032(1)(d), the board may hold some or all of the hearing procedures in closed session.

Section 6. Fitness for Duty Examination. (1) If there is reasonable cause to believe that a license holder or applicant for a license is physically or mentally incapable of practicing psychology with reasonable skill and safety to clients, the board may order the license holder or applicant to submit to an examination by a psychologist or other health care provider designated by the board to determine the license holder's or applicant's competence to practice psychology.

(2) The expense of this examination shall be borne by the board.

(3) The board shall then consider the findings and conclusion of the examination.

(4) A copy of the examination shall be mailed to the respondent. The respondent may file with the board a written response to the examination within fifteen (15) days of the date on which the findings and conclusion of the examination was mailed.

(5) Based on consideration of the psychological or physical examination, the board shall determine if there has been a prima facie violation of the Act. If it is determined that the findings and conclusion of the examination do not constitute a prima facie violation of the statute or administrative regulations, the board shall notify the person. If it is determined that there is a prima facie violation of KRS 319.082 or administrative regulations, the board shall issue an administrative complaint against the license holder or applicant.

Section 7. Board Member Training for Cases of Sexual Misconduct. (1) Within six (6) months of their appointment, all board members and investigators shall undergo specialized training to cover the content specified by KRS 319.032(1)(e).

(2) No investigator shall be assigned to cases where sexual misconduct has been alleged until such training has been completed.

(3) Training shall consist of a three (3) hour course which includes the content specified by KRS 319.032 and may be delivered by means of either live presentation, individual tutorial, or videotape.

JAMIE A. HOPKINS, Ph.D., HSPP, Chairperson

APPROVED BY AGENCY: March 15, 2017

FILED WITH LRC: March 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 25, 2017, at 1:00 p.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. 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 April 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Chessica Nation, Board Administrator, Kentucky Board of Examiners of Psychology, Department of Professional Licensing, 911 Leawood Drive, P. O. Box 1360, Frankfort, Kentucky 40601, phone (502) 782-8812, fax (502) 696-3925, email chessica.nation@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chessica Nation

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the procedure for investigating complaints or suspected violations of this chapter and notifying proper law enforcement authorities.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the procedure for investigating complaints or suspected violations of this chapter and notifying proper law enforcement authorities.

(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 continuing education requirement for a credential holder.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the procedure for investigating complaints or suspected violations of this chapter and notifying proper law enforcement authorities.

(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 amends allows the board to order a fitness for duty examination without going through the grievance procedure.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to avoid any delays in the renewal or application process.

(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 equivalent course of study.

(d) How the amendment will assist in the effective administration of the statutes: The amendment is necessary because the board has had several applications, which were delayed, because the board had to go through the grievance process so that a fitness for duty examination could be completed. This delayed the granting of applications and renewals.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently nine (9) certified psychologists, seventy-three (73) certified psychologist with autonomous functioning, three hundred forty (340) psychological associates, one hundred thirty (130) psychological practitioners, and nine hundred sixty (960) licensed psychologists. The Board is unsure of the number of possible applicants in the future.

(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 complete a continuing education course on suicide assessment, treatment, and management within the first year of licensure and then every six years thereafter.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will be the charge for the continuing education course.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A credential holder who falls within the allowable exemptions will not be required to take the continuing education course on suicide assessment, treatment, and management.

(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 Examiners of Psychology.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319.032(1)(k), (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 Examiners of Psychology
(Amendment)

201 KAR 26:140. Procedures for disciplinary hearings.

RELATES TO: KRS 319.092
STATUTORY AUTHORITY: KRS 319.032
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.092 mandates a hearing upon the filing of a grievance[~~complaint~~] alleging a violation of KRS Chapter 319 to be conducted in accordance with the provisions of KRS Chapter 13B. This administrative regulation establishes procedures which supplement the provisions of KRS Chapter 13B.

Section 1. Composition of the Hearing Panel. (1) Disciplinary actions may[~~shall~~] be heard by a hearing panel consisting of either a [~~the~~] hearing officer and at least one (1) board member appointed by the board, or upon unanimous decision of the board, only by a hearing officer.

(2) A board member who has participated in the investigation of a grievance[~~an initiating complaint~~] or who has personal knowledge of the facts giving rise to the grievance[~~complaint~~] or for other reasons is unable to render a fair and impartial decision shall not sit as a member of the panel hearing that particular complaint.

(3) Separation of functions. No member, officer, or employee of the board who is engaged in the performance of investigative or prosecutorial functions for the board in a particular case or a factually related case, shall participate in or advise in the decision of the disciplinary action, except as a witness or counsel in the hearing.

Section 2. Right of Administrative Hearing from a Denial of or Refusal to Renew, or Restore 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.

(2) 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. 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.

(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 3. 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 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 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 notice of revocation shall be effective upon the expiration of the time for the certificate holder to request an appeal.

Section 4. A request for an administrative hearing shall be sent to the Kentucky Board of Examiners of Psychology by mail to P.O. Box 1360, Frankfort, Kentucky 40602 or by hand-delivery to 911 Leawood Drive, Frankfort, Kentucky 40601.

Section 5. An administrative hearing shall be governed in accordance with KRS Chapter 13B.

Section 6. 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 shall be assessed against the licensee or applicant, and the board's attorney fees. In a case of financial hardship, the board may waive all or part of the fee.

Section 7. Hearing Fee. If the board finds against the respondent on any charge, or if the hearing is scheduled at the request of a credential holder or applicant for relief from sanctions previously imposed by the board pursuant to the provisions of KRS Chapter 319, a hearing fee in an amount equal to the costs of stenographic services and the costs of the services of a hearing officer, if any, shall be assessed against the respondent. In case of financial hardship, the board may waive all or part of the fee.

Section 8. Notification of Action Taken. A public notification[~~press release~~] describing all final disciplinary actions taken by the board to suspend, revoke, or refuse to issue or renew a license, restrict, or place a credential holder on probation shall be provided as mandated by federal law, and to the Association for State and Provincial Psychology Boards for publication in their data base[~~, and at least to the newspapers with the largest circulation in Louisville, Lexington, Frankfort, the city of business of the respondent and to the AP wire service. Nothing in this administrative regulation shall be construed to limit KRS 319.092(5)~~].

JAMIE A. HOPKINS, Ph.D., HSPP, Chairperson

APPROVED BY AGENCY: March 15, 2017

FILED WITH LRC: March 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 25, 2017, at 1:00 p.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. 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 April 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Chessica Nation, Board Administrator, Kentucky Board of Examiners of Psychology, Department of Professional Licensing, 911 Leawood Drive, P. O. Box 1360, Frankfort, Kentucky 40601, phone (502) 782-8812, fax (502) 696-3925, email chessica.nation@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chessica Nation

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the procedures that the board will follow in a disciplinary hearing.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the due process procedures that supplement the provisions of KRS Chapter 13B.

(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 continuing education requirement for a credential holder.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in establishing and clarifying the procedure for disciplinary hearings.

(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 establish the due process procedures for a denial of, refusal to renew, or reinstate a license and revocation of probation. It also sets out the scope of what a hearing officer may consider and imposes costs on an individual who fails to reverse the decision of the board on a denial of, refusal to renew, or reinstate a license and revocation of probation. It also amends the requirement that a hearing must always be heard by at least one (1) board member.

(b) The necessity of the amendment to this administrative

regulation: The amendments are necessary to establish due process procedures.

(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 equivalent course of study.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist in establishing and clarifying the procedure and requirements for the denial, renewal, reinstatement, and revocation of a probation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently nine (9) certified psychologists, seventy-three (73) certified psychologist with autonomous functioning, three hundred forty (340) psychological associates, one hundred thirty (130) psychological practitioners, and nine hundred sixty (960) licensed psychologists. The Board is unsure of the number of possible applicants in the future.

(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 complete a continuing education course on suicide assessment, treatment, and management within the first year of licensure and then every six years thereafter.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will be the charge for the continuing education course.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A credential holder who falls within the allowable exemptions will not be required to take the continuing education course on suicide assessment, treatment, and management.

(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 Examiners of Psychology.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319.032.

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 Examiners of Psychology
(Amendment)

201 KAR 26:145. Code of conduct.

RELATES TO: KRS 319.032, 319.082

STATUTORY AUTHORITY: KRS 319.032(1)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(c) requires the board to establish requirements for disciplining a credential holder of this board, whether a licensed psychologist, certified psychologist, certified psychologist with autonomous functioning, licensed psychological practitioner, licensed psychological associate, an applicant or a holder of a temporary license. This administrative regulation establishes a code of conduct for a person practicing psychology.

Section 1. Definitions. (1) "Client" means a person who meets the requirements established in Section 2 of this administrative regulation.

(2) "Confidential information" means information revealed by a client or clients or otherwise obtained by a credential holder in a professional relationship

(3) "Court order" means the written or oral communication of a member of the judiciary, or other court magistrate or administrator, if the authority has been lawfully delegated to the magistrate or administrator.

(4) "Credential holder" is defined by KRS 319.010(3).

(5) "Professional relationship" means a mutually agreed upon relationship between a credential holder and a client for the purpose of the client obtaining the credential holder's professional expertise.

(6) "Professional service" means all actions of the credential holder in the context of a professional relationship with a client.

(7) "Supervisee" means a person who functions under the extended authority of the credential holder to provide psychological services.

Section 2. Responsibility to Clients. (1) A credential holder shall promote the well-being of a client and, if required by law, the safety and well-being of an individual whose life might be affected by the client's behavior or circumstance.

(2) A credential holder shall not verbally abuse or harass or physically threaten or assault a client, supervisee, board member, or agent of the board.

Section 3. [2.] Client Requirements. (1) Identification of a client. A client shall be a person who receives:

(a) An evaluation, assessment, or psychological testing;

(b) Other professional psychological services for the treatment or amelioration of an emotional, mental, nervous, addictive or behavioral disorder or distress, or a mental health condition; or

(c) Psychological consultation in the context of a professional relationship.

(2) A corporate entity or other organization shall be considered the client if the professional contract is to provide a psychological service of benefit to the corporate entity or organization.

(3) A legal guardian of a minor or legally incompetent adult shall be considered the client for a decision-making purposes.

(4) A person identified as a client pursuant to subsections (1)-(3) of this section shall be deemed to continue to be a client for a period of two (2) years following the last date of service rendered to the person.

Section 4.[~~3.~~] Competence. (1) Limits on practice. The credential holder shall limit practice and supervision to the areas of competence in which proficiency has been gained through education, training, and experience.

(2) Maintaining competency. The credential holder shall maintain current competency in the areas in which he or she practices, through continuing education, consultation, or other procedures, in conformance with current standards of scientific and professional knowledge.

(3) Adding new services and techniques. The credential holder, if developing competency in a service or technique that is new either to the credential holder or new to the profession, shall engage in ongoing consultation with other psychologists or relevant professionals and shall obtain appropriate education and training. The credential holder shall inform a client of the innovative nature and the known risks associated with the service, so that the client can exercise freedom of choice concerning the service.

(4) Referral. The credential holder shall make or recommend referral to other professional, technical, or administrative resources if a referral is clearly in the best interests of the client.

(5) Sufficient professional information. A credential holder rendering a formal professional opinion in a report, letter, or testimony about a person shall not do so without direct and substantial professional contact with or a formal assessment of that person.

(6) Maintenance and retention of records.

(a) The credential holder rendering professional services to an individual client, or services billed to a third-party payor, shall maintain professional records that include:

1. The presenting problem, purpose or diagnosis;

2. The fee arrangement;

3. The date and substance of each professional contact or service;

4. Test results or other evaluative results obtained and the basic test data from which the results were derived;

5. Notation and results of a formal consult with another provider; and

6. A copy of all test or other evaluative reports prepared as part of the professional relationship.

(b) The credential holder shall ensure that all records are maintained for a period of not less than six (6) years after the last date that services were rendered.

(c) The credential holder shall store and dispose of written, electronic and other records in a manner which shall ensure their confidentiality.

(d) For each person supervised pursuant to KRS Chapter 319, the credential holder shall maintain for a period of not less than six

(6) years after the last date of supervision a record of each supervisory session that shall include the type, place, date, and general content of the session.

(7) Continuity of care. The credential holder shall make arrangements for another appropriate professional or professionals to provide for an emergency need of a client, as appropriate, during a period of his or her foreseeable absence from professional availability.

Section 5.[~~4.~~] Impaired Objectivity and Dual Relationships. (1) Impaired credential holder.

(a) The credential holder shall not undertake or continue a professional relationship with a client if the objectivity or competency of the credential holder is impaired due to a mental, emotional, physiologic, pharmacologic, or substance abuse condition.

(b) If an impairment develops after a professional relationship has been initiated, the credential holder shall:

1. Terminate the relationship in an appropriate manner;

2. Notify the client in writing of the termination; and

3. Assist the client in obtaining services from another professional.

(2) Prohibited dual relationships.

(a) The credential holder shall not undertake or continue a professional relationship with a client if the objectivity or competency of the credential holder is impaired because of the credential holder's present or previous familial, social, sexual, emotional, financial, supervisory, administrative, or legal relationship with the client or a relevant person associated with or related to the client.

(b) The credential holder, in interacting with a client, shall not:

1. Engage in verbal or physical behavior toward the client which is sexually seductive, demeaning, or harassing;

2. Engage in sexual intercourse or other physical intimacy with the client; or

3. Enter into a potentially exploitative relationship with the client.

(c) The prohibitions established in paragraph (b) of this subsection shall extend indefinitely if the client is clearly vulnerable, by reason of emotional or cognitive disorder, to exploitative influence by the credential holder.

(8) A credential holder shall not engage in the practice of psychology if under the influence of alcohol, another mind-altering or mood-altering drug, or physical or psychological illness which impairs delivery of the services.

Section 6.[~~5.~~] Client Welfare. (1) Providing explanation of procedures. The credential holder shall give a truthful, understandable, and appropriate account of the client's condition to the client or to those responsible for the care of the client. The credential holder shall keep the client fully informed as to the purpose and nature of an evaluation, treatment, or other procedure, and of the client's right to freedom of choice regarding services provided.

(2) Termination of services.

(a) If professional services are terminated, the credential holder shall offer to assist the client in obtaining services from another professional.

(b) The credential holder shall:

1. Terminate a professional relationship if the client is not benefiting from the services; and

2. Prepare the client appropriately for the termination.

(3) Stereotyping. The credential holder shall not impose on the client a stereotype of behavior, values, or roles related to age, gender, religion, race, disability, nationality, sexual preference, or diagnosis which would interfere with the objective provision of psychological services to the client.

(4) Solicitation of business by clients. The credential holder providing services to an individual client shall not induce that client to solicit business on behalf of the credential holder.

(5) Referrals on request. The credential holder providing services to a client shall make an appropriate referral of the client to another professional if requested to do so by the client.

Section 7.[~~6.~~] Welfare of Supervisees and Research Subjects. (1) Welfare of supervisees. The credential holder shall not exploit a supervisee.

(2) Welfare of research subjects. The credential holder shall respect the dignity and protect the welfare of his or her research subjects, and shall comply with all relevant statutes and administrative regulations concerning treatment of research subjects.

Section 8.[~~7.~~] Protecting the Confidentiality of Clients. (1) General. The credential holder shall safeguard the confidential information obtained in the course of practice, teaching, research, or other professional services. Except as provided in this section, the credential holder shall obtain the informed written consent of the client prior to disclosing confidential information.

(2) Disclosure without informed written consent. The credential

holder shall disclose confidential information without the informed consent of the client if the credential holder has a duty to warn an intended victim of the client's threat of violence pursuant to KRS 202A.400 or 645.270.

(3) Disclosure if the client is a corporation or other organization. If the client is a corporation or other organization, the requirements for confidentiality established in this section shall:

(a) Apply to information that pertains to:

1. The corporation or organization; or

2. An individual, including personal information, if the information is obtained in the proper course of the contract; and

(b) Not apply to personal information concerning an individual if the individual had a reasonable expectation that the information was:

1. Obtained in a separate professional relationship between the credential holder and the individual; and

2. Subject to the confidentiality requirements established in this section.

(4) Services involving more than one (1) interested party. If more than one (1) party has an appropriate interest in the professional services rendered by the credential holder to a client or clients, the credential holder shall clarify to all parties prior to rendering the services the dimensions of confidentiality and professional responsibility that shall pertain in the rendering of services.

(5) Multiple clients. If service is rendered to more than one (1) client during a joint session, the credential holder shall at the beginning of the professional relationship clarify to all parties the manner in which confidentiality shall be handled.

(6) Legally dependent clients. At the beginning of a professional relationship the credential holder shall inform a client who is below the age of majority or who has a legal guardian, of the limit the law imposes on the right of confidentiality with respect to his or her communications with the credential holder.

(7) Limited access to client records. The credential holder shall limit access to client records to preserve their confidentiality and shall ensure that all persons working under the credential holder's authority comply with the requirements for confidentiality of client material.

(8) Release of confidential information. The credential holder shall release confidential information upon court order or to conform with state law, including KRS 422.317, or federal law or regulation.

(9) Reporting of abuse or neglect of children and [~~vulnerable~~] adults. The credential holder shall be familiar with the relevant law concerning the reporting of abuse or neglect of children and [~~vulnerable~~] adults, and shall comply with those laws, including KRS 620.030 and KRS 209A030.

(10) Discussion of client information among professionals. If rendering professional services as part of a team or if interacting with other appropriate professionals concerning the welfare of the client, the credential holder may share confidential information about the client if the credential holder takes reasonable steps to ensure that all persons receiving the information are informed about the confidential nature of the information and abide by the rules of confidentiality.

(11) Disguising confidential information. If case reports or other confidential information is used as the basis of teaching, research, or other published reports, the credential holder shall exercise reasonable care to ensure that the reported material is appropriately disguised to prevent client identification.

(12) Observation and electronic recording. The credential holder shall ensure that diagnostic interviews or therapeutic sessions with a client are observed or electronically recorded only with the informed written consent of the client.

(13) Confidentiality after termination of professional relationship. The credential holder shall continue to treat as confidential information regarding a client after the professional relationship between the credential holder and the client has ceased.

Section 9.[~~8.~~] Representation of Services. (1) Display of credentials. The credential holder shall display his or her current credential to practice psychology on the premises of his or her professional office.

(2) Misrepresentation of qualifications. The credential holder shall not misrepresent directly or by implication his or her professional qualifications such as education, experience, or areas of competence.

(3) Misrepresentation of affiliations. The credential holder shall not misrepresent directly or by implication his or her affiliations, or the purposes or characteristics of institutions and organizations with which the credential holder is associated.

(4) False or misleading information. The credential holder shall not include false or misleading information in a public statement concerning professional services offered.

(5) Misrepresentation of services or products. The credential holder shall not associate with or permit his or her name to be used in connection with a service or product in a way which misrepresents:

(a) The service or product;

(b) The degree of his or her responsibility for the service or product; or

(c) The nature of his or her association with the service or product.

(6) Correction of misrepresentation by others. The credential holder shall correct others who misrepresent the credential holder's professional qualifications or affiliations.

Section 10.[~~9.~~] Disclosure of Cost of Services. The credential holder shall not mislead or withhold from a client, prospective client, or third party payor, information about the cost of his or her professional services.

Section 11.[~~10.~~] Assessment Procedures. (1) Confidential information. The credential holder shall treat as confidential assessment results or interpretations regarding an individual.

(2) Protection of integrity of assessment procedures. The credential holder shall not disseminate a psychological test in a way that may invalidate it.

(3) Information for professional users. The credential holder offering an assessment procedure or automated interpretation service to another professional shall accompany this offering by a manual or other printed material which describes the development of the assessment procedure or service, the rationale, evidence of validity and reliability, and characteristics of the normative population. The credential holder shall state the purpose and application for which the procedure is recommended and identify special qualifications required to administer and interpret it properly. The credential holder shall ensure that advertisements for the assessment procedure or interpretive service are factual.

Section 12.[~~11.~~] Aiding Illegal Practice. (1) Delegating professional responsibility. The credential holder shall not delegate professional responsibilities to a person not appropriately credentialed or otherwise appropriately qualified to provide psychological services.

(2) Providing supervision. The credential holder shall exercise appropriate supervision over a supervisee, as required by 201 KAR 26:171.

JAMIE A. HOPKINS, Ph.D., HSPP, Chairperson

APPROVED BY AGENCY: March 15, 2017

FILED WITH LRC: March 15, 2017 at

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 25, 2017, at 1:00 p.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. 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 April 30, 2017. Send written notification of

intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Chessica Nation, Board Administrator, Kentucky Board of Examiners of Psychology, Department of Professional Licensing, 911 Leawood Drive, P. O. Box 1360, Frankfort, Kentucky 40601, phone (502) 782-8812, fax (502) 696-3925, email chessica.nation@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chessica Nation

(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 continuing education requirement for a credential holder.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation expands and clarifies the code of ethics that a credential holder is expected to maintain in his or her practice of psychology.

(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 expand the code of ethics to explicitly prohibit a credential folder from: (1) verbally abusing or harassing or physically threatening or assaulting a client, supervisee, board member, or agent of the board; (2) engaging in the practice of psychology if under the influence of alcohol, another mind-altering or mood-altering drug, or physical or psychological illness which impairs delivery of the services; and (3) expanding the requirements to expedite and ensure the continuity of care and services of a client.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to clarify the behavioral expectations of credential holders in their practice of psychology.

(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 equivalent course of study.

(d) How the amendment will assist in the effective administration of the statutes: This regulation expands and clarifies the code of ethics to include recent incidents that the board had to address.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently nine (9) certified psychologists, seventy-three (73) certified psychologist with autonomous functioning, three hundred forty (340) psychological associates, one hundred thirty (130) psychological practitioners, and nine hundred sixty (960) licensed psychologists. The Board is unsure of the number of possible applicants in the future.

(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 complete a continuing education course on suicide assessment, treatment, and management within the first year of licensure and then every six years thereafter.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will be the charge for the continuing education course.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A credential holder who falls within the allowable exemptions will not be required to take the continuing education course on suicide assessment, treatment, and management.

(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 Examiners of Psychology.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319.032(1)(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. 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 Examiners of Psychology
(Amendment)

201 KAR 26:155. Licensed psychologist: application procedures and temporary license.

RELATES TO: KRS 319.050

STATUTORY AUTHORITY: 319.032(1)(a), (c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(a) and (c) require the board to promulgate administrative regulations establishing the requirements for an

applicant for licensure as a psychologist. This administrative regulation establishes the requirements for applicants for licensure, and the conditions for a temporary license.

Section 1. Application. (1) An application for a credential as a licensed psychologist and for temporary licensure may be submitted after the requirements established in KRS 319.050(2) are met.

(2) The application required by subsection (1) or (2) of this section shall be made by submitting a completed Application for Licensure as a Psychologist[~~Form Psy-1~~] to the board. The application shall:

(a) Include a certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief; and

2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and

(b) Be accompanied by:

1. A check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 26:160;

2. Three (3) recommendations[~~letters of reference~~] from persons qualified to evaluate the applicant's professional ability within five (5) years from the date of application, including two (2) persons who have received a doctorate in psychology (Ph.D. PsyD., Ed.D.). The recommendations shall be submitted on the Recommendation for Licensure as a Psychologist form; and

3. An official transcript for all levels of education required for licensure.

Section 2. Temporary Licensure. (1) Pending successful completion of required examinations, an applicant may request permission to practice psychology at the doctoral level on a temporary basis pursuant to KRS 319.050(3). The request for a temporary credential shall be cosigned by the candidate and the proposed supervisor, who shall be a licensed psychologist approved by the board.

(2) Supervision during the period of temporary licensure shall be a minimum of one (1) hour of individual, face-to-face supervision on a weekly basis.

(3) A report of supervision shall be submitted on a regular basis as required by 201 KAR 26:171, Section 6.

(4) The candidate shall take the national EPPP within one (1) year of the board's written approval of temporary licensure.

(5) The period of temporary licensure shall be terminated upon successful completion of all credentials and examination procedures or upon the earliest of the following:

(a) The candidate's failure to pass the EPPP within one (1) year of the date of the board's approval for temporary license;[~~.~~]

(b) The candidate's failure to pass the examinations on psychological practice, ethical principles, and the law within one (1) year of completion of the required supervised experience; and[~~.~~]

(c) The passage of two (2) years from issuance.

(6) (a) Under exceptional circumstances and upon written request cosigned by the board approved supervisor, the board may [~~shall~~] approve an extension of the period of temporary licensure.

(b) A licensee shall submit a completed Request for Extension of Temporary Licensure as a Psychologist to request an extension.

Section 3. (1) An individual who submits an application required by Section 1(1) or (2) of this administrative regulation and has been approved by another state to take the EPPP shall submit:

(a). The official notice of the results of the EPPP from the state board that approved to take the EPPP; or

(b) a request to ASPPB to release the results of the EPPP to the board and notify the board of the submission of the request.

(2) The applicant shall submit the official notice or notification of the request to ASPPB to the board within thirty (30) days of taking the examination.

Section 4. Grace Period for Submission of Credentials. In order to allow for processing of the candidate's materials by the board, there shall be a grace period not to exceed sixty (60) days within which candidates who have completed their degree requirements may begin to practice psychology under supervision of a board-approved supervisor, as established in 201 KAR 26:190.

(1) Upon acceptance of employment or the beginning of the required period of supervision, the candidate and the licensed psychologist who shall serve as his or her supervisor shall immediately submit a letter of notice to the board indicating that he or she has begun to practice in Kentucky and that application materials are forthcoming. Failure to submit this notice shall be deemed as grounds for disciplinary action against the candidate and the supervisor.

(2) It is the responsibility of the candidate to ensure that all materials are forwarded to the board within thirty (30) days from the date of employment or supervision. Once the application is complete, the board shall review the material at its next scheduled meeting and, if appropriate, issue either a temporary or permanent credential. If the candidate does not meet the requirements for the credential, or if their application material is insufficient to take any action, he or she shall be notified by the board and directed to cease practice until the requirements are met or the necessary documentation has been submitted.

(3) Under no circumstances shall the grace period be extended beyond sixty (60) days. Candidates who fail to achieve approval within this timeframe shall not practice psychology until credentialed by the board.

(4) Upon filing the notice set forth in Section 3(1) of this administrative regulation, the candidate is deemed to be practicing psychology under the jurisdiction of the board, and shall comply with KRS Chapter 319 and 201 KAR Chapter 26.

Section 5. Incomplete Application. An incomplete application shall be denied two (2) years from the date of filing.

Section 6. Incorporation by Reference. (1) The following material[~~"Form Psy 1", (January 2002 edition),~~] is incorporated by reference:[~~.~~]

(a) "Application for Licensure as a Psychologist", February, 2017;

(b) "Recommendation for Licensure as a Psychologist", February, 2017; and

(c) "Request for Extension of Temporary Licensure as a Psychologist", February, 2017.

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

JAMIE A. HOPKINS, Ph.D., HSPP, Chairperson

APPROVED BY AGENCY: March 15, 2017

FILED WITH LRC: March 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 25, 2017, at 1:00 p.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. 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 April 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Chessica Nation, Board Administrator, Kentucky Board of Examiners of Psychology, Department of Professional Licensing, 911 Leawood Drive, P. O. Box 1360, Frankfort, Kentucky 40601, phone (502) 782-8812, fax (502) 696-3925, email chessica.nation@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chessica Nation

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the procedures and requirements to obtain a temporary license or full license as a licensed psychologist.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the documents that an applicant must submit for a temporary or full license, and the procedures if applying for a temporary license.

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists an applicant with providing notice of what an applicant must submit for a temporary or full license, and the procedures if applying for a temporary 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 establish: (1) a five year period that a person who recommends another to have experience to evaluate the applicant; (2) a recommendation form; 3) establishes a grace period for a temporary license; (3) an automatic denial of an incomplete application after two years of date of filing; and (4) prohibits a temporary licensed psychologist from paying, hiring, or employing a supervisor.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to address recent issues with applications submitted to the board and new procedures in place.

(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 equivalent course of study.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist an applicant with knowing: (1) from whom to request a recommendation; (2) what application or form to use; (3) of a grace period; (4) that after two years, an incomplete application is denied; (5) he or she is prohibited from paying, hiring, or employing a supervisor.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently nine (9) certified psychologists, seventy-three (73) certified psychologist with autonomous functioning, three hundred forty (340) psychological associates, one hundred thirty (130) psychological practitioners, and nine hundred sixty (960) licensed psychologists. The Board is unsure of the number of possible applicants in the future.

(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 complete a continuing education course on suicide assessment, treatment, and management within the first year of licensure and then every six years thereafter.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will be the charge for the continuing education course.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A credential holder who falls within the allowable exemptions will not be required to take the continuing education course on suicide assessment, treatment, and management.

(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 Examiners of Psychology.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: 319.032(1)(a), (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. 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 Examiners of Psychology
(Amendment)

201 KAR 26:160. Fee schedule.

RELATES TO: KRS 319.050(2)(a), 319.064(1)(a), 319.071(1)

STATUTORY AUTHORITY: KRS 319.032(1)(n), 319.071(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.050(2)(a) and 319.064(1)(a) require an applicant to pay a fee for applying for licensure. KRS 319.071(1) requires a credential holder to pay a renewal fee established by the board. KRS 319.032(1)(n) requires the board to promulgate administrative regulations increasing or decreasing the fees for an applicant or credential holder as the board deems necessary. This

administrative regulation establishes the application and renewal fees for credential holders.

Section 1. (1) Except as provided in subsection (3) of this section, an applicant for licensure as a psychologist shall pay the following:

(a) A $100 nonrefundable application review fee;

(b) The fee for taking the EPPP, which shall be paid directly to the ASPPB examination contractor;

(c) A $100 nonrefundable fee for taking the structured oral examination.

(2) Except as provided in subsection (3) of this section, an applicant for licensure as a psychological associate shall pay the following:

(a) A $100 nonrefundable application review fee;

(b) The fee for taking the EPPP, which shall be paid directly to the ASPPB examination contractor;

(3) The examination fee established in subsection (1)(b) or (2)(b) of this section shall be waived if a candidate has:

(a) Previously taken the EPPP in another state; and

(b) Achieved a score which would be considered as passing in Kentucky.

(4) Upon successful completion of the application and examination processes, the initial licensure fees shall be as follows:

(a) An applicant for licensure as a psychologist or psychological practitioner shall pay $250 for the first three (3) year period;

(b) An applicant for licensure as a psychological associate shall pay $200 for the first three (3) year period.

(5) Every three (3) years a licensed psychologist, certified psychologist with autonomous functioning, or licensed psychological practitioner shall pay to the board a renewal fee of $450.

(6) Every three (3) years a certified psychologist or licensed psychological associate shall pay to the board a renewal fee of $300.

Section 2. The late renewal fee for late renewal during the three (3) month period shall be seventy-five (75) dollars.

Section 3. The reinstatement fee for licensure shall be $100.

Section 4. The fee for registration as a nonresident psychologist shall be $100.

Section 5.[3.] (1) If the applicant fails the Examination for Professional Practice in Psychology (EPPP) and applies to retake this examination, the applicant shall submit the examination fee as established by the ASPPB examination contractor directly to the contractor.

(2) If the applicant fails the structured oral examination and applies to retake this examination, the fee shall be fifty (50) dollars.

(3) An application for licensure by reciprocity shall be accompanied by a fee of $100.

Section 6.[3.] (1) The board may refund the fee for the EPPP and the fee for the structured oral examination, if applicable, if an application was:

(a) Approved; and

(b) Withdrawn prior to the applicant taking the examination for professional practice in psychology.

(2) The board shall refund the fee for the EPPP or the structured oral examination, if applicable, if the application to sit for the examination is denied.

JAMIE A. HOPKINS, Ph.D., HSPP, Chairperson

APPROVED BY AGENCY: March 15, 2017

FILED WITH LRC: March 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 25, 2017, at 1:00 p.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. 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 April 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Chessica Nation, Board Administrator, Kentucky Board of Examiners of Psychology, Department of Professional Licensing, 911 Leawood Drive, P. O. Box 1360, Frankfort, Kentucky 40601, phone (502) 782-8812, fax (502) 696-3925, email chessica.nation@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chessica Nation

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation established the application, renewal, and examination fees.

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

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation informs applicants and licensees the fees required to obtain and maintain a license.

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

(a) How the amendment will change this existing administrative regulation: The amendment establishes a reinstatement fee and penalty associated with filing a late renewal application.

(b) The necessity of the amendment to this administrative regulation: The board is receiving numerous applications after the renewal date but during the grace period.

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

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in having applicants submit a timely renewal application without having to face a reinstatement fee and penalty associated with filing a late renewal application.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently nine (9) certified psychologists, seventy-three (73) certified psychologist with autonomous functioning, three hundred forty (340) psychological associates, one hundred thirty (130) psychological practitioners, and nine hundred sixty (960) licensed psychologists. The Board is unsure of the number of possible applicants in the future.

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

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

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

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): Applicants and licensees are informed that the fees are non-refundable.

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

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

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

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319.032(1)(n), 319.071(1).

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

201 KAR 26:165. Inactive status.

RELATES TO: KRS 319.071

STATUTORY AUTHORITY: KRS 319.032

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.071(3) authorizes the board to grant inactive status for a credential holder for a period of up to three (3) consecutive years. This administrative regulation establishes the requirements for inactive status.

Section 1. Inactive status may be granted to a credential holder pursuant to KRS 319.071(3) by submitting a completed Request for Change of License Status. (1) The credential holder shall be relieved of his or her obligation to pay the renewal fee and of maintaining supervision of his or her practice, but shall continue to meet the requirements for continuing education.

(2) The credential holder may return to active status within the three (3) year period upon:

(a) Notification to the board;

(b) Payment of the current renewal fee;

(c) Resumption of any required supervisory relationship with a supervisor acceptable to the board; and

(d) Demonstration of compliance with all continuing education requirements during the period of inactive status.

(3) The three (3) consecutive year period of inactive status shall begin at the date of expiration of the current period of licensure.

(4) If the credential holder does not reactivate his or her credential at the end of the three (3) year period of inactive status, then the credential shall be forfeited and the credential holder shall make a new application to the board and be reexamined by the board before a new credential may be issued. If the credential holder returns to active status within the three (3) year period, his or her new renewal date shall be the date of return to active status.

(5) A credential holder shall submit a Request for Change of License Status form to be reinstated from an inactive status.

Section 2. Incorporation by Reference. (1) "Request for Change of License Status", February, 2017, is incorporated by reference.

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

JAMIE A. HOPKINS, Ph.D., HSPP, Chairperson

APPROVED BY AGENCY: March 15, 2017

FILED WITH LRC: March 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 25, 2017, at 1:00 p.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. 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 April 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Chessica Nation, Board Administrator, Kentucky Board of Examiners of Psychology, Department of Professional Licensing, 911 Leawood Drive, P. O. Box 1360, Frankfort, Kentucky 40601, phone (502) 782-8812, fax (502) 696-3925, email chessica.nation@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chessica Nation

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the procedures that the board will follow in a disciplinary hearing.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the due process procedures that supplement the provisions of KRS Chapter 13B.

(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 continuing education requirement for a credential holder.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in establishing and clarifying the procedure for disciplinary hearings.

(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 incorporates a new form for an individual to use to be placed on inactive status and reinstated from inactive status.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to standardize the process to be placed on inactive status and reinstated from inactive status.

(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 equivalent course of study.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the processing of a request to be placed on inactive status and reinstated from inactive status.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently nine (9) certified psychologists, seventy-three (73) certified psychologist with autonomous functioning, three hundred forty (340) psychological associates, one hundred thirty (130) psychological practitioners, and nine hundred sixty (960) licensed psychologists. The Board is unsure of the number of possible applicants in the future.

(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 complete a continuing education course on suicide assessment, treatment, and management within the first year of licensure and then every six years thereafter.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will be the charge for the continuing education course.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A credential holder who falls within the allowable exemptions will not be required to take the continuing education course on suicide assessment, treatment, and management.

(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 Examiners of Psychology.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319.032.

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 Examiners of Psychology
(Amendment)

201 KAR 26:171. Requirements for supervision.

RELATES TO: KRS 319.032(1)(l), 319.050(3), (6), 319.056(4), 319.064(3), (4), 319.082(1), 319.092(3)(d), 319.118(1)

STATUTORY AUTHORITY: KRS 319.032(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(a) requires the board to promulgate an administrative regulation governing the supervision of a certified psychologist, licensed psychological associate, candidate for licensure, or a credential holder sanctioned by the board. This administrative regulation establishes the requirements for supervision.

Section 1. Except as provided in Section 15 of this administrative regulation, a supervisory arrangement shall have the prior approval of the board, with both supervisor and supervisee petitioning the board in writing. The supervisor and supervisee shall submit a Request for Change of Supervisor and/or Frequency to the board the description of the supervisory arrangement or a change in the supervisory arrangement at least thirty (30) days prior to the effective date of the arrangement or change.

Section 2. (1) All supervision requirements shall:

(a) Be met with individual, face-to-face, weekly contact between supervisor and supervisee except as provided in subsection (2) of this section and Sections 12 and 15 of this administrative regulation; and

(b) Include additional supervision sessions as needed.

(2) An alternative format of supervision, including two (2) way interactive video, may be substituted for the supervisory contact, required by subsection (1) of this section, upon specific approval by the board.

Section 3. (1) A certified psychologist or licensed psychological associate may petition the board to be relieved of his or her obligation to maintain supervision during which period he or she

shall not practice psychology.

(2) The certified psychologist or licensed psychological associate shall obtain a supervisor approved by the board before the resumption of practice.

(3) Upon resumption of practice, the certified psychologist or licensed psychological associate shall document compliance with continuing education requirements and shall report on their activities and employment related to psychology during the period without supervision.

Section 4. (1) A licensed psychologist with health service provider designation who has been approved by the board as a supervisor shall attend a board approved training session in supervisory practices within twelve (12) months of obtaining approval as a supervisor.

(2) A board approved supervisor shall obtain a minimum of three (3) continuing education hours in supervision theory or techniques in each three (3) year renewal cycle as required by 201 KAR 26:175, Section 1(3). The board shall suspend its approval of a supervisor if the supervisor does not complete the required continuing education.

Section 5. (1) The supervisor shall make all reasonable efforts to be assured that each supervisee's practice is in compliance with this administrative regulation.

(2) The supervisor shall report to the board an apparent violation of KRS 319.082(1) on the part of the supervisee.

(3) The supervisor shall inform the board immediately of a change in the ability to supervise, or in the ability of a supervisee to function in the practice of psychology in a competent manner.

(4) The supervisor shall control, direct, or limit the supervisee's practice as appropriate to insure that the supervisee's practice of psychology is competent.

(5) The supervisor of record shall be responsible for the practice of psychology by the supervisee. If the board initiates an investigation concerning a supervisee, the investigation shall include the supervisor of record.

(6) For each person supervised pursuant to KRS 319.050(3), (6), 319.056(3), (4), 319.064(2), (4), or 319.092(3)(d), the supervisor shall maintain a record of each supervisory session that shall include the type, place, and general content of the session. This record shall be maintained for a period of not less than six (6) years after the last date of supervision.

Section 6. (1) In calculating the amount of time spent in full-time practice while under supervision, 1,800 hours of supervised practice shall be equivalent to one (1) year of experience.

(2) The supervisor shall submit a Supervisory Report[~~provide reports~~] to the board of the supervision of each supervisee according to the following schedule:

Credential Status	Reporting Period	Report Due Date(s)
(a) Licensed psychological associate or certified psychologist with 4 or more years of full-time practice, or its equivalent	Every 2 years (with prior board approval)	Anniversary date of supervisee's licensure
(b) Licensed psychological associate or certified psychologist with fewer than 4 years of full-time practice, or its equivalent	Yearly	Anniversary date of supervisee's licensure
(c) Temporarily licensed psychologist	Every 6 months and 1 month prior to structured exam	
(d) Temporarily licensed psychological associate	Every 6 months	
(e) Sanctioned license holder	Quarterly	January, April, July, and October 15th

(3) The report shall include:

(a) A description of the frequency, format and duration of supervision;

(b) An assessment of the functioning of the supervisee, including the strengths and weaknesses; and

(c) Other information which may be relevant to an adequate assessment of the practice of the supervisee.

Section 7. (1) If a supervisee has more than one (1) board-approved supervisor, the supervisors shall be in direct contact with one another at least once every six (6) months, and they shall provide Supervisory Plans and Goals[~~reports~~] to the board and copies to one another.

(2) A request to have more than two (2) supervisors at one (1) time shall require a special application to the board which shall include detailed information as to how the supervisors shall communicate and coordinate with each other in providing the required supervision.

Section 8. If the supervisee is a licensed psychological associate or a certified psychologist with less than four (4) years of full-time, postlicensure practice, or its equivalent, or a licensure candidate with temporary permission to practice, the supervisor of record shall:

(1) Read and countersign all psychological assessments;

(2) Review treatment plans, progress notes and correspondence on an as-needed basis to assess the competency of the supervisee to render psychological services;

(3) Jointly establish with the supervisee a supervisory plan that shall be submitted to the board[~~to the board~~] at the beginning of the supervisory relationship. The plan shall:

(a) Be updated or revised and submitted to the board with the regular report of supervision;

(b) Include intended format, and goals to be accomplished through the supervisory process; and

(c) Include methods that the supervisor and supervisee shall employ to evaluate the supervisory process.

(4) Have direct observation of the supervisee's work at least once every two (2) months. Direct observation can be accomplished through audiotaping, video camera, videotaping, one (1) way mirror or as a cotherapist;

(5) Have direct knowledge of the size and complexity of the supervisee's caseload;

(6) Limit and control the caseload as appropriate to the supervisee's level of competence;

(7) Have knowledge of the therapeutic modalities and techniques being used by the supervisee; and

(8) Have knowledge of the supervisee's physical and emotional well-being when it has a direct bearing on the supervisee's competence to practice.

Section 9. If the supervisee is a licensed psychological associate or certified psychologist with more than four (4) years of full-time, postlicensure practice, or its equivalent, the supervisor of record shall:

(1) Review and countersign psychological assessments as needed or appropriate;

(2) Review treatment plans, notes, and correspondence as needed or appropriate;

(3) Jointly establish with the supervisee a supervisory plan that shall be submitted to the board to the board at the beginning of the supervisory relationship. The plan shall:

(a) Be updated or revised and submitted to the board with the regular report of supervision;

(b) Include intended format, and goals to be accomplished through the supervisory process; and

(c) Include methods that the supervisor and supervisee shall employ to evaluate the supervisory process.

(4) Have direct observation of the supervisee's work on an as-needed basis;

(5) Have direct knowledge of the size and complexity of the supervisee's caseload;

(6) Limit and control the caseload as appropriate to the

supervisee's level of competence;

(7) Have knowledge of the therapeutic modalities and techniques being used by the supervisee; and

(8) Have knowledge of the supervisee's physical and emotional well-being when it has a direct bearing on the supervisee's competence to practice.

Section 10. (1) The supervisee shall:

(a) Keep the supervisor adequately informed at all times of his or her activities and ability to function; and

(b) Seek supervision as needed in addition to a regularly scheduled supervisory session.

(2) The supervisee shall:

(a) Participate with the supervisor in establishing supervisory goals and in completing the regular supervisory reports;

(b) Be jointly responsible with the supervisor for ensuring that a supervisory report or plan has been sent to the board in accordance with the reporting schedule established in Section 6(1) of this administrative regulation; and

(c) Report to the board an apparent violation of KRS 319.082(1) on the part of the supervisor.

Section 11. Identification of Provider. The actual deliverer of a service shall be identified to the client. A billing for a rendered service shall identify which service was performed by the certified psychologist, licensed psychological associate, temporary licensed psychologist, trainee, or other provider and supervised by the licensed psychologist.

Section 12. Frequency of Supervision. (1) A licensed psychological associate or certified psychologist shall have a minimum of one (1) hour of individual face-to-face supervision on a weekly basis for the first two (2) years of full-time practice or its equivalent following licensure.

(2) After two (2) years of full-time, postlicensure practice, or its equivalent, the supervisor and supervisee may petition the board to alter the format, frequency or duration of supervision as long as the proposed change includes a minimum of two (2) one (1) hour individual face-to-face meetings every four (4) weeks, and the total amount of supervision is not less than four (4) hours per four (4) week period. This petition may include a request to change the format from individual to group supervision. Supervision requirements for part-time practice may be modified at the discretion of the board upon approval of the submitted plan.

(3)(a) After four (4) years of full-time, postlicensure practice, or its equivalent, the supervisor and supervisee may petition the board for further modification of the format, frequency, or duration of supervision, with a minimum amount of one (1) hour of face-to-face supervision per month. Additional modifications of the format, frequency or duration of supervision may be submitted for approval by the board.

(b) Upon a change of supervisor, a new plan for supervision shall be submitted by the supervisor and supervisee to the board for approval. This plan may require additional supervision than was previously approved by the board.

(c) Upon termination of the supervisor-supervisee relationship, the final report of supervision shall be submitted to the board within thirty (30) days of the termination.

Section 13. Supervision of a Disciplined Licensed Holder. (1) The board shall appoint an approved supervisor to supervise a disciplined licensed holder for the period of time defined by the board.

(2) The disciplined license holder shall be responsible for paying the fee for supervision.

(3) The supervisor shall have completed the board approved training course in supervision.

(4) The supervisor shall:

(a) Review the originating complaint, agreed order, or findings of the disciplinary hearing;

(b) Meet with the disciplined license holder and the board liaison to:

1. Summarize the actions and concerns of the board;

2. Review the goals and expected outcomes of supervision submitted by the board liaison;

3. Develop a specific plan of supervision; and

4. Review the reporting requirements that shall be met during the period of supervision;

(c) Meet with the disciplined license holder at least weekly, on an individual face-to-face basis for a minimum of one (1) hour unless modified by the board;

(d) Submit a quarterly report to the board which reflects progress, problems, and other information relevant to the need for board-mandated supervision;

(e) Make all reasonable efforts to insure that the disciplined license holder's practice is in compliance with KRS Chapter 319 and 201 KAR Chapter 26;

(f) Report to the board any apparent violation of KRS 319.082(1) on the part of the disciplined license holder;

(g) Immediately report to the board in writing; a change in the ability to supervise, or in the ability of the disciplined license holder to function in the practice of psychology in a competent manner;

(h) Review and countersign psychological assessments as needed or appropriate;

(i) Review treatment plans, notes, and correspondence as needed or appropriate;

(j) Have direct observation of the disciplined license holder's work on an as-needed basis;

(k) Have direct knowledge of the size and complexity of the disciplined license holder's caseload;

(l) Have knowledge of the therapeutic modalities and techniques being used by the disciplined license holder; and

(m) Have knowledge of the disciplined license holder's physical and emotional well-being when it has direct bearing on the disciplined license holder's competence to practice.

(5) The supervisor shall control, direct or limit the disciplined license holder's practice as appropriate to ensure that the disciplined license holder's practice is competent.

(6) The supervisor shall contact the board liaison with any concern or problem with the disciplined license holder, his or her practice or the supervision process.

(7) A final meeting shall be scheduled within thirty (30) days of the end of the established supervision period to summarize the supervision. The meeting shall include the supervisor, disciplined license holder and board liaison. A written summary of the supervision shall be submitted by the supervisor to the board two (2) weeks following this meeting with a copy to the board liaison.

Section 14. Board Liaison for Disciplined License Holder. The board shall appoint a board member to serve as a liaison between the board and the approved supervisor. The board liaison shall:

(1) Recruit the supervising psychologist from a list provided by the board;

(2) Provide the supervising psychologist with the originating complaint, agreed order or findings of the hearing and supply other material relating to the disciplinary action as deemed appropriate by the liaison;

(3) Ensure that the supervising psychologist is provided with the necessary documentation for liability purposes to clarify that he or she is acting as an agent of the board pursuant to KRS 319.118(1) and has immunity commensurate with that of a board member;

(4) Provide the supervising psychologist with a written description of the responsibilities of the supervisor and a copy of the responsibilities of the liaison;

(5) Ensure that the board has sent a written notification letter to the disciplined license holder. The notification letter shall:

(a) State the name of the supervising psychologist; and

(b) Specify that the disciplined license holder shall meet with the supervising psychologist and the liaison within thirty (30) days of the date of the notification letter;

(6) Meet with the supervising psychologist and disciplined license holder within thirty (30) days of the date of the notification letter to summarize the actions of the board, review the applicable statutes and administrative regulations regarding supervision requirements for a disciplined license holder and assist with the

development of a plan of supervision. The plan of supervision shall be written at the first meeting;

(7) Submit the report of supervision to the board for approval. The liaison shall place the report of supervision on the agenda for review and approval at the next regularly scheduled board meeting. In the interim, the supervising psychologist and disciplined license holder shall continue to meet;

(8) Remain available to the supervising psychologist to provide assistance and information as needed;

(9) Report any problem or concern to the board regarding the supervision and communicate a directive of the board to the supervising psychologist;

(10) Review the quarterly report of supervision and forward to the supervision committee of the board for approval; and

(11) Meet with the supervising psychologist and the disciplined license holder at the end of the term of supervision to summarize the supervision.

Section 15. Psychology Graduate Students. Graduate-level psychology students who are providing services in psychological health care settings including independent practice settings shall:

(1) Be supervised by a psychologist licensed by the Board of Examiners of Psychology with health service provider status, licensed at the doctoral level by the State Board of Examiners in the state in which the training program exists, or by a licensed mental health professional approved by the training program who is affiliated with either the university training program or the practice setting;

(2) Be registered for credit in his or her course of study;

(3) Clearly identify their status as unlicensed psychology trainees to all clients and payors;

(4) Give to all clients and payors the name of the licensed psychologist responsible for their work;

(5) Not accept employment or placement to perform the same or similar activities following the completion of their university-sanctioned placement, regardless of the job title given, unless the student holds a license from the board.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Supervisory Plans and Goals", October, 2016;

(b) "Supervisory Report", October, 2016; and

(c) "Request for Change of Supervisor and/or Frequency", October, 2016.

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

JAMIE A. HOPKINS, Ph.D., HSPP, Chairperson

APPROVED BY AGENCY: March 15, 2017

FILED WITH LRC: March 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 25, 2017, at 1:00 p.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. 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 April 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Chessica Nation, Board Administrator, Kentucky Board of Examiners of Psychology, Department of Professional Licensing, 911 Leawood Drive, P. O. Box 1360, Frankfort, Kentucky 40601, phone (502) 782-8812, fax (502) 696-3925, email chessica.nation@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chessica Nation

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the supervision requirements to qualify for licensure.

(b) The necessity of this administrative regulation: This administrative regulation enables the board to evaluate applications by establishing the supervision experience requirements for licensure.

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation specifies the types of experience that is acceptable for licensure.

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

(a) How the amendment will change this existing administrative regulation: The amendment incorporates new forms to assist documenting supervision received and requesting changes to a supervision status.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to standardize the supervision reporting process and incorporate forms.

(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 equivalent course of study.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in providing the documents required to be submitted to the supervisor and supervisee.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently nine (9) certified psychologists, seventy-three (73) certified psychologist with autonomous functioning, three hundred forty (340) psychological associates, one hundred thirty (130) psychological practitioners, and nine hundred sixty (960) licensed psychologists. The Board is unsure of the number of possible applicants in the future.

(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 complete a continuing education course on suicide assessment, treatment, and management within the first year of licensure and then every six years thereafter.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will be the charge for the continuing education course.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A credential holder who falls within the allowable exemptions will not be required to take the continuing education course on suicide assessment, treatment, and management.

(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 Examiners of Psychology.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319.032(1)(a).

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

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

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(Amendment)

201 KAR 26:175. Continuing education.

RELATES TO: KRS 210.366, 319.032(1)(f), 319.050, 319.053, 319.064, 319.071

STATUTORY AUTHORITY: KRS 319.032(1)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(f) requires the board to promulgate an administrative regulation establishing a requirement for continuing education as a condition for renewal of a license. This administrative regulation establishes the continuing education requirements for renewal of a license.

Section 1. Definitions. (1) "Continuing education" means participation in an approved program beyond the basic educational requirements that meet the requirements established in Section 2(1) of this administrative regulation.

(2) "Continuing education hour" means a fifty-five (55) minute clock hour of instruction.

Section 2. (1) Each license holder shall document the completion of at least thirty-nine (39) continuing education hours approved by the board pursuant to this administrative regulation within each three (3) year renewal period.

(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 every six (6) years thereafter as required by KRS 210.366.

(a) A person holding a license shall be exempted from the requirement to complete a continuing education course in suicide assessment, treatment, and management for the licensee's first six (6) years of licensure if the licensee completes a three (3) semester hour graduate course in suicide and crisis assessment, prevention, and intervention during the course of the licensee's graduate education.

(b) A person holding a license shall be exempted from the requirement to complete a continuing education course in suicide assessment, treatment, and management from the six year continuing education if, during the six (6) year requirement, the licensee:

1. Is primarily employed in a clinical setting accredited by the Joint Commission or another nationally accrediting healthcare entity that requires the completion of a suicide risk assessment with each patient being seen within the setting;

2. Teaches a graduate-level psychology course in suicide assessment, training, and management; or

3. Teaches a continuing education course in suicide assessment, training, and management at least once during the six (6) year period.

(c) The continuing education course in suicide assessment, treatment, and management shall be approved in accordance with Section 5 of this administrative regulation.

(3) The continuing education shall:

(a) Provide specific content planned and evaluated to improve the license holder's professional competence;

(b) Make possible the acquisition of new skills and knowledge required to maintain competence;

(c) Strengthen the habits of critical inquiry and balanced judgment; and

(d) Include a minimum of three (3) hours in either ethical practice or risk management with each three (3) year renewal period.

(4) Continuing educational hours shall not carry over from one (1) renewal period to the next.

(5)(a) Except as provided in paragraph (b) of this subsection, a licensed psychologist with the health service provider designation who provides supervision to an applicant for licensure, or a certified psychologist or a licensed psychological associate shall include as part of the thirty-nine (39) hours of continuing education required by subsection (1) of this section a minimum of three (3) continuing education hours in the area of supervision theory or techniques for each three (3) year renewal period.

(b) The requirement established in paragraph (a) of this subsection shall begin with the renewal period immediately following the period in which the original supervisory training required by 201 KAR 26:171, Section 4(1) and (2), is received.

Section 3. (1) Hours required to satisfy the continuing education requirement shall be completed prior to the renewal date of a license.

(2) A credential holder shall certify in the renewal application that the continuing education requirement has been satisfied.

(3) A credential holder who is being audited shall submit copies of the certificate of completion received from the continuing education course.

(4) The credential holder shall:

(a) Maintain and provide adequate records including certificates of attendance and documentation of completion of the required continuing education hours; or

(b) Provide documentation through a board-approved registry, which shall certify the name and license number of the license holder, date and title of each program and the number of hours earned, and confirmation that the programs were given by a board-

approved provider.

Section 4. All continuing education activities approved by the board shall be accepted toward the continuing education requirements for renewal of a license. A license holder shall determine prior to attending a specific continuing education program that the program:

(1) Has been approved by the board; or

(2) Is approved, offered, or sponsored by an organization approved by the board to sponsor continuing education programs.

Section 5. Approved Sponsoring Organizations and Approved Programs. (1) Participation in a continuing education program that is approved, offered, or sponsored by an organization listed in this subsection shall be accepted toward the requirement for continuing education established in Section 2(1) of this administrative regulation:

(a) An affiliated state chapter of the American Psychological Association, American Medical Association, American Psychiatric Association, or National Association of Social Workers;

(b) A recognized state, regional, national, or international psychological association;

(c) A state or provincial psychology licensure board; and

(d) A course for graduate-level academic credit in psychology or psychiatry offered by a national, regional, or state accredited academic institution.

(2)(a) The board may approve an organization that is not listed in subsection (1) of this section as a sponsor of continuing education for a twelve (12) month period if the organization:

1. Files a completed Continuing Education Sponsorship Application;

2. Pays an initial application fee of $250; and

3. Proposes to sponsor continuing education programs that meet the requirements established in Sections 2(1) and 6 of this administrative regulation.

(b) An approved sponsor shall submit an annual report of the continuing education programs offered during that year.

(c) 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.

(3)(a) The board may approve a specific continuing education program that is not approved, offered, or sponsored by an organization listed in in subsection (1) of this section or an approved organization under subsection (2) of this section if the sponsor or a participant of the program:

1. Files a completed Continuing Education Program Application;

2. Pays an application fee of fifty (50) dollars; and

3. Provides information about a continuing education program that it proposes to sponsor which meets the requirements established in Sections 2(1) and 6 of this administrative regulation.

(b) The approval of a program pursuant to paragraph (a) of this subsection shall permit the sponsor to offer the program one (1) time. The sponsor shall submit a request for renewal and a ten (10) dollar renewal fee for each subsequent request to offer the same approved program.

Section 6. A continuing education program that satisfies the requirements for license renewal shall:

(1) Be:

(a) Approved, offered, or sponsored by an organization that has been approved by the board; or

(b) A specific program approved by the board;

(2)(a) Have a clearly-stated purpose and defined content area; and

(b) Be consistent with the overall goals of continuing education as defined in Section 1 of this administrative regulation;

(3) Have a presenter who is a professional qualified in the defined content area;

(4) Clearly state the program's time. Actual contact time shall be a minimum of one (1) continuing education hour;

(5) Include attendance recorded by the program's sponsor;

(6) Document completion that shall be provided to the participant; and

(7) Include each participant's evaluation of the program.

Section 7. Equivalencies. (1) A graduate-level psychology course taken at an accredited academic institution shall earn continuing education hours pursuant to paragraphs (a) and (b) of this subsection.

(a) Each one (1) hour semester course shall be the equivalent of fifteen (15) continuing education hours for the purposes of meeting the requirements of this administrative regulation.

(b) Each one (1) hour quarter course shall be the equivalent of nine (9) continuing education hours for the purposes of meeting the requirements of this administrative regulation.

(2) A person who teaches a three (3) hour semester or quarter graduate-level course in psychology at an accredited academic institution shall:

(a) Earn six (6) continuing education hours for teaching the course; and

(b) Not receive:

1. Credit more than once for teaching a particular course during a renewal period; and

2. More than nine (9) total continuing education hours for these teaching activities.

(3) A person who teaches an approved continuing education workshop or program shall:

(a) Earn continuing education hours on a one (1) to one (1) basis; and

(b) Not receive:

1. Credit more than once for teaching a particular workshop or program during a renewal period; and

2. More than nine (9) total continuing education hours for these teaching activities.

(4) A person who completes home study or internet-based courses approved, offered, or sponsored by an organization listed in Section 5(1) shall not receive:

(a) Credit for repeating a specific study course during a renewal period; and

(b) More than twelve (12) total continuing education hours through home study or internet-based courses in a renewal period.

(5) A person who participates in videoconferencing in an interactive setting shall:

(a) Earn one (1) continuing education hour for each clock hour of participation; and

(b) Not receive more than twenty-four (24) continuing education hours through interactive videoconferencing participation.

Section 8. Carry-over of Continuing Education Hours, Prohibited. There shall not be a carry-over of continuing education hours earned in excess of those required under Section 1 of this administrative regulation into the immediately following renewal period.

Section 9. The board shall audit a minimum of ten (10) percent of all credential holders' documentation supporting the completion of the appropriate number of continuing education hours through a random audit process.

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

(a) "Continuing Education Program Application", October, 2016; and

(b) "Continuing Education Sponsorship Application", October, 2016.

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

JAMIE A. HOPKINS, Ph.D., HSPP, Chairperson

APPROVED BY AGENCY: March 15, 2017

FILED WITH LRC: March 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 25, 2017, at 1:00 p.m. Eastern Time at the Office of

Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. 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 April 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Chessica Nation, Board Administrator, Kentucky Board of Examiners of Psychology, Department of Professional Licensing, 911 Leawood Drive, P. O. Box 1360, Frankfort, Kentucky 40601, phone (502) 782-8812, fax (502) 696-3925, email chessica.nation@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chessica Nation

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the continuing education requirements for a credential holder.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish a continuing 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 continuing education requirement 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 continuing education 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 incorporates new forms to assist applying for continuing education approval; clarifies that excess continuing education hours are not carried forward; establishes that 10% of renewals will be audited and what documents must be submitted if audited; removes some automatic providers from the continuing education provider list; and differentiate between different types of providers..

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to standardize the supervision reporting process and incorporate forms.

(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 equivalent course of study.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in providing the documents required to be submitted to the supervisor and supervisee.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently nine (9) certified psychologists, seventy-three (73) certified psychologist with autonomous functioning, three hundred forty (340) psychological associates, one hundred thirty (130) psychological practitioners, and nine hundred sixty (960) licensed psychologists. The Board is unsure of the number of possible applicants in the future.

(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 complete a continuing education course on suicide assessment, treatment, and management within the first year of licensure and then every six years thereafter.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will be the charge for the continuing education course.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A credential holder who falls within the allowable exemptions will not be required to take the continuing education course on suicide assessment, treatment, and management.

(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 Examiners of Psychology.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319.032(1)(f).

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

201 KAR 26:180. Requirements for granting licensure as a psychologist by reciprocity.

RELATES TO: KRS 319.032(1)(i)
STATUTORY AUTHORITY: KRS 319.032(1)(i)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(i) requires the board to promulgate an administrative regulation governing the granting of a license through reciprocity. This administrative regulation establishes the requirements for licensure as a psychologist by reciprocity.
Section 1. The board shall issue a license to an applicant who qualifies for a license as a psychologist pursuant to an agreement of reciprocity entered into by the board of this jurisdiction with the board or boards of any other jurisdiction or multiple jurisdictions.

Section 2. The applicant for licensure as a psychologist by reciprocity shall:
(1) Submit a completed Application for Licensure by Reciprocity;
(2) Hold a current valid license in good standing to practice psychology which has been granted by at least one (1) state or the District of Columbia or a Canadian province which maintains a psychology registration board:
(a) That is a constituent member of the Association of State and Provincial Psychology Boards (ASPPB); and
(b) With whom this board has an agreement of reciprocity;
(3)[~~(2)~~] Have a minimum of five (5) years of full-time practice or its equivalent as determined by the board in the other jurisdiction; and
(4)[~~(3)~~] Has not been disciplined by any licensure board.

Section 3. The board shall conduct a face-to-face examination of an applicant for licensure by reciprocity. The applicant shall demonstrate an acceptable level of knowledge of Kentucky mental health law.

Section 4. An applicant for licensure with the health service provider designation shall comply with KRS 319.050(7).

Section 5. If an applicant for licensure with the health service provider designation does not have an additional 1,800 hours of supervised experience as required by KRS 319.050 and 201 KAR 26:125, the board may determine that the applicant's practice experience is equivalent to the required year of experience.

Section 6. A person holding the Certificate of Professional Qualification in Psychology (CPQ) issued by the (ASPPB) or a successor organization or a person who holds a certificate from the National Register of Health Service Providers in Psychology or a successor organization and has a minimum equivalent of five (5) years of full-time practice at the independent level and has had no disciplinary action taken by a licensure board or on record in the ASPPB database[~~date base~~] shall:
(1) Be deemed to meet the qualifications for licensure by reciprocity as established in this administrative regulation; and
(2) Upon meeting the requirements established in Section 3 of this administrative regulation, shall be granted a license with the health service provider designation.

Section 7. Incorporation by Reference. (1) "Application for Licensure by Reciprocity", February 2017, is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Examiners of Psychology, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMIE A. HOPKINS, Ph.D., HSPP, Chairperson
APPROVED BY AGENCY: March 15, 2017
FILED WITH LRC: March 15, 2017 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 25, 2017, at 1:00 p.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. 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 April 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.
CONTACT PERSON: Chessica Nation, Board Administrator, Kentucky Board of Examiners of Psychology, Department of Professional Licensing, 911 Leawood Drive, P. O. Box 1360, Frankfort, Kentucky 40601, phone (502) 782-8812, fax (502) 696-3925, email chessica.nation@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chessica Nation
(1) Provide a brief summary of
(a) What this administrative regulation does: This administrative regulation establishes the procedures and requirements to obtain a licensure as a psychologist through reciprocity.
(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the procedures and necessary documents to obtain a licensure as a psychologist through reciprocity.
(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 continuing education requirement for a credential holder.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assist with the effective processing of an application for licensure as a psychologist through reciprocity.
(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 incorporates a new application form for licensure as a psychologist through reciprocity.
(b) The necessity of the amendment to this administrative regulation: The amendments are necessary standardized the process and allow for the board to continue towards online applications.
(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the equivalent course of study.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist with the effective processing of an application for licensure as a psychologist through reciprocity.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently nine (9) certified psychologists, seventy-three (73) certified psychologist with autonomous functioning, three hundred forty (340) psychological associates, one hundred thirty (130) psychological practitioners, and nine hundred sixty (960) licensed psychologists. The Board is unsure of the number of possible applicants in the future.
(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 complete a continuing education course on suicide assessment, treatment, and management within the first year of licensure and then every six years thereafter.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will be the charge for the continuing education course.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A credential holder who falls within the allowable exemptions will not be required to take the continuing education course on suicide assessment, treatment, and management.

(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 Examiners of Psychology.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319.032(1)(i).

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 Examiners of Psychology
(Amendment)

201 KAR 26:185. Requirements for granting licensure as a psychologist to an applicant licensed in another state.

RELATES TO: KRS 319.032(1)(i)

STATUTORY AUTHORITY: KRS 319.032(1)(i)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(i) requires the board to promulgate an administrative regulation governing the granting of a license as a psychologist to an applicant from another jurisdiction. This administrative regulation establishes the requirements for granting a license to an applicant who is licensed in another state that does not have an agreement of reciprocity with this board.

Section 1. (1) The board shall consider an applicant for licensure in psychology in Kentucky who:

(a) Is licensed in another state that does not have an agreement of reciprocity with the Kentucky Board of Examiners of Psychology;

(b) Holds a current valid license or certificate, in good standing, to practice psychology that has been granted by:

1. At least one (1) state;

2. The District of Columbia; or

3. A Canadian province that maintains a psychology registration board that is a constituent member of the Association of State and Provincial Psychology Boards (ASPPB);

(c) Has a minimum of five (5) years of full-time practice or its equivalent as determined by the board in the other jurisdiction; and

(d) Has not been disciplined by any psychology licensure board.

(2) The board shall consider if the applicant meets the requirements established in KRS 319.050(2). If an applicant for licensure does not have the supervised experience as required by KRS 319.050(2)(d), the board may determine that the applicant's practice experience is equivalent to the required supervised experience.

(3) An applicant for licensure as a psychologist shall submit:

(a) A completed Application for Licensure of a Psychologist Licensed in Another State with the required supplementary documentation;

(b) Three (3) letters of reference from persons qualified to evaluate the applicant's professional ability, including two (2) persons who have received a doctorate in psychology (Ph.D. PsyD., Ed.D.);

(c) An official transcript for all levels of education required for licensure;

(d) A Curriculum Vitae that demonstrates five (5) years of full-time practice of psychology;

(e)[~~Submit~~] To the Examination for Professional Practice in Psychology (EPPP):

1. Developed by the ASPPB examination contractor; and

2. Owned by the ASPPB; [~~and~~]

(c)[~~(b) Obtain~~] A verified computerized EPPP scaled score of 500 or greater. The board shall accept the applicant's previous examination results for the national EPPP examination if the original test scores satisfied the doctoral licensure requirement as to criterion level at the time of that examination; and[~~.~~]

(d) Payment of $200.

(4) The board shall review the applicant's:

(a) Record as to complaints or hearings held in previous jurisdictions; and

(b) Professional references.

Section 2. An applicant for licensure as a psychologist shall submit to a structured examination on Kentucky mental health law.

Section 3. In addition to demonstrating an acceptable level of knowledge of Kentucky mental health law, an applicant for licensure as a psychologist shall submit to a structured oral examination on ethical principles and professional practice

administered by two (2) licensed psychologists. (1) Each examiner shall independently rate the applicant's performance.

(2) The applicant shall demonstrate an acceptable level of knowledge in each of the areas in order to pass the examination.

(3) An applicant who receives a pass rating from the two (2) examiners shall have successfully passed the oral examination and shall be eligible to be granted a license as a licensed psychologist.

Section 4. Incorporation by Reference. (1) "Application for Licensure of a Psychologist Licensed in Another State", February 2017, is incorporated by reference.

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

JAMIE A. HOPKINS, Ph.D., HSPP, Chairperson

APPROVED BY AGENCY: March 15, 2017

FILED WITH LRC: March 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 25, 2017, at 1:00 p.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. 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 April 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Chessica Nation, Board Administrator, Kentucky Board of Examiners of Psychology, Department of Professional Licensing, 911 Leawood Drive, P. O. Box 1360, Frankfort, Kentucky 40601, phone (502) 782-8812, fax (502) 696-3925, email chessica.nation@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chessica Nation

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the procedures and requirements to obtain a licensure as a psychologist through reciprocity.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the procedures and necessary documents to obtain a licensure as a psychologist through reciprocity.

(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 continuing education requirement for a credential holder.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assist with the effective processing of an application for licensure as a psychologist through reciprocity.

(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 incorporates a new application form for licensure as a psychologist through reciprocity.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary standardized the process and allow for the board to continue towards online applications.

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

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist with the effective processing of an application for licensure as a psychologist through reciprocity.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently nine (9) certified psychologists, seventy-three (73) certified psychologist with autonomous functioning, three hundred forty (340) psychological associates, one hundred thirty (130) psychological practitioners, and nine hundred sixty (960) licensed psychologists. The Board is unsure of the number of possible applicants in the future.

(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 complete a continuing education course on suicide assessment, treatment, and management within the first year of licensure and then every six years thereafter.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will be the charge for the continuing education course.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A credential holder who falls within the allowable exemptions will not be required to take the continuing education course on suicide assessment, treatment, and management.

(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 Examiners of Psychology.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319.032(1)(i).

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 Examiners of Psychology
(Amendment)

201 KAR 26:190. Requirements for supervised professional experience.

RELATES TO: KRS 319.050, 319.053, 319.056, 319.064

STATUTORY AUTHORITY: KRS 319.032, 319.050(2)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.050(2)(d) requires an applicant for licensure as a psychologist to have a minimum of 3,600 hours[~~at least two (2) years~~] of supervised professional experience. This administrative regulation establishes those requirements.

Section 1. Supervisory Requirements for an Applicant for Licensure as a Psychologist. (1) The applicant for licensure as a psychologist with the authorization to provide psychological health care services shall have completed a minimum of 3,600 hours[~~the equivalent of two (2) years~~] of supervised professional experience in accordance with this administrative regulation.

(2) A minimum of 1,800 hours[~~One (1) year~~] of the supervised professional experience shall be a predoctoral internship of 1,800 hours with at least 100 hours of supervisory sessions.

(3) The remaining[~~The other~~] 1,800 hours of supervised experience shall be[~~may be~~] predoctoral, postdoctoral, or a combination of pre- and post-doctoral supervised professional experience acceptable to the board.

(4) Supervised experience[~~earned in the doctoral training program~~] shall consist of practica, field placement, or other professional experiences not including the beginning courses and accompanying practica in assessment and treatment techniques.

(5) At least fifty (50) percent of the supervised[~~professional~~] experience shall be in service-related activities, such as treatment, assessment, interviews, report-writing, case presentations, and consultations. [~~(6) For the 1,800 hours of supervised experience earned in the doctoral training program, there shall be a minimum of 100 hours of supervisory sessions. At least seventy-five (75) percent of these supervisory sessions (seventy-five (75) hours) shall be done with a licensed psychologist supervisor, at least one-third (1/3) of which (twenty-five (25) hours) shall be conducted in an individual, face-to-face format. The other twenty-five (25) percent of the supervisory sessions (twenty-five (25) hours) may be done with a licensed mental health professional. Of the total supervision hours, no more than fifty (50) percent (fifty (50) hours) shall be done via secure interactive videoconferencing.~~

~~(7) If the supervised experience earned in the doctoral training program does not meet the 1,800 hour requirement, additional supervised professional experience satisfactory to the board may be earned with supervision by a board-approved licensed psychologist of a minimum of one (1) hour individual, face-to-face supervision on a weekly basis.~~]

Section 2. For a person applying for licensure as a psychologist. [~~to provide psychological health care services~~] the predoctoral internship shall meet the following criteria:

(1) The experience shall occur within an organized training program, in contrast to supervised experience or on-the-job training and have a planned, programmed sequence of training experiences;

(2) The training program shall have a clearly designated staff psychologist who shall be:

(a) Responsible for the integrity and quality of the training program;

(b) Actively licensed by the Board of Examiners in Psychology; or

(c) Licensed at the doctoral level by the State Board of Examiners in the state in which the training program exists or otherwise meets the standards of applicable state law; and

(d) For school psychology doctoral internships, the responsible psychologist director may be from an affiliate agency or from the university training program.

(3) Internship supervision shall be provided by a staff member of the internship agency or by an affiliate of that agency who has clinical responsibility for the cases being supervised. At least half of the internship supervision shall be provided by one (1) or more psychologists with an appropriate doctorate degree;

(4) The internship shall provide training in a range of assessment and treatment activities conducted directly with clients seeking psychological services;

(5) At least twenty-five (25) percent of the trainee's time shall be in direct client contact;

(6) The internship shall include a minimum of two (2) hours per week of regularly scheduled, formal, face-to-face individual supervision. There shall also be at least two (2) additional hours per week in learning activities such as case conferences, seminars dealing with clinical issues, and group supervision;

(7) Training shall be postclerkship, postpracticum, and postexternship level;

(8) The internship shall have a written statement or brochure that describes the goals and content of the internship, stated clear expectations for quality and quantity the of trainee's work and shall be made available to prospective interns;

(9) The internship experience shall be completed within twenty-four (24) months;

(10) The trainee has a title such as "intern", "resident," "fellow," or other designation of trainee status; and

(11) The internship agency, preparing institution, and intern have a written agreement that describes the goals and content of the internship including clearly stated expectations for the nature of experiences offered in the agency and for the quantity and quality of the work.

Section 3. Additional Required Supervisory Experience. (1) For a person applying for licensure as a psychologist to provide psychological health care services, the 1,800 hours of supervised professional experience in addition to the internship required by KRS 319.050(2)(d) shall be a training-oriented professional experience that may include course-related field experience and practica, not to include the beginning courses and practica in assessment and treatment techniques.

(2) In addition to training in a range of diagnostic and treatment activities conducted directly with clients seeking psychological services, the supervised professional experience shall include a planned and organized sequence of activities that includes explicit training and supervision in the following areas:

(a) Clinical skill development;

(b) Legal and regulatory issues;

(c) Ethical dilemmas and issues; and

(d) Supervisory skill development.

(3) During the 1,800 hours of supervised professional experience in addition to the internship, the candidate shall:

(a) Be under supervision as required by 201 KAR 26:171; and

(b)Be providing psychological health care services under the supervision of a licensed psychologist or other licensed mental health professional approved by the doctoral training program who is affiliated with the training program or with the practice setting:

1. In a:
a. Health care facility or agency;
b. Regional mental health or mental retardation board;
c. School, college, or university;
d. Government agency;
e. Independent practice; or
(f) In a formalized postdoctoral internship program.

(4) The applicant and the supervisor of record shall design and describe the proposed experience, including the areas listed in subsection (2) of this section.

(5) If the supervised professional experience in addition to the internship is in an independent practice, a special application letter shall affirm:

(a) The identity of the applicant, supervisor, and employer; and

(b) That the supervising licensed psychologist is not hired, employed, or engaged under contract by the applicant and shall not be terminated by the applicant;

(c) That the applicant is not one (1) of the owners of the independent practice or organization, but rather serves as an employee; and

(d) That the applicant has both administrative and clinical supervision that shall be provided by the independent practice or employer.

(6) If the supervised experience is in a university setting, the application shall also:

(a) Be proffered by a full-time faculty member;

(b) Include a plan that contains each of the areas established in subsection (2) of this section; and

(c) Include a minimum of 400 hours of direct and indirect client involvement that:

1. Is supervised by a licensed psychologist; and
2. Includes:
a. Supervising student clinical work;
b. Diagnostic and interviewing activity that occurs within clinical research projects; or
c. Clinical work in the context of teaching psychotherapy, interviewing, or psychological testing.

(7) The board shall not grant a request for temporary licensure if the request does not contain an explicit and acceptable plan for the supervised experience as required by this section.

Section 4.[~~A licensed psychologist applying for health service provider designation shall complete, in addition to the supervised professional experience requirement for licensure as a licensed psychologist, 1,800 hours of supervised experience within one (1) or more health care settings in which the psychologist delivered direct psychological health care services. Supervision shall be provided by a licensed psychologist approved by the board and shall consist of one (1) hour of individual supervision each week.~~

~~Section 5.~~] An applicant for licensure as a psychological associate shall complete supervised experience consisting of course-related field experience, practica, and formal internships adding up to a minimum of 600 supervised hours that shall meet the following criteria:

(1) The experience shall occur within an organized training program, and consist of a planned, programmed sequence of training experiences;

(2) The preparing institution's psychology training program shall have a clearly-designated placement director who shall be responsible for the integrity and quality of the experiential component of the training program;

(3) Weekly practicum and internship supervision shall be provided by a staff member of the placement agency, by an affiliate of that agency, or by a university faculty member. At least half of the supervision shall be provided by one (1) or more psychologists with an appropriate doctorate degree and license;

(4) Field experiences, practica, and internships shall provide training in a range of diagnostic and treatment activities conducted directly with clients seeking psychological services;

(5) At least twenty-five (25) percent of the trainee's time shall be in direct client contact;

(6) The preparing institution shall maintain a written statement or brochure describing the goals and content of the required field experiences, practica, and internships.

(7) Students participating in university-sanctioned supervised experience shall be clearly identified to clients and payors as trainees.

Section 5[~~6~~]. An applicant for licensure as a psychological practitioner shall complete the equivalent of five (5) full-time years of psychological practice under the direct supervision of a licensed psychologist approved by the board, consistent with the requirements of 201 KAR 26:171. (1) For purposes of this requirement, a candidate shall complete the equivalent of five (5) full-time years of supervised experience from the date of initial credentialing as a psychological associate, with a full-time year comprising at least 1800 hours of supervised professional experience.

(2) A school psychologist who is employed in a Kentucky school system, credentialed by the Professional Standards Board, and also credentialed as a psychological associate by this board, may contract for on-going clinical supervision in the school setting with a board-approved licensed psychologist who is neither an employee nor a contractor of the school system.

(a) The supervised professional experience shall meet the conditions of this administrative regulation and may be used by the licensed psychological associate employed by the school system to meet the requirements for application to become a licensed psychological practitioner.

(b) To fulfill the requirements of 201 KAR 26:171, there shall be an explicit written plan approved by the board between the school system, the school psychologist, and the board-approved supervisor that delineates roles and responsibilities, not restricting the ability of the school district to direct or control the activities of its employee;

(c) A person trained in school psychology, if employed by an agency other than a public school or engaged in practice outside of the school setting, shall obtain clinical supervision in the manner specified by 201 KAR 26:171.

JAMIE A. HOPKINS, Ph.D., HSPP, Chairperson
APPROVED BY AGENCY: March 15, 2017
FILED WITH LRC: March 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 25, 2017, at 1:00 p.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. 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 April 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Chessica Nation, Board Administrator, Kentucky Board of Examiners of Psychology, Department of Professional Licensing, 911 Leawood Drive, P. O. Box 1360, Frankfort, Kentucky 40601, phone (502) 782-8812, fax (502) 696-3925, email chessica.nation@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chessica Nation

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the requirements for supervised professional experience to become a licensed psychologist.

(b) The necessity of this administrative regulation: The

necessity of this regulation is to establish the requirements for supervised professional experience and provide notice to any prospective applicant of the requirements.

(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 continuing education requirement for a credential holder.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists with clarifying the requirements for supervised professional experience to become a licensed psychologist.

(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 reference to the additional 1,800 hours needed to receive the health service provider designation; and clarifies the requirements of the 3,600 hours of supervised professional experience; and removes confusing language regarding supervisory experience from the regulation.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to resolve numerous questions routinely submitted regarding the supervised professional experience hours.

(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 equivalent course of study.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist in clarifying many of the frequently asked questions regarding the 3,600 hours of supervised professional experience.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently nine (9) certified psychologists, seventy-three (73) certified psychologist with autonomous functioning, three hundred forty (340) psychological associates, one hundred thirty (130) psychological practitioners, and nine hundred sixty (960) licensed psychologists. The Board is unsure of the number of possible applicants in the future.

(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 complete a continuing education course on suicide assessment, treatment, and management within the first year of licensure and then every six years thereafter.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will be the charge for the continuing education course.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A credential holder who falls within the allowable exemptions will not be required to take the continuing education course on suicide assessment, treatment, and management.

(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 Examiners of Psychology.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319.032, 319.050(2)(d).

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

201 KAR 26:200. Education requirements for licensure as a psychologist.

RELATES TO: KRS 319.050

STATUTORY AUTHORITY: KRS 319.032, 319.050(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.050(2)(b) requires that to obtain licensure, a psychologist shall have a doctoral degree in psychology from a regionally accredited educational institution. This administrative regulation establishes requirements for licensure as a psychologist.

Section 1. For purposes of licensure, a doctoral degree in psychology shall:

(1) Be from a recognized institution of higher learning as established in this administrative regulation;

(2) Be clearly identified by the granting institution as a psychology program wherever the program may be administratively housed;

(3) Be specified in pertinent institutional catalogs and brochures as intended to educate and train professional psychologists;

(4) Require a dissertation for the degree as psychological in method and content and an expected product of doctoral training in psychology;

(5) Stand as a recognizable, coherent, organized entity within the institution;

(6) Require within the psychology faculty clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;

(7) Be an integrated, organized sequence of study;

(8) Require an identifiable psychology faculty and a psychologist responsible for the program;

(9) Require an identifiable body of students who are matriculated in that program for a degree; and

(10) Require a three (3) graduate semester-hour[~~in areas of training for psychologists who deliver or supervise psychological health services, educational experiences with titles such as~~] practicum[~~, internship, or field training~~].

Section 2. (1) In determining the approval of curricular experiences and course work, the board shall consider compliance with the requirements established in paragraphs (a) through (d) of this subsection.

(a) The curriculum shall encompass a minimum of three (3) academic years of full-time graduate study.

(b) A minimum of one (1) full academic year shall be spent in residence at the institution. The year in residence shall consist of a minimum of 250 contact hours or its equivalent of curricular experiences and course work delivered through face-to-face in person context with other students and with faculty of the institution, without regard to the specific physical location in which the course work is conducted.

(c) In addition to instruction in scientific and professional ethics and standards, research design and methodology, statistics and psychometrics, the core program shall require each student to demonstrate competence by including a minimum of three (3) or more graduate semester hours (five (5) or more graduate quarter hours) in each of these four (4) areas:

1. Biological bases of behavior, including the subject matters of physiological psychology, comparative psychology, neuropsychology, sensation and perception, and psychopharmacology;

2. Cognitive-affective bases of behavior, including the subject matters of learning, thinking, motivation, and emotion;

3. Social bases of behavior, including the subject matters of social psychology group process and organizational psychology and systems;

4. Individual differences, including the subject matters of personality theory, human development, and abnormal psychology.

(d) In addition to the core program, the curriculum shall include course work in the specialty area of training. For candidates who seek to deliver or supervise psychological health services, that training shall include specific training in diagnosis, psychological testing, assessment of individual differences, and the design and implementation of appropriate intervention techniques, such as psychotherapy, counseling, and consultation.

(2) A deficiency in course work or other requirements shall be corrected by appropriate remedial work.

Section 3. (1) A regionally accredited educational institution shall be accredited by the 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 Western Association of Schools and Colleges.

(2) Accreditation shall include accreditation by one (1) of the associations established in subsection (1) of this section at Level 4.[{]doctoral degree granting accreditation.[}] or at Level 5.[{]graduate or professional degree granting accreditation[}].

JAMIE A. HOPKINS, Ph.D., HSPP, Chairperson

APPROVED BY AGENCY: March 15, 2017

FILED WITH LRC: March 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 25, 2017, at 1:00 p.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. 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 April 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Chessica Nation, Board Administrator, Kentucky Board of Examiners of Psychology, Department of Professional Licensing, 911 Leawood Drive, P. O. Box 1360, Frankfort, Kentucky 40601, phone (502) 782-8812, fax (502) 696-3925, email chessica.nation@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chessica Nation

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the education requirements for licensure as a psychologist.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the education requirements for licensure as a psychologist.

(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 continuing education requirement for a credential holder.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assist in advising a prospective applicant of the education requirements for licensure as a psychologist.

(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 that an applicant must complete a three (3) hour practicum as part of the doctoral program.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify that an applicant must complete a three (3) hour practicum as part of the doctoral program.

(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 equivalent course of study.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in clarifying the number of hours of a practicum.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently nine (9) certified psychologists, seventy-three (73) certified psychologist with autonomous functioning, three hundred forty (340) psychological associates, one hundred thirty (130) psychological practitioners, and nine hundred sixty (960) licensed psychologists. The Board is unsure of the number of possible applicants in the future.

(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 complete a continuing education course on suicide assessment, treatment, and management within the first year of licensure and then every six years thereafter.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in

question (3): The cost will be the charge for the continuing education course.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A credential holder who falls within the allowable exemptions will not be required to take the continuing education course on suicide assessment, treatment, and management.

(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 Examiners of Psychology.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319.032, 319.050(2)(b).

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

201 KAR 26:210.[~~Definitions of terms used by the Board of Examiners of Psychologists for meeting~~] Educational requirements for licensure as a licensed psychological associate.

RELATES TO: KRS 319.064

STATUTORY AUTHORITY: KRS 319.032(1)(a), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(a) requires the board to promulgate regulations that establishes the requirements, standards, and tests to determine the moral, intellectual, educational, scientific, technical, and professional qualifications of applicants for licensure; and preparing or selecting and administering examinations on general psychological knowledge[~~Certain terms are used in the statute regulating educational requirements for applicants for a credential. This administrative regulation defines those terms as they relate to licensed psychological associates~~].

Section 1. Educational Requirements. (1) A master's degree from a recognized institution of higher learning in this administrative regulation;

(2) The program, wherever it may be administratively housed, is clearly identified by the granting institution as a psychology program. The program shall specify in pertinent institutional catalogs and brochures its intent to educate and train professional psychologists;

(3) Any thesis required for the degree is psychological in method and content and an expected product of master's training in psychology;

(4) The program stands as a recognizable, coherent, organized entity within the institution;

(5) Within the psychology faculty there is clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;

(6) The program is an integrated, organized sequence of study;

(7) There is an identifiable psychology faculty and a psychologist responsible for the program;

(8) The program has an identifiable body of students who are matriculated in that program for a degree; and

(9) The program includes educational experiences with titles such as practicum, internship or field training.

(10) An applicant for licensure as a psychological associate shall complete a minimum of 600 supervised hours supervised in a course-related field experience, practica, and formal internship as part of the degree program.

Section 2. (1) In determining the acceptability of curricular experiences and course work, the following factors shall be considered:

(a) The curriculum shall encompass a minimum of forty-five (45) semester hours of graduate study.

(b) In addition to instruction in scientific and professional ethics and standards, research design and methodology, statistics and psychometrics, the core program shall require each student to demonstrate competence in each of the following content areas. This typically will be met by including a minimum of three (3) or more graduate semester hours (five (5) or more graduate quarter hours) in each of these four (4) areas:

1. Biological bases of behavior, including the subject matters of physiological psychology, comparative psychology, neuropsychology, sensation and perception, psychopharmacology.

2. Cognitive-affective bases of behavior, including the subject matters of learning, thinking, motivation, emotion.

3. Social bases of behavior, including the subject matters of social psychology, group process, organizational psychology and systems.

JAMIE A. HOPKINS, Ph.D., HSPP, Chairperson

APPROVED BY AGENCY: March 15, 2017

FILED WITH LRC: March 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 25, 2017, at 1:00 p.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. 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 April 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Chessica Nation, Board Administrator, Kentucky Board of Examiners of Psychology, Department of Professional Licensing, 911 Leawood Drive, P. O. Box 1360, Frankfort, Kentucky 40601, phone (502) 782-8812, fax (502) 696-3925, email chessica.nation@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chessica Nation

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the education requirements to be licensed as a psychological associate.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the education requirements to be licensed as a psychological associate so a prospective applicant knows what is required to be approved for licensure.

(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 continuing education requirement for a credential holder.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the education requirements to be licensed as a psychological associate. It sets the criteria that each applicant will be held to in determining whether his or her education is appropriate.

(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 amends the title of the regulation and clarifies that an applicant must complete 600 hours in a course-related filed experience, practica, or formal internship as part of his or her degree.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify the course requirements and competence of licensees.

(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 equivalent course of study.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to clarify the course-related filed experience, practica, or formal internship requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently nine (9) certified psychologists, seventy-three (73) certified psychologist with autonomous functioning, three hundred forty (340) psychological associates, one hundred thirty (130) psychological practitioners, and nine hundred sixty (960) licensed psychologists. The Board is unsure of the number of possible applicants in the future.

(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 complete a continuing education course on suicide assessment, treatment, and management within the first year of licensure and then every six years thereafter.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will be the charge for the continuing education course.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A credential holder who falls within the allowable exemptions will not be required to take the continuing education course on suicide assessment, treatment, and management.

(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 Examiners of Psychology.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319.032(1)(a), (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 Examiners of Psychology
(Amendment)

201 KAR 26:215. Nonresident status.

RELATES TO: KRS 319.015(8)

STATUTORY AUTHORITY: KRS 319.015(8), 319.032(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.015(8) authorizes a nonresident psychologist temporarily employed in the state to render psychological services for no more than thirty (30) days every two (2) years and requires the board to

establish a registration process for nonresident psychologists. This administrative regulation establishes the requirements for registering in Kentucky as a nonresident psychologist.

Section 1.[~~(1)~~] A nonresident psychologist temporarily employed in the state may render psychological services[~~for no more than thirty (30) days every two (2) years~~] immediately upon:

(1) Written notification of intent to provide psychological services in Kentucky and verification to[~~of~~] the board that the nonresident psychologist:

(a) Holds the Interjurisdictional Practice Certificate (IPC) issued by the Association of State and Provincial Psychology Boards (ASPPB) or a successor organization;[~~or~~]

(b) Holds the Certificate of Professional Qualification (CPQ) issued by ASPPB or a successor organization;[~~or~~]

(c) Is board-certified by the American Board of Professional Psychology (ABPP) or a successor organization; or

(d) Is licensed in a jurisdiction with whom this Board has established reciprocity; and[~~.~~]

(2) Payment to the board a fee for registration as a nonresident psychologist established in 201 KAR 26:160, Section 4 [~~A nonresident psychologist temporarily employed in the state may render psychological services no more than thirty (30) days every two (2) years with the approval of the board if the nonresident psychologist is duly licensed in a jurisdiction not established as having reciprocity with the board and holds none of the qualifications described in subsection (1) of this section~~].

Section 2. (1)[~~Pursuant to KRS 319.015(8),~~] A nonresident credential [~~licensee~~] holder who does not satisfy Section 1, is temporarily employed, and seeks to practice[~~temporarily~~] in Kentucky shall [~~file a written registration with the board. The registration shall be a written letter sent to the board~~]:

(a) Submit completed Nonresident Psychological Registration Form and satisfy the requirements of Subsection (2) of this section [~~Indicating his or her desire to practice in Kentucky pursuant to KRS 319.015(8)~~]; and

(b) Pay to the board a fee for registration as a nonresident psychologist established in 201 KAR 26:160, Section 4[~~Stating the dates he or she intends to practice in Kentucky~~].

(2) Board approval shall be contingent upon:

(a) Receipt of documentation that the nonresident psychologist holds a valid license in good standing from another jurisdiction; and

(b) Confirmation that the applicant does not have a report of disciplinary action filed with the Association of State and Provincial Psychology Boards.

(3)(a) Nonresident temporary practice pursuant to KRS 319.015(8) shall be conditionally approved by the chair of the board if:

1. The applicant for temporary practice meets the conditions for practice established by KRS 319.015(8); and

2. The applicant has registered with the board.

(b) The conditional approval shall terminate at the next regularly scheduled meeting of the board. At that meeting, the board shall determine whether to approve the temporary practice.

Section 3. A nonresident psychologist temporarily employed in the state may render psychological services no more than thirty (30) days every two (2) years with the approval of the board.

Section 4.[~~3.~~] Upon the completion of the authorized temporary employment period, the nonresident license holder shall submit a written report to the board of each date on which psychological services were rendered in this state, and the location of the site of those services.

Section 5.[~~4.~~]For purposes of this administrative regulation, the provision of psychological services on a given date, regardless of the period of time of those services, shall constitute one (1) day.

Section 6.[~~5.~~] Pursuant to KRS 319.015(8), the provisions of this administrative regulation shall:

(1) Apply to a nonresident psychologist temporarily employed in the state for a period of fewer than thirty (30) days every two (2) years; and

(2) Not be used to begin practice in Kentucky by an applicant for temporary or regular licensure pending credentials review.

Section 7.[~~6.~~] A person licensed to practice psychology in another jurisdiction may practice psychology by electronic or telephonic means in Kentucky if he or she registers with the board and receives board approval for this practice. A person seeking this approval shall follow the provisions set forth in Sections 1 through 4 of this administrative regulation.

Section 8.[~~7.~~] A person licensed to practice psychology in another jurisdiction and who is providing service in response to a declared disaster pursuant to an agreement between the American Red Cross and the American Psychological Association's Disaster Response Network may begin practice in Kentucky upon notification to the board.

Section 9. A person practicing pursuant to the provisions of KRS 319.015(8) shall be subject to the provisions of KRS 319.082 and 201 KAR 26:145.

Section 10. Incorporation by Reference. (1) "Nonresident Psychological Registration Form", December 2016, is incorporated by reference.

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

JAMIE A. HOPKINS, Ph.D., HSPP, Chairperson

APPROVED BY AGENCY: March 15, 2017

FILED WITH LRC: March 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 25, 2017, at 1:00 p.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. 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 April 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Chessica Nation, Board Administrator, Kentucky Board of Examiners of Psychology, Department of Professional Licensing, 911 Leawood Drive, P. O. Box 1360, Frankfort, Kentucky 40601, phone (502) 782-8812, fax (502) 696-3925, email chessica.nation@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chessica Nation

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the procedure for a nonresident obtaining the right to temporarily practice psychology in Kentucky.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish a temporary status for a nonresident qualified individual to be allowed to practice psychology in Kentucky.

(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 continuing education requirement 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 continuing education 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 adds a late fee, reinstatement fee, and fee for registration as a nonresident; and incorporates new form to be submitted by a nonresident to be approved to temporarily practice psychology in Kentucky.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to incorporate a form.

(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 equivalent course of study.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in providing a form detailing the information that the board requires to approve a nonresident to temporarily practice psychology in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently nine (9) certified psychologists, seventy-three (73) certified psychologist with autonomous functioning, three hundred forty (340) psychological associates, one hundred thirty (130) psychological practitioners, and nine hundred sixty (960) licensed psychologists. The Board is unsure of the number of possible applicants in the future.

(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 complete a continuing education course on suicide assessment, treatment, and management within the first year of licensure and then every six years thereafter.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will be the charge for the continuing education course.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A credential holder who falls within the allowable exemptions will not be required to take the continuing education course on suicide assessment, treatment, and management.

(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 Examiners of Psychology.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319.015(8), 319.032(1)(a).

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

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

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(Amendment)

201 KAR 26:250. Employment of a psychological associate.

RELATES TO: KRS 319.032(1)(b), (l), 319.064(5)

STATUTORY AUTHORITY: KRS 319.032(1)(b), (l)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(l) requires the board to promulgate an administrative regulation governing the supervision and employment of a licensed psychological associate. KRS 319.064(5) prohibits a licensed psychological associate from practicing independently, except under the employment and supervision of a board approved licensed psychologist. This administrative regulation establishes the requirements for the employment of a licensed psychological associate.

Section 1. Employment of a licensed psychological associate by a regional mental health/mental retardation board, college or university, or government agency shall not be considered independent practice.

Section 2. A licensed psychological associate may be employed in a supervisor's independent practice, if the supervisor is responsible for the direction and control of the practice of the licensed psychological associate.

Section 3. A special application shall:

(1) Be submitted to the board by the supervisor of record and a licensed psychological associate if:

(a)1. The licensed psychological associate is employed in an independent practice; and

2. The supervisor of record is not the employer; or

(b) The employer is not an organization listed in Section 1 of this administrative regulation;

(2) Be approved by the board before the practice begins;

(3) Identify the licensed psychological associate, supervisor,

and employer; and

(4) Certify that:

(a) The supervising licensed psychologist is not hired, employed or engaged under contract by the licensed psychological associate [~~and shall not be terminated by the licensed psychological associate~~];

(b) The licensed psychological associate is not one of the owners of the independent practice or organization, but rather serves as an employee; and

(c) The licensed psychological associate has both administrative and clinical supervision which are provided by the independent practice or organization.

(5) The arrangement described in the application shall be approved by the board before the practice begins.

Section 4. A licensed psychological associate shall not pay, hire or employ a supervisor to provide supervision in accordance with 201 KAR 26:171.

Section 5. A licensed psychological associate who works as an employee for more than one (1) independent practice or organization shall obtain approval from the board of a supervisor of record for each independent practice or organization and shall comply with 201 KAR 26:171 for approval to have more than two (2) supervisors of record.

Section 6[~~5~~]. In all communications and advertising with the public, the licensed psychological associate's relationship with the employer and the supervisor shall be clearly indicated.

Section 7[~~6~~]. The licensed psychological associate and the supervisor shall comply with the requirements for supervision established in 201 KAR 26:171.

Section 8[~~7~~]. Incorporation by Reference. (1) "Special Application[~~/Employment of a Psychological Associate~~]", (October 2016[~~January 2002~~] edition), is incorporated by reference.

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

JAMIE A. HOPKINS, Ph.D., HSPP, Chairperson

APPROVED BY AGENCY: March 15, 2017

FILED WITH LRC: March 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 25, 2017, at 1:00 p.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. 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 April 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Chessica Nation, Board Administrator, Kentucky Board of Examiners of Psychology, Department of Professional Licensing, 911 Leawood Drive, P. O. Box 1360, Frankfort, Kentucky 40601, phone (502) 782-8812, fax (502) 696-3925, email chessica.nation@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chessica Nation

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation governs the employment of a licensed psychological associate.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the allowable employment practices for a licensed psychological associate.

(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 continuing education requirement for a credential holder.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the procedure for what is expected and allowed when it comes to the employment of a licensed psychological associate.

(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 that a licensed psychological associate shall not pay, hire or employ a licensed psychologist as a supervisor.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify this practice is not allowed.

(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 equivalent course of study.

(d) How the amendment will assist in the effective administration of the statutes: The amendment is to incorporate the affirmation that an a licensed psychological associate is already making on a special application.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently nine (9) certified psychologists, seventy-three (73) certified psychologist with autonomous functioning, three hundred forty (340) psychological associates, one hundred thirty (130) psychological practitioners, and nine hundred sixty (960) licensed psychologists. The Board is unsure of the number of possible applicants in the future.

(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 complete a continuing education course on suicide assessment, treatment, and management within the first year of licensure and then every six years thereafter.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will be the charge for the continuing education course.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A credential holder who falls within the allowable exemptions will not be required to take the continuing education course on suicide assessment, treatment, and management.

(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 Examiners of Psychology.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319.032(1)(b), (l)

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 Examiners of Psychology
(Amendment)

201 KAR 26:280. Licensed psychological associate: application procedures and temporary license.

RELATES TO: KRS 319.064

STATUTORY AUTHORITY: KRS 319.032(1)(a), (c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(a) and (c) require the board to promulgate administrative regulations establishing the requirements for an applicant for licensure as a psychological associate. This administrative regulation establishes the requirements for applicants for licensure, and the conditions for a temporary license.

Section 1. Application. (1) An application for a credential to perform certain functions as a licensed psychological associate may be submitted after the requirements established in KRS 319.064(2) are met.

(2) The application required by subsection (1) of this section shall be made by submitting a completed Application for Licensure as a Psychological Associate[~~Form Psy-1, as incorporated in 201 KAR 26:155,~~] to the board. The application shall:

(a) Include a certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief; and

2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and

(b) Be accompanied by:

1. A check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 26:160;

2. Three (3) letters of reference from persons qualified to evaluate the applicant's professional ability, including two (2) persons who have received a doctorate in psychology (Ph.D. Psy.D., or Ed.D.); and

3. An official transcript for all levels of education required for licensure.

Section 2. Temporary Licensure. (1) An applicant may request permission to perform functions as a licensed psychological associate on a temporary basis pursuant to KRS 319.064(3).

(2) The request for a temporary credential shall be co-signed by the candidate and the proposed supervisor, who shall be a licensed psychologist approved by the board and who holds the health services provider designation.

(3) The period of temporary licensure shall be terminated upon successful completion of all credentials and examination procedures or if the candidate fails to pass the EPPP within one (1) year of the date of the notice of approval by the board for a temporary license.

(4)(a) Under exceptional circumstances and upon written request cosigned by the board approved supervisor, the board may approve an extension of the period of temporary licensure.

(b) A licensee shall submit a completed Request for Extension of Temporary Licensure as a Psychological Associate to request an extension.

Section 3. Grace Period for Submission of Credentials. In order to allow for processing of the candidate's materials by the board, there shall be a grace period not to exceed sixty (60) days within which a candidate who has completed his or her degree requirements may begin employment by an agency to practice psychology under supervision with a board-approved supervisor.

(1) Upon acceptance of employment, the candidate and the licensed psychologist who shall serve as the supervisor shall immediately submit a letter of notice to the board indicating that he or she has begun to practice in Kentucky and that application materials are forthcoming. Failure to submit this notice may be deemed as grounds for disciplinary action against the candidate and the supervisor.

(2) It is the responsibility of the candidate to ensure that all materials are forwarded to the board within thirty (30) days from the date of agency employment. Once the application is complete, the board shall review the material at its next scheduled meeting and, if appropriate, issue either a temporary or permanent credential. If the candidate does not meet the requirements for the credential, or if their application material is insufficient to take any action, he or she shall be directed to cease practice until the requirements are met.

(3) The grace period shall not be extended beyond sixty (60) days. A candidate who fails to achieve approval within this timeframe shall not practice psychology until credentialed by the board.

(4) Upon filing the notice set forth in subsection (1) of this section, the candidate is deemed to be practicing psychology under the jurisdiction of the board, and is subject to all relevant laws and regulations.

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

(a) "Application for Licensure as a Psychological Associate", February 2017;

(b) "Recommendation for Licensure as a Psychological Associate", February 2017; and

(c) "Request for Extension of Temporary Licensure as a Psychological Associate", February 2017.

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

JAMIE A. HOPKINS, Ph.D., HSPP, Chairperson

APPROVED BY AGENCY: March 15, 2017
FILED WITH LRC: March 15, 2017 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 25, 2017, at 1:00 p.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. 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 April 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Chessica Nation, Board Administrator, Kentucky Board of Examiners of Psychology, Department of Professional Licensing, 911 Leawood Drive, P. O. Box 1360, Frankfort, Kentucky 40601, phone (502) 782-8812, fax (502) 696-3925, email chessica.nation@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chessica Nation

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the procedures and requirements to obtain a temporary license or full license as a licensed psychological associate.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the procedure and documents that an applicant must submit for a temporary or full license, and the procedure for obtaining an extension of a temporary license.

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists an applicant with detailing the procedure and documents that an applicant must submit for a temporary or full license, and the procedure for obtaining an extension of a temporary license.

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

(a) How the amendment will change this existing administrative regulation: The amendment incorporates new forms to be submitted by: (i) an applicant applying to be a licensed psychological associate; (ii) a standardized recommendation form; and (iii) an extension of a temporary application request.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to incorporate forms.

(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 equivalent course of study.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in providing specific forms outlining the information and documents the board needs to process an application.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently nine (9) certified psychologists, seventy-three (73) certified psychologist with autonomous functioning, three hundred forty (340) psychological associates, one hundred thirty (130) psychological practitioners, and nine hundred sixty (960) licensed psychologists. The Board is unsure of the number of possible applicants in the future.

(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 complete a continuing education course on suicide assessment, treatment, and management within the first year of licensure and then every six years thereafter.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will be the charge for the continuing education course.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A credential holder who falls within the allowable exemptions will not be required to take the continuing education course on suicide assessment, treatment, and management.

(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 Examiners of Psychology.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319.032(1)(a), (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. 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 Examiners of Psychology
(Amendment)

201 KAR 26:290. Licensed psychological practitioner: application procedures.

RELATES TO: KRS 319.053
STATUTORY AUTHORITY: 319.032(1)(a), (c)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.053 requires the board to promulgate administrative regulations establishing the requirements for an applicant for licensure as a psychological practitioner. This administrative regulation establishes the requirements for applicants.

Section 1. Application. (1) An applicant[~~application~~] for licensure[~~a license~~] as a licensed psychological practitioner shall submit a completed Application for Licensure as a Psychological Practitioner [~~may be submitted on form Psy 1, as incorporated in 201 KAR 26:155,~~] after the requirements established in KRS 319.053(1) are met.

(2) The application shall:

(a) Include a certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief;

2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and

(b) Be accompanied by:

1. A payment[~~check or money order payable~~] to the Kentucky State Treasurer for the application fee as required by 201 KAR 26:160;

2. Three (3) letters of completed Recommendation for Licensure as a Psychological Practitioner[~~reference~~] from persons who are familiar with the clinical work of the applicant. One (1) letter shall be from the current board-approved supervisor of record outlining the candidate's scope of practice and the other two (2) letters shall be from licensed mental health professionals acceptable to the board;[~~and~~]

3. An official transcript for all levels of education required for licensure; and[~~.~~]

4. A completed Supervisor Recommendation for Licensure as a Psychological Practitioner.

Section 2. Temporary Licensure. Temporary credentials shall not be issued to persons applying for licensed psychological practitioner status. An applicant may continue to practice under board-approved supervision as a licensed psychological associate or as a certified psychologist pending successful completion of all requirements for a change of status to a licensed psychological practitioner.

(1) The candidate shall obtain an acceptable score on the national (EPPP) examination as established in 201 KAR 26:230, Section 4.

(2) The board shall accept the applicant's previous examination results for the national (EPPP) examination if the original test score satisfied the doctoral licensure requirement as to criterion level at the time of that examination.

(3) The applicant shall pass the structured oral examinations on Kentucky mental health law, ethical principles, and professional practice established in 201 KAR 26:230, Section 4(5).

(4) An applicant for licensure as a psychologist shall submit:

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Licensure as a Psychological Practitioner", February 2017;

(b) "Supervisor Recommendation for Licensure as a Psychological Practitioner", February 2017; and

(c) "Recommendation for Licensure as a Psychological Practitioner", February 2017.

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

JAMIE A. HOPKINS, Ph.D., HSPP, Chairperson
APPROVED BY AGENCY: March 15, 2017
FILED WITH LRC: March 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 25, 2017, at 1:00 p.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. 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 April 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Chessica Nation, Board Administrator, Kentucky Board of Examiners of Psychology, Department of Professional Licensing, 911 Leawood Drive, P. O. Box 1360, Frankfort, Kentucky 40601, phone (502) 782-8812, fax (502) 696-3925, email chessica.nation@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chessica Nation

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the procedures and requirements to obtain a temporary license or full license as a licensed psychological practitioner.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the procedure and documents that an applicant must submit for a temporary or full license, and the procedure for obtaining an extension of a temporary license.

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists an applicant with detailing the procedure and documents that an applicant must submit for a temporary or full license, and the procedure for obtaining an extension of a temporary license.

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

(a) How the amendment will change this existing administrative regulation: The amendment incorporates new forms to be submitted by: (i) an applicant applying to be a licensed psychological practitioner; (ii) a standardized recommendation form; and (iii) an extension of a temporary application request.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to incorporate forms.

(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 equivalent course of study.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in providing specific forms outlining the information and documents the board needs to process an application.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently nine (9) certified psychologists, seventy-three (73) certified psychologist with autonomous functioning, three hundred forty (340) psychological

associates, one hundred thirty (130) psychological practitioners, and nine hundred sixty (960) licensed psychologists. The Board is unsure of the number of possible applicants in the future.

(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 complete a continuing education course on suicide assessment, treatment, and management within the first year of licensure and then every six years thereafter.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will be the charge for the continuing education course.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A credential holder who falls within the allowable exemptions will not be required to take the continuing education course on suicide assessment, treatment, and management.

(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 Examiners of Psychology.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319.032(1)(a), (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. 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
Board of Licensing for Marriage and Family Therapists
(Amendment)

201 KAR 32:050. Code of ethics.

RELATES TO: KRS 335.320(7), 335.348

STATUTORY AUTHORITY: KRS 335.320(7), (9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.320(5) requires the board to promulgate a code of ethics for licensed marriage and family therapists and marriage and family therapist associates. This administrative regulation establishes the required code of ethics.

Section 1. Responsibility to Clients. (1) A marriage and family therapist or a marriage and family therapist associate shall:

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

(b) respect the rights of persons seeking his assistance; and

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

(2) A marriage and family therapist or marriage and family therapist associate shall not:

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

(b) Engage in a dual relationship with a client, including a social, business, or personal relationship, that may:

1. Impair professional judgment;

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

3. Otherwise violate a provision of this administrative regulation. 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 therapist or therapist associate shall take appropriate professional precautions to ensure that judgment is not impaired and exploitation of the client does not occur.

(c) Engage in a sexual relationship with a current client,[~~or with~~] a former client, or a member of a client's family system[~~for two (2) years following the termination of therapy~~];

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

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

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

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

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

(i) Engage in sexual or other harassment or exploitation of a client, student, trainee, supervisee, employee, colleague, research subject, or actual or potential witness or complainant in investigations and ethical proceedings; or

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

Section 2. Confidentiality. (1) A therapist or therapist associate shall respect and guard the confidences of each individual client.

(2) Marriage and family therapists and marriage and family therapist associates 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 or persons;

(c) If the therapist or therapist associate is a defendant in a civil, criminal, or disciplinary action arising from the therapy, confidences may be disclosed only in the course of that action; or

(d) If a waiver has been obtained in writing, confidential

information shall be revealed only in accordance with the terms of the waiver. If more than one (1) person in a family receives therapy, unless a waiver is executed by each family member receiving therapy, who is legally competent to execute a waiver, a therapist or therapist associate shall not disclose information received from any family member.

(3) A marriage and family therapist or marriage and family therapist associate, shall not reveal any individual's confidences to others in the client unit without the prior written permission of that individual.

(4) A marriage and family therapist or marriage and family therapist associate may use client or clinical materials in teaching, writing, and public presentations if:

(a) A written waiver 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.

(5) A marriage and family therapist or marriage and family therapist associate shall store or dispose of client records so as to maintain confidentiality.

Section 3. Professional Competence and Integrity. A marriage and family therapist or marriage and family therapist associate shall maintain standards of professional competence and integrity and shall be subject to disciplinary action:

(1)(a) Upon conviction of a felony, or a misdemeanor related to his practice as a marriage and family therapist or marriage and family therapist associate.

(b) Conviction shall include conviction based on:

1. A plea of no contest or an "Alford Plea"; or

2. The suspension or deferral of a sentence.

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

(3) Upon a showing of impairment due to mental incapacity or the abuse of alcohol or other substances which negatively impact the practice of marriage and family therapy;

(4) If he misrepresented or concealed a material fact in obtaining or seeking reinstatement of a license or certificate;

(5) If he has refused to comply with an order issued by the board; or

(6) If he has failed 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 subpoenas issued by the board; or

(7) Fails to notify the board in writing within ten (10) business days of a change in contact information.

Section 4. Responsibility to a Student or Supervisee. (1) A marriage and family therapist or marriage and family therapist associate shall not exploit the trust and dependency of a student or supervisee.

(2) A marriage and family therapist or marriage and family therapist associate shall:

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

(b) Avoid exploiting the trust and dependency of these persons.

1. A therapist or therapist associate shall make every effort to avoid a dual relationship, including a social, business, or personal relationship, with a student or supervisee that may impair professional judgment or increase the risk of exploitation.

2. If a dual relationship cannot be avoided, a therapist or therapist associate shall take appropriate professional precautions to ensure judgment is not impaired and no exploitation occurs.

3. A therapist or therapist associate shall not provide therapy to a student, employee or supervisee.

4. A therapist or therapist associate shall not engage in sexual intimacy or contact with a student or supervisee.

(3) A marriage and family therapist or marriage and family therapist associate shall not permit a student or supervisee to perform or to hold himself out as competent to perform professional services beyond his level of training, experience, and competence.

(4) A marriage and family therapist or marriage and family therapist associate shall not disclose a student's or supervisee's confidence except:

(a) As mandated, or permitted by law;

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

(c) If the therapist or therapist associate is a defendant in a civil, criminal, or disciplinary action arising from the supervision, the student's or supervisee's confidence may be disclosed only in the course of that action;

(d) In educational or training settings if there are multiple supervisors, to other professional colleagues who share responsibility for the training of the supervisee; or

(e) If there is a waiver previously obtained in writing, information shall be revealed only in accordance with the terms of the waiver.

Section 5. Financial Arrangements. (1) A marriage and family therapist or marriage and family therapist associate shall make financial arrangements with a client, third party payor, or supervisee that are reasonably understandable and conform to accepted professional practices.

(2) A marriage and family therapist or marriage and family therapist associate shall:

(a) Not offer or accept payment for referrals;

(b) Not charge excessive fees for services;

(c) Disclose his fees to clients and supervisees at the beginning of services; or

(d) Represent facts truthfully to clients, third party payors, and supervisees regarding services rendered.

Section 6. Advertising. A marriage and family therapist shall:

(1) Accurately represent his education, training, and experience relevant to his practice of marriage and family therapy;

(2) Not use professional identification, including a business card, office sign, letterhead, or telephone or association directory listing if it includes a statement or claim that is false, fraudulent, misleading, or deceptive.

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

(a) Contains a material misrepresentation of fact;

(b) Fails to state any material fact necessary to make the statement, in light of all circumstances, not misleading; or

(c) Is intended to or is likely to create an unjustified expectation.

Section 7. A marriage or family therapist associate may have business cards and letterhead if it is clearly stated that he is an associate. He shall not present himself or imply that he is licensed to practice as a marriage and family therapist.

MARY BADAMI, Chairperson

APPROVED BY AGENCY: February 13, 2017

FILED WITH LRC: March 2, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 21, 2017, at 1:30 p.m., at the office of the Kentucky Board for Marriage and Family Therapists, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-3296. Individuals interested in attending this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the day on April 30, 2017. Send written notification of intent to attend

the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Nicole Sergent Biddle, Counsel for Kentucky Board of Licensure for Marriage and Family Therapists, C/O Office of the Attorney General, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-5463, email Nicole.Sergent@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nicole Sergent Biddle

(1) Provide a brief summary of: This administrative regulation changes the Marriage and Family Therapist and Marriage and Family Therapist Associate ethical code to provide that no marriage and family therapist or marriage and family therapist associate shall engage in a sexual relationship with a current client or with a former client or the client family system.

(a) What this administrative regulation does: This administrative regulation sets forth a clear ethical violation.

(b) The necessity of this administrative regulation: These changes are authorized under KRS 335.320(5) and provide public protection.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation sets forth the prohibition against a sexual relationship with a client or anyone in the client family system.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth a code of ethics for the practice of marriage and family therapy.

(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 any waiting period (previously 2 years) and provides that no sexual relationship is allowed with a client or the client system at any time.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because it clarifies that a sexual relationship with a client or anyone in the client system would violate the Kentucky marriage and family therapist and marriage and family therapist associates' code of ethics.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is consistent with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide clarity regarding acceptable conduct by a marriage and family therapist and marriage and family therapist associate.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Marriage and Family Therapists Approx. 550 and Marriage and Family Therapist Associates Approx. 150, total Approx. 700.

(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: They cannot have a sexual relationship with clients or anyone in the client system.

(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 anticipated changes in costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The code of ethics will not allow for a sexual relationship with a client or anyone in the client system.

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

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The fees are not increased.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative regulation does not establish fees or increase fees, only ethical standards.

(9) TIERING: Is tiering applied? Tiering is not applied. All licensees and associates or permit holders are held to the same ethical standards.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensure for Marriage and Family Therapists does not anticipate any other agencies being impacted.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.320(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. Expenditures will not be affected by this amendment.

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? N/A

(d) How much will it cost to administer this program for subsequent years? N/A

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

GENERAL GOVERNMENT
Board of Licensure for Marriage and Family Therapists
(Amendment)

201 KAR 32:060. Continuing education requirements.

RELATES TO: KRS 194.540, 210.366, 335.300(4), 335.340

STATUTORY AUTHORITY: KRS 335.320(4), (9), 335.340(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.340(7) authorizes the board to promulgate administrative regulations to establish the fees and other requirements for a permit as a marriage and family therapist and associate. This administrative regulation establishes the requirements for continuing education and the methods and standards for the accreditation of continuing education courses.

Section 1. Accrual of Continuing Education Hours; Computation of Accrual. (1) Effective January 1, 2017, a minimum of fifteen (15) approved continuing education hours shall be accrued by each licensee and a minimum of ten (10) approved continuing education hours shall be accrued by each associate during each one (1) year renewal period.

(2) All hours shall be in "the practice of marriage and family

therapy" as defined by KRS 335.300(4) and shall relate to the professional application of psychotherapeutic and systems theories and techniques in the delivery of services to individuals, couples, and families.

(3) Three (3) hours of the[~~fifteen (15)~~] hours required by subsection (1) of this section for licensees and associates shall be accrued in the field of professional marriage and family therapy ethics.

(4) Commencing on January 1, 2017, each licensee and associate shall be required to show proof of completion of six (6) hours of continuing education in suicide assessment, treatment, and management every six (6) years beginning January 1, 2015 as required by KRS 210.366. These hours shall be in addition to the requirements set forth in subsection (1) of this section unless preapproved by the board as meeting the requirements set forth in subsection (2) of this section or meets requirements of Section 2 of this administrative regulation.

(5) Within three (3) years of initial licensure or certification, all mental health professionals shall successfully complete a three (3) hour training that covers dynamics of domestic violence, 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 as required by KRS 194A.540.

Section 2. Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the license or permit shall be directly related to the professional growth and development of marriage and family therapy practitioners and associates. Education hours shall be earned by completing any of the educational activities established in this subsection. (1) Programs not requiring board review and approval. Programs from the following sources shall be deemed to be relevant to the practice of marriage and family therapy and shall be approved without further review by the board:

(a) Programs provided or approved by the American Association for Marriage and Family Therapy (AAMFT) and its state affiliates;

(b) Academic courses as defined in 201 KAR 32:010; and

(c) Continuing education programs offered by Commission on Accreditation for Marriage and Family Therapy Education accredited institutions.

(2) Programs requiring board review and approval. Programs from the following sources shall be reviewed and may be determined to be relevant and subsequently approved by the board:

(a) Relevant programs including online study courses, manualized training, and face-to-face workshops, by other organizations, educational institutions, or other service providers approved by the board;

(b) Relevant programs or academic courses presented by the licensee. Presenters of relevant programs or academic courses may 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; and

(c) Relevant publications in a professionally recognized or juried publication. Credit shall not be granted except for those publications that were published within the one (1) year period immediately preceding the renewal date. A licensee shall earn one-half (1/2) of the continuing education hours required for a relevant publication. More than one (1) publication shall not be counted during each renewal period.

Section 3. Continuing Education Sponsors. (1) Any entity seeking to obtain approval of a continuing education program prior to its offering shall pay the fee as established in 201 KAR 32:030, Section 7, and submit an Application for Continuing Education Sponsor Approval to the board at least sixty (60) days in advance of the program. The application shall include the:

(a) Type of learning activity;

(b) Subject matter;

(c) Names and qualifications of the instructors; and

(d) Number of continuing education hours offered.

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

(a) Is an organized program of learning;

(b) Pertains to subject matters that integrally relate to the practice of marriage and family therapy;

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

(d) Is conducted by individuals who have relevant educational training or experience.

Section 4. Responsibilities and Reporting Requirements of Licensees and Associates. (1) Licensees and associates shall:

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

(b) Identify personal continuing education needs;

(c) Take the initiative in seeking continuing professional education activities to meet these needs; and

(d) Seek ways to integrate new knowledge, skills, and attitudes.

(2) Each person holding a license or permit shall:

(a) Select approved activities by which to earn continuing education hours;

(b) If seeking approval for continuing education from a program not already approved pursuant to Section 3 of this administrative regulation and not exempted from requiring board approval pursuant to Section 2(1) of this administrative regulation, submit an application to the board for consideration. The application shall include the:

1. Agenda that is detailed, timed, and includes topics and presenters;

2. Presenter's biography, including education;

3. Credentials of all presenters;

4. All presenters' experience related to topic;

5. Description of training; and

6. Objectives and goals;

(c) Maintain records of continuing education hours. Each licensee and associate shall maintain, for a period of one (1) year from the date of renewal, all documentation verifying successful completion of continuing education hours. During each renewal period, up to fifteen (15) percent of all licensees and associates 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. Verification of continuing education hours shall not otherwise be reported to the board;

(d) Document attendance and participation in a continuing education activity in the form of official documents including transcripts, certificates, or affidavits signed by instructors. The type of documentation required shall vary depending on the specific activity submitted to the board for approval; and

(e) Fully comply with the provisions of this administrative regulation. Failure to comply shall constitute a violation of KRS 335.340(7) and may result in the refusal to renew, suspension, or revocation of the license or permit.

Section 5. Carry-over of Continuing Education Hours, Prohibited. There shall not be a carry-over of continuing education hours earned in excess of those required under Section 1 of this administrative regulation into the immediately following renewal period.

Section 6. Board to Approve Continuing Education Hours; Appeal Upon Approval Denial. In the event of denial, in whole or part, of any application for approval of continuing education hours, the licensee or associate shall have the right to request reconsideration by the board 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 7. Waiver or Extensions of Continuing Education. (1) The board may, in individual cases involving medical disability, illness, or undue hardship, grant waivers of the minimum continuing education requirements or extensions of time within which to fulfill the same or make the required reports.

(2) A request for waiver or extension shall be in writing and submitted within the renewal grace period.

(3) A written request for waiver or extension of time involving medical disability or illness shall be submitted by the licensee or associate accompanied by a verifying document signed by a licensed physician, a physician's assistant, or a nurse practitioner, and shall be received by the board within the grace period.

(4) A waiver of the minimum continuing education requirements or an extension of time within which to fulfill the continuing education requirements may be granted by the board for a period of time not to exceed one (1) calendar year.

(5) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the licensee or associate shall reapply for the waiver or extension in writing prior to the expiration of the previous extension or waiver.

Section 8. Incorporation by Reference. (1) "Application for Continuing Education Program Sponsor Approval", 10/2011 Edition, Board of Marriage and Family Therapists, is incorporated by reference.

(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.

MARY BADAMI, Chairperson

APPROVED BY AGENCY: February 13, 2017

FILED WITH LRC: March 2, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 21, 2017, at 1:30 p.m., at the office of the Kentucky Board for Marriage and Family Therapists, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-3296. Individuals interested in attending this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the day on April 30, 2017. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Nicole Sergent Biddle, Counsel for Kentucky Board of Licensure for Marriage and Family Therapists, C/O Office of the Attorney General, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-5463, email Nicole.Sergent@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nicole Sergent Biddle

(1) Provide a brief summary of: This administrative regulation clarifies the continuing education requirements for Marriage and Family Therapists and Marriage and Family Therapist Associates.

(a) What this administrative regulation does: This administrative regulation sets forth a clear ethics continuing education requirement of three (3) hours for both therapists and associates.

(b) The necessity of this administrative regulation: These changes are authorized under KRS 335.320(4) and (9).

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation sets forth the continuing education requirements for marriage and family therapists and marriage and family therapist associates.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the required continuing education for the practice of marriage and family therapy.

(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 clarifies the continuing education ethics requirements therapists and associates.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because it clarifies that both therapists and associates are required to complete three (3) credit hours of ethics.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is consistent with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide clarity regarding continuing education in ethics for a marriage and family therapist and marriage and family therapist associate.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Marriage and Family Therapists Approx. 550 and Marriage and Family Therapist Associates Approx. 150, total Approx. 700.

(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: Both associates and therapists must complete the ethics continuing education.

(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 anticipated changes in costs. The same number of hours are required for both associates and therapists (only the type of educational hours change to clearly include ethics).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Both associates and therapists will complete three (3) hours of ethics.

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

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The fees are not increased.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative regulation does not establish fees or increase fees, only continuing education requirements.

(9) TIERING: Is tiering applied? Tiering is not applied. All licensees and associates or permit holders are held to the same continuing education requirements regarding ethics.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensure for Marriage and Family Therapists does not anticipate any other agencies being impacted.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.320(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. Expenditures will not be affected by this amendment.

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? N/A

(d) How much will it cost to administer this program for subsequent years? N/A

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

GENERAL GOVERNMENTAL CABINET
Office of Occupations and Professions
Board of Interpreters for the Deaf and Hard of Hearing
(Amendment)

201 KAR 39:050. Renewal of licenses, extension of temporary licenses and reinstatement.

RELATES TO: KRS 309.304(5), 309.312, 309.314

STATUTORY AUTHORITY: KRS 309.304(3), 309.312, 309.314

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.304(3), 309.312, and 309.314 require the Board of Interpreters for the Deaf and Hard of Hearing to promulgate administrative regulations to carry the provisions of KRS 309.300 to 309.3189; to establish certification requirements for licensure; and to establish renewal and reinstatement fees. This administrative regulation establishes requirements for renewal of licenses, extension of temporary licenses, and reinstatement.

Section 1. Renewal of Licenses. A person licensed as an interpreter shall renew that license annually, as required by KRS 309.314(1) by submitting the following to the board:

(1) A completed License Renewal Application form;

(2) The renewal fee as established in 201 KAR 39:040;

(3) Proof of current certification of the licensee as an interpreter for the deaf and hard of hearing by a nationally recognized organization[~~established in 201 KAR 39:030~~]; and

(4) Documentation of completion of the continuing education requirement established in 201 KAR 39:090.

Section 2. Grace Period. If a license is not renewed by July 1, it may be renewed during the following sixty (60) day period, in accordance with KRS 309.314, by:

(1) Complying with the requirements established in Section 1 of this administrative regulation; and

(2) Submitting the late renewal fee established in 201 KAR 39:040.

Section 3. (1) Reinstatement. A license not renewed prior to the close of the sixty (60) day grace period, in accordance with KRS 309.314(4), may be reinstated upon:

(a) Payment of the renewal fee plus a reinstatement fee as established by 201 KAR 39:040, Section 4(1);

(b) Submission of a completed Reinstatement Application for Licensed Interpreters[~~License Reinstatement Application~~] form to the board;

(c) Submission of evidence of completion of continuing education as required by 201 KAR 39:090, Section 10; and

(d) Proof of current certification of the licensee as an interpreter for the deaf and hard of hearing by a nationally recognized organization[~~Completion of the requirements of Section 4 of this administrative regulation~~].

(2) The board may reinstate a temporary license only if the licensee submits proof sufficient to the board of situations such as:

(a) Medical disability of the licensee;

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

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

(3) A request for reinstatement of a temporary license 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.

Section 4. Extensions of Temporary Licenses. (1) Temporary licenses shall expire on July 1 each year. To extend a temporary license, a request for extension shall be submitted by July 1 each year.

(2) To request an extension of a temporary license:

(a) A temporary licensee shall submit:

1. A completed Temporary License Extension Application form;

2. The appropriate fee set forth in 201 KAR 39:040;

3. Proof of completion of the continuing education requirements set forth in 201 KAR 39:090;

4. A letter recommending extension written by the Mentor(s) of Record for the previous licensure term which describes the progress achieved by the mentee. The board may waive this requirement upon submission of proof by the licensee that the licensee has substantially met the goals stated in the plan of supervision; and

5. A revised plan of supervision for the upcoming licensure year.

(b) A deaf or hard of hearing temporary licensee shall submit:

1. Upon applying for a first, second, or third extension:

a. A completed Temporary License Extension Application form;

b. The appropriate fee set forth in 201 KAR 39:040;

c. Proof of completion of the continuing education requirements set forth in 201 KAR 39:090;

d. A letter recommending extension written by the Mentor(s) of Record which describes the progress achieved by the Mentee. The board may waive this requirement upon submission of proof by the licensee that the licensee has substantially met the goals stated in the plan of supervision; and

e. A revised plan of supervision for the upcoming licensure year.

2. Upon applying for a fourth and subsequent extensions, a temporary license holder shall submit to the board documentation proving:

a. All requirements listed in paragraph (a) of this subsection; and

b. Proof of passage of the RID CDI Knowledge Exam.

(3) The extensions of temporary licenses under this section shall be subject to the term limitations imposed by 201 KAR 39:070, Section 2(2).

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "License Renewal Application", December 2016[~~January 2013~~];

(b) "Reinstatement Application for Licensed Interpreters", December 2016[~~"License Reinstatement Application", March 2013~~];

(c) "Temporary License Reinstatement Application", December 2016[~~March 2013~~]; and

(d) "Temporary License Extension Application", December 2016[~~March 2013~~].

(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 Chai

APPROVED BY AGENCY: March 2, 2017

FILED WITH LRC: March 2, 2017 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, April 24, 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 Sunday, April 30, 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 renewal and reinstatement procedures for persons licensed to practice in the state as a Licensed Interpreter for the Deaf and Hard of Hearing. This administrative regulation establishes the extension procedures for persons holding temporary licensure.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the minimum requirements for renewal and reinstatement of licenses for interpreters for the deaf and hard of hearing. This administrative regulation is necessary to set the extension requirements for persons holding temporary licenses.

(c) How does this administrative regulation conform to the content of the authorizing statutes? KRS 309.314 requires the board to promulgate administrative regulations stating the fees and standards for renewal and reinstatement of licenses. KRS 309.312 requires the board to promulgate administrative regulations stating the circumstances for extension of temporary licenses. This administrative regulation establishes those required standards and fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will informs the applicants for renewal and extensions of the minimum requirements and fees for renewal or reinstatement of licenses, and for extension of temporary licenses.

(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 allow applicants for renewal to show current certification with any nationally recognized organization for renewal of licensure.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to allow license holders to renew licenses based on the licensure certifications accepted by the board at the time of their initial applications.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 309.312 requires licensees to hold current certification from a nationally recognized organization for sign language interpreters. KRS 309.314 requires the board to promulgate administrative regulations that that set the standards for reinstatement of licenses that have expired for non-renewal. This amendment is necessary to allow license holders applying for renewal to show they are currently certified to practice as interpreters for the deaf and hard of hearing.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow license holders to renew licenses based on the certifications they held at the time of their initial applications.

(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 or renewal 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 renewal applicants to submit proof that they met the minimum credential standards in place at the time of their initial application for licensure.

(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 renewal will be able to submit the same proof of certification as they held at the time of their initial application for licensure in the Commonwealth.

(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 renewing and reinstating licenses. The fees are not stated in this regulation.

(9) Tiering: Is tiering applied? No. Tiering is not applied to this regulation because the criteria will apply to all license renewal 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, KRS 309.314.

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

TOURISM, ARTS, AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:075. Wildlife rehabilitation permit.

RELATES TO: KRS 150.015, 150.021, 150.183, 150.195

STATUTORY AUTHORITY: KRS 150.025(1)(h), 150.280

NECESSITY, FUNCTION AND CONFORMITY: KRS 150.025(1)(h) authorizes the department to promulgate administrative regulations reasonably necessary to implement or carry out the purposes of Chapter 150[~~regulate wildlife in the Commonwealth~~]. KRS 150.280 authorizes the department to promulgate administrative regulations regarding holding protected wildlife. This administrative regulation establishes the guidelines for issuing a permit to a wildlife rehabilitator, maintaining a facility for wildlife rehabilitation, and the operating requirements[~~standards~~] for wildlife rehabilitators.

Section 1. Definitions[~~Definition~~]. (1) "Cervid" means a member of the family Cervidae.

(2) "Permit holder" means a wildlife rehabilitation permit holder.

(3) "Wildlife rehabilitation" means the process of rescuing, raising, and arranging for veterinary medical care of orphaned, sick, displaced, or injured wildlife with the goal of releasing the wildlife back into its natural habitat.

Section 2. Wildlife Rehabilitation Permits. (1) An applicant for a wildlife rehabilitation permit shall:

(a) Be at least[~~a minimum of~~] eighteen (18) years of age;

(b) Complete[~~Fill out~~] an application provided by the department;

(c) Submit[~~Send~~] the application to the Director of Wildlife at #1 Sportsman's Lane, Frankfort, Kentucky 40601;

(d) Submit proof of successful completion of the course entitled "Basic Wildlife Rehabilitation" offered by the International Wildlife Rehabilitation Council; and

(e) Submit the annual permit fee as established in 301 KAR 3:022[~~a twenty-five (25) dollar fee, which shall be paid each year for renewal of the permit~~].

(2) An applicant:

(a) May obtain a course-pending[~~"course pending"~~] status for up to one (1) year upon the issuance of the initial permit; and

(b) Shall submit[~~.~~] proof of course completion [~~shall be submitted~~] to the department before the permit shall be renewed.

(3) An applicant's or permit holder's[A] facility shall be inspected[~~preinspected~~] by a conservation officer to document compliance with Section 4 of this administrative regulation before a permit is obtained or renewed.

(4)[~~An annual permit shall be issued by calendar year beginning in January.~~

~~(5) Revocation of permits.~~] A permit shall be revoked and wildlife confiscated if:

(a) An applicant falsifies information on the application;

(b) The permit holder[~~permittee~~] fails to comply with the provisions of this administrative regulation; or

(c) The permit holder[~~permittee~~] is convicted of a violation of KRS Chapter 150.

(5)[~~(6)~~] An individual whose request for a permit has been denied or whose status has been revoked or suspended may request an administrative hearing pursuant to KRS Chapter 13B.

Section 3. Requirements. (1) A permit holder shall:

(a) Only keep wildlife[~~may remain~~] in a rehabilitation facility for a maximum of 180 days unless specifically exempted by the U.S. Fish and Wildlife Service; and[~~.~~]

(b) Submit to the department a completed Kentucky Department of Fish and Wildlife Resources Annual Report Form[~~(2) A permittee shall produce an annual report on a form~~] provided by the department.

(2)[~~and incorporated by reference specifying the following:~~

~~(a) The species held;~~

~~(b) The quantity of species held;~~

~~(c) Status of each species;~~

~~(d) Release location;~~

~~(e) Date of release;~~

~~(f) Tag information if required; and~~

~~(g)~~] If an animal is not releasable as established in subsection (4) of this section[~~classified as nonreleaseable~~] and is held for educational purposes, then the annual report shall document each educational program's[~~program including~~]:

1. Date;
2. Time; and
3. Location[~~of event~~].

(3) A permit holder[~~permittee~~] shall not simultaneously hold captive wildlife[~~for nonrehabilitation purposes~~] under the auspices of a captive wildlife["~~captive wildlife~~"] permit as established[~~issued~~] in [~~accordance with~~] 301 KAR 2:081 or 301 KAR 2:083.

(4) A permit holder[~~permittee~~] may retain wildlife[~~classified as nonreleasable~~] for educational purposes if the animal[~~meets one (1) or more of the following conditions~~]:

(a) Is a mammal with[~~and has~~] an amputated leg;

(b) Lacks adequate vision to function in the wild;

(c) Lacks locomotive skills necessary for survival in the wild; or

(d) Has[~~Exhibits~~] another permanent injury that is reasonably expected to inhibit survival in the wild.

(5) An animal[~~classified as nonreleasable and~~] retained for educational purposes pursuant to subsection (4) of this section shall be exhibited in an educational program a minimum of six (6) times per year.

(6) Except as allowed[~~where permitted~~] under federal regulations, a permit holder[~~permittee~~] shall not propagate threatened and endangered wildlife.

(7) A permit holder[~~The department~~] shall[~~be notified~~] immediately notify the department, in writing, of any federally-threatened or endangered wildlife species delivered, recovered, or retained for rehabilitation.

(8) A permit holder[~~permittee~~] shall not rehabilitate or attempt to rehabilitate any species of terrestrial wildlife not native to Kentucky.

(9) A permit holder[~~permittee~~] shall not rehabilitate or attempt to rehabilitate:

(a) A cougar[~~cougars~~] (Felis concolor);[~~,~~]

(b) A wolf[~~wolves~~] (Canis lupus or Canis rufus);[~~,~~]

(c) An elk (Cervus elaphus); or

(d) A bear[~~bears~~] (Ursus americanus).

(10) A permit holder[~~permittee~~] shall not transport wildlife across state lines for rehabilitation, release, or for any other purpose[~~purposes~~], unless authorized by the commissioner.

(11) A permit holder shall release rehabilitated wildlife [~~shall be released~~] into the appropriate habitat for that species.

(12) A permit holder[~~permittee~~] shall obtain landowner permission before releasing rehabilitated wildlife.

(13) A permit holder[~~Cervids~~] shall not keep a cervid[~~be held~~] in a rehabilitation facility for more than 180 days.[~~After 180 days a rehabilitation permit holder shall apply for a noncommercial captive cervid permit as specified in 301 KAR 2:083, if he or she wishes to hold the cervid for more than 180 days.~~]

(14) A wild-born cervid[~~cervids~~] held in captivity for rehabilitation purposes shall not:

(a) Be housed in the same pen as another captive cervid or[~~otherwise~~] housed in direct physical contact with a cervid[~~cervids~~] that originated in captivity; and

(b) Be housed in a pen that has previously[~~ever~~] housed cervids that originated in captivity.

(15)[~~A person holding a wildlife rehabilitation permit shall not buy, sell, offer to sell, trade, or barter cervids.~~

~~(16)~~] A[~~person holding a wildlife rehabilitation~~] permit holder shall not simultaneously hold a[~~commercial~~] captive cervid permit.

Section 4. Facilities and Operating Standards. (1) Unless authorized by the Director of Wildlife, a facility shall comply with Minimum Standards for Wildlife Rehabilitation as adopted by the National Wildlife Rehabilitators Association and the International Wildlife Rehabilitation Council.

(2) A permit[~~The~~] holder[~~of a rehabilitation permit~~] shall allow a conservation officer to inspect the facilities at any reasonable time.

(3) The conservation officer shall immediately notify the permit holder and the commissioner if the inspection reveals that the facility is not in compliance with the provisions of this administrative regulation.

(4) The conservation officer shall make a second inspection after ten (10) days, and the permit shall be revoked and all captive wildlife confiscated immediately if the unsatisfactory conditions have not been corrected.[~~The Director of Wildlife may authorize additional time for compliance and subsequent inspections as necessary.~~]

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The National Wildlife Rehabilitator's Association and the International Wildlife Rehabilitation Council publication "Minimum Standards for Wildlife Rehabilitation", third edition, 2000;

(b) "Kentucky Department of Fish and Wildlife Resources Annual Report Form", 2002 edition; and

(c) "Application for Wildlife Rehabilitation Permit", 2006 edition.

(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. until 4:30 p.m.

CHARLES O. BUSH, JR., Deputy Commissioner
For GREGORY K. JOHNSON, Commissioner
DON PARKINSON, Secretary
APPROVED BY AGENCY: March 9, 2017
FILED WITH LRC: March 14, 2017 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 24, 2017 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through April 30, 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 persons rehabilitating wildlife in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide reasonable standards for those who rehabilitate wildlife in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1)(h) authorizes the department to promulgate administrative regulations reasonably necessary to implement or carry out the purposes of Chapter 150. KRS 150.280 authorizes the department to promulgate administrative regulations regarding holding protected wildlife.

(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 minimum requirements for wildlife rehabilitators in Kentucky.

(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 ability of a permit holder to keep a cervid longer than 180 days by obtaining a noncommercial captive wildlife permit, as this permit was recently discontinued.

(b) The necessity of the amendment to this administrative regulation: See 1 (b) above.

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See 1(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently, there are 50 wildlife rehabilitation permit holders 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: Wildlife rehabilitators who possess white-tailed deer will need to release the deer into within 180 days of obtaining the animals. They will no longer be able to purchase a noncommercial captive wildlife permit to continue holding the deer indefinitely.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment does not change any costs to the entities identified in 3.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No benefits will accrue to the entities in question (3).

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

(a) Initially: There will not be an additional cost to the agency to implement this administrative regulation initially.

(b) On a continuing basis: There will not be an additional cost to the agency on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It will not be necessary to increase a fee or funding to implement this

administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? No. All permit holders are subject to the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources' Divisions of Wildlife and Law Enforcement will be impacted by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1)(h) and 150.280.

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:083. Holding and intrastate transportation of captive cervids.

RELATES TO: KRS 150.010(41), 150.290, 150.725, 150.740, 164.772

STATUTORY AUTHORITY: KRS 150.025(1), 150.280, 150.720, 150.730, 150.735

NECESSITY, FUNCTION AND CONFORMITY: KRS 150.025 authorizes the department to regulate the buying, selling, or transportation of wildlife. KRS 150.280 authorizes the department to promulgate administrative regulations relating to propagating and holding of wildlife. KRS 150.720 authorizes the department to promulgate administrative regulations pertaining to the importation and holding of cervids, including privately-owned and farm-raised cervids. KRS 150.730 authorizes the department to issue or deny permits to hold captive cervids. KRS 150.735 authorizes the department to promulgate administrative regulations relating to the expansion of captive cervid facilities and the transfer of permits. This administrative regulation establishes the requirements for holding and intrastate transporting cervids in Kentucky.

Section 1. Definitions. (1) "Approved laboratory" means:

(a) The National Veterinary Service Laboratory in Ames, Iowa; or

(b) Any other laboratory approved by the Administrator of the Animal and Plant Health Inspection Service of the United States Department of Agriculture.

(2) "Captive cervid" means a cervid that is privately owned, born, and raised in captivity, and not considered wildlife as established in KRS 150.010.

(3)[~~(2)~~] "Captive cervid permit" means a permit issued by the Kentucky Department of Fish and Wildlife Resources that is required to hold cervids in captivity and does not include shooting preserves as permitted under 301 KAR 2:041.

(4)[~~(3)~~] "Cervid" means a member of the family Cervidae.

(5) "Chronic Wasting Disease" or "CWD" means a transmissible spongiform encephalopathy found in cervids.

(6)[~~(4)~~]"Flop tag" means a commercial plastic ear tag used to identify livestock.

(7)[~~(5)~~] "Line post" means a post in a fence that is not a corner or end post.

(8)[~~(6)~~] "Noncommercial captive cervid permit" means a permit issued prior to March 1, 2016 that allows a person to possess captive cervids that are not intended for sale, offered for sale, traded, or bartered.

Section 2. Fencing and Holding Requirements. (1)(a) An exterior fence shall be at least eight (8) feet above ground level for its entire length, and consist of twelve and one-half (12 1/2) gauge woven wire, fourteen and one-half (14 1/2) gauge high-tensile woven wire, wood planks, or chain link.

(b) A single or double strand of barbed wire strung across the top to bring the total fence height to eight (8) feet shall be acceptable.

(c) Strands of barbed wire shall not be more than six (6) inches apart and shall not be more than five (5) inches from the top of the fencing as established in this subsection and subsection (2) of this section.

(d) Spacing between vertical wires shall not exceed six and one-half (6 1/2) inches for captive deer or species whose adult size is less than 400 pounds and twelve (12) inches for captive elk or species whose adult size is 400 pounds or more.

(e) If two (2) woven wire fences are combined, one (1) above the other, the woven wire fences shall be overlapped at least six (6) inches and firmly attached to each other at intervals no greater than three (3) feet.

(f) The fence bottoms shall be installed to provide not more than three (3) inches of ground clearance.

(2) Right-of-way.

(a) The fence right-of-way shall be cleared for a distance of six (6) feet on each side.

(b) If the fence is a property boundary fence, the fence right-of-way shall be cleared for a distance of six (6) feet on the inside only.

(c) If dead timber with a height greater than the distance of the fence exists on the permittee's property, it shall be felled.

(3)(a) Fence posts shall extend a minimum of eight (8) feet above the ground and shall be of sufficient strength to maintain the fence integrity.

(b) Pine wood posts shall be treated.

(c) Posts shall be set to a minimum depth of three (3) feet.

(d) T-posts shall be installed according to manufacturers' specifications.

(4) Line posts.

(a) Wooden line posts shall be a minimum of four (4) inches in diameter and shall not be spaced more than twenty-four (24) feet apart.

(b) Steel pipeline posts shall:

1. Be a minimum of two and three-eighths (2 3/8) inches in outside diameter;

2. Weigh a minimum of three (3) pounds per foot; and

3. Not be spaced more than twenty-four (24) feet apart.

(c) Metal "T" posts shall be a minimum of one and one-quarter (1.25) pounds per foot and shall be spaced no more than twenty (20) feet apart.

(d) If the woven wire is not high tensile, there shall be a wooden or steel pipe post every sixty (60) feet.

(5) Corner and end posts.

(a) Wooden corner and end posts shall be a minimum of five (5) inches in diameter.

(b) Steel pipe corner and end posts shall be a minimum of two and seven-eighths (2 7/8) inches in outside diameter.

(c) Corner and end posts of other materials shall be of sufficient strength to maintain the fence integrity.

(6) Gates shall be:

(a) Substantially constructed to meet the specifications of the fence; and

(b) Equipped with at least one (1) latching and one (1) locking device.

(7)(a) Swinging water gaps and stream crossings shall be constructed to equal or exceed the standards of the fence.

(b) Crossings shall be adequate to prevent ingress and egress during high water.

(c) Permissible water gaps are established in subparagraphs 1. through 4. of this paragraph:

1. Swinging gates constructed to match the contour of the stream supported by cable or hinge (larger water gaps);

2. Pipe with swinging barrier (larger water gaps);

3. Pipe with fixed mesh barrier (smaller water gaps); and

4. Heavy gauge woven barrier contoured to fit the gap (smaller water gaps).

(8) If topographic, natural, or other conditions exist that enable cervids to pass through, under, or over the fence, the permittee shall be required to supplement the fence with additional, stronger or higher fence posts, special grading, additional wire to increase fence height or other measures to prevent escape.

(9) Maintenance. The fence shall continuously be maintained in a game-proof condition.

(10) A noncommercial captive permit holder shall:

(a) Separate all adult males and females with fencing as established in this section;

(b) Not allow breeding, either by natural or artificial insemination;[~~and~~]

(c) Not introduce any additional captive cervids to the facility;

(d) Complete and submit to the department a Captive Cervid Annual Reporting Form by February 28 of each year;

(e) Report any cervid deaths to the department by telephone at 800-858-1549 within forty-eight (48) hours and;

(f) Submit tissue specimens of all captive cervids that die in the permit holder's facility to an approved laboratory for CWD testing.

Section 3. Capture and Handling Facilities. (1) Except as established in subsection (2) of this section, each captive facility shall have a squeeze chute or crush that facilitates inspection, handling, or capture of an individual animal.

(2) If a permittee's facility does not have the handling or capture facilities established in subsection (1) of this section, the alternative shall be a dart gun or tranquilizer that immobilizes the animal.

Section 4. Tagging. (1) Captive cervids shall be identified in accordance with the Kentucky Department of Agriculture's Chronic Wasting Disease program requirements established in 302 KAR 20:066.

(2) Except as established in subsection (3) of this section, captive cervids over six (6) months old shall be uniquely identified with a plastic flop tag in at least one (1) ear that is clearly visible and identifiable.

(3) The department shall approve one (1) of the alternatives for plastic flop tags established in paragraphs (a) through (c) of this subsection for bona fide zoos, nature centers, or similar educational institutions upon written request:

(a) Lip or ear tattoo;

(b) Microchip; or

(c) Branding.

Section 5. Ingress and Egress. (1) The permit holder shall be responsible for immediately capturing or destroying escaped animals upon discovering their escape.

(2) If the permit holder is unable to capture an escaped animal within forty-eight (48) hours from discovering its escape, the permit holder shall report each escape to the department by telephone at 1-800-858-1549.

(3) The permit holder shall send a written report to the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, ATTN: Captive Cervid Permits, within ten (10) days, describing what escaped and the reason for the escape.

(4) The permit holder shall report known ingress of wild cervids into the enclosure by sending a written report to the department at the same address established in subsection (3) of this section.

(5) The department or any peace officer may seize, capture, or destroy escaped animals or those that have ingressed if necessary.

Section 6. Space Requirements. (1) For species whose adult weight is less than 400 pounds, each individual animal shall be allowed at least 1,000 square feet of space.

(2) One (1) individual animal of a species whose adult weight is 400 pounds or more, shall require at least 1,500 square feet of space, with each additional animal requiring an additional 1,000 square feet of space.

Section 7. Prohibited Species. Except for cervids legally held prior to November 12, 2002, a captive cervid permit shall not be issued for the species established in subsections (1) through (4) of this section:

(1) Genus Cervus spp., except Cervus elaphus nelsoni;

(2) Genus Axis spp.;

(3) Roe deer (Capreolus and Capreolus pygarus); or

(4) Hybrids thereof.

Section 8. Captive Cervid Permits. (1) Permit application and issuance. An application for a new or renewed captive cervid permit shall be processed in accordance with the provisions of KRS 150.730.

(2) A captive cervid permit shall be valid only for the property and facility identified in the application and that is inspected as established in subsection (11) of this section. A cervid shall not be moved into a new or expanded facility until the facility has been issued a captive cervid permit by the department.

(3) Zoos and other facilities fully accredited by and in good standing with the American Zoo and Aquarium Association shall not be required to obtain or renew a captive cervid permit, but facilities not accredited by the American Zoo and Aquarium Association shall be required to obtain and renew a captive cervid permit.

(4) A captive cervid permit shall be required for a facility owned or leased by a person wishing to hold captive cervids.

(5) A new noncommercial captive cervid permit shall not be issued to a facility after February 28, 2016.

(6) All wild cervids shall be removed from the facility prior to initial inspection.

(7) A permit shall identify the species and numbers of cervids being held.

(8) Duration.

(a) A captive cervid permit shall be valid for one (1) year beginning March 1 through the last day of February, and may be renewed annually upon payment of the annual fee and proof of compliance with all applicable statutes and administrative regulations.

(b) A noncommercial captive cervid permit shall be valid for three (3) years beginning March 1 through the last day of February, and may be renewed every third year upon payment of the fee and proof of compliance with all applicable statutes and administrative regulations.

(9) A holder of a noncommercial captive cervid permit prior to March 1, 2016, shall be allowed to hold captive cervids for the life of the animals, after which the permit shall not be valid.

(10) Transfers. A captive cervid permit may be transferred if an existing and currently permitted facility is sold or leased to a person or entity who shall maintain and operate the facility pursuant to KRS 150.735(3).

(a) The original captive cervid permit holder who is transferring the permit shall be compliant with all provisions of this administrative regulation prior to transfer.

(b) Prior to transfer of the permit to a new owner or lessee, the facility shall be inspected for compliance as provided by subsection (11) of this section.

(c) The purchaser or lessee of the facility shall:

1. Apply for transfer of the existing captive cervid permit on a department Captive Cervid Permit Transfer Application form;

2. Attach a copy of the deed indicating change of ownership or the lease agreement between the parties conducting the transfer; and

3. Send all application materials to the department at #1 Sportsman's Lane, Frankfort, Kentucky 40601, ATTN: Captive Cervid Permits, within thirty (30) days after the inspection.

(d) A transferred captive cervid permit may be renewed by the new owner or lessee completing a Captive Cervid Permit Application.

(e) A noncommercial captive cervid permit shall not be transferred.

(11) Inspections.

(a) Before a captive cervid permit or noncommercial captive cervid permit is issued, renewed, or transferred, each facility or facility expansion shall pass an inspection that certifies it is in compliance with all applicable statutes and administrative regulations.

(b) Upon completion of a facility or facility expansion, or if a facility is to be sold or otherwise transferred, the permit applicant or holder shall notify the department to request an inspection that shall be conducted within thirty (30) days of receipt of the request.

(c) Each facility shall be inspected annually after issuance of a captive cervid permit or noncommercial captive cervid permit to certify and document that the facility is in compliance with this administrative regulation.

(d) A Captive Cervid Facility Inspection Form shall be completed by a department law enforcement captain, who shall then forward the original copy to department headquarters for processing.

(12) Revocation or suspension.

(a) The department shall issue a notice of violation in the form of a certified letter to a person who is not in compliance with this administrative regulation, 302 KAR 20:066, or a Kentucky statute pertaining to the holding of captive cervids.

(b) The department shall suspend the permit of a person who has received a notice of violation until the person complies with this administrative regulation and applicable statutes.

(c) The department shall issue a citation to a person who has failed to comply with this administrative regulation or applicable statutes within sixty (60) days from the date of the notice of violation.

(d) If convicted of a violation of this administrative regulation, the department shall:

1. Revoke the permit; and

2. Seize the captive cervids.

(e) A person who has a captive cervid permit revoked or suspended shall not, without the written approval of the department:

1. Transfer or expand the facility; or

2. Sell, offer to sell, trade, transport, hunt, or slaughter captive cervids that are housed in that facility.

(13) Appeal procedures. An individual whose request for a permit has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

(14) Expansions.

(a) A facility may be expanded and shall conform to the fencing specifications established in this administrative regulation.

(b) Facility expansions shall be adjacent and connected to the currently permitted facility.

(c) Cervids shall not be introduced into the expanded portion of a facility until that expansion has been inspected and approved by the department as established in subsection (11) of this section.

Section 9. Origin and Disposition of Captive Cervids. (1) Cervids obtained from the wild shall only be held by a permitted wildlife rehabilitator pursuant to 301 KAR 2:075.

(2) Captive cervids shall not be released into the wild except for wild-born cervids released by a permitted wildlife rehabilitator pursuant to 301 KAR 2:075.

(3) Wild-born cervids held in captivity for rehabilitation purposes shall not:

(a) Be housed in the same pen or otherwise housed in direct physical contact with cervids that were born in captivity; and

(b) Be housed in a pen that has ever housed cervids that were born in captivity.

Section 10. Intrastate Movement of Cervids. (1) Before a person may move a captive cervid within the state, an authorization number shall be obtained from the Kentucky Department of Agriculture pursuant to 302 KAR 20:066.

(2) A person transporting cervids shall have the authorization number issued by the Kentucky Department of Agriculture, and if applicable, the required health papers, in possession while transporting cervids.

Section 11. Selling Cervids. A permit holder who holds a captive cervid permit may sell live cervids, parts thereof, or products produced by captive cervids, if those animals were not obtained from the wild in Kentucky.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Captive Cervid Permit Application", 2016 edition;

(b) "Captive Cervid Permit Transfer Application", 2016 edition; [~~and~~]

(c) "Captive Cervid Facility Inspection Form", 2016 edition; and

(d) "Captive Cervid Annual Reporting Form", 2017 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Department of Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CHARLES O. BUSH, JR., Deputy Commissioner
For GREGORY K. JOHNSON, Commissioner
DON PARKINSON, Secretary
APPROVED BY AGENCY: March 9, 2017
FILED WITH LRC: March 14, 2017 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 24, 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 April 30, 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 regulates the holding and transportation of cervids.

(b) The necessity of this administrative regulation: This

administrative regulation is necessary in order to regulate the transportation and holding of cervids to protect native populations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to regulate the buying, selling, or transportation of wildlife. KRS 150.280 authorizes the department to promulgate administrative regulations relating to propagating and holding of wildlife. KRS 150.720 authorizes the department to promulgate administrative regulations pertaining to the importation and holding of cervids, including privately-owned and farm-raised cervids. KRS 150.730 authorizes the department to issue or deny permits to hold captive cervids. KRS 150.735 authorizes the department to promulgate administrative regulations relating to the expansion of captive cervid facilities and the transfer of permits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in the effective administration of the statutes by establishing the requirements for the possession, holding, and transportation of cervids in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This amendment requires the noncommercial captive cervid permit holder to annually report a herd census and test all animals that die for chronic wasting disease.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary in order to protect native cervids from Chronic Wasting Disease. Once it affects cervid populations in a state, it cannot be effectively eradicated with current technology.

(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: Currently, there are 13 noncommercial captive permit holders in the state.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Permit holders will need to report an annual herd census and submit tissue specimens of all animals that die for CWD testing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to submit a herd census; however each animal submitted for CWD lab testing will cost sixty ($60) dollars.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The native cervid populations will be protected from potential disease transmission, thus benefitting hunters, local businesses, and others who benefit from healthy wildlife populations.

(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 initially to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost on a continuing basis 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 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 fees or funding.

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

(9) TIERING: Is tiering applied? No, because all persons wishing to hold captive cervids will be treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources' 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 150.025, 150.280, 150.720, 150.730, 150.735

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any additional income 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? None. This administrative regulation will not generate any additional income for subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional administrative cost for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional administrative cost 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 (+/-): None.

Expenditures (+/-): None.

Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Office of the Secretary
(Amendment)

400 KAR 1:001. Definitions for 400 KAR Chapter 1.

RELATES TO: KRS 146-200 - 146.360, 146.450, 146.530, 146.990, 149.344, 149.346, 149.348, 151.125, 151.182, 151.184, 151.297, 151.990, Chapters 223, 224[~~223.200, 223.420, 223.991, 224.10-270, 224.10-410, 224.10-420, 224.10-430, 224.10-440, 224.20-755(7), 224.60-130, 224.60-140~~], 350.028, 350.0301, 350.0305, 350.032, 350.070, 350.085, 350.090, 350.093, 350.130, 350.255, 350.465, 350.610, 350.990, 30 C.F.R. Parts 724, 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

STATUTORY AUTHORITY: 146.270, 146.450, 146.990, 149.344, 149.346, 151.125, 151.182, 151.184, 151.186, 151.297, 223.200, 223.991, 224.10-100, 224.10-410, 224.10-420, 224.10-430, 224.10-440, 224.40-310, 224.60-120, 350.020, 350.028, 350.0301, 350.0305, 350.255, 350.465, 350.610, 30 C.F.R. Parts 724, 730, [~~724,~~] 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapters 146, 149, 151, 223, 224, and 350 authorize the cabinet to conduct administrative hearings and authorize the cabinet to promulgate administrative regulations to regulate the administrative hearing process[~~KRS Chapter 350 in pertinent part authorizes the cabinet to promulgate administrative regulations pertaining to surface coal mining and reclamation operations and coal exploration operations. KRS Chapters 224 and portions of KRS Chapters 146 and 223 in pertinent part authorize the cabinet to promulgate administrative regulations pertaining to the conduct of administrative hearings concerning matters covered by KRS~~

~~Chapters 146, 223, and 224. KRS Chapter 151 in pertinent part authorizes the secretary to promulgate, without notice or hearings administrative regulations with respect to procedural aspects of administrative hearings~~]. This administrative regulation defines certain essential terms used in 400 KAR Chapter 1.

Section 1. Definitions.[~~As used in this chapter, the following terms shall have the following meanings:~~]

(1) "Administrative hearing" means a formal adjudicatory hearing conducted before the cabinet pursuant to KRS Chapters[~~Chapter~~] 146, 149, 151, 223, 224, or 350.

(2) "Cabinet" is defined by KRS 149.330(2), 151.100(2), 223.400(3), 224.1-010(9), [~~224.01-010~~] and 350.010(10).

(3) "Chief hearing officer" means the individual duly qualified and designated by the secretary as the chief hearing officer of the office.

(4) "Day" means calendar day unless otherwise specified to be a working day[~~"Defendant" means any person against whom a claim is made in any action filed in the office and includes any person so designated in the caption of an initiating document; term is interchangeable with "respondent"~~].

(5) "Final order" means final order of the secretary.

(6)[~~(5)~~] "Hearing officer" means the individual duly qualified and assigned as presiding officer to conduct an administrative hearing and [~~; term~~] includes the chief hearing officer.

(7) "Individual" means a natural person.

(8)[~~(6)~~] "Initiating document" means a petition for administrative hearing, an administrative complaint, a show cause order or other document that[~~which~~] commences an administrative proceeding.

(9) "Interim report" means statements made by a hearing officer in written form that are not intended to be considered by the secretary and that are not subject to judicial review.

(10)[~~(7)~~] "Office" means the office of administrative hearings.

(11)[~~(8)~~] "Party" means:

(a) The named person whose legal rights, duties, privileges, or immunities are being adjudicated in the administrative hearing;[~~, or~~]

(b) Any other person who is duly granted intervention in the administrative hearing;[~~,~~] and[~~includes~~]

(c) Any agency named as a party to the adjudicatory proceeding or entitled or permitted by law to participate fully in the administrative hearing.

(12)[~~(9)~~] "Person" is defined by[~~in~~] KRS 149.330(7), 151.100(15), 223.400(5), 224.1-010(17),[~~224.01-010~~] and 350.010(9).

(13)[~~(10)~~] "Petitioner" means the party filing an initiating document in an action before the office[~~; term is interchangeable with "plaintiff"~~].

(14)[~~(11) "Plaintiff" means the party filing an initiating document in an action before the office; term is interchangeable with "petitioner".~~

~~(12)~~] "Pleading" means an[~~the~~] initiating document,[~~the~~] answer, motion, response, supporting memorandum, brief, notice, and any other document[~~responsive pleading~~] authorized to be filed[~~ordered~~] by a hearing officer or[~~authorized~~] by administrative regulation.

(15)[~~(13)~~] "Record" means:

(a) The electronic recording or transcript of a proceeding;

(b) Each hearing officer ruling;

(c) Any pleading;

(d) Documentary and physical evidence received or considered;

(e) A statement of any matter officially noticed;

(f) Each question and offer of proof;

(g) Each objection;

(h) Any legal brief;

(i) A proposed finding and recommended order;

(j) Any exception and response; and

(k) Final order[~~the transcript of a proceeding, if any, and rulings; and all pleadings, motions, responses, replies and rulings; documentary and physical evidence received or considered; a statement of matters officially noticed; questions and offers of proof, objections and rulings thereon; proposed findings and recommended orders; and legal briefs and orders~~].

(16)[~~(14)~~] "Respondent" means any person against whom a claim is made in any action filed in the office and includes any person so designated in the caption of an initiating document[~~; term is interchangeable with "defendant"~~].

(17)[~~(15)~~] "Responsive pleading" means the answer or any document required or authorized by administrative regulation or a hearing officer to be filed in response to a pleading.

(18)[~~(16)~~] "Secretary" is defined by[~~in~~] KRS 146.210(7), 151.100(16), 223.400(6), 224.1-010(24),[~~224.01-010~~] and 350.010(11).

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: March 15, 2017

FILED WITH LRC: March 15, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 25, 2017 at 10:00 a.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by April 18, 2017, 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 through April 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the definitions for certain terms used in 400 KAR Chapter 1.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish essential terms used in the administrative hearings regulations that relate to the cabinet's administrative hearing process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapters 146, 149, 151, 223, 224, and 350 authorize the cabinet to conduct administrative hearings and authorize the cabinet to promulgate administrative regulations to regulate the administrative hearing process. This regulation defines essential terms found in the regulations implementing those KRS Chapters, specifically 400 KAR Chapter 1.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes essential terms used in the administrative hearings regulations that relate to the cabinet's administrative hearing process found in 400 KAR Chapter 1.

(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 is a clarifying amendment that more specifically defines terms as used by the cabinet through the administrative hearing process and eliminates definitions that are unnecessary. Citations to KRS Chapter 149 are added as KRS Chapter 400 contains the provisions that would apply to administrative hearings involving the cabinet's forestry program.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that the terms used in the cabinet's administrative hearings regulations are adequately define in a clear manner and include all provisions needed for consistency and clarify with the cabinet's programmatic

functions.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment defines essential terms of the administrative regulations governing the cabinet's administrative hearing process. The administrative hearing process ensures the cabinet can effectively administer the cabinet's programs.

(d) How the amendment will assist in the effective administration of statutes: This amendment will decrease possible conflict and delay by clarifying definitions to more specifically define terms as used by the cabinet through the administrative hearing process and eliminates definitions that are unnecessary. Citations to KRS Chapter 149 are added as KRS Chapter 400 contains the provisions that would apply to administrative hearings involving the Cabinet's forestry program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This regulation establishes definitions that apply to all individuals, businesses, organizations, or state and local governments that either initiate or become subject to an administrative proceeding in the cabinet's Office of Administrative Hearings.

(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 is a clarifying amendment that defines essential terms, removes unnecessary terms, and includes citations to the forestry program that are already subject to the cabinet's administrative hearings process. As a definitions administrative regulation, no requirements or actions are included in the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): As a definitions administrative regulation, no requirements or actions are included that are associated with costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a definitions administrative regulation, no requirements or actions are included in the amendment, therefore, no specific benefits will accrue as a result of specific compliance by the entities.

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

(a) Initially: The cabinet will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: The cabinet will not incur any additional costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet's current operating budget will be used for the implementation of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering was not used. The definitions found in the administrative regulation will apply equally to all parties of an administrative adjudication in the Cabinet's Office of Administrative Hearings.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The cabinet will continue to hold administrative hearings to as needed concerning matters covered by KRS Chapters 146, 149, 151, 223, 224, and 350. State and local government will only be impacted insofar as they are parties of an administrative adjudication with the cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 146.270, 146.450, 146.990, 149.344, 149.346, 151.125, 151.182, 151.184, 151.186, 151.297, 223.200, 223.991, 224.10-100, 224.10-410, 224.10-420, 224.10-430, 224.10-440, 224.40-310, 224.60-120, 350.020, 350.028, 350.0301, 350.0305, 350.255, 350.465, 350.610, 30 C.F.R. Parts 724, 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255.

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

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

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

(c) How much will it cost to administer this program for the first year? The cabinet's current operating budget will be used to administer this program for the first year.

d) How much will it cost to administer this program for subsequent years? The cabinet's operating budget will be used to administer this program for subsequent years.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

ENERGY AND ENVIRONMENT CABINET
Office of the Secretary
(Amendment)

400 KAR 1:090. Administrative hearings practice provisions.

RELATES TO: KRS 146.200-146.360, 146.450, 146.530, 146.990, 149.344, 149.346, 149.348, 151.125, 151.182, 151.184, 151.297, 151.990, Chapters 223, 224[~~223.200, 223.420, 223.991, 224.10-270, 224.10-410, 224.10-420, 224.10-430, 224.10-440, 224.20-755(7), 224.60-130, 224.60-140~~], 350.028, 350.029, 350.0301, 350.0305, 350.032, 350.060, 350.070, 350.085, 350.090, 350.093, 350.130, 350.240, 350.255, 350.300, 350.305, 350.465, 350.610, 350.990, 30 C.F.R. Parts 724, 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

STATUTORY AUTHORITY: KRS 146.270,[~~Chapter 13A,~~] 146.450, 146.990, 149.344, 149.346, 151.125, 151.182, 151.184, 151.186, 151.297, 223.200, 223.991, 224.10-100, 224.10-410, 224.10-420, 224.10-430, 224.10-440, 224.40-310, 224.60-120, 350.020, 350.028, 350.029, 350.0301, 350.0305, 350.240, 350.255, 350.300, 350.465, 350.610, 30 C.F.R. Parts 724, 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapters 146, 149, 151, 223, 224, and[~~Chapter~~] 350 authorize the cabinet to conduct administrative hearings and authorize the cabinet to promulgate administrative regulations to regulate the administrative hearing process. This administrative regulation establishes procedures for conducting administrative hearings, administrative conferences, mediations, and issuance of final orders in regard to violations and final determinations of the

cabinet made pursuant to KRS Chapters 146, 149, 151, 223, 224, and 350[~~in pertinent part authorizes the cabinet to promulgate administrative regulations pertaining to surface coal mining and reclamation operations and coal exploration operations. This administrative regulation sets forth practice provisions for the permanent regulatory program in addition to those found in 405 KAR 7:091 and 405 KAR 7:092. KRS Chapters 224 and portions of KRS Chapters 146 and 223 in pertinent part authorize the cabinet to promulgate administrative regulations pertaining to the conduct of administrative hearings concerning matters covered by KRS Chapters 146, 223, and 224. This administrative regulation sets forth practice provisions for the administration of matters falling under KRS Chapters 146, 223 and 224. KRS Chapter 151 in pertinent part authorizes the secretary to promulgate, without notice or hearing, rules and administrative regulations with respect to procedural aspects of administrative hearings. This administrative regulation sets forth practice provisions for the administration of matters falling under KRS Chapter 151~~].

Section 1. Applicability. This administrative regulation establishes procedures for conducting an administrative hearing, administrative conference, mediation, and issuance of a final order in regard to a violation and a final determination of the cabinet made pursuant to KRS Chapters 146, 149, 151, 223, 224, and 350.

Section 2. Assignment of a Case Number and Caption. (1) Assignment of a case number.

(a) If the office receives an initiating document, filed in accordance with Section 3 of this administrative regulation by a person other than the cabinet, the office shall assign a case number to that document.

(b) If the initiating document is filed by the cabinet's Office of General Counsel, the Office of General Counsel shall assign the case number to the document at the time of filing.

(2) Caption requirements. Any person filing an initiating document, or pleading in the office shall state:

(a) The case number;

(b) The permit number if it relates to a permit;

(c) The noncompliance number if it relates to a notice of noncompliance and order for remedial measures as defined in 405 KAR 7:092, Section 1;

(d) The cessation order number if it relates to a cessation order as defined in 405 KAR 7:092, Section 1;

(e) The agency interest number;

(f) The petitioner name;

(g) The respondent name; and

(h) Any intervenor name.

(3) Any person filing an initiating document in the office shall state in the caption of the document, the name and address of the person to be served on behalf of each respondent.

(4) Consolidated case caption. A pleading filed in a consolidated case shall list all consolidated case numbers. If a pleading filed in a consolidated case pertains to some, but not all, of the consolidated cases, the party filing the document shall indicate the case to which the document applies.

Section 3. Filing and Retention of a Pleading or Discovery Material. (1) Filing of a pleading.

(a) Any person filing a pleading in the office shall file the original pleading with office.

(b) A pleading may be initially filed by facsimile or electronic mail pursuant to the requirements in subparagraphs 1. and 2. of this paragraph. A person filing by facsimile or electronic mail shall, after sending the document via facsimile or by electronic mail, file the original of the document with the office.

1. Facsimile.

a. A person filing a pleading in the office may file the pleading by facsimile at the facsimile number listed for the office.

b. The facsimile pleading shall be stamped filed according to the time and date stamp placed on the facsimile pleading by the office facsimile machine and shall be filed in the record upon retrieval from the office facsimile machine.

c. If the office facsimile machine malfunctions, the facsimile pleading shall be stamped as of the date actually received in the office.

2. Electronic mail.

a. A person filing a pleading in the office may file the pleading by electronic mail at the electronic mail address listed for the office, not the electronic mail address of the assigned hearing officer.

b. The pleading shall be saved as a Portable Document Format (PDF). If the pleading is not electronically mailed in a Portable Document Format, it shall not be accepted by the office.

c. The electronic mail pleading shall be stamped filed according to the time and date placed on the electronic mail pleading as received by the office computer and shall be filed in the record upon retrieval from the office computer.

d. If the office electronic mail server fails, the document shall be stamped as of the date actually received in the office.

(c) The original pleading shall be file stamped on the date actually received by the office. The effective date of filing shall be the earlier date of the receipt in the office of either the facsimile, the electronic mail, or the original.

(d) Filing of discovery material.

1. Except as provided by subparagraph 3 of this paragraph, the following documents shall not be filed with the office unless the hearing officer issues an order otherwise:

a. Interrogatory;

b. Request for production or inspection; and

c. Request for admission.

2. The party responsible for the service of the discovery material shall retain the original and become the custodian. The custodian shall provide access to any party of record during the pendency of the action. A subpoena shall be returned to the party requesting issuance.

3. If a document listed in paragraph (d)1. of this section is to be used at the administrative hearing or in support of a pleading, then the document shall be filed in the office at the beginning of the administrative hearing or at the time the pleading is filed.

(2) Official record.

(a) Each pleading, book, record, paper, or map received in evidence in an administrative hearing or submitted for the record in a proceeding before the office shall be retained in the official record. The replacement of an original document with an accurate photocopy may be permitted while the case is pending upon terms and conditions as may be ordered by the hearing officer.

(b) If a final order of the secretary has been entered, the hearing officer may, upon request and after notice to the other parties, authorize the replacement of an original document with an accurate photocopy.

(3) Signature and record address.

(a) Contact information. A person who files a pleading in the record shall sign the document and shall state the person's:

1. Mailing address;

2. Electronic mail address, if available;

3. Facsimile number, if available; and

4. Telephone number.

(b) Change of contact information. If any of the information that is required to be provided in paragraph (a) of this subsection changes, the person shall within fourteen (14) days of the change, file a notice of change of information in the office identifying each case number in which the person has made a filing.

(4) Submission of authority. If a person filing a pleading relies upon a pertinent case decision or other legal authority in the pleading, the person may file with the pleading a copy of the case decision or other legal authority. If the person files a copy of authority, the person shall serve upon each party in the case a copy of the case decision or other legal authority with the pleading.

(5) Format requirements. Each pleading filed with the office shall conform to the requirements established in paragraphs (a) and (b) of this subsection.

(a) Paper size and binding. The pleading shall be on eight and one-half (8 1/2) inches by eleven (11) inches paper stock. A filing shall not be side-bound or top-bound with a binding that interferes with the inclusion of the pleading in the office unless permitted by the hearing officer; and

(b) Type size and style. The document shall be typed in a

twelve (12) point font.

(6) Electronic recording and transcript.

(a) An administrative hearing and proceeding before the office shall be electronically recorded.

(b) A digital copy of the electronic recording shall be provided by the office upon request.

(c) The cost of a transcript shall be borne by the requesting party.

1. The cost of a transcript prepared by an employee of the office shall be at a rate that covers the costs of staff time, machine use, and materials.

2. If the transcript is prepared by a private reporter pursuant to a contract between the reporter and the cabinet, the cost of the transcript shall be at the rate established by the contract.

(e) Requirement to file transcript with the office.

1. Any party who obtains a transcript of a proceeding before the office and who cites to, quotes from or otherwise relies upon that transcript in any pleading filed with the office, shall file a complete copy of the transcript in the record in the office, unless a copy of the transcript was previously filed in the record.

2. The transcript shall be filed no later than the date upon which the party first cites to, quotes from or relies upon the transcript in any pleading filed with the office.

3. If the party fails to file the transcript with the office that is cited, quoted, or otherwise relied upon in a pleading, the hearing officer may strike all or part of the pleading that refers to the transcript.

Section 4. Time. (1) Computation.

(a) In computing any period of time prescribed or allowed by order of the hearing officer or administrative regulation, the day of the act, event, or default after which the designated period of time begins to run shall not be included.

(b) The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period shall run until the end of the next day that is not a Saturday, a Sunday, or a legal holiday.

(c) If the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

(d) If a person has the right or is required to perform an act within a period prescribed by order of the hearing officer or administrative regulation after the service of a notice or other pleading upon the party and the notice or pleading is served by mail, three (3) days shall be added to the prescribed period. This provision shall not apply to the service of administrative summons and initiating documents by mail.

(2) Extensions of time.

(a) A motion for an extension of time shall be filed within the time allowed for filing the pleading. The hearing officer, upon cause shown, may order the period extended. If the motion is made after the expiration of the time allowed for filing the pleading, the hearing officer may order the period extended if the failure to act was the result of excusable neglect.

(b) The hearing officer shall not extend the time for filing an initiating document pursuant to the applicable statute of limitations, or if the extension is contrary to any other law or administrative regulation.

Section 5. Administrative Summons and Service of Process. (1) Upon receipt of an initiating document, the office shall serve a copy of the initiating document upon each party designated on the initiating document to be served along with an administrative summons. The office shall serve the initiating document in accordance with the method designated on the initiating document and subsection (4) this section.

(2) The administrative summons shall:

(a) Notify the respondent that an initiating document has been filed against the respondent and unless a written defense is timely served, action adverse to the respondent's interest may be taken;

(b) Designate the date, time, and place of the prehearing conference or administrative hearing; and

(c) Include a statement of the legal authority for the administrative hearing and reference to the statutes and administrative regulations involved.

(3) Service shall be made pursuant to one of the methods in subparagraphs (a) through (k) of this subsection.

(a) Individual within the Commonwealth. Service shall be made upon an individual within the Commonwealth, other than an unmarried infant or person of unsound mind, by delivering a copy of the administrative summons and initiating document to the person or, if acceptance is refused, by offering personal delivery to the person, or by delivering a copy of the administrative summons and initiating document to an agent authorized by appointment or by law to receive service of process for the individual.

(b) Unmarried infant or person of unsound mind. Service shall be made upon an unmarried infant or a person of unsound mind by serving the person's resident guardian or committee if there is one (1) known to the initiating party or, if none; by serving either the person's father or mother within this state or, if none, by serving the person within this state having control of the individual. If there are no persons, application shall be made to the appropriate court to appoint a practicing attorney as guardian ad litem who shall be served. If any person directed by this section to be served is also an initiating party, the person who stands first in the order named who is not an initiating party shall be served.

(c) Partnership or unincorporated association. Service shall be made upon a partnership or unincorporated association subject to suit under a common name by serving:

1. A partner or managing agent of the partnership;

2. An officer or managing agent of the association; or

3. An agent authorized by appointment or by law to receive service on its behalf.

(d) Corporation. Service shall be made upon a corporation by serving an officer or managing agent thereof, or any other agent authorized by appointment or by law to receive service on its behalf.

(e) Person issued a permit, registration, or certification from the cabinet. Service shall be made at the address specified in the permit, registration, registration application, certification, or certification application, exploration notice or exploration application pursuant to 405 KAR 8:020 upon:

1. A person issued a permit, registration, or certification by the cabinet;

2. A person specified as an operator in the permit; or

3. The person's named agent for service stated in the permit, registration, registration application, certification, or certification application.

(f) Commonwealth or agency other than the cabinet. Service shall be made upon the Commonwealth or any agency other than the cabinet by serving the attorney general or any assistant attorney general.

(g) Cabinet. Service of a request for an administrative hearing shall be made upon the cabinet by serving the Executive Director of the Office of General Counsel.

(h) County, city, public board, or other administrative body except state agencies.

1. Service shall be made upon a county by serving the county judge or, if the judge is absent from the county, the county attorney.

2. Service shall be made upon a city by serving the chief executive officer of the city or an official attorney of the city.

3. Service on any public board or other administrative body, except state agencies, shall be made by serving a member.

(i) Nonresident. Service may be made upon a nonresident individual who transacts business through an office or agency in this state, or a resident individual who transacts business through an office or agency in any action growing out of or connected with the business of an office or agency, by serving the person in charge.

(j) Out of state individual. Service may be made upon an individual out of this state, other than an unmarried infant, a person of unsound mind or a prisoner, by any method stated in subsection (4) of this section.

(k) Unknown person. In an action against a person whose name is unknown to the initiating party, the person shall be

described in the initiating document and administrative summons as unknown party. If the person's name or place of residence is discovered during the action, then the initiating document shall be amended accordingly.

(4) Methods of service. The office shall place a copy of the document to be served in an envelope and address the envelope to the person to be served at the address set forth in the caption or at the address set forth in written instructions furnished by the initiating party. The office shall employ one (1) of the methods of service in paragraphs (a) through (c) of this subsection as directed by the petitioner on the initiating document in accordance with Section 2(3) of this administrative regulation.

(a) Certified mail.

1. The office shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested.

2. The office shall enter the fact of mailing in the record and make a similar entry when the return receipt is received. If the envelope is returned with an endorsement showing failure of delivery, that fact shall be entered in the record.

3. The office shall file the return receipt or returned envelope in the record;

(b) Personal service.

1. The office shall cause the envelope to be transferred for service to a person authorized by the secretary or by a statute to deliver it, or to a person authorized to serve an action in a court of law who shall serve the initiating document.

2. The office shall enter the fact of delivery in the record and make a similar entry when the return receipt from the authorized person is received.

3. If the return receipt is returned with an endorsement showing failure of delivery, that fact shall be entered in the record. The return receipt shall be proof of the time and manner of service; or

(c) Other method allowed by law. Any other method of service authorized by statute, administrative regulation, or the civil rules for an action in a circuit court of the Commonwealth of Kentucky shall be supplemental to and shall be accepted as an alternative to any of the methods of service specified in subsections (3) or (4) of this section.

(5) Proof of service. The return receipt shall be proof of acceptance, refusal, inability to deliver, or failure to claim the document. The return receipt shall also be proof of the time, place, and manner of service. Service shall be effective upon:

(a) Acceptance of the summons by any person eighteen (18) years of age or older at the permanent address;

(b) Refusal to accept the summons by any person at the permanent address;

(c) The United States Postal Service's inability to deliver the certified mail containing the summons if properly addressed pursuant to section (4) of this section;

(d) Failure to claim the certified mail containing the summons prior to its return to the cabinet by the United States Postal Service; or

(e) To the extent the United States postal regulations allow authorized representatives of local, state, or federal governmental offices to accept and sign for "addressee only" mail, signature by the authorized representative shall constitute service on the addressee.

Section 6. Service of a Pleading and Discovery Material. (1) Service is required. Except as provided in subsection (2) or (5) of this section, a party, including a person filing a motion for intervention, shall serve the following pleadings or other documents upon each party in the proceeding:

(a) Every order required by its terms to be served;

(b) Every pleading subsequent to the original initiating document unless the hearing officer orders otherwise in accordance with subsection (5); and

(c) Every document relating to discovery required to be served upon a party unless the hearing officer orders otherwise in accordance with subsection (5).

(2) Service requirement for parties in default. If a secretary's order of default has been entered against a party for failure to appear, then that party shall not be required to be served pursuant to subsection (1) of this section. The defaulting party shall only be given notice of a pleading asserting a new or additional claim for relief against the defaulting party by an initiating document and summons issued thereon.

(3) How service is made.

(a) If service is required pursuant to subsection (1) of this section or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the hearing officer.

(b) Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party or by mailing it to the attorney's or party's last known address. Delivery of a copy shall include:

1. Handing it to the attorney or to the party;

2. Leaving it at the attorney's or party's office with the person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or

3. If the office is closed or the person to be served has no office, leaving it at the attorney's or party's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

(c) Service by mail shall be complete upon mailing unless the serving party learns or has reason to know it did not reach the person to be served.

(4) Proof of service.

(a) Proof of the time and manner of service shall be filed in the office before the hearing officer or the party is required to take action.

(b) Proof may be by:

1. Certificate of a member of the bar;

2. Affidavit of the person who served the document; or

3. By any other proof satisfactory to the hearing officer.

(c) The certificate or affidavit shall identify by name the person served.

(5) Service on numerous respondents. If there are numerous respondents, the hearing officer may designate one (1) respondent for the service of each document.

Section 7. Hearing Officer. (1) Functions of a hearing officer. An independent hearing officer shall preside at the administrative hearing, shall keep order, and shall conduct the administrative hearing. The hearing officer shall:

(a) Administer oaths and affirmations;

(b) Issue subpoenas in accordance with Section 8 of this administrative regulation;

(c) Issue appropriate orders relating to discovery in accordance with 400 KAR 1:040;

(d) Rule on procedural requests or similar matters;

(e) Preside over prehearing conferences for settlement or simplification of the issues;

(f) Regulate the course of the administrative hearing;

(g) Rule on offers of proof and receive relevant evidence;

(h) Rule on a motion for summary disposition in accordance with Section 17 of this administrative regulation;

(i) Rule on a motion for directed recommendation in accordance with Section 18 of this administrative regulation;

(j) Issue an order for temporary relief in accordance with 405 KAR 7:092, Section 11 and 405 KAR 5:095, Section 7;

(k) Serve as a mediator in accordance with Section 23 of this administrative regulation;

(l) Take any other action authorized by KRS Chapters 146, 149, 151, 223, 224, 350, and the administrative regulations promulgated pursuant thereto; and

(m) Make or recommend decisions or reports in accordance with KRS Chapters 146, 149, 151, 223, 224, 350, and the administrative regulations promulgated pursuant thereto.

(2) No Authority to Grant Injunctive Relief or a Stay. Notwithstanding the right to grant temporary relief in accordance with 405 KAR 7:092, Section 11 and 405 KAR 5:095, Section 7, a hearing officer shall not have any independent authority to grant injunctive relief or a request for a stay of any statutory, regulatory,

or permit requirement.

(3) Ex parte communication.

(a) Except to the extent required for the disposition of an ex parte matter as authorized by law, the hearing officer shall not discuss the merits of an administrative hearing or proceeding with a person identified in subparagraphs 1. through 3. of this paragraph, unless the communication, if oral, is made in the presence of each and every party or their representative, or, if written, is furnished to each party.

1. A party to the proceeding;

2. A person interested in the proceeding; or

3. A representative of a party.

(b) Office personnel involved or who may become involved in the decision making process of an administrative hearing shall not discuss the merits of an administrative hearing or proceeding with a person identified in paragraph (a)1. through 3. of this subsection, unless the communication, if oral, is made in the presence of every other party or their representative, or, if written, is furnished to every party.

(c) The hearing officer and office personnel may discuss the case status or provide advice concerning compliance a with procedural requirement with a person identified in paragraph (a)1. through 3. of this subsection, unless the area of inquiry is in fact an area of controversy in the administrative hearing or proceeding over which the hearing officer is presiding.

(d) An oral communication made in violation of this subsection shall be reduced to writing in a memorandum by the person receiving the communication and shall be included in the record.

(e) A written communication made in violation of this administrative regulation shall be included in the record and a copy of the memorandum or communication shall be provided to each party, who shall be given an opportunity to respond in writing.

(4) Disqualification. The hearing officer shall withdraw from a case if, according to recognized canons of judicial ethics, the hearing officer deems it appropriate. If prior to a decision of the hearing officer an affidavit of personal bias or disqualification with substantiating facts is filed, and the hearing officer concerned does not withdraw, the secretary shall determine the matter of disqualification.

Section 8. Subpoena. (1) The hearing officer shall issue a subpoena requiring the attendance of a witness or production of a book, paper, document, or tangible thing designated therein, or both, at an administrative hearing or at the taking of a deposition.

(2) A subpoena shall be issued using OAH 100 or OAH 101.

(3) A subpoena may be served by:

(a) A person who is not less than eighteen (18) years of age; or

(b) Certified mail, return receipt requested.

(4) The original subpoena bearing a certificate of service shall be filed with the office.

(5) The return receipt if signed by the addressee's authorized agent shall constitute proof of service of the subpoena.

Section 9. De Novo Review. An administrative hearing shall be de novo as to all issues of fact and law. A previous final order on the merits shall be binding against each party or any party in privity with the original party to that action in regard to the issues determined by that final order.

Section 10. Right to Counsel, Entry of Appearance and Notice of Withdrawal. (1) Right to counsel. A party to an administrative hearing may be represented by counsel. The hearing officer shall permit any party to represent his own interests, except a party that is a corporation or limited liability company shall only be represented by an attorney licensed to practice law in the Commonwealth of Kentucky. The failure of the corporation or limited liability company to appear by counsel, without good cause, shall be grounds for default.

(2) Filing of notice of entry of appearance.

(a) An attorney representing a party before the office shall file a written notice of entry of appearance in each case before the attorney may practice in that case before the office.

(b) The notice of entry of appearance shall set forth the current, complete and correct name, address, telephone number, and facsimile number, if any, and electronic mail address, if any.

(c) An attorney is not required to file a separate notice of entry of appearance if the attorney files a pleading on behalf of attorney's client.

(3) Withdrawal of representation. An attorney of record shall not withdraw from representation in a proceeding before the office without leave of the hearing officer. Leave shall be given unless the hearing officer determines that the withdrawal will result in substantial prejudice or will unduly delay the consideration and resolution of the case.

(4) Filing of notice of change of address. Each party or, if the party is represented, the party's counsel, shall notify the office of any change of address, telephone number, electronic mail address, or facsimile number by filing a notice of change of address in the record within fourteen days of the change.

Section 11. Prehearing Conference. A hearing officer may order a prehearing conference to be held in person or by telephone:

(1) To simplify and clarify the issue;

(2) To receive a stipulation and admission;

(3) To explore the possibility of agreement to dispose of any issue in dispute; and

(4) To address any motions.

Section 12. Motion Practice. (1) General provisions.

(a) A request for relief, which is not required to be made in a pleading, shall be in the form of a motion and shall indicate in the caption the nature of the motion.

(b) A motion filed with the office shall state precisely the relief requested, and include a citation to the record, the administrative regulations, or the law as appropriate.

(c) A written motion shall comply with the provisions of this section. Failure to comply with this section may be grounds for denying the motion.

(2) Supporting memorandum.

(a) A motion filed with the office, including a motion to dismiss, a motion for summary disposition, a motion to strike, and a motion on the pleadings, shall be accompanied by a memorandum setting forth the grounds for the motion and shall contain a citation to any authority relied upon.

(b) The memorandum shall be no longer than twenty-five (25) pages in length and may be filed in the office without prior leave of a hearing officer.

(3) Response. Any party served with a motion may file a response memorandum opposing the motion, with a citation to any supporting authority.

(a) A response memorandum shall be filed no later than fifteen (15) days of the date of service of a motion.

(b) The time for filing a response memorandum may be extended once, without leave of the hearing officer, for no more than thirty (30) additional days if each party enters into a written agreement that is filed in the office prior to the deadline for filing the initial response.

(c) No response memorandum longer than twenty-five (25) pages in length shall be filed in the office without approval prior leave of a hearing officer.

(d) A response memorandum shall indicate in its caption that it is a response memorandum.

(4) Reply. Any party served with a response memorandum may file a reply memorandum addressing only the matter initially raised in the response.

(a) A reply memorandum shall be filed no later than five (5) days of the date of service of a response memorandum unless a different reply period is ordered by the hearing officer.

(b) The time for filing a reply memorandum may be extended once without leave of the hearing officer for no more than ten (10) additional days if each party enters into a written agreement that is filed in the office prior to the deadline for filing the initial reply.

(c) No reply memorandum longer than ten (10) pages in length shall be filed in the office without prior leave of a hearing officer.

(d) A reply memorandum shall indicate in its caption that it is a reply memorandum.

(5) Failure to file supporting memorandum. The hearing officer may find or recommend entry of an order against a party failing to file a supporting memorandum in support of a motion, response or reply.

(6) Proposed order.

(a) A party who files a motion or response shall simultaneously tender a proposed order granting the requested relief or denying the motion.

(b) The office shall not accept for filing a motion or response unless accompanied by a tendered proposed order.

(c) The tendered order shall contain a service page listing the current, correct and complete names and addresses of each party and counsel of record upon whom the office is required to serve the order.

(d) A party may submit a proposed order in electronic form if accompanied by a hard copy.

(7) Hearing on a motion.

(a) Any party making a motion may request that the motion be heard before the hearing officer.

(b) Upon receipt of the request for a hearing on a motion, the hearing officer may schedule a hearing after the time for all responses and replies pursuant to this section has expired, if the hearing officer determines that oral arguments could provide additional information to form the basis of the ruling.

(c) Court reporter. Any party may arrange for a court reporter to record a hearing on a motion, as long as the party bears the costs.

(d) Failure to appear at hearing. A hearing officer may deny a motion for which the movant who requested the hearing fails to appear. A hearing officer may grant a motion for which a movant requests a hearing and the nonmovant fails to appear, upon proof by the movant filed in the record that the motion was served on the nonmoving party.

Section 13. Motion for Continuance of Formal Administrative Hearing. (1) The hearing officer shall not grant a motion for continuance unless good cause is shown.

(2) The hearing officer shall not grant a motion for continuance of an administrative hearing if filed within fifteen (15) days of the scheduled date for the administrative hearing unless compelling cause is shown.

Section 14. Motion for Intervention and Consolidation. (1) Who may file. A person may petition in writing for leave to intervene at any stage of a proceeding. A person shall set forth a statement describing the person's interest and, if required, a showing of why the interest is or may be adversely affected.

(2) Criteria to intervene.

(a) The hearing officer shall grant intervention if the person:

1. Had a statutory right to initiate the proceeding in which the person requests to intervene; or

2. Has an interest that is or may be adversely affected by the outcome of the proceeding.

(b) If the criteria set forth in paragraph (a) of this subsection does not apply, the hearing officer shall consider the following in determining if intervention is appropriate:

1. The nature of the issues;

2. The adequacy of representation of the person's interest which is provided by the existing parties to the proceeding;

3. The ability of the person to present relevant evidence and argument; and

4. The effect of intervention on the cabinet's implementation of its statutory mandate.

(3) Effect of ruling. A person granted leave to intervene in a proceeding may participate in the proceeding as a full party or in a limited capacity. The hearing officer shall determine the extent and terms of the participation, having due regard for the interests of justice and the orderly and prompt conduct of the proceeding. Conditions may include:

(a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

(b) Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceeding; and

(c) Requiring two (2) or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceeding.

(4) Consolidation. If proceedings involving the same parties or a common question of law or fact are pending before the office, the proceedings shall be subject to consolidation pursuant to a motion by a party or upon the initiative of the hearing officer.

Section 15. Dismissal for Failure to Prosecute. Once per year the office shall determine all cases in which no activity has been taken for one (1) year or more. The hearing officer to whom a case is assigned shall issue an order directing the petitioner to show cause why the case should not be dismissed. If the petitioner does not show good cause why the case should not be dismissed, the hearing officer shall recommend dismissal of the case with prejudice for failure to prosecute.

Section 16. Evidence. (1) Admissibility. Unless specifically excluded by subsection (2) this section, evidence that would otherwise not be admissible under the Kentucky Rules of Evidence may be admitted by the hearing officer, if determined by the hearing officer:

(a) To be necessary to ascertain facts not reasonably susceptible to proof under rules of evidence; and

(b) Is a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs.

(2) The hearing officer shall exclude:

(a) Irrelevant, immaterial, or unduly repetitious evidence from the record; the

(b) Evidence designated as confidential by statute; and

(c) Evidence protected pursuant to a privilege recognized by law.

(3) An objection may be made by a party and shall be noted in the record by hearing officer.

(4) The hearing officer may require each party to submit any part of the evidence in written form if:

(a) An administrative hearing will be expedited; and

(b) The interests of each party will not be substantially prejudiced.

(5) Documentary evidence may be received in the form of a copy or excerpt. Upon request of any party, each party shall be given an opportunity to compare the copy with the original.

(6) A party may conduct cross-examination as required for a full and true disclosure of the facts.

(7) The hearing officer may take notice of generally recognized technical or scientific facts within the cabinet's specialized knowledge. The hearing officer shall notify each party of the material noticed either before or during the administrative hearing, or by reference in the report and recommended order. Each party shall be afforded an opportunity to contest the material so noticed by the hearing officer.

(8) The cabinet's experience, technical competence, and specialized knowledge may be utilized by the hearing officer in the evaluation of the evidence.

Section 17. Summary Disposition. At any time after a proceeding has begun, a party may move for a summary disposition of the whole or part of a case, in which event the following procedures shall apply:

(1) The moving party shall verify any allegation of fact with a supporting affidavit, unless the moving party is relying upon:

(a) A deposition,

(b) An answers to interrogatories,

(c) An admissions, or

(d) Any document produced upon request to verify such allegation.

(2) A hearing officer may grant a motion for summary disposition and render a report and recommended order to the secretary under this section if the record shows that:

(a) There is no genuine issue as to any material fact; and

(b) The moving party is entitled to a summary disposition as a

matter of law.

(3) If a motion for a summary disposition is not granted for the entire case or for all the relief requested and an evidentiary hearing on some or all of the issues is necessary, the hearing officer shall and upon examination of all relevant documents and evidence, ascertain what material facts are actually and in good faith controverted. The hearing officer shall issue an interim report specifying the facts that appear without substantial controversy and direct further proceedings as deemed appropriate.

Section 18. Directed Recommendation. (1) At the close of the presentation of evidence by a party at an administrative hearing, the opposing party may move the hearing officer for a directed recommendation to the secretary.

(2) The moving party shall state the specific grounds in support of the request for a directed recommendation.

(3) The hearing officer shall consider all of the evidence presented at the administrative hearing by the nonmoving party and shall draw all inferences in favor of the nonmoving party.

(4) If the hearing officer determines that the nonmoving party has failed to meet his burden of proof, the hearing officer shall:

(a) Grant the moving party's motion; and

(b) Recommend that the secretary deny the nonmoving party's request for relief.

(5) A motion for a directed recommendation is not a waiver of an administrative hearing.

(6) A party who moves for a directed recommendation may move forward and offer evidence to the same extent as if the motion had not been made and without having to reserve the right to offer the evidence.

Section 19. Orders to Abate and Alleviate. (1) Notice.

(a) If the secretary issues an order to abate or alleviate pursuant to KRS 224.10-410, the secretary shall file a copy of the order in the office.

(b) Upon filing an order to abate or alleviate, the office shall issue an administrative summons pursuant to Section 5 of this administrative regulation and shall set the time and place for an administrative hearing to be held within ten (10) days from the date the order to abate or alleviate was signed by the secretary.

(2) Response.

(a) The person named in the order to abate or alleviate shall prior to or at the administrative hearing file a response to the order that:

1. Specifically admits or denies the facts alleged in the order;

2. Sets forth other matters to be considered on review; and

3. Sets forth evidence, if any, that the condition or activity does not violate the provisions of KRS 224.10-410.

(b) In lieu of a response, the person named in the order to abate or alleviate may contact the office in writing or by other means and state that an administrative hearing is not needed, and that the person does not desire to contest the order.

(3) Hearing procedure. The administrative hearing shall be held in accordance with this administrative regulation.

(4) Burden of proof. The cabinet shall have the burden of going forward to establish a prima facie case as to the propriety of the abate and alleviate order. The person named in the abate and alleviate order shall have the ultimate burden of persuasion that the condition or activity does not violate KRS 224.10-410, or that the condition or activity has been discontinued, abated, or alleviated.

(5) Default. The hearing officer shall promptly prepare a report stating that the hearing has been waived and the order to abate or alleviate stands as issued if:

(a) The person named in the order to abate or alleviate notified the office that an administrative hearing is not needed; or

(b) Upon failure of the person to appear at the administrative hearing.

(6) Effect of the proceeding. The scheduling and holding of an administrative hearing pursuant to this section shall not operate to terminate or stay the order or the affirmative obligation imposed on a person by the order.

Section 20. Report and Recommended Order and Any Exception. (1) Time.

(a) With the exception of paragraph (b) and (c) of this subsection, the hearing officer shall make a report and recommended order to the secretary within thirty (30) days of the close of the record.

(b) In a hearing brought in accordance with 405 KAR 7:092, Section 8, permit determinations, the hearing officer shall make a report and recommended order within twenty (20) days of the close of the record.

(c) If the secretary finds upon written request of the hearing officer that additional time is needed to submit the report and recommended order, the secretary may grant an extension. If granted by the secretary, all parties shall be notified.

(2) Preponderance of the evidence. The report and recommended order shall be based on a preponderance of the evidence appearing in the record as a whole and shall contain appropriate findings of fact and conclusions of law.

(3) Civil penalty determination.

(a)The hearing officer shall recommend the amount of a civil penalty based on the record.

(b) The hearing officer may compute the amount of the penalty to be assessed irrespective of any computation offered by any party.

(c) In actions brought pursuant to 405 KAR 7:092, the hearing officer shall consider the same factors set forth in 405 KAR 7:092, Section 3(2) for consideration in recommending the penalty assessment.

(d) The hearing officer shall state with particularity the reasons, supported by the record, for the penalty recommended in the report and recommended order.

(4) Mailing. The report and recommended order shall be mailed, postage prepaid, to each party and the party's attorney of record.

(5) Exceptions. A party may file an exception and a response to the exception as allowed pursuant to KRS 149.346, 151.184, 224.10-440, and KRS 350.0301. There shall be no further submissions in the record.

(a) Each exception and response shall conform to the format for filing a document in Section 3 of this administrative regulation.

(b) A party filing an exception to a report and recommended order shall tender with the exception a draft recommended order for the secretary.

1. The excepting party's draft recommended order shall set out the relief the party requests in its exception.

2. The draft recommended order shall contain a service page listing the current, correct, and complete name and address of each party and counsel of record upon whom the office shall be required to serve the order.

3. A party may submit a draft recommended order in electronic form if accompanied by a hard copy.

(c) Good cause exception. The secretary may exempt a party from compliance with paragraphs (a) and (b) of this subsection upon a showing of good cause or undue hardship.

Section 21. Secretary's Order. (1) The secretary shall consider the hearing officer's report and recommended order, any exception filed, and response to any exception if permitted by statute, and decide the case within the time period required by statute.

(2) The secretary may:

(a) Remand the matter to the hearing officer;

(b) Adopt the report and recommended order of the hearing officer as a final order;

(c) Adopt part of the report and recommended order of the hearing officer and issue a final order; or

(d) Reject the report and recommended order of the hearing officer and issue a final order.

(3) The final order of the secretary shall be mailed postage prepaid to each party and the party's attorney of record.

(4) A final order of the secretary shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the secretary and the facts and law upon which the decision is based.

Section 22. Agreed Order. (1) An agreed order that resolves any claim or part of a claim in a case pending in the office shall be tendered to the hearing officer for acknowledgment by signature before being presented to the secretary.

Section 23. Mediation. (1) Referral to mediation.

(a) At any time prior to the conclusion of the final prehearing conference, a hearing officer may issue an order referring all or any part of any case to nonbinding mediation.

(b) A case shall not be referred for mediation if the cabinet advises the hearing officer that mediation would require a deviation from a statutory or regulatory requirement.

(2) Mediator.

(a) A case may be referred to any hearing officer employed by the office or a mediator approved by the chief hearing officer.

(b) The mediator shall notify the hearing officer in writing when a case is not accepted for mediation.

(c) Disqualification of a mediator.

1. Any party may move the hearing officer to enter an order disqualifying the mediator for good cause. Employment by the cabinet shall not constitute good cause for the disqualification.

2. If the hearing officer rules that a mediator is disqualified from mediating the case, the hearing officer shall enter an order referring the matter to another mediator.

3. Nothing in this provision shall preclude a mediator from disqualifying himself or refusing any assignment.

4. Unless the hearing officer orders otherwise, the time for mediation shall be tolled during any periods in which a motion to disqualify is pending.

(3) Statements not admissible. Statements or admissions made for the purpose of mediation shall not be:

(a) Subject to disclosure through discovery;

(b) Admitted in evidence at an administrative hearing; or

(c) Used by the hearing officer in making any report and recommended order.

(4) Proceeding not stayed. Unless otherwise ordered by the hearing officer or agreed to in writing by the parties, the mediation shall not operate as a stay of discovery or other prehearing proceeding.

(5) Mediation conference.

(a) Mediation status conference. In the mediation referral order, the hearing officer shall schedule a mediation status conference to be held within thirty (30) days from the entry of the mediation referral order unless otherwise agreed to in writing by the parties.

(b) Scheduling a Mediation Conference.

1. The mediator shall schedule a mediation conference within thirty (30) days of the mediation status conference unless otherwise agreed to by the parties.

2. The mediator may schedule as many conferences as are necessary to complete the process of mediation.

(c) Purpose of the mediation conference. The conference shall be conducted by the mediator to consider the possibility of settlement, the simplification of each issue, and any other matter that the mediator and each party determines may aid in the handling or the disposition of the proceeding.

(d) Appearance at mediation conference.

1. Each party or a representative of the party, having authority to negotiate on behalf of that party, shall attend the mediation.

2. Counsel may also be present.

(e) Production of a document and witness. The mediator may request that a party bring a document or witness, including an expert witness, to the mediation conference, but shall not have authority to order production.

(f) The mediation conference shall continue until:

1. A settlement is reached;

2. Any party is unwilling to proceed further; or

3. The mediator determines that further efforts would be of no avail.

(6) Reporting to the hearing officer.

(a) After the conclusion of the first mediation conference, any party may move the hearing officer to remove the case from mediation and to set the case for a prehearing conference or an administrative hearing.

(b) Within ten (10) days of the conclusion of a case accepted for mediation, the mediator shall state in writing to the hearing officer that the mediation process has ended. The report shall state:

1. Remand prior to settlement. If any party is unwilling to proceed further or the mediator determines that further efforts would be of no avail, then the mediator shall state in writing the lack of an agreement to the hearing officer and shall make no other comment or recommendation.

2. Full settlement. If a case is settled prior to or during mediation, an attorney for one (1) of the parties shall:

a. Within ten (10) days of the conclusion of mediation, file with the office a joint statement that all issues have been resolved; and

b. Promptly prepare and submit to the hearing officer an agreed order reflecting the terms of the settlement in accordance with Section 22 of this administrative regulation.

3. Partial settlement. If some but not all of the issues in the case are settled during mediation or if an agreement is reached to limit discovery or on any other matter, the attorney for one (1) party shall, within ten (10) days of the conclusion of mediation, file with the office a joint statement enumerating the issues that have been resolved and the issues that remain for an administrative hearing. The hearing officer shall then return the matter to the active docket and promptly schedule a prehearing conference or an administrative hearing.

Section 24. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Subpoena", OAH 100, November 2016;

(b) "Subpoena Duces Tecum", OAH 101, November 2016.

(2) This material may be inspected, copied, or obtained, at the Office of Administrative Hearings, 211 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

(3) This material may also be obtained on the office Web site at www.oah.ky.gov.[~~This administrative regulation shall govern the conduct by the cabinet of all administrative hearings authorized by KRS Chapters 151, 224, and 350, and pertinent portions of KRS Chapters 146 and 223, including those pending at the time this administrative regulation becomes effective.~~

~~Section 2. Construction. This administrative regulation shall be construed liberally and in conformity with reasonable administrative practice to achieve just, timely and inexpensive determinations of matters before the office. This administrative regulation is not intended to be comprehensive, and nothing contained herein shall be construed to limit the authority of a hearing officer to govern the conduct of his docket or the procedural course of a particular administrative hearing as authorized by statute and administrative regulation and in accordance with reasonable administrative practice.~~

~~Section 3. Assignment of Case Numbers and Captions. (1) Assignment of case numbers. The office shall stamp each initiating document filed on the date received by the office and shall assign a file number to that document.~~

~~(2) Captions generally. All initiating documents, pleadings, motions, orders and all other papers filed in any case before the office shall be uniformly marked in the caption to indicate the file number(s) and, where applicable, shall show the permit number(s), the noncompliance number(s), the cessation order number(s), the notice of violation number(s), the petitioner's or plaintiff's name(s), the respondent's or defendant's name(s), and any intervenors' names.~~

~~(3) Consolidated case captions. All documents filed in consolidated proceedings shall list all case file numbers as set forth in subsection (2) of this section. If a document filed in a consolidated proceeding pertains to some, but not all, of the cases consolidated, the party filing such a document shall indicate in the text thereof the case(s) to which the document applies.~~

~~Section 4. Facsimile Filings. (1) Time and manner of filing.~~

Persons filing documents with the office may file such documents by telefacsimile machine at the telefacsimile number listed for the office. The telefacsimile document shall be stamped filed according to the time and date stamp placed on the telefacsimile copy by the telefacsimile machine and shall be promptly filed in the record upon retrieval from the telefacsimile machine. If the telefacsimile machine malfunctions, the telefacsimile document shall be stamped as of the date actually received in the office.

(2) Originals filed. Parties filing by telefacsimile machine shall promptly after telefaxing a document file the original of the document with the office. The original shall be file stamped on the date actually received by the office. The effective date of filing shall be the date of the receipt in the office of the telefacsimile document or the original document, whichever is earlier.

Section 5. Initiating Documents, Answers and Responsive Pleadings. (1) Initiating documents. In addition to other administrative regulations governing the contents of an initiating document, an initiating document shall identify by name and file number all related actions pending before the office known to the filing party, and shall set forth the current, complete and correct name, address, telephone number, and telefax number, if any, of the filing party and, if he is represented, his counsel.

(2) Answers and responsive pleadings. In addition to other administrative regulations governing the contents of an answer or responsive pleading, an answer or responsive pleading, if required or permitted, shall set forth other matters to be considered in the action, and shall set forth the current, complete and correct name, address, telephone number, and telefax number, if any, of the responding party and, if he is represented, his counsel. If a responding party is without knowledge or information sufficient to form a belief as to the truth of an allegation, he shall so state and this shall have the effect of a denial.

(3) Effect of failure to deny. Allegations in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided. Allegations in a pleading to which a responsive pleading is required may be deemed admitted when not denied in the responsive pleading. Failure to plead any available administrative affirmative defense in a required responsive pleading may constitute a waiver of such defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in a responsive pleading.

Section 6. Prehearing Conferences. (1) General provisions. To the extent practicable, a prehearing conference shall be held in all cases filed with the office.

(2) Telephonic prehearing conferences. Prehearing conferences may be held in person or by telephone. Any party who requests a telephonic prehearing conference shall initiate the conference call, unless the hearing officer orders otherwise.

Section 7. Mediation. (1) General provisions.

(a) Referral to mediation. At any time prior to the conclusion of the final prehearing conference, a hearing officer may, by appropriate order, refer all or any part of any case to nonbinding mediation. A case shall not be referred for mediation if the cabinet advises the hearing officer that mediation would require deviation from statutory or regulatory requirements. Cases may be referred to any mediator employed by the office or approved by the chief hearing officer.

(b) Disqualification of mediator. Any party may move the hearing officer to enter an order disqualifying the mediator for good cause, except that employment by the cabinet shall not constitute good cause for such disqualification. If the hearing officer rules that a mediator is disqualified from mediating the case, he shall enter an order referring the matter to another mediator. Nothing in this provision shall preclude a mediator from disqualifying himself or refusing any assignment. Unless the hearing officer orders otherwise, the time for mediation shall be tolled during any periods in which a motion to disqualify is pending.

(c) Statements not admissible. No statements or admissions made for the purpose of mediation are subject to disclosure through discovery, nor may they be admitted in evidence at an administrative hearing or used by the hearing officer in making any report and recommendation to the secretary.

(d) Proceedings not stayed. Referral of a case to mediation shall not operate as a stay of discovery or other prehearing proceedings, unless otherwise ordered by the hearing officer or agreed to in writing by the parties. While a case is in mediation, the hearing officer may schedule periodic prehearing conferences to ascertain the status of mediation.

(2) Mediation conferences.

(a) Time and purpose of conference. Within ten (10) days from the entry of a mediation referral order, the mediator shall schedule a mediation conference, which shall be held within thirty (30) days from the entry of the mediation referral order unless otherwise agreed to in writing by the parties. The conference shall be conducted by the mediator to consider the possibility of settlement, the simplification of the issues and any other matters which the mediator and the parties determine may aid in the handling or the disposition of the proceedings.

(b) Duration. The mediator may schedule such sessions as are necessary to complete the process of mediation, and mediation shall continue until the parties have reached a settlement, until any party is unwilling to proceed further, until the mediator determines that further efforts would be of no avail, or until the hearing officer orders the matter remanded from mediation. After the conclusion of the first mediation conference, any party may move the hearing officer to remove the case from mediation and to set the case for a prehearing conference or an administrative hearing.

(c) Appearance at conference. The parties shall attend the mediation conference(s). Counsel may also be present. If a party to mediation is the cabinet or any other public entity, that party shall be deemed to appear at a mediation conference by the presence of a representative with full authority to negotiate on behalf of the cabinet or other entity and to recommend settlement to the secretary or to the appropriate decision-making body of the entity. In all other cases, a party is deemed to appear at a mediation conference if that party or a representative having full authority to negotiate on behalf of that party is present.

(d) Production of documents and witnesses. The mediator may request that the parties bring documents or witnesses, including expert witnesses, to the mediation sessions, but has no authority to order such production.

(3) Reporting to the hearing officer.

(a) Refusal to accept. The mediator shall notify the hearing officer promptly in writing when a case is not accepted for mediation.

(b) Remand prior to settlement. At any time after the case has been referred for mediation, the mediator may for good cause in writing return the case to the hearing officer. The hearing officer shall promptly thereafter schedule a prehearing conference or an administrative hearing.

(c) Full settlement. If a case is settled prior to or during mediation, an attorney for one (1) of the parties shall promptly prepare and submit to the hearing officer an agreed order reflecting the terms of the settlement in accordance with Section 16 of this administrative regulation.

(d) Partial settlement. If some but not all of the issues in the case are settled during mediation or if agreements are reached to limit discovery or on any other matter, the parties shall, within ten (10) days of the conclusion of mediation, file with the office a joint statement enumerating the issues that have been resolved and the issues that remain for an administrative hearing. The hearing officer shall then return the matter to his active docket and promptly schedule a prehearing conference or an administrative hearing.

(e) Mediator's report. Within ten (10) days of the conclusion of cases accepted for mediation, the mediator shall state in writing to the hearing officer that the mediation process has ended. If the parties do not reach an agreement as to any matter as a result of mediation, the mediator shall state in writing the lack of an agreement to the hearing officer and shall make no other comment or recommendation.

Section 8. Entry of Appearance and Notice of Withdrawal. (1)

Filing of notice of entry of appearance. All attorneys representing parties before the office must file a written notice of entry of appearance in each case before they may practice in that case before the office. The notice of entry of appearance must set forth the current, complete and correct name, address, telephone number and telefax number, if any, of the attorney and his client. An attorney is not required to file a separate notice of entry of appearance if he files the initial pleading on behalf of his client in conformity with Section 5 of this administrative regulation.

(2) Withdrawal of representation. An attorney of record shall not withdraw from representation in a proceeding before the office without leave of the hearing officer. Leave shall be given unless the hearing officer determines that the withdrawal will result in substantial prejudice or will unduly delay the consideration and resolution of the case.

(3) Filing of notice of change of address. Each party or, if he is represented, his counsel shall promptly notify the office of any change of address, telephone number, or telefax number required to be filed pursuant to this administrative regulation by filing a notice of entry of change of address in the record.

Section 9. Motion Practice. (1) General provisions. All requests for relief which are not required to be made in a pleading shall be in the form of a motion. All motions filed with the office shall state precisely the relief requested, with citations to the record, the administrative regulations or the law as appropriate. All written motions shall comply with the provisions of this section. Failure to comply with this section may be grounds for denying the motion.

(2) Motions. All motions filed with the office going to the merits of a case, including motions to dismiss, motions for summary disposition, motions to strike, and motions on the pleadings shall be accompanied by a brief memorandum setting forth the grounds for the motion and shall contain citation of authorities relied upon.

(a) No memorandum in support of a motion longer than twenty-five (25) pages in length shall be filed in the office without prior leave of a hearing officer.

(b) A motion shall indicate in its caption the nature of the motion.

(3) Responses. Any party served with a motion may file a response memorandum opposing the motion, with citation of supporting authorities.

(a) A response memorandum shall be filed no later than fifteen (15) days of the date of service of a motion unless a different response time is ordered by the hearing officer. The time for filing a response memorandum may be extended once without leave of the hearing officer for no more than thirty (30) additional days by written agreement of all parties filed in the office prior to the deadline for filing that is being extended.

(b) No response memorandum longer than twenty-five (25) pages in length shall be filed in the office without prior leave of a hearing officer.

(c) A response memorandum shall indicate in its caption that it is a response memorandum.

(4) Replies. Any party served with a response memorandum may file a reply memorandum addressing only matters initially raised in the response.

(a) A reply memorandum shall be filed no later than five (5) days of the date of service of a response memorandum unless a different reply period is ordered by the hearing officer. The time for filing a reply memorandum may be extended once without leave of the hearing officer for no more than ten (10) additional days by written agreement of all parties filed in the office prior to the deadline for filing that is being extended.

(b) No reply memorandum longer than ten (10) pages in length shall be filed in the office without prior leave of a hearing officer.

(c) A reply memorandum shall indicate in its caption that it is a reply memorandum.

(5) Failure to file supporting memorandum. Failure to file a memorandum in support of a motion or in support of a response or reply may be grounds for ruling against the party failing to file the supporting memorandum.

(6) Format of memoranda. All motions, memoranda, pleadings and briefs filed with the office shall conform to the following requirements:

(a) Paper size and binding. All motions, memoranda, pleadings and briefs shall be on eight and one-half (8 1/2) inches by eleven (11) inches paper stock. Filings shall not be side-bound or top-bound with bindings that interfere with the inclusion of the papers or pleadings in the office files unless permitted by the hearing officer.

(b) Type size and style. All motions, memoranda, pleadings and briefs shall be in type no smaller than ten (10) point nor closer than twelve (12) pitch.

(c) Signature. All motions, memoranda, pleadings and briefs shall be signed by the party or counsel submitting same and shall include the name, address, telephone number and telefax number, if any, of the attorney of record or party filing such document.

(d) Certificate of service. All documents served under these administrative regulations shall have proof of service by a written certification. Proof of service shall state the date and method of service and shall be signed by a person who can verify service.

(7) Originals only filed. Unless otherwise ordered by the hearing officer, only the original motion, memorandum, pleading or brief, together with any telefacsimile thereof, shall be filed with the office.

(8) Submission of authority. If a person filing a motion, brief or memorandum has relied upon a pertinent case decision or other legal authority in the motion, brief or memorandum, that person may file with such motion, brief or memorandum a copy of the case decision or other legal authority. If the person files a copy of authority, he shall serve upon all other parties to the case a copy of the case decision or other legal authority with the memorandum or motion.

(9) Proposed orders. No motion, response or memorandum supporting or opposing a motion shall be accepted for filing by the office unless accompanied by a tendered separate proposed order granting the requested relief or denying the motion. The tendered order shall contain a service page listing the current, correct and complete names and addresses of all parties and counsel of record upon whom the office is required to serve the order. Parties may submit proposed orders in electronic form if accompanied by a hard copy.

(10) Good cause exception. The hearing officer may exempt a party from compliance with subsections (6) and (9) of this section upon a showing of good cause or undue hardship.

Section 10. Hearings on Motions. (1) Requests for hearing on motion. Any party making a motion may request that such motion be heard before the hearing officer assigned to the case in which the motion is made. A request for a hearing on a motion shall give notice that the motion will be heard on any regularly scheduled motion day for the hearing officer that follows the expiration of the time for filing a reply memorandum unless otherwise ordered by the hearing officer.

(2) Court reporter. Any party may arrange for a court reporter to record a hearing on a motion. The party requesting the court reporter shall bear all appearance costs and expenses associated with having the court reporter at the motion hearing.

(3) Motion days. Motion days shall be conducted on a regular basis according to a schedule established by the office. The office shall post a current schedule which sets forth the time, place and date of upcoming motion days.

(4) Failure to appear at hearing. A hearing officer before whom a motion is made may deny any motion for which a movant schedules or notices a hearing and fails to appear. A hearing officer before whom a motion is made may grant any motion for which a movant schedules or notices a hearing and the nonmovant fails to appear, upon proof by the movant filed in the record that the motion was served on the nonmoving party.

Section 11. Motion for Continuance. No motion for a continuance shall be granted if made within two (2) days of a prehearing conference or fifteen (15) days of an administrative hearing, unless compelling cause is shown therefor. All motions for a continuance shall be in writing, shall be filed with the office, and shall be served upon all other parties to the case. Continuances

~~shall not be granted upon oral motion absent good cause shown.~~

~~Section 12. Directed Recommendation. (1) Time and standard. At the close of the presentation of evidence by a party at an administrative hearing, the opposing party may move the hearing officer for a directed recommendation to the secretary. The moving party shall state the specific grounds therefor. In ruling on the motion for directed recommendation, the hearing officer shall consider all of the evidence presented at the administrative hearing by the nonmoving party and shall draw all inferences therefrom in favor of the nonmoving party. If, after so considering the evidence, the hearing officer determines that the nonmoving party has failed to meet his burden of proof, the hearing officer shall grant the moving party's motion and shall recommend that the secretary deny the nonmoving party's request for relief.~~

~~(2) Motion for directed recommendation not a waiver. A motion for a directed recommendation is not a waiver of an administrative hearing. A party who moves for a directed recommendation at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having to reserve the right to do so and to the same extent as if the motion had not been made.~~

~~Section 13. Dismissal for Failure to Prosecute. Cases which have been on the docket of the office for a period of one (1) year without any activity shall be dismissed, with prejudice, for failure to prosecute unless there is good cause shown why they should not be dismissed. Once per year the office shall determine all cases in which no activity has been taken for one (1) year or more. Thereafter, the hearing officer to whom such cases are assigned shall issue an order directing the petitioner or plaintiff of the case to show cause why the case should not be dismissed. If the petitioner or plaintiff does not show good cause why the matter should not be dismissed, the hearing officer shall recommend dismissal of the matter.~~

~~Section 14. Filing Exceptions. (1) Filing with the office. Any party filing exceptions to a hearing officer's report and recommendation or a response to such exceptions as provided for by statute or administrative regulation shall file the exceptions or response in the record of the case in the office. All such exceptions and responses shall conform to the format for motion memoranda specified in Section 9(6) of this administrative regulation.~~

~~(2) Draft order of the secretary. All parties filing exceptions to a hearing officer's report and recommendation shall tender with their exceptions a draft final order for the secretary. The excepting party's draft final order shall set out the relief the party requests in its exceptions. The tendered order shall contain a service page listing the current, correct and complete names and addresses of all parties and counsel of record upon whom the cabinet is required to serve the order. Parties may submit proposed orders in electronic form if accompanied by a hard copy.~~

~~(3) Good cause exception. The secretary may exempt a party from compliance with the formatting requirements of subsection (1) of this section and the requirements of subsection (2) of this section upon a showing of good cause or undue hardship.~~

~~Section 15. Filing Transcripts. (1) Transcript to be filed on use. Any party who obtains a transcript of a proceeding before the office and who cites to, quotes from or otherwise relies upon that transcript in any document filed with the office shall file a complete copy of the transcript in the record in the office, unless a copy of the transcript has been previously filed in the record.~~

~~(2) Time for filing. Any party filing a transcript under this section shall file the transcript no later than the date upon which the party first cites to, quotes from or relies upon the transcript in any document filed with the office.~~

~~(3) Failure to file transcript. Failure to file any transcript cited, quoted or otherwise relied upon in a document filed with the office shall be grounds for striking all or part of such motion, memorandum, pleading or other document.~~

~~Section 16. Agreed Orders. All agreed orders entered into which resolve any claim or part of a claim in a case pending before a hearing officer shall be tendered to the office for acknowledgement by the hearing officer before being presented to the secretary, and shall contain thereon a signature line for the hearing officer. The filing of an agreed order in accordance with this section shall not relieve the parties from compliance with the provisions of Section 11 of this administrative regulation.~~]

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: March 15, 2017

FILED WITH LRC: March 15, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 25, 2017 at 10:00 a.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by April 18, 2017, 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 through April 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the administrative hearing practice provisions for the cabinet.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish administrative hearing practice provisions that relate to the cabinet's administrative hearing process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapters 146, 149, 151, 223, 224, and 350 authorize the cabinet to conduct administrative hearings and authorize the cabinet to promulgate administrative regulations to regulate the administrative hearing process. This regulation establishes procedures for conducting administrative hearings, administrative conferences, mediations and issuance of final orders in regard to violations and final determinations for 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 statues by providing consistent provisions relating to the conduct of administrative hearings, administrative conferences, mediations and issuance of final orders in regard to violations and final determinations of the cabinet.

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

(a) How the amendment will change this existing administrative regulation: This amendment will incorporate provisions previously included in 400 KAR 1:030, 401 KAR 100:010, and 405 KAR 7:091, as well as allow for filing of pleadings by electronic mail. Other updates are made to provide clarity and ease of administration.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to continue to provide an effective, fair, and timely administrative hearing practice provisions.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides for the

consolidation of certain hearing practice provisions into this administrative regulation. The administrative hearing process ensures the cabinet can effectively administer the cabinet's programs.

(d) How the amendment will assist in the effective administration of statutes: This amendment will decrease possible conflict and delay by providing practitioners and the public with consolidated hearing practice provisions, which will lesson confusion among those involved in an administrative proceeding with the cabinet. Allowing the filing of pleadings by electronic mail will reduce delay.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This regulation establishes practice provisions that apply to all individuals, businesses, organizations, or state and local governments that either initiate or become subject to an administrative proceeding in the cabinet's Office of Administrative Hearings.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will have to comply with the requirements for the filing of pleadings, service, computation of time, evidence and other procedural processes included in the administrative hearing process.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs to comply with is administrative regulation are similar to those found in private civil litigation due to the nature of the de novo hearing at the administrative level. However, there might be a slight cost saving due to this amendment due to the allowance of filing pleadings by electronic mail

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, entities will continue to benefit from effective, fair, and timely administrative hearing practice provisions.

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

(a) Initially: The cabinet will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: The cabinet will not incur any additional costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet's current operating budget will be used for the implementation of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes, tiering was used. Generally, the provisions in this administrative regulation will apply equally to all parties of an administrative adjudication in the Cabinet's Office of Administrative Hearings. However, tiering was used to determine how service shall be made to different types of legal entities.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The cabinet will continue to hold administrative hearings to as needed concerning matters covered by KRS Chapters 146, 149, 151, 223, 224, and 350. State and local government will only be impacted insofar as they are parties of an administrative adjudication with the cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 146.270, 146.450, 146.990, 149.344, 149.346, 151.125, 151.182, 151.184, 151.186, 151.297, 223.200, 223.991, 224.10-100, 224.10-410, 224.10-420, 224.10-430, 224.10-440, 224.40-310, 224.60-120, 350.020, 350.028, 350.029, 350.0301, 350.0305, 350.240, 350.255, 350.300, 350.465, 350.610, 30 C.F.R. Parts 724, 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255.

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

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

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

(c) How much will it cost to administer this program for the first year? The cabinet's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The cabinet's operating budget will be used to administer this program for subsequent years.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

ENERGY AND ENVIRONMENT CABINET
Department of Environmental Protection
Division of Air Quality
(Amendment)

401 KAR 50:060. Enforcement.

RELATES TO: KRS 224.10-100(5), (18), (19), (22), (23), (26), 224.10-420, 224.10-440, 224.20-110

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Environmental and Public Protection Cabinet to prescribe administrative regulations for the prevention, abatement and control of air pollution. This administrative regulation provides for enforcement of the terms and conditions of permits and compliance schedules.

Section 1. Permits and Compliance Schedules Subject to Conditions. Permits and compliance schedules issued under these administrative regulations shall be subject to such terms and conditions set forth in the permit or compliance schedule as the cabinet may deem necessary to insure compliance with all applicable standards. Such terms and conditions may include, but shall not be limited to, the maintenance and production for inspection of records relating to operation which may cause or contribute to air pollution including periodic source or stack sampling, or periodic ambient air monitoring.

Section 2. Permit Revocation. The cabinet may revoke any permit issued under these administrative regulations if the permittee:

(1) Willfully makes material misstatements in the permit

application or any amendments thereto;

(2) Fails to comply with the terms or conditions of the permit;

(3) Fails to comply with any emission standards applicable to an affected facility included in the permit;

(4) Causes emissions from the source which result in violations of, or interfere with the attainment and maintenance of, any ambient air quality standards contained in Title 401, Chapter 53, of these administrative regulations or result in an exceedance of any allowable increase over baseline concentrations contained in Title 401, Chapter 51, of these administrative regulations; or

(5) Fails to report construction, modification, alteration, or reconstruction of an affected facility.

Section 3. Compliance Schedule Revocation. The cabinet may revoke a compliance schedule issued under these administrative regulations if the owner or operator of the source or any other person acting on his behalf:

(1) Willfully makes material misstatements in the application for the compliance schedule or in any communications relied upon by the cabinet in issuing the compliance schedule;

(2) Fails to comply with the terms and conditions of the compliance schedule, including but not limited to any increment dates and any interim emission standards; or

(3) Fails to report construction, modification, alteration or reconstruction of the affected facilities.

Section 4. Suspensions, Modifications, Violation of Administrative Regulations Subject to Penalties. (1) The grounds for revocation of permits and compliance schedules listed in Sections 2 and 3 of this administrative regulation are declared to be violations of these administrative regulations and are subject to the penalties and all other relief contained in KRS 224.99-010.

(2) The cabinet may order appropriate modifications to any permit or compliance schedule whenever it appears that the conditions of the permit or compliance schedule will not be sufficient to meet all of the standards and requirements contained in these administrative regulations, including but not limited to Title 401, Chapters 51, 57, 59 and 61.

(3) The cabinet may suspend under such conditions and for such period of time as the cabinet may prescribe any permit or compliance schedule for any of the grounds for revocation contained in Sections 2 and 3 of this administrative regulation or for any other violations of these administrative regulations. [~~Section 5. Administrative Hearing Procedures. (1) Whenever the cabinet has reason to believe that a violation of any of the provisions of KRS Chapter 224 or these administrative regulations has occurred it shall issue and serve upon the person complained against a written notice of the provision of KRS Chapter 224 or the rule or administrative regulation alleged to have been violated and the facts alleged to constitute the violation thereof and shall require the person so complained against to answer the charges set out in the notice at a hearing before the cabinet. Nothing herein shall prevent the cabinet from seeking all appropriate relief in circuit court.~~

~~(2) Any person not previously heard in connection with the issuance of any order or the making of any determination, including but not limited to the issuance, denial, modification, or revocation of any permit, by which he considers himself aggrieved may file with the cabinet a petition alleging that such order or determination is contrary to law or fact and is injurious to him, alleging the grounds and reasons therefor, and demand a hearing. Unless the cabinet considers that the petition is frivolous, it shall serve written notice of the petition on each person named therein and shall schedule a hearing before the cabinet. The right to demand such a hearing shall be limited to a period of thirty (30) days after the petitioner has had actual notice of the order or determination, or could reasonably have had such notice.~~

~~(3) The cabinet shall schedule a hearing before the cabinet not less than twenty-one (21) days after notice of such a hearing is served upon the parties, unless the person complained against waives in writing the twenty-one (21) day period. The notice of the hearing shall include a statement of the time, place, and nature of the hearing; the legal authority for the hearing; reference to the statutes and administrative regulations involved; and a short statement of the reason for the granting of the hearing.~~

~~(4) Prior to the formal hearing, and upon seven (7) days written notice to all parties, delivered personally or by certified mail, return receipt requested, the hearing officer may hold a prehearing conference to consider simplification of the issues, admissions of fact and documents which will avoid unnecessary proof, limitations of the number of witnesses and such other matters as will aid in the disposition of the matter. Disposition of the matter may be made at the prehearing conference by stipulation, agreed settlement, consent order, or default for nonappearance.~~

~~(5)(a) Any party to a hearing may be represented by counsel, may make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. A hearing officer shall preside at the hearing, shall keep order, and shall conduct the hearing in accordance with reasonable administrative practice.~~

~~(b) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible of proof under judicial rules of evidence, evidence not admissible thereunder may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Hearing officers shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original. A party may conduct cross-examinations required for a full and true disclosure of the facts. Notice may be taken of generally recognized technical or scientific facts within the cabinet's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The cabinet's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.~~

~~(c) It will be within the hearing officer's discretion to require official transcripts or to set up other procedures for taking evidence including but not limited to the use of mechanical recording devices for recording the testimony. The record of such hearing, consisting of all pleadings, motions, rulings, documentary and physical evidence received or considered, a statement of matters officially noticed, questions and offers of proof, objections and rulings thereon, proposed findings and recommended order, and legal briefs, shall be open to public inspection and copies thereof shall be made available to any person upon payment of the actual cost of reproducing the original except as provided in KRS 224.10-210. The cabinet may cause the mechanical recording of the testimony to be transcribed. When certified as true and correct copy of the testimony by the hearing officer, the transcript shall constitute the official transcript of the evidence.~~

~~(d) The hearing officer shall within thirty (30) days of the closing of the hearing record make a report and a recommended order to the secretary. The order shall contain the appropriate findings of fact and conclusions of law. If the secretary finds upon written request of the hearing officer that additional time is needed, then the secretary may grant a reasonable extension. The hearing officer shall serve a copy of his report and recommended order upon all parties. The parties may file within seven (7) days of service of the hearing officer's report and recommended order exceptions to the recommended order. The secretary shall consider the report and recommended order and exceptions. The secretary may remand to the hearing officer the matter for further deliberation, adopt the opinion of the hearing officer as the cabinet's or issue his own written order based on the report and recommended order. The secretary shall act within twenty (20) days of the deadline for filing exceptions, unless extensions of time have been granted to the hearing officer, pursuant to paragraph (e) of this subsection.~~

~~(e) After completion of the hearing and filing of exceptions, the cabinet shall notify the parties in writing, certified mail, return receipt requested, of the final decision of the cabinet. If any extension of time is granted by the secretary for a hearing officer to complete his report, the cabinet shall notify all parties at the time of the granting of the extension. Parties shall have seven (7) days to file exceptions to the report and recommended order if such an extension is granted.~~

~~(f) The secretary shall not grant extensions of time to the hearing officer for more than thirty (30) days for any one (1) extension, and no more than two (2) such extensions shall be granted.~~

~~(g) A final order of the cabinet shall be based on the preponderance of the evidence appearing in the record as a whole and shall set forth the decision of the cabinet and the facts and law upon which the decision is based.~~

~~(h) There shall be no ex parte communications between a hearing officer and parties to the action.~~]

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: March 15, 2017

FILED WITH LRC: March 15, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 25, 2017 at 10:00 a.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by April 18, 2017, 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 through April 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for enforcement of the terms and conditions of permits and compliance schedules and contains certain provisions relating to administrative hearing procedures.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish effective enforcement of cabinet's program for the prevention, abatement, and control of air pollution implemented by the Division for Air Quality.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides for the prevention, abatement, and control of air pollution by addressing situations appropriate for permit or compliance schedule revocation and providing that permits contain all applicable standards.

(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 providing the cabinet's Division for Air Quality the mechanism to enforce all applicable standards though a comprehensive and appropriately issued permit or compliance schedule.

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

(a) How the amendment will change this existing administrative regulation: This amendment will delete Section 5 of the administrative regulation and provisions found in Title 400 of the Kentucky Administrative Regulations will apply.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to continue to provide an effective, fair, and timely administrative hearing practice provisions as all hearing practices relating to KRS Chapter 224 will be consolidated within Title 400 of the Kentucky Administrative Regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides for the consolidation of certain hearing practice provisions into Title 400 of Kentucky Administrative Regulations. The administrative hearing process ensures the cabinet can effectively administer the cabinet's programs.

(d) How the amendment will assist in the effective administration of statutes: This amendment will decrease possible conflict and delay by providing practitioners and the public with consolidated hearing practice provisions, which will lesson confusion among those involved in an administrative proceeding with the cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This regulation will now apply to all entities that obtain a permit or compliance schedule for the cabinet's Division for Air Quality.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will have to comply with the same actions as before the administrative regulation amendment, except that provisions found in Title 400 of the Kentucky Administrative Regulations will apply to hearings brought forth pursuant to 400 KAR Chapter 50.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No new costs are associated with complying with this amendment as the provisions of Section 5 are being replaced by the provisions found in Title 400 of the Kentucky Administrative Regulations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, entities will continue to benefit from effective, fair, and timely administrative hearing practices and requirements involving the cabinet's Division for Air Quality relating to the terms and conditions of permits and compliance schedules.

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

(a) Initially: The cabinet will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: The cabinet will not incur any additional costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet's current operating budget will be used for the implementation of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering was not used. Generally, the provisions in this administrative regulation will apply equally to all parties holding an air quality permit or compliance schedule from the cabinet's Division for Air Quality.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? State and local government will only be impacted insofar as they are parties of an administrative adjudication with the cabinet or hold a permit or schedule of compliance from the cabinet's Division for Air Quality.

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

KRS 224.10-100

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

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

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

(c) How much will it cost to administer this program for the first year? The cabinet's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The cabinet's operating budget will be used to administer this program for subsequent years.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Reclamation and Enforcement
(Amendment)

405 KAR 5:095. Administrative hearings, informal settlement conferences, and general practice provisions relating to a mineral operation.

RELATES TO: KRS 224.10-410, 224.10-470, 350.010(2), 350.032, 350.060, 350.085, 350.130, 350.240, 350.300, 350.305, 350.990

STATUTORY AUTHORITY: KRS 350.028, 350.029, 350.0301, 350.050, 350.240, 350.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. KRS 350.0301 requires the cabinet to promulgate administrative regulations establishing formal and informal hearing procedures and administrative conferences. This administrative regulation establishes provisions governing requests for administrative hearings, initiation of administrative hearings by the cabinet, informal settlement conferences, procedures for the conduct of administrative hearings,[~~service,~~] and[~~administrative hearings for~~] orders to abate and alleviate.

Section 1. Definitions. (1) "Cessation order" means an order for cessation and immediate compliance and any similar order issued by an authorized representative of the cabinet pursuant to KRS 350.130 and 405 KAR Chapter 5.

(2) "Department" means the Department for Natural Resources.

(3) "Mineral operation":

(a) Means noncoal mining activities including mining of limestone and dolomite, mining of sand and gravel, surface disturbance of dredging of river or creek sand and gravel, mining of clay, mining of tar sand or rock asphalt, and mining of fluorspar and other vein minerals. Mineral operations include the surface disturbance of underground mining as well as strip mining. This term includes mining activities and all activities necessary and incident to the reclamation of the mine or dredging operation as required by this 405 KAR Chapter 5; and

(b) Does not mean coal mining or oil shale mining.

(4) "Mineral operator" means any person, partnership, or corporation engaged in mineral operations.

(5) "Mineral permittee" means a mineral operator or person holding a permit, or required by KRS Chapter 350 or 405 KAR Chapter 5 to hold a permit, to conduct mineral operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapter 5 are satisfied.

(6) "Notice of noncompliance and order for remedial measures" means a written document and order prepared by an authorized representative of the cabinet in accordance with KRS 350.130 that:

(a) Sets forth with specificity the violations of KRS Chapter 350, 405 KAR Chapters 5, or permit conditions, which the authorized representative of the cabinet determines to have occurred based upon a cabinet inspection; and

(b) Establishes the necessary remedial actions, if any, and the time schedule for completion thereof, which the authorized representative deems necessary and appropriate to correct the violations.

(7) "Order for cessation and immediate compliance" means a written document and order issued by an authorized representative of the cabinet in accordance with KRS 350.130 when:

(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by a cabinet inspection, to comply with the terms of the notice of noncompliance and order for remedial measures within the time limits set therein, or as subsequently extended; or

(b) The authorized representative finds, on the basis of a cabinet inspection, any condition or practice or any violation of KRS Chapter 350, 405 KAR Chapters 5, or any condition of a permit that:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(8) "Permit" means written approval issued by the cabinet to conduct mineral operations.

(9) "Permit area" means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas that are or will be affected by mineral operations under that permit.

(10) "Significant, imminent environmental harm to land, air, or water resources" means a situation which is determined as follows:

(a) An environmental harm is an adverse impact on land, air, or water resources, including, but not limited to, plant and animal life;

(b) An environmental harm is imminent if a condition, practice, or violation exists that:

1. Is causing the harm; or

2. May be reasonably expected to cause the harm at any time before the end of the reasonable abatement time; or

(c) An environmental harm is significant, if that harm is appreciable, and not immediately reparable.

Section 2. Review of a Cabinet Order and Final Determination Relating to a Mineral Operation. (1) Who may file. A person aggrieved by a determination of the cabinet relating to a mineral operation, including a notice of noncompliance and order for remedial measures, cessation order or penalty assessment, may file a petition for review of the determination. A petition for review shall be filed pursuant to this section and KRS 350.0301(1).

(2) Time for filing.

(a) A person filing a petition for review under this section shall file in the office a petition within thirty (30) days after the person has had actual notice of the determination complained of, or could reasonably have had notice.

(b) The hearing officer shall not grant an extension of time for filing a petition for review.

(c) If the hearing officer, upon motion or his own initiative, finds that the person failed to timely file the petition for review in accordance with this section, the hearing officer shall issue a report recommending dismissal of the petition. The secretary shall enter an order dismissing the petition since the person waived the right to an administrative hearing.

(3) Contents of the petition. The petition for review shall contain:

(a) A statement of the facts entitling the person to administrative relief;

(b) An explanation of each specific alleged error in the cabinet's determination;

(c) A request for specific relief; and

(d) A copy of the written determination to be reviewed, if applicable.

(4) Public notice. The office shall post notice of the administrative hearing at the department's regional office with jurisdiction over the mine site, at least five (5) days before the administrative hearing.

(5) Answer or responsive pleading.

(a) The respondent shall file with the office an answer or other responsive pleading within thirty (30) days of service of the petition.

(b) The answer shall contain:

1. A statement specifically admitting or denying the facts stated in the petition or amended petition unless the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and this shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of the defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert those defenses in a responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(6) Amended petition.

(a) A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

(b) The respondent shall have ten (10) days from the filing of an amended petition or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading to the amended petition.

(c) If the hearing officer grants a motion to amend a petition, the hearing officer shall set the time for an answer to be filed in the order granting the motion.

(7) Effect of filing. The filing of a petition for review shall not stay the effectiveness of the cabinet's determination pending completion of administrative review.

(8) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer shall issue an order to show cause why that person should not be deemed to have waived his right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order dismissing the petition since the petitioner waived the right to an administrative hearing.

(c) If the person requesting the administrative hearing fails to appear at a hearing, the person shall be deemed to have waived his right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order dismissing the petition since the person waived the right to an administrative hearing.

(9) Burden of proof.

(a) In review of a penalty assessment, a notice of noncompliance and order for remedial measures, cessation order or the modification, vacation, or termination thereof under this section:

1. The cabinet shall have the burden of going forward to establish a prima facie case as to the propriety of the penalty assessment, notice of noncompliance and order for remedial measures, cessation order, or modification, vacation, or termination thereof; and

2. The petitioner shall have the ultimate burden of persuasion.

(b) In review of a determination of the cabinet other than those set forth in paragraph (a) of this subsection, the petitioner shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the requested relief.

(10) Hearing officer determination. The hearing officer determination shall be made in accordance with Section 4 of this administrative regulation.

Section 3. Administrative Hearing Initiated by the Cabinet Relating to a Mineral Operation. (1) Criteria for filing. The cabinet may initiate an administrative hearing and may seek suspension or revocation of a permit and forfeiture of the bond if:

(a) The cabinet has reason to believe that a violation of KRS Chapter 350, 405 KAR Chapters 5, or a permit condition has occurred or is occurring;

(b) A mineral permittee has failed to:

1. Pay a civil penalty assessed by the cabinet;

2. Undertake a remedial measure mandated by an order of the cabinet; or

3. Abate a violation it was determined to have committed by an order of the cabinet;

(c) The provisions of 405 KAR 5:082 apply; or

(d) The cabinet has reason to believe an additional remedy should be sought or an order should be entered against any person to protect the environment or the health and safety of the public.

(2) Remedies. In an administrative hearing initiated by the cabinet or in a counterclaim filed in response to a petition filed in accordance with Section 2 of this administrative regulation, the cabinet may seek a combination of the following:

(a) Permit suspension or revocation;

(b) Bond forfeiture;

(c) Civil penalty;

(d) A determination, pursuant to KRS 350.085 and 350.130, that a person shall not be eligible to receive another permit or conduct future mineral operations; or

(e) Any other relief to which it may be entitled by KRS Chapters 224 and 350.

(3) Procedure for an administrative hearing initiated by the cabinet.

(a) Filing of administrative complaint. The cabinet shall initiate an administrative hearing by filing an administrative complaint with the office incorporating the following for each claim for relief:

1. A statement of facts entitling the cabinet to administrative relief;

2. A request for specific relief; and

3. A copy of any notice or order upon which relief is sought.

(b) Public participation. The office shall post notice of the administrative hearing at the department's regional office over the mineral operation, at least five (5) days before the administrative hearing.

(c) Answer or responsive pleading. The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the administrative complaint, which shall contain:

1. A statement specifically admitting or denying the alleged facts stated in the administrative complaint or amended administrative complaint unless the person is without knowledge or information sufficient to form a belief as to the truth of an

allegation, then the person shall so state and this shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(d) Amendment.

1. An administrative complaint may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

2. The respondent shall have ten (10) days from the filing of an amended administrative complaint or the time remaining for filing an answer to the original complaint, whichever is longer, to file an answer or responsive pleading to the amended administrative complaint.

3. If the hearing officer grants a motion to amend the administrative complaint, the hearing officer shall set the time for an answer to be filed in the order granting the motion.

(4) Burden of proof.

(a) The cabinet shall have the ultimate burden of persuasion.

(b) A responding party shall have the burden of persuasion to establish an affirmative defense.

(5) Default.

(a) In a proceeding in which the person against whom the administrative complaint is filed fails to timely comply with a prehearing order of a hearing officer, the hearing officer may on his own initiative or upon motion issue an order to show cause why the person should not be deemed to have waived his right to an administrative hearing and why a report and recommended order adverse to the person shall not be referred to the secretary.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order in conformity with the relief requested by the cabinet in its administrative complaint.

(c) If the person against whom the administrative complaint is filed fails to appear at an administrative hearing, the person shall be deemed to have waived his right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order in conformity with the relief requested by the cabinet in its administrative complaint.

(6) Hearing officer determination and report. The hearing officer determination and report shall be made in accordance with Section 4 of this administrative regulation.

Section 4. Hearing Officer Determination. (1) The hearing officer determination and report shall be made in accordance with 400 KAR 1:090, Section 20 and the provisions of this section.

(2) The hearing officer may recommend suspension or revocation of the permit or forfeiture of the bond if the mineral permittee has violated:

(a) Any provision of KRS Chapter 350;

(b) 405 KAR Chapter 5;

(c) A permit condition; or

(d) A final order, including a failure to pay a civil penalty assessed in a final order of the cabinet.

(3) The hearing officer may recommend, pursuant to KRS 350.085 and 350.130, that a person shall not be eligible to receive another permit or conduct future mineral operations.

(4) If the hearing officer finds a violation exists, the hearing officer may recommend that a person be required to abate, repair, alleviate, or prevent violations of KRS Chapter 350, 405 KAR Chapter 5, or a permit condition.

(5) The hearing officer may in reviewing a permit determination by the cabinet recommend:

(a) That a permit was issued in violation of applicable statutory and regulatory criteria;

(b) Suspension or revocation of the permit; or

(c) Remedial or compliance action be taken by the mineral permittee.

Section 5. Judicial Review, Effect, and Subsequent Proceedings. (1) Judicial review. Judicial review may be taken from a final order of the secretary to the appropriate circuit court of competent jurisdiction in accordance with KRS 350.032 or 350.0305, as applicable.

(2) Effect of final order pending judicial review. The commencement of a proceeding for judicial review of a final order of the secretary shall not operate as a stay of a final order, unless specifically ordered by the court of competent jurisdiction.

(3) Remand from a court.

(a) If a matter is remanded from a court for a further proceeding, and to the extent the court's directive and time limitations will permit, each party shall be allowed an opportunity to submit to the hearing officer, a report recommending a procedure to be followed in order to comply with the court's order.

(b) The hearing officer shall review each report and enter a special order governing the handling of matters remanded to it for further proceedings by a court.

Section 6. Informal Settlement Conference. (1) As an alternative to the administrative hearing established in Section 2 of this administrative regulation, a mineral permittee or other person issued a proposed penalty assessment, notice of noncompliance and order for remedial measures, cessation order, may request an informal conference with the Director, Division of Mine Reclamation and Enforcement. The request shall be made by submitting a written request.

(2) The mineral permittee or other person shall request an informal conference within thirty (30) days of issuance of the notice of noncompliance and order for remedial measures, cessation order, or proposed penalty assessment.

(3) A request for an informal conference shall not toll the time for requesting an administrative hearing pursuant to Section 2 of this administrative regulation.

Section 7. Temporary Relief. (1) Temporary Relief Available. Pending the completion of the investigation and hearings provided for in this administrative regulation, a hearing officer may, subject to review by the secretary, grant temporary relief from a:

(a) Notice of noncompliance and order for remedial measures or a cessation order issued for a mineral operation pursuant to KRS Chapter 350 or 405 KAR Chapter 5; or

(b) A permit or bond release decision of the cabinet.

(2) Temporary Relief Not Available. A hearing officer shall not grant temporary relief for:

(a) The issuance of a permit if the cabinet made a determination to deny a permit in whole or in part; or

(b) The release of a bond if the cabinet made a determination to deny a bond release request.

(3) A hearing officer shall grant or deny temporary relief from a cessation order or bond release decision within five (5) working days of receipt by the office of a temporary relief request, unless waived by the petitioner.

(4) Contents of the Petition. A person shall file a written petition for relief with the office. The petition shall contain:

(a) The permit number;

(b) The name of the mineral permittee;

(c) The date and number of the notice of noncompliance and order for remedial measures or cessation order from which relief is requested, if applicable;

(d) The name and telephone number of the petitioner;

(e) A detailed statement setting forth reasons why the relief should be granted;

(f) Facts supporting a substantial likelihood that the person requesting the relief will prevail on the merits of the final determination of the proceeding;

(g) A statement that the relief sought will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources;

(h) If the petition relates to a cessation order, a statement of whether or not the person waives the requirement for the hearing officer to grant or deny the request for temporary relief within five (5) working days of receipt of the petition by the office; and

(i) A statement of the specific relief requested.

(4) Hearing Process.

(a) In addition to the service requirements of 400 KAR 1:090, Section 5, the petitioner shall serve other parties with a copy of the petition simultaneously with the filing of the application. If service is

accomplished by mail, the petitioner shall inform the other parties by telephone at the time of mailing that a petition is being filed and the contents of the petition.

(b) Filing an Objection.

1. The representative of the cabinet and any other party may communicate an objection to the application to the hearing officer and the petitioner by telephone.

2. The representative of the cabinet and any other party may simultaneously reduce any objection to writing.

3. A written objection shall be immediately filed with the office and immediately served upon the petitioner.

4. Ex parte communication as to the merits of the proceeding shall not be conducted with the hearing officer.

(c) Scheduling a Hearing.

1. Upon receiving an objection to the petition, the hearing officer shall immediately order a location, time, and date for the administrative hearing by communicating the information to the cabinet, any other party, and the petitioner by telephone.

2. The hearing officer shall reduce the communication to writing in the form of a memorandum to the file.

3. The administrative hearing on the request for temporary relief shall be held in a location acceptable to both the cabinet and the petitioner.

4. If the petitioner did not waive the requirement for the hearing officer to grant or deny temporary relief within five (5) working days of the office's receipt of the petition for temporary relief as set forth in subsections (3) and (4)(e) of this section, the hearing officer shall schedule the administrative hearing within (5) five days of the office's receipt of the petition for temporary relief.

(d) If an evidentiary hearing is held, the hearing officer may require the parties to submit proposed findings of fact and conclusions of law to be considered at the evidentiary hearing, which may be orally supplemented on the record at the hearing.

(e) If at any time, the petitioner requests a delay or acts in a manner so as to frustrate the expeditious nature of the proceeding or fails to supply the information required by the hearing officer, the action shall constitute a waiver of the five (5) day requirement in subsection (3) of this section.

(5) Standard of review. A hearing officer may grant temporary relief if:

(a) The person requesting relief shows that there is substantial likelihood that the findings on the merits in an administrative hearing conducted by the cabinet will be favorable to the person; and

(b) The relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.

(6) Timing of hearing officer's determination.

(a) If the petitioner did not waive the requirement for a hearing officer to grant or deny the request for temporary relief of a cessation order or bond release decision within five (5) days of the office's receipt of the petition as required in subsections (3) and (4)(e) of this section, the hearing officer shall either:

1. Orally rule on the request for temporary relief at the conclusion of the hearing stating the reasons for the decision and issue a written decision stating the reasons for the finding within three (3) working days; or

2 Within twenty-four (24) hours of completion of the administrative hearing issue a written decision stating the reasons for the finding.

(b) If the petitioner waived the requirement for a hearing officer to grant or deny the request for temporary relief within five (5) days of the office's receipt of the petition in accordance with subsection (3) and (4)(e) of this section or the petitioner did not request temporary relief from a cessation order or a bond release decision, then the hearing officer shall either:

1. Orally rule on the request for temporary relief at the conclusion of the hearing stating the reasons for the decision and issue a written decision stating the reasons for the finding within twenty (20) working days; or

2. Within fifteen (15) days of completion of the administrative hearing issue a written decision stating the reasons for the finding.

[~~Section 1. Conduct of Administrative Hearings. (1)(a)1. Requests for an administrative hearing by persons other than the cabinet.~~

~~(1) A person aggrieved by an order or determination of the cabinet may request in writing that an administrative hearing be conducted by the cabinet, pursuant to KRS 350.0301. The request shall be filed with the Office of Administrative Hearings in Frankfort and shall include a short and plain statement identifying the basis of the request and the order or determination being contested.~~

~~2. The request for an administrative hearing shall plainly identify the notice or order being contested if the request involves:~~

~~a. A notice of noncompliance;~~

~~b. An order for cessation and immediate compliance; or~~

~~c. A proposed penalty assessment.~~

~~3. The right to demand an administrative hearing shall be limited to a period of thirty (30) days, in accordance with KRS 350.0301(1).~~

~~(b) Burden of proof.~~

~~1. The cabinet shall have the burden of establishing a prima facie case as to the propriety of:~~

~~a. Notices of noncompliance and orders for remedial measures;~~

~~b. Orders for cessation and immediate compliance; or~~

~~c. The modification, vacation, or termination as established in this section.~~

~~2. The ultimate burden of persuasion shall rest with the petitioner. In all other cases in which the administrative hearing is requested by persons other than the cabinet, the petitioner shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the requested relief.~~

~~(2) Initiation of an administrative hearing by the cabinet.~~

~~(a) The cabinet may initiate an administrative hearing and may seek suspension or revocation of the permit and forfeiture of the bond if:~~

~~1. It has reason to believe that a violation of KRS Chapter 350, 405 KAR Chapter 5, or a permit condition has occurred or is occurring;~~

~~2. A mineral permittee has failed to:~~

~~a. Pay a civil penalty assessed in a final order of the cabinet;~~

~~b. Undertake remedial measures mandated by a final order of the cabinet; or~~

~~c. Abate violations it was determined to have committed by final order of the cabinet;~~

~~3. The cabinet has reason to believe that additional remedies should be sought or that an order should be entered against a person to protect the environment or the health and safety of the public; or~~

~~4. The criteria of 405 KAR 5:082 apply.~~

~~(b) Burden of proof. If the cabinet initiates an administrative hearing, the cabinet shall have the ultimate burden of persuasion. The responding party shall have the burden of persuasion to establish an affirmative defense.~~

~~(3) At an administrative hearing held pursuant to subsection (1) or (2) of this section, the cabinet may seek any combination of the following:~~

~~(a) Permit suspension or revocation;~~

~~(b) Bond forfeiture;~~

~~(c) Civil penalties;~~

~~(d) A determination, pursuant to KRS 350.060, 350.085, and 350.130, that a person or persons shall not be eligible to receive another permit or conduct future mineral operations; or~~

~~(e) Relief to which it may be entitled by KRS Chapters 224 and 350.~~

~~(4) If the cabinet revokes or suspends the permit, then mining operations on the permit area shall immediately cease, and the mineral permittee shall:~~

~~(a) Complete reclamation within the time specified in the order, if the permit is revoked; or~~

~~(b) Complete all affirmative obligations to abate all conditions, practices, and violations as specified in the order, if the permit is suspended.~~

~~(5) Informal settlement conferences. As an alternative to the administrative hearings provided at subsection (1) of this section, a permittee or other person issued a notice of noncompliance, order for cessation and immediate compliance, or proposed penalty~~

assessment may request an informal conference with the Director, Division of Mine Reclamation and Enforcement, by submitting a written request.

(a) The time for requesting an informal conference shall be limited to a period of thirty (30) days following issuance of the notice of noncompliance, order for cessation and immediate compliance or proposed penalty assessment.

(b) A request for informal conference shall not toll the time for requesting an administrative hearing pursuant to subsection (1) of this section.

(6) Administrative summons.

(a) Upon request pursuant to subsection (1) of this section, or upon initiation by the cabinet pursuant to subsection (2) of this section, the cabinet shall schedule an administrative hearing to be held not less than twenty-one (21) days after the notice of demand for an administrative hearing, unless the person complained against waives, in writing, the twenty-one (21) day period.

(b) The administrative summons, including a notice of administrative hearing, shall be served in accordance with Section 2 of this administrative regulation and shall include the following:

1. A statement of the time, place, and nature of the administrative hearing;

2. A statement of the legal authority for the administrative hearing;

3. Reference to the statutes and administrative regulations involved; and

4. A short statement of the reason for granting of the administrative hearing.

(c) For all administrative hearings initiated pursuant to subsection (2) of this section, notice shall also be mailed to intervenors and shall be posted at the department's appropriate regional office.

(7) Prior to an administrative hearing as provided in this administrative regulation, and upon seven (7) days' written notice to all parties, the hearing officer may hold a prehearing conference to consider simplification of the issues, consolidation of actions, admission of facts and documents to avoid unnecessary proof, limitation of the number of witnesses, and other matters that aid in the disposition of the matter. Final disposition of the matter may be made at the conference by stipulation, settlement, agreed order, summary disposition, or default for nonappearance. The parties may hold additional conferences as necessary to resolve an issue in dispute.

(8)(a) Any party to an administrative hearing may be represented by counsel, make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of these actions. The cabinet may compel the attendance of witnesses and the production of documents by the issuance of subpoenas.

(b) An independent hearing officer shall preside at the administrative hearing, shall keep order, and shall conduct the administrative hearing in accordance with reasonable administrative practice.

(c) Oaths and affirmations shall be administered by the hearing officer or court reporter. The provisions of 400 KAR 1:030 and 1:040 shall apply to cases before the cabinet, consistent with KRS Chapters 224 and 350.

(d) The hearing officer shall permit a party to represent himself, except a corporate party shall only be represented by an attorney licensed to practice law in the Commonwealth of Kentucky. The failure of a corporate party to appear by counsel shall be grounds for the Hearing Officer to issue a default order recommending that the Secretary grant or deny relief as appropriate.

(e) Failure to appear shall be grounds for the Hearing Officer to issue a default order recommending that the Secretary grant or deny relief as appropriate.

(9) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

(a) If necessary to ascertain facts not reasonably susceptible of proof under judicial rules of evidence, evidence not admissible thereunder may be admitted, except if precluded by statute, if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs.

(b) Hearing officers shall give effect to the rules of privilege recognized by law. Objections may be made and shall be noted in the record.

(c) Subject to these requirements, if an administrative hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. Documentary evidence may be received in the form of copies or excerpts.

(d) Upon request, parties shall be given an opportunity to compare the copy with the original. A party may conduct cross-examinations required for a full and true disclosure of the facts. Notice may be taken of generally recognized technical or scientific facts within the cabinet's specialized knowledge.

(e) Parties shall be notified either before or during the administrative hearing, or by reference in preliminary reports or otherwise, of the material noticed, including a staff memoranda or data, and the parties shall be afforded an opportunity to contest the material so noticed. The cabinet's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

(10)(a) Each administrative hearing shall be recorded, and a transcript made available on the motion of a party or by order of the hearing officer. Unless otherwise agreed, the party requesting the transcript shall provide payment for the original, and all others desiring copies shall pay copying costs.

(b) The record of the administrative hearing shall be open to public inspection and copies thereof shall be made available to a person upon payment of the actual cost of reproducing the original except as provided in KRS Chapter 224. The record shall consist of:

1. All pleadings, motions, and rulings;

2. Documentary and physical evidence received or considered;

3. A statement of matters officially noticed;

4. Questions and offers of proof, objections, and rulings thereon;

5. Proposed findings and recommended orders; and

6. Legal briefs.

(c) If certified by the cabinet as a true and correct copy of the testimony, the transcript shall constitute the official transcript of the evidence.

(11)(a) After the administrative hearing, the hearing officer shall issue a determination based on the preponderance of evidence appearing in the record as a whole. The determination shall establish if the violation did occur. If the violation occurred, the determination shall specify a recommended penalty and recommended remedial or compliance actions to be taken by the mineral permittee or the person conducting the mineral operation.

(b) In addition to the requirements of paragraph (a) of this subsection:

1. The hearing officer may recommend suspension or revocation of the permit or forfeiture of the bond if the mineral permittee has violated any provision of KRS Chapter 350; 405 KAR Chapter 5; a permit condition; or a final order, including failure to pay a civil penalty assessed in a final order of the cabinet;

2. The hearing officer may recommend, pursuant to KRS 350.060, 350.085, and 350.130, that a person or persons shall not be eligible to receive another permit or conduct future mineral operations;

3. The hearing officer may recommend that a person be required to abate, repair, alleviate, or prevent violations of KRS Chapter 350; 405 KAR Chapter 5; or a permit condition, if the violations are found to exist on the basis of a preponderance of the evidence; and

4. For permit determinations, the hearing officer may recommend that a permit was issued in violation of applicable statutory and regulatory criteria, and may recommend suspension or revocation of the permit and may further recommend remedial or compliance actions to be taken by the mineral permittee.

(12) The hearing officer shall recommend the amount of a civil penalty pursuant to KRS 350.990(1) and (2) and the recommendation shall be based exclusively on the record of the administrative hearing. The hearing officer may compute the amount of the penalty to be assessed irrespective of a computation

offered by a party, and shall state with specificity the reason, supported by the record of the administrative hearing, for the penalty assessed in the final written report.

(13)(a) The hearing officer shall, within thirty (30) days of the close of the administrative hearing record, make a report and a recommended order to the secretary. The report and recommended order shall contain the appropriate findings of fact and conclusions of law.

(b) If the secretary finds upon written request of the hearing officer that additional time is needed, then the secretary may grant a reasonable extension.

(c) The hearing officer shall mail, postage prepaid, a copy of the report and recommended order to all parties. The parties may file, within fourteen (14) days of receipt of the hearing officer's report and recommended order, exceptions to the report and recommended order. There shall not be other or further submissions.

(14) The secretary shall consider the report and recommended order and any exceptions filed and pass upon the case within a reasonable time. The secretary may remand the matter to the hearing officer, adopt the report and recommended order of the hearing officer as the cabinet's final order, or issue the secretary's own final order.

(15) The cabinet shall mail the final decision of the cabinet to the parties. If an extension of time is granted by the secretary for a hearing officer to complete the report, the cabinet shall notify all parties upon the granting of the extension.

(16) The secretary shall not grant an extension of time to the hearing officer for more than thirty (30) days for any one (1) extension, and no more than two (2) extensions shall be granted.

(17) A final order of the cabinet shall be based on substantial evidence appearing in the record as a whole and shall establish the decision of the cabinet and the facts and law upon which the decision is based.

(18) There shall not be ex parte communications between the parties or representatives of the parties and the hearing officer.

(19) Any person aggrieved by a final order of the cabinet may seek judicial review as established in KRS 224.10-470 (pertaining to abate and alleviate orders), 350.0305(2) and 350.032(2).

(20) This administrative regulation shall not prevent the cabinet from taking appropriate action in circuit court.

Section 2. Service. (1) Except as provided in subsections (3) and (4) of this section, any proposed penalty assessment, notice of administrative hearing, or other document required to be served in accordance with this section shall be served by one (1) of the following methods:

(a) The cabinet shall send copies of documents to the person to be served or instructed to be served by the initiating party, by certified mail or electronic mail pursuant to KRS 350.130.

1. The cabinet shall enter this occurrence into the record.

2. If the envelope is returned with an endorsement showing failure of delivery, that fact shall be entered in the record.

3. Service by certified mail is complete upon delivery of the envelope or as provided by subsection (2) of this section. The return receipt shall be proof of the time, place, and manner of service. To the extent that the United States postal regulations permit authorized representatives of local, state, or federal governmental offices to accept and sign for "addressee only" mail, signature by the authorized representative shall constitute service on the addressee.

(b) The cabinet may cause the document, with necessary copies, to be transferred for service to a person authorized by the secretary or by a statute to deliver them, or to a person authorized to deliver service for the purpose of an action in a court of law who shall serve the documents, and the return endorsed thereon shall be proof of the time and manner of service.

(2)(a) Service is effective upon acceptance of the document by a mineral permittee at the permit address, upon refusal to accept the document by a person at the permit address, upon the United States Postal Service's inability to deliver the document if properly addressed pursuant to subsection (1)(a) of this section, or upon failure to claim the document prior to its return to the cabinet by the United States Postal Service. The return receipt shall be proof of the acceptance, refusal, inability to deliver, or failure to claim the document.

(b) Service of documents by electronic mail shall be effective pursuant to KRS 350.130(7).

(3) Any other method of service authorized by statute, administrative regulation, or the civil rules for an action in a court of law shall be supplemental to and shall be accepted as an alternative to any of the methods of service specified in this section.

(4) In addition to the provisions of subsections (1) through (3) of this section, the provisions of 400 KAR 1:030, shall apply to service resulting from or attendant to administrative hearings established in this administrative regulation.

Section 3. Temporary Relief. (1)(a) Pending completion of the investigation and administrative hearings provided for in this administrative regulation, a hearing officer may, subject to review by the secretary, grant temporary relief from a notice or order issued pursuant to KRS Chapter 350 or the administrative regulations or a determination by the cabinet to issue a permit or release a bond.

(b) A petition for temporary relief shall be made in writing and filed with the Office of Administrative Hearing with notice to the Office of Legal Services. The petition shall contain the following:

1. A detailed statement establishing the reasons temporary relief should be granted;

2. A showing that there is a substantial likelihood that the petitioner will prevail on the merits upon a final determination of the proceeding;

3. A statement that the relief sought will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air or water resources;

4. If the petition relates to an order for cessation and immediate compliance, a statement of whether the requirement for a decision on the petition within five (5) working days is waived; and

5. A statement of the specific relief requested.

(2) A hearing officer may grant temporary relief after making a written finding that the relief is warranted, and shall state the reasons for the finding. The hearing officer shall grant or deny relief expeditiously. If the petition relates to an order for cessation and immediate compliance, relief shall be granted or denied within five (5) working days of receipt by the office of the petition. A hearing officer may grant temporary relief from notices and orders issued pursuant to 405 KAR Chapter 5 or a determination by the cabinet to issue a permit or release a bond, upon conditions as are deemed appropriate, only upon a finding that:

(a) The parties were given an opportunity to be heard in a location acceptable to both the cabinet and the petitioner;

(b) The petitioner has shown that there is a substantial likelihood that the findings on the merits in an administrative hearing conducted before the cabinet will be favorable to the petitioner;

(c) The relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air or water resources; and

(d) The relief sought is not the issuance of a permit if a permit has been denied, in whole or in part, by the cabinet, nor the release of a bond if a bond release request has been denied.

Section 4. Orders to Abate and Alleviate. (1) If the secretary issues an order to abate and alleviate pursuant to KRS 224.10-410 the cabinet shall provide the permittee or person to whom the order was issued an opportunity to be heard not more than ten (10) days following issuance of the order, unless waived in writing by the permittee or person.

(2) The order to abate and alleviate shall be filed with the Office of Administrative Hearings, which shall issue an administrative summons pursuant to Section 1(6) of this administrative regulation. Neither the scheduling nor holding of an administrative hearing pursuant to this section shall operate to terminate or stay the order, nor operate to relieve the permittee or

~~person or persons named in the order from performing the affirmative obligations imposed in the order to abate and alleviate, unless the hearing officer shall find on the record that the obligations have been met or that the order was improper or inappropriate.~~]

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: March 15, 2017

FILED WITH LRC: March 15, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 25, 2017 at 10:00 a.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by April 18, 2017, 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 through April 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes provisions governing requests for administrative hearings, initiation of administrative hearings by the cabinet, informal settlement conferences, procedures for the conduct of administrative hearings, and orders to abate and alleviate.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish provisions governing requests for administrative hearings, initiation of administrative hearings by the cabinet, informal settlement conferences, procedures for the conduct of administrative hearings, and orders to abate and alleviate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.240 requires the cabinet to promulgate administrative regulations for the reclamation of land disturbed or removed. KRS 350.130 relates to the noncompliances. This administrative regulation provides for the procedures of an administrative hearing, informal settlement conferences, and orders to abate and alleviate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the necessary detail for the cabinet administrative hearing process as it applies to non-coal mining.

(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 makes various changes in order to comply with KRS 13A as well as to clarify the intent of the administrative regulations and ensures they do not conflict with other administrative hearing procedures in the cabinet.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the intent of the administrative regulation as well as ensure it does not conflict with other administrative hearing procedures in the cabinet.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by clarifying the administrative hearing process and ensuring it does not conflict with other administrative hearing regulations in the cabinet.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.990 establishes penalties for the Department for Natural Resources. These amendments are provided to ensure this administrative regulation doesn't conflict with other cabinet administrative hearing regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity that would be required to enter into the cabinet administrative hearings procedures.

(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 entities listed in question (3) above will be required to comply with minor administrative hearing amendments.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These entities will benefit by ensuring there is no conflict between administrative hearing regulations.

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

(a) Initially: There will be no costs to the department with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department with implementation of this amendment.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The amendments to this administrative regulation will not require an increase in fees or funding.

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

(9) TIERING: Is tiering applied? No. All entities that enter into an administrative hearing process will be required to meet the requirements of this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Reclamation and Enforcement.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028, 350:240, 350.130, and 350.990.

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

(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 amended administrative regulation will not generate any new revenue for the state or local government.

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

revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Reclamation and Enforcement
(Amendment)

405 KAR 7:092. Administrative hearings and assessment conferences relating to matters brought under KRS Chapter 350 relating to surface coal mining and reclamation operations, and coal exploration operations.

RELATES TO: KRS 224.10-410, 350.010, 350.028, 350.0301, 350.070, 350.090, 350.093, 350.130, 350.255, 350.465, 350.990, 30 C.F.R. Parts 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

STATUTORY AUTHORITY: KRS[~~Chapter 13A~~] 350.020, 350.028, 350.0301, 350.255, 350.465, 350.610, 30 C.F.R. Parts 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350[~~in pertinent part~~] requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations and coal exploration operations. This administrative regulation sets forth hearing, conference, notice, penalty assessment, and other procedural and due process provisions for the permanent regulatory program.[~~This administrative regulation and 405 KAR 7:091 contain the substance of 405 KAR 7:090 which has been repealed.~~]

Section 1. Definitions. (1) "Applicant" means any person seeking a permit, permit revision, permit amendment, permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable administrative regulations.

(2) "Application" means any document and other information filed with the cabinet seeking issuance of a permit; revision; amendment; renewal; and transfer, assignment or sale of permit rights for surface coal mining and reclamation operations or, if required, seeking approval for coal exploration.

(3) "Cessation order" means an order for cessation and immediate compliance and any similar order issued by OSM under SMCRA or issued by any state pursuant to its laws or regulations under SMCRA.

(4) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(5) "Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of 405 KAR Chapters 7 through 24 if the activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water, or other environmental resources.

(6) "Department" means the Department for Natural Resources.

(7) "Knowingly" means that a person knew or had reason to know in authorizing, ordering, or carrying out an act or omission that the act or omission constituted a violation of SMCRA, KRS Chapter 350, 405 KAR Chapters 7 through 24, or a permit condition, or that the act or omission constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24.

(8) "Notice of noncompliance and order for remedial measures" means a written document and order prepared by an authorized representative of the cabinet which sets forth with specificity the violations of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions which the authorized representative of the cabinet determines to have occurred based upon his inspection, and the necessary remedial actions, if any, and the time schedule for completion thereof, which the authorized representative deems necessary and appropriate to correct the violations.

(9) "Operations" is defined in KRS 350.010(6).

(10) "Operator" is defined in KRS 350.010(8).

(11) "Order for cessation and immediate compliance" means a written document and order issued by an authorized representative of the cabinet when:

(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by a cabinet inspection, to comply with the terms of the notice of noncompliance and order for remedial measures within the time limits set therein, or as subsequently extended; or

(b) The authorized representative finds, on the basis of a cabinet inspection, any condition or practice or any violation of KRS Chapter 350, 405 KAR Chapters 7 through 24, or any condition of a permit or exploration approval which:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(12) "Performance bond" means a surety bond, a collateral bond, or a combination thereof, or bonds subject to the provisions of the Kentucky Reclamation Guaranty Fund pursuant to KRS 350.500 to 350.521, by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(13) "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(14) "Permit area" means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit.

(15) "Permittee" is defined in KRS 350.010(21).

(16) "Reclamation" is defined in KRS 350.010(12).

(17) "Secretary" is defined in KRS 350.010(11).

(18) "Significant, imminent environmental harm" means an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life as further defined in this subsection.

(a) An environmental harm is imminent, if a condition, practice, or violation exists which:

1. Is causing environmental harm; or

2. May reasonably be expected to cause environmental harm at any time before the end of the reasonable abatement time that would be set by the cabinet's authorized agents pursuant to the provisions of KRS Chapter 350.

(b) An environmental harm is significant if that harm is appreciable and not immediately reparable.

(19) "SMCRA" means Surface Mining Control and Reclamation Act of 1977 (Pub.L. 95-87), as amended.

(20) "Surface coal mining and reclamation operations" is defined by KRS 350.010(1).

(21) "Transfer, assignment, or sale of permit rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by

the cabinet.

(22) "Willfully" and "willful violation" mean that a person acted either intentionally, voluntarily, or consciously, and with intentional disregard or plain indifference to legal requirements, in authorizing, ordering, or carrying out an act or omission that constituted a violation of SMCRA, KRS Chapter 350, 405 KAR Chapters 7 through 24, or a permit condition, or that constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24.

Section 2. Applicability. This administrative regulation shall govern the conduct by the cabinet of all administrative hearings and conferences arising under KRS Chapter 350, including those pending at the time this administrative regulation becomes effective, and provide for public participation, pertaining to the review of determinations on permits for surface coal mining and reclamation operations and coal exploration operations, including issuance, denial, suspension, revocation, modification, and compliance with the terms of any permit; notices of noncompliance and orders for remedial measures; orders for cessation and immediate compliance issued pursuant to KRS 350.130(1) or (4); determinations of performance bond amount, duration, release, and forfeiture; administrative hearings arising under KRS 224.10-410 on orders to abate or alleviate issued to surface coal mining and reclamation operations; and all other matters including participation in administrative hearings by any person adversely affected by a determination of the cabinet, which[~~in the discretion of the cabinet~~] are appropriate for adjudication and determination by the cabinet and arise by virtue of an order or determination of the cabinet pursuant to the permanent regulatory program for surface coal mining and reclamation operations and coal exploration operations as set forth in KRS Chapter 350 and 405 KAR Chapters 7 through 24.[~~, except that the provisions pertaining to the payment of proposed assessments into an escrow account as set forth in Sections 3 and 6 of this administrative regulation and the waiver of payments as provided in Section 15 of this administrative regulation shall only be applicable to those notices of noncompliance and orders for remedial measures or orders for cessation and immediate compliance issued on or subsequent to the effective date of this administrative regulation. If requests for formal hearings have been timely filed at the time this administrative regulation takes effect, cases shall not be dismissed for the reason that they do not conform to the new procedural requirements of this administrative regulation for filing administrative complaints and answers.~~

~~Section 2. Construction. This administrative regulation shall be construed to achieve just, timely and inexpensive determinations of all questions appropriate for determination pursuant to Section 1 of this administrative regulation.~~]

Section 3. Proposed Penalty Assessment and Request for Assessment Conference and Administrative Hearing. (1) Notification. The cabinet shall notify a person issued a notice of noncompliance and order for remedial measures or a cessation order[~~an for cessation and immediate compliance~~] in writing of the cabinet's[~~its~~] proposed penalty assessment. The proposed penalty assessment shall be made by authorized personnel of the department.

(2) Criteria. The department, in determining the amount of the proposed penalty assessment, shall give consideration[~~shall be given~~] to:

(a) History of previous violations of the permittee or operator[~~permittee's or operator's history of previous violations~~] at the particular surface coal mining and reclamation operation;

(b) The seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public;

(c) Whether or not the permittee, operator, or person was negligent; and

(d) The demonstrated good faith of the permittee, operator, or person in attempting to achieve rapid compliance after notification of the violation, except that good faith consideration shall not be applicable to any violation determined not to be correctable.[~~If a violation has been cited against a person conducting coal exploration operations consideration shall be given to the above factors as applicable in determining the amount of the penalty.~~]

(3) Service.

(a) Method; time.

1. The department shall serve the notice of proposed penalty assessment along[~~The notice of proposed penalty assessment shall be served under 405 KAR 7:091, Section 5, together~~] with copies of applicable worksheets, to the person to whom the notice or order was issued within fifteen (15) working days after issuance of the final notice of inspection of noncompliance or final notice of inspection of cessation order.

2. The department shall serve the notice of proposed penalty assessment by utilizing one (1) of the following:

(a) Service methods authorized in 400 KAR 1:090, Section 5(3) and (4); or

(b) By electronic mail pursuant to KRS 350.130.

3. Service shall be deemed effective pursuant to 400 KAR 1:090, Section 5(5) or upon delivery of the notice of proposed penalty assessment with copies of worksheets to the recipient's inbox by electronic mail as electronically communicated to the department by an electronic registered receipt.

4.[~~(b) Failure to timely serve; substantial prejudice.~~] Failure to serve the proposed penalty assessment within fifteen (15) working days after issuance of the final notice of inspection of noncompliance or final notice of inspection of cessation order shall not be grounds for dismissal of all or part of the assessment unless:

a. The person against whom the proposed penalty has been assessed proves actual and substantial prejudice as a result of the delay; and

b. The person makes[~~Makes~~] a timely written objection to the delay[~~. An objection shall be timely only if made~~] on or before the last date to request an assessment conference under subsection (4)(b) of this section.

(4) Options of person issued notice of proposed penalty assessment.

(a) Waiver of rights to challenge proposed penalty assessment if no petition was filed challenging the fact of the violation. The person shall notify the department that the person elects not to contest the proposed penalty assessment. If the person did not file a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of this administrative regulation, then the secretary shall issue a final order finding that[~~; final order to enter. The person issued the notice of proposed penalty assessment may choose not to contest the assessment and a final order of the secretary shall be entered finding that~~]:

1. The person to whom the notice of noncompliance and order for remedial measures or cessation order[~~notice or order~~] was issued has waived all rights to an administrative hearing on the amount of the proposed assessment;[~~and~~]

2. The fact of the violation is deemed admitted; and

3. The proposed penalty is due and payable within thirty (30) days after the entry of the final order.

(b) Waiver of rights to challenge penalty assessment and the person filed a petition challenging the fact of the violation. The person shall notify the department that the person elects not to contest the proposed penalty assessment. If the person filed a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of this administrative regulation, then the secretary shall issue a final order finding that:

1. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment; and

2. The proposed penalty is due and payable within thirty (30) days of the mailing of a final order affirming the fact of the violation;

(c) Request for an[~~If a petition requesting an administrative hearing as to the fact of the violation has been timely filed pursuant to Section 7 of this administrative regulation, the finding in subparagraph 2 of this paragraph shall be omitted and the proposed penalty assessment shall be due and payable within~~

~~thirty (30) days of the mailing of a final order affirming the fact of the violation.~~]assessment conference. The person shall request in writing an assessment conference:

1. Within thirty (30) days of receipt[~~service~~] of the notice of proposed penalty assessment; or

2. Within thirty (30) days from the date[~~if~~] the notice of proposed penalty assessment[~~document~~] is returned to the department as undeliverable, unclaimed or refused; or[~~, thirty (30) days from the date of the return, the person to whom the notice of proposed penalty assessment was sent may request review of the penalty assessment by requesting in writing an assessment conference pursuant to Section 4 of this administrative regulation in which case payment of the proposed assessment into the cabinet's escrow account shall not be required; or~~]

(d)[~~(c)~~] Petition for administrative hearing.

1. The person shall[~~The person to whom a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance was issued may~~] contest the proposed penalty assessment or the fact of the violation[~~or both~~] by submitting a petition for an administrative hearing in accordance with Section 6 or 7 of this administrative regulation, or contest both by filing a petition for an administrative hearing in accordance with Section 6 and 7[~~If an assessment conference has been held pursuant to Section 4 of this administrative regulation, the person may contest the amount assessed in the conference officer's report or the fact of the violation or both by submitting a petition for an administrative hearing in accordance with Section 6 of this administrative regulation~~].

2. The fact of the violation shall[~~may~~] not be contested if it has been adjudicated by a final order of the secretary pursuant to an administrative hearing commenced under Section 7 of this administrative regulation.

(5) Failure to Request a Penalty Assessment Conference. If a person issued a proposed penalty assessment fails to request in writing an assessment conference in a timely manner as set forth in subsection (4)(c) of this section or has not filed a timely petition in accordance with Section 6 of this administrative regulation, then the cabinet shall consider the failure to request an assessment conference a waiver of the person's right to a conference. The secretary shall enter a final order pursuant to paragraphs (a) or (b) of this subsection.

(a) If the person did not file a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of this administrative regulation, then the secretary shall issue a final order finding that:

1. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment;

2. The fact of the violation is deemed admitted; and

3. The proposed penalty is due and payable within thirty (30) days after the entry of the final order.

(b) If the person filed a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of this administrative regulation, then the secretary shall issue a final order finding that:

1. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment; and

2. The proposed penalty is due and payable within thirty (30) days of the mailing of a final order affirming the fact of the violation [~~Nothing in this paragraph shall be construed as infringing upon any person's right to contest the fact of the violation without having to pay the proposed assessment into the cabinet's escrow account if such petition was timely filed in accordance with Section 7 of this administrative regulation~~].

Section 4. Procedures for Assessment Conference. (1)[~~In general.~~

~~(a) Time for filing. Following issuance by the cabinet of a notice of proposed penalty assessment, the person to whom the notice was sent may request an assessment conference on the proposed penalty assessment. The request for an assessment conference shall be filed with the office within thirty (30) days of the date of receipt of the proposed penalty assessment or, if the document is returned undeliverable, unclaimed, or refused, thirty (30) days from the date of return.~~

~~(b) Waiver; final order to enter. Failure to timely request an assessment conference shall constitute a waiver of the right to a conference. If a petition for review of the proposed penalty assessment, has not been timely filed under Section 6 of this administrative regulation a final order shall be entered in conformity with Section 6(1)(c) of this administrative regulation.~~

~~(c)~~] Date and location of conference; failure to timely schedule; substantial prejudice.

(a) If an assessment conference is requested, the cabinet[~~it~~] shall schedule the assessment conference within[~~be scheduled for a date no later than~~] sixty (60) days after the cabinet's receipt of the request, unless all parties agree otherwise.

(b) An assessment conference shall be held in the department's regional office of the mine site subject to the proposed penalty assessment unless the parties agree otherwise.

1. If all the parties or their counsel request to participate by telephone or other electronic means, then the conference officer may hold the assessment conference telephonically or by any other electronic means agreed to by the parties.

2. Any person who attends the assessment conference in person at the department's regional office shall have access to the telephonic conference line or the electronic means utilized during the assessment conference.

(c) Failure by the cabinet to timely schedule an assessment conference shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed makes a timely objection on or before the date of the assessment conference and proves actual and substantial prejudice as a result of the delay.

(d) The scheduling of the assessment conference shall not operate as a stay of any notice of noncompliance and order for remedial measures or cessation[~~notice or~~]order.

(2) Service; public participation.

(a) The cabinet shall serve notice of the assessment conference [~~shall be~~] pursuant to 400 KAR 1:090, Section 5.[~~served under 405 KAR 7:091, Section 5 and~~]

(b) The cabinet shall also send a copy of the notice of the assessment conference[~~shall also be sent~~] to any person who filed a report that[~~which~~] led to the issuance of the notice of noncompliance and order for remedial measures or cessation order[~~notice or order~~] being contested.

(c) The cabinet shall post notice of the assessment conference at the department's regional office of the mine site subject to the proposed penalty assessment[~~department's appropriate regional office~~] at least five (5) days before the assessment conference.

(d) Any person shall have the right to attend and participate in the assessment conference.

(3) Conference officer; requirements for administrative hearings not applicable. The office shall assign a conference officer to hold the assessment conference. The assessment conference shall not be governed by the requirements for administrative hearings in 401 KAR 1:090 or by the provisions of 400 KAR 1:040.

(4) Report of conference officer. The conference officer shall consider all relevant information pertaining to the proposed penalty assessment. Within thirty (30) days after the assessment conference is held, the conference officer shall issue a report recommending to the secretary to either affirm, raise, lower, or dismiss the proposed penalty assessment.

(5) Service of report; documentation. The conference officer's report shall be [~~promptly~~] served by mail, postage prepaid, and shall include a worksheet if the penalty has been raised or lowered. The reasons underlying the conference officer's report shall be fully documented.

(6)[~~Agreed order.~~

~~(a) Waiver of further review. If an agreed order is entered into, the person assessed shall be deemed to have waived all rights to further review of the fact of the violation and penalty in question. The agreed order shall contain a clause that any petition for review~~

~~of the fact of the violation filed in accordance with Section 7 of this administrative regulation shall be deemed withdrawn.~~

~~(b) Enforcement of agreed order. If full payment of the amount specified in the agreed order is not received by the cabinet within thirty (30) days after the date of the secretary's signature, the cabinet may take necessary steps to enforce the agreed order.~~

~~(7)~~] Failure to attend; report to issue. If the person requesting an assessment conference fails to attend the scheduled assessment conference, the assessment officer shall within thirty (30) days of the date of the scheduled assessment conference issue a report to the secretary recommending that the proposed penalty assessment be affirmed.

(7)[~~(8)~~] Statements not to be introduced at administrative hearing[~~hearings~~]. In any administrative hearing commenced under Sections 6 or 7 of this administrative regulation no evidence as to statements made by a[~~one (1)~~] party at an assessment[~~a~~] conference shall be introduced by another party as evidence or to impeach a witness.

(8) Challenge to conference officer's report.

(a)[~~(9) administrative hearing; who may request.~~] Any person issued a proposed penalty assessment may file a petition requesting [~~request under Section 6 of this administrative regulation~~] an administrative hearing to contest the conference officer's recommended penalty pursuant to the requirements of Section 6 of this administrative regulation.

(b) The cabinet may file a petition to request under Section 5 of this administrative regulation an administrative hearing to contest the conference officer's recommended penalty.

(9) Failure to timely file a petition challenging the conference report. If a person issued a proposed penalty assessment fails to file a timely petition in accordance with Section 6 of this administrative regulation challenging the conference report, the secretary shall issue a final order pursuant to paragraphs (a) or (b) of this subsection.

(a) If the person did not file a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of the administrative regulation, then the secretary shall issue a final order finding that:

1. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment;

2. The fact of the violation is deemed admitted; and

3. The proposed penalty is due and payable within thirty (30) days after the entry of the final order.

(b) If the person filed a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of the administrative regulation, then the secretary shall issue a final order finding that:

1. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment; and

2. The proposed penalty is due and payable within thirty (30) days of the mailing of a final order affirming the fact of the violation;[~~(10) Failure to timely request; order to enter. If a request for an administrative hearing is not filed with the office within thirty (30) days of mailing of the conference officer's report, an order of the secretary shall be entered and mailed containing the following:~~

~~(a) That the person to whom the notice or order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment;~~

~~(b) That the fact of the violation is deemed admitted; and~~

~~(c) That the penalty assessment contained in the conference officer's report is deemed accepted and is due and payable to the cabinet within thirty (30) days after the entry of the final order. If a petition requesting a hearing as to the fact of the violation has been timely filed pursuant to Section 7 of this administrative regulation, the finding set forth in paragraph (b) of this subsection shall be omitted and the penalty assessment contained in the conference officer's report shall be due and payable within thirty (30) days of the mailing of the final order affirming the fact of a violation.~~]

Section 5. Administrative Hearing[~~Hearings~~] Initiated by the Cabinet. (1) Criteria for filing.

(a) The cabinet may initiate an administrative hearing and may seek revocation of the permit and forfeiture of the bond or suspension of the permit if[~~whenever~~]:

1. The cabinet[~~it~~] has reason to believe that a violation of KRS Chapter 350; 405 KAR Chapters 7 through 24 has occurred or is occurring;[~~or~~]

2. A violation of a permit condition has occurred or is occurring;[~~or~~]

3.[~~2.~~] A permittee, operator, or person has failed to:

a. Pay a civil penalty assessed by[~~in a final order of~~] the cabinet;[~~or~~]

b.[~~to~~] Undertake remedial measures mandated by an order of the cabinet; or

c.[~~to~~] Abate violations it was determined to have committed by an[~~a final~~] order of the cabinet;[~~or~~]

4.[~~3.~~] The provisions of KRS 350.990(9) apply;[~~or~~]

5.[~~4.~~] The cabinet has reason to believe additional remedies should be sought or an order should be entered against any person to protect the environment or the health and safety of the public; or

6.[~~5.~~] The criteria of 405 KAR 10:050, Section 3(2) or (3) apply.

(b) The cabinet may initiate an administrative hearing to contest a conference officer's recommended penalty and seek any combination of the relief set forth in subsection (2) of this section[~~, in which case prepayment of the proposed penalty assessment is not required~~].

(c) The cabinet shall initiate an administrative hearing and shall seek revocation of the permit and forfeiture of the bond or suspension of the permit if[~~whenever~~]:

1. The permittee, operator, or person has willfully failed to comply with a cessation order[~~an order for cessation and immediate compliance~~]; or

2. The criteria of 405 KAR 10:050, Section 3(1) apply.

(2) Remedies. In an administrative hearing initiated by the cabinet, the cabinet may seek one (1) or a combination of the following:

(a) Permit suspension or revocation;

(b) Bond forfeiture;

(c) Civil penalty[~~penalties~~];

(d) A determination, pursuant to KRS 350.060, 350.085, and 350.130, that a person[~~or persons~~] shall not be eligible to receive another permit or conduct future operations;

(e) A determination, pursuant to KRS 350.990(9), that any director, officer, or agent of a corporation willfully and knowingly authorized, ordered, or carried out a violation or failed or refused to comply with any final order; or

(f) Any other relief to which it may be entitled by KRS Chapter 350.

(3) Procedure[~~Procedures~~] for an administrative hearing[~~hearings~~] initiated by the cabinet.

(a) Filing of administrative complaint. Content[~~Contents~~]. The cabinet shall initiate an administrative hearing by filing an administrative complaint with the office incorporating the following for each claim for relief:

1. A statement of facts entitling the cabinet to administrative relief;

2. A request for specific relief;[~~and~~]

3. A copy of any notice,[~~or~~] order, or determination upon which relief is sought; and

4. In a bond forfeiture action, the cabinet shall attach documentation to the petition that the cabinet contacted the bonding company or financial institution providing the bond, to determine if it wanted the right to perform the measures necessary to secure bond release in accordance with KRS 350.130.

(b) Answer or responsive pleading. The respondent[~~person named in an administrative complaint~~] shall file with the office an answer or responsive pleading within thirty (30) days of service of the administrative complaint, which shall contain:

1. A statement specifically admitting or denying the alleged facts stated in the administrative complaint or amended administrative complaint unless the person is without knowledge or

information sufficient to form a belief as to the truth of an allegation, then the person shall so state and this shall have the effect of a denial;[and]

2. Any defense[defenses] to each claim for relief; and

3. Any other matter to be considered on review.

(c) Amendment[Amendments].

1. An administrative complaint may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

2. The respondent[person named in the administrative complaint] shall have ten (10) days from the filing of an amended administrative complaint[amended as a matter of right] or the time remaining for filing an answer to the original complaint, whichever is longer, to file an answer or responsive pleading to the amended administrative complaint.

3. If the hearing officer grants a motion to amend the administrative complaint, the hearing officer shall set the time for an answer to be filed[shall be set forth] in the order granting the motion.

(4) Burden of proof.[If the cabinet initiates an administrative hearing,]

(a) The cabinet shall have the ultimate burden of persuasion.

(b) A[The] responding party shall have the burden of persuasion to establish an affirmative defense.

(c) A responding party claiming an exemption shall have the burden of persuasion to establish the qualification for the exemption.

(5) Default.

(a) If [In a proceeding where] the person against whom the administrative complaint is filed fails to timely comply with a prehearing order of a hearing officer, the hearing officer, may on his own initiative or upon motion,[shall] issue an order to show cause why the person should not be deemed to have waived his right to an administrative hearing and why a report and recommended order adverse to the person shall not be referred to the secretary.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order in conformity with the relief requested by the cabinet in its administrative complaint.

(c) If the person against whom the administrative complaint is filed fails to appear at an administrative hearing, the person shall be deemed to have waived his right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order in conformity with the relief requested by the cabinet in its administrative complaint.

Section 6. Administrative Hearing for Review of Proposed Assessment. (1) Who may file.[Filing petition; waiver.] Any person issued a proposed penalty assessment may file with the office a petition for an administrative hearing to review the penalty.

(2) Filing petition; waiver.

(a) A person filing a petition for review of a proposed penalty assessment who did not make a request for a Penalty Assessment Conference pursuant to Section 4 of this administrative regulation shall file the petition[be filed] in the office within thirty (30) days of:

1. Receipt[service] of the proposed penalty assessment; or

2.[If] The return receipt date in the office of the notice of proposed penalty assessment,[is] if the proposed penalty assessment is returned undeliverable, unclaimed or refused.[, within thirty (30) days of the date of return; or]

(b) If the person made a timely request for an assessment conference [has been made] pursuant to Section 4 of this administrative regulation, the person shall file a petition for review [must be filed] in the office within thirty (30) days of:

1. Receipt[from mailing] of the conference officer's report; or

2. The return receipt date in the office of the conference officer's report, if the conference officer's report is returned undeliverable, unclaimed, or refused;

(c) The hearing officer shall not grant an extension of time[shall not be granted] for filing a petition for review of a proposed penalty assessment[as required by this section].

(d) If the hearing officer, upon motion or his own initiative, finds that the person failed to timely file the petition for review in accordance with this section, the hearing officer shall issue a report recommending dismissal of the petition. The secretary shall enter an order in accordance with Section 4(9)(a) or (b)[If a petition for review is not timely filed, the petition, if any, shall be dismissed and a final order shall be entered which contains the following:

1. That the person to whom the notice or order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment or the assessment as amended by the conference officer;

2. The fact of the violation is deemed admitted; and

3. The proposed penalty assessment, or the assessment as amended by the conference officer is deemed admitted and shall be due and payable to the cabinet within thirty (30) days after the entry of the final order. If a petition requesting an administrative hearing on the fact of the violation has been timely filed under Section 7 of this administrative regulation, the finding set forth in subparagraph 2 of this paragraph shall be omitted and the penalty assessment shall be due and payable within thirty (30) days after the entry of a final order affirming the fact of the violation].

(3) Content[(2) Contents] of the petition.[; payment required.

(a)] The petition shall include:

(a)[1.] A short and plain statement indicating the reasons why [either] the amount of the penalty [or the fact of the violation or both] is being contested;

(b)[2.] If the amount of penalty is being contested based upon a misapplication of the penalty formula, a statement indicating how the penalty formula contained in 405 KAR 7:095 was misapplied, along with a proposed penalty utilizing the penalty formula; and

(c)[3.] Identification by reference to the noncompliance or cessation order number.

(4)[of all violations being contested; and

4. The identifying number of the cashier's check, certified check, bank draft, or bank money order accompanying the petition.

(b) The petition shall be accompanied by full payment of the proposed penalty assessment, or the assessment as amended by the conference officer, in the form of a cashier's check, certified check, bank draft, or bank money order made payable to the Kentucky State Treasurer to be placed in an escrow account pending final determination of the assessment; and, on the face of the payment an identification, by reference to the noncompliance or cessation order identification number, of the violations for which payment is being tendered.

(c) An extension of time shall not be granted for full payment of the proposed assessment. If payment is not timely made, the petition shall be dismissed, and a final order shall be entered in conformity with subsection (1)(c) of this section.

(3)] Answer or responsive pleading.

(a) The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the petition.

(b) The answer shall contain:

1. A statement specifically admitting or denying the facts stated in the petition or amended petition unless the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and this shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of such defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in an answer or responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted when not denied in the answer or responsive pleading[The cabinet shall have thirty (30) days from service of a copy of the petition to file an answer or responsive pleading with the office. An answer shall contain a statement specifically admitting or denying the alleged

~~errors stated in the petition and setting forth other matters to be considered on review~~].

(5)[~~(4)~~] Amended petition.

(a) A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

(b) The respondent[~~cabinet~~] shall have ten (10) days from the filing of an amended[~~a~~] petition[~~amended as a matter of right~~] or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading to the amended petition.

(c) If the hearing officer grants a motion to amend a petition, the hearing officer shall set the time for an answer to be filed shall be set forth in the order granting the motion.[~~(5) Notice of hearing. The parties and interested persons shall be given written notice of the time and place of the hearing at least twenty-one (21) days prior to the hearing unless the twenty-one (21) day period is waived in writing.~~]

(6) Burden of proof.[~~In administrative hearings under this section,~~] The cabinet shall have the burden of going forward to establish a prima facie case as to[~~the fact of the violation and~~] the amount of the penalty assessment and the ultimate burden of persuasion as to the amount of the penalty assessment.[~~The person who petitioned for review shall have the ultimate burden of persuasion as to the fact of the violation.~~]

(7) Default.

(a) In a proposed penalty assessment proceeding if the person against whom the proposed penalty is assessed fails to timely comply with a prehearing order of a hearing officer, the hearing officer shall issue an order to show cause why the person should not be deemed to have waived his right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order in conformity with Section 4(9)(a) or (b) of this administrative regulation[~~subsection 1(c) of this section~~].

(c) If the person against whom the proposed penalty is assessed fails to appear at a hearing, the person shall be deemed to have waived his right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order in conformity with Section 4(9)(a) or (b) of this administrative regulation[~~subsection 1(c) of this section~~].

(8) Hearing officer[~~officer's~~] report; contents. If an administrative hearing is conducted, the hearing officer shall incorporate in his report and recommended order concerning a civil penalty[~~, findings of fact~~] on each of the four (4)[~~,~~] criteria set forth in 405 KAR 7:095, Section 3[~~,~~] and conclusions of law.

Section 7. Administrative Review of a Notice[~~Notices~~] of Noncompliance and Order[~~Orders~~] for Remedial Measures and a Cessation Order[~~Orders for Cessation and Immediate Compliance~~]. (1) Who may file. A person who considers himself aggrieved by the issuance of[~~issued~~] a notice of noncompliance and order for remedial measures or cessation order[~~an order for cessation and immediate compliance~~] by the cabinet pursuant to the provisions of KRS Chapter 350 or administrative regulations [~~or a person having an interest which is or may be adversely affected by such a notice or order~~] may file a petition for review with the office.

(2) Time for filing.

(a) A person filing a petition for review under this section shall file in the office a petition within:

1. Thirty (30) days of the receipt of a notice of noncompliance and order for remedial measures or cessation order;[~~notice or order or~~]

2.[~~Within~~] Thirty (30) days of receipt of notice of modification, vacation, or termination of the notice of noncompliance and order for remedial measures or cessation order;[~~notice or order~~] or

3. Thirty (30) days of the return receipt date in the office of the notice of noncompliance and order for remedial measures or cessation order if[~~any of the foregoing documents~~] the notice of noncompliance and order for remedial measures or cessation order is returned as undeliverable, unclaimed or refused[~~within thirty (30) days of the date of the return~~].

(b) The hearing officer shall not grant an extension of time [~~shall not be granted~~] for filing a petition for review.

(c) If the hearing officer, upon motion or his own initiative, finds that the person failed to timely file the petition for review in accordance with this section, the hearing officer shall issue a report recommending dismissal of the petition. The secretary shall dismiss a petition that is not filed in accordance with subsection (2)(a) of this section finding the person to have waived his right to an administrative hearing and affirming the notice of noncompliance and order for remedial measures or cessation order[~~If a petition for review is not timely filed, the petition shall be dismissed.~~

~~(c) Failure to file a petition for review of a notice of noncompliance and order for remedial measures or order for cessation and immediate compliance under this section shall not preclude challenging the fact of violation at an administrative hearing requested under Section 6 of this administrative regulation~~].

(3) Content[~~Contents~~] of a petition. A person filing a petition for review shall incorporate in the petition regarding each claim for relief [~~the following~~]:

(a) A statement of facts entitling that person to administrative relief;

(b) A request for specific relief;

(c) A copy of the notice of noncompliance and order for remedial measures or cessation order[~~notice or order~~] sought to be reviewed; and

(d) A statement as to whether or not the person waives the opportunity for an evidentiary hearing;[~~and~~

~~(e) Other relevant information.~~]

(4) Answer or responsive pleading.

(a) The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the petition.

(b) The answer shall contain:

1. A statement specifically admitting or denying the facts stated in the petition or amended petition unless the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and this shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of such defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in a responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading[~~The cabinet and interested parties shall have thirty (30) days from service of a copy of the petition within which to file an answer or other responsive pleading. The answer shall contain a statement specifically admitting or denying the alleged facts stated by the petitioner and setting forth other matters to be considered on review~~].

(5) Amended petition.

(a) A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

(b) The respondent[~~cabinet and other interested parties~~] shall have ten (10) days from the filing of a petition amended as a matter of right or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading.

(c) If the hearing officer grants a motion to amend a petition, the time for an answer to be filed shall be set forth in the order granting the motion.

(6) Requirement to file subsequent notice of noncompliance and order for remedial measures or cessation order.

(a) Within ten (10) days of receipt, a petitioner shall file a copy of any subsequent notice of noncompliance and order for remedial measures or cessation order[~~notice or order~~] which modifies, vacates, or terminates the notice of noncompliance and order for remedial measures or cessation order[~~notice or order~~] sought to be reviewed.[~~and~~]

(b) Within ten (10) days of receipt, a petitioner shall file a copy of any subsequent cessation order[~~for cessation and immediate compliance~~] for failure to timely abate the violation which is the subject to the notice sought to be reviewed[~~within ten (10) days of receipt of the notice or order~~].

(c) If a petitioner desires to challenge a subsequent notice of noncompliance and order for remedial measures or cessation order [~~notice or order~~], the petitioner must file:

1. A separate petition for review in accordance with subsection (2); or

2. A motion to amend a pending petition with the amended petition attached within the time requirements of subsection (2).

(d) A petition[~~. Petitions~~] for review of a related notice of noncompliance and order for remedial measures or cessation order is [~~notices or orders are~~] subject to consolidation.

(7)[~~Notice of hearing. The parties and interested persons shall be given written notice of the time and place of the hearing at least twenty-one (21) days prior to the hearing, unless the twenty-one (21) day period is waived in writing.~~

~~(8)~~] Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer shall issue an order to show cause why the person should not be deemed to have waived his right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order affirming the notice of noncompliance and order for remedial measures or cessation order[~~notice or order~~] and dismissing the petition.

(c) If the person requesting the administrative hearing fails to appear at a hearing, the person shall be deemed to have waived his right to an administrative hearing and the hearing officer shall recommend to the secretary the entry of a final order affirming the notice of noncompliance and order for remedial measures or cessation order[~~notice or order~~] and dismissing the petition.

(8)[~~(9)~~] Burden of proof. In review of a notice[~~notices~~] of noncompliance and order[~~orders~~] for remedial measures or cessation order[~~orders for cessation and immediate compliance~~] or the modification, vacation, or termination thereof under this section, the cabinet shall have the burden of going forward to establish a prima facie case as to the propriety of the notice of noncompliance and order for remedial measures or cessation order[~~notice, order~~], or modification, vacation, or termination thereof. The ultimate burden of persuasion shall rest with the petitioner.

Section 8. Request for Review of Permit Determinations. (1) Who may file. The permit applicant, permittee, or person having an interest which is or may be adversely affected by a permit determination of the cabinet may file a petition for review of the following:

(a) Application[~~Applications~~] for a new permit[~~permits~~];

(b) Application[~~Applications~~] for a permit revision[~~revisions~~] and amendment[~~amendments~~], permit renewal[~~renewals~~], and the transfer, assignment, or sale of rights granted under permit;

(c) Permit revision[~~revisions~~] and amendment[~~amendments~~] ordered by the cabinet, except challenges of permit revision[~~revisions~~] ordered as a remedial measure in a notice of noncompliance shall be reviewed in an administrative hearing pursuant to Section[~~6 or~~] 7 of this administrative regulation; and

(d) Application[~~Applications~~] for a coal exploration permit[~~permits~~].

(2) Time to file; waiver.

(a) The permit applicant, permittee, or person having an interest that is or may be adversely affected by a permit determination of the cabinet shall file a petition for review[~~shall be filed~~] with the office within thirty (30) days from the date the permit applicant, permittee, or person had[~~has~~] actual notice of the determination or could reasonably have had notice.

(b) If the hearing officer, upon motion or his own initiative, finds that the permit applicant, permittee, or person failed to timely file the petition for review in accordance with this section, the hearing officer shall issue a report recommending dismissal of the petition. The secretary shall enter an order stating that the permit applicant, permittee, or person waived his right to an administrative hearing[~~Failure to timely file a petition for review shall constitute a waiver of an administrative hearing and the petition shall be dismissed~~].

(3) Content[~~Contents~~] of the petition. The petition for review shall include:

(a) A clear statement of the facts entitling the person[~~one~~] requesting review to administrative relief;

(b) An explanation of each specific alleged error in the cabinet's decision, including reference to the statutory and regulatory provisions allegedly violated;

(c) A request for specific relief; and

(d) A statement whether or not the person requests or waives the opportunity for an evidentiary hearing.[~~; and~~

~~(e) Other relevant information.~~]

(4) Answer or responsive pleading.

(a) The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the petition.

(b) The answer shall contain:

1. A statement specifically admitting or denying the facts stated in the petition or amended petition unless the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and this shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of such defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in a responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading[~~The cabinet and interested parties shall file an answer or responsive pleading within thirty (30) days of service of the petition. An answer shall contain a statement specifically admitting or denying facts or alleged errors stated in the petition and setting forth other matters to be considered on review~~].

(5) Amended petition.

(a) A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

(b) The respondent[~~An interested party~~] shall have ten (10) days from the filing of an amended[~~a~~] petition[~~amended as a matter of right~~] or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading to the amended petition.

(c) If the hearing officer grants a motion to amend a petition, the hearing officer shall set the time for an answer to be filed[~~shall be set forth~~] in the order granting the motion.

(6)[~~Notice of hearing. The parties and interested persons shall be given written notice of the time and place of the administrative hearing at least twenty-one (21) days prior to the hearing unless the twenty-one (21) day period is waived in writing~~.

~~(7)~~] Effect of filing. The filing of a petition for review shall not stay the effectiveness of the cabinet's determination pending completion of administrative review.

(7)[~~(8)~~] Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer shall issue an order to show cause why the person should not be deemed to have waived

his right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order finding that the petitioner has waived his right to an administrative hearing and dismissing the petition.

(c) If the person requesting the administrative hearing fails to appear at a hearing, the hearing officer shall recommend to the secretary the entry of a final order finding that the petitioner has waived his right to an administrative hearing and dismissing the petition.

(8)[(9)] Burden of proof.

(a) Petition to review[In a proceeding to review a decision on an] application for a new permit.[:]

1. If the permit applicant is seeking review, he shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that:

a. The permit application complies with the requirements of KRS Chapter 350 and administrative regulations; or[that]

b. The permit terms or conditions are improper.

2. If a person other than the permit applicant is seeking review, the person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that:

a. The permit application fails to comply with the requirements of KRS Chapter 350 or the administrative regulations;[,] or[that]

b. The cabinet should have imposed certain terms or conditions on the permit that were not imposed.

(b) Petition to review[In a proceeding to review] the approval or disapproval of an application for a permit renewal.

1. A party[those parties] opposing the renewal of a permit shall have the burden of going forward to establish a prima facie case; and

2. The ultimate burden of persuasion that the permit renewal application should be disapproved or that the cabinet should have imposed certain terms or conditions on the renewal permit that were not imposed.

(c) Petition[In a proceeding] to review the approval or disapproval of an application for a permit revision or amendment, or an application for the transfer, assignment, or sale of rights granted under permit.[:]

1. If the permit applicant is seeking review, the permit applicant [he] shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the permit application complies with the requirements of KRS Chapter 350 and administrative regulations.[; and]

2. If a person other than the permit applicant is seeking review, the person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the application fails to comply with the requirements of KRS Chapter 350 or the administrative regulations.

(d) Petition[In a proceeding] to review a permit revision or amendment ordered by the cabinet.

1.[,]The cabinet shall have the burden of going forward to establish a prima facie case that the permit should be revised or amended; and

2. The permittee shall have the ultimate burden of persuasion that the revision or amendment is not appropriate.

(e) Petition[In a proceeding] to review a decision on an application for a coal exploration permit.[:]

1. If the permit applicant is seeking review, he shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the permit application complies with the requirements of KRS Chapter 350 and administrative regulations.

2. If a person other than the permit applicant is seeking review, the person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the application fails to comply with the requirements of KRS Chapter 350 or the administrative regulations.

Section 9. Review of a Cabinet Determination[Determinations]. (1) Who may file. A person who considers himself aggrieved by a determination of the cabinet for which an administrative hearing is not specifically provided in any other section of this administrative regulation may file a petition for review of the determination pursuant to this section.

(2) Time to file; waiver.

(a) A person filing a petition for review under this section shall file in the office a petition[The petition for review shall be filed with the office] within thirty (30) days after the person[petitioner] has had actual notice of the determination complained of, or could reasonably have had notice.

(b) The hearing officer shall not grant an extension of time for filing a petition for review pursuant to this section.

(c) If the hearing officer, upon motion or his own initiative, finds that the person failed to timely file the petition for review in accordance with this section, the hearing officer shall issue a report recommending dismissal of the petition. The secretary shall enter an order stating that the person waived his right to an administrative hearing[Failure to timely file a petition for review shall constitute a waiver of an administrative hearing and the petition shall be dismissed].

(3) Content[Contents] of the petition. The petition for review shall contain:

(a) A statement of the facts entitling the person[one requesting review] to administrative relief;

(b) An explanation of each specific alleged error in the cabinet's determination; and

(c) A request for specific relief.[; and

(d) Other relevant information.]

(4) Answer or responsive pleading.

(a) The respondent[cabinet and interested parties] shall file with the office an answer or other responsive pleading within thirty (30) days of service of the petition.

(b) The answer shall contain:

1. A statement specifically admitting or denying the facts stated in the petition or amended petition unless the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and this shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of such defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in a responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading[specifically admitting or denying facts or alleged errors stated in the petition and setting forth any other matters to be considered on review].

(5) Amended petition.

(a) A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

(b) The respondent[cabinet and interested parties] shall have ten (10) days from the filing of an amended[a] petition[amended as a matter of right] or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading to the amended petition.

(c) If the hearing officer grants a motion to amend a petition, the hearing officer shall set the time for an answer to be filed[shall be set forth] in the order granting the motion.[(6) Notice of hearing. The parties and interested persons shall be given written notice of the time and place of the administrative hearing at least twenty-one (21) days prior to the hearing unless the twenty-one (21) days period is waived in writing.]

(6)[(7)] Effect of filing. The filing of a petition for review shall not stay the effectiveness of the cabinet's determination pending completion of administrative review.

(7)[(8)] Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer shall issue an order to show cause why that person should not be deemed to have waived his right to an administrative hearing and why his petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order finding that the petitioner has waived his right to an administrative hearing and dismissing the petition.

(c) If the person requesting the administrative hearing fails to appear at a hearing, the person shall be deemed to have waived his right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order finding that he has waived his right to an administrative hearing and dismissing the petition.

(8)[~~(9)~~] Burden of proof. The petitioner shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the requested relief.

Section 10. Proceeding[~~Proceedings~~] for the Suspension or Revocation of a Permit[~~Permits~~] Because of a Pattern of Violations. (1) Initiation of the proceeding[~~proceedings~~].

(a) A proceeding on a show cause order issued by the cabinet pursuant to KRS 350.028(4), 350.465(3)(f), and 405 KAR 12:020, Section 8, shall be initiated by the filing of a copy of the show cause order by the cabinet with the office at the same time the order is issued to the permittee.

(b) A show cause order shall set forth:

1. A list of the unwarranted or willful violations that[~~which~~] contribute to a pattern of violations;

2. A copy of each order or notice that[~~which~~] contains the violations listed as contributing to a pattern of violations;

3. The basis for determining the existence of a pattern of violations; and

4. A recommendation[~~Recommendations~~] whether or not the permit should be suspended or revoked, including the length and terms of a suspension.

(2) Answer. The permittee shall have thirty (30) days from service of the show cause order within which to file an answer with the office, which shall state:

(a) The reasons in detail why a pattern of violations, as established[~~described~~] in 405 KAR 12:020, Section 8, does not exist or has not existed including all reasons for contesting:

1. The fact of the violations alleged by the cabinet as constituting a pattern of violations;

2. The willfulness of the violations; or

3. Whether or not the violations were caused by the unwarranted failure of the permittee;

(b) Mitigating factors the permittee believes exist in determining the terms of the revocation or the length and terms of the suspension;

(c) Other alleged relevant facts; and

(d) Whether or not an evidentiary hearing on the show cause order is desired.

(3) Burden of proof. In a show cause proceeding, the cabinet shall have the burden of going forward to establish a prima facie case for suspension or revocation of the permit. The ultimate burden of persuasion that the permit should not be suspended or revoked shall rest with the permittee.

(4) Determination by the hearing officer.

(a) Upon a determination by the hearing officer pursuant to 405 KAR 12:020, Section 8, that a pattern of violations exists or has existed, the hearing officer shall recommend the permit either be suspended or revoked and the permittee be directed to complete necessary remedial measures and reclamation operations. In making the[~~such a~~] recommendation, the hearing officer need not find that all the violations listed in the show cause order occurred, but only that sufficient violations occurred to establish a pattern.

(b) If the permit is suspended, the hearing officer may recommend preconditions to be satisfied prior to the suspension being lifted.

(5) Default. If the permittee fails to timely file an answer or appear at the administrative hearing, the permittee shall be deemed to have waived his right to an administrative hearing and the hearing officer shall recommend to the secretary the entry of a final order containing the following:

(a) That each violation listed in the show cause order occurred;

(b) That the violations were caused by the permittee's unwarranted failure or were willfully caused;

(c) That a pattern of violations exists; and

(d) That the permit shall be suspended or revoked in accordance with the recommendation contained in the show cause order. [~~Section 11. Procedures for Abate or Alleviate Orders. (1) In general. If pursuant to KRS 224.10-410, the secretary issues an order to abate or alleviate to a surface coal mining and reclamation operation, the cabinet shall provide the person to whom the order was issued an opportunity to be heard.~~

~~The holding of an administrative hearing pursuant to this section shall not operate to terminate or stay the order or the affirmative obligations imposed on a person by the order, unless the hearing officer shall find on the record that the obligations have been met or that the order was improper or inappropriate.~~

~~(2) Notice.~~

~~(a) Upon issuance of an order to abate or alleviate under the provisions of KRS 224.10-410, the secretary shall file with the office a copy of the order.~~

~~(b) Upon filing an order to abate or alleviate, the office shall issue an administrative summons pursuant to 405 KAR 7:091, Section 6, and shall set the time and place for an administrative hearing to be held not more than ten (10) days from the date the order to abate or alleviate was signed by the secretary.~~

~~(3) Response.~~

~~(a) The person named in the order to abate or alleviate shall prior to or at the hearing file a response to the order specifically admitting or denying facts alleged in the order, setting forth other matters to be considered on review, and setting forth evidence, if any, that the condition or activity does not violate the provisions of KRS 224.10-410.~~

~~(b) In lieu of a response, the person named in the order to abate or alleviate may contact the office in writing or by other means and state that an administrative hearing is not needed, and that he does not desire to contest the order.~~

~~(4) Hearing procedure. The administrative hearing shall be held in accordance with 405 KAR 7:091, Section 3. In addition the hearing officer may require the parties to submit proposed findings of fact and conclusions of law to be considered at the hearing which may be orally supplemented on the record at the hearing, or if written proposed findings of fact and conclusions of law have not been submitted at the hearing, they may be orally presented for the record at the administrative hearing.~~

~~(5) Burden of proof. The cabinet shall have the burden of going forward to establish a prima facie case as to the propriety of the order to abate or alleviate. The person named in the order to abate or alleviate shall have the ultimate burden of persuasion that the condition or activity does not violate KRS 224.10-410, or that the condition or activity has been discontinued, abated or alleviated.~~

~~(6) Default. Upon notification by the person named in the order to abate or alleviate that a hearing is not needed or upon failure of the person to appear at the administrative hearing, the hearing officer shall promptly prepare a report stating that the hearing has been waived and the order to abate or alleviate stands as issued.~~

~~(7) Effect of proceedings. The scheduling of an administrative hearing pursuant to this section shall not operate to terminate or stay the effect of the order or to relieve the person named in the order from performing the affirmative obligations imposed order in the order to abate or alleviate.~~]

Section 11[~~12~~]. Temporary Relief. (1) Temporary Relief Available.[~~(a)~~] Pending the completion of the investigation and hearing[~~hearings~~] provided for in this administrative regulation, a hearing officer may, subject to review by the secretary, grant temporary relief from a:

(a) Notice of noncompliance and order for remedial measures or a cessation[~~or~~] order issued pursuant to KRS Chapter 350 or administrative regulations;[~~,~~] or

(b) A permit or bond release decision of the cabinet.

(2) Temporary Relief Not Available. A hearing officer shall not

grant temporary relief for:

(a) The issuance of a permit if the cabinet made a determination to deny a permit in whole or in part; or

(b) The release of a bond if the cabinet made a determination to deny a bond release request.

(3) A hearing officer shall grant or deny temporary relief from a cessation order issued pursuant to KRS 350.130(1) or (4), or from a bond release decision within five (5) working days of receipt by the office of a temporary relief request, unless waived by the petitioner.

(4) Contents of the Petition. A person shall file[~~(b)~~] a written petition for relief[~~shall be in writing, and filed~~] with the office. The petition shall contain:

(a) The permit number, the name of the permittee, the date and number of the notice of noncompliance and order for remedial measures or cessation order from which relief is requested, if applicable, and the name and telephone number of the petitioner;

(b)[~~1.~~] A detailed statement setting forth reasons why such relief should be granted;

(c)[~~2.~~] Facts supporting[~~A showing that there is~~] a substantial likelihood that the person requesting the relief will prevail on the merits of the final determination of the proceeding;

(d)[~~3.~~] A statement that the relief sought will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources;

(e)[~~4.~~] If the petition relates to a cessation[~~an~~] order[~~for cessation and immediate compliance~~] issued pursuant to KRS 350.130(1) or (4) or a decision to release a bond, a statement of whether or not the person waives the requirement for[~~a decision~~] the hearing officer to grant or deny the request for temporary relief[~~on the petition~~] within five (5) working days of receipt of the petition by the office[~~is waived~~]; and

(f)[~~5.~~] A statement of the specific relief requested.

(5) Hearing process.

(a) In addition to the service requirements of 400 KAR 1:090, Section 5, the petitioner shall serve other parties with a copy of the petition simultaneously with the filing of the petition. If service is accomplished by mail, the petitioner shall inform the other parties by telephone at the time of mailing that a petition is being filed and the contents of the petition.

(b) The representative of the cabinet and any other party may indicate their objection to the application by communicating the objection to the hearing officer and the petitioner by telephone. Ex parte communication as to the merits of the proceeding shall not be conducted with the hearing officer. The representative of cabinet and any other party may simultaneously reduce their objections to writing. Written objections shall be immediately filed with the office and immediately served upon the petitioner.

(c) Scheduling a hearing.

1. Upon receipt of communication that there is an objection to the petition, the hearing officer shall immediately order a location, time, and date for the administrative hearing by communicating the information to the cabinet, any other party, and the petitioner by telephone.

2. The hearing officer shall reduce the communication to writing in the form of a memorandum to the file.

3. The administrative hearing on the request for temporary relief shall be held in the locality of the permit area, or at any other location acceptable to the cabinet, the petitioner, and any other person named in the action.

4. If the petitioner did not waive the requirement for the hearing officer to grant or deny temporary relief within five (5) working days of the office's receipt of the petition for temporary relief as set forth in subsections (3) and (4)(e) of this section, the hearing officer shall schedule the administrative hearing within (5) five days of the office's receipt of the petition for temporary relief.

(d) If an evidentiary hearing is held the hearing officer may require the parties to submit proposed findings of fact and conclusions of law to be considered at the evidentiary hearing, which may be orally supplemented on the record at the hearing.

(e) If at any time, the petitioner requests a delay or acts in a manner so as to frustrate the expeditious nature of the proceeding or fails to supply the information required by the hearing officer, the action shall constitute a waiver of the five (5) day requirement in subsection (3) of this section.

(6) Standard of review. A hearing officer may grant temporary relief if:

(a) The person requesting relief shows that there is substantial likelihood that the findings on the merits in an administrative hearing conducted by the cabinet will be favorable to the person; and

(b) The relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.

(7) Timing of hearing officer's determination.

(a) A hearing officer shall grant or deny relief expeditiously.

(b) If the petitioner did not waive the requirement for a hearing officer to grant or deny the request for temporary relief within five (5) days of the office's receipt of the petition as required in subsections (3) and (4)(e) of this section, the hearing officer shall either:

1. Orally rule on the request for temporary relief at the conclusion of the hearing stating the reasons for the decision and issue a written decision stating the reasons for the finding within three (3) working days; or

2. Within twenty-four (24) hours of completion of the administrative hearing issue a written decision stating the reasons for the finding.

(c) If the petitioner waived the requirement for a hearing officer to grant or deny the request for temporary relief within five (5) days of the office's receipt of the petition in accordance with subsections (3) and (4)(e) of this section, or the petitioner did not request temporary relief from a cessation order or a bond release hearing, then hearing officer shall either:

1. Orally rule on the request for temporary relief at the conclusion of the hearing stating the reasons for the decision and issue a written decision stating the reasons for the finding within twenty (20) working days; or

2. Within fifteen (15) days of completion of the administrative hearing issue a written decision stating the reasons for the finding.[~~(c) A hearing officer my grant temporary relief after making a written finding that relief is warranted, and shall state the reasons for the finding. A hearing officer shall grant or deny relief expeditiously; except if the person requests temporary relief from an order for cessation and immediate compliance issued pursuant to KRS 350.130(1) or (4), or from a bond release decision, a hearing officer shall grant or deny temporary relief within five (5) working days of receipt by the office of a request~~.

~~(2) A hearing officer may grant temporary relief from notices and orders of the cabinet issued pursuant to 405 KAR 12:020, Sections 2 and 3 under conditions as is deemed appropriate, if:~~

~~(a) An administrative hearing on the request for temporary relief has been held in the locality of the permit area, or at any other location acceptable to the cabinet and the person to whom the notice or order was issued, in which all parties were given an opportunity to be heard~~;

~~(b) The person requesting relief shows that there is substantial likelihood that the findings on the merits in an administrative hearing conducted by the cabinet will be favorable to the person; and~~

~~(c) The relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.~~

~~(3) If a person requests temporary relief from a permit or coal exploration determination, the hearing officer under conditions as may be prescribed pending final determination of the proceeding may grant temporary relief if:~~

~~(a) The parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;~~

~~(b) The person requesting the relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and~~

~~(c) The relief will not affect adversely the public health or safety, or cause significant, imminent environmental harm to land, air, or water resources; and~~

~~(d) The relief sought is not the issuance of a permit where a~~

permit has been denied, in whole or in part, by the cabinet, nor release of a bond when a bond release request has been denied.

(4) Determinations on petitions concerning orders for cessation and immediate compliance issued pursuant to KRS 350.130(1) or (4) or bond release decisions shall be handled as follows:

(a) If the five (5) day requirement set forth in subsection (1) of this section is waived, the hearing officer shall expeditiously conduct a hearing and render a decision on the petition.

(b) If a waiver of the five (5) day requirement set forth in subsection (1) is not made, the following shall apply:

1. The five (5) day time for decision shall not begin to run until the petition for temporary relief is filed with the office;

2. The petition shall identify the permit number, permittee, the date and number of the noncompliance or cessation order from which relief is requested, if applicable, and the name and telephone number of the petitioner;

3. In addition to the service requirements of 405 KAR 7:091, Section 5, the petitioner shall serve other parties with a copy of the petition simultaneously with the filing of the application. If service is accomplished by mail, the petitioner shall inform the other parties by telephone at the time of mailing that a petition is being filed and the contents of the petition;

4. The representative of the Department of Law and other parties may indicate their objection to the application by communicating the objection to the hearing officer and the applicant by telephone. However, ex parte communication as to the merits of the proceeding shall not be conducted with the hearing officer. The representative of Department of Law and other parties may simultaneously reduce their objections to writing. Written objections shall be immediately filed with the hearing officer and immediately served upon the petitioner;

5. Upon receipt of communication that there is an objection to the petition, the hearing officer shall immediately order a location, time and date for the administrative hearing by communicating the information to the Department of Law, other parties, and the petitioner by telephone. The hearing officer shall reduce the communications to writing in the form of a memorandum to the file;

6. If an evidentiary hearing is held:

a. The hearing officer may require the parties to submit proposed findings of fact and conclusions of law to be considered at the evidentiary hearing which may be orally supplemented on the record at the hearing or where written proposed findings of fact and conclusions of law have not been submitted at the hearing, they may be orally presented for the record at the hearing;

b. The hearing officer shall either rule from the bench on the petition, orally stating the reasons for his decision or shall within twenty-four (24) hours of completion of the hearing issue a written decision. If the hearing officer makes an oral ruling, he shall issue a written decision within three (3) working days; and

7. If at any time after the initiation of the expedited procedure, the petitioner requests a delay or acts in a manner so as to frustrate the expeditious nature of the proceeding or fails to supply the information required by the hearing officer, the action shall constitute a waiver of the five (5) day requirement.

Section 13. Penalties. (1) Any person who violates any of the provisions of KRS Chapter 350; 405 KAR Chapters 7 through 24; or a permit condition or who fails to perform the duties imposed by these provisions, except the refusal or failure to obtain a permit, exploration approval or other authorization, or who violates any determination or order promulgated pursuant to those provisions, may be assessed a civil penalty of not more than $5,000 for each day during which the violation continues. A civil penalty of not more than $5,000 for each day shall be assessed against a person issued an order pursuant to KRS 350.130(4).

(2) If violation has not been abated during the abatement period set forth in a notice of noncompliance and order for remedial measures or in an order for cessation and immediate compliance, a civil penalty of not less than $750 shall be assessed for each day during which the failure to abate continues, up to a maximum of thirty (30) days, except that:

(a) A penalty for failure to abate the violation shall not be assessed for more than thirty (30) days for each violation. If the person has not abated the violation within the thirty (30) day period, the cabinet shall take appropriate action pursuant to KRS 350.990(3), (4), (9), or the pattern of violations provisions of KRS 350.028(4) within thirty (30) days to ensure that abatement occurs or to ensure that there will not be a recurrence of the failure to abate; and

(b) If the person to whom the notice or order was issued initiates review proceedings with respect to the violation, and the abatement requirements are suspended in a temporary relief proceeding pursuant to Section 12 of this administrative regulation, then the abatement period shall be extended until the date a final order concerning the violation in question is issued.

(3) A person who engages in surface coal mining and reclamation operations or coal exploration operations without first securing a permit or exploration approval according to KRS Chapter 350 and 405 KAR Chapters 7 through 24, shall be assessed a civil penalty of not less than $5,000 nor more than $25,000. Each day shall constitute a separate violation. However, the penalties provided in subsection (1) of this section shall apply in lieu of the penalties provided for in this subsection where a permittee through inadvertence has exceeded the boundaries of the permit in effect at that time.

(4) Whenever a corporate permittee violates any provision of KRS Chapter 350 or the administrative regulations or fails or refuses to comply with any final order issued by the secretary, any director, officer, or agent of the corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure or refusal shall be subject to the same civil penalties, fines, and imprisonment as may be imposed upon a person pursuant to this section.

(5) Penalties shall be recoverable in an action brought in the name of the Commonwealth of Kentucky or the Environmental and Public Protection Cabinet by the cabinet's Department of Law, or upon the secretary's request, by the attorney general.

(6)(a) If any party seeks judicial review of a final order of the cabinet involving a penalty, the proposed penalty shall continue to be held in escrow until completion of the review. If judicial review is not sought, the escrowed funds shall be transferred to the cabinet for payment to the Kentucky State Treasurer as provided by law.

(b) If a final order of the secretary or final decision of a reviewing court results in the reduction or elimination of the proposed penalty, the cabinet shall within thirty (30) days of receipt of the order refund the appropriate amount with interest at the statutory rate from the date of payment into escrow.

(c) If a final order of the secretary or final decision of a reviewing court increases the penalty, the person to whom the notice or order was issued shall pay the difference to the cabinet within thirty (30) days after receipt of the order.]

Section 12[14]. Petition for Recovery of Costs and Expenses. (1) Who may file and time to file.

(a) A person may file a petition for an award of costs and expenses, including attorneys' fees reasonably incurred, as a result of the person's participation in a proceeding held pursuant to this administrative regulation that[which] results in an order of the secretary.

(b) A person shall file with the cabinet within forty-five (45) days of the date of entry of the final order a[The] petition for an award of costs and expenses, including attorneys' fees[, shall be filed with the cabinet within forty-five (45) days of mailing of the final order].

(c) Failure of a person to timely file the petition shall constitute a waiver of the person's right to an award.

(2) Content[Contents] of the petition. A person shall include in the petition filed under this section[shall include] the name of the party from whom[which] costs and expenses are sought and the following [shall be submitted in support of the petition]:

(a) An affidavit setting forth in detail all costs and expenses including attorneys' fees reasonably incurred for, or in connection with, the person's participation in the proceeding;

(b) Receipts or other evidence of the costs and expenses; and

(c) If attorneys' fees are claimed, evidence concerning:

1. The hours expended on the case;

2.[,]The customary commercial rate of payment for the services in the area; and

3. The experience, reputation, and ability of the individual or individuals performing the services.

(3) Answer.

(a) The respondent[A person served with a copy of the petition] shall file with the office within[have] thirty (30) days from service of the petition[within which to file] an answer or other responsive pleading.

(b) The answer shall contain:

1. A statement specifically admitting or denying the facts stated in the petition or amended petition unless the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and this shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of such defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in a responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading[specifically admitting or denying the allegations stated in the petition and setting forth other matters to be considered].

(4) Criteria for awarding of costs.[Appropriate costs and expenses including attorneys' fees may be awarded as follows:]

(a) Appropriate costs and expenses including attorneys' fees may be awarded to a person from the permittee, if:

1. The person initiated[initiates] an administrative proceeding reviewing an enforcement action, and a Secretary's Order was issued[upon a] finding that, on or after May 18, 1982:[,]

a. A notice of noncompliance and order for remedial measures or a cessation order[notice of noncompliance or order for cessation] was properly issued for violations of KRS Chapter 350, Title 405 KAR or a permit condition;[conditions] or

b. An[That] imminent hazard existed; or

2. The person participated in an administrative proceeding reviewing an enforcement action, and a Secretary's Order was issued finding that, on or after May 18, 1982:

a. A notice of noncompliance and order for remedial measures or a cessation order was properly issued for violations of KRS Chapter 350, Title 405 KAR, or a permit condition; or

b. An imminent hazard existed; and

c. The hearing officer finds and the secretary concurs that the person made a substantial contribution to the full and fair determination of the issues.

(b) Appropriate costs and expenses including attorneys' fees may be awarded[, or
(b)] to a person other than a permittee or his representative from the cabinet, if:

1. The person initiated[initiates] or participated[participates] in any proceeding under KRS Chapter 350; and

2. The hearing officer finds and the secretary concurs[upon a finding] that the person made a substantial contribution to a full and fair determination of the issues.[; or]

(c) Appropriate costs and expenses including attorneys' fees may be awarded to a permittee from the cabinet if[when] the permittee demonstrates that the cabinet initiated an administrative hearing or issued a notice of noncompliance and order for remedial measures or a cessation order[an order of cessation or a notice of noncompliance or initiated an administrative hearing in]:

1. In bad faith; and

2. For the purpose of harassing or embarrassing the permittee.[; or]

(d) Appropriate costs and expenses including attorneys' fees may be awarded to a permittee from a person if[where] the permittee demonstrates that the person initiated an administrative hearing [or conference] under this administrative regulation or participated in an administrative hearing or conference:

1. In bad faith; and

2. For the purpose of harassing or embarrassing the permittee.[; or]

(e) Appropriate costs and expenses including attorneys' fees may be awarded to the cabinet from a person if the cabinet[where it] demonstrates that:

1. A person applied for review pursuant to this administrative regulation in bad faith and for the purpose of harassing or embarrassing the cabinet or the Commonwealth; or

2.[that] A party participated in an administrative hearing or conference in bad faith and for the purpose of harassing or embarrassing the cabinet or the Commonwealth.

(5) An award under this section may include reimbursement for costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred.

Section 13. Location of an Administrative Hearings. (1) An administrative hearing conducted in accordance with this administrative regulation shall be held at the location designated by the hearing officer unless a written request for a hearing at or close to the mine site is submitted with the initiating document or an answer.

(2) The department's regional office for the mine site shall be deemed reasonably close, unless a closer location is requested by a party to the case and agreed to by the hearing officer.

Section 14. Judicial Review, Effect, and Subsequent Proceeding. (1) Judicial review. Judicial review may be taken from a final order of the secretary to the appropriate circuit court of competent jurisdiction in accordance with KRS 350.032 or 350.0305 as applicable.

(2) Effect of final order pending judicial review. The commencement of a proceeding for judicial review of a final order of the secretary shall not operate as a stay of a final order, unless specifically ordered by the court of competent jurisdiction.

(3) Remand from a court.

(a) If a matter is remanded from a court for a further proceeding, and to the extent the court's directive and time limitations will permit, each party shall be allowed an opportunity to submit to the hearing officer, a report recommending a procedure to be followed in order to comply with the court's order.

(b) The hearing officer shall review each report and enter a special order governing the handling of the matter remanded to it for further proceedings by a court.[:

(a) Costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred As a result of initiation or participation or both in an administrative hearing or conference under this administrative regulation; and

(b) Costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred In seeking the award before the cabinet.

Section 15. Determinations as to Inability to Prepay. (1) Inability to pay. Notwithstanding the provisions of Section 6(2) of this administrative regulation, an individual, upon filing a petition for review pursuant to Section 6 of this administrative regulation, may, in lieu of paying into the cabinet's escrow account the amount of the proposed assessment, simultaneously submit a petition and affidavit requesting the office to accord the individual a waiver of the requirement to prepay.

(2) Contents of petition. The petition for waiver of prepayment requirements shall set forth:

(a) A statement of facts underlying the request for a determination that the individual is unable to comply with Section 6(2) of this administrative regulation; and

(b) An affidavit, subject to penalties for perjury, setting forth the applicant's income, property owned, outstanding obligations, the number and age of dependents, and a copy of his most recent Kentucky and federal income tax returns.

(3) Response. Within fifteen (15) days of service of the petition,

~~the cabinet may file an answer or responsive pleading admitting or denying the contents of the petition for waiver. Failure by the cabinet to submit an answer or responsive pleading shall not relieve the office from making an independent determination as to the validity of the contents of the petition for waiver, and whether the waiver should be given.~~

~~(4) Interim report. Within thirty (30) days of filing of the petition, the hearing officer shall issue an interim report accepting or denying the petition for waiver. If the waiver is accepted, it shall be so noted in the record and shall remain in effect, subject to review upon proper motion. If the waiver is denied, the applicant shall be informed in writing and the applicant shall be given thirty (30) days from the mailing of the interim report to pay into the cabinet's escrow account the amount of the assessment as set forth in the notice of proposed assessment or as set forth by the conference officer under the provisions of Section 4 of this administrative regulation.~~

~~(5) Presumptions.~~

~~(a) It shall be prima facie evidence that the individual is unable to comply with Section 6(2) of this administrative regulation if the petition is accompanied by a certified copy of a petition for bankruptcy or the individual is receiving or is eligible to receive public assistance payments at the time a petition for waiver is filed.~~

~~(b) It shall be prima facie evidence a person is not eligible for a waiver if he owns real property; is not receiving, or is not eligible to receive, public assistance payments at the time the affidavit is submitted; or owns more than one (1) motor vehicle.~~]

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: March 15, 2017

FILED WITH LRC: March 15, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 25, 2017 at 10:00 a.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by April 18, 2017, 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 through April 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth hearing, conference, notice, penalty assessment and other procedural and due process provisions for the permanent regulatory program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish hearing, conference, notice, penalty assessment and other procedural and due process provisions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.028 establishes the cabinet's authority to issue a final order after an opportunity for a hearing. This administrative regulation establishes the requirements for hearing, conference, notice, penalty assessment and other procedural and due process provisions for the permanent regulatory program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the necessary detail for the cabinet administrative hearing process as it applies to coal mining.

(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 makes various changes in order to comply with KRS 13A as well as to clarify the intent of the administrative regulations and ensures they do not conflict with other administrative hearing procedures in the cabinet.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the intent of the administrative regulation as well as ensure it does not conflict with other administrative hearing procedures in the cabinet.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by clarifying the administrative hearing process and ensuring it does not conflict with other administrative hearing regulations in the cabinet.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.028 provides the authority for a hearing if necessary. These amendments are provided to ensure this administrative regulation doesn't conflict with other cabinet administrative hearing regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity that would be required to enter into the cabinet administrative hearings procedures.

(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 entities listed in question (3) above will be required to comply with minor administrative hearing amendments.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These entities will benefit by ensuring there is no conflict between administrative hearing regulations.

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

(a) Initially: There will be no costs to the department with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department with implementation of this amendment.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The amendments to this administrative regulation will not require an increase in fees or funding.

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

(9) TIERING: Is tiering applied? No. All entities that enter into an administrative hearing process will be required to meet the requirements of this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Reclamation and Enforcement.

2. Identify each state or federal statute or federal regulation

that requires or authorizes the action taken by the administrative regulation. KRS 350.028 and 350.990.

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

(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 amended administrative regulation will not generate any new revenue for the state or local government.

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 6:040. Kentucky State Penitentiary.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Kentucky State Penitentiary.

Section 1. Incorporation by Reference. (1) Kentucky State Penitentiary policies and procedures, March 14, 2017[~~January 7, 2013~~], are incorporated by reference. Kentucky State Penitentiary policies and procedures include:

KSP 01-02-01	Public Information and Media Communications (Amended 11/8/2005)
KSP 02-01-02	Inmate Canteen (Amended 3/14/17[~~11/8/2005~~])
KSP 02-12-02	Inmate Funds (Amended 11/14/12)
KSP 03-01-02	Tobacco Free (Amended 3/14/17[~~Added 11/14/12~~])
KSP 06-01-02	Inmate Master Records (Amended 11/14/12)
KSP 10-02-01	Special Management Unit Operating Procedures, Living Conditions and Classification (Amended 11/14/12)
KSP 10-02-05	Death Row (Amended 3/14/17[~~12/12/06~~])
KSP 10-04-01	Special Needs Inmates (Amended 11/14/12)
KSP 13-01-01	Pharmacy Procedures (Amended 3/14/17[~~11/8/2005~~])
KSP 13-02-01	Health Services (Amended 11/8/2005)
KSP 13-02-03	Continuity of Care (Amended 3/14/17[~~12/12/06~~])
KSP 13-02-04	Levels of Care and Staff Training (Amended 11/8/2005)
KSP 13-02-05	Consultations (Amended 9/14/2005)
KSP 13-02-08	Health Records (Amended 12/12/06)
KSP 13-02-09	Psychiatric and Psychological Services (Amended 3/14/17[~~11/8/2005~~])
KSP 13-02-13	Optometric Services (Amended 1/7/13)
KSP 13-06-02	Informed Consent (Amended 11/8/2005)
KSP 14-03-01	Marriage of Inmates (Amended 3/14/17[~~11/14/12~~])
KSP 14-04-01	Legal Services (Amended 3/14/17[~~11/14/12~~])
KSP 14-06-01	Inmate Grievance Procedure (Amended 3/14/17[~~9/14/2005~~])
KSP 15-06-01	Adjustment Procedures (Amended 3/14/17[~~9/14/2005~~])
KSP 16-01-01	Visiting Program (Amended 3/14/17[~~11/14/12~~])
KSP 16-02-01	Inmate Correspondence (Amended 3/14/17[~~11/14/12~~])
KSP 16-03-02	Inmate Telephone Access (Amended 3/14/17[~~11/8/2005~~])
KSP 16-04-01	Inmate Packages (Amended 3/14/17[~~11/8/2005~~])
KSP 17-01-01	Inmate Personal Property (Amended 9/14/2005)
KSP 17-01-02	Disposition of Unauthorized Property (Amended 11/8/2005)
KSP 17-01-03	Procedures for Providing Clothing, Linens and Other Personal Items (Amended 3/14/17[~~11/14/12~~])
KSP 17-01-04	Property Room, Clothing Storage and Property Inventory Control (Amended 11/8/2005)
KSP 17-02-01	Inmate Reception and Orientation (Amended 11/14/12)
KSP 18-01-01	General Guidelines and Functions of the Classification Committee (Amended 3/14/17[~~11/14/12~~])
KSP 18-01-02	Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) (Added 3/14/17)
KSP 18-01-05	Meritorious Housing (Added 3/14/17)
KSP 18-06-01	Classification Document (Amended 3/14/17[~~11/8/2005~~])
KSP 18-10-01	Preparole Progress Report (Amended 3/14/17[~~11/14/12~~])
KSP 18-15-01	Protective Custody Unit (Amended 3/14/17[~~9/14/2005~~])
KSP 19-04-01	Inmate Work Programs and Safety Inspections of Inmate Work Locations (Amended 3/14/17[~~7/12/00~~])
KSP 19-04-02	Unit Classification Committee and Inmate Work Assignments (Amended 3/14/17[~~11/14/12~~])
KSP 19-05-01	Correctional Industries (Amended 3/14/17[~~9/14/2005~~])
KSP 20-04-01	Educational Programs (Amended 3/14/17[~~11/14/12~~])
KSP 22-04-01	Arts and Crafts Program (Amended 12/12/06)
KSP 23-01-03	Religious Services (Amended 3/14/17[~~11/14/12~~])
KSP 25-01-01	Release Preparation Program (Amended 3/14/17[~~11/14/12~~])
KSP 25-01-02	Inmate Release Procedure (Amended 3/14/17[~~11/14/12~~])
KSP 25-10-01	Discharge of Inmates by Shock Probation (Amended 11/14/12)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Legal Services, Justice and Public Safety Cabinet, Department of Corrections, 275 E. Main Street, P.O. Box 2400, Frankfort, Kentucky 40602-2400, Monday through Friday, 8 a.m. to 4:30 p.m.

RODNEY BALLARD, Commissioner

APPROVED BY AGENCY: March 14, 2017

FILED WITH LRC: March 14, 2017 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 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 April 30, 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: Oran S. McFarlan, III, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8246, fax (502) 564-6686, email Justice.RegsContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Oran S. McFarlan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the operation of the Kentucky State Penitentiary including the rights and responsibilities of Kentucky State Penitentiary 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 Kentucky State Penitentiary.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear and concise direction and information to Kentucky State Penitentiary employees and the inmate population as to their duties, rights, privileges and responsibilities.

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

(a) How the amendment will change this existing administrative regulation: The amendment brings the policies and procedures into compliance with state and federal law and ACA Standards and updates current practices for the institution.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020.

(c) How the amendment conforms to the content of the authorizing statutes: It permits the Commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky State Penitentiary.

(d) How the amendment will assist in the effective administration of the statutes: This will help Kentucky State Penitentiary to operate more efficiently.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Kentucky State Penitentiary's 297 employees, 870 inmates, and all volunteers and visitors to the institution.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff and inmates will have to follow the changes made in the policies and procedures. The institution, employees, and inmates will have to change their actions to comply with any operational changes made by this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendments to this regulation impact how the Kentucky State Penitentiary operates. The costs for the amendments are not expected to increase costs for the Kentucky State Penitentiary budgeted funds for the biennium.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of this institution.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky State Penitentiary budgeted funds**.**

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment does not increase or decrease any fee**.**

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(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 Kentucky State Penitentiary or other government 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 Kentucky State Penitentiary, or other government entity.

(c) How much will it cost to administer this program for the first year? The amendments to this regulation impact how the Kentucky State Penitentiary operates. The costs for the amendments are not expected to increase costs for the Kentucky State Penitentiary budgeted funds for the biennium.

(d) How much will it cost to administer this program for subsequent years? The amendments to this regulation impact how the Kentucky State Penitentiary operates. The costs for the amendments are not expected to increase costs for the Kentucky State Penitentiary budgeted funds for the biennium.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TRANSPORTATION CABINET
Department of Vehicle Regulation
(Amendment)

601 KAR 1:018. Special overweight or overdimensional motor vehicle load permits.

RELATES TO: KRS 175.450, 177.390-177.570, 177.9771, 186.010(8), 186.050, 189.221, 189.222, 189.2225(3), 189.270, 189.271, 189.2715, 189.2716, 189.2717, 227.550, 281.838, 23 C.F.R. 658.17, 49 C.F.R. 367, 393.11

STATUTORY AUTHORITY: KRS 189.270(6), 189.271(9)(b), 189.2715(1), 189.2717(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.270(6), 189.271(9)(b), 189.2715(1), 189.2716, and 189.2717(1) authorize the Secretary of the Kentucky Transportation Cabinet to issue permits for the movement of motor vehicles with divisible or nondivisible loads exceeding legal weights or dimensions. This administrative regulation establishes the procedures and requirements for the issuance of an overweight or overdimensional single trip or annual permit including the height, width, and length necessary for vehicles and loads; escort safety requirements; the requirements to move a house or building; and the criteria necessary to obtain a permit for a sealed, containerized, ocean-going cargo unit[permit,].

Section 1. Definitions. (1) "Axle spacing" means the measurable distance between the axle centers of the axle unit.

(2) "Boat" means a vehicle used for movement on the water and includes the trailer on which it is placed for transporting the vehicle on the highway.

(3) "Designated National Truck Network" means routes approved for use by increased dimension as established in KRS 189.222.

(4) "Height pole" means a vertical clearance measuring device.

(5) "International bill of lading" means a receipt or ticket for property tendered for transportation by a common motor carrier or private carrier in foreign commerce including:

(a) Consignor;

(b) Consignee;

(c) Origin and destination points;

(d) Number of packages;

(e) Description of freight or goods; and

(f) Date.

(6) "Manufactured home" is defined by KRS 227.550(7).

(7) "Nondivisible" means a load, cargo unit, or vehicle that if separated into smaller loads or vehicles would:

(a) Compromise the intended use of the vehicle, making it unable to perform the function for which it was intended;

(b) Destroy the value of the load or vehicle, making it unusable for its intended purpose; or

(c) Require more than four (4) or eight (8) work hours to dismantle and reassemble contingent on the route traveled.

(8) "Overdimensional" means the motor vehicle exceeds the dimension limits established in 603 KAR 5:070.

(9) "Overweight" means the motor vehicle exceeds:

(a) The gross weight limit established in 603 KAR 5:066;

(b) The axle weight limit established in 603 KAR 5:066;

(c) The gross weight limits established by KRS 177.9771 for a motor vehicle transporting coal or coal by-products;

(d) The bridge weight limit established by 603 KAR 5:066; or

(e) The gross weight limit posted at a bridge or other structure.

(10) "Permit fee" means the fee established in KRS 189.270, 189.2715, or 189.2717 for the issuance of an overweight or overdimensional trip or annual permit, to cover the cost of processing the permit application, including:

(a) A qualification check of the applicant;

(b) A statutory compliance check; and

(c) An initial bridge and weight analysis.

(11) "Pole trailer" means a motor vehicle without motive power that is:

(a) Designed to be drawn by a motor vehicle and attached to the towing motor vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing motor vehicle; and

(b) Used for transporting long or irregularly shaped loads such as poles, pipes, or structural members that generally are capable of sustaining themselves as beams between the supporting connections.

(12) "Sealed, containerized, ocean-going cargo unit" means a nondivisible unit of cargo that is part of international trade due to importation from, or exportation to, another country.

(13) "Self-propelled specialized mobile equipment" means every self-propelled vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways.

(14) "Steering axle" means the axle or axles of a vehicle or combination of vehicles by which the vehicle or vehicles are guided or steered.

(15) "Tandem" means any two (2) axles with centers forty two (42) inches or more apart but less than ninety six (96) inches apart.

(16) "Tridem" means any three (3) consecutive axles with centers forty two (42) inches or more apart and less than 120 inches apart.

(17) "Trunnion axle" means an axle configuration with two (2) individual axles mounted in the same transverse plane with four (4) tires on each axle connected at a pivot point that allows each individual axle to oscillate in a vertical plane to provide constant and equal weight distribution on each individual axle.

Section 2. Overweight or Overdimensional Permit Application. (1) An application for a "Single Trip Kentucky Overweight or Overdimensional Permit Worksheet", TC Form 95-10, and an Application for Annual Overweight or Overdimensional Permit", TC Form 95-25,
shall be submitted to the Division of Motor Carriers by:

(a) Hand delivery;

(b) Mail;

(c) Fax; or

(d) The online motor carrier permitting system at http://drive.ky.gov/motor-carriers/Pages/Purchase-Overweight-Over-Dimensional-Permits.aspx.

(2) An applicant for an overweight or overdimensional single trip permit shall submit a completed Single Trip Kentucky Overweight or Overdimensional Permit Worksheet, TC Form 95-10 to the Division of Motor Carriers.

(3) An overweight or overdimensional single trip permit shall be valid for one (1) move and a duration of ten (10) days.

(4) An overweight or overdimensional single trip permit application shall specify the following information regarding the towing vehicle:

(a) The year, make, and vehicle identification number;

(b) The license plate number and jurisdiction;

(c) The maximum weight for which the towing vehicle is registered;

(d) The jurisdiction or state of the apportioned registration;

(e) The name, address, and telephone number of the operator or owner;

(f) A general description of the cargo;

(g) The effective date of travel;

(h) The serial number for a manufactured home;

(i) The specific routes of travel requested;

(j) A general description of the cargo;

(k) The Kentucky Highway Use License (KYU License) or the DOT number; and

(l) The axle spacing and axle group configuration.

(5) An applicant for an overweight or overdimensional annual permit shall submit a completed Annual Overweight or Overdimensional Permit Worksheet, TC Form 95-25 to the Division of Motor Carriers.

(6) An overweight or overdimensional annual permit shall be valid for an unlimited number of moves for a duration of 365 days.

(7) An overweight or overdimensional annual permit application shall specify the following information regarding the towing vehicle:

(a) The year, make, and vehicle identification number;

(b) The license plate number, jurisdiction, and unit number;

(c) The maximum weight for which the towing vehicle is registered;

(d) The jurisdiction or state of the apportioned registration;

(e) The name, address, and telephone number of the operator or the owner;

(f) A general description of the cargo;

(g) The effective date of travel;

(h) The Kentucky Highway Use License (KYU License) or the DOT number; and

(i) The axle spacing and axle group configuration.

Section 3. Permit Validity and Availability. (1)(a) A valid

overweight or overdimensional annual or single trip permit issued by the Division of Motor Carriers shall be carried in the overweight or overdimensional vehicle during transit.

(b) The permit shall be presented upon request to law enforcement or authorized personnel of the Department of Vehicle Regulation.

(c) A modification by the permittee to the permit that is not authenticated by the Division of Motor Carriers shall render the permit invalid.

(2) A separate overweight or overdimensional permit shall be required for each vehicle involved in a movement.

(3) An overweight or overdimensional permit shall not be issued for a divisible load that if reasonably divided, dismantled, disassembled, or rearranged would no longer be overweight or overdimensional except as provided by KRS 189.2715, 189.2716, or 189.2717.

(4) A special overweight or overdimensional annual or trip permit to allow the movement of a motor vehicle with a gross weight or gross dimension in excess of the weights and dimensions established in KRS 189.270, 189.271, 189.2715, and 189.2717 may be issued by the Division of Motor Carriers if the movement is necessary to provide transportation for specified cargo that is in the interest of the health, welfare, or economy of the Commonwealth.

Section 4. Changes to Overweight or Overdimensional Permits. (1) A duplicate overweight or overdimensional permit that is needed to replace a lost, stolen, or destroyed annual permit or to transfer or amend the permit to another towing vehicle shall be obtained from the Division of Motor Carriers by a payment of ten (10) dollars.

(2) One (1) transfer to another towing vehicle or one (1) amendment of vehicle information shall be allowed for each overweight or overdimensional annual permit during the permit's effective year.

(3) The original overweight or overdimensional permit shall be returned to the Division of Motor Carriers prior to the transfer of an annual permit.

Section 5. Travel Restrictions. (1) In accordance with 23 C.F.R. 658.17, the Division of Motor Carriers may deny an overweight or overdimensional permit application if:

(a) The route includes a portion of the interstate highway system; and

(b) The load is divisible.

(2) The cabinet shall deny or restrict an overweight or overdimensional permit for the use of a route that may cause damage to property or is detrimental to public safety or convenience. The following shall be considered in making a determination on the application:

(a) The strength of bridges and structures on the route;

(b) Traffic congestion on the route;

(c) Horizontal and vertical clearance on the route;

(d) The availability of alternate routes that afford greater safety;

(e) Urban development in residential and commercial areas on the route; and

(f) The proximity of schools to the route.

(3) Overdimensional restrictions shall not prohibit a utility company from working in an emergency situation to restore utility service to an area otherwise experiencing an outage.

(4)(a) As needed for public safety, the department shall prohibit movements in congested areas within the peak traffic hours.

(b) Additional restrictions shall be noted on the overweight or overdimensional permit upon issuance.

(5)(a) Travel on an overweight and overdimensional permit shall not be permitted in Boone, Kenton, Campbell, Fayette, Jefferson County (Louisville) or at the Owensboro, Kentucky 2155 bridge from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. Monday through Friday.

(b) An overweight or overdimensional load originating in Fayette County shall be exempt from traffic rush hour restrictions on Interstate 64 and Interstate 75 in Fayette County and on connecting routes to both interstates up to a distance of three (3) miles from the interstates.

(6) If proof of an emergency is furnished to the Division of Motor Carriers, a move shall be authorized during the hours restricted by KRS 189.270(11)(a).

(7) Each vehicle transporting a load under the provisions of an overweight or overdimensional annual or single trip permit shall obtain prior approval from the Division of Motor Carriers for a deviation from the routes approved by the Transportation Cabinet.

Section 6. Height. (1) A vehicle and load with a height in excess of thirteen (13) feet, six (6) inches shall obtain an overweight or overdimensional single-trip permit pursuant to KRS 189.270(2) prior to movement.

(2) An overweight or overdimensional annual permit shall not be issued or used for the movement if the height of the combination load and towing vehicle exceeds thirteen (13) feet, six (6) inches.

(3) The maximum height for each overweight or overdimensional single-trip permit shall be determined by the cabinet based upon underpass and bridge height along the designated route.

(4) A vehicle and load exceeding (15) feet, (6) inches in height shall submit a completed Route Survey, TC Form 95-625 in addition to TC Form 95-10 to the Division of Motor Carriers.

Section 7. Weight. (1) Gross or axle overweight shall not be permitted on:

(a) A unit that does not have a registered weight of at least 80,000 lbs; or

(b) A towing vehicle whose horsepower or braking capacity is not adequate to safely transport the overdimensional or overweight load.

(2) The weight on a single axle in any combination shall not exceed the product of 700 pounds times the aggregate width in inches established by the manufacturer's stamped tire measurement of all the tires on the axle, or the following axle or axle group weights, whichever is less:

(a) Single axle - 24,000 pounds;

(b) Steering axle - 20,000 pounds;

(c) Tandem axle group if the combination vehicle has only five (5) axles total - 45,000 pounds;

(d) Tandem axle group if the combination vehicle has six (6) or more axles total - 48,000 pounds;

(e) Tridem axle group - 60,000 pounds;

(f) Five (5) axle combination units not exceeding 96,000 pounds gross weight;

(g) Six (6) axle combination units not exceeding 120,000 pounds gross weight; or

(h) Seven (7) axle combination units not exceeding 160,000 pounds gross weight.

(3) Trunnion axle group maximum gross weights shall be determined by a route and bridge analysis performed by the cabinet's Bridge Preservation Branch.

(4) Maximum weights shall not be permitted unless each of the bridges and roads on the moving route have sufficient capacity to accommodate the load.

(5) Self-propelled specialized mobile equipment shall not exceed the following axle, axle group, or gross weight:

(a) Single axle: 23,000 pounds;

(b) Tandem axle group: 46,000 pounds; and

(c) Tridem axle group: 69,000 pounds.

(6) The maximum gross weight for a four (4) axle self-propelled specialized mobile equipment shall be 92,000 pounds.

(7) The maximum gross weight for a five (5) axle self-propelled specialized mobile equipment shall be 115,000 pounds.

Section 8. Manufacturers of Self-Propelled Specialized Mobile Equipment. (1)(a) A manufacturer of self-propelled construction equipment that is not licensed as a motor vehicle may obtain an annual permit for the sole purpose of road-testing the equipment prior to its sale.

(b) Operation of the equipment during the road-testing shall be limited to employees of the manufacturer upon designated routes

within the Commonwealth.

(2) The annual permit issued to a manufacturer of self-propelled construction equipment shall be limited to equipment that is:

(a) A maximum width of ten (10) feet; and

(b) A gross vehicle weight not in excess of 160,000 pounds.

(3)(a) A manufacturer desiring to road test equipment shall submit a completed Annual Overweight or Overdimensional Permit Worksheet, TC Form 95-25 to the Division of Motor Carriers.

(b) The application for a permit shall designate the model of the equipment and the requested or intended route. A separate TC Form 95-25 shall be submitted or required for each model, and each requested or intended route.

(c) The cost of each annual permit shall be $250 dollars.

(d) A permit issued to the manufacturer of self-propelled construction equipment shall be valid for twenty-four (24) hours a day except that pursuant to the concerns cited in Section 5 of this administrative regulation, the department may restrict operation under the permit on Monday through Friday between 7 a.m. and 9 a.m. and between 4 p.m. and 6 p.m.

Section 9. Length. (1) A front overhang on a combination vehicle shall be prohibited.

(2) A manufactured home that has a combined length of the manufactured home and towing vehicle greater than 120 feet shall not be towed upon a Kentucky highway.

(3) A manufactured home shall not exceed ninety (90) feet in length.

Section 10. Width. (1) Prior to movement, a vehicle and load with a width in excess of eight and a half (8 1/2) feet shall obtain an overweight or overdimensional permit pursuant to KRS 189.270(2).

(2) Prior to movement, a vehicle and load with a width in excess of eight (8) feet traveling on routes not included on the Designated National Truck Network shall obtain an overweight or overdimensional permit except as provided in KRS 189.2225(3).

(3) An annual permit shall not be issued for the movement of an overweight or overdimensional load in excess of sixteen (16) feet in width.

(4)(a) A move of an overweight or overdimensional load more than twelve (12) feet wide shall not be made on a highway if a wind advisory has been issued by the National Weather Service; or

(b) If adverse weather conditions or road conditions would cause the move to be dangerous.

(5) A move of an overweight or overdimensional load that is more than twelve (12) feet wide operating pursuant to an annual permit shall be limited to highways of four (4) or more lanes and to the shortest and best two (2) lane route designated by the Division of Motor Carriers.

Section 11. Power Unit Flag and Sign Requirements (1) Red or orange fluorescent flags that are a minimum of eighteen (18) inches square (11,612.7 millimeters square) shall be displayed on each vehicle and load operating under the provisions an overweight or overdimensional permit.

(a) A vehicle operating overwidth shall display four (4) warning flags, one (1) at each of the four (4) corners. If a portion of the load extends beyond the four (4) corners, additional flags shall be displayed at the widest points of the load.

(b) A vehicle operating overlength, or with a rear overhang, shall display two (2) warning flags located to indicate the maximum width at the extreme rear of the vehicle or load.

(2) A vehicle exceeding twelve (12) feet (3.65 meters) in width, or having front overhang shall display two (2) warning signs.

(a) A warning sign shall be six (6) to eight (8) feet in width stating "OVERSIZE LOAD" in black letters on a yellow background.

(b) The black letters shall be at least eighteen (18) inches high (11,612.7 millimeters) with a brush stroke of at least one and four tenths (1.4) inches (35.56 millimeters).

(c) A warning sign shall be displayed at the:

1. Front of the power unit;

2. Rear of the towed unit; or

3. Rear of the load.

(3) If a front overhang exceeds ten (10) feet (3.05 meters), an amber strobe or flashing light shall be placed on the power unit of the towing vehicle and shall be in use while the power unit is in operation.

(4) The lighting devices and reflectors established in 49 C.F.R. 393.11 for pole trailers and projecting loads shall be required.

(5) As a special provision of the permit, and due to safety considerations, the Division of Motor Carriers may require additional lighting or warning flags.

Section 12. Braking Requirements. (1) The number, type, size, and design of brake assemblies required to assist the towing vehicle in controlling and stopping a manufactured home or boat shall be sufficient to assure that the maximum stopping distance from an initial velocity of twenty (20) miles per hour shall not exceed forty (40) feet.

(2) If required, a manufactured home not equipped with brakes on all axles shall certify to law enforcement that the towing unit has sufficient brake assemblies to meet the braking distance specified in this section by producing:

(a) A manufacturer's statement;

(b) Documented technical data; or

(c) An engineering analysis or its equivalent stating that the braking distance has been met.

(3) The certification shall be carried in the towing unit and presented upon request to law enforcement.

Section 13. Escort Vehicle Safety Requirements. (1) A required escort vehicle shall accompany the overweight or overdimensional vehicle at a distance of 300 feet (91.44 meters) on open highways unless it is necessary to travel at a distance closer or farther away from the vehicle accompanied for safety or due to road conditions. An escort vehicle shall:

(a) Maintain radio contact with the load;

(b) Have amber strobe lights or flashing lights;

(c) Keep its headlamps lit during transit; and

(d) Use a height pole front escort if the escorted load is in excess of fourteen (14) feet eleven (11) inches.

(2) A warning sign stating "OVERSIZE LOAD" shall be displayed on a lead escort vehicle so that it is visible to oncoming traffic for a vehicle and load with a width in excess of twelve (12) feet.

Section 14. Escorts required. (1) A lead escort shall be required on two (2) lane routes of travel if:

(a) The vehicle and load width is in excess of twelve (12) feet.

(b) The vehicle and load length is in excess of seventy five (75) feet; or

(c) The vehicle and load height is in excess of fourteen (14) feet eleven (11) inches.

(2) A trail escort shall be required on two (2) lane routes of travel if:

(a) The vehicle and load width is in excess of twelve (12) feet;

(b) The vehicle and load length is in excess of eighty five (85) feet; or

(c) The vehicle and load do not maintain the posted speed limit.

(3) A lead escort shall be required on four (4) lane routes of travel if:

(a) The vehicle and load width is in excess of fourteen (14) feet; or

(b) The vehicle and load height is in excess of fourteen (14) feet eleven (11) inches.

(4) A trail escort shall be required on four (4) lane routes of travel if:

(a) The vehicle and load width is in excess of twelve (12) feet;

(b) The vehicle and load length is in excess of 110 feet; or

(c) The vehicle and load width is in excess of twelve (12) feet and does not maintain a speed of forty five (45) miles per hour.

(5) Due to safety considerations, the Division of Motor Carriers may require additional escort vehicles as a special provision of the permit.

Section 15. House or Building Permits. (1)(a) An application for a permit to move a house or building shall be made on House Moving Application, TC Form 95-310, and submitted to the Division of Motor Carriers via mail, hand delivery, or the motor carrier online permitting system at the Division of Motor Carriers, Transportation Cabinet Building, 200 Mero Street Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4 p.m., or via fax at (502) 564-0992.

(b) The mover shall furnish all escorts and flagmen deemed necessary during the move to ensure the safety of the public.

(2) A house moving permit shall not be issued for the movement of a permanent building other than a portable storage unit on a parkway or an interstate highway.

(3)(a) The Division of Motor Carriers shall contact the appropriate cabinet district office for specific routing restrictions or local highway conditions prior to the issuance of a house moving permit.

(b) Specific restrictions shall be identified on the house moving permit and a deviation from the restrictions shall void the house moving permit.

Section 16. Building Materials. (1) A vehicle hauling building materials to a home or home site may travel fifteen (15) miles off of a state highway for purpose of delivery if the highway is classified to carry the registered weight of the vehicle.

(a) The vehicle shall meet the requirements and limits of its registration and also be within the axle weight limits. The vehicle shall not be required to have a permit for overweight or overlength dimensions.

(b) An operator shall be required to provide a bill of lading either to vehicle enforcement, or to a cabinet designee, while engaged in the transportation of home building materials.

Section 17. Permits for sealed, containerized, ocean-going cargo units. (1) A vehicle moving a sealed, containerized, ocean-going cargo unit that meets the requirements and limitations established in KRS 189.222, 189.270, and Section 7 of this administrative regulation shall be eligible for an overweight single trip or annual permit.

(2) An applicant for an overweight or overdimensional single trip permit shall submit the following to the Division of Motor Carriers:

(a) A completed Kentucky Overweight or Overdimensional Permit Worksheet, TC Form 95-10;

(b) A payment of sixty (60) dollars pursuant to KRS 189.270(2);

(c)1. Either a copy of an international bill of lading signed by a custom's official; or

2. An international bill of lading with an equipment interchange and inspection report; and

(d) The seal number and container number for the load.

(3) An applicant for an overweight or overdimensional annual permit shall submit the following to the Division of Motor Carriers:

(a) A completed Kentucky Overweight or Overdimensional Permit Worksheet, TC Form 95-25;

(b) A payment of 250 dollars pursuant to KRS 189.270(3); and

(c) 1. Either an acknowledgement of possession of a copy of an international bill of lading signed by a custom's official; or

2. An international bill of lading with an equipment interchange and inspection report containing the seal number and container number for each load.

(4) During transit, an operator shall have in his or her possession either a copy of the international bill of lading signed by a custom's official, or an international bill of lading with an equipment interchange and inspection report containing the seal number and container number for the load.

Section 18. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Single Trip Kentucky Overweight or Overdimensional Permit Worksheet", TC Form 95-10, February, 2017; and

(b) Application for Annual Overweight or Overdimensional Permit", TC Form 95-25, September, 2014;

(c) "House Moving Application", TC Form 95-310, August, 2012;

(d) "Overweight or Overdimensional Proposed Route Survey", TC Form 95-625, February, 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Motor Carriers, Transportation Cabinet Building, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4 p.m.[~~"Cosignor" means a shipper of goods.~~

~~(4) "Cosignee" means a recipient of goods.~~

~~(5) "Divisible load" means a load that if divided, dismantled, disassembled, or rearranged would no longer be overweight or overdimensional.~~

~~(6) "Dual-wheel axle" means one (1) axle with two (2) wheels on each side of the axle.~~

~~(7) "Height pole" means a vertical clearance measuring device.~~

~~(8) "International bill of lading" means a receipt or ticket for property tendered for transportation by a common motor carrier or private carrier in foreign commerce containing the following information:~~

~~(a) Cosignor;~~

~~(b) Cosignee;~~

~~(c) Origin and destination points;~~

~~(d) Number of packages;~~

~~(e) Description of freight or goods; and~~

~~(f) Date.~~

~~(9) "Nondivisible load" means a load or vehicle, that if separated into smaller loads or vehicles would:~~

~~(a) Compromise the intended use of the vehicle, making it unable to perform the function for which it was intended;~~

~~(b) Destroy the value of the load or vehicle, making it unusable for its intended purpose; or~~

~~(c) Require more than eight (8) work hours to dismantle using appropriate equipment.~~

~~(10) "Overdimensional" means the motor vehicle exceeds the dimension limits established in 603 KAR 5:070.~~

~~(11) "Overweight" means the motor vehicle exceeds:~~

~~(a) The gross weight limit established in 603 KAR 5:066;~~

~~(b) The axle weight limit established in 603 KAR 5:066;~~

~~(c) The gross weight limits established by KRS 177.9771 for a motor vehicle transporting coal or coal by-products;~~

~~(d) The bridge weight limit established by 603 KAR 5:066; or~~

~~(e) The gross weight limit posted at a bridge or other structure.~~

~~(12) "Permit fee" means the fee established in KRS 189.270, 189.2715, or 189.2717 for the issuance of an overweight or overdimensional trip or annual permit, to cover the cost of processing the permit application, including:~~

~~(a) A qualification check of the applicant;~~

~~(b) A statutory compliance check; and~~

~~(c) An initial bridge and weight analysis.~~

~~(13) "Pole trailer" means a motor vehicle without motive power that is:~~

~~(a) Designed to be drawn by a motor vehicle and attached to the towing motor vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing motor vehicle; and~~

~~(b) Used for transporting long or irregularly shaped loads such as poles, pipes, or structural members that generally are capable of sustaining themselves as beams between the supporting connections.~~

~~(14) "Sealed, containerized, ocean-going cargo unit" means a nondivisible unit of cargo that is part of international trade due to importation from, or exportation to another country.~~

~~(15) "Steering axle" means the axle or axles of a vehicle or combination of vehicles by which the vehicle or vehicles are guided or steered.~~

~~(16) "Tandem" means any two (2) axles with centers forty two (42) inches or more apart but less than ninety six (96) inches apart.~~

~~(17) "Tridem" means any three (3) consecutive axles with centers forty two (42) inches or more apart and less than 120 inches apart.~~

~~(18) "Trunnion axle" means an axle configuration with two (2) individual axles mounted in the same transverse plane with four (4) tires on each axle connected at a pivot point that allows each individual axle to oscillate in a vertical plane to provide constant~~

and equal weight distribution on each individual axle.

(19) "Utility equipment" means the specialized equipment, including earth-moving equipment, necessary for the installation or operation of utility poles or pipes, transformers, regulators, or other utility electrical field equipment. It does not include equipment necessary for the construction or operation of a power generation station.

Section 2. Overweight or Overdimensional Permit Application. (1) An applicant for an overweight or overdimensional single trip permit shall submit a completed Kentucky Overweight or Overdimensional Permit Worksheet, TC Form 95-10 to the Division of Motor Carriers.

(2) An applicant for an overweight or overdimensional annual permit shall submit a completed Application for Annual Overweight or Overdimensional Permit, TC Form 95-25 to the Division of Motor Carriers.

(3) An application for an overweight or overdimensional single trip or annual permit shall be submitted to the Division of Motor Carriers by:

(a) Hand delivery;

(b) Mail;

(c) Fax; or

(d) The online motor carrier permitting system.

(4) An overweight or overdimensional single trip permit shall be valid for:

(a) One (1) move; and

(b) A duration of ten (10) days.

(5) An overweight or overdimensional annual permit shall be valid for 365 days from date of issue.

(6) An overweight or overdimensional single trip permit application or request shall specify the following:

(a) The year, make, and vehicle identification number of the towing vehicle;

(b) The towing vehicle's license plate number;

(c) The maximum weight for which the vehicle is registered;

(d) The state of registration of the vehicle;

(e) The name, address, and telephone number of the owner;

(f) The dates of travel;

(g) The serial number for a manufactured home;

(h) The specific routes of travel requested;

(i) A detailed description of the equipment or load to be moved;

(j) The Kentucky Highway Use License (KYU License) or the DOT number; and

(k) Axle spacing.

(7) If the towing vehicle for which an overweight or overdimensional single trip permit is being requested is registered in a state other than Kentucky, the vehicle shall be either:

(a) Apportioned registered to operate in Kentucky; or

(b) In compliance with KRS 281.838.

(8) An overweight or overdimensional annual permit application or request shall specify the following information relating to the motor vehicle:

(a) Year and make;

(b) Vehicle identification number;

(c) License plate number and unit number;

(d) The maximum weight for which it is registered;

(e) The state of apportioned registration, if not registered in Kentucky;

(f) Name, address, and telephone number of the motor carrier operating or the owner of the towing vehicle;

(g) If the motor carrier operating the towing vehicle is a for-hire or private carrier;

(h) A general description of cargo;

(i) Axle spacing; and

(j) The Kentucky Highway Use License (KYU License) or the DOT number.

(9) If the towing vehicle issued an overweight or overdimensional annual permit is registered in a state other than Kentucky, the vehicle shall be apportioned registered to operate in Kentucky.

(10) A special overweight or overdimensional annual or trip permit to allow the movement of a motor vehicle with a gross weight or gross dimension in excess of the weights and dimensions established in KRS 189.270, 189.271, 189.2715, and 189.2717 shall be issued by the Division of Motor Carriers if the movement is necessary to provide transportation for specified cargo in the interest of the health, welfare, or economy of the people.

(11) Each overweight or overdimensional trip or annual permit issued shall be limited to designated portions of the state primary road system and stated periods of time.

(12) A separate overweight or overdimensional permit shall be required for each vehicle involved in a movement.

(13) An overweight or overdimensional permit shall not be issued for a divisible load that if reasonably divided, dismantled, disassembled, or rearranged would no longer be overweight or overdimensional except as provided by KRS 189.2715 or 189.2717.

(14) An overweight or overdimensional permit shall not be issued to the following:

(a) A Kentucky licensed vehicle with a gross weight exceeding that for which the truck is registered unless registered for 80,000 pounds (36,287.36 kilograms);

(b) A tractor-trailer combination of less than five (5) axles;

(c) A vehicle not registered in Kentucky, unless it has met one (1) of the following conditions:

1. The vehicle has been apportioned registered by another jurisdiction to operate in Kentucky at 80,000 pounds (36,287.36 kilograms); or

2. The vehicle has met the provisions of KRS 281.838;

(d) A vehicle whose axle weight would exceed the product of 700 pounds (317.51 kilograms) times the aggregate width in inches established from the manufacturer's stamped tire measurement for all tires on the axle; or

(e) A towing vehicle whose horsepower or braking capacity is not adequate to safely transport the overdimensional or overweight load.

(15) The cabinet shall further restrict the movement or deny the overweight or overdimensional permit for a movement that may cause damage to property or that may be detrimental to public safety or convenience.

(16) An overweight or overdimensional annual permit shall not be issued if the vehicle is licensed with a limited or restricted registration as identified in KRS 186.050(8) and (9) for Kentucky-based vehicles.

Section 3. Height. (1) A vehicle and load with a height in excess of thirteen (13) feet, six (6) inches shall obtain an overweight or overdimensional single-trip permit pursuant to KRS 189.270(2) prior to movement.

(2) The maximum height for each overweight or overdimensional single-trip permit shall be determined by the cabinet based upon underpass and bridge height along the designated route.

Section 4. Weight. (1) Gross or axle overweight shall not be permitted:

(a) On a combination unit of less than five (5) axles; or

(b) On a single unit except off-road equipment such as a road grader, mobile crane, or other self-propelled unit.

(2) A vehicle shall not be issued an overweight or overdimensional permit that does not have a declared gross weight of at least 80,000 lbs.

(3) The weight on a single axle in any combination shall not exceed the product of 700 pounds times the aggregate width in inches established by the manufacturer's stamped tire measurement of all the tires on the axle, or the following axle or axle group weights, whichever is less:

(a) Single wheel axle - 24,000 pounds;

(b) Steering axle - 20,000 pounds;

(c) Tandem dual-wheel axle group if the combination vehicle has only five (5) axles total - 45,000 pounds;

(d) Tandem dual-wheel axle group if the combination vehicle has six (6) or more axles total - 48,000 pounds;

(e) Tridem dual-wheel axle group - 60,000 pounds;

(f) Five (5) axle combination units not exceeding 96,000 pounds gross weight;

(g) Six (6) axle combination units not exceeding 120,000 pounds gross weight;

(h) Seven (7) axle combination units not exceeding 160,000 pounds gross weight; or

(i) Trunnion axle group maximum gross weight as determined by the formula established in 603 KAR 5:066, Section 3(7).

(4) Maximum weights shall not be permitted unless all bridges and roads on the moving route have sufficient capacity to accommodate the load.

(5) A self propelled truck crane shall not exceed the following axle, axle group weights, or gross weight:

(a) Single wheel axle: 23,000 pounds;

(b) Tandem dual-wheel axle group: 46,000 pounds; and

(c) Tridem dual-wheel axle group: 69,000 pounds.

(6) The maximum gross weight for a four (4) axle self-propelled truck crane shall be 92,000 pounds.

(7) The maximum gross weight for a five (5) axle self-propelled truck crane shall be 115,000 pounds.

Section 5. Responsibility of the Overweight or Overdimensional Permit Holder. (1) Damage to highway, signs, guardrails, or other public or private property caused by the transportation of the specialized equipment shall be the responsibility of the overweight or overdimensional permit holder. The overweight or overdimensional permit holder shall either repair all damage incurred or pay for the repair.

(2) An overweight or overdimensional permit holder shall not cut, trim, remove, or relocate a tree, shrub, guardrail, highway sign, or other object without the written approval of the landowner or the chief district engineer or designee in the district office where the property is physically located.

(3) The applicant shall be responsible for providing accurate information and reviewing the permit prior to travel on Kentucky highways.

Section 6. Overweight or Overdimensional Permit Availability. (1) A valid overweight or overdimensional permit issued by the Division of Motor Carriers shall be carried in the overweight or overdimensional vehicle during transit.

(2) A valid overweight or overdimensional annual or single trip permit shall be presented upon request to law enforcement or authorized personnel of the Department of Vehicle Regulation.

(3) An overweight or overdimensional annual permit not authenticated by the Division of Motor Carriers shall not be valid.

Section 7. Duplicate Overweight or Overdimensional Permits. (1) A duplicate overweight or overdimensional permit that is needed to replace a lost, stolen, or destroyed annual permit or to transfer the permit to another towing vehicle shall be obtained from the Division of Motor Carriers by a payment of ten (10) dollars.

(2) One (1) transfer to another towing vehicle shall be allowed for each overweight or overdimensional annual permit during its effective year.

(3) An additional transfer of the overweight or overdimensional annual permit requested shall be subject to the permit fees established in KRS 189.270.

(4) The original overweight or overdimensional permit shall be returned to the Division of Motor Carriers prior to the transfer of an annual permit.

Section 8. Travel Restrictions. (1) A time extension shall only be granted if the overweight or overdimensional permit holder proves extenuating circumstances, such as weather, fire, natural disaster, or unforeseen emergency.

(2)(a) As needed for public safety, the department shall further prohibit movements in congested areas within the peak traffic hours.

(b) The additional restrictions shall be noted on the overweight or overdimensional permit upon issuance.

(3) Overdimensional restrictions shall not prohibit a utility company from working in an emergency situation to restore utility service to an area otherwise experiencing an outage.

Section 9. Escort Vehicle Safety Requirements. (1) The provisions of this section shall not apply if the vehicle or equipment is less than twelve (12) feet wide and:

(a) Used in part for off-road use;

(b) Not required to be registered or licensed; and

(c) Not transporting cargo.

(2) A required escort vehicle shall accompany the overweight or overdimensional vehicle at a distance of 300 feet (91.44 meters) on open highways unless it is necessary to travel at a distance closer or farther away from the vehicle accompanied for safety or due to road conditions.

(3) An escort vehicle shall:

(a) Maintain radio contact with the load;

(b) Post appropriate signs on the vehicle;

(c) Have amber strobe lights or flashing lights on the escort vehicle;

(d) Keep its headlamps lit during transit; and

(e) Use a height pole if the escorted load is fifteen (15) feet or greater.

(4) One (1) lead escort shall be required for:

(a) A vehicle and load with a width in excess of ten (10) feet, six (6) inches (three and two-tenths (3.2) meters), but twelve (12) feet (3.66 meters) or less in width travelling on a two (2) lane highway;

(b) A vehicle and load with a length in excess of seventy-five (75) feet (22.86 meters), but not more than eighty-five (85) feet (25.91 meters);

(c) Utility equipment, a pole, or pipe being transported that exceeds fifty-five (55) feet (16.76 meters) in length.

(5) One (1) trail escort shall be required for:

(a) A vehicle and load with a width exceeding twelve (12) feet (3.66 meters) that does not maintain a speed of forty-five (45) miles per hour (72.42 kilometers per hour) on a highway that is four (4) lanes or wider;

(b) A vehicle and load traveling on a two (2) lane highway at speeds below the posted speed limit on its route; and

(c) A vehicle and load with a length of 120 feet or less traveling on a four (4) lane or wider highway.

(6) One (1) lead and one (1) trail escort shall be required for:

(a) A vehicle and load with a length in excess of eighty-five (85) feet (25.91 meters traveling on a two (2) lane highway);

(b) A vehicle and load with a width exceeding twelve (12) feet (3.66 meters) on a two (2) lane highway; and

(c) A vehicle and load with a length in excess of 120 feet traveling on a four (4) lane or wider highway.

Section 10. Flag and Sign Requirements for Escort Vehicles. (1) Red or orange fluorescent flags that are a minimum of eighteen (18) inches square (11,612.7 millimeters square) shall be displayed on each vehicle and load operating under the auspices of either an overlength or an overwidth permit.

(a) A vehicle operating overwidth shall display four (4) warning flags, one (1) at each of the four (4) corners and if any portion of the load extends beyond the four (4) corners, additional flags shall be displayed at the widest points of the load.

(b) A vehicle operating overlength or with a rearend overhang shall display two (2) warning flags located to indicate maximum width at the extreme rear of the vehicle or load.

(2) A vehicle exceeding ten (10) feet, six (6) inches, three and two-tenths (3.2) meters in width or having front overhang shall display two (2) warning signs.

(a) A warning sign shall be six (6) to eight (8) feet in width stating "OVERSIZE LOAD" in black letters on a yellow background.

(b) The black letters shall be at least eighteen (18) inches high (11,612.7 millimeters) with a brush stroke of at least one and four tenths (1.4) inches (35.56 millimeters).

(c) A warning sign shall be displayed on a lead escort vehicle so that it is visible to oncoming traffic.

(d) A warning sign shall be displayed at the:

1. Front of the power unit;

2. Rear of the towed unit; or

3. Rear of the load.

(3) If a front overhang exceeds ten (10) feet (3.05 meters), an amber strobe or flashing light shall be placed on the power unit of the towing vehicle and shall be in use while the power unit is in operation.

(4)(a) The lighting devices and reflectors established in 49 C.F.R. 393.11 for pole trailers and projecting loads shall be required.

(b) A front overhang on a combination vehicle shall be prohibited.

(5) As a special provision of the permit and due to safety considerations, the Division of Motor Carriers may require additional escort vehicles, lighting, or warning flags.

Section 11. House or Building Permits. (1) An application for a permit to move a house or building shall be made on House Moving Application, TC Form 95-310, and submitted to the Division of Motor Carriers via mail, hand delivery, or the motor carrier online permitting system at the Division of Motor Carriers, Transportation Cabinet Building, 200 Mero Street Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4 p.m., or via fax at (502) 564-0992.

(2)(a) House moving permits shall be issued for movements that occur during off-peak traffic hours.

(b) The mover shall furnish all escorts and flagmen required to protect the public.

(3) A house moving permit shall not be issued for the movement of a permanent building other than a portable storage unit on a parkway or an interstate highway.

(4)(a) The Division of Motor Carriers shall contact the appropriate Department of Highways' district office for specific routing restrictions or local highway conditions prior to the issuance of a house moving permit.

(b) Specific restrictions shall be identified on the house moving permit, and deviation from the restrictions shall void the house moving permit.

Section 12. Route Deviation. Each vehicle transporting a load under an overweight or overdimensional annual or single trip permit shall obtain prior written approval from the Division of Motor Carriers for any deviation from the routes approved by the Transportation Cabinet for the towing vehicle.

Section 13. Overweight or Overdimensional Permit Required. Until an authorized overweight or overdimensional permit has been issued by the Division of Motor Carriers under the provisions of this administrative regulation and KRS 189.270:

(1) An overweight or overdimensional load of a width greater than eight and one-half (8 1/2) feet shall not be towed on any state-maintained highway;

(2) An overweight or overdimensional load with a width greater than eight (8) feet shall not be towed on any state-maintained highway not included on the Transportation Cabinet's list of roads approved for passage of motor vehicles with increased dimensions pursuant to 603 KAR 5:070, except as provided in KRS 189.2225(3); and

(3) A manufactured home with a combined length of manufactured home and towing vehicle greater than 120 feet shall not be towed upon any Kentucky highway. The manufactured home shall not exceed eighty-five (85) feet in length.

Section 14. Overweight or Overdimensional Annual Permits. (1)(a) A permit shall not be issued for the movement of an overweight or overdimensional load in excess of sixteen (16) feet in width inclusive of the usual overhang.

(b) Mirrors on a towing vehicle shall not be considered in determining the width of an overweight or overdimensional load.

(2) Prior to a movement of an overweight or overdimensional load under the provisions of an annual permit, the permit holder shall evaluate the entire route proposed to be used for the movement of the overweight or overdimensional load. The evaluation shall include the following:

(a) Highway width;

(b) Shoulder width and surface type;

(c) Bridge width and posted weights;

(d) Curves;

(e) Turns to be negotiated;

(f) Construction zones;

(g) Obstructions;

(h) Access control;

(i) Traffic volume; and

(j) Other routes available that may be safer even if not as convenient.

(3) The permit holder shall use the results of the evaluation to determine the safest route available to transport the overweight or overdimensional load.

(4) If there is any doubt about the adequacy of the highway to safely accommodate the overweight or overdimensional load, the permit holder shall either:

(a) Select a different route; or

(b) Contact the Division of Motor Carriers for approval to move the overweight or overdimensional load over that specific route.

(5) An overweight or overdimensional annual permit shall not be issued or used for the movement if the height of the combination load and towing vehicle exceeds thirteen (13) feet, six (6) inches.

(6) Acceptance and use of the annual overweight or overdimensional permit shall indicate the permit holder's acceptance of the liability associated with the move.

(7) Moves of overweight or overdimensional loads more than twelve (12) feet wide shall be limited to highways of four (4) or more lanes and to the shortest and best two (2) lane route designated by the Division of Motor Carriers. The cabinet shall deny movements on a route unsuitable for move.

Section 15. Traffic Control. (1) If an overweight or overdimensional load while crossing a bridge would encroach on any other lane of traffic:

(a) All approaching traffic shall be stopped; and

(b) All trailing traffic shall be prevented from attempting to pass the overweight or overdimensional load until the load has cleared the bridge and has moved sufficiently to the right to safely allow following traffic to pass.

(2) An overweight or overdimensional load shall slow the movement of other traffic as little as possible. If traffic backs up behind the load being moved, the escort vehicles and load shall exit the highway if there is sufficient space to do so.

Section 16. Overweight or Overdimensional Permit Validity. (1) A vehicle hauling building materials to a home or home site shall be allowed to travel fifteen (15) miles off of a state highway classified to carry the registered weight of the vehicle for purpose of delivery.

(a) The vehicle shall:

1. Not be required to have a permit for overweight or overlength; and

2. Be within the limits of the registration and within axle weight limits.

(b) An operator shall be required to provide a bill of lading while engaged in the transportation of home building materials.

(2)(a) Travel on all overweight and overdimensional permits shall not be permitted in Boone, Kenton, Campbell, Fayette, Jefferson County (Louisville) or at the Owensboro, Kentucky 2155 bridge from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. Monday through Friday.

(b) An overweight or overdimensional load originating in Fayette County shall be exempt from traffic rush hour restrictions on Interstate 64 and Interstate 75 in Fayette County and on connecting routes to both interstates up to a distance of three (3) miles from the interstates.

(3) If proof of an emergency is furnished to the Division of Motor Carriers, moves shall be authorized during the hours restricted pursuant to KRS 189.270(11)(a).

(4) Travel shall not be made in excess of the posted limitations on a bridge or other highway structure.

~~Section 17. Weather Conditions. (1) A move of an overweight or overdimensional load more than twelve (12) feet wide shall not be made on a highway if a wind advisory has been issued by the National Weather Service; or~~

~~(2) If adverse weather conditions or road conditions would cause these moves to be dangerous.~~

~~Section 18. Brakes. (1) The number, type, size, and design of brake assemblies required to assist the towing vehicle in controlling and stopping a manufactured home or boat shall be sufficient to assure that the maximum stopping distance from an initial velocity of twenty (20) miles per hour shall not exceed forty (40) feet.~~

~~(2) A manufactured home not equipped with brakes on all axles shall certify that the towing unit has sufficient brake assemblies to meet the braking distance specified in this section. Certification shall be in the form of:~~

~~(a) A manufacturer's statement;~~

~~(b) Documented technical data; or~~

~~(c) An engineering analysis or its equivalent stating that the braking distance has been met.~~

~~(3) The certification shall be carried in the towing unit and shall be presented upon request to law enforcement.~~

~~Section 19. Permits for Sealed, Containerized, Ocean-going Cargo Units. (1) A vehicle moving a sealed, containerized, ocean-going cargo unit shall be eligible for an overweight or oversized single trip permit.~~

~~(2) A vehicle eligible for an overweight or oversized permit shall meet the specifications and limitations established in KRS 189.222 and Section 4 of this administrative regulation.~~

~~(3) An applicant for an overweight or overdimensional permit shall submit the following to the Division of Motor Carriers:~~

~~(a) A completed Kentucky Overweight or Overdimensional Permit Worksheet, TC Form 95-10;~~

~~(b) A payment of sixty (60) dollars pursuant to KRS 189.270(2); and~~

~~(c) A copy of an international bill of lading signed by a custom's official, or an international bill of lading with an equipment interchange and inspection report.~~

~~(4) An overweight or overdimensional permit shall be valid for:~~

~~(a) One (1) move;~~

~~(b) A duration of ten (10) days; and~~

~~(c) Twenty four (24) hour continuous movement during the duration of the overweight or overdimensional permit.~~

~~(5) During transit, an operator shall have in his or her possession a copy of the documents established in subsection (3)(c) of this section.~~

~~Section 20. Denial of Overweight or Overdimensional Permit Application. (1) In accordance with 23 C.F.R. 658.17, the Division of Motor Carriers shall deny an overweight or overdimensional permit application if:~~

~~(a) The route includes any portion of the interstate highway system; and~~

~~(b) The load is divisible.~~

~~(2) The Transportation Cabinet shall deny or restrict an overweight or overdimensional permit for the use of a route if it is detrimental to public safety or convenience. The Transportation Cabinet shall consider the following while making a determination on the application:~~

~~(a) The strength of all bridges and structures on the route;~~

~~(b) Traffic congestion on the route;~~

~~(c) Horizontal and vertical clearance on the route;~~

~~(d) The availability of alternate routes that afford greater safety;~~

~~(e) Urban development in residential and commercial areas on the route;~~

~~(f) The proximity of schools to the route; and~~

~~(g) A condition that would unduly compromise public safety and convenience.~~

~~Section 21. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Application for Annual Overweight or Overdimensional Permit", TC Form 95-25, August 2010;~~

~~(b) "House Moving Application", TC Form 95-310, November 2007;~~

~~(c) "Kentucky Overweight or Overdimensional Permit Worksheet", TC Form 95-10, February 2011.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Motor Carriers, Transportation Cabinet Building, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4 p.m.~~]

GREG THOMAS, Secretary
JOHN-MARK HACK, Commissioner
D. ANN DANGELO, Office of Legal Services

APPROVED BY AGENCY: March 15, 2017

FILED WITH LRC: March 15, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 26, 2017 at 10:00 a.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C121, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through April 30, 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: D. Ann Dangelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-523, email Ann.Dangelo@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Ann DAngelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures and requirements for the issuance of an overweight or overdimensional single trip or annual trip permit; the height, width, and length necessary for vehicles and loads; escort safety requirements; the requirements to move a house or building; and the criteria necessary to obtain a permit for a sealed, containerized, ocean-going cargo unit.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the process for single and annual trip permit applications and to set the requirements for the movement of overweight and overdimensional vehicles on Kentucky's highways.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 189.270(6), 189.271(9)(b), 189.2715(1), and 189.2717(1) authorize the cabinet's secretary to issue permits and establish the requirements for the movement of motor vehicles with divisible or nondivisible loads exceeding legal weights and dimensions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation amends the current regulation to update procedures and requirements.

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

(a) How the amendment will change this existing administrative

regulation: This amendment organizes length, height, and width of overweight and overdimensional vehicles into a more user friendly format in the administrative regulation; separates permit types to reduce confusion; includes language to allow single trip permits for sealed ocean containers; includes annual permits for manufacturers of self-propelled specialized mobile equipment; and amends escort requirements to harmonize with AASHTO phase two (2) recommendations as well as surrounding states.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that the public has the most current information and requirements regarding overweight and overdimensional vehicles.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment will further clarify procedures related to overweight and overdimensional vehicles.

(d) How the amendment will assist in the effective administration of the statutes: Needed updates to the administrative regulation will ensure that the procedures related to overweight and overdimensional statutes stay current.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects the Kentucky Transportation Cabinet, Division of Motor Carriers and entities and individuals currently operating with an annual or single trip permit as well as future applicants for permits.

(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 and individuals will not have to take any additional actions as a result of these amendments.

(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 or fees as a result of this amendment. Permit fees are established by KRS 189.270.

(c) As a result of compliance, what benefits will accrue to the entities identified in question 3): Qualified entities and individuals will be able to obtain special overweight or overdimensional single trip or annual permits.

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

(a) Initially: There are no costs associated with these amendments.

(b) On a continuing basis: There are no continuing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Road 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: Fees are not necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Fees are not established by this administrative regulation.

(9) TIERING: Is tiering applied? Yes. Tiering is applied because restrictions on travel will vary depending on safety issues and length of trip (single trip v. annual trip).

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 impacts procedures in the Division of Motor Carriers.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the
action taken by the administrative regulation. KRS 189.270, 189.271, 189.2715, 189.2717

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation is not expected to affect expenditures or revenues.

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

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

(c) How much will it cost to administer this program for the first year? No costs are expected as a result of this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No subsequent costs are expected as a result of this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

NEW ADMINISTRATIVE REGULATIONS

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(New Administrative Regulation)

201 KAR 26:225. Renewal and reinstatement.

RELATES TO: 319.071
STATUTORY AUTHORITY: KRS 319.032(1)(c), 319.032(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.03(1)(c) requires the board to promulgate an administrative regulation setting the requirements for issuing and denying an applicant for licensure. KRS 319.032 authorizes the board to promulgate administrative regulations as it deems necessary for the proper administration of KRS Chapter 319. This administrative regulation establishes the renewal and reinstatement processes.

Section 1. (1) To apply for renewal, a licensed psychologist, certified psychologist with autonomous functioning, or licensed psychological practitioner shall:

(a) Submit a completed Renewal Application to the board;

(b) Pay to the board the appropriate renewal fee established in 201 KAR 26:160, Section 1(5); and

(c) Have completed thirty-nine (39) continuing education hours established in 201 KAR 26:175, Section 2(1).

(2) After the renewal date but during the three (3) month grace period, a licensed psychologist, certified psychologist with autonomous functioning, or licensed psychological practitioner shall:

(a) Submit a completed Renewal Application to the board;

(b) Pay to the board the appropriate renewal fee established in 201 KAR 26:160, Section 1(5);

(c) Pay to the board a late fee established in 201 KAR 26:160, Section 2; and

(d) Have completed thirty-nine (39) continuing education hours established in 201 KAR 26:175, Section 2(1); and

(3) After the three (3) month grace period but less than three (3) years of cancelation, a licensed psychologist, certified psychologist with autonomous functioning, or licensed psychological practitioner shall:

(a) Submit a completed Renewal Application to the board;

(b) Pay to the board the appropriate renewal fee established in 201 KAR 26:160, Section 1(5);

(c) Pay to the board a late fee established in 201 KAR 26:160, Section 2;

(d) Pay to the board a reinstatement fee established in 201 KAR 26:160, Section 3; and

(e) Complete thirty-nine (39) continuing education hours obtained within the three (3) years prior to the date of application for reinstatement.

(4) After three (3) years of cancelation, a licensed psychologist, certified psychologist with autonomous functioning, or licensed psychological practitioner shall:

(a) Submit a new completed application to the board;

(b) Pay to the board the appropriate fee established in 201 KAR 26:160, Section 1; and

(c) Successfully complete the oral and structured examinations on Kentucky mental health law, ethical principles, and professional practice established in 201 KAR 26:230, Section 3(1)(b) and (4).

Section 2. (1) To apply for renewal, a certified psychologist or licensed psychological associate shall:

(a) Submit a completed Renewal Application to the board;

(b) Pay to the board the appropriate renewal fee established in 201 KAR 26:160, Section 1(6); and

(c) Have completed thirty-nine (39) continuing education hours established in 201 KAR 26:175, Section 2(1).

(2) After the renewal date but during the three (3) month grace period, a certified psychologist or licensed psychological associate shall:

(a) Submit a completed Renewal Application to the board;

(b) Pay to the board the appropriate renewal fee established in 201 KAR 26:160, Section 1(6);

(c) Pay to the board a late fee established in 201 KAR 26:160, Section 2; and

(d) Complete thirty-nine (39) continuing education hours established in 201 KAR 26:175, Section 2(1); and

(3) After the three (3) month grace period but less than three (3) years of cancelation, a certified psychologist or licensed psychological associate shall:

(a) Submit a completed Renewal Application to the board;

(b) Pay to the board the appropriate renewal fee established in 201 KAR 26:160, Section 1(5);

(c) Pay to the board a late fee established in 201 KAR 26:160, Section 2;

(d) Pay to the board a reinstatement fee established in 201 KAR 26:160, Section 3; and

(e) Complete thirty-nine (39) continuing education hours obtained within the three (3) years prior to the date of application for reinstatement.

(4) After three (3) years of cancelation, a certified psychologist or licensed psychological associate shall:

(a) Submit a new completed application to the board; and

(b) Pay to the board the appropriate fee established in 201 KAR 26:160, Section 1.

Section 3. A person who previously held a credential issued by the board and applies three (3) years or more beyond the date of cancelation shall be required to meet current initial licensure requirements.

Section 4. A credential holder may continue to practice during the grace period.

Section 5. A person shall not engage in the practice of psychology after a license has been canceled.

Section 6. Incorporation by Reference. (1) "Renewal Application", March 2017, is incorporated by reference.

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

JAMIE A. HOPKINS, Ph.D., HSPP, Chairperson
APPROVED BY AGENCY: March 15, 2017
FILED WITH LRC: March 15, 2017 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 25, 2017, at 1:00 p.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. 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 April 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Chessica Nation, Board Administrator, Kentucky Board of Examiners of Psychology, Department of Professional Licensing, 911 Leawood Drive, P. O. Box 1360, Frankfort, Kentucky 40601, phone (502) 782-8812, fax (502) 696-3925, email chessica.nation@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chessica Nation

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure and requirements for the renewal and reinstatement of a license.

(b) The necessity of this administrative regulation: The necessity of this regulation is to inform a licensee of the procedure and requirements for the renewal and reinstatement of a license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the renewal, reinstatement, and reactivation of a license.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in establishing and clarifying the procedure and requirements for the renewal and reinstatement of a license.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently nine (9) certified psychologists, seventy-three (73) certified psychologist with autonomous functioning, three hundred forty (340) psychological associates, one hundred thirty (130) psychological practitioners, and nine hundred sixty (960) licensed psychologists. The Board is unsure of the number of possible applicants in the future.

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

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

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

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

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

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

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

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319.032(1)(c), 319.032(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:

ENERGY AND ENVIRONMENT CABINET
Office of the Secretary
(Repealer)

400 KAR 1:031. Repeal of 400 KAR 1:030.

RELATES TO: KRS 146.200-146.360, 146.990, 151.182, 151.184, 151.297, 151.990, Chapters 223, 224, 350.028, 350.070, 350.085, 350.093, 350.130, 350.465, 350.990, 30 C.F.R. Parts 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

STATUTORY AUTHORITY: KRS 151.125, 224.10-100, 224.10-410, 224.10-420, 224.10-430, 224.10-440, 224.40-310, 350.028, 350.255, 350.465, 30 C.F.R. Parts 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) provides the Energy and Environment Cabinet the authority to repeal 400 KAR 1:030. The administrative regulation is being repealed as a result of the Governor's Red Tape Reduction Initiative since the contents are duplicative of the requirements contained in 400 KAR 1:090.

Section 1. 400 KAR 1:030, Administrative service of process; computation of time and filing documents, is hereby repealed.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: March 15, 2017

FILED WITH LRC: March 15. 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 25, 2017 at 10:00 a.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by April 18, 2017, 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 through April 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 400 KAR 1:030.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to repeal 400 KAR 1:030. Information has been moved to 400 KAR 1:090.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute requires the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. Moving the information into 400 KAR 1:090 places it all in one regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently establishes the requirements for administrative service of process and computation of time and filing of documents. These provisions have been moved to 400 KAR 1:090.

(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 repeals the regulation pertaining to administrative service of process and computation of time and filing of documents.

(b) The necessity of the amendment to this administrative regulation: The repeal is necessary because the information has been moved into 400 KAR 1:090.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statute by repealing the regulation pertaining to administrative service of process and computation of time and filing of documents.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will place the requirements pertaining to administrative service of process and computation of time and filing of documents into one regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The repeal of this regulation will have no impact as the requirements are being moved to 400 KAR 1:090.

(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 associated with this repealer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs associated with this repealer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Not applicable

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

(a) Initially: There is no cost associated with the repeal of this administrative regulation.

(b) On a continuing basis: There is no cost associated with the repeal of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Not applicable

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

(9) TIERING: Is tiering applied? No, this is a repeal of an administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The cabinet's Office of Administrative Hearings.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151.125, 224.10-100, 224.10-410, 224.10-420, 224.10-430, 224.10-440, 224.40-310, 350.028, 350.255, 350.465, 30 C.F.R. Parts 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

(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 repeal will not generate revenue.

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

(c) How much will it cost to administer this program for the first year? This repeal will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years? This repeal will not cost the agency additional funding.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

ENERGY AND ENVIRONMENT CABINET
Office of the Secretary
(New Administrative Regulation)

400 KAR 1:100. General administrative hearing practice provisions relating to matters brought under KRS Chapters 146, 149, 151, 223, and 224.

RELATES TO: KRS 146.200 - 146.360, 146.990, 149.344, 149.346, 149.348, 151.182, 151.184, 151.297, 151.990, Chapters 223, 224

STATUTORY AUTHORITY: KRS 146.270, 149.344, 149.346, 151.125, 151.182, 151.184, 151.186, 151.297, 224.10-100, 224.10-410, 224.10-420, 224.10-440, 224.40-310

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 146 relating to wild rivers, KRS Chapter 149 relating to timber harvesting, KRS Chapter 151 relating to water resources, KRS Chapter 223 relating to water plant operators and water well drillers, and KRS Chapter 224 relating generally to environmental protection authorize the cabinet to conduct administrative hearings and promulgate administrative regulations. This administrative regulation establishes procedures for conducting administrative hearings.

Section 1. Applicability. This administrative regulation shall govern the conduct by the cabinet of all administrative hearings authorized by KRS Chapter 146 relating to wild rivers, KRS Chapter 149 relating to timber harvesting, KRS Chapter 151 relating to water resources, KRS Chapter 223 relating to water plant operators and water well drillers, and KRS Chapter 224 relating generally to environmental protection, including those matters initiated by a petition for hearing filed on or before January 1, 2018. This administrative regulation governs an administrative hearing, an order, and a final determination of the cabinet.

Section 2. Location of Administrative Hearing. An administrative hearing shall be held in Frankfort at the location designated by the hearing officer unless an alternative location is agreed to by each party or authorized by KRS 224.40-310(5)(e).

Section 3. Administrative Hearing Initiated by the Cabinet. (1) Criteria for filing. The cabinet may initiate an administrative hearing and may seek a remedy identified in subsection (2) of this section if:

(a) The cabinet has reason to believe that a violation of KRS Chapters 146, 149, 151, 223, 224, KAR Titles 400, 401, 402, an administrative regulation, a permit, registration, or certification condition has occurred or is occurring; or

(b) The cabinet has reason to believe a remedy should be sought or an order should be entered against any person to protect the environment or the health and safety of the public.

(2) Remedies. In an administrative hearing initiated by the cabinet, the cabinet may seek one (1) or a combination of the following:

(a) Permit revocation, termination, denial, modification, or suspension;

(b) Bond and other financial assurance forfeiture;

(c) Civil penalty;

(d) A determination, if expressly authorized by statute, that a person shall not be eligible to receive another permit or conduct future activity;

(e) Cost recovery if expressly authorized by statute; or

(f) Any other relief to which the cabinet may be entitled by KRS Chapters 146, 149, 151, 223, 224, KAR Titles 400, 401, and 402.

(3) Procedure for an administrative hearing initiated by the cabinet.

(a) The cabinet shall initiate an administrative hearing by filing an administrative complaint with the office incorporating the following for each claim for relief:

1. A statement of facts entitling the cabinet to administrative relief;

2. A request for specific relief; and

3. A copy of any notice or order upon which relief is sought.

(b) Answer or responsive pleading.

1. The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the administrative complaint.

2. The answer shall contain:

a. A statement specifically admitting or denying the facts stated in the administrative complaint or amended administrative complaint unless the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and this shall have the effect of a denial;

b. Any defense to each claim for relief; and

c. Any other matter to be considered on review.

3. Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of such defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in a responsive pleading.

4. An allegation in a pleading to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

5. An allegation in a pleading to which an answer or responsive pleading is required may be deemed admitted when not denied in the answer or responsive pleading.

(c) Amendments.

1. An administrative complaint may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

2. The respondent shall have ten (10) days from the filing of an administrative complaint amended as a matter of right or the time remaining for filing an answer to the original complaint, whichever is longer, to file an answer or responsive pleading.

3. If the hearing officer grants a motion to amend the administrative complaint, the time for an answer to be filed shall be set forth in the order granting the motion.

(4) Burden of proof.

(a) The cabinet shall bear the ultimate burden of persuasion.

(b) A respondent shall have the burden of persuasion to establish an affirmative defense.

(c) A respondent claiming an exemption shall have the burden of persuasion to establish qualification for the exemption.

(5) Default.

(a) If the person against whom the administrative complaint is filed fails to timely comply with a prehearing order of a hearing officer, the hearing officer may on his own initiative or upon motion issue an order to show cause why the person should not be deemed to have waived his right to an administrative hearing and why a report and recommended order adverse to the person shall not be referred to the secretary.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order in conformity with the relief requested by the cabinet in its administrative complaint.

(c) If the person against whom the administrative complaint is filed fails to appear at an administrative hearing, the person shall be deemed to have waived his right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order in conformity with the relief requested by the cabinet in its administrative complaint.

Section 4. Review of a Cabinet Order and Final Determination. (1) Who may file. A person who considers himself aggrieved by an order or final determination of the cabinet may file a petition for review of the order or final determination. The petition for review shall be filed pursuant to this section. This section also applies to a petition for review of a draft permit for construction or expansion of a waste disposal facility, made pursuant to KRS 224.40-310(6), if the expansion results in substantial additional capacity.

(2) Time for filing.

(a) A person filing a petition for review under this section shall file in the office a petition within thirty (30) days after the person has had actual notice of the order or final determination complained of, or could reasonably have had notice.

(b) The hearing officer shall not grant an extension of time for filing a petition for review.

(c) If the hearing officer, upon motion or his own initiative, finds that the person failed to timely file the petition for review in accordance with this section, the hearing officer shall issue a report recommending dismissal of the petition. The secretary shall dismiss a petition that is not filed in accordance with subsection (2)(a) of this section stating that the person waived his right to an administrative hearing.

(3) Content of the petition. The petition for review shall contain:

(a) A statement of the facts entitling the person requesting review to administrative relief;

(b) An explanation of each specific alleged error in the cabinet's determination;

(c) A request for specific relief;

(d) If the petition challenges an order or final determination on a permit, the name of the permittee and the permit number; and

(e) If the petition challenges an order or final determination other than a permit, a copy of the order or final determination sought to be reviewed.

(4) Answer or responsive pleading.

(a) The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the petition.

(b) The answer shall contain:

1. A statement specifically admitting or denying the facts stated in the petition or amended petition unless the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and this shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of the defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in an answer or responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted when not denied in the answer or responsive pleading.

(5) Amended petition.

(a) A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

(b) The respondent shall have ten (10) days from the filing of an amended petition or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading to the amended petition.

(c) If the hearing officer grants a motion to amend the petition, the hearing officer shall set the time for an answer to be filed shall be set forth in the order granting the motion.

(6) Effect of filing. The filing of a petition for review shall not stay the effectiveness of the cabinet's order or final determination pending completion of administrative review.

(7) Burden of proof.

(a) The petitioner shall bear the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the requested relief.

(b) A responding party shall have the burden of persuasion to establish an affirmative defense.

(c) A responding party claiming an exemption shall have the burden of persuasion to establish qualification for the exemption.

(8) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer may, at his discretion or upon motion, issue an order to show cause why the petitioner should not be deemed to have waived the right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order dismissing the petition since the petitioner waived the right to an administrative hearing.

(c) If the petitioner fails to appear at an administrative hearing, the petitioner shall be deemed to have waived his right to an administrative hearing and the hearing officer shall recommend to the secretary the entry of a final order dismissing the petition since the petitioner waived the right to an administrative hearing.

Section 5. Procedure for an Order for Remedy under KRS 151.297. (1) Notice.

(a) If the secretary issues an order for remedy pursuant to KRS 151.297, the secretary shall file a copy of the order for remedy in the office.

(b) Upon filing of an order for remedy, the office shall issue an administrative summons pursuant to 400 KAR 1:090, Section 5 and shall set the time and place for an administrative hearing. The office may schedule the administrative hearing within five (5) working days from the date the order for remedy was signed by the secretary.

(2) Response.

(a) Unless paragraph (b) of this subsection applies, the person named in the order for remedy prior to or at the administrative hearing shall file a response to the order that:

1. Specifically admits or denies the facts alleged in the order;

2. Sets forth other matters to be considered on review; and

3. Sets forth evidence, if any, that the condition or activity does not violate the provisions of KRS 151.297.

(b) In lieu of a response, the person named in the order for remedy may contact the office in writing or by other means and state that an administrative hearing is not needed, and that the person does not desire to contest the order.

(3) Hearing procedure. The administrative hearing shall be held in accordance with 400 KAR 1:090.

(4) Burden of proof. The cabinet shall have the burden of going forward to establish a prima facie case as to the propriety of the order for remedy. The person named in the order for remedy shall have the ultimate burden of persuasion that the condition or activity does not violate KRS 151.297, or that the condition or activity has been discontinued, abated or alleviated.

(5) Default. The hearing officer shall promptly prepare a report stating that the hearing has been waived and the order for remedy stands as issued if:

(a) The person named in the order for remedy notified the office that an administrative hearing is not needed; or

(b) The person failed to appear at the administrative hearing.

(6) Effect of the proceeding. The scheduling and holding of an administrative hearing pursuant to this section shall not operate to terminate or stay the order for remedy or the affirmative obligations imposed on a person by the order.

Section 6. Judicial Review, Effect, and a Subsequent Proceeding. (1) Judicial review. Judicial review may be taken from a final order of the secretary to the appropriate circuit court of competent jurisdiction in accordance with KRS 151.186 or 224.10-470, as applicable.

(2) Effect of final order pending judicial review. The commencement of a proceeding for judicial review of a final order of the secretary shall not operate as a stay of a final order, unless specifically ordered by a court of competent jurisdiction.

(3) Remands from court. If a matter is remanded from any court for a further proceeding, and to the extent the court's directive and time limitations will permit, each party shall file with the office a report recommending the procedure to be followed in order to comply with the court's order. The hearing officer shall review each report and enter a special order governing the handling of the matter remanded for a further proceeding.

Section 7. Requirement to File Written Direct Testimony and Its Use in an Administrative Proceeding Subject to KRS 224.10-440. In proceedings subject to KRS 224.10-440:

(1) In addition to the provisions of 400 KAR 1:090, Section 16(4), pertaining to the admission of written testimony, the hearing officer may require the filing of the written testimony of a witness as if on direct examination, which shall be prepared and filed in the record in advance of the formal administrative hearing.

(2) The hearing officer may require written testimony to be supplemented by additional evidence.

(3) Written testimony shall be accompanied by an affidavit of the witness verifying that the written direct testimony is a true and accurate record of the witness' testimony as if given orally, and that the answers to the questions propounded to the witness are true.

(4) Any witness whose written testimony is prefiled shall appear at the formal administrative hearing unless all parties agree to waive the appearance of the witness.

(5) At the formal administrative hearing, the witness shall again verify that the written direct testimony is a true and accurate record of the witness' testimony as if given orally and that the answers to the questions propounded to the witness are true and the witness shall be available for cross examination.

(6) If a witness fails to verify his written direct testimony or is not available for cross examination at the formal administrative hearing, the written testimony of that witness shall be excluded from the record, unless the parties agree otherwise.

(7) Written testimony shall be set forth in a "question and answer" format.

(8) If written testimony, that is based upon a separate document or writing is submitted into the record, that document or

writing shall be authenticated and entered into the record as an accompanying exhibit to the written testimony.

(9) Each party shall have a reasonable opportunity prior to the formal administrative hearing to:

(a) Object to all or portions of any written testimony and any accompanying exhibit; and

(b) Obtain a ruling on objections to written testimony or exhibits prior to their introduction at the administrative hearing.

(11) Written testimony and accompanying exhibits shall be subject to the same standards of authentication and admissibility as all other testimony and exhibits offered in an administrative hearing.

Section 8. Waiver and Waiver Revocation in Administrative Proceedings Subject to KRS 224.10-440. (1) Waiver.

(a) In proceedings subject to KRS 224.10-440, if each party agrees to waive the deadline of KRS 224.10-440(3), a waiver agreement executed by each party or the party's counsel shall be filed in the office.

(b) Waiver of the KRS 224.10-440(3) deadlines shall not be subject to revocation by a party without consent of all parties and the approval of the hearing officer.

(2) Motion for extension of time.

(a) A party or hearing officer seeking an extension of the deadline for completion of the administrative hearing process set forth in KRS 224.10-440(3) shall file in the office a motion for extension that includes a proposed date certain by which the report and recommended order shall be completed.

(b) The motion for extension shall be filed forty-five (45) days prior to the deadline for the hearing officer to transmit the report and recommended order to the secretary, unless good cause is shown for not filing the motion prior to forty-five (45) days before the deadline.

(c) A party or hearing officer objecting to the extension shall file any response in opposition to the motion within seven (7) calendar days from receipt of the motion. The mail rule provisions set forth in 400 KAR 1:090, Section 4(1)(d) shall not be applicable in calculating the deadline for filing the response.

(d) Upon expiration of the time period for a motion and a response to the motion, the office shall tender the motion and any response to the secretary or the secretary's designee.

(e) The secretary or the secretary's designee shall rule on the motion within ten (10) days from expiration of the time period for filing an objection to any motion for extension.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: March 15, 2017

FILED WITH LRC: March 15, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 25, 2017 at 10:00 a.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by April 18, 2017, 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 through April 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation governs the conduct by the cabinet of all administrative hearings authorized by KRS Chapter 146 relating to wild rivers, KRS Chapter 149 relating to timber harvesting, KRS Chapter 151 relating to water resources, KRS Chapter 223 relating to water plant operators and water well drillers, and KRS Chapter 224 relating generally to environmental protection, including those administrative hearings pending at the time this administrative regulation becomes effective. This administrative regulation governs administrative hearings authorized by those chapters on violations of those chapters and administrative regulations promulgated pursuant thereto, and on orders and final determinations of the cabinet made under those chapters and the administrative regulations promulgated pursuant thereto.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish administrative hearing practice provisions that relate to the cabinet's administrative hearing process specifically involving matters brought under KRS Chapters 146, 149, 151, 223, and 224. This administrative regulation provides for the remainder of 401 KAR 100:010 that was not feasibly merged into 401 KAR 1:090.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 146 relating to wild rivers, KRS Chapter 149 relating to timber harvesting, KRS Chapter 151 relating to water resources, KRS Chapter 223 relating to water plant operators and water well drillers, and KRS Chapter 224 relating generally to environmental protection authorize the cabinet to conduct administrative hearings and promulgate administrative regulations. This administrative regulation establishes procedures for conducting administrative hearings.

(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 statues by providing consistent provisions relating to the conduct of administrative hearings specifically involving matters brought under KRS Chapters 146, 149, 151, 223, and 224.

(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 statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This regulation establishes practice provisions that apply to all individuals, businesses, organizations, or state and local governments that either initiate or become subject to an administrative proceeding in the cabinet's Office of Administrative Hearings specifically involving matters brought under KRS Chapters 146, 149, 151, 223, and 224.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will have to comply with the requirements for procedural processes included in the administrative hearing process included in the regulation, such as, location of the hearing, procedures for review of cabinet orders and final determination, remedy under KRS 151.297, use of written direct testimony, and waiver of time deadlines or motion for extensions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs to comply with is administrative regulation are similar to those found in private civil litigation due to the nature of the de novo hearing at the administrative level. However, there might be a slight cost saving due to this amendment due to the allowance of

written direct testimony.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, entities will continue to benefit from effective, fair, and timely administrative hearing practice provisions.

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

(a) Initially: The cabinet will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: The cabinet will not incur any additional costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet's current operating budget will be used for the implementation of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering was not used. The provisions in this administrative regulation will apply equally to all parties of an administrative adjudication in the Cabinet's Office of Administrative Hearings.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The cabinet will continue to hold administrative hearings to as needed that specifically involve matters brought under KRS Chapters 146, 149, 151, 223, and 224. State and local government will only be impacted insofar as they are parties of an administrative adjudication with the cabinet.

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

KRS 146.270, 149.344, 149.346, 151.125, 151.182, 151.184, 151.186, 151.297, 224.10-100,224.10-410, 224.10-420, 224.10-440, 224.40-310

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

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

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

(c) How much will it cost to administer this program for the first year? The cabinet's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The cabinet's operating budget will be used to administer this program for subsequent years.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
(Repealer)

401 KAR 100:011. Repeal of 401 KAR 100:010.

RELATES TO: KRS 146.200-146.360, 146.990, 149.344, 149.346, 149.348, 151.182, 151.184, 151.297, 151.990, Chapters 223, 224

STATUTORY AUTHORITY: KRS 146.270, 149.344, 149.346, 151.125, 151.182, 151.184, 151.186, 151.297, 224.10-100, 224.10-410, 224.10-420, 224.10-440, 224.40-310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) provides the Energy and Environment Cabinet the authority to repeal 401 KAR 100:010. The administrative regulation is being repealed as a result of the Governor's Red Tape Reduction Initiative since the contents are duplicative of the requirements contained in 400 KAR 1:090.

Section 1. 401 KAR 100:010, General administrative hearing practice provisions, is hereby repealed.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: March 15, 2017

FILED WITH LRC: March 15, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 25, 2017 at 10:00 a.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by April 18, 2017, 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 through April 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 401 KAR 100:010.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to repeal 401 KAR 100:010. Information has been moved to 400 KAR 1:090.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute requires the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. Moving the information into 400 KAR 1:090 places it all in one regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently establishes the general administrative hearing practice provisions. These provisions have been moved to 400 KAR 1:090.

(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 repeals the regulation pertaining to the general administrative hearing practice provisions.

(b) The necessity of the amendment to this administrative regulation: The repeal is necessary because the information has been moved into 400 KAR 1:090.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statute by repealing the regulation pertaining to the general administrative hearing practice provisions.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will place the requirements pertaining to the general administrative hearing practice provisions into one regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The repeal of this regulation will have no impact as the requirements are being moved to 400 KAR 1:090.

(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 associated with this repealer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs associated with this repealer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Not applicable

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

(a) Initially: There is no cost associated with the repeal of this administrative regulation.

(b) On a continuing basis: There is no cost associated with the repeal of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Not applicable

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

(9) TIERING: Is tiering applied? No, this is a repeal of an administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The cabinet's Office of Administrative Hearings.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.270, 149.344, 149.346, 151.125, 151.182, 151.184, 151.186, 151.297, 224.10-100, 224.10-410, 224.10-420, 224.10-440, 224.40-310

(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 repeal will not generate revenue.

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

(c) How much will it cost to administer this program for the first year? This repeal will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years? This repeal will not cost the agency additional funding.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Reclamation and Enforcement
(Repealer)

405 KAR 7:093. Repeal of 405 KAR 7:091.

RELATES TO: KRS 224.10-410, 350.028, 350.0301, 350.0305, 350.032, 350.070, 350.090, 350.093, 350.130, 350.255, 350.465, 350.990, 446.030, 30 C.F.R. Parts 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

STATUTORY AUTHORITY: KRS, 350.020, 350.028, 350.0301, 350.0305, 350.255, 350.465, 350.610

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1) provides the Energy and Environment Cabinet's Department for Natural Resources the authority to repeal 400 KAR 7:091. The administrative regulation is being repealed as a result of the Governor's Red Tape Reduction Initiative since the contents are duplicative of the requirements contained in 400 KAR 1:090.

Section 1. 405 KAR 7:091, General practice provisions, is hereby repealed.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: March 15, 2017

FILED WITH LRC: March 15, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 25, 2017 at 10:00 a.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by April 18, 2017, 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 through April 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 405 KAR 7:091.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to repeal 405 KAR 7:091. The information has been moved to 400 KAR 1:090.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute requires the cabinet to promulgate administrative regulations that are no more stringent than required by that law. Moving the information into 400 KAR 1:090 places it all in one regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes hearing, notice, and other procedural and due process provisions for the permanent regulatory SMCRA program. These provisions have been moved to 400 KAR 1:090.

(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:

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The repeal of this regulation will have no impact as the requirements are being moved to 400 KAR 1:090.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no substantive action associated with this repealer.

(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 substantive costs associated with this repealer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be no change associated with the repeal of this information. The information will exist in 400 KAR 1:090.

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

(a) Initially: There is no cost associated with the repeal of this administrative regulation.

(b) On a continuing basis: There is no cost associated with the repeal of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Not applicable

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

(9) TIERING: Is tiering applied? No, this is a repeal of an administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The cabinet's Office of Administrative Hearings.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.020 and 350.028

(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 repeal will not generate revenue.

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

(c) How much will it cost to administer this program for the first year? This repeal will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years? This repeal will not cost the agency additional funding.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Kentucky Health Benefit and Information Exchange
(Repealer)

900 KAR 10:041. Repeal of 900 KAR 10:040 and 900 KAR 10:050.

RELATES TO: KRS 194A.050(1), 42 U.S.C. 18031, 45 C.F.R. Part 155

STATUTORY AUTHORITY: KRS 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Kentucky Office of the Health Benefit and Information Exchange, has responsibility to administer the state-based American Health Benefit Exchange. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet; and to implement programs mandated by federal law or to qualify for the receipt of federal funds. In accordance with KRS 13A.310(3)(a), this administrative regulation repeals 900 KAR 10:040 and 900 KAR 10:050 as these administrative regulations were rendered obsolete with the promulgation of 900 KAR 10:200, Kentucky State Based Exchange on the federal platform.

Section 1. The following administrative regulations are hereby repealed:

(1) 900 KAR 10:040, KHBE Consumer Assistance Program and kynector certification; and

(2) 900 KAR 10:050, Individual agent participation with the Kentucky Health Benefit Exchange.

CARRIE BANAHAN, Executive Director
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: March 8, 2017

FILED WITH LRC: March 9, 2017 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on April 21, 2017 at 9:00 a.m. in Conference Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by April 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 April 30, 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 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Chandra Venettozzi, phone (502) 564-7940, email Chandra.Venettozzi@ky.gov., and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in accordance with KRS 13A.310(3)(a), repeals 900 KAR 10:040 and 900 KAR 10:050.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal 900 KAR 10:040 and 900 KAR 10:050 as these regulations are obsoleted by 900 KAR 10:200 Kentucky State Based Exchange on the Federal Platform.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by repealing 900 KAR 10:040 and 900 KAR 10:050 as these regulations are obsoleted by 900 KAR 10:200 Kentucky State Based Exchange on the Federal Platform.

(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 repealing 900 KAR 10:040 and 900 KAR 10:050 as these regulations are obsoleted by 900 KAR 10:200 Kentucky State Based Exchange on the Federal Platform.

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

(a) How the amendment will change this existing administrative regulation: This is not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment to an existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects individuals and entities that wish to participate as an application assister or an agent on the Kentucky Health Benefit Exchange.

(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 and entities that wish to participate on the Kentucky Health Benefit Exchange as an application assister or agent will now be subject to the to the requirements established in 900 KAR 10:200.

(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 will be incurred to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation repeals 900 KAR 10:040 and 900 KAR 10:050.

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

(a) Initially: This administrative regulation imposes no costs on the administrative body.

(b) On a continuing basis: This administrative regulation imposes no costs on the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary to implement the administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as this administrative regulation repeals 900 KAR 10:040 or 900 KAR 10:050.

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 affects individuals and entities that wish to participate as an application assister or agent on the Kentucky Health Benefit Exchange.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.310(3)(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? This administrative regulation will not 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? This administrative regulation will not generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? This administrative regulation imposes no costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation imposes no costs on the administrative body.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 18022, 18031, 18042, 18054, 45 C.F.R. Parts 155, 156

2. State compliance standards. 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet, and to implement programs mandated by federal law or to qualify for the receipt of federal funds. This administrative regulation repeals 900 KAR 10:040 and 900 KAR 10:050 as they are obsoleted by 900 KAR 10:200.

3. Minimum or uniform standards contained in the federal mandate. The Exchange must establish a Consumer Assistance Program. These administrative regulations are being repealed as they are obsoleted by 900 KAR 10:200.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will impose no stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Prevention and Quality Improvement
(New Administrative Regulation)

902 KAR 21:030. Pediatric Cancer Research and Treatment Grant Program.

RELATES TO: KRS 141.445, 194A.095, 211.595-597
STATUTORY AUTHORITY: KRS 194A.050(1), 211.597(2) and (3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.597(3) requires the Pediatric Cancer Research Trust Fund Board to promulgate administrative regulations necessary to carry out the provisions of KRS 211.596 and KRS 211.597. KRS 211.597(2) requires the Pediatric Cancer Research Trust Fund Board to promulgate administrative regulations to establish a competitive grant program to provide funding to specific entities offering research funding and treatment for pediatric cancer for Kentucky children impacted by the disease. This administrative regulation establishes the Pediatric Cancer Research and Treatment Grant Program.

Section 1. Definitions. (1) "Applicant" means a not-for-profit entity, academic medical center, or government agency in Kentucky offering research funding and treatment to Kentucky children impacted by pediatric cancer and applying for a grant pursuant to this administrative regulation.
(2) "Board" means the Pediatric Cancer Research Trust Fund Board created by KRS 211.596.
(3) "Funding" means a financial grant from the Pediatric Cancer Research Trust Fund created by KRS 211.595.

Section 2. Application Process. (1) An applicant may apply or reapply each year for grant funding.
(2) To apply for grant funding, an applicant shall mail to the board:
(a) A completed PCRTF 101, Pediatric Cancer Research Trust Fund, Application for Research and Treatment Grant Program:
1. Postmarked on or before the date specified in the applicable grant notice; and
2. Addressed to the Department for Public Health, Division of Prevention and Quality Improvement, Chronic Disease Prevention Branch, 275 East Main Street, Frankfort, Kentucky 40621;
(b) A project description that includes the following information:
1. The need for the funding;
2. The goals and objectives, including how many people will be affected and in what geographic area;
3. The outcomes directly related to the impact of the research;
4. An implementation plan describing how the objectives will be met;
5. A timeline for implementation of the proposed research;
6. Plans designed to measure the success of the research; and
7. Intent to provide a semi-annual progress report and a year-end progress report documenting progress toward meeting the grant objectives; and
(c) The following financial information:
1. A detailed budget of requested funds; and
2. A description of any other sources of funds for the research including in-kind participation.
(3) A faxed or incomplete application shall not be considered for funding.

Section 3. Duties of the Board. (1) The board shall:
(a) Hold meetings and conduct board business pursuant to KRS 211.596;
(b) Advertise a grant funding opportunity on the Cabinet for Health and Family Services Web site including:
1. A postmark date for submission of an application;
2. The mailing address for the application as specified in Section 2(2)(a)2 of this administrative regulation; and
3. An anticipated grant award date;
(c) Review and score applications based on the following criteria:
1. Relevancy to the mission of the Pediatric Cancer Research Trust Fund;
2. Offer of research funding and treatment specifically for pediatric cancer to Kentucky children impacted by the disease;
3. Proposal to address the prioritized list of programs and research projects the board has identified; and
4. Enhancement, but not duplication, of a program or research project currently provided in the same geographic area; and
(d) To the extent funds are available:
1. Award a Pediatric Cancer Research and Treatment Grant to a selected applicant; and
2. Notify the applicant of the award decision:
a. Within ninety (90) days after application deadline;
b. In writing; and
c. By certified mail.
(2) The board's decision for award selection shall be final.
(3) A selected applicant shall sign and return a grant agreement:
(a) To the board; and
(b) Postmarked within two (2) weeks of receipt.
(4) If a research grant is awarded, the grant shall be contingent upon a grant recipient's appropriate Institutional Review Board approval if applicable.

Section 4. Grant Objectives Reporting. (1) A grant recipient shall provide semi-annual and year-end progress reports to the board as specified in Section 2(2)(b)7.
(2) A grant recipient that is not making progress toward meeting grant objectives, as determined by the board, shall be notified in writing that objectives are not being met. The grant recipient shall:
(a) Submit to the board within thirty (30) days of receiving the notice a corrective action plan addressing the objectives that are not being met; and
(b) Reimburse the board for grant funds received to date if the corrective action plan is not implemented.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference: Form "PCRTF 101, Pediatric Cancer Research Trust Fund, Application for Research and Treatment Grant Program", 3/2017.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 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, Commissioner
VICKIE YATES BROWN GLISSON, Secretary
APPROVED BY AGENCY: March 14, 2017
FILED WITH LRC: March 14, 2017 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on April 21, 2017, at 9:00 a.m. in DCLC Room B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by April 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 April 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40602, phone 502-564-7905, fax 502-564-7573, email Tricia.Orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Laura Begin, phone 502-564-3970, ext. 4066, email Laura.Begin@ky.gov., and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Pediatric Cancer Research and Treatment Grant Program, which is a competitive grant program to provide funding to entities offering research funding and treatment for pediatric cancer for Kentucky children impacted by the disease.

(b) The necessity of this administrative regulation: KRS 211.597(3) requires the Pediatric Cancer Research Trust Fund Board to promulgate administrative regulations necessary to carry out the provisions of KRS 211.596 and 597. KRS 211.597(2) requires the board to promulgate administrative regulations for this competitive grant program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) requires the secretary adopt administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.597(2) and (3) require the promulgation of administrative regulations establishing this competitive grant program and carrying out the provisions of KRS 211.596-597.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the Pediatric Cancer Research and Treatment Grant Program, which is a competitive grant program to provide funding to entities offering research funding and treatment for pediatric cancer for Kentucky children impacted by the disease, as required by KRS 211.597(2).

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation created by the provisions of KRS 211.595-597.

(b) The necessity of the amendment to this administrative: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Not-for-profit entities, academic medical centers, and government agencies offering research funding and treatment for pediatric cancer to Kentucky children affected by the disease may apply for grant funding. Kentucky children and families impacted by the disease are expected to benefit from this grant program directed towards pediatric cancer research and treatment. The Kentucky Cancer Consortium's 2016 Cancer Action Plan stated that, in Kentucky, approximately 238 children were diagnosed with invasive childhood cancer in 2015.

(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 Pediatric Cancer Research and Treatment Grant Program is a voluntary competitive grant program. An applicant must apply using the incorporated grant application form, include a project description containing specific information, and include specific financial information. The board shall review and score applications based on specific criteria included in this administrative regulation and award a grant if funds are available. Grantees shall provide semi-annual and year-end progress reports and work to meet their grant objectives.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The Pediatric Cancer Research and Treatment Grant Program is a voluntary competitive grant program and imposes no costs. The pediatric cancer research trust fund is limited to the amount of funds it receives from the income tax checkoff created by KRS 141.445 and any other proceeds from grants, contributions, appropriations, or other moneys made available for the purposes of the fund. Costs to the board will not exceed its funding.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Pediatric Cancer Research and Treatment Grant Program is a voluntary competitive grant program. Entities offering research funding and treatment for pediatric cancer for Kentucky children impacted by the disease may be selected to receive grant funding under this administrative regulation.

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

(a) Initially: The equivalent of a half-time employee, about $50,000.00 including benefits.

(b) On a continuing basis: Estimated to be the equivalent of a half-time employee, about $50,000.00 including benefits.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The pediatric cancer research trust fund is funded by amounts collected from the income tax checkoff created in KRS 141.445 and any other proceeds from grants, contributions, appropriations, or other moneys made available for the purposes of the 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: This administrative regulation does not require an increase in fees or funding.

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

(9) TIERING: Is tiering applied? No. This administrative regulation is applicable to the Pediatric Cancer Research Trust Fund Board and applicants/grantees of its competitive grant program.

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 for Public Health administers this program pursuant to KRS 211.595.

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 211.597(2) and (3).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? Estimated to be the equivalent of a half-time employee, about $50,000.00 including benefits. Grants distributed by the Pediatric Cancer Research Trust Fund Board are limited to the amounts received from the income tax checkoff and any other proceeds from grants, contributions, appropriations, or other moneys made available for the purposes of this fund. Grants will not exceed the funds of the board.

(d) How much will it cost to administer this program for subsequent years? Estimated to be the equivalent of a half-time employee, about $50,000 including benefits. Grants distributed by the Pediatric Cancer Research Trust Fund Board are limited to the

amounts received from the income tax checkoff and any other proceeds from grants, contributions, appropriations, or other moneys made available for the purposes of this fund. Grants will not exceed the funds of the board.

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 March 6, 2017

Call to Order and Roll Call
The February meeting of the Administrative Regulation Review Subcommittee was held on Monday, March 6, 2017, at 1 p.m. in Room 149 of the Capitol Annex. Senator Harris, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the February 2017 meeting were approved.

Present were:
Members: Senators Perry Clark, Alice Forgy Kerr, Ernie Harris and Julie Raque-Adams; and Representatives Jason Petrie, and Ken Upchurch.

LRC Staff: Sarah Amburgey, Emily Caudill, Betsy Cupp, Ange Darnell, Emily Harkenrider, Karen Howard, and Carrie Klaber.

Guests: Jimmy Adams, Lisa Lang, Education Professional Standards Board; Tom Crawford, David Gordon, Melissa Russell, Department of Revenue; Bill Adcock, Florence Huffman, Board of Social Work, Ryan Halloran, Board of Licensed Occupational Therapists; Brian Judy, Board of Alcohol and Drug Counselors; John Marcus Jones, Denise Logsdon, Board of Licensure for Massage Therapy; Steve Beam, Ron Brooks, Gabe Jenkins, David Wicker, Department of Fish and Wildlife Resources; Caroline Baesler, Katie Smith, Cabinet for Economic Development; Tony Hatton, Aaron Keatley, Bruce Scott, Energy and Environment Cabinet; Amy Barker, Department of Corrections; Steve Humphress, Carol Beth Martin, Trina Summers, Christy Trout, Department of Alcoholic Beverage Control; Patrick O'Connor, Department of Insurance; Laura Begin, Angela Billings, Sue Thomas-Cox, Department of Public Health; Robert Silverthorn, Office of Inspector General; Veronica Cecil, Donna Little, Department for Medicaid Services; Tom FitzGerald, Kelley Leach, and Sonia McElroy.

The Administrative Regulation Review Subcommittee met on Monday, March 6, 2017, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Education Professional Standards Board: Certification Procedures

16 KAR 4:040. Certification fees. Jimmy Adams, executive director, represented the board.

In response to questions by Co-Chair Harris, Mr. Adams stated that a deferral situation in which a program was delayed through no fault of the teacher was exempt from the fifty (50) dollar fee. A statement of eligibility was valid for five (5) years. A certificate holder, with multiple certificates that have different renewal dates, may pay an additional fifteen (15) dollars to align the multiple certificates with one (1) common renewal date at the next expiration period.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add a citation; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add a citation; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

16 KAR 4:090. Reissuance.

A motion was made and seconded to approve the following amendments. (1) to amend the STATUTORY AUTHORITY paragraph to add a citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) 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.

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Ad Valorem Tax; Administration

103 KAR 5:121. Repeal of 103 KAR 5:120. Tom Crawford, director, Office of Property Valuation; David Gordon, executive director, Office of Property Valuation; and Melissa Russell, tax policy research consultant, Office of Tax Policy and Regulation, represented the department.

In response to a question by Co-Chair Harris, Mr. Crawford stated that these administrative regulations were being repealed because they were outdated and unnecessary.

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 Social Work

201 KAR 23:075. Continuing education for renewal. Bill Adcock, board member; Florence Huffman, executive director; and Brian Judy, assistant attorney general, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2 through 6, 9, and 11 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 4 to clarify that the fee for a provider shall be: (a) fifty (50) dollars for each one (1) day program of eight (8) hours or less; and (b) $100 for each additional one (1) day program of eight (8) hours or less; (3) to amend Section 5 to clarify that the presenter requirements shall apply to a sponsor; and (4) to make technical corrections to material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

Board of Licensure for Occupational Therapy

201 KAR 28:090. Renewals. Ryan Halloran, assistant attorney general, represented the board.

A motion was made and seconded to approve the following amendments: to amend Section 4 to delete the requirement to complete the board jurisprudence examination upon a licensee's renewal. Without objection, and with agreement of the agency, the amendments were approved.

Board of Alcohol and Drug Counselors

201 KAR 35:016. Repeal of 201 KAR 35:015. Brian Judy, assistant attorney general, represented the board.

201 KAR 35:020. Fees.

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 through 4 and 7 through 9 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 35:025. Examinations.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and the Re-Examination Application form to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 35:030. Code of Ethics.

In response to a question by Co-Chair Harris, Mr. Judy stated that all peer support specialists were recovering addicts with at least two (2) years in recovery to be eligible for registration. Most had completed a treatment program.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 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.

201 KAR 35:050. Curriculum of study.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to add citations; (2) to amend Sections 1 and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (3) to amend the Peer Support Specialist Alcohol/Drug Training Verification Form to add sections for additional required training. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 35:070. Supervision experience.

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, 4, 8, 9, and 11 to clarify when required forms shall be filed; and (3) to amend Sections 1 through 3 and 8 through 11 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 Licensure for Massage Therapy

201 KAR 42:020. Fees. John Marcus Jones, assistant attorney general, and Denise Logsdon, MS, LMT, chair, represented the board.

In response to questions by Co-Chair Harris, Ms. Logsdon stated that a nonpracticing licensee may go into inactive status. An inactive license was renewed annually, rather than biannually. A licensee with an inactive license was expected to comply with continuing education requirements and was not required to get additional training to return to active status if in compliance with continuing education requirements. If a licensee was not in compliance with continuing education requirements, the board would consider the reason for noncompliance before the licensee returned to active status.

A motion was made and seconded to approve the following amendment: to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

201 KAR 42:040. Renewal.

A motion was made and seconded to approve the following amendments: to amend Section 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

301 KAR 1:152. Asian Carp and Scaled Rough Fish Harvest Program. Steve Beam, wildlife division director; Ron Brooks, fisheries director; and David Wicker, general counsel, represented the department.

Game

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

A motion was made and seconded to approve the following amendments: to amend Section 10 to clarify the deadline. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR ECONOMIC DEVELOPMENT: Economic Development Finance Authority

307 KAR 1:031. Repeal of 307 KAR 1:030, 307 KAR 1:040, 307 KAR 1:050, and 307 KAR 1:060. Caroline Baesler, executive director and general counsel, Office of Legal Services, and Katie Smith, executive director, Office of Financial Services, represented the authority.

In response to questions by Co-Chair Harris, Ms. Baesler stated that these administrative regulations were reviewed as part of the Governor's red tape reduction initiative. One (1) administrative regulation applied to a program that no longer existed. The other three (3) administrative regulations applied to existing programs; however, the requirements for those programs had been incorporated into another administrative regulation. The program that no longer existed ceased taking applications in 2009, although there were still agreements in place for monitoring and compliance purposes.

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 Counsel; Kelley Leach, Ogden Ridge resident; and Sonia McElroy, Trimble County resident, appeared in opposition to these administrative regulations.

In response to questions by Co-Chair Harris, Mr. Scott stated that this administrative regulation package adopted the federal coal combustion residuals (CCR) rules for coal ash ponds and CCR landfills. The cabinet made changes to 401 KAR 46:101 and 46:120 in response to public comments. As a result of the new requirements, coal ash ponds throughout Kentucky would close pursuant to protective closure requirements. Going forward, CCRs would be disposed of in landfills, rather than held in coal ash ponds.

Mr. Leach asked the Subcommittee not to accept the proposed changes to the CCR requirements. If CCR disposal did not pose a problem, why were there existing administrative regulations to govern them? Louisville Gas and Electric company's original CCR landfill permit required monitoring wells to ensure that groundwater was not contaminated. Most landowners adjacent to CCR landfills could not afford litigation or private monitoring. Recent contamination at Herrington Lake may not have been detected under the proposed permit-by-rule program.

Ms. McElroy stated that she lived in Trimble County and was opposed to the Louisville Gas and Electric company's CCR landfill. Many notices of deficiency had been issued to the facility. Residents near the Cane Run plant had to live with blowing fly ash, which lowered property values and resulted in health problems. Kentucky was fifth in the United States for coal ash contamination. It was necessary to have an agency to actively regulate coal ash facilities, including to regulate public notification and education of affected communities. The requirements should stay as they are and not be amended by this proposed administrative regulation package because facilities could not be counted upon to properly regulate themselves.

Mr. FitzGerald stated that CCRs were known to cause environmental damage. There were seventeen (17) potentially

toxic elements commonly present in CCRs. Leachates from CCR facilities typically exceeded drinking water standards, and communities near CCR landfills often used groundwater as a drinking water source. Leachate studies showed that, in some cases, heavy metal leachate from CCRs was higher than hazardous waste standards. There was no federal mandate for the cabinet to delete the existing permit process. The proposed, self-certifying standards required information to be made public on the Internet; however, the required information was minimal and of little use to regulators and communities. Agency oversight was necessary for activities such as groundwater monitoring. Monitoring wells recently constructed without cabinet oversight were shown to not comply with standards, and some were constructed in the wrong place to detect potential contamination. A cabinet inspection prior to commencing operation would no longer be required. The Subcommittee should find these administrative regulations deficient because they were inconsistent with KRS 224.10-100(19), which required the cabinet to regulate permits for waste disposal sites and facilities and to compel applications accompanied by plans and specifications.

Mr. Scott stated that the problems illustrated by those testifying against these administrative regulations demonstrated the need for these new requirements. The problems described occurred pursuant to the existing administrative regulations. The cabinet would continue to inspect and monitor CCR disposal, just as it had done previously. KRS 13A.030(2)(a) required the Subcommittee to find an administrative regulation deficient if it imposed stricter state requirements than those required by a federal mandate. There were existing permit-by-rule requirements in place without this administrative regulation package. If permit-by-rule was incompatible with KRS 224.10-100(19), then both the current requirements and the proposed package were incompatible.

Division of Waste Management: Special Waste

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

At the February 10, 2017, meeting of the Administrative Regulation Review Subcommittee a motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO 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.

At the February 10, 2017, meeting of the Administrative Regulation Review Subcommittee 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.

At the February 10, 2017, meeting of the Administrative Regulation Review Subcommittee 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.

At the February 10, 2017, meeting of the Administrative Regulation Review Subcommittee 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.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 6:170. Green River Correctional Complex. Amy Barker, assistant general counsel, represented the department.

In response to a question by Co-Chair Harris, Ms. Barker stated that this administrative regulation was the annual update to the Green River Correctional Complex policies.

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Licensing

804 KAR 4:370. Entertainment destination center license. Steve Humphress, general counsel; Carol Beth Martin, malt beverage administrator; Trina Summers, distilled spirits administrator; and Christy Trout, commissioner, represented the department.

In response to a question by Co-Chair Harris, Ms. Trout stated that the entertainment destination center license was an existing licensing program.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to correct citations. Without objection, and with agreement of the agency, the amendments were approved.

Department of Insurance: Commissioner's Office

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. Patrick O'Connor II, executive advisor, represented the department.

A motion was made and seconded to approve the following amendment: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to add a cross reference. Without objection, and with agreement of the agency, the amendment was approved.

806 KAR 2:097. Filing of local government premium tax ordinances; notification to insurers.

Agent Licensing Division: Agents, Consultants, Solicitors, and Adjusters

806 KAR 9:360 & E. Pharmacy benefit manager license.

A motion was made and seconded to approve the following amendment: to amend Section 2 to clarify what the commissioner considers as "good cause" to avoid the denial of an application if missing or necessary information is not received within thirty (30) days from the date of notification by the commissioner. Without objection, and with agreement of the agency, the amendment was approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Division of Public Health Protection and Safety: Sanitation

902 KAR 10:085. Kentucky on-site sewage disposal systems. Laura Begin, regulation coordinator, and Angela Billings, environmental health program administrator, represented the division.

In response to a question by Co-Chair Harris, Ms. Begin stated that the changes to this administrative regulation were the result of 2016 legislation to provide greywater conservation credits. If certain environmentally conservative types of systems were installed, the size of the chambers may be reduced to benefit these systems.

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 through 4, 6, 7, and 9 through 12 to comply with the drafting and formatting requirements of KRS Chapter 13A; (3) to amend Sections 1, 3, and 6 to include Web site addresses for the referenced handbook and manuals; and (4) to amend Section 6 to clarify that certain leaching chamber sizes shall be established on a case-by-case basis pursuant to

technological advances. Without objection, and with agreement of the agency, the amendments were approved.

Office of Inspector General: Division of Health Care: Health Services and Facilities

902 KAR 20:091 & E. Facilities specifications, operation and services; community mental health center. General Robert Silverthorn, Jr., inspector general, represented the office.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct citations; and (2) to amend Sections 1, 3, and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 20:280. Prescribed pediatric extended care centers.

In response to a question by Co-Chair Harris, General Silverthorn stated that this administrative regulation used the term "primary care provider," rather than "primary care physician," for consistency with the authorizing statute.

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 Sections 1, 10, and 12 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Division of Prevention and Quality Improvement: Programs for the Underserved

902 KAR 21:020. Kentucky Colon Cancer Screening Program. Laura Begin, regulation coordinator, and Sue Thomas – Cox, chronic disease branch manager, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend Section 5 to delete provisions that were governed by contract; and (2) to amend Sections 6 and 7 to comply with the formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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. Veronica Cecil, deputy commissioner, and Donna Little, regulatory compliance senior policy advisor, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add citations; (2) to amend Section 1 to add three (3) definitions; and (3) to amend Sections 1, 4, and 8 through 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.

907 KAR 1:047 & E. Community mental health center primary care services.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add citations; and (2) to amend Sections 3, 6, and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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.

In response to a question by Co-Chair Harris, Ms. Cecil stated that the six (6) month waiting period established in this administrative regulation and 907 KAR 4:030 was being deleted because it was not a federal requirement and it left children without creditable coverage during the waiting period.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO 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.

907 KAR 4:030. Kentucky Children's Health Insurance Program Phase III Title XXI of the Social Security Act.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add citations; and (2) to amend Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred to the April 11, 2017, meeting of the Subcommittee:

GENERAL GOVERNMENT CABINET: Board of Physical Therapy

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

Board of Prosthetics, Orthotics and Pedorthics

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

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.

CABINET FOR HEALTH AND FAMILY SERVICES: Division of Community Alternatives: Behavioral Health

907 KAR 15:005 & E. Definitions for 907 KAR Chapter 15.

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.

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.

Commissioner's Office: Managed Care

907 KAR 17:015 & E. Managed care organization requirements and policies relating to providers.

The Subcommittee adjourned at 2:10 p.m. until April 11, 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.

NONE

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates **J - 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 **J - 14**

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 43 of the *Administrative Register of Kentucky*.

Technical Amendment Index **J - 27**

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 **J - 30**

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.

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 before being printed in Register
*** Emergency expired after 180 days
‡ Withdrawn deferred more than twelve months (KRS 13A.300(4) and 13A.315(1)(d))
(r) Repealer regulation: KRS 13A.310 - on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

EMERGENCY ADMINISTRATIVE REGULATIONS:

EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

9 KAR 1:040E	2866	5-13-2016
Replaced		See 43 Ky.R.
301 KAR 2:221E	1699	11-3-2015
Resubmitted	2868	5-11-2016
Replaced		See 43 Ky.R.
301 KAR 2:222E	1701	11-3-2015
Resubmitted	2870	5-11-2016
Replaced		See 43 Ky.R.
301 KAR 2:225E	1111	8-21-2015
Resubmitted	2875	5-11-2016
Replaced	2944	8-4-2016
401 KAR 31:040E	2877	4-26-2016
Replaced		See 43 Ky.R.
601 KAR 2:030E	1114	9-1-2015
Resubmitted	2702	3-29-2016
Expired		10-25-2016
921 KAR 3:035E	2708	4-1-2016
Replaced		See 43 Ky.R.
922 KAR 1:320E	2530	2-26-2016
Replaced		See 43 Ky.R.
922 KAR 2:020E	2534	2-26-2016
Replaced		See 43 Ky.R.
922 KAR 2:160E	2540	2-26-2016
Replaced		See 43 Ky.R.
922 KAR 2:260E	2550	2-26-2016
Replaced		See 43 Ky.R.

ORDINARY ADMINISTRATIVE REGULATIONS:

9 KAR 1:040		
Amended	2911	See 43 Ky.R.
11 KAR 4:080		
Amended	2611	7-1-2016
11 KAR 5:145		
Amended	2612	7-1-2016
103 KAR 3:050		
Amended	2614	
As Amended	2881	7-1-2016
200 KAR 30:010		
Amended	2913	See 43 Ky.R.
200 KAR 30:020		
Amended	2914	See 43 Ky.R.
200 KAR 30:030		
Amended	2916	See 43 Ky.R.
200 KAR 30:040		
Amended	2918	See 43 Ky.R.
200 KAR 30:050		
Repealed	2997	10-7-2016
200 KAR 30:051*(r)*	2997	10-7-2016
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.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	42 Ky.R. Page No.	Effective Date
201 KAR 46:070		
Amended	2933	See 43 Ky.R.
301 KAR 2:095		
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	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	42 Ky.R. Page No.	Effective Date
As Amended	2899	6-22-2016
815 KAR 20:195		
Amended	2661	
As Amended	2904	6-22-2016
902 KAR 4:120		
Amended	2982	See 43 Ky.R.
902 KAR 100:030		
Amended	2985	See 43 Ky.R.
902 KAR 100:080		
Amended	2990	See 43 Ky.R.
902 KAR 100:085		
Amended	2993	See 43 Ky.R.
921 KAR 3:035		
Amended	2841	See 43 Ky.R.
922 KAR 1:320		
Amended	2663	See 43 Ky.R.
922 KAR 2:020		
Amended	2668	See 43 Ky.R.
922 KAR 2:160		
Amended	2673	See 43 Ky.R.
922 KAR 2:260	2690	See 43 Ky.R.

SYMBOL KEY:

* Statement of Consideration not filed by deadline

** Withdrawn before being printed in Register

*** Emergency expired after 180 days

‡ Withdrawn deferred more than twelve months (KRS 13A.300(4) and 13A.315(1)(d))

(r) Repealer regulation: KRS 13A.310 - on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	43 Ky.R. Page No.	Effective Date

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
Replaced	1004	3-3-2017
101 KAR 2:180E	877	11-15-2016
Replaced	1008	3-3-2017
101 KAR 3:045E	880	11-15-2016
Replaced	1011	3-3-2017
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
Replaced	1125	3-3-2017
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
Replaced	1381	3-3-2017
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	3-3-2017
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	3-3-2017
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
12 KAR 1:155		
Amended	431	
As Amended	673	12-2-2016
13 KAR 2:110		
Amended	1625	
13 KAR 2:060		
Amended	758	
As Amended	1162	1-30-2017
13 KAR 4:010	833	
As Amended	1163	1-30-2017
16 KAR 1:010		
Amended	1205	
16 KAR 1:030		
Amended	585	
AmComments	1185	
As Amended	1367	3-3-2017
16 KAR 4:040		
Amended	1207	
As Amended	1714	
16 KAR 4:080	1330	
As Amended	1715	
16 KAR 4:090	1331	
As Amended	1715	
16 KAR 6:010		
Amended	588	

Regulation Number	43 Ky.R. Page No.	Effective Date
AmComments	1188	
As Amended	1505	
16 KAR 6:020		
Amended	1627	
16 KAR 7:010		
Amended	592	
AmComments	1192	3-3-2017
As Amended	1370	
30 KAR 7:010		
Amended	250	11-4-2016
30 KAR 7:020	1113	3-3-2017
31 KAR 4:170		
Amended	1000	
As Amended	1375	3-3-2017
40 KAR 2:145	358	
As Amended	674	12-2-2016
40 KAR 2:150		
Amended	251	
AmComments	556	
As Amended	675	12-2-2016
40 KAR 2:250		
Recodified as 40 KAR 2:155		6-30-2016
101 KAR 1:325		
Amended	1001	3-3-2017
101 KAR 2:034		
Amended	1004	3-3-2017
101 KAR 2:046		
Amended	1631	
101 KAR 2:056		
Amended	1633	
101 KAR 2:066		
Amended	1634	
101 KAR 2:180		
Amended	1008	3-3-2017
101 KAR 2:210		
Amended	599	1-6-2017
101 KAR 3:045		
Amended	1011	3-3-2017
101 KAR 5:016*(r)*	1114	3-3-2017
102 KAR 1:165		
Amended	258	
As Amended	528	11-4-2016
102 KAR 1:290		
Amended	260	
As Amended	530	11-4-2016
102 KAR 1:320		
Amended	262	
As Amended	530	11-4-2016
103 KAR 3:011*(r)*	1115	3-3-2017
103 KAR 5:121*(r)*	1333	
103 KAR 8:160	360	
AmComments	563	12-2-2016
103 KAR 15:021*(r)*	1334	
103 KAR 15:180		
Amended	266	11-4-2016
103 KAR 16:031*(r)*	1335	
103 KAR 16:221*(r)*	1336	
103 KAR 19:031*(r)*	1337	
103 KAR 20:011*(r)*	1338	
103 KAR 28:040		
Repealed	947	1-6-2017
103 KAR 28:041*(r)*	636	
As Amended	947	1-6-2017
103 KAR 41:020		
Repealed	947	1-6-2017
103 KAR 41:021*(r)*	637	
As Amended	947	1-6-2017
103 KAR 44:130		
Repealed	947	1-6-2017
103 KAR 44:131*(r)*	638	
As Amended	947	1-6-2017
106 KAR 1:081		
Amended	1211	
As Amended	1506	
106 KAR 1:091		
Amended	1224	
As Amended	1519	
106 KAR 1:101		
Amended	1229	
As Amended	1524	
106 KAR 1:111		
Amended	1231	
As Amended	1524	
106 KAR 1:121		
Amended	1232	
As Amended	1525	
106 KAR 1:131		
Amended	1234	
As Amended	1526	
200 KAR 2:006		
Amended	761	
As Amended	1164	
200 KAR 5:355	477	
AmComments	704	
As Amended	947	1-6-2017
200 KAR 30:010		See 42 Ky.R.
As Amended	393	10-7-2016
200 KAR 30:020		See 42 Ky.R.
As Amended	394	10-7-2016
200 KAR 30:030		See 42 Ky.R.
As Amended	395	10-7-2016
200 KAR 30:040		See 42 Ky.R.
As Amended	395	10-7-2016
201 KAR 1:015		
Amended	600	1-6-2017
201 KAR 1:065		
Amended	601	
As Amended	949	1-6-2017
201 KAR 1:100		
Amended	603	
As Amended	950	1-6-2017
201 KAR 2:045		
Amended	606	
As Amended	952	12-14-2016
201 KAR 2:050		
Amended	607	
As Amended	953	12-14-2016
201 KAR 2:074		
Amended	1796	
201 KAR 2:076		
Amended	609	
Withdrawn		11-7-2016
201 KAR 2:350		
Repealed	639	12-14-2016
201 KAR 2:351*(r)*	639	12-14-2016
201 KAR 9:025		See 42 Ky.R.
As Amended	12	7-20-2016
201 KAR 9:081		See 42 Ky.R.
As Amended	12	7-20-2016
201 KAR 9:240		See 42 Ky.R.
As Amended	15	7-20-2016
201 KAR 9:250		See 42 Ky.R.
As Amended	192	8-17-2016
201 KAR 9:270		
Amended	1435	
AmComments	1777	
201 KAR 13:040		See 42 Ky.R.
As Amended	17	7-20-2016
201 KAR 13:050		See 42 Ky.R.
As Amended	19	7-20-2016

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	43 Ky.R. Page No.	Effective Date
201 KAR 14:015		See 42 Ky.R.
As Amended	194	9-2-2016
201 KAR 14:030		See 42 Ky.R.
As Amended	195	9-2-2016
201 KAR 14:045		See 42 Ky.R.
As Amended	195	9-2-2016
201 KAR 14:090		See 42 Ky.R.
As Amended	195	9-2-2016
201 KAR 14:110		See 42 Ky.R.
As Amended	196	9-2-2016
201 KAR 14:125		
Amended	269	
AmComments	566	
As Amended	681	12-2-2016
201 KAR 14:150		See 42 Ky.R.
As Amended	197	9-2-2016
201 KAR 14:180		See 42 Ky.R.
As Amended	198	9-2-2016
201 KAR 18:050		
Repealed	640	1-6-2017
201 KAR 18:051*(r)*	640	1-6-2017
201 KAR 20:056		
Amended	1799	
201 KAR 20:057		
Amended	1802	
201 KAR 20:215		
Amended	1015	3-3-2017
201 KAR 20:220		
Amended	1018	
As Amended	1375	3-3-2017
201 KAR 20:411		
Amended	433	11-16-2016
201 KAR 20:520		See 42 Ky.R.
As Amended	19	7-20-2016
201 KAR 21:025		
Amended	766	
As Amended	1169	2-3-2017
201 KAR 21:041		
Amended	768	2-3-2017
201 KAR 22:020		
Amended	1237	
As Amended	1528	
201 KAR 22:045		
Amended	270	
As Amended	533	10-19-2016
201 KAR 22:053		
Amended	1240	
201 KAR 23:055		See 42 Ky.R.
AmComments	234	
As Amended	395	9-21-2016
201 KAR 23:075		See 42 Ky.R.
AmComments	235	
Withdrawn		7-29-2016
Amended	1021	
AmComments	1580	
As Amended	1716	
201 KAR 26:125		
Amended	1805	
201 KAR 26:130		
Amended	1807	
201 KAR 26:140		
Amended	1809	
201 KAR 26:145		
Amended	1811	
201 KAR 26:155		
Amended	1814	
201 KAR 26:160		
Amended	1816	
201 KAR 26:165		
Amended	1818	
201 KAR 26:171		
Amended	1819	
201 KAR 26:175		
Amended	1823	
201 KAR 26:180		
Amended	1826	
201 KAR 26:185		
Amended	1827	
201 KAR 26:190		
Amended	1829	
201 KAR 26:200		
Amended	1831	
201 KAR 26:210		
Amended	1833	
201 KAR 26:215		
Amended	1834	
201 KAR 26:225	1900	
201 KAR 26:250		
Amended	1836	
201 KAR 26:280		
Amended	1838	
201 KAR 26:290		
Amended	1840	
201 KAR 27:005		
Amended	273	
AmComments	706	1-6-2017
201 KAR 27:007		
Amended	275	
AmComments	708	1-6-2017
201 KAR 27:008		
Amended	276	
AmComments	710	
As Amended	953	1-6-2017
201 KAR 27:011		
Amended	280	
AmComments	713	
As Amended	955	1-6-2017
201 KAR 27:012		
Amended	291	
AmComments	724	1-6-2017
201 KAR 27:016		
Amended	294	
AmComments	727	
As Amended	965	1-6-2017
201 KAR 27:017		
Amended	304	
AmComments	737	
As Amended	974	1-6-2017
201 KAR 27:020		
Amended	309	
AmComments	741	1-6-2017
201 KAR 27:021	364	
AmComments	744	
As Amended	978	1-6-2017
201 KAR 27:035		
Repealed	366	1-6-2017
201 KAR 27:036*(r)*	366	1-6-2017
201 KAR 27:040		
Amended	311	
AmComments	746	1-6-2017
201 KAR 27:045		
Repealed	366	1-6-2017
201 KAR 27:050		
Repealed	366	1-6-2017
201 KAR 27:055		
Repealed	366	1-6-2017
201 KAR 27:060		
Repealed	366	1-6-2017
201 KAR 27:065		
Repealed	366	1-6-2017

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	43 Ky.R. Page No.	Effective Date
201 KAR 27:070		
Repealed	366	1-6-2017
201 KAR 27:090		
Repealed	366	1-6-2017
201 KAR 27:100		
Repealed	366	1-6-2017
201 KAR 27:105	367	
AmComments	748	
As Amended	979	1-6-2017
201 KAR 28:090		
Amended	1026	
As Amended	1720	
201 KAR 28:200		
Amended	1028	
Withdrawn		3-2-2017
201 KAR 28:230	1116	
201 KAR 29:015		See 42 Ky.R.
As Amended	198	8-17-2016
201 KAR 30:030		
Amended	312	
As Amended	535	11-4-2016
201 KAR 32:030		See 42 Ky.R.
AmComments	240	
As Amended	536	10-19-2016
201 KAR 32:050		
Amended	1841	
201 KAR 32:060		
Amended	1843	
201 KAR 35:016*(r)*	1339	
201 KAR 35:020		
Amended	1243	
As Amended	1721	
201 KAR 35:025	1340	
As Amended	1722	
201 KAR 35:030		
Amended	1245	
AmComments	1585	
As Amended	1723	
201 KAR 35:050		
Amended	1248	
AmComments	1588	
As Amended	1725	
201 KAR 35:070		
Amended	1250	
As Amended	1726	
201 KAR 36:005	835	
As Amended	1529	
201 KAR 36:020		
Amended	770	
AmComments	1392	
201 KAR 36:030		
Amended	771	
As Amended	1531	
201 KAR 36:040		
Amended	774	
AmComments	1393	
As Amended	1533	
201 KAR 36:045	837	
As Amended	1540	
201 KAR 36:050		
Amended	781	
AmComments	1400	
201 KAR 36:055	838	
201 KAR 36:060		
Amended	783	
AmComments	1402	
As Amended	1540	
201 KAR 36:065	840	
AmComments	1405	
201 KAR 36:070		
Amended	786	
AmComments	1407	
As Amended	1543	
201 KAR 36:075	841	
AmComments	1410	
As Amended	1545	
201 KAR 36:090	843	
AmComments	1412	
As Amended	1546	
201 KAR 38:020		
Amended	1254	
As Amended	1547	
201 KAR 38:030		
Amended	1255	
As Amended	1548	
201 KAR 38:070		
Amended	1259	
As Amended	1550	
201 KAR 39:001		
Amended	1636	
201 KAR 39:030		
Amended	1639	
201 KAR 39:050		
Amended	1846	
201 KAR 39:070		
Amended	1640	
201 KAR 42:020		
Amended	790	
As Amended	1729	
201 KAR 42:040		
Amended	792	
As Amended	1729	
201 KAR 43:110	149	10-7-2016
201 KAR 44:040		
Amended	1438	
201 KAR 45:100		
Amended	1642	
201 KAR 45:110		See 42 Ky.R.
As Amended	537	11-4-2016
Amended	1643	
201 KAR 45:120		
Amended	1644	
201 KAR 45:130		
Amended	1646	
201 KAR 46:020		See 42 Ky.R.
As Amended	199	8-17-2016
201 KAR 46:040		
Amended	1648	
201 KAR 46:060		
Amended	1651	
201 KAR 46:070		See 42 Ky.R.
As Amended	200	8-17-2016
Amended	1653	
201 KAR 46:090		
Amended	1654	
201 KAR 46:020		See 42 Ky.R.
As Amended	199	8-17-2016
201 KAR 46:070		See 42 Ky.R.
As Amended	200	8-17-2016
201 KAR 47:010	641	
As Amended	1170	2-3-2017
201 KAR 47:020	644	
As Amended	1172	2-3-2017
202 KAR 7:501		
Amended	78	
Withdrawn		9-15-2016
202 KAR 7:520		
Amended	94	
Withdrawn		9-15-2016
202 KAR 7:810	1118	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	43 Ky.R. Page No.	Effective Date
As Amended	1551	
202 KAR 10:010	844	
AmComments	1199	
202 KAR 10:020	847	
As Amended	1553	
202 KAR 10:030	1120	
As Amended	1553	
301 KAR 1:015		
Amended	315	10-6-2016
301 KAR 1:152		
Amended	1440	
301 KAR 1:201		
Amended	317	
As Amended	538	10-6-2016
301 KAR 2:049		
Amended	436	
As Amended	1173	2-3-2017
301 KAR 2:075		
Amended	1848	
301 KAR 2:083		
Amended	1850	
301 KAR 2:122		See 42 Ky.R.
As Amended	20	7-19-2016
301 KAR 2:132		
Amended	322	10-6-2016
Amended	1656	
301 KAR 2:172		
Amended	1442	
As Amended	1731	
301 KAR 2:176		See 42 Ky.R.
As Amended	200	8-4-2016
301 KAR 2:178		
Amended	1661	
301 KAR 2:221		See 42 Ky.R.
As Amended	202	8-4-2016
301 KAR 2:222		See 42 Ky.R.
As Amended	203	8-4-2016
301 KAR 2:226		See 42 Ky.R.
As Amended	21	7-19-2016
301 KAR 2:251		
Amended	440	
As Amended	1176	
301 KAR 3:015		
Amended	1261	
As Amended	1555	
301 KAR 5:040		See 42 Ky.R.
As Amended	206	8-4-2016
302 KAR 39:020		
Amended	1031	
As Amended	1377	3-3-2017
307 KAR 1:031(r)	1493	
400 KAR 1:001		
Amended	1853	
400 KAR 1:031(r)	1901	
400 KAR 1:090		
Amended	1855	
400 KAR 1:100	1902	
401 KAR 4:070	848	
401 KAR 31:040		See 42 Ky.R.
As Amended	207	8-4-2016
401 KAR 45:010		
Amended	794	
As Amended	1557	
401 KAR 45:060		
Amended	796	
As Amended	1558	
401 KAR 46:101	850	
AmComments	1413	
As Amended	1558	
401 KAR 46:110	852	
401 KAR 46:120	854	
AmComments	1415	
As Amended	1559	
401 KAR 50:060		
Amended	1866	
401 KAR 51:010		See 42 Ky.R.
AmComments	242	
As Amended	396	10-6-2016
401 KAR 53:010		See 42 Ky.R.
As Amended	22	7-19-2016
401 KAR 60:005		
Amended	1033	
As Amended	1378	3-3-2017
401 KAR 63:002		
Amended	1037	3-3-2017
401 KAR 63:060		
Amended	1043	3-3-2017
401 KAR 100:011(r)	1906	
405 KAR 5:095		
Amended	1869	
405 KAR 7:092		
Amended	1876	
405 KAR 7:093(r)	1907	
501 KAR 6:020		See 42 Ky.R.
As Amended	24	8-5-2016
Amended	444	
AmComments	749	
As Amended	980	1-6-2017
Amended	1446	
AmComments	1780	
501 KAR 6:030		
Amended	1448	
501 KAR 6:040		
Amended	1889	
501 KAR 6:060		
Amended	1669	
501 KAR 6:110		
Amended	99	
As Amended	402	10-7-2016
501 KAR 6:150		
Amended	797	
As Amended	1179	2-3-2017
501 KAR 6:160		
Amended	101	10-7-2016
501 KAR 6:170		
Amended	1450	
503 KAR 5:090		
Amended	446	
As Amended	682	12-2-2016
600 KAR 5:011*(r)*	479	
Withdrawn		10-4-2016
600 KAR 6:061*(r)*	480	
Withdrawn		9-22-2016
601 KAR 1:018		
Amended	1890	
601 KAR 1:029		
Repealed	684	12-2-2016
601 KAR 1:060		
Repealed	684	12-2-2016
601 KAR 1:075		
Repealed	684	12-2-2016
601 KAR 1:095		
Repealed	684	12-2-2016
601 KAR 1:101		
Repealed	684	12-2-2016
601 KAR 1:110		
Repealed	684	12-2-2016
601 KAR 1:145		
Repealed	684	12-2-2016
601 KAR 1:190		

Regulation Number	43 Ky.R. Page No.	Effective Date
Repealed	684	12-2-2016
601 KAR 1:230		
Repealed	684	12-2-2016
601 KAR 1:231*(r)*	481	
As Amended	684	12-2-2016
601 KAR 2:010		
Repealed	482	12-2-2016
601 KAR 2:011*(r)*	482	12-2-2016
601 KAR 2:030		
Amended	1049	
601 KAR 9:010		
Repealed	483	12-2-2016
601 KAR 9:020		
Repealed	483	12-2-2016
601 KAR 9:060		
Repealed	483	12-2-2016
601 KAR 9:065		
Repealed	483	12-2-2016
601 KAR 9:095		
Repealed	483	12-2-2016
601 KAR 9:105		
Repealed	483	12-2-2016
601 KAR 9:111*(r)*	483	12-2-2016
601 KAR 40:010		
Repealed	484	12-2-2016
601 KAR 40:011*(r)*	484	12-2-2016
602 KAR 15:011*(r)*	486	
Withdrawn		11-2-2016
602 KAR 20:090		
Repealed	487	12-2-2016
602 KAR 20:091*(r)*	487	12-2-2016
603 KAR 1:030		
Repealed	488	12-2-2016
603 KAR 1:031*(r)*	488	12-2-2016
603 KAR 2:020	856	
AmComments	1418	
As Amended	1561	
603 KAR 4:045		
Repealed	489	12-2-2016
603 KAR 4:046*(r)*	489	12-2-2016
603 KAR 5:020		
Repealed	684	12-2-2016
603 KAR 5:030		
Repealed	684	12-2-2016
603 KAR 5:080		
Repealed	684	12-2-2016
603 KAR 5:090		
Repealed	684	12-2-2016
603 KAR 5:301		
Repealed	684	12-2-2016
603 KAR 5:311*(r)*	490	
As Amended	684	12-2-2016
603 KAR 7:010		
Repealed	491	12-2-2016
603 KAR 7:040		
Repealed	491	12-2-2016
603 KAR 7:050		
Repealed	491	12-2-2016
603 KAR 7:060		
Repealed	491	12-2-2016
603 KAR 7:070		
Repealed	491	12-2-2016
603 KAR 7:071*(r)*	491	12-2-2016
603 KAR 8:011*(r)*	492	
Withdrawn		10-4-2016
603 KAR 9:021*(r)*	493	
Withdrawn		11-2-2016
605 KAR 1:010		
Repealed	494	12-2-2016
605 KAR 1:011*(r)*	494	12-2-2016
702 KAR 3:170		
Repealed	495	1-30-2017
702 KAR 3:170		
Repealed	495	1-30-2017
702 KAR 3:171*(r)*	495	1-30-2017
702 KAR 6:090		
Amended	1671	
702 KAR 7:065		
Amended	102	
AmComments	418	
As Amended	542	10-10-2016
703 KAR 4:040		
Repealed	150	11-4-2016
703 KAR 4:041*(r)*	150	11-4-2016
703 KAR 5:070		
Amended	1264	
704 KAR 3:340		
Repealed	152	11-4-2016
704 KAR 3:342*(r)*	152	11-4-2016
705 KAR 4:231		
Amended	449	
As Amended	1180	1-30-2017
739 KAR 2:040		
Amended	327	
As Amended	981	1-6-2017
739 KAR 2:140	153	
As Amended	403	9-28-2016
750 KAR 1:030		
Amended	1673	
755 KAR 1:080	369	11-14-2016
780 KAR 4:010		
Repealed	496	1-30-2017
780 KAR 4:010		
Repealed	496	1-30-2017
780 KAR 4:012*(r)*	496	1-30-2017
780 KAR 7:060		See 42 Ky.R.
As Amended	208	9-2-2016
787 KAR 1:070		
Amended	612	
789 KAR 1:010		
Amended	613	
As Amended	983	1-6-2017
803 KAR 2:180		
Amended	330	
As Amended	685	12-2-2016
803 KAR 2:300		
Amended	1265	
803 KAR 2:303		
Amended	1267	
As Amended	1562	
803 KAR 2:305		
Amended	1269	
803 KAR 2:308		
Amended	1271	
As Amended	1562	
803 KAR 2:313		
Amended	1273	
As Amended	1563	
803 KAR 2:317		
Amended	1275	
As Amended	1563	
803 KAR 2:307		See 42 Ky.R.
As Amended	209	9-2-2016
803 KAR 2:320		
Amended	1675	
803 KAR 2:400		See 42 Ky.R.
As Amended	210	9-2-2016
803 KAR 2:403		
Amended	1681	
803 KAR 2:412		

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	43 Ky.R. Page No.	Effective Date
Amended	106	
As Amended	985	1-6-2017
803 KAR 2:425		
Amended	1683	
803 KAR 2:500		
Amended	1685	
803 KAR 25:010		See 42 Ky.R
AmComments	28	
As Amended	404	10-7-2016
804 KAR 1:071*(r)*	498	
AmComments	996	2-3-2017
804 KAR 1:090		
Repealed	996	2-3-2017
804 KAR 1:120		
Repealed	996	2-3-2017
804 KAR 3:080		
Repealed	499	12-2-2016
804 KAR 3:081*(r)*	499	12-2-2016
804 KAR 3:100		
Amended	1687	
804 KAR 4:040		
Repealed	500	12-2-2016
804 KAR 4:041*(r)*	500	12-2-2016
804 KAR 4:050		
Repealed	500	12-2-2016
804 KAR 4:150		
Repealed	500	12-2-2016
804 KAR 4:310		
Repealed	500	12-2-2016
804 KAR 4:340		
Repealed	500	12-2-2016
804 KAR 4:370		
Amended	1452	
As Amended	1733	
804 KAR 4:380		
Repealed	370	11-4-2016
804 KAR 4:381*(r)*	370	11-4-2016
804 KAR 4:385		
Repealed	500	12-2-2016
804 KAR 4:390		
Amended	332	
As Amended	545	11-4-2016
804 KAR 4:400		
Amended	334	
As Amended	546	11-4-2016
804 KAR 4:410		
Amended	336	
As Amended	547	11-4-2016
804 KAR 5:030		
Repealed	501	12-2-2016
804 KAR 5:031*(r)*	501	12-2-2016
804 KAR 5:050		
Repealed	501	12-2-2016
804 KAR 7:050		
Repealed	502	12-2-2016
804 KAR 7:051*(r)*	502	12-2-2016
804 KAR 8:040		
Repealed	503	12-2-2016
804 KAR 8:041*(r)*	503	12-2-2016
804 KAR 8:060		
Repealed	503	12-2-2016
804 KAR 9:010		
Amended	1055	3-3-2017
804 KAR 9:020		
Repealed	504	12-2-2016
804 KAR 9:021*(r)*	504	12-2-2016
804 KAR 9:030		
Repealed	504	12-2-2016
804 KAR 10:010		
Amended	1277	
804 KAR 10:021*(r)*	1341	
804 KAR 11:010		
Amended	338	
AmComments	752	1-6-2017
804 KAR 11:020		
Repealed	505	12-2-2016
804 KAR 11:021*(r)*	505	12-2-2016
806 KAR 2:011*(r)*	1342	
As Amended	1734	
806 KAR 2:097		
Amended	1278	
806 KAR 3:210		
Amended	1280	
Withdrawn	**	2-1-2017
806 KAR 9:360	1123	
AmComments	1590	
As Amended	1735	
806 KAR 18:020		
Amended	1291	
808 KAR 1:080		
Repealed	371	11-4-2016
808 KAR 1:081*(r)*	371	11-4-2016
808 KAR 1:100		
Repealed	371	11-4-2016
808 KAR 1:111*(r)*	1344	
808 KAR 1:160	372	
As Amended	547	11-4-2016
808 KAR 3:020		
Amended	1292	
808 KAR 3:031*(r)*	1345	
808 KAR 4:020		
Repealed	375	11-4-2016
808 KAR 4:021*(r)*	375	11-4-2016
808 KAR 5:011*(r)*	1346	
808 KAR 7:031*(r)*	1347	
808 KAR 9:050		See 42 Ky.R.
As Amended	25	8-5-2016
808 KAR 11:010		
Repealed	376	11-4-2016
808 KAR 11:011*(r)*	376	11-4-2016
808 KAR 12:021		
Amended	110	11-4-2016
808 KAR 12:055	155	
As Amended	548	11-4-2016
810 KAR 1:009		
Amended	114	9-9-2016
811 KAR 1:220		
Amended	1299	
As Amended	1564	
811 KAR 2:190		
Amended	118	10-7-2016
811 KAR 2:215		
Amended	1294	
815 KAR 7:120		
Amended	452	
Withdrawn		8-24-2016
815 KAR 20:010		
Amended	615	
As Amended	987	1-6-2017
815 KAR 20:020		
Amended	455	
As Amended	685	11-16-2016
815 KAR 20:060		
Amended	621	1-6-2017
815 KAR 20:080		
Amended	460	11-16-2016
815 KAR 20:090		
Amended	461	11-16-2016
815 KAR 20:120		
Amended	466	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	43 Ky.R. Page No.	Effective Date
As Amended	689	11-16-2016
815 KAR 20:130		
Amended	624	1-6-2017
900 KAR 5:020		
Amended	800	
AmComments	1420	
900 KAR 6:055		
Amended	1302	
900 KAR 6:060		
Amended	1304	
As Amended	1566	
900 KAR 6:065		
Amended	1306	
As Amended	1567	
900 KAR 6:095		
Amended	1310	
900 KAR 10:041(r)	1908	
900 KAR 10:200	1125	3-3-2017
902 KAR 2:020		
Amended	122	
AmComments	568	11-16-2016
902 KAR 2:060		
Amended	1454	
902 KAR 4:120		See 42 Ky.R.
As Amended	210	8-17-2016
902 KAR 10:085		
Amended	1462	
As Amended	1736	
902 KAR 20:008		
Amended	801	
AmComments	1421	
As Amended	1569	
902 KAR 20:013*(r)*	858	
902 KAR 20:058		
Amended	129	
AmComments	575	
As Amended	695	11-16-2016
902 KAR 20:081		
Amended	1311	
AmComments	1782	
902 KAR 20:091		
Amended	1057	
As Amended	1752	
902 KAR 20:280		
Amended	1479	
As Amended	1762	
902 KAR 21:020	1348	
AmComments	1592	
As Amended	1767	
902 KAR 21:030	1910	
902 KAR 55:015		
Amended	1068	
As Amended	1381	3-3-2017
902 KAR 55:035		
Amended	629	3-3-2017
902 KAR 100:030		See 42 Ky.R.
As Amended	212	8-17-2016
902 KAR 100:080		See 42 Ky.R.
As Amended	216	8-17-2016
902 KAR 100:085		See 42 Ky.R.
As Amended	217	8-17-2016
906 KAR 1:151*(r)*	859	
906 KAR 1:190		
Amended	806	
AmComments	1427	
As Amended	1574	
907 KAR 1:045		
Amended	1071	
AmComments	1594	
As Amended	1768	
907 KAR 1:047	1130	
AmComments	1600	
As Amended	1772	
907 KAR 1:065		
Amended	1485	
907 KAR 3:031*(r)*	1133	3-3-2017
907 KAR 4:020		
Amended	1077	
As Amended	1774	
907 KAR 4:030		
Amended	1080	
As Amended	1775	
907 KAR 7:010		
Amended	339	
Withdrawn		9-15-2016
907 KAR 7:015		
Amended	351	
Withdrawn		9-15-2016
907 KAR 15:005		
Amended	1082	
AmComments	1603	
907 KAR 15:010		
Amended	1085	
AmComments	1606	
907 KAR 15:015		
Amended	1098	
AmComments	1619	
907 KAR 17:015		
Amended	1316	
907 KAR 17:035	1350	
AmComments	1786	
907 KAR 17:040	1353	
AmComments	1789	
908 KAR 2:040		
Amended	813	
As Amended	1182	2-3-2017
908 KAR 3:051(r)	1699	
908 KAR 3:060		
Amended	1689	
908 KAR 3:080		
Repealed	861	2-3-2017
908 KAR 3:081*(r)*	861	2-3-2017
908 KAR 3:090		
Repealed	861	2-3-2017
908 KAR 3:100		
Repealed	861	2-3-2017
908 KAR 3:110		
Repealed	861	2-3-2017
908 KAR 3:120		
Repealed	861	2-3-2017
908 KAR 3:130		
Repealed	861	2-3-2017
908 KAR 3:140		
Repealed	861	2-3-2017
908 KAR 3:150		
Repealed	861	2-3-2017
908 KAR 3:150		
Repealed	861	2-3-2017
908 KAR 3:160		
Repealed	861	2-3-2017
908 KAR 3:180		
Repealed	861	2-3-2017
910 KAR 1:210		
Amended	136	
AmComments	421	
As Amended	550	10-19-2016
920 KAR 2:040		
Amended	1103	
As Amended	1383	3-3-2017
921 KAR 1:001		

Regulation Number	43 Ky.R. Page No.	Effective Date
Amended	815	3-3-2017
921 KAR 1:380		
Amended	473	
As Amended	701	11-16-2016
921 KAR 1:410		
Amended	631	
As Amended	992	12-14-2016
921 KAR 1:420		
Amended	354	10-19-2016
921 KAR 1:430		
Amended	1692	
921 KAR 2:015		
Amended	1321	
921 KAR 3:030		
Amended	817	
As Amended	1182	2-3-2017
921 KAR 3:035		See 42 Ky.R.
AmComments	42	
As Amended	218	8-17-2016
921 KAR 3:050		
Amended	819	2-3-2017
921 KAR 4:118		
Repealed	157	10-6-2016
921 KAR 4:119*(r)*	157	10-6-2016
922 KAR 1:140		
Amended	823	
AmComments	1201	3-3-2017
922 KAR 1:150		
Repealed	377	11-16-2016
922 KAR 1:151*(r)*	377	11-16-2016
922 KAR 1:170		
Repealed	377	11-16-2016
922 KAR 1:210		
Repealed	377	11-16-2016
922 KAR 1:230		
Repealed	377	11-16-2016
922 KAR 1:320		See 42 Ky.R.
AmComments	45	8-17-2016
922 KAR 1:360		
Amended	826	2-3-2017
922 KAR 1:400		
Amended	1695	
922 KAR 1:500		
Amended	142	
AmComments	582	11-16-2016
922 KAR 2:020		See 42 Ky.R.
AmComments	50	
As Amended	221	8-17-2016
922 KAR 2:160		See 42 Ky.R
AmComments	55	
As Amended	225	8-17-2016
922 KAR 2:260		See 42 Ky.R.
AmComments	65	8-17-2016
922 KAR 3:011*(r)*	1355	
AmComments	1791	
922 KAR 3:040		
Recodified as 922 KAR 6:045		11-17-2016
922 KAR 5:080		
Repealed	159	9-21-2016
922 KAR 5:081*(r)*	159	9-21-2016
922 KAR 5:120		
Amended	1327	
AmComments	1792	
922 KAR 6:010		
Amended	1108	
As Amended	1386	3-3-2017
922 KAR 6:045		
Recodified from 922 KAR 3:040		11-17-2016

SYMBOL KEY:

* Statement of Consideration not filed by deadline

** Withdrawn before being printed in Register

*** Emergency expired after 180 days

‡ Withdrawn deferred more than twelve months (KRS 13A.300(4) and 13A.315(1)(d))

(r) Repealer regulation: KRS 13A.310 - on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

KRS INDEX

KRS SECTION	REGULATION
2.015	922 KAR 1:140
	922 KAR 1:400
6.611	2 KAR 2:040
	2 KAR 2:050
	2 KAR 2:060
	2 KAR 2:070
6.666	2 KAR 2:010
	2 KAR 2:040
6.681	2 KAR 2:070
6.686	2 KAR 2:050
	2 KAR 2:070
6.787	2 KAR 2:020
6.793	2 KAR 2:020
6.807	2 KAR 2:010
	2 KAR 2:040
6.821	2 KAR 2:010
	2 KAR 2:040
6.824	2 KAR 2:010
6.827	2 KAR 2:010
	2 KAR 2:040
6.829	2 KAR 2:010
	2 KAR 2:040
6.691	2 KAR 2:060
11A	600 KAR 6:061
11A.010	9 KAR 1:010
	9 KAR 1:060
11A.045	9 KAR 1:060
11A.050	9 KAR 1:010
11A.055	9 KAR 1:060
12.355	201 KAR 22:045
13B	10 KAR 6:010
	201 KAR 36:030
	906 KAR 1:190
	908 KAR 3:060
	920 KAR 2:040
	921 KAR 1:430
	922 KAR 5:081
	922 KAR 1:320
	922 KAR 1:360
	922 KAR 1:500
	922 KAR 2:020
	922 KAR 2:260
	922 KAR 5:120
13B.010	921 KAR 1:410
	921 KAR 1:420
13B.170	921 KAR 1:420
15.055	921 KAR 1:410
	921 KAR 1:430
15.440	503 KAR 5:090
15.450	503 KAR 5:090
15A.060	921 KAR 1:430
17.165	920 KAR 2:040
17.500	201 KAR 47:010
	201 KAR 47:020
	902 KAR 20:091
18A.005	101 KAR 1:325
	101 KAR 2:056
18A.030	101 KAR 2:034
	101 KAR 2:046
	101 KAR 2:066
	101 KAR 2:210
18A.032	101 KAR 2:046
18A.110	101 KAR 2:034
	101 KAR 2:046
	101 KAR 2:056
	101 KAR 2:066
	101 KAR 2:180
	101 KAR 3:045
18A.111	101 KAR 1:325
18A.113	101 KAR 2:066
18A.120	101 KAR 2:046

KRS SECTION	REGULATION
	101 KAR 2:056
18A.135	101 KAR 2:066
18A.150	101 KAR 2:046
18A.155	101 KAR 3:045
18A.165	101 KAR 2:034
	101 KAR 2:066
18A.202	101 KAR 3:045
18A.225	101 KAR 2:210
18A.2254	101 KAR 2:210
18A.0751	101 KAR 1:325
23A.010	922 KAR 1:320
	922 KAR 2:020
	922 KAR 2:260
39E.010	106 KAR 1:131
39E.020	106 KAR 1:081
39E.030	106 KAR 1:081
39E.040	106 KAR 1:081
	106 KAR 1:091
	106 KAR 1:111
	106 KAR 1:131
39E.050	106 KAR 1:081
	106 KAR 1:121
	106 KAR 1:091
	106 KAR 1:101
	106 KAR 1:111
	106 KAR 1:131
39E.080	106 KAR 1:111
	106 KAR 1:131
39E.110	106 KAR 1:081
	106 KAR 1:111
39E.120	106 KAR 1:081
	106 KAR 1:131
39E.130	106 KAR 1:081
	106 KAR 1:131
39E.140	106 KAR 1:081
	106 KAR 1:111
39E.150	106 KAR 1:081
	106 KAR 1:111
39E.160	106 KAR 1:081
39E.170	106 KAR 1:081
39E.190	106 KAR 1:081
	106 KAR 1:131
39E.200	106 KAR 1:131
39E.210	106 KAR 1:131
39E.220	106 KAR 1:081
	106 KAR 1:131
39E.230	106 KAR 1:081
	106 KAR 1:091
	106 KAR 1:101
39E.990	106 KAR 1:131
44.060	200 KAR 2:006
45.101	200 KAR 2:006
45.237-45.241	922 KAR 1:400
	922 KAR 2:020
45.357	922 KAR 6:010
45.360	603 KAR 1:031
45A	202 KAR 10:010
	601 KAR 2:030
45A.030	200 KAR 5:355
45A.070	603 KAR 2:020
45A.077	200 KAR 5:355
	603 KAR 2:020
45A.085	200 KAR 5:355
	202 KAR 10:020
	603 KAR 2:020
45A.090	200 KAR 5:355
45A.180	200 KAR 5:355
45A.183	200 KAR 5:355
45A.455	922 KAR 6:010
45A.494	603 KAR 2:020
45A.800-45A.835	600 KAR 6:061

KRS INDEX

KRS SECTION	REGULATION
61.315	202 KAR 7:810
	739 KAR 2:040
61.805-61.850	702 KAR 7:065
61.870-884	922 KAR 6:010
65.245	202 KAR 10:030
67.750	30 KAR 7:010
	30 KAR 7:020
67.767	30 KAR 7:010
	30 KAR 7:020
67A.620	921 KAR 1:410
95.620	921 KAR 1:410
95.878	921 KAR 1:410
91A.080	806 KAR 2:097
95A	739 KAR 2:040
	739 KAR 2:140
96A	603 KAR 7:071
116.048	921 KAR 3:030
117.015	31 KAR 4:170
117.235	31 KAR 4:170
131.081	103 KAR 15:021
131.110	103 KAR 15:021
131.130	103 KAR 3:011
	103 KAR 41:021
	103 KAR 44:131
131.131	103 KAR 3:011
	103 KAR 15:180
131.570	921 KAR 1:410
132.010	815 KAR 7:120
	815 KAR 20:010
132.020	103 KAR 8:160
132.200	103 KAR 8:160
134.160	103 KAR 5:120
136.070	103 KAR 20:011
136.320	103 KAR 15:180
136.330	103 KAR 15:180
136.340	103 KAR 15:180
136.350	103 KAR 15:180
136.370	103 KAR 15:180
136.390	103 KAR 15:180
136.392	739 KAR 2:040
138.130	103 KAR 41:021
138.207	103 KAR 41:021
138.455-138.470	601 KAR 1:231
138.510	811 KAR 2:190
138.4602	103 KAR 44:131
138.4603	103 KAR 44:131
139.050	103 KAR 28:041
139.100	103 KAR 28:041
141.010	103 KAR 15:021
	103 KAR 26:221
	103 KAR 19:031
141.0101	103 KAR 15:021
141.012	103 KAR 16:031
141.020	103 KAR 15:021
	103 KAR 15:180
141.0205	103 KAR 15:021
141.040	103 KAR 15:021
	103 KAR 15:180
	103 KAR 16:221
141.0401	103 KAR 15:180
141.050	103 KAR 3:011
	103 KAR 15:180
141.068	103 KAR 3:011
141.200	103 KAR 15:021
141.206	103 KAR 19:031
141.420	103 KAR 15:021
141.432	103 KAR 15:180
141.433	103 KAR 15:180
141.434	103 KAR 15:180
141.445	902 KAR 21:030
142.361	907 KAR 1:065
142.363	907 KAR 1:065
146.200-146.360	400 KAR 1:001
	400 KAR 1:031
	400 KAR 1:090
	400 KAR 1:100
	401 KAR 100:011
146.200-146.990	401 KAR 4:070
146.450	400 KAR 1:001
	400 KAR 1:090
146.530	400 KAR 1:001
	400 KAR 1:090
146.990	400 KAR 1:001
	400 KAR 1:031
	400 KAR 1:090
	400 KAR 1:100
	401 KAR 100:011
148.853	804 KAR 4:370
149.344	400 KAR 1:001
	400 KAR 1:090
	400 KAR 1:100
	401 KAR 100:011
149.346	400 KAR 1:001
	400 KAR 1:090
	400 KAR 1:100
	401 KAR 100:011
149.348	400 KAR 1:001
	400 KAR 1:090
	400 KAR 1:100
	401 KAR 100:011
150.010	301 KAR 1:152
	301 KAR 1:201
	301 KAR 2:049
	301 KAR 2:083
	301 KAR 2:132
	301 KAR 2:172
	301 KAR 2:178
150.015	301 KAR 2:075
150.021	301 KAR 2:075
150.025	301 KAR 3:015
150.090	301 KAR 1:015
150.092	301 KAR 2:049
150.170	301 KAR 1:152
	301 KAR 1:201
	301 KAR 2:049
	301 KAR 2:132
	301 KAR 2:178
	301 KAR 2:251
150.175	301 KAR 1:152
	301 KAR 1:201
150.177	301 KAR 2:172
150.180	301 KAR 2:132
	301 KAR 2:172
	301 KAR 2:251
150.183	301 KAR 2:075
150.190	301 KAR 2:132
150.195	301 KAR 2:075
150:290	301 KAR 2:083
150.340	301 KAR 1:201
	301 KAR 2:178
150.370	301 KAR 2:049
	301 KAR 2:178
	301 KAR 2:251
150.399	301 KAR 2:049
	301 KAR 2:251
150.411	301 KAR 2:172
150.415	301 KAR 2:251
150.416	301 KAR 2:251
150.445	301 KAR 1:152
150.450	301 KAR 1:152
150.620	301 KAR 1:201
150.625	301 KAR 1:015
150:725	301 KAR 2:083
150:740	301 KAR 2:083

KRS INDEX

KRS SECTION	REGULATION
150.990	301 KAR 1:015
	301 KAR 1:152
	301 KAR 1:201
	301 KAR 2:049
	301 KAR 2:132
	301 KAR 2:172
	301 KAR 2:178
	301 KAR 2:251
150.995	301 KAR 2:049
	301 KAR 2:251
151.110	401 KAR 4:070
151.125	400 KAR 1:001
	400 KAR 1:090
	401 KAR 4:070
151.182	400 KAR 1:001
	400 KAR 1:031
	400 KAR 1:090
	400 KAR 1:100
	401 KAR 100:011
151.184	400 KAR 1:001
	400 KAR 1:031
	400 KAR 1:090
	400 KAR 1:100
	401 KAR 100:011
151.250	401 KAR 4:070
151.297	400 KAR 1:001
	400 KAR 1:031
	400 KAR 1:090
	400 KAR 1:100
	401 KAR 100:011
151.990	400 KAR 1:001
	400 KAR 1:031
	400 KAR 1:090
	400 KAR 1:100
	401 KAR 100:011
151B.450-151B.475	789 KAR 1:010
154.1-750	202 KAR 10:020
154.22-010 - 154.22-102	307 KAR 1:031
154.45-096	601 KAR 1:231
154A.130	11 KAR 15:090
156.01	11 KAR 15:090
156.029	705 KAR 4:231
156.031	702 KAR 3:171
156.035	702 KAR 6:090
156.070	704 KAR 3:342
156.074	702 KAR 3:171
156.101	16 KAR 7:010
156.160	702 KAR 6:090
	704 KAR 3:342
156.200	702 KAR 6:090
156.802	705 KAR 4:231
	780 KAR 4:012
156.850	780 KAR 4:012
156.852	780 KAR 4:012
157.070	702 KAR 7:065
157.618	750 KAR 1:030
158.007	11 KAR 15:090
158.030	703 KAR 4:041
158.031	703 KAR 4:041
158.035	902 KAR 2:060
158.115	600 KAR 5:011
158.6451	703 KAR 4:041
	703 KAR 5:070
158.6453	703 KAR 5:070
158.6455	703 KAR 5:070
158.816	16 KAR 6:020
158.854	702 KAR 6:090
158.856	702 KAR 6:090
160.345	702 KAR 6:090
160.380	702 KAR 7:065
160.445	702 KAR 7:065
161.020	16 KAR 1:010
161.027	16 KAR 4:040
	16 KAR 4:080
	16 KAR 4:090
	16 KAR 6:010
	16 KAR 6:020
161.028	16 KAR 1:010
	16 KAR 1:030
	16 KAR 4:040
	16 KAR 4:080
	16 KAR 4:090
	16 KAR 6:010
	16 KAR 6:020
	16 KAR 7:010
161.030	16 KAR 1:010
	16 KAR 4:040
	16 KAR 4:080
	16 KAR 4:090
	16 KAR 6:010
	16 KAR 6:020
	16 KAR 7:010
161.046	16 KAR 4:040
	16 KAR 4:080
	16 KAR 4:090
161.048	16 KAR 1:010
	16 KAR 4:040
	16 KAR 4:080
	16 KAR 4:090
161.053	16 KAR 4:040
	16 KAR 4:080
	16 KAR 4:090
	16 KAR 7:010
161.120	16 KAR 1:010
	16 KAR 1:030
161.095	16 KAR 1:010
161.220	102 KAR 1:320
161.520	102 KAR 1:165
161.661	102 KAR 1:290
161.700	102 KAR 1:320
	921 KAR 1:410
161.716	102 KAR 1:320
164.001	13 KAR 2:060
	13 KAR 2:110
164.002	11 KAR 15:090
164.020	13 KAR 2:060
	13 KAR 2:110
	13 KAR 4:010
164.295	13 KAR 2:110
164.518	11 KAR 4:080
164.772	804 KAR 4:400
164.744	11 KAR 4:080
164.748	11 KAR 4:080
164.753	11 KAR 4:080
164.769	11 KAR 4:080
164.772	301 KAR 2:083
164.780	11 KAR 4:080
164.785	11 KAR 4:080
164.945	13 KAR 4:010
164.946	13 KAR 4:010
164.947	13 KAR 4:010
164.992	13 KAR 4:010
164.2847	922 KAR 1:500
164.7535	11 KAR 4:080
164.772	201 KAR 22:020
164.7871	11 KAR 15:090
164.7874	11 KAR 15:090
164.7877	11 KAR 15:090
164.7879	11 KAR 15:090
164.7881	11 KAR 15:090
164.7885	11 KAR 15:090

KRS INDEX

KRS SECTION	REGULATION
164.7889	11 KAR 15:090
164.7890	11 KAR 4:080
164.7894	11 KAR 4:080
164A.560	755 KAR 1:080
164A.565	755 KAR 1:080
164A.575	755 KAR 1:080
164A.580	755 KAR 1:080
164A.585	755 KAR 1:080
164A.590	755 KAR 1:080
164A.595	755 KAR 1:080
164A.600	755 KAR 1:080
165A.320-165A.450	13 KAR 4:010
168.100	702 KAR 3:171
174.080	603 KAR 7:071
174.400-174.425	601 KAR 1:231
174.450	601 KAR 40:011
175.450	601 KAR 1:018
175B.005	202 KAR 10:010
	202 KAR 10:020
	603 KAR 2:020
175B.010	202 KAR 10:010
	202 KAR 10:020
	202 KAR 10:030
	603 KAR 2:020
175B.015	202 KAR 10:010
	202 KAR 10:030
175B.020	202 KAR 10:010
	202 KAR 10:020
	603 KAR 2:020
175B.030	202 KAR 10:010
	202 KAR 10:020
	603 KAR 2:020
175B.035	202 KAR 10:010
	202 KAR 10:020
	202 KAR 10:030
	603 KAR 2:020
175B.037	202 KAR 10:010
	202 KAR 10:020
	603 KAR 2:020
175B.040	202 KAR 10:010
	202 KAR 10:020
	202 KAR 10:030
175B.095	202 KAR 10:010
	202 KAR 10:020
176	603 KAR 8:011
176.050	603 KAR 7:071
176.070	603 KAR 1:031
176.080	603 KAR 2:020
176.130	603 KAR 1:031
176.140	603 KAR 1:031
	603 KAR 2:020
176.240	603 KAR 7:071
177.220-177.240	603 KAR 5:311
177.390-177.570	601 KAR 1:018
177.9771	601 KAR 1:018
183.090	602 KAR 20:091
	603 KAR 9:021
183.200-183.213	602 KAR 15:011
186	601 KAR 2:011
	601 KAR 9:111
186.010	601 KAR 1:018
	601 KAR 2:030
186.050	601 KAR 1:018
186.053	601 KAR 9:111
186.276	601 KAR 9:111
186.281	601 KAR 1:231
	601 KAR 9:111
186.440	601 KAR 2:030
186.442	601 KAR 2:030
186.480	601 KAR 2:030
186.531	601 KAR 2:030
186.560	601 KAR 2:030
186.570	601 KAR 2:030
	921 KAR 1:410
186.650	601 KAR 9:111
186A.145	601 KAR 9:111
186A.160	601 KAR 9:111
189.010	603 KAR 4:046
189.221	601 KAR 1:018
	603 KAR 5:311
189.222	601 KAR 1:018
	603 KAR 5:311
189.231	603 KAR 5:311
189.270	601 KAR 1:018
189.271	601 KAR 1:018
189.337	603 KAR 4:046
189.338	603 KAR 5:311
189.2225	601 KAR 1:018
189.2715	601 KAR 1:018
189.2716	601 KAR 1:018
189.2717	601 KAR 1:018
189A.005	601 KAR 2:030
189A.010	601 KAR 2:030
189A.040	601 KAR 2:030
189A.070	601 KAR 2:030
189A.085	601 KAR 2:030
189A.090	601 KAR 2:030
189A.103	601 KAR 2:030
189A.105	601 KAR 2:030
189A.107	601 KAR 2:030
189A.200	601 KAR 2:030
189A.240	601 KAR 2:030
189A.250	601 KAR 2:030
189A.340	601 KAR 2:030
189A.345	601 KAR 2:030
189A.400	601 KAR 2:030
189A.410	601 KAR 2:030
189A.420	601 KAR 2:030
189A.440	601 KAR 2:030
189A.500	601 KAR 2:030
190.058	605 KAR 1:011
194.540	201 KAR 32:060
194A	921 KAR 2:015
	922 KAR 1:151
	922 KAR 3:011
194A.005	922 KAR 1:320
	922 KAR 1:400
	922 KAR 2:260
194A.025	907 KAR 15:005
	907 KAR 17:015
	907 KAR 17:035
	907 KAR 17:040
194A.030	921 KAR 4:119
	922 KAR 1:320
	922 KAR 2:260
194A.050	900 KAR 10:041
	900 KAR 10:200
	902 KAR 10:085
	921 KAR 1:001
194A.060	922 KAR 2:020
	922 KAR 2:160
	922 KAR 6:010
194A.095	902 KAR 21:030
194A.540	201 KAR 36:030
196	501 KAR 6:020
	501 KAR 6:030
	501 KAR 6:040
	501 KAR 6:060
	501 KAR 6:110
	501 KAR 6:150
	501 KAR 6:160
	501 KAR 6:170
	501 KAR 6:999
197	501 KAR 6:020

KRS SECTION	REGULATION
	501 KAR 6:030
	501 KAR 6:040
	501 KAR 6:060
	501 KAR 6:110
	501 KAR 6:150
	501 KAR 6:160
	501 KAR 6:170
	501 KAR 6:999
198B.010	815 KAR 7:120
198B.040	815 KAR 7:120
198B.050	815 KAR 7:120
198B.060	815 KAR 7:120
198B.080	815 KAR 7:120
198B.110	815 KAR 7:120
198B.260	815 KAR 7:120
	902 KAR 20:091
	902 KAR 20:280
198B.990	815 KAR 7:120
199	922 KAR 1:151
	922 KAR 3:011
199.011	922 KAR 1:140
	922 KAR 1:360
	922 KAR 1:400
199.555	101 KAR 3:045
	922 KAR 1:140
	922 KAR 1:320
199.557	922 KAR 1:140
	922 KAR 1:320
199.640-199.680	922 KAR 1:360
199.801	922 KAR 1:140
	922 KAR 1:360
199.892	922 KAR 2:160
199.894	922 KAR 2:160
199.896	922 KAR 2:160
199.898	922 KAR 2:160
199.899	922 KAR 2:160
199.8982	922 KAR 2:160
199.8994	922 KAR 2:160
199.8996	10 KAR 6:010
200.151	10 KAR 6:010
200.700	10 KAR 6:010
200.703	10 KAR 6:010
200.705	10 KAR 6:010
200.707	10 KAR 6:010
200.709	10 KAR 6:010
200.711	10 KAR 6:010
202A	908 KAR 2:040
	908 KAR 3:081
202A.011	902 KAR 20:091
	921 KAR 2:015
202B	908 KAR 3:081
202B.010	902 KAR 20:091
205.211	922 KAR 1:400
205.2003	922 KAR 1:400
205.510-205.647	907 KAR 4:020
205.520	902 KAR 21:020
	907 KAR 1:045
	907 KAR 1:047
	907 KAR 7:010
	907 KAR 15:010
	907 KAR 15:015
205.594	921 KAR 1:410
205.595	921 KAR 1:410
205.5605	907 KAR 7:010
205.5606	907 KAR 7:010
205.5607	907 KAR 7:010
205.635	907 KAR 7:010
205.6313	902 KAR 20:091
205.6481-205.6497	907 KAR 4:020
	907 KAR 4:030
205.646	907 KAR 17:035
	907 KAR 17:040
205.703	922 KAR 1:400
205.705	921 KAR 1:380
205.710	921 KAR 1:430
205.710-205.800	921 KAR 1:001
	921 KAR 1:380
	921 KAR 1:410
205.712	601 KAR 2:030
	921 KAR 1:430
205.720	921 KAR 1:420
205.745	921 KAR 1:430
205.750	921 KAR 1:420
205.755	921 KAR 1:420
205.778	921 KAR 1:430
205.795	921 KAR 1:420
205.992	921 KAR 1:380
205.7685	921 KAR 1:410
	921 KAR 1:430
205.769	921 KAR 1:430
209	201 KAR 47:010
	201 KAR 47:020
	922 KAR 3:011
	922 KAR 5:120
209.020	921 KAR 2:015
	922 KAR 1:320
	922 KAR 1:400
209.200	922 KAR 5:081
209A	922 KAR 3:011
209A.020	922 KAR 1:320
210	908 KAR 3:081
210.300	908 KAR 2:040
210.366	201 KAR 26:175
	201 KAR 32:060
	201 KAR 36:030
	201 KAR 38:070
210.370	902 KAR 20:091
	907 KAR 1:045
210.410	902 KAR 20:091
	907 KAR 1:047
210.450	902 KAR 20:091
210.710	908 KAR 3:051
	908 KAR 3:060
210.720	908 KAR 3:051
	908 KAR 3:060
210.730	908 KAR 3:051
	908 KAR 3:060
211.015	902 KAR 10:085
211.090	902 KAR 2:060
	902 KAR 21:020
211.180	902 KAR 2:020
	902 KAR 21:020
211.220	902 KAR 2:060
211.350-211.380	902 KAR 10:085
211.595-597	902 KAR 21:030
211.990	902 KAR 10:085
213.046	921 KAR 1:380
214.010	902 KAR 2:020
214.032-214.036	902 KAR 2:060
214.036	922 KAR 2:160
214.540-214.544	902 KAR 21:020
214.645	902 KAR 2:020
216.2925	902 KAR 20:008
216.530	902 KAR 20:008
	921 KAR 2:015
216.557	921 KAR 2:015
216.750	921 KAR 2:015
216.765	921 KAR 2:015
216.875	902 KAR 20:280
216.880	902 KAR 20:280
216.885	902 KAR 20:280
216B	921 KAR 2:015
216B.010	902 KAR 20:008
	902 KAR 20:013

KRS INDEX

KRS SECTION	REGULATION
	902 KAR 20:058
	902 KAR 20:091
216B.010-216B.130	900 KAR 5:020
	902 KAR 20:081
216B.015	900 KAR 6:055
	900 KAR 6:060
	900 KAR 6:065
	900 KAR 6:095
	902 KAR 20:008
	902 KAR 20:013
	902 KAR 20:058
	902 KAR 20:091
216B.020	202 KAR 7:501
216B.030	902 KAR 20:091
216B.040	900 KAR 6:060
	900 KAR 6:065
	902 KAR 20:008
	902 KAR 20:058
216B.042	902 KAR 20:008
	902 KAR 20:013
	902 KAR 20:058
216B.045-216B.055	902 KAR 20:008
	902 KAR 20:058
216B.061	900 KAR 6:095
216B.062	900 KAR 6:065
216B.075	902 KAR 20:008
	902 KAR 20:058
216B.085	900 KAR 6:065
216B.095	900 KAR 6:060
	900 KAR 6:065
216B.105	902 KAR 20:013
	902 KAR 20:091
216B.105-216B.131	902 KAR 20:008
	902 KAR 20:058
216B.155	906 KAR 1:151
216B.176	902 KAR 20:058
216B.177	902 KAR 20:058
216B.185	902 KAR 20:008
216B.400	201 KAR 20:411
216B.990	900 KAR 6:095
	902 KAR 20:008
	902 KAR 20:058
	902 KAR 20:081
	902 KAR 20:091
216B.935	902 KAR 20:081
217.005-217.215	902 KAR 55:035
217.055	201 KAR 2:076
217.065	201 KAR 2:076
218A.010	16 KAR 1:030
	201 KAR 2:076
	202 KAR 10:030
218A.010-218A.030	902 KAR 55:035
218A.010-218A.050	902 KAR 55:015
218A.120	902 KAR 55:035
218A.130	902 KAR 55:035
218A.205	201 KAR 2:050
	201 KAR 20:056
	201 KAR 20:057
	201 KAR 20:215
222.211	902 KAR 20:091
223	400 KAR 1:001
	400 KAR 1:031
	400 KAR 1:090
	400 KAR 1:100
	401 KAR 100:011
224	400 KAR 1:001
	400 KAR 1:031
	400 KAR 1:090
	400 KAR 1:100
	401 KAR 100:011
224.1	401 KAR 4:070
	401 KAR 45:060

KRS SECTION	REGULATION
	401 KAR 46:101
	401 KAR 46:110
	401 KAR 46:120
224.1-010	103 KAR 8:160
	401 KAR 45:010
224.10	401 KAR 4:070
	401 KAR 45:060
	401 KAR 46:101
	401 KAR 46:110
	401 KAR 46:120
224.10-100	401 KAR 50:060
	401 KAR 60:005
	401 KAR 63:002
	401 KAR 63:060
224.10-410	405 KAR 5:095
	405 KAR 7:092
	405 KAR 7:093
224.10-420	401 KAR 50:060
224.10-440	401 KAR 50:060
224.10-470	405 KAR 5:095
224.20-100	401 KAR 60:005
	401 KAR 63:002
224.20-110	401 KAR 50:060
	401 KAR 60:005
	401 KAR 63:002
	401 KAR 63:060
224.20-120	401 KAR 60:005
	401 KAR 63:002
224.40	401 KAR 45:060
224.46	401 KAR 45:060
224.50	401 KAR 4:070
	401 KAR 45:060
	401 KAR 46:101
	401 KAR 46:110
	401 KAR 46:120
224.50-760	401 KAR 45:010
224.70	401 KAR 46:101
	401 KAR 46:110
	401 KAR 46:120
224.99	401 KAR 4:070
	401 KAR 45:060
	401 KAR 46:101
	401 KAR 46:110
	401 KAR 46:120
227.300	815 KAR 7:120
227.550	601 KAR 1:018
	815 KAR 7:120
229.011	201 KAR 27:005
	201 KAR 27:007
229.021	201 KAR 27:005
	201 KAR 27:007
	201 KAR 27:008
	201 KAR 27:011
	201 KAR 27:012
	201 KAR 27:016
	201 KAR 27:017
	201 KAR 27:036
	201 KAR 27:040
	201 KAR 27:105
229.031	201 KAR 27:005
	201 KAR 27:011
	201 KAR 27:012
	201 KAR 27:016
	201 KAR 27:020
	201 KAR 27:105
229.041	201 KAR 27:007
	201 KAR 27:020
229.051	201 KAR 27:005
	201 KAR 27:007
	201 KAR 27:008
229.061	201 KAR 27:007
229.071	201 KAR 27:005

KRS SECTION	REGULATION
	201 KAR 27:008
	201 KAR 27:011
	201 KAR 27:012
	201 KAR 27:016
	201 KAR 27:017
	201 KAR 27:020
	201 KAR 27:021
	201 KAR 27:036
	201 KAR 27:105
229.081	201 KAR 27:005
	201 KAR 27:008
	201 KAR 27:011
	201 KAR 27:012
	201 KAR 27:016
	201 KAR 27:017
	201 KAR 27:021
	201 KAR 27:036
	201 KAR 27:040
229.091	201 KAR 27:005
	201 KAR 27:008
	201 KAR 27:011
	201 KAR 27:012
	201 KAR 27:016
	201 KAR 27:017
	201 KAR 27:021
	201 KAR 27:036
	201 KAR 27:040
	201 KAR 27:105
229.101	201 KAR 27:011
	201 KAR 27:016
	201 KAR 27:017
229.111	201 KAR 27:005
	201 KAR 27:016
	201 KAR 27:021
229.131	201 KAR 27:005
	201 KAR 27:011
	201 KAR 27:016
	201 KAR 27:017
229.155	201 KAR 27:005
	201 KAR 27:007
	201 KAR 27:011
	201 KAR 27:105
229.171	201 KAR 27:005
	201 KAR 27:007
	201 KAR 27:008
	201 KAR 27:011
	201 KAR 27:012
	201 KAR 27:016
	201 KAR 27:017
	201 KAR 27:021
	201 KAR 27:036
	201 KAR 27:040
	201 KAR 27:105
229.180	201 KAR 27:005
	201 KAR 27:016
	201 KAR 27:017
	201 KAR 27:020
	201 KAR 27:021
	201 KAR 27:036
	201 KAR 27:105
229.190	201 KAR 27:007
	201 KAR 27:105
229.200	201 KAR 27:007
	201 KAR 27:021
	201 KAR 27:105
229.991	201 KAR 27:007
	201 KAR 27:021
	201 KAR 27:105
230.215	810 KAR 1:009
	811 KAR 2:190
	811 KAR 1:215
	811 KAR 1:220
230.225	811 KAR 2:190
230.260	811 KAR 1:215
	811 KAR 1:220
230.280	811 KAR 1:220
230.290	811 KAR 1:220
230.310	811 KAR 1:220
230.398	811 KAR 1:220
230.443	811 KAR 2:190
230.445	811 KAR 2:190
230.770	811 KAR 1:215
230.802	811 KAR 1:215
230.990	811 KAR 1:215
235.010	301 KAR 1:015
235.990	301 KAR 1:015
237.110	301 KAR 2:172
	921 KAR 1:410
	921 KAR 1:430
241.060	804 KAR 1:071
	804 KAR 3:081
	804 KAR 4:041
	804 KAR 4:370
	804 KAR 4:400
	804 KAR 4:410
	804 KAR 5:031
	804 KAR 7:051
	804 KAR 8:041
	804 KAR 9:010
	804 KAR 9:021
	804 KAR 10:021
	804 KAR 11:021
241.065	804 KAR 9:010
243.030	804 KAR 9:010
243.090	804 KAR 4:390
	804 KAR 4:400
243.490	804 KAR 3:100
241.110	804 KAR 10:010
241.120	804 KAR 10:010
241.130	804 KAR 10:010
241.160	804 KAR 10:010
241.170	804 KAR 10:010
241.180	804 KAR 10:010
241.220	804 KAR 10:010
241.230	804 KAR 10:010
241.240	804 KAR 10:010
243.030	804 KAR 4:370
243.040	804 KAR 4:370
243.050	804 KAR 4:370
243.155	804 KAR 4:381
243.240	804 KAR 9:010
243.250	804 KAR 9:010
243.380	804 KAR 4:400
243.390	804 KAR 4:400
244.500	804 KAR 11:010
244.590	804 KAR 11:010
250.021	12 KAR 1:116
	12 KAR 1:140
	12 KAR 1:155
250.031	12 KAR 1:116
	12 KAR 1:140
	12 KAR 1:155
250.041	12 KAR 1:116
	12 KAR 1:140
	12 KAR 1:155
250.051	12 KAR 1:116
	12 KAR 1:140
	12 KAR 1:155
250.061	12 KAR 1:116
	12 KAR 1:140
	12 KAR 1:155
250.071	12 KAR 1:116
	12 KAR 1:140
	12 KAR 1:155

KRS INDEX

KRS SECTION	REGULATION
250.081	12 KAR 1:116
	12 KAR 1:140
	12 KAR 1:155
250.091	12 KAR 1:116
	12 KAR 1:140
	12 KAR 1:155
250.101	12 KAR 1:116
	12 KAR 1:140
	12 KAR 1:155
250.111	12 KAR 1:116
	12 KAR 1:140
	12 KAR 1:155
260.165	302 KAR 39:020
260.166	302 KAR 39:020
260.167	302 KAR 39:020
260.168	302 KAR 39:020
260.175	302 KAR 39:020
273.405-273.453	922 KAR 6:010
281	601 KAR 1:231
	601 KAR 2:011
281.626	601 KAR 1:231
281.655	601 KAR 1:231
281.656	601 KAR 1:231
281.720	601 KAR 9:111
281.838	601 KAR 1:018
281.900	601 KAR 1:231
281.905	601 KAR 1:231
286.3-010	808 KAR 1:160
286.3-020	808 KAR 1:160
286.3-050	808 KAR 1:160
286.3-065	808 KAR 1:081
286.3-095	808 KAR 1:160
286.3-100	808 KAR 1:081
	808 KAR 1:111
286.3-135	808 KAR 1:160
286.3-140	808 KAR 1:160
286.3-145	808 KAR 1:160
286.3-146	808 KAR 1:160
286.3-170	808 KAR 1:160
286.3-172	808 KAR 1:160
286.3-174	808 KAR 1:160
286.3-180	808 KAR 1:160
286.3-185	808 KAR 1:160
286.3-450	808 KAR 1:160
286.3-480	808 KAR 1:160
286.3-530	808 KAR 1:160
286.3-820	808 KAR 1:160
286.3-900	808 KAR 11:011
286.3-920	808 KAR 1:160
286.5-081	808 KAR 7:031
286.5-441	808 KAR 7:031
286.5-451	808 KAR 7:031
286.5-905	808 KAR 7:031
286.5-910	808 KAR 7:031
286.6-070	808 KAR 3:020
286.6-100	808 KAR 3:020
	808 KAR 3:030
286.6-405	808 KAR 3:020
286.7-440	808 KAR 5:011
286.7-520	808 KAR 5:011
286.7-550	808 KAR 5:011
286.7-590	808 KAR 5:011
286.8-010	808 KAR 12:021
	808 KAR 12:055
286.8-020	808 KAR 12:021
286.8-030	808 KAR 12:021
286.8-036	808 KAR 12:021
286.8-060	808 KAR 12:021
286.8-070	808 KAR 12:021
286.8-080	808 KAR 12:021
286.8-090	808 KAR 12:021
286.8-255	808 KAR 12:055
286.8-260	808 KAR 12:021
286.8-290	808 KAR 12:021
304.1-050	806 KAR 9:360
304.2-040	806 KAR 2:011
304.2-080	806 KAR 2:011
304.2-110	806 KAR 2:011
304.2-150	806 KAR 2:011
304.2-160	806 KAR 2:011
304.3-270	103 KAR 15:180
304.4-010	806 KAR 2:011
	806 KAR 2:097
304.9-053	806 KAR 9:360
304.9-054	806 KAR 9:360
304.12-010	806 KAR 18:020
304.17A	902 KAR 21:020
304.18-040	806 KAR 18:020
304.32-080	806 KAR 18:020
309.080	902 KAR 20:091
309.081	201 KAR 35:030
309.083	201 KAR 35:020
	201 KAR 35:025
	201 KAR 35:050
	201 KAR 35:070
309.0831	201 KAR 35:020
	201 KAR 35:025
	201 KAR 35:070
309.0832	201 KAR 35:020
	201 KAR 35:025
	201 KAR 35:070
309.0833	201 KAR 35:020
	201 KAR 35:025
	201 KAR 35:070
309.0832	201 KAR 35:016
309.084	201 KAR 35:016
	201 KAR 35:020
309.085	201 KAR 35:020
309.130	902 KAR 20:091
309.300	201 KAR 39:001
309.304	201 KAR 39:001
	201 KAR 39:030
	201 KAR 39:050
309.312	201 KAR 39:030
	201 KAR 39:050
	201 KAR 39:070
309.314	201 KAR 39:050
309.331	201 KAR 45:110
	201 KAR 45:120
309.334	201 KAR 45:120
309.335	201 KAR 45:100
	201 KAR 45:120
309.337	201 KAR 45:130
309.357	201 KAR 42:020
	201 KAR 42:040
309.361	201 KAR 42:040
309.362	201 KAR 42:020
	201 KAR 42:040
309.404	201 KAR 47:010
309.406	201 KAR 47:010
	201 KAR 47:020
309.412	201 KAR 47:010
	201 KAR 47:020
309.414	201 KAR 47:010
	201 KAR 47:020
309.416	201 KAR 47:010
	201 KAR 47:020
309.418	201 KAR 47:010
	201 KAR 47:020
309.420	201 KAR 47:010
	201 KAR 47:020
311	201 KAR 27:008
	902 KAR 20:058
311.560	902 KAR 20:081

KRS SECTION	REGULATION
	902 KAR 20:091
311.571	902 KAR 20:280
311.530-311.620	201 KAR 9:270
311.990	201 KAR 9:270
	202 KAR 7:520
311A.010	202 KAR 7:520
311A.030	202 KAR 7:501
311A.035	202 KAR 7:520
311A.050	202 KAR 7:520
311A.055	202 KAR 7:520
311A.060	202 KAR 7:520
311A.155	202 KAR 7:520
311A.190	202 KAR 7:501
	202 KAR 7:520
311B.050	201 KAR 46:060
	201 KAR 46:090
311B.100	201 KAR 46:070
	201 KAR 46:090
311B.110	201 KAR 46:060
311B.120	201 KAR 46:070
	201 KAR 46:090
311B.150	201 KAR 46:070
	201 KAR 46:090
311B.160	201 KAR 46:070
	201 KAR 46:090
311B.170	201 KAR 46:070
	201 KAR 46:090
311B.180	201 KAR 46:070
	201 KAR 46:090
311B.190	201 KAR 46:070
	201 KAR 46:090
312.019	201 KAR 21:025
312.055	201 KAR 21:025
312.085	201 KAR 21:041
312.095	201 KAR 21:041
312.145	201 KAR 21:041
312.175	201 KAR 21:041
314	902 KAR 20:058
314.011	201 KAR 20:056
	201 KAR 20:057
	201 KAR 20:215
	201 KAR 20:220
	201 KAR 20:411
	902 KAR 20:091
	920 KAR 2:040
	922 KAR 2:160
314.041	902 KAR 20:280
314.042	201 KAR 20:056
	201 KAR 20:057
	902 KAR 20:091
314.073	201 KAR 20:215
	201 KAR 20:220
314.091	201 KAR 20:056
314.103	201 KAR 20:056
	201 KAR 20:411
314.109	201 KAR 20:056
314.131	201 KAR 20:220
314.142	201 KAR 20:411
	920 KAR 2:040
314.161	201 KAR 20:056
314.193	201 KAR 20:057
314.196	201 KAR 20:057
314.470	201 KAR 20:056
	201 KAR 20:411
314.991	201 KAR 20:215
315.010	201 KAR 2:045
	201 KAR 2:074
315.020	201 KAR 2:045
	201 KAR 2:074
	201 KAR 2:076
315.030	201 KAR 2:074
315.035	201 KAR 2:050

KRS SECTION	REGULATION
	201 KAR 2:076
315.036	201 KAR 2:050
315.050	201 KAR 2:050
315.060	201 KAR 2:050
315.110	201 KAR 2:050
315.120	201 KAR 2:050
315.121	201 KAR 2:074
315.191	201 KAR 2:045
	201 KAR 2:076
	201 KAR 2:351
315.402	201 KAR 2:050
315.518	201 KAR 2:050
315.520	201 KAR 2:050
315.0351	201 KAR 2:050
	201 KAR 2:076
317.440	201 KAR 14:125
317.450	201 KAR 14:125
318	815 KAR 20:010
	815 KAR 20:080
318.010	815 KAR 20:020
	815 KAR 20:090
	815 KAR 20:120
	815 KAR 20:130
318.015	815 KAR 20:020
	815 KAR 20:090
	815 KAR 20:130
318.130	815 KAR 20:020
	815 KAR 20:060
	815 KAR 20:090
	815 KAR 20:120
	815 KAR 20:130
318.150	815 KAR 20:020
	815 KAR 20:060
	815 KAR 20:090
	815 KAR 20:120
	815 KAR 20:130
318.165	815 KAR 20:120
318.200	815 KAR 20:020
	815 KAR 20:090
	815 KAR 20:120
	815 KAR 20:130
319.005	201 KAR 26:130
319.010	902 KAR 20:280
319.015	201 KAR 26:215
319.032	201 KAR 26:145
	201 KAR 26:171
	201 KAR 26:175
	201 KAR 26:180
	201 KAR 26:185
	201 KAR 26:250
319.050	201 KAR 26:125
	201 KAR 26:155
	201 KAR 26:160
	201 KAR 26:171
	201 KAR 26:175
	201 KAR 26:190
	201 KAR 26:200
319.053	201 KAR 26:175
	201 KAR 26:190
	201 KAR 26:290
319.056	201 KAR 26:171
	201 KAR 26:190
	902 KAR 20:091
319.064	201 KAR 26:160
	201 KAR 26:171
	201 KAR 26:175
	201 KAR 26:190
	201 KAR 26:200
	201 KAR 26:250
	201 KAR 26:280
	902 KAR 20:091
319.071	201 KAR 26:160

KRS SECTION	REGULATION
	201 KAR 26:165
	201 KAR 26:175
	201 KAR 26:225
319.082	201 KAR 26:130
	201 KAR 26:145
	201 KAR 26:171
319.092	201 KAR 26:140
	201 KAR 26:171
319.118	201 KAR 26:130
	201 KAR 26:171
319.990	201 KAR 26:130
319A.080	201 KAR 28:230
319A.160	201 KAR 28:090
319A.300	201 KAR 28:230
319B.030	201 KAR 44:040
319B.140	201 KAR 44:040
319C.010	902 KAR 20:091
319C.030	201 KAR 43:110
320.210	902 KAR 20:091
322	401 KAR 46:120
322A	401 KAR 46:120
322.020	201 KAR 18:051
322.040	201 KAR 18:051
322.080	201 KAR 18:051
324A.010	201 KAR 30:030
324A.030	201 KAR 30:030
324A.035	201 KAR 30:030
324A.040	201 KAR 30:030
324A.052	201 KAR 30:030
325.230	201 KAR 1:015
	201 KAR 1:065
	201 KAR 1:100
327.010	201 KAR 22:020
	201 KAR 22:045
	902 KAR 20:280
327.040	201 KAR 22:053
327.050	201 KAR 22:020
327.060	201 KAR 22:020
327.070	201 KAR 22:045
	201 KAR 22:053
327.075	201 KAR 22:020
331B.020	201 KAR 46:040
331B.050	201 KAR 46:040
331B.080	201 KAR 46:040
331B.100	201 KAR 46:040
331B.110	201 KAR 46:040
331B.120	201 KAR 46:040
331B.180	201 KAR 46:040
331B.190	201 KAR 46:040
333.130	902 KAR 2:020
334A.020	902 KAR 20:280
335.080	201 KAR 22:020
	902 KAR 20:091
335.090	902 KAR 20:280
335.100	902 KAR 20:091
335.130	201 KAR 23:075
335.300	201 KAR 32:060
	902 KAR 20:091
335.320	201 KAR 32:050
335.340	201 KAR 32:060
335.348	201 KAR 32:050
335.500	201 KAR 36:060
	201 KAR 36:065
	201 KAR 36:070
	902 KAR 20:091
335.500-335.990	201 KAR 36:030
335.505	201 KAR 36:045
	201 KAR 36:060
	201 KAR 36:065
335.515	201 KAR 36:045
	201 KAR 36:055
	201 KAR 36:090
335.525	201 KAR 36:020
	201 KAR 36:060
	201 KAR 36:065
	201 KAR 36:070
335.527	201 KAR 36:070
335.535	201 KAR 36:005
	201 KAR 36:020
	201 KAR 36:075
335.540	201 KAR 36:040
	201 KAR 36:050
335.545	201 KAR 36:050
	201 KAR 36:090
335.620	201 KAR 38:020
	201 KAR 38:030
335.625	201 KAR 38:070
335.640	201 KAR 38:070
335.650	201 KAR 38:070
337.275	922 KAR 2:160
338.015	803 KAR 2:180
	803 KAR 2:300
	803 KAR 2:305
	803 KAR 2:317
	803 KAR 2:320
	803 KAR 2:412
	803 KAR 2:500
338.031	803 KAR 2:320
	803 KAR 2:412
338.051	803 KAR 2:303
	803 KAR 2:305
	803 KAR 2:313
	803 KAR 2:317
	803 KAR 2:403
	803 KAR 2:412
338.061	803 KAR 2:180
	803 KAR 2:303
	803 KAR 2:305
	803 KAR 2:313
	803 KAR 2:317
	803 KAR 2:403
	803 KAR 2:412
338.121	803 KAR 2:180
341.370	787 KAR 1:070
341.392	921 KAR 1:430
341.420	921 KAR 1:430
341.530	787 KAR 1:070
342.125	803 KAR 25:010
342.260	803 KAR 25:010
342.265	803 KAR 25:010
342.270	803 KAR 25:010
342.300	803 KAR 25:010
342.310	803 KAR 25:010
342.315	803 KAR 25:010
342.710	803 KAR 25:010
342.715	803 KAR 25:010
342.732	803 KAR 25:010
342.760	803 KAR 25:010
342.0011	803 KAR 25:010
344	922 KAR 6:010
350.010	405 KAR 5:095
	405 KAR 7:092
350.028	400 KAR 1:001
	400 KAR 1:031
	400 KAR 1:090
	405 KAR 7:092
	405 KAR 7:093
350.029	400 KAR 1:090
350.032	400 KAR 1:001
	400 KAR 1:090
	405 KAR 5:095
	405 KAR 7:093
350.060	400 KAR 1:090
	405 KAR 5:095

KRS INDEX

KRS SECTION	REGULATION
350.070	400 KAR 1:001
	400 KAR 1:031
	400 KAR 1:090
	405 KAR 7:092
	405 KAR 7:093
350.085	400 KAR 1:001
	400 KAR 1:031
	400 KAR 1:090
	405 KAR 5:095
350.090	400 KAR 1:001
	400 KAR 1:090
	405 KAR 7:092
	405 KAR 7:093
350.093	400 KAR 1:001
	400 KAR 1:031
	400 KAR 1:090
	405 KAR 7:092
	405 KAR 7:093
350.130	400 KAR 1:001
	400 KAR 1:031
	400 KAR 1:090
	405 KAR 5:095
	405 KAR 7:092
	405 KAR 7:093
350.240	400 KAR 1:090
	405 KAR 5:095
350.255	400 KAR 1:001
	400 KAR 1:090
	405 KAR 7:092
	405 KAR 7:093
350.300	400 KAR 1:090
	405 KAR 5:095
350.305	400 KAR 1:090
	405 KAR 5:095
350.465	400 KAR 1:001
	400 KAR 1:031
	400 KAR 1:090
	405 KAR 7:092
	405 KAR 7:093
350.610	400 KAR 1:001
	400 KAR 1:090
350.990	400 KAR 1:001
	400 KAR 1:031
	400 KAR 1:090
	405 KAR 5:095
	405 KAR 7:092
	405 KAR 7:093
350.0301	400 KAR 1:001
	400 KAR 1:090
	405 KAR 7:092
	405 KAR 7:093
350.0305	400 KAR 1:001
	400 KAR 1:090
	405 KAR 7:093
360.210-360.265	808 KAR 4:021
367.93101	40 KAR 2:145
367.93103	40 KAR 2:150
367.93105	40 KAR 2:145
	40 KAR 2:150
367.93107	40 KAR 2:145
367.93109	40 KAR 2:145
367.93111	40 KAR 2:145
367.93113	40 KAR 2:145
367.93115	40 KAR 2:145
367.93117	40 KAR 2:145
	40 KAR 2:150
367.93121	40 KAR 2:145
367.97501	40 KAR 2:145
	40 KAR 2:150
367.97504	40 KAR 2:150
367.97507	40 KAR 2:150
367.97511	40 KAR 2:150
367.97514	40 KAR 2:145
	40 KAR 2:150
367.97517	40 KAR 2:150
367.97521	40 KAR 2:150
367.97524	40 KAR 2:145
	40 KAR 2:150
367.97527	40 KAR 2:145
	40 KAR 2:150
387.025	922 KAR 1:140
403.190	102 KAR 1:320
403.211	921 KAR 1:380
403.210-403.240	921 KAR 1:001
403.311-403.215	921 KAR 1:410
403.707	201 KAR 20:411
405.060	921 KAR 1:410
405.405-405.991	921 KAR 1:410
405.411	921 KAR 1:430
405.430	921 KAR 1:380
405.440	921 KAR 1:001
	921 KAR 1:430
402.450	921 KAR 1:430
405.463	921 KAR 1:430
405.465	921 KAR 1:430
405.467	921 KAR 1:380
	921 KAR 1:430
405.470	921 KAR 1:430
405.490	921 KAR 1:430
405.520	921 KAR 1:001
	921 KAR 1:380
	921 KAR 1:420
406.021	921 KAR 1:380
406.025	921 KAR 1:380
407.5101	921 KAR 1:420
407.5101-407.5902	921 KAR 1:410
407.5101-407.5903	921 KAR 1:001
	921 KAR 1:380
421.500-421.575	201 KAR 20:411
427.125	921 KAR 1:410
431.600	920 KAR 2:040
439	501 KAR 6:020
	501 KAR 6:030
	501 KAR 6:040
	501 KAR 6:060
	501 KAR 6:110
	501 KAR 6:150
	501 KAR 6:160
	501 KAR 6:170
	501 KAR 6:999
439.3401	201 KAR 47:010
	201 KAR 47:020
	902 KAR 20:091
446.030	405 KAR 7:093
504	908 KAR 2:040
514	921 KAR 2:015
527.100	922 KAR 1:140
527.110	922 KAR 1:140
600.020	922 KAR 1:140
	922 KAR 1:320
	922 KAR 1:360
	922 KAR 1:400
	922 KAR 2:160
605.090	922 KAR 1:320
	922 KAR 1:360
605.120	922 KAR 2:160
610.110	922 KAR 1:140
	922 KAR 1:360
	922 KAR 1:400
	922 KAR 1:500
610.125	922 KAR 1:140
610.127	922 KAR 1:140
610.170	921 KAR 1:380
620	922 KAR 1:151

KRS SECTION	REGULATION
	922 KAR 3:011
620.020	920 KAR 2:040
	922 KAR 1:140
	922 KAR 1:320
	922 KAR 1:400
	922 KAR 1:500
	922 KAR 2:160
620.030	902 KAR 20:280
620.045	920 KAR 2:040
620.050	920 KAR 2:040
620.060	922 KAR 1:140
620.090	922 KAR 1:140
620.140	922 KAR 1:140
	922 KAR 1:500
620.180	922 KAR 1:140
	922 KAR 1:320
620.230	922 KAR 1:320
625.040	922 KAR 1:140
625.090	922 KAR 1:140
645.020	902 KAR 20:091
2 C.F.R.	202 KAR 7:520
	803 KAR 2:412
7 C.F.R.	702 KAR 6:090
	804 KAR 3:100
	921 KAR 3:030
	921 KAR 3:035
	921 KAR 3:050
	922 KAR 2:160
10 C.F.R.	921 KAR 4:119
12 C.F.R.	808 KAR 3:020
20 C.F.R.	921 KAR 2:015
	922 KAR 2:160
21 C.F.R.	902 KAR 55:015
	902 KAR 55:035
23 C.F.R.	600 KAR 6:061
	601 KAR 1:018
	603 KAR 4:046
26 C.F.R.	921 KAR 3:050
29 C.F.R.	601 KAR 1:231
	803 KAR 2:180
	803 KAR 2:300
	803 KAR 2:303
	803 KAR 2:305
	803 KAR 2:308
	803 KAR 2:313
	803 KAR 2:317
	803 KAR 2:320
	803 KAR 2:403
	803 KAR 2:425
	803 KAR 2:500
30 C.F.R.	400 KAR 1:001
	400 KAR 1:031
	400 KAR 1:090
	405 KAR 7:092
	405 KAR 7:093
31 C.F.R.	921 KAR 1:410
34 C.F.R.	11 KAR 4:080
40 C.F.R.	401 KAR 4:070
	401 KAR 46:101
	401 KAR 46:110
	401 KAR 46:120
	401 KAR 60:005
	401 KAR 63:002
	401 KAR 63:060
42 C.F.R.	907 KAR 1:065
	907 KAR 4:020
	907 KAR 7:010
	907 KAR 7:015
	907 KAR 17:015
	907 KAR 17:035
	907 KAR 17:040
45 C.F.R.	806 KAR 9:360

KRS SECTION	REGULATION
	900 KAR 10:041
	900 KAR 10:200
	902 KAR 20:058
	902 KAR 20:091
	921 KAR 1:001
	921 KAR 1:380
	921 KAR 1:410
	921 KAR 1:420
	922 KAR 1:140
	922 KAR 1:320
	922 KAR 1:400
	922 KAR 1:500
	922 KAR 2:020
	922 KAR 2:160
	922 KAR 2:260
	922 KAR 6:010
49 C.F.R.	202 KAR 10:020
	600 KAR 6:061
	601 KAR 1:018
	601 KAR 1:231
	601 KAR 2:011
7 U.S.C.	804 KAR 3:100
	921 KAR 3:030
	921 KAR 3:035
	922 KAR 2:160
8 U.S.C.	921 KAR 2:015
15 U.S.C.	201 KAR 27:008
	201 KAR 27:011
	201 KAR 27:017
	921 KAR 1:410
16 U.S.C.	401 KAR 4:070
	401 KAR 46:101
	401 KAR 46:110
	401 KAR 46:120
18 U.S.C.	601 KAR 2:030
20 U.S.C.	11 KAR 4:080
	702 KAR 7:065
	705 KAR 4:231
	780 KAR 4:012
	922 KAR 1:500
21 U.S.C.	902 KAR 55:035
23 U.S.C.	600 KAR 6:061
	603 KAR 4:046
25 U.S.C.	922 KAR 1:140
	922 KAR 2:160
26 U.S.C.	102 KAR 1:320
	103 KAR 15:180
29 U.S.C.	921 KAR 4:119
	922 KAR 2:160
30 U.S.C.	400 KAR 1:001
	400 KAR 1:031
	400 KAR 1:090
	405 KAR 7:092
	405 KAR 7:093
33 U.S.C.	401 KAR 4:070
	401 KAR 46:101
	401 KAR 46:110
	401 KAR 46:120
38 U.S.C.	922 KAR 2:160
42 U.S.C.	106 KAR 1:081
	106 KAR 1:091
	401 KAR 46:101
	401 KAR 46:110
	401 KAR 46:120
	401 KAR 60:005
	401 KAR 63:002
	401 KAR 63:060
	815 KAR 20:060
	900 KAR 10:041
	900 KAR 10:200
	902 KAR 20:058
	902 KAR 20:091

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	906 KAR 1:190		
	907 KAR 1:065		
	907 KAR 3:031		
	907 KAR 4:020		
	907 KAR 4:030		
	907 KAR 7:015		
	907 KAR 15:010		
	907 KAR 15:015		
	907 KAR 17:015		
	921 KAR 1:001		
	921 KAR 1:380		
	921 KAR 1:410		
	921 KAR 1:420		
	921 KAR 2:015		
	921 KAR 3:030		
	921 KAR 3:035		
	921 KAR 4:119		
	922 KAR 1:140		
	922 KAR 1:320		
	922 KAR 1:360		
	922 KAR 1:400		
	922 KAR 1:500		
	922 KAR 2:020		
	922 KAR 2:160		
	922 KAR 2:260		
	922 KAR 3:011		
	922 KAR 6:010		
Pub.L. 109-58	921 KAR 4:119		
1986 Ky. Acts ch 401	603 KAR 8:011		
1998 Ky. Acts ch.615	600 KAR 5:011		
2010 ES Ky. Acts ch.1	101 KAR 5:016		
2014 Ky. Acts ch.117	922 KAR 2:160		
2016 Ky. Acts ch. 91	739 KAR 2:140		
2016 Ky. Acts ch. 149	922 KAR 2:160		
EO 2016-270	201 KAR 27:005		
	201 KAR 27:105		
Pres. EO 13166	921 KAR 3:030		

TECHNICAL AMENDMENT INDEX

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.

Regulation Number		Date Corrected	Regulation Number		Date Corrected
30 KAR 1:040		8-2-2016	103 KAR 43:110		6-28-2016
40 KAR 2:150		6-30-2016	103 KAR 43:140		6-28-2016
103 KAR 25:050		6-22-2016	103 KAR 43:310		6-28-2016
103 KAR 25:060		6-22-2016	103 KAR 43:330		6-28-2016
103 KAR 25:131		6-22-2016	103 KAR 44:060		6-28-2016
103 KAR 26:050		6-22-2016	103 KAR 44:070		6-28-2016
103 KAR 26:070		6-22-2016	201 KAR 22:053		11-16-2016
103 KAR 26:080		6-22-2016	201 KAR 27:005	‡	10-26-2016
103 KAR 26:090		6-22-2016	201 KAR 27:007	‡	10-26-2016
103 KAR 26:100		6-22-2016	201 KAR 27:008	‡	10-26-2016
103 KAR 27:120		6-22-2016	201 KAR 27:011	‡	10-26-2016
103 KAR 27:140		6-22-2016	201 KAR 27:012	‡	10-26-2016
103 KAR 27:150		6-22-2016	201 KAR 27:016	‡	10-26-2016
103 KAR 27:180		6-22-2016	201 KAR 27:017	‡	10-26-2016
103 KAR 27:220		6-22-2016	201 KAR 27:020	‡	10-26-2016
103 KAR 28:010		6-22-2016	201 KAR 27:021	‡	10-26-2016
103 KAR 28:020		6-22-2016	201 KAR 27:036	‡	10-26-2016
103 KAR 28:030		6-22-2016	201 KAR 27:040	‡	10-26-2016
103 KAR 28:040		6-22-2016	201 KAR 27:105	‡	10-26-2016
103 KAR 28:051		6-22-2016	201 KAR 35:015		1-27-2017
103 KAR 28:060		6-22-2016	201 KAR 35:070		1-27-2017
103 KAR 28:090		6-22-2016	301 KAR 2:030		8-29-2016
103 KAR 28:130		6-22-2016	401 KAR 4:010		7-8-2016
103 KAR 28:150		6-22-2016	401 KAR 4:060		7-8-2016
103 KAR 30:091		6-22-2016	401 KAR 4:100		7-8-2016
103 KAR 30:120		6-22-2016	401 KAR 4:140		7-8-2016
103 KAR 30:140		6-22-2016	401 KAR 4:220		7-8-2016
103 KAR 30:160		6-22-2016	401 KAR 5:002		7-8-2016
103 KAR 30:170		6-22-2016	401 KAR 5:005		7-8-2016
103 KAR 30:180		6-22-2016	401 KAR 5:006		7-8-2016
103 KAR 30:190		6-22-2016	401 KAR 5:060		7-8-2016
103 KAR 30:235		6-22-2016	401 KAR 5:320		7-8-2016
103 KAR 30:250		6-22-2016	401 KAR 6:310		7-8-2016
103 KAR 30:260		6-22-2016	401 KAR 6:320		7-8-2016
103 KAR 30:270		6-22-2016	401 KAR 6:350		7-8-2016
103 KAR 30:280		6-22-2016	401 KAR 8:020		7-8-2016
103 KAR 30:290		6-22-2016	401 KAR 8:040		7-8-2016
103 KAR 31:011		6-22-2016	401 KAR 8:100		7-8-2016
103 KAR 31:050		6-22-2016	401 KAR 9:010		7-8-2016
103 KAR 31:080		6-22-2016	401 KAR 10:026		7-8-2016
103 KAR 31:090		6-22-2016	401 KAR 10:030		7-8-2016
103 KAR 31:190		6-22-2016	401 KAR 10:031		7-8-2016
103 KAR 40:010		6-28-2016	401 KAR 11:050		7-8-2016
103 KAR 40:035		6-28-2016	401 KAR 31:070		7-8-2016
103 KAR 40:050		6-28-2016	401 KAR 32:010		7-8-2016
103 KAR 40:090		6-28-2016			12-21-2016
103 KAR 40:100		6-28-2016	401 KAR 32:040		7-8-2016
103 KAR 41:030		6-28-2016			12-21-2016
103 KAR 41:040		6-28-2016	401 KAR 33:010		7-8-2016
103 KAR 41:050		6-28-2016			12-21-2016
103 KAR 41:060		6-28-2016	401 KAR 34:060		7-8-2016
103 KAR 41:090		6-28-2016			12-21-2016
103 KAR 41:100		6-28-2016	401 KAR 34:080		7-8-2016
103 KAR 41:110		6-28-2016	401 KAR 35:060		12-21-2016
103 KAR 41:120		6-28-2016	401 KAR 38:040		7-8-2016
103 KAR 41:130		6-28-2016			12-21-2016
103 KAR 41:160		6-28-2016	401 KAR 38:050		7-8-2016
103 KAR 43:010		6-28-2016	401 KAR 38:080		7-8-2016
103 KAR 43:050		6-28-2016			12-21-2016
103 KAR 43:100		6-28-2016	401 KAR 42:020		7-8-2016

TECHNICAL AMENDMENT INDEX

Regulation Number	Date Corrected
	12-21-2016
401 KAR 42:030	7-8-2016
	12-21-2016
401 KAR 42:040	7-8-2016
	12-21-2016
401 KAR 42:060	7-8-2016
	12-21-2016
401 KAR 42:070	7-8-2016
	12-21-2016
401 KAR 42:080	7-8-2016
	12-21-2016
401 KAR 42:250	7-8-2016
	12-21-2016
401 KAR 42:290	7-8-2016
	12-21-2016
401 KAR 42:300	7-8-2016
	12-21-2016
401 KAR 42:316	7-8-2016
	12-21-2016
401 KAR 42:320	7-8-2016
	12-21-2016
401 KAR 42:330	7-8-2016
	12-21-2016
401 KAR 42:340	7-8-2016
	12-21-2016
401 KAR 44:030	7-8-2016
401 KAR 45:030	7-8-2016
	12-21-2016
401 KAR 45:040	7-8-2016
	12-21-2016
401 KAR 45:070	7-8-2016
	12-21-2016
401 KAR 45:080	7-8-2016
	12-21-2016
401 KAR 45:090	7-8-2016
	12-21-2016
401 KAR 45:100	7-8-2016
401 KAR 45:135	7-8-2016
	12-21-2016
401 KAR 47:090	7-8-2016
	12-21-2016
401 KAR 47:095	7-8-2016
	12-21-2016
401 KAR 47:110	7-8-2016
	12-21-2016
401 KAR 47:205	7-8-2016
	12-21-2016
401 KAR 48:205	7-8-2016
	12-21-2016
401 KAR 48:206	7-8-2016
401 KAR 48:207	7-8-2016
401 KAR 48:208	7-8-2016
401 KAR 48:310	7-8-2016
	12-21-2016
401 KAR 49:011	7-8-2016
	12-21-2016
401 KAR 49:080	7-8-2016
	12-21-2016
401 KAR 49:090	7-8-2016
401 KAR 49:100	7-8-2016
401 KAR 49:210	7-8-2016
	12-21-2016
401 KAR 50:015	7-8-2016
401 KAR 50:045	7-8-2016
401 KAR 50:065	7-8-2016
401 KAR 50:066	7-8-2016
401 KAR 51:001	7-8-2016
401 KAR 51:150	7-8-2016
401 KAR 51:160	7-8-2016
401 KAR 51:170	7-8-2016
401 KAR 51:180	7-8-2016
401 KAR 51:190	7-8-2016
401 KAR 51:195	7-8-2016
401 KAR 52:020	7-8-2016
401 KAR 52:030	7-8-2016
401 KAR 52:040	7-8-2016
401 KAR 52:050	7-8-2016
401 KAR 52:060	7-8-2016
401 KAR 52:070	7-8-2016
401 KAR 52:100	7-8-2016
401 KAR 58:005	7-8-2016
401 KAR 58:025	7-8-2016
401 KAR 59:021	7-8-2016
401 KAR 59:023	7-8-2016
401 KAR 59:174	7-8-2016
401 KAR 59:760	7-8-2016
401 KAR 61:036	7-8-2016
401 KAR 61:090	7-8-2016
401 KAR 63:031	7-8-2016
401 KAR 68:010	7-8-2016
401 KAR 68:020	7-8-2016
401 KAR 68:048	7-8-2016
401 KAR 68:065	7-8-2016
401 KAR 68:090	7-8-2016
401 KAR 68:100	7-8-2016
401 KAR 68:150	7-8-2016
401 KAR 68:200	7-8-2016
401 KAR 100:030	7-8-2016
	12-21-2016
401 KAR 101:010	7-8-2016
	12-21-2016
401 KAR 101:020	7-8-2016
401 KAR 101:030	7-8-2016
401 KAR 101:040	7-8-2016
	12-21-2016
401 KAR 102:010	7-8-2016
	12-21-2016
405 KAR 5:032	7-6-2016
405 KAR 5:070	7-6-2016
405 KAR 5:078	7-6-2016
405 KAR 5:082	7-6-2016
405 KAR 7:080	7-6-2016
405 KAR 7:095	7-6-2016
405 KAR 8:001	7-6-2016
405 KAR 8:010	7-6-2016
405 KAR 8:030	7-6-2016
405 KAR 8:040	7-6-2016
405 KAR 10:015	7-6-2016
405 KAR 10:025	7-6-2016
405 KAR 10:030	7-6-2016
405 KAR 10:070	7-6-2016
405 KAR 10:070	11-1-2016
405 KAR 10:080	7-6-2016
405 KAR 16:001	7-6-2016
405 KAR 16:200	7-6-2016
405 KAR 18:001	7-6-2016
405 KAR 18:200	7-6-2016
500 KAR 3:010	12-20-2016
501 KAR 6:060	8-18-2016
802 KAR 1:010	9-27-2016
805 KAR 1:070	7-6-2016
805 KAR 1:100	7-6-2016
805 KAR 1:110	7-6-2016
805 KAR 1:140	7-6-2016
805 KAR 1:160	7-6-2016
805 KAR 1:170	7-6-2016
805 KAR 1:180	7-6-2016
805 KAR 1:190	7-6-2016
805 KAR 9:010	7-6-2016
805 KAR 9:020	7-6-2016
805 KAR 9:030	7-6-2016
805 KAR 9:040	7-6-2016

TECHNICAL AMENDMENT INDEX

Regulation Number		Date Corrected	Regulation Number	Date Corrected
805 KAR 9:060		7-6-2016		
805 KAR 9:080		7-6-2016		
805 KAR 9:100		7-6-2016		
805 KAR 4:010		7-6-2016		
805 KAR 4:040		7-6-2016		
805 KAR 4:085		7-6-2016		
805 KAR 4:093		7-6-2016		
805 KAR 4:100		7-6-2016		
805 KAR 4:110		7-6-2016		
805 KAR 5:070		7-6-2016		
805 KAR 7:030		7-6-2016		
805 KAR 7:080		7-6-2016		
805 KAR 8:060		7-6-2016		
805 KAR 11:010		7-6-2016		
805 KAR 11:020		7-6-2016		
902 KAR 2:020	‡	8-4-2016		
907 KAR 1:672		3-15-2017		

ACCOUNTANCY
Continuing professional education requirements; 201 KAR 1:100
Individual license renewal and fee; 201 KAR 1:065
Per diem compensation; 201 KAR 1:015

AERONAUTICS
Airport Development
Repeal of 602 KAR 15:010; 602 KAR 15:011
Airport Safety Standards
Repeal of 602 KAR 20:090; 602 KAR 20:091

AGING AND INDEPENDENT LIVING
Services
Long-term Care Ombudsman Program; 910 KAR 1:210

AGRICULTURE
Marketing and Product Promotion
Small Farm Wineries Support Fund; 302 KAR 39:020

AGRICULTURAL EXPERIMENT STATION
Seed
Permits, reports, fees for persons using own tags; 12 KAR 1:140
Sampling, analyzing, testing, and tolerances; 12 KAR 1:116
Schedule of charges for samples submitted for testing; 12 KAR 1:155

AIR QUALITY
Ambient Air Quality
Ambient air quality standards; 401 KAR 53:010
Attainment and Maintenance of the National Ambient Air Quality Standards
Attainment status designations; 401 KAR 51:010
General Administrative Procedures
Enforcement; 401 KAR 50:060
General Standards of Performance
40 C.F.R. Part 63 national emission standards for hazardous air pollutants; 401 KAR 63:002
List of hazardous air pollutants, petitions process, lesser quantity designations, and source category list; 401 KAR 63:060
New Source Performance Standards
40 C.F.R. Part 60 standards of performance for new stationary sources; 401 KAR 60:005

ALCOHOL AND DRUG COUNSELORS
Curriculum of study; 201 KAR 35:050
Code of ethics; 201 KAR 35:030
Examinations; 201 KAR 35:025
Fees; 201 KAR 35:020
Repeal of 201 KAR 35:015; 201 KAR 35:016
Supervision of study; 201 KAR 35:070

ALCOHOLIC BEVERAGE CONTROL, DEPARTMENT OF
Advertising Distilled Spirits and Wine
Repeal of 804 KAR 1:090 and 804 KAR 1:120; 804 KAR 1:071
Conduct of Business; Employees
Repeal of 804 KAR 5:030 and 804 KAR 5:050; 804 KAR 5:031
Fair Trade; Pricing and Sales
License may be suspended or revoked for accepting Supplemental Needs Assistance Program ("SNAP") benefits for alcohol purchases; 804 KAR 3:100
Repeal of 804 KAR 3:080; 804 KAR 3:081
Licensing
ABC basic application and renewal form incorporated by reference; 804 KAR 4:400
Entertainment destination center license; 804 KAR 4:370
Renewals; 804 KAR 4:390
Repeal of 804 KAR 4:040, 804 KAR 4:050, 804 KAR 4:150, 804 KAR 4:310, 804 KAR 4:340, and 804 KAR 4:385; 804 KAR 4:041
Repeal of 804 KAR 4:380; 804 KAR 4:381
Special applications and registration forms; 804 KAR 4:410
Local Administrators
Appointment notification of local alcoholic beverage control administrator; 804 KAR 10:010
Repeal of 804 KAR 10:020 and 10:025; 804 KAR 10:021
Malt Beverage Equipment, Supplies, and Service
Equipment and supplies; 804 KAR 11:010
Repeal of 804 KAR 11:020; 804 KAR 11:021
Quotas
Quota retail license limits for counties; 804 KAR 9:010
Repeal of 804 KAR 9:020 and 804 KAR 9:030; 804 KAR 9:021
Retail Premises
Repeal of 804 KAR 7:050; 804 KAR 7:051
Transportation of Alcoholic Beverages
Repeal of 804 KAR 8:040 and 804 KAR 8:060; 804 KAR 8:041

APPLIED BEHAVIOR ANALYSIS
Per Diem; 201 KAR 43:110

ASSISTIVE TECHNOLOGY LOAN CORPORATION
General eligibility criteria; 789 KAR 1:010

ATHLETE AGENTS
Complaint review; 200 KAR 30:020
Definitions; 200 KAR 30:010
Fees; 200 KAR 30:040
Registration procedure; 200 KAR 30:030
Repeal of 200 KAR 30:050 and 200 KAR 30:060; 200 KAR 30:051

ATTORNEY GENERAL
Consumer Protection; 40 KAR Chapter 2

BANKS
See Financial Institutions

BARBERING
Fees; license, examination, renewal, expiration; 201 KAR 14:180
License, five (5) year expiration of; 201 KAR 14:030
New locations, notification and inspection of; 201 KAR 14:045
Retaking of examination; 201 KAR 14:015
School
Curriculum; 201 KAR 14:090
Equipment; plant layout; 201 KAR 14:110
Records; 201 KAR 14:150
Teacher requirements, 201 KAR 14:125

BEHAVIORAL HEALTH, DEVELOPMENTAL AND INTELLECTUAL DISABILITIES
Mental Health
Hospital district assignments; 908 KAR 2:040
Institutional Care
"Means test" for determining patient liability and per diem rates; 908 KAR 3:060
Repeal of 908 KAR 3:050; 908 KAR 3:051
Repeal of 908 KAR 3:080, 908 KAR 3:0910, 908 KAR 3:100, 908 KAR 3:110, 908 KAR 3:120, 908 KAR 3:130, 908 KAR 3:140, 908 KAR 3:150, 908 KAR 3:160, and 908 KAR 3:180; 908 KAR 3:081

BOXING AND WRESTLING
Definitions; 201 KAR 27:005
Disciplinary action; 201 KAR 27:105
Drug testing; 201 KAR 27:021
Elimination event requirements; 201 KAR 27:017
General requirements
Boxing and kickboxing shows; 201 KAR 27:011
Mixed martial arts matches, shows, or exhibitions; 201 KAR 27:016
Wrestling shows; 201 KAR 27:012
Inspector, powers and duties; 201 KAR 27:007
License requirements and fees; 201 KAR 27:008
Managers; 201 KAR 27:040
Repeal of 201 KAR 27:035, 27:045, 27:050, 27:055, 27:060, 27:065, 27:070, 27:090, 27:100; 201 KAR 27:036

Tickets; 201 KAR 27:020

BUILDING CODE
See Housing, Buildings and Construction

CHILD CARE
See Day Care

CHILDREN
See listings under the following headings:
Day Care
Early Childhood Development Authority
Education
Family Support
Protection and Permanency
Public Health

CHIROPRACTIC EXAMINERS
Board; officers, duties, and compensation; 201 KAR 21:025
Licensing; standards, fees; 201 KAR 21:041

COMMUNITY AND TECHNICAL COLLEGE SYSTEM
Emergency Medical Services; 202 KAR Chapter 7
Fire Commission; KAR Title 739

COMMUNITY BASED SERVICES
Family Support; KAR Title 921
Protection and Permanency; KAR Title 922
Child Care; 922 KAR Chapter 2

CONSTRUCTION
See: Highways
Housing, Buildings and Construction

CONSUMER PROTECTION
Cremation forms and inspections; 40 KAR 2:150
Funeral planning declaration form; 40 KAR 2:145

CORRECTIONS
Office of the Secretary
Correctional Industries; 501 KAR 6:160
Corrections policies and procedures; 501 KAR 6:020
Eastern Kentucky Correctional Complex; 501 KAR 6:150
Green River Correctional Complex; 501 KAR 6:170
Kentucky State Penitentiary; 501 KAR 6:040
Kentucky State Reformatory; 501 KAR 6:030
Northpoint Training Center; 501 KAR 6:060
Roederer Correctional Complex; 501 KAR 6:110

COUNSELORS, PROFESSIONAL
Administrative hearings for denials and revocation of probation; 201 KAR 36:090
Administrative subpoena; 201 KAR 36:055
Application, education, and examination requirements; 201 KAR 36:070
Code of ethics; 201 KAR 36:040
Complaint management process; 201 KAR 36:050
Continuing education requirements; 201 KAR 36:030
Definitions for 201 KAR Chapter 36; 201 KAR 36:005
Distance counseling; 201 KAR 36:045
Fees; 201 KAR 36:020
Licensed professional clinical counselor supervisor; 201 KAR 36:065
Qualifying experience under supervision; 201 KAR 36:060
Renewal, late renewal, and reinstatement of license; 201 KAR 36:075

CREDIT UNIONS
See Financial Institutions

CRIMINAL JUSTICE TRAINING
Law Enforcement Foundation Program Fund
Participation: requirements; application; withdrawal; 503 KAR 5:090

DAY CARE
Child Care Assistance Program; 922 KAR 2:160
Child Care Assistance Program (CCAP) improper payments, claims, and penalties; 922 KAR 2:020
Child care service appeals; 922 KAR 2:260
Children's advocacy center standards; 920 KAR 2:040

DIABETES EDUCATORS
Continuing education; 201 KAR 45:130
Fees; 201 KAR 45:100
Renewal, reinstatement, and inactive status; 201 KAR 45:120
Supervision and work experience; 201 KAR 45:110

DURABLE MEDICAL EQUIPMENT SUPPLIERS
Home medical equipment and supplier licenses, requirements, and fees; 201 KAR 47:010
Inspections, discipline, reinstatement, and administrative appeals; 201 KAR 47:020

EARLY CHILDHOOD DEVELOPMENT AUTHORITY
Duties of the advisory council; 10 KAR 6:010

ECONOMIC DEVELOPMENT FINANCE AUTHORITY
Repeal of 307 KAR 1:030, 307 KAR 1:040, 307 KAR 1:050, and 307 KAR 1:060; 307 KAR 1:031

EDUCATION AND WORKFORCE DEVELOPMENT
See headings listed below:
For Education:
General; KAR Titles 702, 703, 704, 705
Higher Education Assistance Authority; KAR Title 11
Professional Standards Board; KAR Title 16
Postsecondary Education; KAR Title 13
Technical Education; KAR Title 780
For Workforce Development:
Assistive Technology Loan Corporation; KAR Title 789
Employment and Training; KAR Title 787
Employment Services; KAR Title 788

EDUCATION
Assessment and Accountability
Procedures for the inclusion of special populations in the state-required assessment and accountability programs; 703 KAR 5:070
Food Service Programs
Minimum nutritional standards for foods and beverages available on public school campuses during the school day; required nutrition and physical activity reports; 702 KAR 6:090
Instruction
Repeal of 704 KAR 3:340; 704 KAR 3:342
Instructional Programs
General program standards for secondary career and technical education programs; 705 KAR 4:231
Repeal of 780 KAR 4:010; 780 KAR 4:012
Learning Results Services
Repeal of 703 KAR 4:040; 703 KAR 4:041
School Administration and Finance
Repeal of 702 KAR 3:170; 702 KAR 3:171
School Terms, Attendance and Operation
Designation of agent to manage middle and high school interscholastic athletics; 702 KAR 7:065

EDUCATION PROFESSIONAL STANDARDS BOARD
Assessment
Assessment requirements for occupation-based career and technical education teachers; 16 KAR 6:020
Examination prerequisites for teacher certification; 16 KAR 6:010
Certification Procedures
Certification fees; 16 KAR 4:040
Out-of-state recency; 16 KAR 4:080
Reissuance; 16 KAR 4:090

General Administration
Procedures for educator certificate surrender, revocation, suspension, reinstatement, and reissuance, and for application denial; 16 KAR 1:030
Standards for certified teachers; 16 KAR 1:010
Internship
Kentucky Teacher Internship Program; 16 KAR 7:010

ELECTIONS
Forms and Procedures
Exceptions to prohibition on electioneering; 31 KAR 4:170

EMERGENCY MEDICAL SERVICES
Allocation of block grant funding assistance for emergency medical services; 202 KAR 7:520
Ambulance and medical first response agencies; 202 KAR 7:501
Survivor benefits for death of emergency medical services personnel; 202 KAR 7:810

EMPLOYMENT AND TRAINING
See also Occupations and Professions
Unemployment Insurance
Reasonable time for protesting claim; 787 KAR 1:070

ENERGY AND ENVIRONMENT
Environmental Protection
See specific heading:
Air Quality
Environmental Protection
Natural Resources
Office of the Secretary
Waste Management
Water Quality

ENGINEERS AND LAND SURVEYORS
Repeal of 201 KAR 18:050; 201 KAR 18:051

ENVIRONMENTAL PROTECTION
Repeal of 100:011; 401 KAR 100:011
See specific heading:
Air Quality
Waste Management
Water

ETHICS
See: Executive Branch Ethics Commission, KAR Title 9
Legislative Ethics Commission, KAR Title 2

EXECUTIVE BRANCH ETHICS COMMISSION
Registration and expenditure statements; financial transactions and termination forms; and enforcement; 9 KAR 1:040
Requirements relating to fundraising activities and charitable nonprofit organizations; 9 KAR 1:060
Statement of financial disclosure; 9 KAR 1:010

FAMILY SUPPORT
Child Support
Application and intergovernmental process; 921 KAR 1:380
Child support administrative hearings; 921 KAR 1:430
Collection and enforcement; 921 KAR 1:410
Definitions; 921 KAR 1:001
Distribution; 921 KAR 1:420
Energy Assistance Program/Weatherization
Repeal of 921 KAR 4:118; 921 KAR 4:119
K-TAP, Kentucky Works, Welfare to Work, State Supplementation
Supplemental programs for persons who are aged, blind, or have a disability; 921 KAR 2:015
Supplemental Nutrition Assistance Program
Application process; 921 KAR 3:030
Certification process; 921 KAR 3:035
Claims and additional administrative provisions; 921 KAR 3:050

FINANCE AND ADMINISTRATION
Executive Branch Ethics Commission; 9 KAR Chapter 1
Revenue; KAR Title 103
Purchasing
Public-private partnership delivery method; 200 KAR 5:355
School Facilities Construction Commission
Emergency and targeted investment fund; 750 KAR 1:030
Travel Expense and Reimbursement
Employees' reimbursement for travel; 200 KAR 2:006
Teachers' Retirement System; KAR Title 102

FINANCIAL INSTITUTIONS
Administration
Fees for services rendered to banks and trust companies; 808 KAR 1:160
Repeal of 808 KAR 1:080 and 808 KAR 1:100; 808 KAR 1:081
Repeal of 808 KAR 1:110; 808 KAR 1:111
Check Cashing
Required forms, procedures, and fees for applicants and licensees; 808 KAR 9:050
Credit Unions
Recordkeeping requirements; 808 KAR 3:020
Repeal of 808 KAR 3:030; 808 KAR 3:031
Finance Charges
Repeal of 808 KAR 4:020; 808 KAR 4:021
Industrial Loans
Repeal of 808 KAR 5:010, 808 KAR 5:020, and 808 KAR 5:030; 808 KAR 5:011
Repeal of 808 KAR 11:010; 808 KAR 11:011
Mortgage Loan Companies and Mortgage Loan Brokers
Licensing and registration; 808 KAR 12:021
Uniform standards for mortgage loan processor applicant employee background checks; 808 KAR 12:055
Savings and Loans
Repeal of 808 KAR 7:030 and 808 KAR 7:040; 808 KAR 7:031

FIRE COMMISSION
Personnel Standards and Education
Survivor benefits for death of a firefighter; 739 KAR 2:040
Volunteer fire department reporting requirements; 739 KAR 2:140

FISH AND WILDLIFE RESOURCES
Fish
Asian Carp and Scaled Rough Fish Harvest Program; 301 KAR 1:152
Boat and motor restrictions; 301 KAR 1:015
Taking of fish by traditional methods; 301 KAR 1:201
Game
Deer control tags, deer destruction permits, and landowner designees; 301 KAR 2:176
Deer hunting seasons, zones, and requirements; 301 KAR 2:172
Deer hunting on Wildlife Management Areas, state parks, other public lands, and federally controlled areas; 301 KAR 2:178
Elk hunting seasons, permits, zones, and requirements; 301 KAR 2:132
Holding and intrastate transportation of captive cervids; 301 KAR 2:083
Hunting and trapping seasons and limits for furbearers; 301 KAR 2:251
Seasons, methods, and limits for small game; 301 KAR 2:122
Small game and furbearer hunting and trapping on public areas; 301 KAR 2:049
Waterfowl hunting requirements on public lands; 301 KAR 2:222
Waterfowl seasons and limits; 301 KAR 2:221
Wildlife rehabilitation permit, 301 KAR 2:075
Youth waterfowl, moorhen, and gallinule hunting seasons; 301 KAR 2:226
Hunting and Fishing
Shooting ranges on department-owned or managed lands; 301 KAR 3:015
Licensing
Migratory Bird Harvest Information Program; 301 KAR 5:040

GENERAL GOVERNMENT CABINET
See listing for specific subject headings:
Accountancy; 201 KAR Chapter 1
Alcohol and Drug Counselors; 201 KAR Chapter 35
Barbering; 201 KAR Chapter 14
Chiropractic Examiners; 201 KAR Chapter 21
Counselors, Professional; 201 KAR Chapter 36
Diabetes Educators; 201 KAR Chapter 45
Durable Medical Equipment Suppliers; 201 KAR Chapter 47
Engineers and Land Surveyors; 201 KAR Chapter 18
Interpreters for the Deaf and Hard of Hearing, 201 KAR Chapter 39
Marriage and Family Therapists; 201 KAR Chapter 32
Massage Therapy; 201 KAR Chapter 42
Medical Imaging and Radiation Therapy; 201 KAR Chapter 46
Medical Licensure; 201 KAR Chapter 9
Nursing; 201 KAR Chapter 20
Occupational Therapy; 201 KAR Chapter 28
Ophthalmic Dispensers; 201 KAR Chapter 13
Pastoral Counselors; 201 KAR Chapter 38
Pharmacy; 201 KAR Chapter 2
Physical Therapy; 201 KAR Chapter 22
Prosthetics, Orthotics, and Pedorthics; 201 KAR 44
Real Estate Appraisers; 201 KAR Chapter 30
Respiratory Care; 201 KAR Chapter 29
Social Work; 201 KAR Chapter 23

GOVERNOR'S OFFICE
Early Childhood Development Authority; 10 KAR Chapter 6

HEALTH AND FAMILY SERVICES
Aging and Independent Living; KAR Title 910
Behavioral Health, Developmental and Intellectual Disabilities; KAR Title 908
Community Based Services; KAR Titles 921 and 922
Health Benefit and Information Exchange
Federal Platform; 900 KAR 10:200
Repeal of 900 KAR 10:040 and 900 KAR 10:050; 900 KAR 10:041
Certificate of Need
Administrative escalations; 900 KAR 6:095
Application process; 900 KAR 6:065
Application timetable; 900 KAR 6:060
Forms; 900 KAR 6:055
Inspector General
Kentucky national background check program; 906 KAR 1:190
Repeal of 906 KAR 1:150; 906 KAR 1:151
State Health Plan
Facilities and services; 900 KAR 5:020
Medicaid Services; KAR Title 907
Protection and Permanency; KAR Title 922
Public Health; KAR Title 902

HIGHER EDUCATION ASSISTANCE AUTHORITY
Authority
Student aid applications; 11 KAR 4:080
Kentucky Educational Excellence Scholarship Program
KEES program; 11 KAR 15:090

HIGHWAYS
Construction and Materials
Repeal of 603 KAR 1:030; 603 KAR 1:031
Division of Planning
Repeal of 603 KAR 9:020; 603 KAR 9:021
Mass Transportation
Repeal of 603 KAR 7:010, 603 KAR 7:040, 603 KAR 7:050, 603 KAR 7:060, 603 KAR 7:070; 603 KAR 7:071
Nonpublic School Transportation
Repeal of 600 KAR 5:010; 600 KAR 5:011
Preconstruction
Public-private partnerships; 603 KAR 2:020
Professional Engineering and Related Services
Repeal of 600 KAR 6:020, 600 KAR 6:030, 600 KAR 6:060; 600 KAR 6:061
Right-of-way
Repeal of 603 KAR 4:045; 603 KAR 4:046
Traffic
Repeal of 603 KAR 5:020, 603 KAR 5:030, 603 KAR 5:080, 603 KAR 5:090, 603 KAR 5:301; 603 KAR 5:311
Transportation Scholarship Program
Repeal of 603 KAR 8:010; 603 KAR 8:011

HORSE RACING
Harness Racing
Harness racing at county fairs; 811 KAR 1:220
Kentucky Standardbred Development Fund and Kentucky Standardbred Breeders' Incentive Fund; 811 KAR 1:215
Quarter Horse, Paint Horse, Appaloosa, and Arabian Racing
Development Fund; 811 KAR 2:190
Thoroughbred Racing
Jockeys and apprentices; 810 KAR 1:009

HOUSING, BUILDINGS AND CONSTRUCTION
Building Code Enforcement
Kentucky Building Code; 815 KAR 7:120
Plumbing; 815 KAR Chapter 20

HUNTING
See Fish and Wildlife Resources

INSURANCE
Agents, Consultants, Solicitors, and Adjusters
Pharmacy benefit manager license; 806 KAR 9:360
Administration
Filing of local government premium tax ordinances; notification to insurers; 806 KAR 2:097
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 2:011
Group and Blanket Health Insurance
Preferred and exclusive provider arrangements; 806 KAR 18:020

INTERPRETERS FOR THE DEAF AND HARD OF HEARING
Application; qualifications for licensure; and certification levels; 201 KAR 39:030
Application and qualifications for temporary licensure; 201 KAR 39:070
Definitions for 201 KAR 39:001; 201 KAR 39:001
Renewal of licenses, extension of temporary licenses and reinstatement; 201 KAR 39:050

JUSTICE AND PUBLIC SAFETY
Corrections; KAR Title 501
Criminal Justice Training; KAR Title 503

LABOR
Workers' Claims; 803 KAR Chapter 25
Workplace Standards
Occupational Safety and Health; 803 KAR Chapter 2

LEGISLATIVE ETHICS COMMISSION
Adjudicatory hearings; 2 KAR 2:060
Advisory opinions; 2 KAR 2:070
Preliminary inquiries; 2 KAR 2:050
Required forms; 2 KAR 2:010
Statement of financial disclosure; 2 KAR 2:020
Updated registration short forms for employers and legislative agents; 2 KAR 2:040

MARRIAGE AND FAMILY THERAPISTS
Code of ethics; 201 KAR 32:050
Continuing education requirements; 201 KAR 32:060
Fees; 201 KAR 32:030

MASSAGE THERAPY
Fees; 201 KAR 42:020
Renewals; 201 KAR 42:040

MEDICAL IMAGING AND RADIATION THERAPY
Continuing education requirements; 201 KAR 46:060
Fees; 201 KAR 46:020
Medical imaging technologist, advanced imaging professional, radiographer, nuclear medicine technologist, and radiation therapist licenses; 201 KAR 46:040
Violations and enforcement; 201 KAR 46:070

MEDICAL LICENSURE
Complaint process, administrative hearings; 201 KAR 46:090
Disciplinary proceedings; 201 KAR 9:081
Emergency orders and hearings; appeals, other proceedings; 201 KAR 9:240
Interpretation and application of KRS 311.571(10); 201 KAR 9:025
Pain management facilities; registration, oversight; 201 KAR 9:250
Professional standards for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone; 201 KAR 9:270

MEDICAID SERVICES
Behavioral Health
Definitions; 907 KAR 15:005
Providers; Individuals, groups, and multi-specialty groups
Coverage; 907 KAR 15:010
Reimbursement; 907 KAR 15:015
Certified Provider Requirements
Home and community based waiver services version 2
Coverage; 907 KAR 7:010
Reimbursement; 907 KAR 7:015
Children's Health Insurance Program
Medicaid Expansion Title XXI of the Social Security Act; 907 KAR 4:020
Phase III Title XXI of the Social Security Act; 907 KAR 4:030
Managed Care
Third-party review, external independent
Appeal and administrative hearing, after; 907 KAR 17:040
General; 907 KAR 17:035
Provider requirements and policies; 907 KAR 17:015
Payments and Services
Repeal of 907 KAR 3:030; 907 KAR 3:031
Services
Community mental health center services
Community services; 907 KAR 1:045
Primary care services; 907 KAR 1:047
Payments for price-based nursing facility services; 907 KAR 1:065

MILITARY AFFAIRS
Disaster and Emergency Services
Kentucky Emergency Response Commission civil penalty assessment and hearing procedure; 106 KAR 1:131
Kentucky Emergency Response Commission Fee Account Grant Committee; 106 KAR 1:111
Kentucky Emergency Response Commission fee account grant distribution formula; 106 KAR 1:121
Kentucky Emergency Response Commission fee account grant requirements for local emergency planning committees; 106 KAR 1:091
Kentucky Emergency Response Commission fee account grant requirements for state agencies; 106 KAR 1:101
Kentucky Emergency Response Commission Tier 2 reporting and fee schedule requirements; extremely hazardous substance (EHS) facility planning participation requirements; 106 KAR 1:081

MOREHEAD STATE UNIVERSITY
Board of Regents
Capital construction procedures; 755 KAR 1:080

NATURAL RESOURCES
General Provisions
Administrative hearings and assessment conferences relating to matters brought under KRS Chapter 350 relating to surface coal mining and reclamation operations, and coal exploration operations; 405 KAR 7:092
Repeal of 405 KAR 7:091; 405 KAR 7:093
Surface Effects of Noncoal Mining
Administrative hearings, informal settlement conferences, and general practice provisions relating to a mineral operation; 405 KAR 5:095

NURSING
Advanced practice registered nurse licensure and certification requirements; 201 KAR 20:056
Continuing competency requirements; 201 KAR 20:215
Continuing education provider approval; 201 KAR 20:220
Scope and standards of practice of advanced practice registered nurses; 201 KAR 20:057
Sexual assault nurse examiner program standards and credential requirements; 201 KAR 20:411
Telehealth; 201 KAR 20:520

OCCUPATIONAL THERAPY
Renewals; 201 KAR 28:090
Telehealth occupational therapy services; 201 KAR 28:230

OCCUPATIONS AND PROFESSIONS
See specific headings listed by occupation or profession
See also Secretary of State
Athlete Agents 200 KAR Chapter 30

OCCUPATIONAL SAFETY AND HEALTH
See Workplace Standards

OFFICE OF THE SECRETARY
Administrative hearings practice provisions, 400 KAR 1:090
Definitions; 400 KAR 1:001
General administrative hearing practice provisions relating to matters brought under KRS Chapters 146, 149, 151, 223, and 224.
Repeal of 400 KAR 1:030; 400 KAR 1:031

OPHTHALMIC DISPENSERS
Apprentices; 201 KAR 13:050
Licensing; application, examination; experience; renewal; and inactive status; 201 KAR 13:040

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

PERSONNEL
Board
Plan year handbook for the public employee health insurance program; 101 KAR 2:210
Probationary periods; 101 KAR 1:325
Cabinet, Classified
Applying for employment, qualifications and examinations; 101 KAR 2:046
Certification and selection of eligible applicants for appointments; 101 KAR 2:066
Classified compensation administrative regulations; 101 KAR 2:034
Employee performance evaluation system; 101 KAR 2:180
Registers; 101 KAR 2:056
Cabinet, General
Repeal of 101 KAR 5:015; 101 KAR 5:016
Cabinet, Unclassified
Compensation plan and pay incentives for unclassified service; 101 KAR 3:045

PHARMACY
Compounding; 201 KAR 2:076
Licenses and permits; fees; 201 KAR 2:050
Pharmacy services in hospitals or other organized health care facilities; 201 KAR 2:074
Repeal of 201 KAR 2:350; 201 KAR 2:351
Technicians; 201 KAR 2:045

PHYSICAL THERAPY
Continued competency requirements, procedures; 201 KAR 22:045
Eligibility and credentialing procedure; 201 KAR 22:020
Ethics and standards of practice for physical therapists and physical therapist assistants; 201 KAR 22:053

PSYCHOLOGY
Code of conduct; 201 KAR 26:145
Continuing education; 201 KAR 26:175
Education requirements for licensure as a psychologist; 201 KAR 26:200
Educational requirements or licensure as a licensed psychological associate; 201 KAR 26:210
Employment of a psychological associate; 201 KAR 26:250
Fee schedule; 201 KAR 26:160
Grievance procedure; 201 KAR 26:130
Health service provider designation; 201 KAR 26:125
Inactive status; 201 KAR 26:165
Licensed psychological associate: application procedures and temporary license; 201 KAR 26:280
Licensed psychological practitioner: application procedures; 201 KAR 26:290
Licensed psychologist: application procedures and temporary license; 201 KAR 26:155
Nonresident status; 201 KAR 26:215
Procedures for disciplinary hearings; 201 KAR 26:140
Renewal and reinstatement; 201 KAR 26:225
Requirements for granting licensure as a psychologist by reciprocity; 201 KAR 26:180
Requirements for granting licensure as a psychologist to an applicant licensed in another state; 201 KAR 26:185
Requirements for supervised professional experience; 201 KAR 26:190
Requirements for supervision; 201 KAR 26:171

PLUMBING
Definitions; 815 KAR 20:010
House sewers and storm water piping; methods of installation; 815 KAR 20:130
Materials/Parts
  List; 815 KAR 20:020
  Quality and weight; 815 KAR 20:060
Soil, waste, and vent systems; 815 KAR 20:090
Waste pipe size; 815 KAR 20:080
Water supply and distribution; 815 KAR 20:120

POSTSECONDARY EDUCATION
Public Educational Institutions
  Advanced practice doctoral degree programs at comprehensive universities; 13 KAR 2:110
  Degree program approval; equal opportunity goals; 13 KAR 2:060
Interstate Reciprocity Agreements
  State authorization reciprocity agreement; 13 KAR 4:010

PROSTHETICS, ORTHOTICS, AND PEDORTHICS
  Professional conduct and Code of Ethics; 201 KAR 44:040

PROTECTION AND PERMANENCY
Adult Services
  Caregiver misconduct registry and appeals; 922 KAR 5:120
  Repeal of 922 KAR 5:080; 922 KAR 5:081
Block Grants
  Repeal of 922 KAR 3:010 and 922 KAR 3:020; 922 KAR 3:011
Child Welfare
  Educational and training vouchers; 922 KAR 1:500
  Foster care, adoption permanency services; 922 KAR 1:140
  Private child care placement, levels, payment; 922 KAR 1:360
  Supportive services; 922 KAR 1:400
  Repeal of 922 KAR 1:150, 1:170, 1:210, and 1:230; 922 KAR 1:151
  Service appeals; 922 KAR 1:320
Community Action Agencies
  Standards; 922 KAR 6:010

PUBLIC HEALTH
Communicable Diseases
  Reportable disease surveillance; 902 KAR 2:020
Controlled Substances
  Schedule I substances; 902 KAR 55:015
  Schedule V substances; 902 KAR 55:035
Health Services and Facilities
  Facilities specifications, operation and services; community mental health center; 902 KAR 20:091
  License procedures and fee schedule; 902 KAR 20:008
  Operation and services; primary care center; 902 KAR 20:058
  Operations and services; home health agencies; 902 KAR 20:081
  Repeal of 902 KAR 20:014; 902 KAR 20:013
Maternal, Child Health
  Health Access Nurturing Development Services (HANDS) Program; 902 KAR 4:120
Programs for the Underserved
  Colon Cancer Screening Program; 902 KAR 21:020
  Pediatric Cancer Research and Treatment Grant Program; 902 KAR 21:030
Radiology
  Exempt concentrations; 902 KAR 100:085
  Exempt quantities; 902 KAR 100:080
  Quantities of radioactive material requiring labeling; 902 KAR 100:030

PUBLIC PROTECTION CABINET
Alcoholic Beverage Control; KAR Chapter 804
Boxing and Wrestling Commission; 201 KAR Chapter 27
Financial Institutions; KAR Title 808
Insurance; KAR Title 806
Occupations and Professions; KAR Title 200

PUBLIC TRANSPORTATION INFRASTRUCTURE AUTHORITY
Public-private partnerships; 202 KAR 10:020
Tolling projects; 202 KAR 10:030
Unsolicited proposals; 202 KAR 10:010

REAL ESTATE APPRAISERS
Types of appraisers required in federally related transactions; certification and licensure; 201 KAR 30:030

RESPIRATORY CARE
Fees; 201 KAR 29:015

REVENUE
Ad Valorem Tax, Administration
  Repeal of 103 KAR 5:120; 103 KAR 5:121
Ad Valorem Tax; State Assessment
  Valuation of municipal solid waste landfill facilities; 103 KAR 8:160
Corporation License Tax
  Repeal of 103 KAR 20:010, 103 KAR 20:020, and 103 KAR 20:035; 103 KAR 20:011
Forms
  Repeal of 103 KAR 3:010, 103 KAR 3:020, 103 KAR 3:030. 103 KAR 3:040, and 103 KAR 3:050; 103 KAR 3:011
Income Tax; Corporations
  Repeal of 103 KAR 16:030; 103 KAR 16:031
  Repeal of 103 KAR 16:220 and 103 KAR 16:300; 103 KAR 16:221
Income Tax, Miscellaneous
  Repeal of 103 KAR 19:030; 103 KAR 19:031
Income Tax; General Administration
  Kentucky new markets development program tax credit; 103 KAR 15:180
  Repeal of 103 KAR 15:020, 103 KAR 15:080, and 103 KAR 15:100; 103 KAR 15:021
Sales and Use Tax; Miscellaneous Retail Transactions
  Repeal of 103 KAR 28:040; 103 KAR 28:041
Selective Excise Tax; Cigarettes

Repeal of 103 KAR 41:020; 103 KAR 41:021
Selective Excise Tax; Motor Vehicle Usage
Repeal of 103 KAR 44:130; 103 KAR 44:131

SECRETARY OF STATE
Occupational License Fees
Standard form for occupational license fee return; 30 KAR 7:010
Standard form occupational license fee returns for dual tax districts; 30 KAR 7:020

SOCIAL WORK
Continuing education for renewal; 201 KAR 23:075
Inactive status of license; 201 KAR 23:055

TEACHERS' RETIREMENT SYSTEM
General Rules
Disability retirement application, review and examinations; 102 KAR 1:290
Qualified domestic relations orders; 102 KAR 1:320
Surviving children's benefits; 102 KAR 1:165

TECHNICAL EDUCATION
Facilities and Equipment of the Kentucky TECH System
Equipment inventory and insurance; 780 KAR 7:060

TOURISM, ARTS AND HERITAGE
Fish and Wildlife Resources; KAR Title 301

TRANSPORTATION
Aeronautics; KAR Title 602
Highways; KAR Title 603
Vehicle Regulation; KAR Title 601

VEHICLE REGULATION
Administration
Ignition interlock; 601 KAR 2:030
Repeal of 601 KAR 2:010; 601 KAR 2:011
Motor Carriers
Repeal of 601 KAR 1:029, 601 KAR 1:060, 601 KAR 1:075, 601 KAR 1:095, 601 KAR 1:101, 601 KAR 1:110, 601 KAR 1:145, 601 KAR 1:190, and 601 KAR 1:230; 601 KAR 1:231
Special overweight or over dimensional motor vehicle load permits; 601 KAR 1:018
Motor Vehicle Commission
Repeal of 605 KAR 1:010; 605 KAR 1:011
Motor Vehicle Tax
Repeal of 601 KAR 9:010, 601 KAR 9:020, 601 KAR 9:060, 601 KAR 9:065, 601 KAR 9:095, and 601 KAR 9:105; 601 KAR 9:111
Transportation of Solid Waste
Repeal of 601 KAR 40:010; 601 KAR 40:011

WASTE MANAGEMENT
Coal Combustion Residuals (CCR)
Coal Combustion residuals (CCR) permit-by-rule; 401 KAR 46:120
Definitions for 401 KAR Chapter 46; 401 KAR 46:101
Standards for the disposal of coal combustion residuals (CCR) in CCR units; 401 KAR 46:110
Identification and Listing of Hazardous Waste
Lists of hazardous wastes; 401 KAR 31:040
Special Waste
Definitions for 401 KAR Chapter 45; 401 KAR 45:010
Special waste permit-by-rule; 401 KAR 45:060

WATER
Resources
Coal Combustion residuals surface impoundments; 401 KAR 4:070

WORKERS' CLAIMS
Procedure for adjustments of claims; 803 KAR 25:010
Repeal of 803 KAR 25:009; 803 KAR 25:014
Workers' compensation medical fee schedule for physicians; 803 KAR 25:089

WORKFORCE INVESTMENT
See Employment and Training

WORKPLACE STANDARDS
Occupational Safety and Health
Adoption of 29 C.F.R. 1926.1-6; 803 KAR 2:400
Fall protection; 803 KAR 2:412
General; 803 KAR 2:300
Hazardous materials; 803 KAR 2:307
Maritime employment; 803 KAR 2:500
Materials handling and storage; 803 KAR 2:313
Personal protective equipment; 803 KAR 2:308
Powered platforms, manlifts, and vehicle-mounted work platforms; 803 KAR 2:305
Occupational health and environmental controls; 803 KAR 2:430
Recordkeeping, reporting, statistics; 803 KAR 2:180
Special Industries; 803 KAR 2:317
Toxic and hazardous substances; 803 KAR 2:320
Toxic and hazardous substances; 803 KAR 2:425
Walking-working surfaces; 803 KAR 2:303