VOLUME 44, NUMBER 10 LEGISLATIVE RESEARCH COMMISSION APRIL 1, 2018

ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, March 15, 2018.

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet April 12, 2018, at 1:00 p.m. in room 149 Capitol Annex. **Tentative Agenda** 2177
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KENTUCKY ADMINISTRATIVE REGULATIONS are codified according to the following system and are to be cited by Title, Chapter and Regulation number, as follows:

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

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(See KRS Chapter 13A for specific provisions)

Filing and Publication

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

Public Hearing and Public Comment Period

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

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

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

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

Review Procedure

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

EMERGENCY ADMINISTRATIVE REGULATIONS

STATEMENT OF EMERGENCY
201 KAR 22:020E

This emergency administrative regulation is being promulgated in order to meet an imminent threat to public health, safety, or welfare. During the 2017 Legislative Session, the General Assembly enacted House Bill 227 which required, inter alia, that applicants seeking to obtain a credential to engage in the practice of physical therapy in Kentucky submit to a nationwide criminal background investigation provided by the Kentucky State Police and Federal Bureau of Investigation as a condition for participating in the Physical Therapy Compact. Following the passage of this legislation the Kentucky Board of Physical Therapy amended 201 KAR 22:020, 201 KAR 22:040, and 201 KAR 22:070 to make the criminal background investigation a requirement for initial licensure or certification, effective May 1, 2018. As of the date of the filing of this emergency administrative regulation, the Board has been unable to obtain an Originating Agency Identification number from the FBI which would allow its applicants to obtain the necessary criminal background investigation. This is being filed as an emergency administrative regulation to ensure that new applicants, including new graduates of physical therapy and physical therapist assistant programs, are not denied the ability to obtain a license or certificate due to circumstances beyond their control. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATT BEVIN, Governor
TALIA BARTON, Board Chair
SCOTT D. MAJORS, Executive Director

GENERAL GOVERNMENT
Board of Physical Therapy
(Emergency Amendment)

201 KAR 22:020E. Eligibility and credentialing procedure.

RELATES TO: KRS 164.772, 327.010, 327.050, 327.060, 327.075, 327.080, 327.310
STATUTORY AUTHORITY: KRS 327.040(1), (11), (13)
EFFECTIVE: March 14, 2018
NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the Board of Physical Therapy to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327. KRS 327.040(1) requires the board to determine if physical therapist applicants meet the qualifications and standards required by KRS Chapter 327. KRS 327.040(13) authorizes the board to promulgate administrative regulations regarding the qualifications for physical therapist assistants. This administrative regulation establishes the criteria for eligibility, methods, and procedures of qualifying for a credential to practice physical therapy in Kentucky.

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

Section 2. Examination Candidate. (1) To be eligible for the examination, the applicant for licensure as a physical therapist shall:
(a) Have successfully completed the academic and clinical requirements of a physical therapy program accredited by CAPTE;
(b) Submit certification of completion by the educational administrator of that program;
(c) Have successfully completed the Jurisprudence Exam;
(d) Submit a complete Application for Credentialing that includes a photo taken within one (1) year;
(e) Submit the correct, nonrefundable fee as required in 201 KAR 22:135;
(f) If applicable, submit on an Applicant Special Accommodations Request Form a request for a reasonable accommodation in testing due to a documented disability;
(g) Register for the NPTE examination; and
(h) Effective six (6) months after the Board receives an Originating Agency Number from the Federal Bureau of Investigation [~~May 1, 2018~~], submit to the Board a completed nationwide criminal background check as required by KRS 327.310 with the background investigation completed no later than six (6) months prior to the date of the filing of the application.
(2) To be eligible for the examination, the applicant for certification as a physical therapist assistant shall:
(a) Have successfully completed the academic and clinical requirements of a physical therapy or physical therapist assistant program accredited by CAPTE; and
(b) Complete the requirements of subsection (1)(b) through (h) of this section.
(3) Effective July 1, 2012, after six (6) failed attempts at either the physical therapist or physical therapist assistant examination, or combination thereof, in any jurisdiction, an applicant shall not be eligible to register for any additional examinations.

Section 3. An applicant for credentialing who is registered for the examination in another jurisdiction shall:
(1) Meet the eligibility requirements of Section 2 of this administrative regulation; and
(2) Register with the FSBPT Score Transfer Service to have results submitted to Kentucky.

Section 4. To be eligible for a temporary permit, the candidate shall:
(1) Meet the qualifications of Section 2 or 3 of this administrative regulation, except for the retake provisions in Section 2(3) of this administrative regulation;
(2) Complete a Supervisory Agreement for Applicant with Temporary Permit with one (1) or more physical therapists; and
(3) Have not failed either the physical therapist or physical therapist assistant examination in any jurisdiction.

Section 5. (1) Upon issuance of a temporary permit, the physical therapist or physical therapist assistant applicant shall practice only under the supervision of a physical therapist currently engaged in the practice of physical therapy in Kentucky who:
(a) Has practiced in Kentucky for more than one (1) year; and
(b) Has an unrestricted license.
(2) A supervising physical therapist:
(a) Shall be on-site at all times during the practice of the applicant with a temporary permit;
(b) Shall be responsible for the practice of physical therapy by the applicant with a temporary permit;
(c) Shall review, approve, date, and co-sign all physical therapy documentation by the applicant with a temporary permit;
(d) May designate an alternate supervising physical therapist who meets the qualifications of subsection (1)(a) and (b) of this section. The alternate supervising physical therapist shall sign and date written documentation of the acceptance of the responsibility as identified in paragraph (a) through (c) of this subsection; and
(e) Shall notify the board immediately if the supervisory relationship is terminated.
(3) The applicant with a temporary permit shall:
(a) Disclose the applicant's temporary credential status to all patients prior to initiating treatment;
(b) Sign documentation with temporary permit number and designation as defined in 201 KAR 22:053, Section 5(5)(a) or (b); and
(c) Notify the board immediately if the supervisory relationship is terminated.
(4) The temporary permit shall expire the earlier of:

(a) Six (6) months from the date of issuance; or
(b) Notice of exam results by the board.

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

Section 7. To be eligible for credentialing by endorsement, the applicant shall:
(1) Have successfully completed the academic and clinical requirements of a physical therapy or physical therapist assistant program accredited by CAPTE;
(2) Meet the requirements established in Section 2(1)(b) through (e) of this administrative regulation;
(3) Have successfully completed the NPTE or its equivalent, predecessor examination and register with the FSBPT Score Transfer Service to have results submitted to Kentucky:
(a) A passing score in Kentucky for the person who took the NPTE prior to July 1, 1993, shall be at least equal to the national average raw score minus one and five-tenths (1.5) standard deviation set equal to a converted score of seventy-five (75); or
(b) After July 1, 1993, a passing score shall be the criterion referenced passing point recommended by the FSBPT set equal to a scaled score of 600;
(4) Have an active credential in this profession in another jurisdiction; and
(5) Have verification of credentials showing the credential has never been revoked, suspended, placed on probation, or is not under disciplinary review in another jurisdiction upon application.

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

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

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

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Application for Credentialing", December 2011;
(b) "Supervisory Agreement for Applicant with Temporary Permit", January 2017; and
(c) "Applicant Special Accommodations Request Form", December 2012.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Physical Therapy, 312 Whittington Parkway Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

TALIA BARTON, Board Chair
LOUIS D. KELLY, General Counsel
APPROVED BY AGENCY: March 13, 2018
FILED WITH LRC: March 14, 2018 at 10 a.m.
CONTACT PERSON: Scott D. Majors, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140 and fax (502) 429-7142, email ScottD.Majors@ky.gov; and Louis D. Kelly, Esq., General Counsel, Board of Physical Therapy, Adams, Stepner, Woltermann & Dusing, 40 W. Pike Street, P.O. Box 861, Covington, Kentucky 41012, phone (859) 394-6200 and fax (859) 392-7239, email lkelly@aswdlaw.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Scott D. Majors and Louis D. Kelly, Esq.
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the eligibility and credentialing procedure for physical therapists and physical therapist assistants in Kentucky.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of KRS 327.050.
(c) How this administrative regulation conforms to the content of the authorizing statutes: It establishes the eligibility and credentialing procedure for physical therapists and physical therapist assistants in Kentucky.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the eligibility and credentialing procedure for physical therapists and physical therapist assistants 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: The amendment adds a requirement that any applicant must submit to a nationwide criminal background investigation conducted by the Kentucky State Police and Federal Bureau of Investigation in compliance with KRS 327.310, effective six months after the Board obtains an Originating Agency Identification number.
(b) The necessity of the amendment to this administrative regulation: To comply with the provisions of KRS 327.310.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment requires all applicants to submit to a nationwide criminal background investigation conducted by the Kentucky State Police and Federal Bureau of Investigation consistent with the requirements of KRS 327.310.
(d) How the amendment will assist in the effective administration of the statutes: The amendment requires all applicants to submit to a nationwide criminal background investigation conducted by the Kentucky State Police and Federal Bureau of Investigation consistent with the requirements of KRS 327.310, effective six months after the Board obtains an Originating Agency Identification number.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 5,600 physical therapists and physical therapist assistants.
(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: Applicants will be required to submit to a nationwide criminal background investigation conducted by the Kentucky State Police and Federal Bureau of Investigation, effective six months after the Board obtains an Originating Agency Identification number.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The nationwide criminal background investigation is at the applicant's expense and currently costs approximately $40.00 for all associated fees.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Assuming all other criteria for licensure is met, applicants will be granted a credential to work as a physical therapist or physical therapist assistant 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: No cost to the board.
(b) On a continuing basis: No cost to the board.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency Revenue 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: There will be no increase in fees or funding.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Applicants will have to pay fees charged by the Kentucky State

Police and Federal Bureau of Investigation to perform the background checks.

(9) TIERING: Is tiering applied? Tiering was not used 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? Applicants for physical therapist or physical therapist assistant credentials.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 327.040, 327.050, 327.310

(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. No effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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:

STATEMENT OF EMERGENCY
201 KAR 22:040E

This emergency administrative regulation is being promulgated in order to meet an imminent threat to public health, safety, or welfare. During the 2017 Legislative Session, the General Assembly enacted House Bill 227 which required, *inter alia*, that applicants seeking to obtain a credential to engage in the practice of physical therapy in Kentucky submit to a nationwide criminal background investigation provided by the Kentucky State Police and Federal Bureau of Investigation as a condition for participating in the Physical Therapy Compact. Following the passage of this legislation the Kentucky Board of Physical Therapy amended 201 KAR 22:020, 201 KAR 22:040, and 201 KAR 22:070 to make the criminal background investigation a requirement for initial licensure or certification, effective May 1, 2018. As of the date of the filing of this emergency administrative regulation, the Board has been unable to obtain an Originating Agency Identification number from the FBI which would allow its applicants to obtain the necessary criminal background investigation. This is being filed as an emergency administrative regulation to ensure that new applicants, including new graduates of physical therapy and physical therapist assistant programs, are not denied the ability to obtain a license or certificate due to circumstances beyond their control. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATT BEVIN, Governor
TALIA BARTON, Board Chair
SCOTT D. MAJORS, Executive Director

GENERAL GOVERNMENT
Board of Physical Therapy
(Emergency Amendment)

201 KAR 22:040E. Procedure for renewal or reinstatement of a credential for a physical therapist or physical therapist assistant.

RELATES TO: KRS 164.772, 327.050(8), (9), 327.070

STATUTORY AUTHORITY: KRS 327.040(10), (11), 327.310

EFFECTIVE: March 14, 2018

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the Board of Physical Therapy to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327, and 327.040(10) authorizes the board to promulgate administrative regulations establishing a measure of continued competency as a condition of license renewal. This administrative regulation establishes the requirements and procedures for the renewal and reinstatement of credentials.

Section 1. A credential shall be renewed upon:

(1) Payment of the renewal fee established in 201 KAR 22:135 on or before March 31st of each odd numbered year. The fee shall be waived for renewal of license or certificate held by active duty member of Armed Forces as set forth in KRS 12.355;

(2) Submission of the completed Renewal Application or Reinstatement Application;

(3) Verification of continued competence as established in 201 KAR 22:045.

Section 2. Credentials not renewed by the board by March 31 of each odd numbered year shall lapse.

Section 3. (1) A credential holder who has a credential that has lapsed may, within three (3) years of the lapsed date, reinstate upon:

(a) Meeting the requirements of Section 1(2) of this administrative regulation for the current renewal period;

(b) Verification of having obtained within two (2) years prior to the date of submission of the completed Renewal Application or Reinstatement Application:

1. Thirty (30) hours of continued competency as established in 201 KAR 22:045, Section 2(1)(a)1, 2, and 3 and (c) for a physical therapist; or

2. Twenty (20) hours of continued competency as established in 201 KAR 22:045, Section 2(1)(b)1, 2, and 3 and (c) for a physical therapist assistant;

(c) Submission of payment of the reinstatement fee established in 201 KAR 22:135; and[~~.~~]

(d) Effective six (6) months after the Board receives an Originating Agency Identification Number from the Federal Bureau of Investigation[~~May 1, 2018~~], submitting to the Board a completed nationwide criminal background check as required by KRS 327.310 with the background investigation completed no later than six (6) months prior to the date of the filing of the application.

(2) Continued competency hours submitted under subsection (1)(b) of this section for reinstatement shall satisfy the continued competency hours for the next renewal period as established in 201 KAR 22:045, Section 2(2) and (3).

Section 4. A credential holder who has a credential that has lapsed may, more than three (3) years of the lapsed date, reinstate upon:

(1) Meeting the requirements of Section 3 of this administrative regulation;

(2) Submission of all credentials from other jurisdictions since last renewal; and

(3) Completing the following requirements of the board if not holding a current credential from any other jurisdiction since last renewal:

(a) Submission of evidence of professional competency;

(b) An agreement to practice physical therapy under direct

supervision not to exceed six (6) months;

(c) Successful completion of the board-approved examination; or

(d) Any combination of paragraphs (a) through (c) of this subsection.

Section 5. Incorporation by Reference. (1) "Renewal Application", July 2015; and

(2) "Reinstatement Application", July 2015.

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

TALIA BARTON, Board Chair
LOUIS D. KELLY, General Counsel

APPROVED BY AGENCY: March 13, 2018

FILED WITH LRC: March 14, 2018 at 10 a.m.

CONTACT PERSON: Scott D. Majors, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140 and fax (502) 429-7142, email ScottD.Majors@ky.gov; and Louis D. Kelly, Esq., General Counsel, Board of Physical Therapy, Adams, Stepner, Woltermann & Dusing, 40 W. Pike Street, P.O. Box 861, Covington, Kentucky 41012, phone (859) 394-6200 and fax (859) 392-7239, email lkelly@aswdlaw.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Scott D. Majors, and Louis D. Kelly, Esq.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements and procedures for the renewal and reinstatement of credentials.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of KRS Chapter 327.050.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the requirements and procedures for renewal and reinstatement of credentials.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides the requirements and procedures for renewal and reinstatement of credentials.

(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 requirement that any applicant for reinstatement must submit to a nationwide criminal background investigation conducted by the Kentucky State Police and Federal Bureau of Investigation in compliance with KRS 327.310, effective six months after the Board receives an Originating Agency Identification number.

(b) The necessity of the amendment to this administrative regulation: To comply with recent statutory changes to KRS 327.310.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment makes the regulation consistent with the requirements of KRS 327.310.

(d) How the amendment will assist in the effective administration of the statutes: The amendment adds a requirement that any applicant for reinstatement must submit to a nationwide criminal background investigation conducted by the Kentucky State Police and Federal Bureau of Investigation in compliance with KRS 327.310 effective six months after the Board receives an Originating Agency Identification number.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 5,600 physical therapists and physical therapist assistants.

(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: Any applicant for reinstatement must submit to a nationwide criminal background investigation conducted by the Kentucky State Police and Federal Bureau of Investigation in compliance with KRS 327.310, effective six months after the Board receives an Originating Agency Identification number.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The nationwide criminal background investigation is at the applicant's expense and currently costs approximately $40.00 for all associated fees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Assuming all other criteria is met, applicants for reinstatement will be granted a credential to work as a physical therapist or physical therapist assistant 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: No cost to the board.

(b) On a continuing basis: No cost to the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency Revenue 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: There will be no increase in 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 change the fees assessed by the Board directly or indirectly. Applicants will have to pay fees charged by the Kentucky State Police and Federal Bureau of Investigation to perform the background checks.

(9) TIERING: Is tiering applied? Tiering was not used 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? Physical therapists and physical therapists assistants credentialed by the Board.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 327.040, 327.050, 327.310.

(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. No effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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:

STATEMENT OF EMERGENCY
201 KAR 22:070E

This emergency administrative regulation is being promulgated in order to meet an imminent threat to public health, safety, or welfare. During the 2017 Legislative Session, the General Assembly enacted House Bill 227 which required, inter alia, that applicants seeking to obtain a credential to engage in the practice of physical therapy in Kentucky submit to a nationwide criminal background investigation provided by the Kentucky State Police and Federal Bureau of Investigation as a condition for participating in the Physical Therapy Compact. Following the passage of this legislation the Kentucky Board of Physical Therapy amended 201 KAR 22:020, 201 KAR 22:040, and 201 KAR 22:070 to make the criminal background investigation a requirement for initial licensure or certification, effective May 1, 2018. As of the date of the filing of this emergency administrative regulation, the Board has been unable to obtain an Originating Agency Identification number from the FBI which would allow its applicants to obtain the necessary criminal background investigation. This is being filed as an emergency administrative regulation to ensure that new applicants, including new graduates of physical therapy and physical therapist assistant programs, are not denied the ability to obtain a license or certificate due to circumstances beyond their control. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATT BEVIN, Governor
TALIA BARTON, Board Chair
SCOTT D. MAJORS, Executive Director

GENERAL GOVERNMENT
Board of Physical Therapy
(Emergency Amendment)

201 KAR 22:070E. Requirements for foreign-educated physical therapists.

RELATES TO: KRS 327.050, 327.060
STATUTORY AUTHORITY: KRS 327.040(1), (11), 327.060(3), 327.310
EFFECTIVE: March 14, 2018
NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the Board of Physical Therapy to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327. KRS 327.060(3) authorizes the board to approve services to provide an evaluation of a foreign-educated physical therapist applicant's educational credentials. This administrative regulation establishes the requirements a foreign-educated physical therapist shall satisfy to become credentialed in the state of Kentucky.

Section 1. A foreign-educated physical therapist applicant shall be credentialed if the applicant:
(1) Complies with the requirements of KRS 327.060(1)(b).
(2) In accordance with KRS 327.060(1)(b), meets the following requirements:
(a) Furnishes the board a favorable educational credentials evaluation report from a credentialing agency that uses the appropriate edition of the "Coursework Evaluation Tool" (CWT) copyrighted by the Federation of State Boards of Physical Therapy (FSBPT). An academic deficiency in general education coursework identified by the CWT shall be satisfied by the applicant through submission of evidence identifying one (1) of the following:
1. Completion of appropriate coursework at a regionally accredited academic institution:
2. Continuing education in a course approved by the board; or
3. Submission of a portfolio including a detailed resume and description of relevant work experience approved by the board;
(b) Shows proof of English Language Proficiency:
1. A score of not less than fifty (50) on the Test of Spoken English (TSE);
2. Verification that the applicant has achieved the following minimum scores for each category of the Test of English as a Foreign Language, TOEFLE Internet-based test (TOEFL iBT): Writing, twenty-two (22), Speaking, twenty-four (24), Listening, twenty-one (21), Reading, twenty-two (22); with an overall score of not less than eighty-nine (89); or
3. Verification that English is the native language of the country of origin.
(c) Submits a satisfactorily-completed application and appropriate fee as required by 201 KAR 22:135;
(d) Completes the Jurisprudence Exam;
(e) Obtains a passing score on the National Physical Therapy Examination (NPTE). The requirements of 201 KAR 22:020, Section 2(3) and (4) shall be applicable to examination candidates; and
(f) Has successfully completed a minimum of three (3) months and no more than six (6) months of practice under the on-site supervision of a physical therapist credentialed under KRS Chapter 327 at a Kentucky facility previously approved by the board which satisfies the following requirements:
1. The supervised practice shall be a minimum of 390 hours in a three (3) month period, in a facility which is serving as a clinical education site for students enrolled in a program in physical therapist education accredited by the Commission for Accreditation of Physical Therapy Education (CAPTE);
2. The applicant shall furnish the board a favorable evaluation of on-site supervision performed by a clinical supervisor who utilizes the "Performance Evaluation Tool for Foreign Educated Therapists Completing a Supervised Clinical Practice in the United States" copyrighted by FSBPT. The clinical supervisor shall submit the evaluation to the board after three (3) months practice, and if required, after the sixth month, when the required score denoting clinical competency shall have been reached;
3. The supervising physical therapist shall, within the three (3) years prior to serving as a supervisor, have previously acted as clinical supervisor for a physical therapist student as part of a CAPTE accredited program; and
4. The supervisor shall countersign all of the candidate's physical therapy records within fourteen (14) days.
(3) Effective six (6) months after the board receives an Originating Agency Number from the Federal Bureau of Investigation[~~May 1, 2018~~], submits to the board a completed nationwide criminal background check as required by KRS 327.310 with the background investigation completed no later than six (6) months prior to the date of the filing of the application.

Section 2. Temporary Permits for Foreign-educated Physical Therapist Applicants. (1) An applicant who has not satisfactorily completed three (3) months of supervised practice as a physical therapist shall be issued a temporary permit to complete Section 1(2)(f) of this administrative regulation if the applicant has:
(a) Completed the requirements of Section 1(2)(a) through (e) of this administrative regulation; and
(b) Submitted an approved "Supervisory Agreement for Physical Therapists Educated in a Foreign Country".
(2) The temporary permit shall be revoked if the applicant has not satisfactorily completed the supervised practice within a six (6) month period.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Supervisory Agreement for Physical Therapists Educated in a Foreign Country, August 2017".
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

TALIA BARTON, Board Chair
LOUIS D. KELLY, General Counsel
APPROVED BY AGENCY: March 13, 2018
FILED WITH LRC: March 14, 2018 at 10 a.m.
CONTACT PERSON: Scott D. Majors, Executive Director,

Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140 and fax (502) 429-7142, email ScottD.Majors@ky.gov; and Louis D. Kelly, Esq., General Counsel, Board of Physical Therapy, Adams, Stepner, Woltermann & Dusing, 40 W. Pike Street, P.O. Box 861, Covington, Kentucky 41012, phone (859) 394-6200 and fax (859) 392-7239, email lkelly@aswdlaw.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Scott D. Majors and Louis D. Kelly, Esq.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements a foreign-educated physical therapist shall satisfy to become credentialed in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS Chapter 327.060.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the requirements and procedures for credentialing foreign-educated applicants.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides the requirements and procedures for foreign-educated applicants.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds a requirement that any foreign-educated applicant must submit to a nationwide criminal background investigation conducted by the Kentucky State Police and Federal Bureau of Investigation in compliance with KRS 327.310, effective six months after the Board obtains an Originating Agency Identification number.

(b) The necessity of the amendment to this administrative regulation: To comply with the provisions of KRS 327.310.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment requires all foreign-educated applicants to submit to a nationwide criminal background investigation conducted by the Kentucky State Police and Federal Bureau of Investigation consistent with the requirements of KRS 327.310.

(d) How the amendment will assist in the effective administration of the statutes: The amendment requires all foreign-educated applicants to submit to a nationwide criminal background investigation conducted by the Kentucky State Police and Federal Bureau of Investigation consistent with the requirements of KRS 327.310, effective six months after the Board obtains an Originating Agency Identification number.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 5,600 physical therapists and physical therapist assistants.

(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: Foreign-educated applicants will be required to submit to a nationwide criminal background investigation conducted by the Kentucky State Police and Federal Bureau of Investigation, effective six months after the Board obtains an Originating Agency Identification number.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The nationwide criminal background investigation is at the applicant's expense and currently costs approximately $40.00 for all associated fees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Assuming all other criteria for licensure is met, foreign-educated applicants will be granted a license to practice physical therapy 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: No cost to the board.

(b) On a continuing basis: No cost to the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency Revenue 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: There will be no increase in 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 change the fees assessed by the Board directly or indirectly. Applicants will have to pay fees charged by the Kentucky State Police and Federal Bureau of Investigation to perform the background checks.

(9) TIERING: Is tiering applied? Tiering was not used 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? Foreign-educated applicants for physical therapy credentials.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 327.040, 327.050, 327.060, 327.310.

(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. No effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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:

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, March 12, 2018)

103 KAR 1:010. Protests *[~~and appeals~~]*.

RELATES TO: KRS 49.220, 49.250, 131.010, 131.030, 131.081, 131.110, ***and*** 131.180***[~~, and 13B~~]***[~~131.340, 131.345, 131.360, 131.370, 139.760, 139.980~~(4)]

STATUTORY AUTHORITY: KRS[~~Chapter 13A,~~]131.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130 authorizes the Kentucky Department of Revenue to promulgate administrative regulations for the administration and enforcement of all tax laws of this state. This administrative regulation provides guidance regarding a taxpayer's[~~summarizes significant portions of the statutes dealing with taxpayer~~] protest***[~~and appeal~~]*** rights and outlines procedures to facilitate the filing, processing**,** and disposition of a protest***[~~or~~]***[~~such protests and~~]***[~~appeal~~]***.

Section 1. ***Definition.[~~Definitions. As used in this administrative regulation.~~]*** "Notice" means a letter, memorandum, or other document from the department ***that:***

(a) Notifies[~~notifying~~] the taxpayer that tax has been assessed and is due***, or a request for refund has been partially denied or denied in full; and***

(b) Explains the taxpayer's right to protest the assessment, refund denial, or refund reduction, and the time period for filing a protest.

Section 2. Protest - Assessments. (1) Taxpayers will be notified of additional tax assessments by mail. Payment including interest from the original due date, in the absence of protest, ***shall[~~must~~]*** be made within forty-five (45) days from the date of the notice informing the taxpayer that tax is owed[~~of tax due~~].

(2) A written protest may be filed by the taxpayer, or other persons representing the taxpayer, against additional assessments. The department may require the taxpayer to furnish a "Declaration of Representative," Form 20A100 if a representative is serving on behalf of the taxpayer. ***The time period for submitting a supporting statement may be extended as provided in KRS 131.110(1) [~~The protest and supporting statements shall be filed with the Revenue Cabinet within forty-five (45) days from the date of notice~~]***.

(3) A taxpayer or taxpayer representative may submit a written protest and supporting statements to the department by one (1) of the following methods:

(a) Hand delivery to the department at 501 High Street, Frankfort, Kentucky 40601, or a department Taxpayer Service Center location as listed on the department's ***Web site[~~website~~]***;

(b) By the United States postal service or express mail service to the address listed in the notice; or

(c) Electronically to an email address, if provided, listed in the assessment or notice.

(4) When determining if the protest was timely filed, the department shall record the submission as:

(a) The date stamped as received by the department, if hand delivered;

(b) The postmark date from the United States post office, if the postal service is used, but excluding the date from a postage meter;

(c) The delivery confirmation date when received by the department, if an express mail service is used; or

(d) The electronic date and time received, if electronically delivered. If the protest is submitted to the department electronically, the taxpayer shall also mail a copy of the protest and supporting statements to the department at the address listed in the notice.

(5) The department shall acknowledge receipt of the taxpayer's protest in writing within ninety (90) calendar days from the date received by the department.

(6)***[~~In the absence of a protest, payment of the tax assessed in the notice, including any fees, shall be due on or before the due date listed in the notice.~~]***

[~~(7)~~] Scheduling options for a conference *shall be communicated to the taxpayer by the department within forty-five (45) days of the taxpayer's written request for a conference.* ***[~~Audio recordings of the conference are permitted in accordance with KRS 131.081.~~]***

Section 3. Protest - Refund Denials. (1) The department shall send the taxpayer a notice by mail of any denial or partial denial of any refund applied for, including a refund claimed upon any return.

(2) The department shall include with each notice of the denial:

(a)***[~~A clear and concise explanation of the reason for the denial by the department;~~]***

[~~(b)~~] References to the statutes and administrative regulations that are the basis for the denial; and

(b)[~~(c)~~] The date by which the taxpayer ***may[~~must~~]*** protest the denial.

(3)***[~~A~~]*** If the taxpayer disagrees with the disallowance of any refund, the taxpayer may file a written protest and supporting statements with the department by the methods set forth in Section 2 of this administrative regulation.

(4) If the taxpayer or taxpayer representative has submitted all supporting statements and documentation requested by the department**,** but has not received a determination regarding the refund request from the department within 180 calendar days from the date the request was submitted, the taxpayer may file a protest on the claim as if the refund has been denied by the department.

Section 4. Protest – Transfer (1) Unless the assessment results from an audit performed by the Office of Field Operations, the department shall attempt to resolve the protest within the taxing area from which the assessment was issued.

(2) If the protest cannot be resolved ***by the taxing area[~~at the assessment level~~]***, the taxing area shall transfer the protest to the Division of Protest Resolution.

(3) A taxpayer may request in writing that a protest be transferred to the Division of Protest Resolution by the methods outlined in Section ***2[~~(2)~~]*** of this administrative regulation for consideration by the department.

(4) The ***taxing area[~~department~~]*** shall complete the transfer within forty-five (45) days of receipt of the taxpayer's written request to transfer the protest to the Division of Protest Resolution.

(5) The Division of Protest Resolution shall acknowledge receipt of the protest in writing to the taxpayer within forty-five (45) days of the ***transfer[~~department transferring the protest~~]***. The acknowledgement***[~~by the Division of Protest Resolution~~]*** shall contain:

(a) The name and contact information of the department employee assigned to the taxpayer's protest; and

(b) The name and contact information of the employee's direct supervisor.

Section 5. Final Ruling. ***If the department cannot resolve the protest after transfer to the Division of Protest Resolution, the department shall issue a final ruling to the taxpayer.[~~(1) The department shall issue a final ruling on all unresolved protests after transfer to the Division of Protest Resolution.~~]***

[~~(2) The taxpayer may request in writing a final ruling at any time after the filing of a timely protest and supporting statements.~~]

[~~(3) If requested in writing, the department shall issue a final ruling to the taxpayer within thirty (30) days from the date~~]

the request is received by the department by one of the methods described in Section 2 of this administrative regulation.]

Section 6. Failure by the department to meet any of the deadlines imposed by this administrative regulation:

(1) May justify a waiver of penalties; and

(2) Shall not be interpreted to allow a reduction in any tax, interest, or fees assessed by the department.[~~(3) A hearing may also be requested. The taxpayer may appear in person or by representative. If a taxpayer is not present in person, or if a corporation is not represented by an authorized officer, the cabinet may require the taxpayer's representative to furnish evidence of his authority to act for the taxpayer. Consideration will be given to additional information presented in the protest and at hearings and the additional assessment may be adjusted accordingly.~~

~~(4) As provided in KRS 131.081, a taxpayer may make an audio recording of any conference with or hearing by the Revenue Cabinet. However, the Revenue Cabinet may make such a recording only if the taxpayer is given prior written notice. If the conference or hearing is recorded by the Revenue Cabinet, the taxpayer may obtain a copy or transcript thereof as provided in KRS 61.874.~~

~~Section 2. Protests - Refund or Credit Denials. (1) Taxpayers will also be notified by mail of disallowance or partial disallowance of any refund or credit claim including a refund or credit requested upon any return.~~

~~(2) A taxpayer may protest such disallowance or partial disallowance by written protest filed with the Revenue Cabinet, within forty-five (45) days of the disallowance. Procedures governing protests and hearings for refunds and credits are the same as for assessments.~~

~~Section 3. Final Ruling. If the taxpayer's protest of an assessment or refund or credit denial cannot be resolved through correspondence and/or conferences with officials of the Revenue Cabinet and he desires to exercise his rights of further appeal, the taxpayer may request in writing a final ruling at any time after the filing of a timely protest and supporting statements. The final ruling shall be given to the taxpayer within thirty (30) days from the date the request is received by the cabinet.~~

~~Section 4. Appeal - Kentucky Board of Tax Appeals. (The following procedure is prescribed by rules and administrative regulations of the board):~~

~~(1) If a taxpayer desires to appeal a final ruling of the cabinet he may, within thirty (30) days from the date of such ruling, apply for a hearing before the Kentucky Board of Tax Appeals. The appeal:~~

~~(a) Must be filed in quintuplicate;~~

~~(b) Must contain a brief statement of the law and facts in issue;~~

~~(c) Must state the petitioner's position regarding the law, facts, or both; and~~

~~(d) Must contain a copy of the final ruling of the cabinet.~~

~~(2) The board will set a date for a formal hearing. The hearing procedure before the board will be in accordance with the board's rules.~~

~~(3) On the basis of the hearing, briefs, and other documents, the board will issue a written order which will affirm, reverse, modify or remand the final ruling, and will forward a copy of the order to the taxpayer and the cabinet. Assessments upheld by the board shall be due and payable thirty (30) days after the date of the board's order. In the absence of appeal, penalties for failure to pay tax when due apply if payment is not made within thirty (30) days after the date of the board's order.~~

~~(4) Interest from the original due date of the return until the tax is paid shall be added to the additional assessments.~~

~~(5) As provided in KRS 131.355, all hearings before the board are required to be officially reported and all records of proceedings shall be public records except in the case of appeals of unmined minerals assessments in which, under specified circumstances, the statute prohibits disclosure of records or any recorded or transcribed testimony concerning such records. In such cases, a protective order is required to be entered and remain in effect during the entire appeals process, including appeals to the courts, and thereafter, preventing the parties, their agents and representatives, except the taxpayer, from disclosing the confidential records or testimony concerning them outside the appeals proceedings.~~

~~Section 5. Appeal - Circuit Court. Any party aggrieved by a final order of the Kentucky Board of Tax Appeals may, within thirty (30) days after such order becomes final, file a notice of appeal with the Kentucky Board of Tax Appeals and shall serve a copy of said notice upon all other parties to the appeal. A statement of appeal must then be filed within (30) days after the date on which the notice of appeal was filed with the appropriate circuit court, with a copy of the ruling made before the Kentucky Board of Tax Appeals. The statement of appeal must conform to that required to be filed in the Kentucky Supreme Court. Pursuant to KRS 131.370, if the appeal is from an order sustaining a tax assessment, collection of the tax may be stayed by the filing of a supersedeas bond in the manner directed by the Rules of Civil Procedure, or by payment of the tax as provided in KRS 134.580(1).~~

~~Section 6. Appeal - Kentucky Court of Appeals and Kentucky Supreme Court. Any party may appeal to the Kentucky Court of Appeals and to the Kentucky Supreme Court under rules provided by those courts.~~]

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: December 12, 2017

FILED WITH LRC: December 13, 2017 at 4 p.m.

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KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM
Kentucky Board of Emergency Medical Services
(As Amended at ARRS, March 12, 2018)

202 KAR 7:501 Ambulance agency licensure[~~Ambulance providers and medical first response agencies~~].

RELATES TO: KRS 216B.020(2)(f), 311A.030, ***311A.060,*** 311A.190

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030, 311A.060, 311A.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.020 requires the ***Board of Emergency Medical Services[~~board~~]*** to exercise all administrative functions in the regulation of the EMS system and the licensing of ambulance services and medical first response agencies***, except those regulated by the Board of Emergency Medical Services or the Cabinet for Health and Family Services***. KRS 311A.030 requires the board to promulgate administrative regulations for the licensing, inspection, and regulation of ambulance providers and medical first response agencies. This administrative regulation establishes minimum ambulance agency licensing requirements.

Section 1. Applying for Licensure. (1) An applicant shall submit:

(a) A completed Ambulance Agency License Application;

(b) An application fee as established in 202 KAR 7:030;

(c) A current map of the agency's intended service area; and

(d) A written description of the ambulance agency's geographic service area within the Commonwealth, which shall identify with specificity the complete boundary of the area served by the provider upon applying for initial licensure or if the service area has changed since the last map was provided to the KBEMS office. The map shall accurately reflect the service area as identified by the providers Certificate of Need, if appropriate.

(2) The board shall conduct a physical inspection of an agency's premises prior to granting a license or license renewal.

(3) A license to operate shall be issued only for the person,

service area, and premises, including the number of ambulances, named in the application, and shall not be transferable.

(4) An agency shall display its license in a prominent public area at the service base station and at any fixed satellite location.

(5) The following information shall be included on the license issued by the office of the board:

(a) Operating name of the provider;

(b) Physical location of the base station;

(c) The number and physical location of satellite stations, if any, operated by the licensee;

(d) The license classification;

(e) The level of service provided;

(f) The number of vehicles operated by the provider; and

(g) The specific geographic area to be served by the licensee.

(6) A license shall expire on December 31 following the original date of issue and shall subsequently expire annually on December 31 of each year.

Section 2. License Renewal. To renew a license, the holder shall:

(1) Submit a completed Ground Agency Renewal Application;

(2) Pass inspection conducted by the board of the agency's premises, equipment, supplies, vehicles**,** and records; and

(3) Submit a fee in the amount established in 202 KAR 7:030.

Section 3. Agency Changes. (1) A new application shall be filed if a change of ownership occurs. A change of ownership for licenses shall be deemed to occur ***if[~~when~~]*** more than fifty (50) percent of the assets, capital stock, or voting rights of a corporation or agency is purchased, transferred, leased, or acquired by comparable arrangement by one (1) person or entity from another.

(2) A new license application filed due to a change of ownership shall be filed, at minimum, ten (10) days prior to the change of ownership. The new license shall be issued for the remainder of the previous licensure period.

(3) There shall be full disclosure to the board of the changes, such as name and address, of:

(a) Each person having direct or indirect ownership interest of ten (10) percent or more in the agency;

(b) Officers and directors of the corporation, if an agency is organized as a corporation; or

(c) Partners, if an agency is organized as a partnership.

Section 4. Inspections. (1) Compliance with licensing pursuant to this administrative regulation shall be validated through on-site inspections of the agency by representatives or employees of the KBEMS Office. The inspection shall include a:

(a) Safety and maintenance check of all vehicles in operation;

(b) Review of all equipment and supplies stocked on vehicles; and

(c) Review of personnel records, policy manuals**,** and other reports required to be maintained pursuant to 202 KAR Chapter 7.

(2) Each representative or employee of the KBEMS Office shall have access to the service during hours that the agency operates.

(3) A regulatory violation identified during an inspection shall be transmitted in writing to the agency by the KBEMS office.

(4) ***Within ten (10) business days of receipt of the statement of violation,*** the agency shall submit a written plan for the elimination or correction of a regulatory violation to the KBEMS office***[~~within ten (10) business days of receipt of the statement of violation~~]***.

(5) The plan shall specify the date by which the violations shall be corrected.

(6) Within ten (10) ***business[~~working~~]*** days following receipt of the plan, the KBEMS office shall notify the agency in writing whether or not the plan is accepted as providing for the elimination or correction of the violation.

(7) The KBEMS office may conduct a follow-up visit to verify compliance with the plan.

(8) If a portion or all of the plan is unacceptable:

(a) The KBEMS office shall specify why the plan cannot be accepted; and

(b) The provider shall modify or amend the plan and resubmit it to the KBEMS office within ten (10) ***business[~~working~~]*** days after receipt of notice that the plan is unacceptable.

(9) Unannounced inspections may be conducted for a:

(a) Complaint allegation;

(b) Follow-up visit; or

(c) Relicensing inspection.

Section 5. Unethical Conduct. (1) The following acts shall be considered unethical conduct in the practice of providing emergency medical services and may be subject to the sanctions established in KRS 311A.060:

(a) Failure to submit, amend, or modify a plan of correction in order to eliminate or correct regulatory violations;

(b) Failure to eliminate or correct regulatory violations;

(c) Falsifying an application for licensing;

(d) Changing a license issued by the board;

(e) Attempting to obtain or ***obtaining[~~obtains~~]*** a license by:

1. Fraud;

2. Forgery;

3. Deception;

4. Misrepresentation; or

5. Subterfuge;

(f) Providing false or misleading advertising;

(g) Falsifying, or causing to be falsified reports regarding patient care or other reports provided to the KBEMS office;

(h) Providing an unauthorized level of service;

(i) Failing to provide the board or its representative with information upon request, or obstructing an investigation regarding alleged or confirmed violations of KRS Chapter 311A or 202 KAR Chapter 7;

(j) Issuing a payment on an invalid account or an account with insufficient funds to pay established fees, fines, or charges;

(k) Submitting fraudulent or misleading claims for reimbursement; or

(l) Failure to comply with local ordinances, federal statutes, KRS Chapter 311A, or 202 KAR Chapter 7.

(2) An agency whose license is currently under disciplinary review shall not be eligible to sell the license to another entity until all fines or fees owed to the board are satisfied and any associated legal action has been fully resolved.

(3) A licensed agency shall not be disciplined for responding to calls outside of its geographic service area if the agency is providing:

(a) Mutual aid at the request of and under an existing agreement with another licensed agency whose geographic service area includes the area in which the emergency or non-emergency call originates;

(b) Disaster assistance;

(c) Interfacility medical transfer from damaged or closed health facilities; or

(d) Interfacility medical transfer to residents of its service area, who are patients in facilities outside of its service area, for the purpose of returning the patients to their home service area or transporting them to another health facility.

Section 6. Exemptions from Administrative Regulations. (1) The following situations shall be exempt from the provisions of this administrative regulation:

(a) First aid or transportation provided in accordance with KRS 216B.020(2)(f);

(b) A vehicle serving as an ambulance during a disaster or major catastrophe; or

(c) A vehicle operated by the U.S. government on property owned by the U.S. government.

(2) The following out-of-state agencies shall be exempt from the provisions of this administrative regulation:

(a) A vehicle licensed by another state that is transporting a patient from out of state to a Kentucky medical facility or other location in Kentucky;

(b) A vehicle licensed by another state that is transporting a patient from out of state through Kentucky to another location out-of-state;

(c) A vehicle licensed in an adjoining state that responds to a

mutual aid request from a Kentucky licensed provider for emergency assistance if the out of state service is the closest service appropriately capable of responding to the request or if Kentucky licensed providers:

1. Are unavailable;

2. Have already responded; or

3. Are physically unable to reach the incident; and

(d) A vehicle licensed by another state that is providing nonemergency transportation from a Kentucky health care facility for a patient who is not a Kentucky resident back to their state of residence.

Section 7. Public Notice of Negative Action. The board office shall ***publish[cause to be published]***, on the KBEMS web site or similar publication of the board, or otherwise disseminate, the name of any licensed agency that is fined, placed on probationary status, placed on restricted status, suspended, or had a license revoked.

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

(a) "Ambulance Agency License Application", (12/2017); ***and***

(b) "Ground Agency Renewal Application", (12/2017).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 118 James Court, Suite 50, Lexington, Kentucky 40505, Monday through Friday, 8 a.m. to 4:30 p.m.[~~License Classifications. (1) The following classifications of licensure are established for ambulance providers:~~

~~(a) Class I ground ambulance services shall operate at the ALS or BLS level to provide emergency and nonemergency transportation;~~

~~(b) Class II ground ambulance services shall operate at the BLS level only to provide nonemergency transportation;~~

~~(c) Class III ground ambulance services shall operate at the ALS level only to provide critical care, emergency or nonemergency transportation between health care facilities;~~

~~(d) Class IV ground ambulance services shall operate at the ALS or BLS level to provide emergency and nonemergency transportation for restricted locations such as industrial sites and other sites that do not provide services outside a designated site;~~

~~(e) Class VI services provide ALS medical first response without patient transport; and~~

~~(f) Class VII rotor wing air ambulance services may provide ALS emergency or nonemergency transportation. Fixed wing class VII services may provide ALS or BLS emergency or nonemergency transportation.~~

~~(2) The KBEMS office shall determine the appropriate classification for licensing all providers.~~

~~Section 2. Provider Licensing Requirements. (1) A person or entity shall not provide, advertise, or profess to engage in the provision of ambulance service or ALS medical first response originating in Kentucky without having first obtained a license from the board pursuant to this administrative regulation and certificate of need if appropriate.~~

~~(2) A provider shall comply with local ordinances, state and federal statutes and administrative regulations.~~

~~(3) A provider shall display its license in a prominent public area at the service base station.~~

~~(4) The following information shall be included on the license:~~

~~(a) Operating name of the provider;~~

~~(b) Physical location of the base station;~~

~~(c) The number and physical location of satellite stations, if any, operated by the licensee;~~

~~(d) The license classification;~~

~~(e) The level of service provided;~~

~~(f) The number of vehicles operated by the provider; and~~

~~(g) The specific geographic area to be served by the licensee.~~

~~(5) Providers shall provide the KBEMS office with an accurate map and a written description of its geographic service area within the Commonwealth, which shall identify with specificity the complete boundary of the area served by the provider when applying for initial licensure or if the service area has changed since the last map was provided to the KBEMS office. The map shall accurately reflect the service area as identified by the providers certificate of need, if appropriate.~~

~~(6) A licensed provider may respond to calls outside of its geographic service area only if the provider is providing:~~

~~(a) Mutual aid under an existing agreement with another licensed provider whose geographic service area includes the area in which the emergency call is made;~~

~~(b) Disaster assistance;~~

~~(c) Nonemergency transfers from damaged or closed health facilities; or~~

~~(d) Interfacility care to residents of its service area, who are patients in facilities outside of its service area, for the purpose of returning the patients to their home service area or transporting them to another health facility.~~

~~Section 3. Licensing, Inspection and Change of Ownership. (1) To obtain a license, an ambulance provider shall file an "Application for Ambulance Provider Licensing", Form EMS-1 (6/96), with the Office of the Kentucky Board of Emergency Medical Services, 2545 Lawrenceburg Road, Frankfort, Kentucky 40601.~~

~~(2) An applicant for a license or a licensee shall, as a condition precedent to licensing or relicensing, be in compliance with all applicable sections of this administrative regulation as determined through means that include a physical inspection process.~~

~~(3) A license shall expire on December 31 following the original date of issue and shall subsequently expire annually on December 31 of each year.~~

~~(4) A license may be renewed upon:~~

~~(a) Recommendation of staff following the physical inspection of the provider; and~~

~~(b) Payment of the prescribed fee.~~

~~(5) A license to operate shall be issued only for the person, service area, and premises, including the number of ambulances, named in the application, and shall not be transferable.~~

~~(6) A new application shall be filed if a change of ownership occurs. A change of ownership for licenses shall be deemed to occur if more than fifty (50) percent of the assets, capital stock, or voting rights of a corporation or provider is purchased, transferred, leased, or acquired by comparable arrangement by one (1) person from another.~~

~~(7) If a new application for a license is filed due to change of ownership, the new license shall be issued for the remainder of the current licensure period.~~

~~(8) There shall be full disclosure to the board of the changes, such as name and address, of:~~

~~(a) Each person having direct or indirect ownership interest of ten (10) percent or more in the service;~~

~~(b) Officers and directors of the corporation, if a service is organized as a corporation; or~~

~~(c) Partners, if a provider is organized as a partnership.~~

~~(9) Compliance with licensing under this administrative regulation may be ascertained through on-site inspections of the provider by representatives or employees of the KBEMS Office.~~

~~(10) Representatives or employees of the KBEMS Office shall have access to the service during hours that the service operates.~~

~~(11) A regulatory violation identified during an inspection shall be transmitted in writing to the provider by the KBEMS office.~~

~~(12) The provider shall submit a written plan for the elimination or correction of a regulatory violation to the KBEMS office within ten (10) working days of receipt of the statement of violation.~~

~~(13) The plan shall specify the date by which the violation shall be corrected.~~

~~(14) Within ten (10) working days following a review of the plan, the KBEMS office shall notify the provider in writing whether or not the plan is accepted as providing for the elimination or correction of the violation.~~

~~(15) The KBEMS office shall conduct a follow-up visit to verify compliance with the plan.~~

~~(16) If a portion or all of the plan is unacceptable:~~

~~(a) The KBEMS office shall specify why the plan cannot be accepted; and~~

~~(b) The provider shall modify or amend the plan and resubmit it to~~

~~the KBEMS office within ten (10) days after receipt of notice that the plan is unacceptable.~~
~~(17) Unannounced inspections may be conducted for a:~~
~~(a) Complaint allegation;~~
~~(b) Follow-up visit; or~~
~~(c) Relicensing inspection.~~
~~(18) Any licensed provider may be recommended for discipline based upon the following:~~
~~(a) Failure to submit, amend, or modify a plan of correction in order to eliminate or correct regulatory violations;~~
~~(b) Failure to eliminate or correct regulatory violations;~~
~~(c) Falsifying an application for licensing;~~
~~(d) Changing a license issued by the board;~~
~~(e) Attempting to obtain or obtains a license by:~~
~~1. Fraud;~~
~~2. Forgery;~~
~~3. Deception;~~
~~4. Misrepresentation; or~~
~~5. Subterfuge;~~
~~(f) Providing false or misleading advertising;~~
~~(g) Falsifying, or causes to be falsified, a:~~
~~1. Patient record;~~
~~2. Service run report; or~~
~~3. Other reports provided to the KBEMS office;~~
~~(h) Providing an unauthorized level of service;~~
~~(i) Demonstrating a history of staff violations that have resulted in disciplinary action;~~
~~(j) Failing to provide the board or its representative with information upon request, or obstructing an investigation regarding alleged or confirmed violations of statutes or administrative regulations;~~
~~(k) Issuing a check for a license on an invalid account or an account with insufficient funds to pay specified fees; or~~
~~(l) Submitting fraudulent or misleading claims for reimbursement to:~~
~~1. An individual;~~
~~2. A private insurance company; or~~
~~3. A governmental agency.~~

~~Section 4. Utilization of Vehicles by Licensed Providers. (1) At the time of initial inspection, each provider shall inform the KBEMS office of the make, model, year, vehicle identification number or serial number, and license tag number for each vehicle it uses.~~
~~(2) Except as provided by this administrative regulation, a vehicle shall not be placed into operation until after the board has been notified and has verified, through a physical inspection, that the vehicle meets the requirements of this administrative regulation.~~
~~(3) Each provider shall notify the KBEMS office via U.S. mail, email, or fax, no later than the next board business day, of the permanent removal of any licensed vehicle from service by the license holder.~~
~~(4) A licensed provider may use a replacement vehicle on a temporary basis if an approved vehicle is out of service, and if the KBEMS office receives notice within twenty-four (24) hours or on the next business day by fax or email of the need for the provider to place a vehicle into service on a temporary basis. A temporary replacement vehicle shall not be used for more than thirty (30) days unless the KBEMS office has verified, through a physical inspection, that it meets the requirements of this administrative regulation.~~
~~(5) The KBEMS office shall be notified by email or fax within twenty-four (24) hours or on the next business day when a temporary vehicle is removed from service and the original licensed vehicle is returned to service.~~
~~(6) A provider that fails to meet the reporting requirements for use of a temporary vehicle may be required to immediately cease use of the replacement vehicle until the reporting requirements are met.~~
~~(7) A provider that fails to remove a temporary vehicle from service upon written order may be fined an amount not to exceed $1,000 per day for each day or partial day the vehicle is in service and the reporting requirements are not met.~~
~~(8) This administrative regulation shall not prevent a provider from utilizing other means of transporting patients in:~~
~~(a) Disasters;~~
~~(b) Mass casualty incidents; or~~
~~(c) Extraordinary scene conditions that would impair the safety of the patient or personnel operating at the scene.~~

~~Section 5. Provider Management Requirements. (1) All providers shall:~~
~~(a) Maintain an organizational chart that establishes lines of authority, including the designation of:~~
~~1. An administrator responsible for assuring compliance with this administrative regulation during the daily operation of the service; and~~
~~2. A designee who shall serve in the absence of the administrator;~~
~~(b) Maintain records and reports at the ambulance service base station including: An original, microfilm, electronic equivalent, or copy of all run reports whether reported on:~~
~~1. The EMS-8A and EMS-8B "Kentucky Emergency Medical Ambulance Run Report" (9/98), with all nonshaded portions of the run report completed as appropriate for each patient and each run; or~~
~~2. A paper or electronic run form developed by the provider that contains all of the data components of the nonshaded areas of the EMS-8A and EMS-8B (9/98);~~
~~(c) Maintain a copy of all completed run report forms which shall be maintained to ensure confidentiality and safekeeping for a minimum of five (5) years from the date on which the service was rendered, or in the case of a minor, until five (5) years after the minor reaches eighteen (18) years of age. Copies of run reports shall be accessible so as to be immediately available to the board, KBEMS office or representatives upon request;~~
~~(d) Maintain personnel files for each employee or volunteer who staffs a vehicle. Personnel files shall be maintained for a minimum of five (5) years following separation from employment. As a minimum, personnel files shall contain:~~
~~1. Current certification or licensure with corresponding numbers and expiration dates for the position that the individual fulfills on the vehicle;~~
~~2. A preemployment criminal and Department of Transportation driver's records check for each individual added to the service; and~~
~~3. Health records, in a separate secure file, that include:~~
~~a. A post offer of employment health assessment;~~
~~b. Annual tuberculin skin testing or other method of evaluation;~~
~~c. Hepatitis-B vaccinations and seroconversion testing unless exempted by the employees' physician, or an employee signed waiver; and~~
~~d. A record of all work-related illnesses or injuries;~~
~~(e) Maintain a plan and records for the provision of continuing education for staff and volunteers including a written plan for the method of assessment of staff continuing education needs and a coordinated plan to meet those needs including:~~
~~1. Training or continuing education rosters that shall include the printed name, signature, and certification or license number of those in attendance;~~
~~2. A curriculum vitae for the instructor; and~~
~~3. A brief outline of the presentation including the educational objective for the offering and the method of presentation used for the presentation;~~
~~(f) Maintain an infection control plan in accordance with KyOSHA guidelines;~~
~~(g) Maintain a written plan for training or educating personnel for responding to hazardous materials, criminal, and potential terrorist incidents, including plans for the protection and decontamination of patients, ambulances, equipment, and staff;~~
~~(h) Maintain a written plan for the quality assessment of patient care and provider quality improvement including a periodic review of ambulance run report forms, and evaluation of staff performance related to patient care. This plan shall address as a minimum:~~
~~1. Employee health and safety;~~
~~2. Compliance with protocols and operating procedures;~~
~~3. Assessment of dispatch procedures;~~
~~4. Vehicle operations and vehicle safety;~~
~~5. Equipment selection processes;~~
~~6. Equipment preventive maintenance programs; and~~
~~7. A process for the resolution of customer complaints;~~
~~(i) Maintain a written plan for training personnel and responding to~~

~~mass casualty incidents and disasters, which shall establish:~~
~~1. Casualty collection sites;~~
~~2. Casualty evacuation sites;~~
~~3. Training and education for personnel; and~~
~~4. The organizational structure that shall outline an internal incident command structure and how it integrates into a community response plan;~~
~~(j) Maintain an orientation program for all personnel related to:~~
~~1. Communication equipment at the base station and on each vehicle;~~
~~2. Vehicle fire extinguishers;~~
~~3. Response standards;~~
~~4. Map reading and geographic orientation;~~
~~5. Mutual aid agreements;~~
~~6. Cleaning of equipment including vehicles;~~
~~7. Stretcher operations and use;~~
~~8. Completion of run reports; and~~
~~9. Other standard operating procedures that have been established by the provider;~~
~~(k) Maintain and provide proof of professional liability malpractice insurance;~~
~~(l) Maintain and provide proof of vehicular liability insurance; and~~
~~(m) Notify the board immediately upon transfer of coverage, cancellation, lapse, or other cessation or change in professional liability malpractice insurance or vehicular liability insurance.~~
~~(2) Each provider shall in the county in which their base station or a substation is located:~~
~~(a) Document evidence of participation in county emergency management disaster exercises, if conducted;~~
~~(b) Coordinate with the county emergency management director plans for the possible utilization of a provider's personnel for use in the emergency operations center in a disaster; and~~
~~(c) Maintain a copy of the county and state emergency management agency's emergency operations plan at the ambulance base station.~~
~~(3) Diversion plans shall meet the following requirements:~~
~~(a) A provider shall maintain a diversion plan if physicians, hospitals, and ambulance providers within a county or group of counties identify the need for a local diversion plan;~~
~~(b) If it is determined a plan is needed, a committee comprised of equal representation of physicians, hospitals, and ambulance providers shall be formed to:~~
~~1. Develop and implement a diversion plan;~~
~~2. Monitor implementation of the diversion plan;~~
~~3. Meet at least quarterly to discuss operation of the plan and any concerns of providers covered by the plan;~~
~~4. Collect and review data on diversion, evaluate the need for revisions, and update the plan as needed; and~~
~~5. Communicate to the chief executive officer of any health care provider covered under the plan if there is a reported perceived breach of the plan;~~
~~(c) Diversion plans shall address:~~
~~1. Patient and physician preference;~~
~~2. The patient's medical needs; and~~
~~3. Availability and capacity of hospital resources; and~~
~~(d) Ambulance providers licensed in any county where the diversion plan is established shall follow the plan.~~
~~(4) Copies of all documents required by this regulation need not be stored at the ambulance service location but shall be accessible so as to be immediately available to the board, KBEMS office or representatives upon request.~~

~~Section 6. Operating Requirements. (1) All providers, except Class IV shall provide service twenty-four (24) hours, a day, seven (7) days a week. Class IV providers shall operate during the hours of operation for their licensed location. These provisions may be met through a call system or through mutual aid agreements.~~
~~(2) A provider shall have a written plan to assure all requests for service are promptly answered.~~
~~(3) Requests for emergency service shall be dispatched or notified within two (2) minutes of the call taker determining the correct address or location of the emergency incident site.~~
~~(4) Any provider that determines it is unable to have a vehicle responding within ten (10) minutes from the initial time an emergency call is received from the dispatch center shall notify the next closest appropriate vehicle to respond. The next closest vehicle shall be considered to be the vehicle that potentially has the quickest response time to the address requesting service regardless of service ownership. The provider shall notify the dispatch center and the source of the emergency call immediately that it is unable respond to the call and inform the dispatch center and the source of whom the provider dispatched to the emergency scene.~~
~~(5) A provider shall enter into mutual aid agreements with another Kentucky licensed provider or fire department, rescue squad, or other organizations operating within the same or contiguous counties, that provide response to medical emergencies. These agreements shall be in writing and address:~~
~~(a) The type of mutual aid assistance to be provided, including ALS or BLS medical care, ALS medical first response, or extrication;~~
~~(b) Response personnel, including levels of training or education and provisions for joint in-service training or education if appropriate;~~
~~(c) Response vehicles, including unit identifiers and the station or location from which the vehicles shall be operated;~~
~~(d) A plan of action for the mutual aid agreement, including dispatch and notification procedures;~~
~~(e) Radio and other communications procedures between the ambulance provider and other response agencies with which the provider has mutual aid agreements;~~
~~(f) On-scene coordination and scene control including medical direction if several agencies respond to the same incident;~~
~~(g) Exchange of patient information, records, and reports as allowed by law; and~~
~~(h) The effective dates and process for amendment or termination.~~
~~(6) If a local or regional dispatch center or 911 arrangement exists for all or part of the service area of a ground provider, the ground provider shall have a signed affiliation agreement with the dispatch center for coordination of emergency calls. If a ground provider is unable to secure a written affiliation agreement with the dispatch center, the ground provider shall have on file proof of a good faith attempt to obtain an affiliation agreement.~~
~~(7) A provider may accept a request to provide service outside of its service area if it requires documentation from the requesting facility or provider that a good faith effort was made to utilize a provider licensed for the area, except as provided for in Section 2(6) of this administrative regulation.~~
~~(8) A provider shall not refuse a request for emergency service if a unit is available in the service area.~~
~~(9) The provider shall establish written policies and procedures regarding the criteria used by the ambulance service or dispatch center for determining what constitutes a request for emergency service.~~
~~(10) A provider licensed to provide emergency service shall not exhaust their resources by answering a nonemergency call.~~
~~(11) A preventive maintenance program shall be maintained for each vehicle and its equipment to keep them in optimum working order to protect the health and safety of the patient and ambulance personnel.~~
~~(12) Documentation shall be maintained by the provider to support evidence of periodic inspections or calibrations required for maintenance and operation of the vehicle and its equipment.~~
~~(13) Each vehicle and its equipment shall be checked after each use to ensure that it is in a clean and sanitary condition, unless precluded by emergency conditions.~~
~~(14) This administrative regulation shall not be construed to prevent a licensed provider from providing medical first response emergency prehospital care at or below the level for which they are licensed through the utilization of:~~
~~(a) Designated, provider-owned response vehicles;~~
~~(b) Provider or personally-owned supervisor vehicles; or~~
~~(c) Employee personally-owned vehicles.~~
~~(15) The licensed provider shall determine in writing the minimum equipment required for tiered response vehicles operating under their license.~~
~~(16) Vehicles used to provide medical first response services shall~~

~~be insured by the employee or through the insurance policies of the provider.~~
~~(17) A communications system shall be developed, coordinated, and maintained by each ambulance provider. The communication system shall meet the following requirements:~~
~~(a) Radio equipment used in emergency medical services vehicles shall be appropriately licensed through the FCC. Copies of the current FCC licenses shall be on file in the provider's office;~~
~~(b) Vehicles shall be equipped with two (2) way radio communication equipment capable, under normal conditions, of contacting dispatch centers and hospitals; and~~
~~(c) Each vehicle shall have a minimum of one (1) portable communication device capable of operating on the provider or hospital frequency, that shall be provided for personnel if away from the vehicle.~~

~~Section 7. Ground Vehicle Specifications. (1) Vehicles used by ground providers shall:~~
~~(a) Have the name of the provider appearing on both sides of the exterior surface of the vehicle subject to the following:~~
~~1. The name shall be the incorporated name or the name under which the provider does business and as it appears on the provider's license;~~
~~2. The service may request approval from the board to display an abbreviated or shortened version of its name to serve as a unique identifier;~~
~~3. This requirement shall not preclude a provider from adding additional names from another entity on the vehicle due to a joint venture, if the name as licensed by the board is the larger, and visible and readable by the public; and~~
~~4. A vehicle operated by a provider shall not be marked with the words "advanced life support", "paramedic", or similar words which convey essentially the same meaning on its exterior surface visible to the public unless the provider is licensed to provide ALS services;~~
~~(b) Be maintained in good operating condition and in full repair without obvious apparent problems relating to tires, exhaust, body integrity, warning devices, or mechanical reliability, which would be recognized by the average lay person who is not an automotive mechanic;~~
~~(c) Be designed to provide for the medical care or transportation of patients; and~~
~~(d) Have tires that meet the manufacturer's standards for the gross vehicle weight of the vehicle. A tire shall not display exposed tire cord or have tread depth less than 2/32 on back tires and 4/32 on front tires if measured in any two (2) adjacent grooves at three (3) locations spaced equally around the tire. Retread tires shall not be used on ground vehicles.~~
~~(2) All ground ambulances shall meet or exceed the following minimum physical characteristics:~~
~~(a) A ground ambulance shall comply fully with the ambulance design criteria contained in "Federal Specifications for Ambulances", KKK-1822, in effect when the ambulance is manufactured, except for color and provider identification;~~
~~(b) The ambulance provider shall require that a certification decal or sticker be supplied by the manufacturer of newly-purchased ambulances, indicating that the ambulance met KKK-1822 specifications on the date it was manufactured. The certification decal shall be located on a permanent surface, such as in the ambulance oxygen tank compartment; and~~
~~(c) The ambulance provider shall require, for units that are later modified, the conversion company to supply a letter to verify the modification meets or exceeds the KKK-1822 specification requirements, except for color or provider identification, as incorporated in the KKK-1822 specifications on the ambulance's original date of manufacture.~~
~~(3) In addition to the KKK-1822 specifications, the following state licensing requirements shall be maintained:~~
~~(a) The heating system shall maintain a temperature of not less than sixty-five (65) degrees Fahrenheit in the driver and patient compartments in winter weather conditions as determined by a standard automotive testing thermometer;~~
~~(b) The air-conditioning system shall maintain a temperature of not more than eighty-five (85) degrees Fahrenheit in the driver and patient compartments in summer weather conditions as determined by a standard automotive testing thermometer; and~~
~~(c) There shall be no more patients, personnel, and other persons than can be safely secured by means of seat safety belts or similar devices in the vehicle while the vehicle is in motion.~~

~~Section 8. Ground Vehicle Routine Staffing Requirements. (1) A Class I service operating a BLS ambulance shall assure that it is minimally staffed by:~~
~~(a) A driver certified as a first responder; and~~
~~(b) An attendant certified as an EMT.~~
~~(2) A Class I service operating an ALS ambulance that is providing an ALS level of care shall assure that it is minimally staffed by:~~
~~(a) A driver certified as first responder; and~~
~~(b) An attendant licensed as a paramedic.~~
~~(3) A Class I service operating an ALS ambulance that is providing a BLS level of care shall assure that it is minimally staffed by:~~
~~(a) A driver certified as a first responder; and~~
~~(b) An attendant certified as an EMT.~~
~~(4) A Class II service shall be minimally staffed by:~~
~~(a) A driver certified as a first responder; and~~
~~(b) An attendant certified as an EMT.~~
~~(5) A Class III service shall be minimally staffed by:~~
~~(a) A driver certified as an EMT; and~~
~~(b) An attendant licensed as a paramedic.~~
~~(6) A Class IV service operating a BLS ambulance shall assure that it is minimally staffed by:~~
~~(a) A driver certified as a first responder; and~~
~~(b) An attendant certified as an EMT.~~
~~(7) A Class IV service operating an ALS ambulance shall assure that it is minimally staffed by:~~
~~(a) A driver certified as an EMT; and~~
~~(b) An attendant licensed as a paramedic.~~
~~(8) A Class V service shall be minimally staffed by:~~
~~(a) A driver certified as an EMT; and~~
~~(b) An attendant licensed as a paramedic.~~
~~(9) Class I ALS, Class III, Class IV ALS, and Class V ALS services shall have a licensed paramedic on duty at all times.~~
~~(10) An attendant shall remain with the patient, in the patient compartment, at all times during transport.~~
~~(11) A provider that has documented an insufficient number of EMTs or first responders available to staff its vehicles may request a waiver of minimum requirements for drivers only. The waiver request shall be accompanied by an acceptable plan to address the shortage of certified or licensed staff in the area served by the provider. If a waiver is approved by the board, an individual with drivers training as defined by this administrative regulation, and current first aid and CPR certification and HIV/AIDS training as required by KRS 311A.110 may serve as the driver of a provider's vehicle. The driver shall be enrolled in an first responder or EMT course within three (3) months of the hire date and become certified within six (6) months of enrolling in the first responder or EMT course.~~
~~(12) This administrative regulation shall not prevent a provider from utilizing staff other than that required by this administrative regulation in:~~
~~(a) Disasters;~~
~~(b) Mass casualty incidents; or~~
~~(c) Extraordinary scene conditions that would impair the safety of the patient or personnel operating at the scene.~~

~~Section 9. Motor Vehicle Operator Requirements. (1) Staff members or volunteers who operate a vehicle, as a part of their job duties shall:~~
~~(a) Be at least eighteen (18) years of age;~~
~~(b) Hold a valid Kentucky driver's license; and~~
~~(c) Complete an initial drivers training and education program that is a minimum of eight (8) hours long, developed by the provider or provided for the provider in conjunction with another agency or organization.~~
~~(2) Documentation shall be available to support that the driving training program consisted of:~~

~~(a) Review of driving a vehicle under emergency conditions;~~
~~(b) Review of Kentucky Revised Statutes regarding operation of emergency vehicles;~~
~~(c) Performing forward and back-up driving maneuvers in a controlled situation, such as in an obstacle course designed specifically for this purpose; and~~
~~(d) Review of defensive driving techniques and procedures with hands-on experience or exposure by visual aids, such as videotapes, slides, or planned demonstrations.~~
~~(3) All personnel, certified or licensed by the board, who operate a provider's motor vehicle shall repeat a refresher driver's training and education program at least once every two (2) years, which is a minimum of four (4) hours in duration. The course shall consist of:~~
~~(a) A review of driving a vehicle under emergency conditions;~~
~~(b) A review of Kentucky Revised Statutes regarding operation of emergency vehicles;~~
~~(c) A review of forward and back-up driving maneuvers in a controlled situation, such as in an obstacle course designed specifically for this purpose; and,~~
~~(d) A review of defensive driving techniques and procedures by with hands-on experience or exposure by visual aids, such as videotapes, slides, or planned demonstrations.~~
~~(4) Provider personnel who may serve as an attendant or a driver shall meet the qualifications for both roles. Documentation shall be required in personnel files for personnel who:~~
~~(a) Serve as drivers only in a three (3) person crew and do not render any type of first aid or medical treatment; or~~
~~(b) Serve as patient care providers only.~~

~~Section 10. Basic Life Support Equipment and Supplies. (1) All providers shall carry and maintain, in full operational order, the following minimum basic life support equipment and supplies:~~
~~(a) Suction, ventilation, and blood pressure equipment, which shall include:~~
~~1. Two (2) sources of suction apparatus, one (1) of which shall be mechanically operated;~~
~~2. Rigid catheters;~~
~~3. Flexible catheters in adult, pediatric and infant sizes;~~
~~4. Bulb syringe or meconium aspiration device for infant and neonate suction;~~
~~5. Disposable adult, pediatric and infant bag-valve-mask ventilation units with oxygen reservoir, oxygen tubing and masks;~~
~~6. Nasopharyngeal and oropharyngeal airway kits in sizes for adult and children with water soluble lubricant; and~~
~~7. Adult, obese adult, child, and infant sphygmomanometer cuffs with stethoscope. A permanently-mounted sphygmomanometer shall not satisfy this requirement;~~
~~(b) Oxygen equipment, including:~~
~~1. A fixed oxygen system for each ambulance;~~
~~2. Portable oxygen tanks that are minimum size D, with a filled secured spare portable tank, minimum size D;~~
~~3. Pressure gauge and flow rate regulator for fixed and portable units with a range of zero to fifteen (15) liters per minute;~~
~~4. Disposable oxygen humidifier and attachment for use on the fixed oxygen tank;~~
~~5. Oxygen supply tubing;~~
~~6. Transparent nonrebreather oxygen masks for adults and children; and~~
~~7. Nasal cannulas for adults and children;~~
~~(c) Bandages, bandaging supplies and tape, including:~~
~~1. Two (2) sterile universal dressings at least ten (10) inches by thirty (30) inches, compactly folded and packaged;~~
~~2. Fifty (50) sterile four-by-four (4x4) gauze pads;~~
~~3. Ten (10) soft roller self-adhering bandages, various sizes;~~
~~4. Four (4) rolls of adhesive tape, minimum of two (2) sizes;~~
~~5. Ten (10) triangular bandages with large safety pins;~~
~~6. Two (2) sterile burn sheets;~~
~~7. Two (2) eye protector pads and shields or an approved substitute;~~
~~8. Two (2) occlusive dressings; and~~
~~9. Shears for bandages;~~
~~(d) Miscellaneous supplies, including:~~
~~1. Hand held flashlight, at a minimum two (2) "C" cell or greater, capable of providing adequate lighting to assess a scene or a patient away from the vehicle;~~
~~2. One (1) penlight;~~
~~3. Two (2) sterile obstetrical kits;~~
~~4. One (1) bottle of activated charcoal;~~
~~5. Sterile irrigation fluids;~~
~~6. Instant glucose;~~
~~7. Cold packs;~~
~~8. Bite stick; and~~
~~9. An AED with a minimum of two (2) complete sets of pads for all non-ALS vehicles;~~
~~(e) Splints, including:~~
~~1. Lower extremity mechanical traction splint in adult and pediatric sizes; and~~
~~2. Splints for arm, full leg, and foot including padded boards, ladder splints, air splints, or vacuum splints;~~
~~(f) Immobilization devices, including:~~
~~1. Short spine board with straps or other acceptable extrication device;~~
~~2. Adult, and pediatric long spine boards or other full body immobilization device with straps and cervical immobilization accessories;~~
~~3. Five (5) rigid, stiff cervical collars in four (4) different sizes including pediatric sizes;~~
~~4. Towel rolls or other bulk dressings to be used for cervical immobilization for infants; and~~
~~5. An orthopedic "scoop" stretcher or an additional full-body immobilization device shall be maintained by all ground providers; and~~
~~(g) Two (2) five (5) pound size or larger, ABC multipurpose fire extinguishers, approved by Underwriters Laboratory, Coast Guard, or Factory Mutual. One (1) shall be accessible to the driver and the other to the attendant or attendants in the patient compartment in the ambulance or in the rear of the ALS medical first response vehicle.~~
~~(2) All ground ambulances shall have a multi-position stretcher with wheels and a minimum of three (3) straps that shall include shoulder straps for securing the patient to the stretcher, and a mechanism to secure the stretcher while in transit.~~
~~(3) Personal protective equipment shall be available to each staff member responding on the vehicle, including:~~
~~(a) One (1) pocket mask with an isolation valve;~~
~~(b) One (1) clean scrub gown (or substitute, such as disposable coveralls);~~
~~(c) Simple disposable face mask;~~
~~(d) Clear protective goggles or safety glasses;~~
~~(e) Disposable gloves;~~
~~(f) One (1) particulate filter mask rated at N95 or better without an exhaust port for patient use;~~
~~(g) One (1) particulate filter mask rated at N95 or better with or without an exhaust port for protection of crew members; and~~
~~(h) A means of cleansing the hands, such disposable towlettes or other solutions.~~
~~(4) Cleaning materials shall be available including:~~
~~(a) Disinfectants;~~
~~(b) Glass or multisurface cleaner;~~
~~(c) Trash bags for disposal of nonbiohazard waste materials;~~
~~(d) Biohazard bags for the disposable of biohazard waste; and~~
~~(e) Puncture resistant containers for disposal of sharp objects.~~
~~(5) Patient comfort items including:~~
~~(a) Two (2) clean blankets, sheets, pillows, and pillowcases;~~
~~(b) Tissues;~~
~~(c) A disposable urinal;~~
~~(d) A disposable bed pan; and~~
~~(e) An emesis container or similar substitute.~~
~~(6) Current expiration dates are required for any item that carries an expiration date.~~

~~Section 11. Advanced Life Support Equipment and Supplies. (1) All ALS providers shall maintain evidence in the form of a letter that medical protocols have been reviewed and approved by the board.~~
~~(2) In addition to the BLS equipment required in Section 10 of this~~

~~administrative regulation, an ALS provider shall carry on each vehicle and maintain in fully operational order, supplies and equipment required by the providers protocols, including as a minimum of:~~
~~(a) Endotracheal intubation equipment consisting of:~~
~~1. Laryngoscope handle;~~
~~2. Various laryngoscope blades in adult, pediatric, and infant sizes;~~
~~3. Extra batteries and bulbs for handles or blades;~~
~~4. A minimum of seven (7) different sizes of endotracheal tubes for oral and nasal placement in adult, pediatric, and infant sizes;~~
~~5. Equipment necessary to perform emergency cricothyrotomy;~~
~~6. An end tidal carbon dioxide detection device;~~
~~7. Stylettes in adult and pediatric sizes;~~
~~8. Magill forceps in adult and pediatric sizes;~~
~~9. One-half (1/2) inch wide twill tape or equivalent for securing endotracheal tubes; and~~
~~10. Water-soluble lubricant for lubrication of endotracheal and nasotracheal tubes;~~
~~(b) A portable monitor defibrillator that:~~
~~1. Is capable of displaying a visual display of cardiac electrical activity;~~
~~2. Is capable of providing a hard copy of cardiac electrical activity measure;~~
~~3. Is capable of delivering direct current energy over a variable range, which is suitable for pediatric and adult usage;~~
~~4. Is capable of providing external cardiac pacing;~~
~~5. Has adult and pediatric external paddle electrodes or pads, capable of utilization for immediate monitoring of heart activity and delivery of counter shock in both the adult and pediatric patient;~~
~~6. Is capable of being operated from internal rechargeable batteries;~~
~~7. Has synchronized counter shock capability for cardioversion; and~~
~~8. Has a patient monitoring cable with:~~
~~a. Electrode paste or gel or equivalent;~~
~~b. Electrode pads or equivalent for use with the patient monitoring cable; and~~
~~c. One (1) additional roll of paper for hard copy printout;~~
~~(c) Sterile, disposable needles, in types and sizes sufficient for personnel to administer medications and perform procedures allowed by the providers' patient treatment protocols;~~
~~(d) Disposable syringes in types and sizes sufficient for personnel to administer medications and perform procedures allowed by the providers' patient treatment protocols;~~
~~(e) Restriction band appropriate for use with venipuncture procedure;~~
~~(f) Dextrostix or equivalent for the measure of blood glucose levels;~~
~~(g) Disposable, individually-packaged antiseptic wipes;~~
~~(h) Intravenous fluids as required by the provider's protocol, with macrodrip and microdrip fluid sets, extension sets and accessory items including over the needle catheter devices in sizes fourteen (14) to twenty-four (24) gauge;~~
~~(i) Intraosseous needles; and~~
~~(j) Pediatric drug dosage tape or equivalent that provides easy reference for pediatric and infant treatment and drug dosages.~~
~~(3) An ALS provider shall stock and maintain drugs and medications as required by the master drug list contained in protocols established in accordance with this section.~~
~~(4) Controlled drugs shall be stored in a locked storage box in a locked compartment on the vehicle. A provider that stores and utilizes controlled substances shall have protocols approved by the Cabinet for Health Services' Drug Control Branch.~~
~~(5) This administrative regulation shall not prevent a provider from maintaining other supplies or equipment that are required to carry out its protocols as approved by the board.~~
~~(6) Current expiration dates shall be required for any item that carries an expiration date.~~

~~Section 12. Extrication and Other Rescue Equipment. (1) All ground providers licensed to respond to emergency calls shall provide and maintain in full operational order the following minimum light access and extrication equipment on the ambulance:~~
~~(a) Two (2) pairs of eye protection goggles or safety glasses;~~
~~(b) Two (2) pairs of heavy work gloves;~~
~~(c) Two (2) hard hats; and~~
~~(d) Three (3) reflective triangles or strobes, or equivalent warning devices.~~
~~(2) For response to trauma scenes requiring extrication, ground providers licensed to respond to emergency calls shall provide one (1) vehicle, which need not be an ambulance, equipped with the following fully-operational, more extensive access and extrication equipment:~~
~~(a) Two (2) fifty (50) foot long 7/16 or one-half (1/2) inch static or dynamic nylon ropes;~~
~~(b) One (1) pair of pliers or vise grips;~~
~~(c) One (1) wrench, with adjustable, stable open end;~~
~~(d) One (1) set of screwdrivers, four (4) sizes, regular blade;~~
~~(e) One (1) set of screwdrivers, four (4) sizes, Phillips type;~~
~~(f) One (1) double action tin snip;~~
~~(g) One (1) crowbar with pinch point;~~
~~(h) One (1) hacksaw with twelve (12) blades;~~
~~(i) One (1) hammer, three (3) pound size;~~
~~(j) One (1) fire axe;~~
~~(k) One (1) wrecking bar;~~
~~(l) One (1) bolt cutter, with one and one-fourth (1 1/4) inch jaw opening;~~
~~(m) One (1) four (4) ton porta-power jack and spreader tool;~~
~~(n) One (1) shovel, short handle, with pointed blade;~~
~~(o) One (1) shovel, long handle, with pointed blade;~~
~~(p) One (1) come-along tool or other acceptable winching device; and~~
~~(q) Two (2) fire-proof blankets.~~
~~(3) A ground ambulance provider may meet the provision of subsection (2) of this section through the execution of a mutual aid agreement with ALS medical first response providers, fire departments or rescue squads that provide service to the ambulance service's licensed response area. The ambulance service shall have mutual aid agreements that cover all of their licensed response area in order to be exempt from maintaining the more extensive access and extrication equipment.~~

~~Section 13. Medical Directors. All providers shall have a medical director. Medical directors shall meet the requirements as set forth in 202 KAR 7:801.~~

~~Section 14. Request for Waiver. (1) A provider licensed or contemplating licensure under this administrative regulation may make a written request to the board for certain provisions of this administrative regulation to be waived.~~
~~(2) A request shall justify that a proposed waiver, if approved, shall not jeopardize the quality of patient care or public safety.~~
~~(3) The board may approve a request based on at least one (1) of the following:~~
~~(a) Circumstances where public health and safety is a factor;~~
~~(b) Extenuating or mitigating circumstances that warrant consideration to assure the delivery of adequate emergency medical services;~~
~~(c) Substitution of equipment authorized by this administrative regulation; or~~
~~(d) Testing of new procedures, techniques, or equipment in a pilot study authorized by the board.~~
~~(4) The board shall establish time limits and conditions on all waivers.~~

~~Section 15. Exemptions from Administrative Regulations. (1) The following situations shall be exempt from the provisions of this administrative regulation:~~
~~(a) First aid or transportation provided in accordance with KRS 216B.020(2)(f);~~
~~(b) A vehicle serving as an ambulance during a disaster or major catastrophe; or~~
~~(c) A vehicle operated by the United States government on property owned by the United States government.~~
~~(2) In addition, the following out-of-state providers shall be exempt from the provisions of this administrative regulation:~~

~~(a) A vehicle licensed by another state that is transporting a patient from out of state to a Kentucky medical facility or other location in Kentucky;~~
~~(b) A vehicle licensed by another state that is transporting a patient from out of state through Kentucky to another location out-of-state;~~
~~(c) A vehicle owned and operated by a city government which provides services in coterminous cities outside the ambulance service's designated service area pursuant to KRS 216B.020(7);~~
~~(d) A vehicle licensed in an adjoining state that responds to a mutual aid request from a Kentucky licensed provider for emergency assistance if the out of state service is the closest service appropriately capable of responding to the request or when Kentucky licensed providers:~~
~~1. Are unavailable;~~
~~2. Have already responded; or~~
~~3. Are physically unable to reach the incident; and~~
~~(e) A vehicle licensed by another state that is providing nonemergency transportation from a Kentucky health care facility for a patient who is not a Kentucky resident back to their state of residence.~~

~~Section 16. Public Notice of Negative Action. The board office shall cause to be published, in the KBEMS News or similar publication of the board, or otherwise disseminate, the name of an ambulance provider or medical first response agency that is fined, placed on probationary status, placed on restricted status, suspended, or had a license revoked.~~

~~Section 17. Incorporation by Reference. (1) The following material is incorporated by reference:~~
~~(a) Form EMS-8A, "Kentucky Emergency Medical Services Ambulance Run Report", (9/98);~~
~~(b) Form EMS-8B, "Kentucky Emergency Medical Services Ambulance Run Report", (9/98);~~
~~(c) "Federal Specifications for Ambulances", KKK-A-1822 D, (11/94), General Services Administration, Federal Supply Service, Washington, D.C. 20406; and~~
~~(d) "Application for Ambulance Provider Licensing", (June 2003).~~
~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 2545 Lawrenceburg Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.~~]

JIM DUKE, Chairperson
APPROVED BY AGENCY: December 7, 2017
FILED WITH LRC: December 13, 2017 at 2 p.m.
CONTACT PERSON: Angela Evans; Legal Counsel, Kentucky Fire Commission; McBrayer, McGinnis, Leslie & Kirkland, PLLC, 201 East Main Street Suite 900, Lexington, Kentucky 40507, phone (859) 231-8780, fax (859) 231-1175, email aevans@mmlk.com.

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM
Kentucky Board of Emergency Medical Services
(As Amended at ARRS, March 12, 2018)

202 KAR 7:545. License classifications.

RELATES TO: KRS 311A.030, 311A.190
STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030, 311A.190
NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.020 requires the ***Board of Emergency Medical Services[board]*** to exercise all administrative functions in the regulation of the ambulance services and medical first response agencies***, except those regulated by the Board of Emergency Medical Services or the Cabinet for Health and Family Services***. KRS 311A.030 requires the board to promulgate administrative regulations to establish requirements for various classes of ambulance and emergency medical service agencies. This administrative regulation establishes requirements for each class of ambulance service and medical first response agencies.

Section 1. License Classifications. (1) ***In accordance with KRS 311A.030(1),*** license classifications for ambulance providers shall include:
(a) A Class I ground ambulance agency operating at the Advanced Life Support (ALS), Basic Life Support (BLS), or Adult Critical Care Transport level to provide emergency and nonemergency care and transportation***.[;]***
(b) A Class II ground ambulance agency operating at the BLS level only to provide nonemergency care and transportation***.[;]***
(c) A Class III ground ambulance agency operating at the ALS level to provide critical care, specialty care, emergency or nonemergency care, and transportation between health care facilities. Based on the Certificate of Need and scope of care policy, a Class III ground ambulance agency shall be designated as one (1) **or more** of the following types:
1. A Class III Adult Critical Care agency providing critical care transport services to patients ages twelve (12) and above;
2. A Class III Pediatric Specialty Care agency providing specialty care transport services to patients under the age of **twenty-one (21)[~~twelve (12)~~]**; or
3. A Class III Neonatal Specialty Care agency providing specialty care transport services to patients less than twenty-nine (29) days of age***.[;]***
(d) A Class IV ground ambulance agency operating at the ALS or BLS level to provide emergency and nonemergency care and transportation for restricted locations, such as industrial sites or other sites that do not provide services outside the designated geographic service area***.[;]***
(e) A Class VI agency providing medical first response without patient transport at the BLS or ALS level.
1. Each BLS First Response agency shall be licensed separately as a Class VI BLS agency unless a mutual aid agreement is executed with a licensed Class I ambulance agency that provides 911 response services for the geographic service area.
2. A nonlicensed BLS First Response Agency may execute a mutual aid agreement with multiple nonlicensed BLS First Response Agencies that serve the same geographic service area.
3. A mutual aid agreement shall automatically renew at the conclusion of a calendar year.
4. A nonlicensed BLS First Response Agency or a Class I ALS agency may terminate a mutual aid agreement thirty (30) days after written notice is provided to the other party.
5. A mutual aid agreement between a Class I ALS agency and a nonlicensed BLS First Response agency serving the same geographic area shall be updated as changes to the agreement occur and shall include provisions for:
a. Medical direction;
b. BLS protocols;
c. Response protocol;
d. Geographic service areas to be served;
e. Circumstances causing dispatch of the nonlicensed BLS first response agency;
f. Training;
g. Quality assurance processes; and
h. Liability Insurance if applicable.
6. A nonlicensed BLS First Response agency shall not provide BLS care outside of the geographic service area of the Class I ALS agency.
7. A nonlicensed BLS First Response agency unable to secure a written mutual aid agreement with a Class I ALS agency within its geographic service area, may operate within the jurisdiction as a nonlicensed BLS First Response agency if the agency has written correspondence from at least **one (1)[~~two (2)~~]** Class I 911 **agency within its geographic service area[~~agencies~~]** denying the agency's request to enter into a mutual aid agreement. The correspondence denying the mutual aid request shall be maintained on file at the agency.
8. A license to provide BLS care shall not be issued solely through the execution of a mutual aid agreement between a Class I

agency and a nonlicensed BLS First Response agency;

(f) A Class VII rotor wing air ambulance service providing ALS emergency or nonemergency air transportation;

(g) A fixed wing class VII service provides ALS or BLS emergency or nonemergency air transportation; and

(h) A Class VIII agency providing BLS or ALS pre-hospital care above the first-aid level at special events, sports events, concerts, or large social gatherings.

1. A Class VIII agency shall not transport patients beyond the grounds of an event and shall be bound by the geographic service area of its Certificate of Need.

2. A Class VIII agency shall not transport patients independently to a hospital.

3. If transport of a patient is required, a Class VIII agency shall contact 911 for transport by a Class I agency licensed for the geographic service area.

(2) The KBEMS office shall license agencies in accordance with subsection **(1)[(1 or i)]** of this section.

(3) An agency shall obtain a license from the board within ninety (90) days of issuance of a Certificate of Need from the Cabinet for Health and Family Services.

(4) An agency that does not receive a license within ninety (90) days of the issuance of its Certification of Need shall not be granted a license by the board.

(5) An agency shall not hold more than one (1) license per level of classification in one (1) defined geographic service area unless each license was obtained prior to January 1, 2018.

Section 2. Public Notice of Negative Action. The board office shall publish on the KBEMS Web site or similar publication of the board, the name of any licensed agency that is fined, placed on probationary status, placed on restricted status, suspended, or had a license revoked.

ANGELA EVANS, KBEMS General Counsel
For JIM DUKE, KBEMS Chairperson
APPROVED BY AGENCY: February 15, 2018
FILED WITH LRC: February 15, 2018 at 8 a.m.
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KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM
Kentucky Board of Emergency Medical Services
(As Amended at ARRS, March 12, 2018)

202 KAR 7:550 Required equipment and vehicle standards.

RELATES TO: KRS ***13B,*** 311A.030, 311A.180, 311A.190***, 29 C.F.R. 1910.135***

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030, 311A.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.020 requires the ***Board of Emergency Medical Services[board]*** to exercise all administrative functions in the regulation of the emergency medical services system and the licensing of ambulance services and medical first response agencies***, except those regulated by the Board of Emergency Medical Services or the Cabinet for Health and Family Services***. KRS 311A.030 requires the board to promulgate administrative regulations for the licensing, inspection, and regulation of ambulance providers and medical first response agencies. This administrative regulation establishes the required equipment to operate an ambulance service.

Section 1. Ground Ambulance Specifications. (1) Ground ambulances utilized by Class I, II, III, and IV agencies shall:

(a) Have the name of the provider permanently affixed by paint, decal, or wrap on both sides of the exterior surface of the vehicle.

1. The name shall be the incorporated name or the name under which the provider does business and as it appears on the provider's license.

2. This requirement shall not preclude a provider from adding additional names from another entity on the vehicle due to a joint venture, if the name as licensed by the board is***[the]*** larger, and visible and legible by the public.

3. A vehicle operated by an agency shall not be marked with the words "advanced life support", "paramedic," or similar words that convey essentially the same meaning on the vehicle's exterior surface visible to the public unless the***:***

a. Vehicle is always staffed at an Advanced Life Support level***;*** or

b.[unless the] Agency was licensed by the board prior to January 1, 2018***.[;]***

(b) Be maintained in good operating condition and in full repair without obvious apparent problems relating to tires, exhaust, body integrity, warning devices, or mechanical reliability, which would be recognized by the average lay person who is not an automotive mechanic***.[;]***

(c) Be designed to provide for the medical care or transportation of patients***.[;]***

(d) Stow all equipment weighing three (3) pounds or more in an enclosure, bracket, mount, or other appropriate securing device***.[; and]***

(e) Have tires that meet the manufacturer's standards for the gross vehicle weight of the vehicle.

1. A tire shall not display exposed tire cord or have tread depth less than 2/32 on back tires and 4/32 on front tires if measured in any two (2) adjacent grooves at three (3) locations spaced equally around the tire.

2. Retread tires shall not be used on ground vehicles.

3. Internal patches may be utilized for tire repairs if necessary.

4. More than two (2) patches shall not be used on any one (1) defective tire.

5. Plugs shall not be used for the repair of defective ambulance tires.

(2) All Class I, II, III, and IV ground ambulances shall meet or exceed the minimum physical characteristics established in paragraphs (a) through (e) of this subsection.

(a) A ground ambulance licensed in Kentucky shall be affixed with an official Kentucky Board of Emergency Medical Services decal that states, at a minimum, **the month and year of inspection[the expiration date of the license for the agency]**.

(b) An ambulance manufactured prior to January 1, **2019[2018]** shall meet or exceed the standards established in the U.S. General Services Administration Federal Specification for the Star-of-Life Ambulance (GSA KKK-A-1822) in effect on the original date of manufacture.

(c) The agency shall require, for a unit in which the chassis of an ambulance is later replaced, the conversion company to supply a letter to verify that no modification exists that was contained in GSA KKK-A-1822 on the original date of module manufacture.

(d) A new production ground ambulance that is ordered after January 1, **2019[2018]** shall comply fully with the ambulance design criteria contained in the***[most recent version of the]*** Commission on Accreditation of Ambulance Services Ground Vehicle Standard for Ambulances (GVS)***, 7/2016***. A decal or letter of verification from the manufacturer certifying that the vehicle meets the GVS standard, if ordered after January 1, **2019[2018]**, shall be made available upon inspection.

(e) The agency shall require for any GVS certified vehicle, in which the chassis of an ambulance is later replaced, the conversion company shall supply a letter to verify that no modification exists that was contained in the GVS standard on the original date of module manufacture.

(3) In addition to the GSA KKK-A-1822 or the GVS standards, additional requirements shall be met as established in paragraphs (a) through (d) of this subsection.

(a) The air-conditioning system shall minimally deliver a temperature of sixty-five (65) degrees Fahrenheit or less from the vent or vents in the driver and patient compartments in warm

weather conditions as determined by a standard automotive testing thermometer.

(b) The heating system shall minimally deliver a temperature of eighty-five (85) degrees Fahrenheit or more from the vent or vents in the driver and patient compartments in cool weather conditions as determined by a standard automotive testing thermometer.

(c) There shall be no more patients, personnel, and other persons than can be safely secured by means of permanently installed safety belts in the vehicle while the vehicle is in motion.

(d) The patient care area lighting shall be fully functional.

(4) A preventive maintenance program shall be maintained for each vehicle and its equipment to keep them in optimum working order to protect the health and safety of the patient and ambulance personnel.

(5) Documentation shall be maintained by the agency to support evidence of periodic inspections as recommended by the manufacturer, including calibrations required for maintenance and operation of the vehicle and its equipment.

(6) Each vehicle and its equipment shall be checked after each use to ensure that it is in a clean and sanitary condition, unless precluded by emergency conditions.

(7)(a) Except as established in paragraph (b) of this subsection, all linen used for patient care including sheets, blankets, pillowcases, pillows, towels, and washcloths shall be stowed in a separate cabinet and secured from body fluids.

(b) One (1) pillow, one (1) pillow-case, one (1) fitted sheet, two (2) flat sheets, one (1) towel, and two (2) blankets may be utilized on the stretcher that is in-service and shall not require stowing.

Section 2. Class I, II, and IV Basic Life Support Ambulance Equipment and Supplies. (1) Each BLS agency shall maintain evidence in the form of a letter that adult and pediatric medical protocols have been reviewed and approved by the board pursuant to KRS 311A.180. A hard copy or electronic equivalent of approved protocols shall be accessible to each provider throughout each call.

(2) Each Class I, II, and IV BLS agency shall carry and maintain, in full operational order, the following minimum basic life support equipment and supplies:

(a) Suction, ventilation, and blood pressure equipment, which shall include:

1. Two (2) sources of suction apparatus, one (1) of which shall be mechanically operated;

2. Rigid catheters;

3. Flexible catheters in adult, pediatric, and infant sizes;

4. Bulb syringe for infant and neonate suction;

5. Disposable adult and pediatric bag-valve-mask with a pediatric pop-off valve with oxygen reservoir, oxygen tubing, and adult, pediatric, infant, and neonate masks;

6. Nasopharyngeal airways (16F-34F; adult and child sizes) with water-soluble lubricant;

7. Oropharyngeal airways (sizes 0-5; adult, child, and infant sizes);

8. Blind-Insertion Airway Device (BIAD) (adult and pediatric); and

9. Manual pediatric and adult regular and large sphygmomanometer cuffs with stethoscope***.[;]***

(b) Oxygen equipment, including:

1. A fixed oxygen system for each ambulance;

2. Two (2) portable, adequately filled, secured oxygen tanks that are minimally size D;

3. Pressure gauge and flow rate regulator for fixed and portable units with a range of zero to fifteen (15) liters per minute; and

4. Transparent non-rebreather oxygen masks and nasal cannulas for adults and pediatrics***.[;]***

(c) Bandages, bandaging supplies and tape, including:

1. Commercially packaged or sterile burn sheets;

2. Triangular bandages;

3. Dressings of the following types:

a. Sterile dressings, including gauze sponges of suitable size; and

b. Abdominal dressings;

4. Gauze rolls, various sizes;

5. Occlusive dressing, or equivalent;

6. Adhesive tape of various sizes (include one (1) inch and two (2) inch);

7. Arterial tourniquet; and

8. Shears for bandages***.[;]***

(d) Miscellaneous supplies, including:

1. Hand held flashlight capable of providing adequate lighting to assess a scene or a patient away from the vehicle;

2. Penlight;

3. A copy or electronic equivalent of the ***2016[~~most current edition of the~~]*** U.S. Department of Transportation, Emergency Response Guidebook;

4. A minimum of ten (10) triage tags consistent with START System of Triage;

5. Obstetrical supplies that shall include at a minimum:

a.[~~(a)~~] Sterile scalpels or scissors;

b.[~~(b)~~] Sterile gloves;

c.[~~(c)~~] Bulb suction;

d.[~~(d)~~] Two (2) umbilical clamps; and

e.[~~(e)~~] Thermal absorbent blanket and head cover, aluminum foil roll, or appropriate heat-reflective material***, e.g.,[~~(~~]*** enough to cover newborn infant;

6. Sterile irrigation fluids;

7. Glucometer or blood glucose measuring device with reagent strips and lancets for obtaining a blood glucose sample;

8. Oral glucose;

9. Cold packs;

10. Heat packs;

11. An AED with a minimum of two (2) complete sets of pads suitable for adult and pediatric populations for all non-ALS vehicles;

12. Pulse oximeter with pediatric and adult probes;

13. A length-based resuscitation tape or a reference material that provides appropriate guidance for pediatric drug dosing and equipment sizing based on length or weight;

(e) Splints, including:

1. Lower extremity mechanical traction splint in adult and pediatric sizes; and

2. Upper and lower extremity rigid splint devices for adult and pediatric patients;

(f) Immobilization devices, including:

1. Short extrication and immobilization device;

2. Adult and pediatric impervious long spine boards or other full body immobilization devices with a minimum of three (3) appropriate restraint cross-straps;

3. Cervical collars in the following sizes:

a.(i) Cervical collars for pediatric patients ages two (2) years or older; and

(ii) Cervical collars for adults in small, medium, large, and other available sizes; or

b. Pediatric and adult adjustable cervical collars; and

4. Towel rolls or other commercially available cervical immobilization devices for adults and pediatrics;

(g) Two (2) currently certified five (5) pound size or larger, secured, ABC multipurpose fire extinguishers, approved by Underwriters Laboratory, Coast Guard, or Factory Mutual. One (1) shall be accessible to the driver and the other to the attendant or attendants in the patient compartment in the ambulance;

(h) Multi-position stretcher with wheels and a minimum of three (3) cross-straps in addition to one (1) set of shoulder straps for securing the patient to the stretcher***[,]*** and a fixed mechanism to secure the stretcher while in transit;

(i) A pediatric transport device with a minimum weight range of ten (10) to forty (40) pounds; and

(j) A stair chair for the movement of patients in a seated position.

(3) Personal protective equipment shall be available to each staff member responding on the vehicle, including:

(a) One (1) clean scrub gown (or substitute, such as disposable coveralls);

(b) Simple disposable face mask;

(c) Clear protective goggles or safety glasses;

(d) Disposable gloves;

(e) One (1) particulate filter mask rated at N95 or better without an exhaust port for patient use;

(f) One (1) particulate filter mask rated at N95 or better with or without an exhaust port for protection of crew members; and

(g) A means of cleansing the hands, such disposable towlettes or other solutions.

(4) Cleaning materials shall be available including:

(a) Hospital grade disinfectants;

(b) Trash bags for disposal of nonbiohazard waste materials;

(c) Biohazard bags for the disposal of biohazard waste; and

(d) Puncture resistant containers for disposal of sharp objects that are secured to the vehicle.

(5) Patient comfort items shall be available including:

(a) Two (2) clean blankets, sheets, pillows, and pillowcases;

(b) A disposable urinal;

(c) A disposable bed pan; and

(d) An emesis container or similar substitute.

(6) All items with an expiration date shall not be expired.

Section 3. Class I **ALS**, Class III ACC, Class III PSC, and Class IV Advanced Life Support Ambulance Equipment and Supplies. (1) Each ALS agency shall maintain evidence in the form of a letter that adult and pediatric medical protocols have been reviewed and approved by the board pursuant to KRS 311A.180. A hard copy or electronic equivalent of approved protocols shall be accessible to each provider throughout each call.

(2) In addition to the BLS equipment required in Section 2 of this administrative regulation, each Class I **ALS**, Class III ACC, Class III PSC, and Class IV ALS**[agency shall carry on each]** vehicle **shall[~~and~~]** maintain**,** in fully operational order, supplies and equipment required by the agency's protocols, including a minimum of:

(a) Endotracheal intubation equipment consisting of:

1. Laryngoscope handle with extra batteries, bulbs, or blades if applicable;

2. Laryngoscope blades in the following sizes:

a. 0-4, straight Miller; and

b. 2-4, curved Macintosh;

3. Endotracheal tubes in the following sizes:

a. 2.5, 3.0, 3.5, 4.0, 4.5, 5.0, and 5.5 cuffed or uncuffed; and

b. 6.0, 6.5, 7.0, 7.5 and 8.0 cuffed;

4. Stylettes in adult and pediatric sizes;

5. 10-mL syringes;

6. Magill forceps in adult and pediatric sizes;

7. Water-soluble lubricant for lubrication of endotracheal and nasotracheal tubes;

8. End-Tidal CO_2 detection capability (adult and pediatric);

9. One-half (1/2) inch wide twill tape or equivalent for securing endotracheal tubes;

10. Equipment necessary to perform emergency percutaneous cricothyrotomy; and

11. Disposable nebulizer;

(b) A portable, battery-operated monitor defibrillator that:

1. Has a tape write-out or recorder, hands-free defibrillator pads, electrocardiogram monitoring leads, and electrodes for adults and pediatrics;

2. Is capable of delivering direct current energy over a variable range, which is suitable for pediatric and adult usage;

3. Has synchronized counter-shock capability for cardioversion;

4. Has a transcutaneous cardiac pacemaker, including adult and pediatric pads and cables; and

5. Has 12-Lead ECG capability if the vehicle is staffed to provide ALS services;

(c) Vascular Access supplies consisting of:

1. Isotonic crystalloid solutions;

2. Antiseptic solution (alcohol wipes and providone-iodine wipes);

3. Intravenous catheters, 14G-24G;

4. Long-large bore needles or angiocatheters (at least 3.25 ***inches[~~"~~]*** in length for needle chest decompression in large patients);

5. Intraosseous needles or intraosseous devices appropriate for children and adults; and

6. Latex-free tourniquet;

(d) Needles of various sizes, including suitable sizes for intramuscular injections;

(e) Intravenous macrodrip and microdrip administrations sets; and

(f) Intravenous arm boards, adult and pediatric, or appropriate substitute.

(3) An ALS agency shall stock and maintain drugs and medications as required by the master drug list contained in protocols established in accordance with this section.

(4) Controlled drugs shall be stored in a locked storage box in a locked compartment on the vehicle that is immediately accessible to personnel.

(5) This administrative regulation shall not prevent an agency from maintaining other supplies or equipment that are required to carry out its protocols as approved by the board in accordance with KRS 311A.180.

(6) All items with expiration dates shall not be expired.

Section 4. Class III Adult Critical Care (ACC) Transport Equipment. (1) Each Class III ACC agency shall maintain evidence in the form of a letter that medical protocols have been reviewed and approved by the board in accordance with KRS 311A.180. A hard copy or electronic equivalent of approved protocols shall be accessible to each provider throughout each call.

(2) In addition to the BLS equipment required in Section 2 of this administrative regulation and the ALS equipment required in Section 3 of this administrative regulation, Class III Adult Critical Care agencies shall carry on each vehicle and maintain in fully operational order all supplies and equipment required by the agency's protocols, including at a minimum:

(a) A portable transport ventilator, the capabilities of which shall include:

1. Controlling rate;

2. Volume;

3. FiO2 up to 100 percent;

4. I:E ratio;

5. PEEP;

6. Volume control;

7. Pressure control;

8. SIMV mode;

9. NPPV mode; and

10. Low- and high-pressure warning alarms;

(b) Two (2) portable transport ventilator circuits appropriately sized for the patient being transported;

(c) Continuous Positive Airway Pressure (CPAP) ventilation portable equipment;

(d) Electronic waveform capnography, intubated patient, capable of waveform display;

(e) Difficult airway equipment in the form of a bougie gum elastic ET introducer;

(f)[~~(g)~~] Sterile cricothyrotomy set, surgical or needle;

(g)[~~(h)~~] Invasive pressure monitoring capability electronic waveform available on two (2) channels;

(h)[~~(i)~~] An infusion pump or pumps capable of infusing three (3) separate medications simultaneously;

(i)[~~(j)~~] Six (6) IV infusion pump tubing sets;

(j)[~~(k)~~] Two (2) blood infusion sets; and

(k)[~~(l)~~] A device to monitor core body temperature through rectal or esophageal probe.

Section 5. Class III Pediatric Specialty Care (IIIPSC) Transport Equipment. (1) Each Class III Pediatric Specialty Care agency shall maintain evidence in the form of a letter that all medical protocols have been reviewed and approved by the board in accordance with KRS 311A.180. A hard copy or electronic equivalent of approved protocols shall be accessible to each provider throughout each call.

(2) In addition to the BLS equipment required in Section 2 of this administrative regulation, the ALS equipment required in Section 3 of this administrative regulation, and the Critical Care equipment listed in Section 4 of this administrative regulation, each

Class III Pediatric Specialty Care agency shall carry on each vehicle and maintain in fully operational order supplies and equipment required by the agency's protocols, including:

(a) Two (2) 250 ml bags of normal saline or lactated ringers;

(b) Twelve (12) syringes assorted from 1cc to 2cc;

(c) Four (4) three-way stopcocks;

(d) A needle cricothyrotomy kit for children from the ages of twenty-nine (29) days until **twenty-one (21)**[~~twelve (12)~~] years of age; **and**

(e) A **blind-insertion airway device (BIAD) in appropriate sizes for children from the ages of twenty-nine (29) days until twenty-one (21) years of age**[~~laryngeal mask airway in sizes 1, 2, and 3; and~~

~~(f) A king LTD airway in sizes 2, 2.5, 3, and 4~~].

Section 6. Class III Neonatal Specialty Care (III NSC) Transport Equipment. (1) Each Class III Neonatal Specialty Care agency shall maintain evidence in the form of a letter that all medical protocols have been reviewed and approved by the board in accordance with KRS 311A.180. A hard copy or electronic equivalent of approved protocols shall be accessible to each provider throughout each call.

(2) In addition to compliance with Section 1 of this administrative regulation, each Class III Neonatal Specialty Care agency shall carry on each vehicle and maintain in fully operational order all supplies and equipment required by the agency's protocols, including:

(a) Direct two-way communications with the designated neonatologist, attending physician, or receiving NICU;

(b) A standby or backup power source other than the one (1) contained in the isolette;

(c) A source of electrical power sufficient to operate the isolette and ancillary electrically powered equipment;

(d) A transport incubator with portable power supply, portable oxygen tanks, or liquid oxygen, and a source of compressed air, including appropriate valves, meters, and fittings. The transport incubator shall be secured in the vehicle using a manufacturer-approved vehicle-mounting device;

(e) One (1) portable heart rate monitor with visual or audible display and alarm system per patient;

(f) One (1) portable blood pressure monitor with an assortment of cuff sizes suitable for infants;

(g) Three (3) battery powered mechanical IV pumps capable of delivering as low as 1cc increments for IV fluids;

(h) A battery or self-powered oxygen sensor and transcutaneous oxygen monitor or oxygen saturation monitor;

(i) Oxygen delivery devices and tubing capable of administering high concentrations of oxygen;

(j) A temperature-monitoring device;

(k) A portable ventilator appropriate for neonatal patients;

(l) An anesthesia or self-inflating bag with an oxygen reservoir of less than 750 ml, a manometer pressure gauge, and premature newborn and infant size clear masks;

(m) A laryngoscope handle;

(n) Laryngoscope Blades in Miller sizes 00, 0, 1, 2, 3;

(o) Two (2) bulbs;

(p) Two (2) batteries;

(q) Endotracheal tubes in various sizes;

(r) Two (2) stylets;

(s) Two (2) meconium aspirators;

(t) Oral airways in various sizes;

(u) Suction equipment with low suction capabilities of less than eighty (80) mmHg;

(v) Two (2) suction catheters in sizes 5.0, 6, 6.5, 8, and 10 each;

(w) Syringes sizes 1 cc through 60 cc in various sizes;

(x) Two (2) medication access devices;

(y) 23-27 gauge vascular access devices in various sizes;

(z) Sterile gloves in various sizes and sufficient quantity for all crewmembers;

(aa) Medications as required by the master drug list contained in protocols established in accordance with this section;

(bb) IV extension tubing in sufficient length to administer IV fluids or medications;

(cc) IV securing devices in various sizes;

(dd) Two (2) IV filters;

(ee) Two (2) umbilical catheters, sizes 3.5 and 5;

(ff) Ten (10) antiseptic solution wipes;

(gg) One (1) blood glucose-monitoring device;

(hh) Five (5) lancets for obtaining a blood glucose sample;

(ii) One (1) neonatal stethoscope***;***[~~,~~]

(jj) One (1) flashlight;

(kk) Gauze pads;

(ll) One (1) No. 5 and one (1) No. 8 French feeding tube;

(mm) One (1) high intensity light capable of transillumination;

(nn) A biomedical waste plastic bag or impervious container;

(oo) Puncture resistant containers for disposal of sharp objects that shall be secured to the vehicle;

(pp) Gloves made of nitrile or other suitable materials in sufficient quantity for all crewmembers;

(qq) Respiratory face masks in sufficient quantity for all crew members;

(rr) Special procedure trays or instruments capable of performing umbilical catheterization, venous cutdown, and thoracostomy in accordance with established protocol;

(ss) One (1) bulb syringe;

(tt) One (1) cord clamp;

(uu) One (1) age appropriate chest tube evacuation device; and

(vv) Needle aspiration device or chest tubes in appropriate sizes for a neonate patient.

Section 7. Class VI and Class VIII BLS Agency Equipment. (1) Each Class VI and VIII BLS agency shall maintain evidence in the form of a letter that all medical protocols have been reviewed and approved by the board in accordance with KRS 311A.180. A hard copy or electronic equivalent of approved protocols shall be accessible to each provider throughout each call.

(2) Each Class VI and VIII BLS agency shall be exempt from the ground ambulance requirements established in Sections 1 through **6**[~~7~~] of this administrative regulation.

(3) Each Class VI and VIII BLS agency shall provide ready access to and maintain in fully operational order all supplies and equipment required by the agency's protocols.

(4)(a) Each Class VIII BLS agency shall have ready access to and maintain in operational order, two (2) complete sets of equipment required by the agency's protocols and this administrative regulation.

(b) Each Class VI BLS agencies shall be required to maintain one (1) complete set of equipment.

(5) Each basic life support non-transport vehicle shall wrap, properly store, and handle all single-service implements to be inserted into the patient's nose or mouth.

(6) Each Class VI and VIII BLS agency shall properly store and keep multiuse items clean and sterile if indicated.

(7) Each Class VI and VIII BLS agency shall carry the following assembled and readily accessible equipment:

(a) Respiratory and resuscitation equipment, including:

1. Portable suction apparatus, capable of a minimum vacuum of 300 millimeters mercury, equipped with two (2) each of the following:

a. Wide-bore tubing;

b. Rigid catheters;

c. Soft pharyngeal suction tips in child size; and

d. Soft pharyngeal suction tips in adult size;

2. One (1) hand-operated bag-mask ventilation unit equipped with clear facemasks and oxygen reservoirs with oxygen tubing in each of the following sizes:

a. Adult;

b. Child;

c. Infant; and

d. Neonatal mask only;

3. Two (2) oropharyngeal airways in each of the following sizes:

a. Adult;

b. Child; and

c. Infant;

4. One (1) pocket mask with a one (1) way valve;

5. Blind-Insertion Airway Devices (BIAD) in adult and pediatric sizes; and

6. Portable oxygen equipment of at least 300 liters capacity and D size cylinder with a regulator capable of delivering 25LPM;

(b) Oxygen delivery devices, including:

1. Two (2) non-rebreathing oxygen masks in both adult and pediatric sizes;

2. Two (2) nasal cannula in both adult and pediatric sizes;

3. Two (2) nasopharyngeal airways with water-soluble lubricant in each of the following sizes:

a. Adult;

b. Child; and

c. Infant;

(c) Wound care supplies, including:

1. Two (2) airtight dressings for open chest wounds;

2. Assorted bandaging supplies for the care of soft tissue injuries; and

3. Sterile water for irrigation;

(d) An AED with a minimum of two (2) complete sets of pads for all non-ALS providers and vehicles;

(e) Patient stabilization equipment, including:

1. Two (2) upper and two (2) lower extremity-splinting devices; and

2. Two (2) cervical collars in each of the following sizes or adjustable equivalents:

a. Pediatric;

b. Small;

c. Medium;

d. Large; and

e. No-Neck;

(f) Personal protection and body substance isolation equipment, including at least one (1) of each of the following for each EMS provider:

1. Gown;

2. Face mask and shield;

3. Gloves;

4. Biohazard bag;

5. Puncture resistant container for the disposal of sharp objects; and

6. Antimicrobial hand cleaner; and

(g) Miscellaneous items, including:

1. Obstetrical supplies, including:

a. Sterile scalpels or scissors;

b. Sterile gloves;

c. Bulb suction; and

d. Two (2) umbilical clamps;

2. One (1) blood pressure sphygmomanometer in each of the following cuff sizes:

a. Large adult;

b. Adult; and

c. Pediatric;

3. One (1) stethoscope in each of the following sizes:

a. Adult; and

b. Pediatric; and

4. A glucometer or blood glucose-measuring device with reagent strips and lancets for obtaining a blood glucose sample.

Section 8. Class VI and VIII ALS Agency Equipment. (1) Each Class VI and VIII ALS agency shall maintain evidence in the form of a letter that medical protocols have been reviewed and approved by the board in accordance with KRS 311A.180. A hard copy or electronic equivalent of approved protocols shall be accessible to each provider throughout each call.

(2) Each Class VI and VIII ALS agency shall be exempt from the ambulance requirements established in Sections 1 through 6 of this administrative regulation.

(3)(a) Each Class VIII ALS agency shall have ready access to and maintain in operational order, two (2) complete sets of equipment required by the agency's protocols and this administrative regulation.

(b) Each Class VI ALS agency shall be required to maintain one (1) complete set of equipment.

(4) In addition to the BLS equipment required in Section 7 of this administrative regulation, each Class VI and VIII ALS agency shall provide ready access to and maintain in fully operational order, supplies and equipment required by the agency's protocols, including a minimum of:

(a) Endotracheal intubation equipment consisting of:

1. Laryngoscope handle;

2. Various laryngoscope blades in adult, pediatric, and infant sizes;

3. Extra batteries and bulbs for handles or blades;

4. A minimum of seven (7) different sizes of endotracheal tubes for oral and nasal placement in adult, pediatric, and infant sizes;

5. Equipment necessary to perform emergency cricothyrotomy;

6. An end tidal carbon dioxide detection device;

7. Stylettes in adult and pediatric sizes;

8. Magill forceps in adult and pediatric sizes;

9. One-half (1/2) inch wide twill tape or equivalent for securing endotracheal tubes; and

10. Water-soluble lubricant for lubrication of endotracheal and nasotracheal tubes;

(b) A portable monitor defibrillator that:

1. Is capable of displaying a visual display of cardiac electrical activity;

2. Is capable of providing a hard copy of cardiac electrical activity measure;

3. Is capable of delivering direct current energy over a variable range, which is suitable for pediatric and adult usage;

4. Is capable of providing external cardiac pacing;

5. Has adult and pediatric external pads, capable of utilization for immediate monitoring of heart activity and delivery of counter shock in both the adult and pediatric patient;

6. Is capable of being operated from internal rechargeable batteries;

7. Has synchronized counter shock capability for cardioversion; and

8. Has a patient monitoring cable with electrode pads or equivalent for use with the patient monitoring cable;

(c) Sterile, disposable needles, in types and sizes sufficient for personnel to administer medications and perform procedures allowed by the agency's patient treatment protocols;

(d) Disposable syringes in types and sizes sufficient for personnel to administer medications and perform procedures allowed by the agency's patient treatment protocols;

(e) Restriction band appropriate for use with venipuncture procedure;

(f) Disposable, individually packaged antiseptic wipes;

(g) Intravenous fluids as required by the agency's protocol, with macrodrip and microdrip fluid sets, and accessory items including over the needle catheter devices in sizes fourteen (14) to twenty-four (24) gauge;

(h) Intraosseous needles or intraosseous devices appropriate for children and adults; and

(i) Pediatric drug dosage tape or equivalent that provides easy reference for pediatric and infant treatment and drug dosages.

(5) All items with expiration dates shall not be expired.

(6) An ALS agency shall stock and maintain drugs and medications as required by the master drug list contained in protocols established in accordance with this section.

(7) Controlled drugs shall be stored in a locked storage box in a locked compartment that is immediately accessible to personnel.

(8) This administrative regulation shall not prevent an agency from maintaining other supplies or equipment that are required to carry out its protocols as approved by the board in accordance with KRS 311A.180.

Section 9. Safety Equipment. (1) Each ground agency licensed to respond to emergency pre-hospital responses shall provide and maintain in full operational order the following minimum light access and extrication equipment on the ambulance for each staff member:

(a) Eye protection goggles or safety glasses;

(b) Heavy work gloves;

(c) Hard hats that meet ANSI standards***, as stated in 29 C.F.R. 1910.135***;

(d) Reflective safety wear for each crew member that meet current ANSI standard ANSI 107-2010 or ANSI 207-2011; and

(e) Three (3) reflective triangles or strobes, or equivalent warning devices.

(2) A ground ambulance agency subject to emergency pre-hospital response not equipped to provide extrication and rescue services shall execute an agreement with an agency capable of providing extrication and rescue services to the primary geographic service area.

(3) Each Class II, III ACC, III PSC, III NSC, and VIII agency shall be exempt from the requirements of this section unless emergency pre-hospital response is included in the agency's scope of care.

Section 10. Equipment or Medication Waiver. (1) The board for good cause shall grant a waiver of any section of this administrative regulation upon request. An applicant for waiver shall submit an:

(a) "EMS Equipment or Staff Waiver Request"; and

(b) A nonrefundable application fee of $500 per waiver request.

(2) The application request shall include:

(a) Evidence of prior good faith efforts to comply with each section for which a waiver is requested;

(b) A written explanation of the agency's inability to comply with each section for which a waiver is requested, including any financial or other significant hardship resulting from the agency's efforts to comply;

(c) A written plan for providing adequate care to patients;

(d) The length of time the waiver is requested; and

(e) A plan for compliance with each section of this administrative regulation for which a waiver has been requested.

(3) Requests for waivers shall be submitted to the executive director of the board.

(4) The administrator and medical director of the agency requesting a waiver shall appear before the board's executive committee and the full board at a regularly scheduled meeting to present evidence of hardship that compliance with this administrative regulation will cause.

(5) Waivers shall not be issued for minimum staffing requirements.

(6) Any waiver issued by the board shall expire on December 31 of the year of issue.

(7) Within twenty (20) days of the board's decision, the executive director shall notify the applicant of the decision in writing.

(8) A waiver approved by the board upon a finding of good cause shall be considered a fulfillment of the licensing requirements established in the waiver through December 31 of the year of issue.

(9) The board shall deny the waiver request if, after reviewing the application, it is determined ***that if the waiver is granted*** the:

(a) Agency is ***no longer able***~~[unable]~~ to meet the needs of the agency's patients or geographic service area~~[in the event that the waiver is granted]~~; or

(b) Health or safety of the agency's patients or geographic service area may be jeopardized~~[in the event that the waiver is granted]~~.

(10) An applicant whose request for waiver is denied may file a written request for a hearing before the board within thirty (30) days of the written notice of denial.

(11) A hearing shall be conducted in accordance with KRS Chapter 13B.

Section 11. Public Notice of Negative Action. The board office shall cause to be published, on the KBEMS Web site or similar publication of the board, or otherwise disseminate, the name of any licensed agency that is fined, placed on probationary status, placed on restricted status, suspended, or had a license revoked.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "EMS Equipment or Staff Waiver Request", (12/2017);

(b) "U.S. Department of Transportation, Emergency Response Guidebook", (2016);

(c) "Commission on Accreditation of Ambulance Services Ground Vehicle Standard for Ambulances (GVS)", ***(7/2016)***~~[(8/2007)]~~; and

(d) "U.S. General Services Administration Federal Specification for the Star-of-Life Ambulance (GSA ***KKK-A-1822F)", (8/2007)***~~[KKK-A-1822)", (7/2016)]~~.

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ANGELA EVANS, KBEMS General Counsel

For JIM DUKE, KBEMS Chairperson

APPROVED BY AGENCY: February 15, 2018

FILED WITH LRC: February 15, 2018 at 8 a.m.

CONTACT PERSON: Angela Evans; Legal Counsel, Kentucky Board of Emergency Medical Services; McBrayer, McGinnis, Leslie & Kirkland, PLLC, 201 East Main Street Suite 900, Lexington, Kentucky 40507, phone (859) 231-8780, fax (859) 231-1175, email aevans@mmlk.com.

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM
Kentucky Board of Emergency Medical Services
(As Amended at ARRS, March 12, 2018)

202 KAR 7:555. Ground agencies.

RELATES TO: KRS 311A.030, 311A.190***, 29 C.F.R. 1910.1030***

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030, 311A.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.020 requires the ***Board of Emergency Medical Services***~~[board]~~ to exercise all administrative functions in the regulation of the EMS system and the licensing of ambulance services and medical first response agencies***, except those regulated by the Board of Emergency Medical Services or the Cabinet for Health and Family Services***. KRS 311A.030 requires the board to promulgate administrative regulations for the licensing, inspection, and regulation of ambulance providers and medical first response agencies. This administrative regulation establishes minimum licensing requirements.

Section 1. Utilization of Ground Vehicles by Class I, II, III, and IV Licensed Agencies. (1) At the time of initial inspection, each agency shall inform the Kentucky Board of Emergency Medical Services (KBEMS) office of the make, model, year, vehicle identification number or serial number, and license tag number for each vehicle the agency plans to use for medical care and transportation.

(2) A vehicle shall not be placed into operation until the board has conducted a physical inspection of the vehicle and determined it meets the requirements of 202 KAR Chapter 7.

(3) Each agency shall complete a Vehicle Change Form, no later than the next business day after the permanent removal of any licensed vehicle from service by the license holder.

(4)***(a)*** A licensed agency may use a replacement vehicle that meets all of the requirements of 202 KAR Chapter 7 on a temporary basis while a permitted vehicle is out of service. The agency shall complete a Vehicle Change Form within twenty-four (24) hours of the replacement.

(b) A temporary replacement vehicle shall not be used for more than thirty (30) days annually unless the KBEMS office has verified, through a physical inspection, that it meets the requirements of 202 KAR Chapter 7.

(5) The KBEMS office shall be notified by a completed Vehicle

Change Form within twenty-four (24) hours or on the next business day if a temporary vehicle is removed from service and the original licensed vehicle is returned to service.

(6)(a) An agency that fails to report using a temporary vehicle shall be required to immediately cease use of the replacement vehicle until the reporting requirements are met.

(b) An agency that fails to remove a temporary vehicle from service after thirty (30) days shall be fined $500 for each day or partial day the vehicle is in service and not reported.

(7) This administrative regulation shall not prevent a licensed agency from utilizing other means of transporting patients in:

(a) Disasters;

(b) Mass casualty incidents; or

(c) Extraordinary scene conditions that would impair access to the safety or care of the patient or personnel operating at the scene.

Section 2. Provider Management Requirements. (1) All licensed agencies shall maintain:

(a) An organizational chart that establishes lines of authority, including the designation of:

1. An administrator responsible for assuring compliance with KRS Chapter 311A and 202 KAR Chapter 7 during the daily operation of the service; and

2. A designee who shall serve in the absence of the administrator;

(b) Records and reports at the ambulance agency base station including:

1. An original, electronic equivalent, or copy of all patient care records consistent with the U.S. Department of Transportation National Highway Traffic Safety Administration (NHTSA) National Emergency Medical Services Information System (NEMSIS) data dictionary found at www.nemsis.org/technical-resources/version-3;

2. An electronic copy of all completed patient care reports, which shall be maintained to ensure confidentiality and safekeeping for at least seven (7) years from the date on which the service was rendered, or in the case of a minor, at least three (3) years after the minor reaches the age of majority***; and***~~[.]~~

3. Copies of Patient Care Reports for the preceding twelve (12) months, which shall be accessible and be immediately available to the board, KBEMS office, or representatives upon request;

(c) Personnel files for each employee or volunteer who staffs a vehicle of a licensed agency. Personnel files shall be maintained for at least one (1) year following separation from employment. As a minimum, all personnel files shall contain:

1. A pre-employment and annual criminal background check administered by the Kentucky Administrative Office of the Courts;

2. A copy of the employee's valid KBEMS certification or licensure card; and

3. A copy of each employee's completion of NIMS ICS 100, 200, 700, and 800;

(d) A policy for the provision of a pre-employment and annual health assessment of employees of the agency, which shall include reporting mechanisms for work-related illness or injury;

(e) A written plan for providers to consult with online adult and pediatric medical direction. This plan shall address as a minimum:

1. The availability of medical direction twenty-four (24) hours a day, seven (7) days a week;

2. The availability of medical direction during an emergency event;

3. The provision of medical direction by a medical professional with a higher level of training or expertise; and

4. Recommended actions ***if:***

a. There is an equipment failure, a communication barrier, or other unusual circumstance; and

b. It is not possible to contact online medical direction.~~[in the event of equipment failure, communication barriers, or other unusual circumstance if it is not possible to contact online medical direction;]~~

(f) A plan and records for the provision of continuing education for staff and volunteers, including:

1. A written plan for the method of assessment of staff continuing education needs; and

2. A coordinated plan to meet those needs**,** including a provision that all continuing education shall be provided either by a licensed TEI or in accordance with 202 KAR 7:601;

(g) An infection control plan in accordance with 29 C.F.R. 1910.1030;

(h) A written plan for training or educating personnel for responding to hazardous materials, criminal, and potential terrorist incidents, including plans for the protection and decontamination of patients, ambulances, equipment, and staff;

(i) A written policy regarding the appropriate destination of a patient who expires during transport if a valid Kentucky EMS**[,]** DNR, or MOST form is present;

(j) A written plan for the quality assessment of patient care and provider quality improvement, including a monthly review of patient care reports and evaluation of staff performance related to patient care. This plan shall address as a minimum:

1. Employee health and safety;

2. Compliance with protocols and operating procedures;

3. Assessment of dispatch protocols;

4. Vehicle operations and vehicle safety;

5. Additional training necessary for the patient care provider or providers;

6. Equipment preventive maintenance programs; and

7. A process for the resolution of customer complaints;

(k) A written plan for training personnel and responding to mass casualty incidents and disasters;

(l) A written orientation program for all personnel, including at a minimum:

1. Validation of certification or license with KBEMS;

2. Validation of NIMS ICS 100, 200, 700, and 800 within sixty (60) days of employment for any employee who staffs a licensed vehicle;

3. Validation of Driver's License if applicable;

4. A review of all agency policies, procedures, and protocols;

5. Communication equipment at the base station and on each vehicle;

6. Operational aspects of the agency fleet and equipment;

7. Inspection and routine maintenance of agency fleet, facilities, and equipment;

8. Appropriate processes for disinfection of agency fleet, facilities, and equipment;

9. Local navigation and geographic orientation; and

10. Completion of Patient Care Reports and other documentation as established by the agency;

(m) Proof of professional liability malpractice insurance of a minimum of $1,000,000; ***and***

(n) Proof of vehicular liability insurance.

(2) Each agency shall notify the board at least twenty-four (24) hours prior to the transfer of coverage, cancellation, lapse, or other cessation or change in professional liability malpractice insurance or vehicular liability insurance.

(3) Each agency shall verify valid staff certification or licensure as of the first day of the calendar year.

(4) If ceasing to operate, an agency shall provide the board with the physical storage location of all Patient Care Reports within five (5) business days of closure. These reports shall be maintained by the owner of the licensed agency, or a contracted third party to meet the timeline established in subsection (1)(b) of this section.

(5) Each agency that allows an employed emergency responder to provide medical services while off duty in accordance with 202 KAR 7:701, Section 6, shall maintain and implement a policy regarding which employees are approved to provide medical services off duty by the agency's medical director and the manner in which worker's compensation and general liability insurance covers employees off duty. The policy shall be signed by both the agency's administrator and medical director, shall be reviewed annually, and shall include:

(a) Direction on which employees may remove medical equipment from the agency's premises for the purpose of providing care off duty;

(b) Direction on which equipment may be removed from the agency's premises for the purpose of providing care off duty; and

(c) A provision that controlled substances shall not be removed from the agency's premises for the purposes of providing care off duty.

(6) Each agency shall in the county in which the agency's base station or a satellite is located:

(a) Document evidence of participation in a local, county, regional, or state disaster or preparedness exercise within the preceding twelve (12) months;

(b) Coordinate with the county emergency management director plans for the possible use of agency personnel for use in the emergency operations center in a disaster; and

(c) Maintain a hard copy or electronic equivalent of the most current adopted city, county, or urban county government emergency management agency's emergency operations plan at the ambulance base station.

Section 3. Operating Requirements. (1) Each licensed agency, except Class IV and VIII, shall provide service twenty-four (24) hours***[,]*** a day,***[and]*** seven (7) days a week. Class IV and VIII agencies shall operate during the hours of operation for their geographical service area or designated event.

(2) Each licensed agency shall retain staffing schedules for at least the previous twelve (12) months.

(3) Each agency administrator or designee shall be familiar with emergency management reporting and procurement processes and software platforms utilized to communicate the needs of the local government to state agencies.

(4) A licensed Class I, II, III, VI, or VII agency that ceases to provide continuous service on a twenty-four (24) hour basis shall surrender its license to the board's office within twenty-four (24) hours of the agency ceasing to provide continuous service.

(5) A licensed agency shall have a written plan to assure all requests for service shall be promptly answered.

(6) A licensed agency shall have a written scope of care policy to include the types of services performed, limitations of response, and the types of medical teams provided.

(7) Any agency licensed and located within the geographical service area that determines it is unable to have a vehicle responding within ten (10) minutes from the initial time an emergency call is received from the dispatch center shall notify the next closest appropriate licensed agency to respond.

(8) An agency shall enter into a mutual aid agreement with another Kentucky licensed ambulance agency operating within the same or contiguous counties that provide response to medical emergencies. These agreements shall be in writing and address:

(a) The type of mutual aid assistance to be provided, including ALS or BLS medical care and transport and ALS or BLS medical first response;

(b) Response personnel, including levels of training or education and provisions for joint in-service training or education if appropriate;

(c) Response vehicles, including unit identifiers and the station or location from which the vehicles shall be operated;

(d) A plan of action for the mutual aid agreement, including dispatch and notification procedures;

(e) Radio and other communications procedures between the ambulance agency and other response agencies with which the agency has mutual aid agreements;

(f) On-scene coordination and scene control including medical direction if several agencies respond to the same incident;

(g) Exchange of patient information, records, and reports as allowed by law; and

(h) The effective dates and process for amendment or termination.

(9) A ground agency shall send a written request for a mutual aid agreement to at least two (2) contiguous counties and retain a copy of each request and each county's response;

(10) Each agency shall maintain a policy or affiliation agreement with the primary call-taking center that provides dispatch services for all or part of the service area of the ground agency. The agreement shall state at a minimum that:

(a) Requests for emergency ambulance service shall be dispatched or notified within two (2) minutes from determining that the caller is requesting ambulance response;

(b) ***If[In the event that]*** the closest licensed agency for that geographic service area is unable to have a vehicle responding to an emergency call within ten (10) minutes from the time the call is dispatched, the agency shall notify the next closest appropriate licensed agency to respond; and

(c) The agreement shall specify which patient information shall be collected by the call-taking center during a call for service.

(11) If a ground agency is unable to secure a written affiliation agreement with the dispatch center, the ground agency shall retain all written correspondence to the dispatch center requesting an affiliation agreement and the dispatch center's denial of the agency's request.

(12) An agency shall not respond to requests for **emergency** service outside of its licensed geographic service area without first receiving authorization from the licensed agency in the geographic service area in which the request originates.

(13) A licensed Class I ground agency that is located in a geographical service area containing multiple destination hospitals, with regard to the furnishing of 911 response and transportation, shall not engage in:

(a) Exclusive or coercive practices regarding transportation decisions with regard to any affiliated hospital or hospital emergency department;

(b) Preferential transportation to any affiliated hospital emergency department if the transports are not justified by time, place, patient convenience, or other objective factors affecting a patient;

(c) Noncompetitive transportation to any affiliated hospital emergency department; or

(d) Transports to any affiliated hospital emergency department if that hospital is not the closest to the patient location or most appropriate based on the availability of particular services or patient preference.

(14) An agency that cannot meet the timelines established in subsection (10) of this section shall contact another licensed agency and receive an estimated time of arrival to the request for service. If the mutual aid agency can arrive at the location where the request originated more quickly than the agency licensed for the geographic service area, the agency licensed for the geographic service area shall request mutual aid from its neighboring agency to respond to the call.

(15) An agency shall not refuse a request for emergency pre-hospital response if a unit is available in its geographic service area.

(16) An agency shall not exhaust its resources by answering a nonemergency call or for response to mutual aid requests.

(17) This administrative regulation shall not be construed to prevent a licensed agency from providing medical first response emergency or nonemergency pre-hospital care at or below the level for which the agency is licensed through the use of designated agency-owned response vehicles.

(18) A communications system shall be developed, coordinated, and maintained by each licensed agency. The communication system shall comply with paragraphs (a) through (e) of this subsection.

(a) Radio equipment used in emergency medical services vehicles shall be appropriately licensed through the FCC. Copies of the current FCC licenses shall be on file in the agency office.

(b) A licensed agency shall have the capability to communicate on all VHF Kentucky State Mutual Aid Frequencies in accordance with the Commonwealth of Kentucky Field Operations Guide (KY-FOG).

(c) Each ambulance shall be equipped with mobile two (2) way radio communication equipment with a control point located in both the driver's compartment and patient care compartment of the vehicle capable, under normal conditions, of operating on agency, dispatch center, mutual aid, and hospital frequencies.

(d) Each ambulance shall have a minimum of two (2) portable push-to-talk two (2) way radio communication devices capable of operating on the agency dispatch center, mutual aid, and hospital frequencies.

(e) One (1) alternative method of two (2) way communication

may be substituted for one (1) portable two (2) way radio.

Section 4. Medical Directors. (1) Each licensed agency shall have a medical director who meets the requirements established in 202 KAR 7:801.

(2) A licensed agency shall notify KBEMS within twenty-four (24) hours of a decision to discontinue a medical director agreement by either the agency or the medical director.

(3)(a) If an agency is found to be operating without a medical director, the agency shall be provided emergency medical direction by the KBEMS Medical Advisor for a fee of $100 per day for the first thirty (30) calendar days the agency is without a medical director.

(b) The fee shall increase to $500 per day after thirty (30) calendar days.

Section 5. Public Notice of Negative Action. The board office shall cause to be published, on the KBEMS web site or similar publication of the board, the name of any licensed agency that is fined, placed on probationary status, placed on restricted status, suspended, or had a license revoked.

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

(a) "Commonwealth of Kentucky Field Operations Guide (KY-FOG)", (6/2012);

(b) "NHTSA NEMSIS Data Dictionary", (v3.40) U.S. Department of Transportation National Highway Traffic Safety Administration (NHTSA) National Emergency Medical Services Information System (NEMSIS) data dictionary found at https://www.nemsis.org/media/nemsis_v3/3.4.0.150302/DataDictionary/PDFHTML/DEMEMS/NEMSISDataDictionary.pdf; and

(c) "Vehicle Change Form", (12/2017).

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ANGELA EVANS, KBEMS General Counsel

For JIM DUKE, KBEMS Chairperson

APPROVED BY AGENCY: February 15, 2018

FILED WITH LRC: February 15, 2018 at 8 a.m.

CONTACT PERSON: Angela Evans, Legal Counsel, Kentucky Board of Emergency Medical Services; McBrayer, McGinnis, Leslie & Kirkland, PLLC, 201 East Main Street Suite 900, Lexington, Kentucky 40507, phone (859) 231-8780, fax (859) 231-1175, email aevans@mmlk.com.

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM
Kentucky Board of Emergency Medical Services
(As Amended at ARRS, March 12, 2018)

202 KAR 7:560. Ground vehicle staff.

RELATES TO: KRS 189.910-189.950, 311A.030, 311A.190

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030, 311A.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.020 requires the ***Board of Emergency Medical Services[~~board~~]*** to exercise all administrative functions in the regulation of the emergency medical services system and the licensing of ambulance services and medical first response agencies***, except those regulated by the Board of Emergency Medical Services or the Cabinet for Health and Family Services***. KRS 311A.030 requires the board to promulgate administrative regulations for the licensing, inspection, and regulation of ambulance providers and medical first response agencies. This administrative regulation establishes the minimum staffing requirements for ground vehicles.

Section 1. Staffing Requirements. (1) Each Class I agency BLS ambulance shall at minimum, be staffed by:

(a) A driver certified as an emergency medical technician (EMT); and

(b) An attendant certified as an emergency medical technician (EMT).

(2) Each Class I agency ALS ambulance shall at minimum be staffed by:

(a) A driver certified as an emergency medical technician (EMT); and

(b) An attendant certified as an Advanced EMT or licensed as a paramedic.

1. Each Class I ALS agency providing primary 911 emergency ambulance service shall ensure that an on-duty paramedic shall staff at least twenty-five (25) percent of the agency's **staffed** ambulances at any time during a twenty-four (24) hour period.

2. To ensure compliance, each agency shall maintain its work schedules from the previous twelve (12) months until reviewed during its annual inspection.

(3) Each Class I agency operating an ALS ambulance providing a BLS level of care shall at minimum be staffed by:

(a) A driver certified as an emergency medical technician (EMT); and

(b) An attendant certified as an emergency medical technician (EMT).

(4) Each Class II agency shall at minimum be staffed by:

(a) A driver certified as an emergency medical technician (EMT); and

(b) An attendant certified as an emergency medical technician (EMT).

(5) A Class III Adult Critical Care ambulance agency shall at minimum be staffed by:

(a) A driver certified as an emergency medical technician (EMT);

(b) An attendant licensed as a paramedic; and

(c) One (1) licensed:

1. Registered nurse**[~~with a current certification as a CCRN for adults that shall be obtained within one (1) year of hire~~]**;

2. Advanced practice registered nurse**[~~certified in adult acute care~~]**;

3. Respiratory therapist;

4. Physician assistant**[~~specializing in critical care~~]**;

5. Physician; or

6. Additional paramedic.

(6) Each Class III Pediatric Specialty Care Ambulance Agency shall at minimum be staffed by:

(a) A driver certified as an emergency medical technician (EMT); and

(b) **A primary attendant licensed as a registered nurse and certified as a CCRN that is obtained within one (1) year of hire; and**

(c) One (1) additional attendant licensed as a:[~~Two (2) attendants licensed as a:~~]

1. Registered nurse**[~~with a current certification as a CCRN for Pediatrics that is obtained within one (1) year of hire~~]**;

2. Advanced practice registered nurse**[~~certified in pediatric acute care~~]**;

3. Respiratory therapist;

4. Physician assistant;

5. Physician; or

6. Paramedic.**[~~(c) A paramedic and respiratory therapist shall not simultaneously serve as attendants.~~]**

(7) Each Class III Neonatal Specialty Care Ambulance Agency shall at minimum be staffed by:

(a) A driver certified as an emergency medical technician (EMT); ***[~~and~~]***

(b) **A primary[~~An~~]** attendant licensed as a registered nurse with a current certification as a CCRN**[~~in Neonatology~~]** or RNC-NIC that is obtained within one (1) year of hire; and

(c) One (1) **additional attendant licensed as[**~~licensed~~**]**:

1. **An** advanced practice registered nurse**[~~certified in neonatology~~]**;

2. **A** respiratory therapist;

3. **A** physician assistant**[~~specializing in neonatology~~]**; **or**

4. **A** physician***; or***

***5. A registered nurse*[~~; or~~**

~~5. Registered nurse with a current certification as a CCRN in Neonatology or RNC-NIC that is obtained within one (1) year of hire~~].

(8) Each Class IV agency operating a BLS ambulance shall at minimum be staffed by:

(a) A driver certified as an emergency medical technician (EMT); and

(b) An attendant certified as an emergency medical technician (EMT).

(9) Each Class IV service operating an ALS ambulance shall at minimum be staffed by:

(a) A driver certified as an emergency medical technician (EMT); and

(b) An attendant certified as an Advanced EMT or licensed as a paramedic.

1. Each Class IV ALS agency that provides emergency and nonemergency transportation for restricted locations, such as industrial sites or other sites, shall ensure an on-duty paramedic staffs at least twenty-five (25) percent of the agency's **staffed** ambulances at any time during a twenty-four (24) hour period.

2. To ensure compliance, each agency shall maintain its work schedules from the previous twelve (12) months until reviewed by board staff during its annual inspection.

(10) Each Class VI BLS medical first response agency shall at minimum be staffed by a certified:

(a) Emergency medical responder (EMR); or

(b) Emergency medical technician (EMT).

(11) Each Class VI ALS medical first response agency shall at minimum be minimally staffed by:

(a) A certified Advanced EMT; or

(b) A licensed paramedic.

(12) Each Class VIII BLS agency shall be minimally staffed by a certified:

(a) Emergency medical responder (EMR); or

(b) Emergency medical technician (EMT).

(13) Each Class VIII ALS agency shall be minimally staffed by:

(a) A certified Advanced EMT; or

(b) A licensed paramedic.

(14) Each Class I ALS, Class III ACC, Class IV ALS, and Class VI ALS agency shall have a licensed paramedic on duty at all times.

(15) At all times, the attendant shall monitor the patient and remain with the patient in the patient compartment.

(16) This administrative regulation shall not prevent an agency from utilizing staff other than those required by this administrative regulation in:

(a) Disasters;

(b) Mass casualty incidents; or

(c) Extraordinary scene conditions that would impair the safety of the patient or personnel operating at the scene.

(17) A certified emergency medical responder who ***was*[~~*were*~~]** employed by a Class I, II, or III agency as a driver prior to January 1, 2018 may continue in that role if the emergency medical responder's employment relationship with the Class I, II, or III agency does not lapse.

(18) Alternative staff shall not operate a licensed vehicle unless ***the:***

(a) Agency administrator so directs; and

***(b) Vehicle is out of service and not subject to an emergency response*[~~*at the direction of the agency administrator and the vehicle is out of service and not subject to an emergency response*~~]**.

Section 2. Motor Vehicle Operator Requirements. (1) Each person operating a vehicle shall:

(a) Be at least eighteen (18) years of age;

(b) Hold a valid driver's license in any state or territory of the United States; and

(c) Complete at least four (4) hours of driver training and education every two (2) years.

(2) The driver training and education shall consist of a:

(a) Review of driving a vehicle under emergency conditions;

(b) Review of KRS 189.910 through 189.950 regarding operation of emergency vehicles;

(c) Demonstration by the student of forward and back-up driving maneuvers in a controlled situation, such as in an obstacle course designed specifically for this purpose; and

(d) Review of defensive driving techniques and procedures with hands-on experience or exposure by visual aids or planned demonstrations.

Section 3. Public Notice of Negative Action. The board office shall cause to be published, on the KBEMS Web site or similar publication of the board, or otherwise disseminate, the name of any licensed agency that is fined, placed on probationary status, placed on restricted status, suspended, or had a license revoked.

ANGELA EVANS, General Counsel for KBEMS

For JIM DUKE, KBEMS Chairperson

APPROVED BY AGENCY: February 15, 2018

FILED WITH LRC: February 15, 2018 at 8 a.m.

CONTACT PERSON: Angela Evans; Legal Counsel, Kentucky Board of Emergency Medical Services; McBrayer, McGinnis, Leslie & Kirkland, PLLC, 201 East Main Street Suite 900, Lexington, Kentucky 40507, phone (859) 231-8780, fax (859) 231-1175, email aevans@mmlk.com.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, March 12, 2018)

301 KAR 1:015. Boat and motor restrictions.

RELATES TO: KRS 150.090, 150.625, 150.990, 235.010(4), 235.990

STATUTORY AUTHORITY: KRS 150.620, 235.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.620 authorizes the department to promulgate administrative regulations governing lands and waters the department has acquired. KRS 235.280 ***requires*[~~*authorizes*~~]** the department***, with approval of the Department of Fish and wildlife Resources Commission,*** to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of this state. This administrative regulation ***establishes*[~~*limits the*~~]** size ***limits*** of boats and motors on small lakes for safety reasons and to minimize interference with other users.

Section 1. Definition. "Idle speed" means the slowest possible speed at which maneuverability can be maintained.

Section 2. (1) On a lake established in subsection (2) of this section, a person shall not operate a:

(a) House boat;

(b) Monohull boat with a center-line length exceeding twenty-two (22) feet; or

(c) Pontoon boat with a float or decking exceeding twenty-two (22) feet, except on[~~for~~]:

1. Guist Creek Lake, where a pontoon boat with a float or decking up to twenty-four (24) feet or a monohull boat with a center-line length up to twenty-four (24) feet and seating for at least eight (8) passengers may be operated; or

2.[~~On~~] A lake established in clauses a. through c. of this subparagraph, where a pontoon boat with a float or decking up to thirty (30) feet or a monohull boat with a center-line length up to twenty-four (24) feet and seating for at least eight (8) passengers may be operated:

a. Cedar Creek Lake;

b. Lake Beshear; or

c. Lake Malone.

(2) List of lakes:

(a) Ballard WMA Lakes, Ballard County;

(b) Beaver Creek Lake, Anderson County;

(c) Bert Combs Lake, Clay County;
(d) Boatwright WMA lakes, Ballard County;
(e) Boltz Lake, Grant County;
(f) Briggs Lake, Logan County;
(g) Bullock Pen Lake, Grant County;
(h) Carnico Lake, Nicholas County;
(i) Carpenter Lake, Daviess County;
(j) Carter Caves Lake, Carter County;
(k) Cedar Creek Lake, Lincoln County;
(l) Corinth Lake, Grant County;
(m) Dennie Gooch Lake, Pulaski County;
(n) Elmer Davis Lake, Owen County;
(o) Fishpond Lake, Letcher County;
(p) Goose Lake, Muhlenberg County;
(q) Greenbo Lake, Greenup County;
(r) Guist Creek Lake, Shelby County;
(s) Island Lake, Ohio County;
(t) Kentucky River WMA, Boone Tract Lakes, Henry County;
(u) Kincaid Lake, Pendleton County;
(v) Kingdom Come Lake, Harlan County;
(w) Kingfisher Lakes, Daviess County;
(x) Lake Beshear, Caldwell County;
(y) Lake Chumley, Lincoln County;
(z) Lake Malone, Muhlenberg County;
(aa) Lake Mauzy, Union County;
(bb) Lake Reba, Madison County;
(cc) Lake Washburn, Ohio County;
(dd) Lebanon City Lake, Marion County;
(ee) Lincoln Homestead Lake, Washington County;
(ff) Marion County Lake, Marion County;
(gg) Martin County Lake, Martin County;
(hh) McNeely Lake, Jefferson County;
(ii) Metcalfe County Lake, Metcalfe County;
(jj) Pan Bowl Lake, Breathitt County;
(kk) Pikeville City Lake, Pike County;
(ll) Shanty Hollow Lake, Warren County;
(mm) South Lake, Ohio County;
(nn) Spurlington Lake, Taylor County; or
(oo) Wilgreen Lake, Madison County.
(3) Length restrictions in this section shall not apply to a canoe.
(4) A person shall not operate a "personal watercraft"***, as defined by KRS 235.010(4),*** on Cedar Creek Lake***[pursuant to KRS 235.010(4)]***.

Section 3. (1) A person shall not operate a boat:
(a) Motor without an underwater exhaust; or
(b) Faster than idle speed while passing a boat with an occupant actively engaged in fishing, except in a designated skiing zone.
(2) The requirements established in subsection (1) of this section shall apply on:
(a) Beaver Lake, Anderson County;
(b) Boltz Lake, Grant County;
(c) Bullock Pen Lake, Grant County;
(d) Carnico Lake, Nicholas County;
(e) Cedar Creek Lake; Lincoln County;
(f) Corinth Lake, Grant County;
(g) Elmer Davis Lake, Owen County;
(h) Greenbo Lake, Owen County;
(i) Guist Creek Lake, Shelby County;
(j) Kincaid Lake, Pendleton County;
(k) Lake Beshear, Caldwell County;
(l) Lake Malone, Muhlenberg County;
(m) Pan Bowl Lake, Breathitt County;
(n) Shanty Hollow Lake, Warren County;
(o) Swan Lake, Ballard County; and
(p) Wilgreen Lake, Madison County.

Section 4. A person shall not operate an electric or an internal combustion boat motor on:
(1) Dennie Gooch Lake, Pulaski County;
(2) Kingdom Come Lake, Harlan County; or
(3) Lake Chumley, Lincoln County.

Section 5. A person shall not operate an internal combustion boat motor and shall only be allowed to use an electric trolling motor on:
(1) Bert Combs Lake, Clay County;
(2) Briggs Lake, Logan County;
(3) Carpenter Lake, Daviess County;
(4) Carter Caves Lake, Carter County;
(5) Fishpond Lake, Letcher County;
(6) Kentucky River WMA, Boone Tract Lakes, Henry County;
(7) Kingfisher Lake, Daviess County;
(8) Lake Mauzy, Union County;
(9) Lake Reba, Madison County;
(10) Lake Washburn, Ohio County;
(11) Lebanon City Lake, Marion County;
(12) Lincoln Homestead Lake, Washington County;
(13) Marion County Lake, Marion County;
(14) Martin County Lake, Martin County;
(15) McNeely Lake, Jefferson County;
(16) Metcalfe County Lake, Metcalfe County;
(17) Mill Creek Lake, Wolfe County;
(18) Pikeville City Lake, Pike County; or
(19) Spurlington Lake, Taylor County.

Section 6. A person shall not operate a motorboat faster than idle speed on:
(1) Ballard WMA lakes, Ballard County;
(2) Beulah Lake, Jackson County;
(3) Boatwright WMA lakes, Ballard County;
(4) Carnico Lake, Nicholas County;
(5) Goose Lake, Muhlenberg County;
(6) Greenbo Lake, Greenup County;
(7) Island Lake, Ohio County;
(8) South Lake, Ohio County;
(9) Pan Bowl Lake, Breathitt County; or
(10) Wilgreen Lake, Madison County.

Section 7. A person operating a boat motor greater than ten (10) horsepower shall not exceed idle speed on:
(1) Beaver Lake, Anderson County;
(2) Boltz Lake, Grant County;
(3) Bullock Pen Lake, Grant County:
(4) Corinth Lake, Grant County;
(5) Elmer Davis Lake, Owen County;
(6) Herb Smith-Cranks Creek Lake, Harlan County;
(7) Kincaid Lake, Pendleton County;
(8) Martins Fork Lake, Harlan County; or
(9) Shanty Hollow Lake, Warren County.

GREGORY K. JOHNSON, Commissioner
DON PARKINSON, Secretary
APPROVED BY AGENCY: January 11, 2018
FILED WITH LRC: January 12, 2018 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.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, March 12, 2018)

301 KAR 2:132. Elk hunting seasons, permits, zones, and requirements.

RELATES TO: KRS 150.010, 150.170(4), 150.180, 150.990
STATUTORY AUTHORITY: KRS 150.025(1), [~~150.105,~~]150.177, 150.178, 150.390(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.177 authorizes the

department to issue special commission permits for game species to nonprofit wildlife conservation organizations. KRS 150.178 authorizes the department to issue cooperator permits to landowners who enroll property for public hunting access. KRS 150.390(3) authorizes the department to promulgate administrative regulations establishing the conditions under which depredation permits for elk may be issued. This administrative regulation establishes the requirements for the elk permit drawing and quota hunts, the conditions under which special commission and landowner cooperator permits ***may[can]*** be used, procedures for elk damage abatement, and any postseason hunt held after the quota hunts.

Section 1. Definitions. (1) "Antlered elk" means an elk having visible polished antler protruding above the hairline.

(2) "Antlerless elk" means an elk without visible polished antler protruding above the hairline.

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

(4) "At-large" means any portion of the elk zone not included in a limited entry area.

(5) "Bait":

(a) Means a substance composed of grains, minerals, salt, fruits, vegetables, hay, or any other food materials, whether natural or manufactured, that could lure, entice, or attract wildlife; and

(b) Does not mean the establishment and maintenance of plantings for wildlife, foods found scattered solely as the result of normal agricultural planning or harvesting practices, foods available to wildlife through normal agricultural practices of livestock feeding if the areas are occupied by livestock actively consuming the feed on a daily basis, or standing farm crops under normal agricultural practices.

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

(7) "Electronic decoy" means a motorized decoy powered by electricity, regardless of source.

(8) "Elk" means Cervus elaphus nelsoni.

(9) "Elk Management Unit" or "EMU" means a designated area in the restoration zone with specific management restrictions for a post-season antlerless elk quota hunt.

(10) "Elk Restoration Permit" or "ERP" means an elk permit given to a landowner or lessee who allows the department to capture elk on the landowner or lessee's property for restoration or restocking purposes.

(11) "Firearm" means a breech or muzzle-loading rifle, shotgun, or handgun.

(12) "Landowner cooperator" means a landowner or lessee who owns or leases at least 5,000 acres of land in the restoration zone and enters into an agreement with the department to allow public access and hunting for at least five (5) years.

(13) "Limited Entry Area" or "LEA" means a designated area in the restoration zone with specific management restrictions.

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

(15) "Out-of-zone" means all counties not included in the restoration zone.

(16) "Restoration zone" means the Kentucky counties: Bell, Breathitt, Clay, Floyd, Harlan, Johnson, Knott, Knox, Leslie, Letcher, Magoffin, Martin, McCreary, Perry, Pike, and Whitley.

(17) "Spike" means an elk having one (1) or two (2) antler points on each side.

(18) "Voucher cooperator" means a landowner or lessee who owns or leases at least 100 acres of land in the restoration zone and enters into an agreement with the department to allow elk hunting access.

(19) "Youth" means a person under the age of sixteen (16) by the first date of the hunt.

Section 2. Elk Damage Control. The department may authorize the removal or destruction of elk that are causing property damage. A person authorized to destroy an elk shall:

(1) Attach a department-issued destruction tag to an elk prior to moving the carcass; and

(2) Not remove the destruction tag until the carcass is processed.

Section 3. Elk Quota Hunts. (1) The elk quota hunt application period shall be January 1 to April 30.

(2) An applicant shall:

(a) Complete the elk quota hunt application process on the department's Web site at fw.ky.gov; and

(b) Pay a nonrefundable application fee of ten (10) dollars.

(3) The commissioner shall extend the application deadline if technical difficulties with the application system prevent applications from being accepted for one (1) or more days during the application period.

(4) There shall be a random electronic drawing from each applicant pool.

(5) Youth may enter a separate drawing pool for ***up to*** ten (10) either-sex elk permits. These permits shall be valid for use during all elk seasons:

(a) Anywhere in the at-large portion of the restoration zone; or

(b) Within an LEA if the youth applies for and is drawn for an LEA, pursuant to Section ***7(4)[7(3)]*** of this administrative regulation.

(6) A youth applicant shall not apply for the youth-only elk quota hunt more than once per application period.

(7) An applicant for the youth-only elk quota hunt may also apply for ***a[the]*** regular quota ***hunt[hunts]***. The regular quota hunts shall be as established in subsection (12) of this section.

(8) A youth applicant drawn for the youth-only elk quota hunt shall not be drawn in any other elk quota hunt held during the same calendar year.

(9) A youth drawn for the youth-only elk quota hunt shall be ineligible to be drawn in the youth-only elk quota hunt in subsequent years.

(10) Nonresidents shall not comprise more than ten (10) percent of all drawn applicants in each quota hunt pool.

(11) A quota hunt permit awarded from any department-administered drawing shall not be transferable.

(12) In addition to the youth-only quota hunt, there shall be four (4) separate regular elk quota hunts consisting of:

(a) Antlered archery and crossbow;

(b) Antlered firearms;

(c) Antlerless archery and crossbow; and

(d) Antlerless firearms.

(13) An applicant shall:

(a) Apply only once for an individual elk quota hunt;

(b) Not be eligible to be drawn in more than one (1) of the four (4) quota hunt pools;

(c) Only be selected by a random electronic drawing; and

(d) Pay a nonrefundable application fee of ten (10) dollars for each entry.

(14) A person who is drawn for an elk quota hunt shall be ineligible to be drawn for any elk quota hunt for the following three (3) years.

(15) A person who does not have access to the department's Web site to apply for any quota hunt may contact the department toll free at 1-800-858-1549 for assistance in applying.

Section 4. Landowner Cooperator Permits. (1) With the approval of the commission, the commissioner shall issue to a landowner cooperator:

(a) One (1) either-sex permit annually per 5,000 acres of land enrolled with the department in a hunting access agreement for the duration of the agreement;

(b) Two (2) antlerless-only permits annually per 5,000 acres of land enrolled with the department in a hunting access agreement for the duration of the agreement; or

(c) One (1) antlerless-only permit annually per 5,000 acres of land enrolled with the department in an elk hunting access agreement for the duration of the agreement.

(2) A recipient of a landowner cooperator permit shall comply with the season, bag limit, and hunter requirements in Sections 7

and 8 of this administrative regulation.

(3) A landowner cooperator permit shall only be used on the land that is established in the agreement, except that it may be used on adjacent property if:

(a) The adjacent property is owned by a different landowner; and

(b) The adjacent landowner has granted permission to the permit holder.

(4) A landowner cooperator permit may be transferred to any person eligible to hunt in Kentucky, but prior to hunting, the landowner cooperator or person who has received the transferred permit shall provide the department with the hunter's:

1. Name;

2. Social Security number;

3. Address; and

4. Telephone number.

(5) The landowner cooperator permit shall not be transferable if it was already used for the harvest of one (1) elk.

(6) Public access agreements with the department shall be recorded in writing.

Section 5. Voucher Cooperator Permits (1) A voucher cooperator shall accrue one (1) voucher point for each legally harvested elk[~~:~~

~~(a) Two (2) voucher points for each legally harvested antlered elk; and~~

~~(b) One (1) voucher point for each legally harvested antlerless elk~~].

(2) A voucher cooperator who accrues ten (10)[~~twenty (20)~~] total points on land enrolled pursuant to Section 1(18) of this administrative regulation shall receive one (1) either-sex elk permit from the department.

(3) A recipient of a voucher cooperator elk permit shall comply with all of the requirements established in Sections 7 and 8 of this administrative regulation.

(4) A voucher cooperator elk permit shall only be used on:

(a) The property enrolled with the department per agreement; or

(b) Other property that the landowner or lessee owns or leases.

(5) A voucher cooperator permit may be transferable to any person eligible to hunt in Kentucky.

(6) If a voucher cooperator permit is to be transferred, then the landowner, lessee, or person who has received the transferred permit shall provide to the department by August 15 the hunter's:

(a) Name;

(b) Social security number;

(c) Address; and

(d) Telephone number.

(7) A permit shall not be transferable after being used for the harvest of an elk.

Section 6. Elk Restoration Permits. (1) A landowner or lessee who allows the department to capture elk on the landowner or lessee's property shall accrue one (1) point for each captured elk[~~:~~

~~(a) Two (2) points for each male elk captured; and~~

~~(b) One (1) point for each female elk captured~~].

(2) A landowner or lessee who accrues ten (10)[~~twenty (20)~~] total points shall receive one (1) either-sex elk permit from the department that shall only be used the following hunting season.

(3) A recipient of an ERP shall comply with all the requirements established in Sections 7 and 8 of this administrative regulation.

(4) An ERP shall only be used on property that the ERP recipient owns or leases.

(5) An ERP recipient may transfer the permit to any person eligible to hunt in Kentucky.

(6) If an ERP recipient transfers an ERP to another hunter, then the ERP recipient shall provide to the department by August 15 the hunter's:

(a) Name;

(b) Address;

(c) Telephone number; and

(d) Social security number.

(7) An ERP shall be invalid if it has already been used to harvest an elk.

Section 7. Hunter Requirements. (1) A person shall carry proof of purchase of a valid Kentucky hunting license and valid elk permit while hunting, unless exempted by KRS 150.170.

(2) The statewide bag limit shall be one (1) elk per hunter per license year.

(3) If a legal elk hunter kills any elk, then:

(a) The person shall immediately cease hunting elk for the remainder of the elk season; and

(b) All elk permits held by that individual shall immediately become invalid.

(4) A drawn hunter may apply to hunt in up to four (4) areas in any combination of the limited entry areas by completing the application process on the department's Web site at fw.ky.gov.

(a) Up to three (3) drawn hunters may apply for their LEA choices as a party.

(b) If the party is drawn for the LEA, all hunters in the party shall be assigned to that same LEA.

(c) If the number of slots remaining in the quota is less than the number of hunters in the next party selected, the entire party shall be assigned to the party's next choice ranking or to the at-large area.

(5) A hunter who does not apply for an LEA or is not drawn for an LEA shall be assigned to the at-large area.

(6) A hunter drawn for an LEA may hunt only in the assigned LEA, except that a person who is drawn for any elk quota hunt may hunt on his or her land within the restoration zone.

(7) An elk hunter or any person accompanying an elk hunter shall comply with hunter orange requirements established in 301 KAR 2:172.

(8) An elk hunter shall not:

(a) Take elk except during daylight hours;

(b) Use dogs, except to recover wounded elk using leashed tracking dogs;

(c) Hunt over bait inside the elk restoration zone;

(d) Drive elk from outside the assigned area;

(e) Take an elk while it is swimming;

(f) Use electronic calls or electronic decoys; or

(g) Take an elk if the hunter is in a vehicle, boat, or on horseback, except that a disabled hunter who has a hunting method exemption permit issued pursuant to 301 KAR 3:027 may use a stationary vehicle as a hunting platform.

(9) A person shall:

(a) Obtain a vehicle tag from the department prior to hunting elk in the restoration zone; and

(b) Display the vehicle tag in the windshield of the vehicle while hunting elk.

(10) A youth shall be accompanied by an adult who shall remain in a position to take immediate control of the youth's firearm.

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

(12) A person shall only use the weapons and ammunition established in paragraphs (a) through (e) of this subsection to take an elk:

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

(b) A firearm:

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

2. Of .270 caliber or larger; and

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

(c) A muzzleloader of .50 caliber or larger;

(d) A shotgun of twenty (20) gauge or larger loaded with a shell containing one (1) projectile; or

(e) A handgun loaded with:

1. Centerfire cartridges;

2. Bullets of .270 caliber or larger designed to expand upon impact; and

3. Cartridges with a case length of 1.285 inches or larger.

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

(14) An elk hunter shall not use a magazine capable of holding more than ten (10) rounds.

(15) A quota elk hunter shall only take an elk of the type and sex determined by the permit drawn.

(16) A hunter drawn for a firearms elk permit shall hunt elk pursuant to that permit only during the seven (7) day period assigned during the initial drawing.

(17) An individual who receives or is transferred a landowner cooperator permit, a voucher cooperator permit, an elk restoration permit, or a special commission permit may hunt in all of the antlered-only or antlerless-only quota hunts and shall hunt in accordance with the seasons and limits established in Section 7 of this administrative regulation.

(18) A person who is drawn for an archery or crossbow permit or has a landowner cooperator permit, a special commission permit, an elk restoration permit, or voucher cooperator permit may hunt with a crossbow during all archery and crossbow seasons, if at the time of the hunt, the person:

(a) Is a youth;

(b) Is sixty-five (65) years or older; or

(c) Has a crossbow hunting method exemption permit for hunting deer pursuant to 301 KAR 3:027.

(19)***(a)*** A person who is drawn for an elk quota hunt permit or was issued a landowner cooperator permit, a special commission permit, an elk restoration permit, or voucher cooperator permit shall complete and submit a post-season elk hunting survey on the department's website at fw.ky.gov no later than the last day of February.

(b)[~~(20)~~] A person who fails to comply with the requirements established in ***paragraph (a) of this subsection[~~subsection nineteen (19) of this section~~]*** shall be ineligible to apply for any quota hunt or no-hunt option the following year.

Section 8. Elk Quota Hunt Seasons and Limits. (1) A person drawn for an antlerless or antlered archery and crossbow permit shall not hunt when an elk firearms season is open.

(2) A person drawn for an antlered archery and crossbow permit shall use:

(a) Archery equipment to take an antlered elk beginning the third Saturday in September through December 31; and

(b) A crossbow to take an antlered elk from the fourth Saturday in September through December 31.

(3) A person drawn for an antlerless archery and crossbow permit shall use:

(a) Archery equipment to take an antlerless elk beginning the second Saturday in October through December 31; and

(b) A crossbow to take an antlerless elk from the second Saturday in October through December 31.

(4) A person drawn for an antlered firearms permit shall use any legal weapon as established in Section 7(12) of this administrative regulation to take an antlered elk during one (1) of two (2) seven (7) day periods randomly assigned by the department from the:

(a) Last Saturday in September for seven (7) consecutive days; or

(b) First Saturday in October for seven (7) consecutive days.

(5) A person drawn for an antlerless firearms permit shall use any legal weapon as established in Section 7(12) of this administrative regulation to take an antlerless elk during one (1) of two (2) seven day (7) periods randomly assigned by the department from the:

(a) Second Saturday in December for seven (7) consecutive days; or

(b) Third Saturday in December for seven (7) consecutive days.

Section 9. LEA Boundaries. (1) Hazard LEA - Starting at the intersection of State Hwy 476 and State Hwy 80, the boundary proceeds east on Hwy 80 to the intersection with State Hwy 3209. The boundary then goes west on Hwy 3209 to the intersection with State Hwy 1087. The boundary then goes east on Hwy 1087 to the intersection with State Hwy 1098 near Yellow Mountain. The boundary then follows Hwy 1098 north and west to the intersection with State Hwy 15 near Quicksand. The boundary then goes south on Hwy 15 to the intersection with State Hwy 476 near Lost Creek. The boundary then goes south on Hwy 476 to the intersection with State Highway 80, completing the boundary.

(2) Levisa Fork LEA - Starting at the intersection of State Hwy 1789 and State Hwy 460 at Millard, the boundary proceeds south and east on Hwy 460 to the intersection of Hwy 460 and State Hwy 1499 at Mouthcard. The boundary then runs north along State Hwy 1499 to the intersection of State Hwy 1499 and State Hwy 194. It then runs west and north on Hwy 194 to the intersection of Hwy 194 and State Hwy 3418 (Ridge Line Road). The boundary then runs west on Hwy 3418 to the intersection of State Hwy 3418 and Raccoon Road. The boundary then runs west on Raccoon Road to the intersection of Raccoon Road and State Hwy 1441. The boundary then runs south along Hwy 1441 to the intersection of State Hwy 1441 and State Highway 1789. The boundary then runs west to the intersection of Hwy 1789 and State Highway 460, completing the boundary.

(3) Middlesboro LEA - Starting at the intersection of US Hwy 25E and the Tennessee border at Middlesboro, the boundary proceeds southward and westward on the Tennessee and Kentucky border until the intersection of State Hwy 190. The boundary proceeds northward and westward on State Hwy 190 to the intersection of US Hwy 25E. The boundary then goes south on US Hwy 25E to the Tennessee border, completing the boundary.

(4) Prestonsburg LEA - The area shall be within the boundary of the Czar Hunter Access Area as indicated by signage.

(5) Straight Creek LEA - Starting at the intersection of State Hwy 66 and State Hwy 221 at Straight Creek, the boundary proceeds east on State Hwy 221 to the intersection with State Hwy 2009. The boundary then proceeds north along State Hwy 2009 to the intersection with US Route 421. The boundary then proceeds north on US Route 421 to the intersection with State Hwy 406 near Stinnett. The boundary then follows State Hwy 406 west to the intersection with State Highway 66. The boundary then follows State Hwy 66 south to the intersection with Hwy 221 to complete the boundary.

(6) Tug Fork LEA – The area shall be within the boundary of the Revelation Energy Hunter Access Areas in Martin, Pike, and Floyd Counties, as established by signage.

Section 10. Post-season Quota Hunt on Private Land. (1) A modern firearms quota hunt for antlerless elk and spikes shall take place beginning on the fourth Saturday in January for fourteen (14) consecutive days.

(2) Each hunter shall be randomly drawn from the pool of applicants who:

(a) Were not drawn for the previous elk quota hunts; and

(b) Are residents of counties included, wholly or in part, within an EMU boundary.

(3) A drawn applicant shall comply with the requirements in Section 7 of this administrative regulation except that an applicant may hunt only in the assigned EMU or on land the applicant owns within another EMU.

(4) The EMU boundaries shall be as incorporated by reference in this administrative regulation.

(5) Any public hunting area within an EMU shall be closed to elk hunting during this season.

Section 11. Tagging and Checking Requirements. (1) Immediately after taking an elk, a hunter shall record on a hunter's log:

(a) The species harvested;

(b) The sex of the animal;

(c) Date of harvest; and

(d) County of harvest.

(2) A hunter shall check a harvested elk before midnight on the day the elk is recovered by:

(a) Calling (800) 245-4263 and providing the requested information; or

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

(3) A hunter who has checked in an elk shall record the

confirmation number on a hunter's log.

(4) If the hide or head is removed from the carcass before the elk is checked in, then the hunter shall be required to demonstrate proof of the sex of the elk.

(a) For antlered elk the hunter shall retain the:

1. Head with antlers; or

2. Testicles, scrotum, or penis attached to the carcass; or

(b) For antlerless elk the hunter shall retain the:

1. Head; or

2. Udder or vulva attached to the carcass.

(5) If a harvested elk leaves the possession of the hunter, the hunter shall attach to the carcass a hand-made tag that contains the hunter's:

(a) Confirmation number;

(b) Name; and

(c) Telephone number.

(6) A person shall not provide false information in:

(a) Completing the hunter's log;

(b) Checking an elk; or

(c) Creating a carcass tag.

Section 12. Elk Hunting on Public Land. (1) A person drawn for an elk quota hunt or the recipient of a special commission permit may hunt on the areas listed in paragraphs (a) through (f) of this subsection within the restoration zone pursuant to the conditions of the permit received:

(a) Wildlife Management Areas;

(b) Hunter Access Areas;

(c) State forests;

(d) Big South Fork National River and Recreation Area;

(e) Daniel Boone National Forest; or

(f) Jefferson National Forest.

(2) Portions of Paintsville Lake WMA that lie out of the restoration zone shall be subject to the requirements established in Section 13 of this administrative regulation.

(3) Elk hunting shall not be allowed on public areas during quota deer hunts listed in 301 KAR 2:178.

(4) Paul Van Booven WMA.

(a) The archery and crossbow seasons shall be open as established in Section 8 of this administrative regulation.

(b) A firearm shall not be used to hunt elk.

(5) A person shall not mimic the sound of an elk on public land open to elk hunting from September 1 until the opening of the elk archery season.

Section 13. Out-of-zone Elk Hunting. (1) The methods for taking deer and the deer seasons established in 301 KAR 2:172 shall apply to a person taking elk outside of the restoration zone, except that a hunter shall comply with the weapons and ammunition requirements established in Section 7 of this administrative regulation.

(2) Unless exempted by KRS 150.170, a person who is hunting out-of-zone elk shall possess:

(a) A valid Kentucky hunting license; and

(b) An out-of-zone elk permit.

(3) A person may take an elk of either sex, which shall not count toward the person's deer bag limit.

(4) Any elk harvested out-of-zone shall be telechecked pursuant to Section 11 of this administrative regulation.

Section 14. A person who takes possession of any elk antler that has the skull or skull plate attached to it shall contact the department's Law Enforcement Division within twenty-four (24) hours to obtain a disposal permit.

Section 15. A person who is the recipient of a valid elk quota hunt permit, landowner cooperator permit, voucher cooperator permit, an ERP, or special commission permit may defer use of the permit to the following year if:

(1) There is a death of the permit holder's:

(a) Spouse;

(b) Child; or

(c) Legal guardian, if the permit holder is under eighteen (18) years old; and

(2) The permit holder provides to the department a death certificate and one (1) of the following documents prior to May 1 of the year following the hunting season:

(a) A marriage certificate;

(b) A birth certificate; or

(c) An affidavit of paternity or maternity.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Knott-Floyd Elk Management Unit 2017 Edition" map; and

(b) "Mayking Letcher Elk Management Unit 2017 Edition" map.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., Eastern time.

GREGORY K. JOHNSON, Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: January 11, 2018

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PUBLIC PROTECTION CABINET
Department of Insurance
Commissioner's Office
(As Amended at ARRS, March 12, 2018)

806 KAR 14:006. Property and casualty insurance form filings.

RELATES TO: KRS 304.1-050, 304.4-010, ***304.13-051,*** 304.14-120, 304.14-190, 304.21-010,***[~~304.13-051~~,]*** 304.22-020, 304.23-010

STATUTORY AUTHORITY: KRS 304.2-110, 304.14-120

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the commissioner[~~executive director~~] to promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.14-120 authorizes the commissioner to approve, disapprove, or exempt insurance documents and forms prior to***[~~their~~]*** issuance for delivery in Kentucky. This administrative regulation provides form filing procedures for property, casualty, surety, title, and mortgage guaranty insurance.

Section 1. Definitions. (1) "Commissioner"["~~Executive director~~"] is defined ***by[~~in~~]*** KRS 304.1-050(1).

(2) "Department"["~~Office~~"] is defined ***by[~~in~~]*** KRS 304.1-050(2).

Section 2. Electronic Filing. (1) Every insurer, other than life or health insurers, required by law or licensed advisory organization or form provider permitted by law to file policy forms or endorsements, advertising and sales materials, or other documents subject to form filing requirements[~~other than those pertaining to rates~~] shall file the forms with the department electronically ***through the System for Electronic Rate and Form Filing (SERFF) or other electronic manner approved by the department***.[~~with these documents a completed and signed Form PC TD-1, "Property & Casualty Transmittal Document" using the appropriate guidance incorporated by reference in 806 KAR 13:150, Section 12(1)(f) through (nn).~~]

(2) If the filing[~~filling~~] is being made by a third party, a signed letter of authorization from the insurer shall be submitted. [~~Section 3. (1) All paper filings shall include two (2) full sets of documents on 8 1/2 in x 11 in white paper, with three (3) copies of Form PC TD-1, Property & Casualty Transmittal Document" and a self-addressed stamped envelope.~~

~~(2)(a) A property and casualty insurance company, advisory organization, or form provider may file a form in an electronic format established by the National Association of Insurance Commissioners.~~

~~(b) An electronic filing shall be in lieu of a paper filing.~~

~~Section 4. (1) A filing may include any number of documents, filed together on a particular date, pertaining to a single type of insurance from the "Uniform Property & Casualty Product Coding Matrix".~~]

(3)[~~(2)~~] Forms shall be filed separately from rates and rules.

(4) A property and casualty form filing may include forms for a particular insurance company or group of insurance companies. [~~Section 5. All form filings shall be accompanied by a Form PC FFS 1, "Form Filing Schedule".~~]

Section 3.[~~6.~~] (1) A policy or form shall not be used in Kentucky until it has been approved unless a policy or form has been exempted by an order of the commissioner pursuant to KRS 304.14-120(4). Any policy or form exempt from prior approval requirements under an order issued by the commissioner pursuant to KRS 304.14-120(4) may be subsequently disapproved for continued use on a prospective basis by the commissioner or designee upon a finding that the policy or form:

(a) Does not meet the requirements of Kentucky law;

(b) Contains any provisions that are unfair, deceptive, ambiguous, misleading, or unfairly discriminatory; or

(c) Is solicited by means of advertising, communication, or dissemination of information which is deceptive or misleading.

(2) If the rates pertaining to a form are required by law to be filed or approved, the form shall not be used until the appropriate rates have been filed or approved as required in accordance with KRS 304.14-120 and 304.13-051.[~~Section 7. (1) A property and casualty form filing may include forms for a particular insurance company or group of insurance companies.~~

~~(2) If the filing is made for a group of insurance companies, Form PC TD-1, "Property & Casualty Transmittal Document" shall identify all companies included in the filing.~~]

Section 4.[~~8.~~] (1) Filing fees shall be paid on a per-company basis.

(2) The period of time in which the commissioner[~~executive director~~] may approve or disapprove the filing shall not begin to run until both the complete filing and appropriate fee, in accordance with KRS 304.4-010 and 806 KAR 4:010, are received by the department[~~office~~].

Section 5.[~~9.~~] (1) Insurers that are members, subscribers, or service purchasers of an advisory organization or form provider permitted by law to file policy forms or endorsements, advertising and sales materials, or other documents other than those pertaining to rates may choose to adopt all or some of the forms of that advisory organization or form provider.

(2) If an insurer chooses to adopt only a specific filing of an advisory organization or form provider, it shall do so in accordance with the procedures set forth in this administrative regulation, and shall clearly identify which filing of the advisory organization or form provider it is adopting.

(3)(a) If[~~If~~] an insurer chooses to adopt all of the policy forms or endorsements, advertising and sales materials, or other documents other than those pertaining to rates of an advisory organization or form provider, it shall:

1. Provide written authorization to the advisory organization or form provider to file those materials on the insurer's behalf; or

2. File written notice with the commissioner[~~executive director~~] that it is adopting by reference all the current and future policy forms or endorsements, advertising and sales materials, or other documents other than those pertaining to rates that the advisory organization or form provider files.

(b)1. The advisory organization or form provider shall file the written notice of authorization referred to in paragraph (a)1 of this subsection with the commissioner[~~executive director~~] and shall pay the appropriate fee, in accordance with KRS 304.4-010 and 806 KAR 4:010.

2. The fee shall be paid for each company sending the written authorization and on the basis of each line of insurance.

(c)1. If an insurer that previously authorized an advisory organization or forms provider to file on its behalf as referred to in paragraph (a)1 of this subsection, or an insurer that filed written notice with the executive director to adopt by reference as referred to in paragraph (a)2 of this subsection chooses not to adopt certain policy forms or endorsements, advertising and sales materials, or other documents other than those pertaining to rates as filed by the advisory organization or form provider, the insurer shall file a notice of the non-adoption[~~nonadoption~~] with the commissioner[~~executive director~~] and shall pay the appropriate filing fee, in accordance with KRS 304.4-010 and 806 KAR 4:010.

2.a. If an insurer chooses to delay the effective date of its adoption of an advisory organization or forms provider filing, it shall submit a letter to the department[~~office~~]requesting the revised date upon which it shall adopt the filing.

b. The delayed adoption date shall be within six (6) months of the original effective date.

c. If additional time is needed, a second letter shall be submitted to the department[~~office~~], requesting a revised delayed adoption date.

d. All revised delayed adoption dates shall be within one (1) year of the original effective date as filed by the advisory organization or forms provider.

3. If an insurer does not adopt the advisory organization or forms provider filing within one (1) year of the original effective date as filed by the advisory organization or forms provider, the insurer shall submit a non-adoption[~~nonadoption~~] filing.

(4) The requirements of this ***section[~~subsection~~]*** shall apply to any filing made pursuant to an exemption order issued by the commissioner under KRS 304.14-120(4), unless the commissioner specifically exempts the advisory organization or form provider from these requirements in the order.

Section 6.[~~10.~~] If a filing includes a form which amends, replaces, or supplements a form which has been previously filed and not disapproved, it shall be accompanied by a letter of explanation from the filer setting forth the following:

(1) All changes contained in the newly filed form;

(2) The effect, if any, the changes have upon the hazards purported to be assumed by the policy; and

(3) An explanation as to the effect on the applicable rates.

Section 7.[~~11.~~] (1) Facsimile signatures of company officers, attorneys-in-fact, employees, and representatives shall not be required and shall not be submitted with any filing.

(2) A change of signature of the executing officer on a policy form shall not, because of this change alone, require a new filing. [~~Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Uniform Property & Casualty Product Coding Matrix", (March 1, 2007);~~

~~(b) Form PC TD-1, "Property & Causality Transmittal Document", (March 1, 2007); and~~

~~(c) Form PC FFS-1, "Form Filing Schedule", (March 1, 2007).~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's internet Web site at:www.doi.state.ky.us or the Web site of the National Association of Insurance Commissioners at www.naic.org.~~]

NANCY G. ATKINS, Commissioner
DAVID A. DICKERSON, Secretary

APPROVED: December 15, 2017

FILED WITH LRC: December 15, 2017 at 10 a.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
(As Amended at ARRS, March 12, 2018)

806 KAR 20:010. Declination, cancellation, and nonrenewal of property and casualty insurance *and automobile liability insurance policies*.

RELATES TO: KRS 304.12-020, 304.14-120, 304.14-210, ***304.20-040,*** 304.20-160, 304.20-300-304.20-350, 304.30-110***[,~~304-20-040~~]***

STATUTORY AUTHORITY: KRS***[~~Chapter 13A,~~]*** 304.2-110, 304.30-070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 ***authorizes[~~provides that~~]*** the Commissioner of the Department of Insurance[~~Executive Director of Insurance~~] ***to[~~may~~]*** make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.30-070 ***authorizes[~~provides that~~]*** the Commissioner of the Department of Insurance[~~Executive Director of Insurance~~] ***to[~~may~~]*** make reasonable administrative regulations necessary for the effectuation of any provision of KRS Chapter 304.30. This administrative regulation ***establishes[~~provides certain~~]*** guidelines for the declination, cancellation, and nonrenewal of property and casualty insurance pursuant to KRS 304.20-300 to 304.20-350, and automobile liability insurance policies under KRS 304.20-040.

Section 1.[~~Application of KRS 304.20-300 to 304.20-350 to Property and Casualty Insurance Policies. KRS 304.20-300 to 304.20-350 apply to declinations, cancellations, nonrenewals, and twenty-five (25) percent premium increases of property and casualty insurance policies described in KRS 304.20-300 delivered, issued for delivery, or renewed after July 15, 1986.~~

~~Section 2.~~] Notice of Reason for Declination, Cancellation, or Nonrenewal. (1) All notices requiring reasons for declination, cancellation, or ***nonrenewal[~~non-renewal~~]*** under KRS 304.20-320[~~In every instance where KRS 304.20-300 to 304.20-350 require a reason for declination, cancellation, or nonrenewal to be given to an applicant or an insured, the reason given shall be a statement reasonably calculated to inform the applicant or insured of the reason for the declination, cancellation, or nonrenewal. The insurer~~] shall provide specific grounds[~~for nonrenewal~~], and shall not rely on general underwriting reasons[~~in general~~].

(2) All notices of***[~~declination,~~]*** cancellation***[~~,~~]*** and nonrenewal of automobile liability insurance policies under KRS 304.20-040 shall be in writing and inform the applicant or insured of the specific reason for***[~~declination,~~]*** cancellation***[~~,~~]*** or nonrenewal.

(3)[~~(2)~~] Subsection (1) of this section shall not apply for a declination, cancellation, or nonrenewal[~~where a risk is declined or a policy terminated~~] where[~~there is~~] specific information available for review by the commissioner of the Department of Insurance indicates[~~Executive Director of Insurance that~~] the insured has contributed to the[a] loss by arson or fraud.[~~A more general reason may be given to the insured in this situation.~~]

(4)[~~(3)~~] The fact that the reason or reasons for declination, cancellation, or nonrenewal have been obtained through an investigative consumer report subject to the Fair Credit Reporting Act, 15 U.S.C. 1681 et seq., shall not relieve the insurer from the requirement of notifying the insured of the declination, cancellation, or nonrenewal pursuant to ***KRS 304.20-040 and*** KRS 304.20-300 to 304.20-350. However, any insured wishing to learn the substance of an investigative consumer report shall be directed to contact the consumer reporting agency and follow the procedures contained in the Fair Credit Reporting Act. [~~(4) A reason for cancellation or nonrenewal which does not appear in the notice of cancellation or nonrenewal shall not be a basis for cancellation or nonrenewal.~~]

Section 2.[~~3.~~] Cancellation for Nonpayment of Premium Under Insurance Premium Finance Company Contracts Controlled by KRS Chapter 304.30. (1) If an insurance premium finance company exercises its power of attorney to cancel a policy pursuant to KRS 304.30-110, that cancellation is considered to be a cancellation at the request of the insured and shall not be subject to KRS 304.20-300 to 304.20-350.

(2) The phrases "premium finance plan" and "extension of credit" in KRS 304.20-310(2) refer to extensions of credit to pay for insurance which are made by insurers or other entities not subject to KRS Chapter 304.30.

NANCY G. ATKINS, Commissioner
DAVID A. DICKERSON, Secretary
APPROVED BY AGENCY: December15, 2017
FILED WITH LRC: December 15, 2017 at 10 a.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.

ENERGY AND ENVIRONMENT CABINET
Public Service Commission
(As Amended at ARRS, March 12, 2018)

807 KAR 5:027. Gas pipeline safety; reports of leaks; drug testing.

RELATES TO: KRS Chapter 278, 49 C.F.R. Parts[~~Part~~] 191, 192, 199, 49 U.S.C. 1671

STATUTORY AUTHORITY: KRS 278.040(3), 278.230(3), 278.495

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) ***authorizes the Public Service Commission to[~~provides that the commission may~~]*** adopt reasonable administrative regulations to implement the provisions of KRS Chapter 278 and to investigate methods and practices of utilities subject to commission jurisdiction. KRS 278.230(3) ***requires utilities to[~~provides that utilities shall~~]*** file any reports reasonably required by the commission. KRS 278.495 ***authorizes the commission to[~~provides that the commission may~~]*** promulgate administrative regulations consistent with federal pipeline safety laws. This administrative regulation establishes rules ***that[~~which~~]*** apply to gas pipeline safety, reports of leaks, and drug testing by operators of natural gas facilities[~~utilities~~].

Section 1. Definition. (1) "Operator" means any utility, county, or city that is subject to the Commission's jurisdiction under KRS 278.495(2).

Section 2. Gas Pipeline Safety. Each operator shall comply with the minimum federal safety requirements for pipeline facilities set forth in 49 C.F.R. Part 192.

Section 3. Reports. Each operator ***who[~~that~~]*** files an incident ***notice or report[~~notice/report~~]***, a safety-related condition report, or an annual report with the United States Department of Transportation ("USDOT") pursuant to 49 C.F.R. Part 191 shall concurrently file ***this[~~such~~]*** report with the Commission by electronic mail to Pipeline.Safety@ky.gov.

Section 4. Drug and Alcohol Testing. Each operator shall comply with 49 C.F.R. Part 199.

Section 5. Odorization of Gas. Each Operator shall conduct sampling of combustible gases to assure proper concentrations of odorant in accordance with this section. (1) The operator shall sample gases in each separately odorized system at approximate furthest point from injection of odorant or sampling point(s) identified by engineering studies.

(2) Sampling shall be conducted with equipment designed to detect and verify proper level of odorant.

(3) Separately odorized systems with ten (10) or fewer customers shall be sampled for proper odorant level at least once each ninety-five (95) days.

(4) Separately odorized systems with more than ten (10) customers shall be sampled for proper odorant level at least once every thirty (30) days.

Section 6. Inspection prior to service connection. Each operator shall perform a leak test on all piping downstream from the meter for gas leaks, each time gas is turned on, by performing a dial check or pressure test in accordance with accepted industry practices when all appliances are turned off. The operator shall refuse to turn on gas until all gas leaks so disclosed have been properly repaired. [~~Definitions. (1) "Incident" means a gas leak, accident, or other event on a pipeline which requires the utility to notify United States Department of Transportation (USDOT) or the commission.~~

~~(2) "Pipeline facilities" includes, without limitation, new and existing pipe, right-of-way, and any equipment, facility, or building used in transportation of gas or treatment of gas during the course of transportation.~~

~~(3) "System" means all pipeline facilities used by a utility in transportation of gas, including but not limited to, line pipe, valves and other appurtenances connected to line pipe, compressor units, fabricated assemblies associated with compressor units, metering (including customers' meters) and delivery stations, and fabricated assemblies in metering and delivery stations.~~

~~(4) "Test failure" means a break or rupture that occurs during strength-proof testing of transmission or gathering lines that is of such magnitude as to require repair before continuation of the test.~~

~~(5) "Transportation of gas" means the gathering, transmission, or distribution of gas by pipeline, or storage of gas in or effecting interstate, intrastate or foreign commerce.~~

~~Section 2. Scope. (1) This administrative regulation prescribes requirements for reporting gas leaks that are not intended by the utility and that require immediate or scheduled repair and of test failures as defined in Section 1(4) of this administrative regulation.~~

~~(2) This administrative regulation applies to leaks and test failures that occur in the gathering of gas located in the following areas:~~

~~(a) An area within the limits of any incorporated or unincorporated city, town, or village; or~~

~~(b) Any designated residential or commercial area such as a subdivision, business or shopping center, or community development.~~

~~(c) The right-of-way of a state highway, county road or railroad on property of a school, church, hospital, park or similar public place.~~

~~Section 3. Telephonic Notice of Certain Incidents. (1) At the earliest practicable moment but no later than two (2) hours following discovery, each utility shall give notice to the commission in accordance with subsection (3) of this section of any incident that:~~

~~(a) Is reported to USDOT pursuant to 49 C.F.R. Part 191, Federal Pipeline Safety Regulations.~~

~~(b) Requires taking any segment of pipeline or mains out of service.~~

~~(c) Results in gas ignition.~~

~~(d) Causes estimated damage to property of the utility, or others, or both, of $25,000 or more.~~

~~(e) Results in the loss of service to forty (40) or more customers for four (4) or more hours.~~

~~(f) Causes the loss of a sizable amount of gas.~~

~~(g) Received extensive news coverage, or in the judgment of the utility is significant, even though it does not meet the criteria of paragraphs (a) through (g) of this subsection.~~

~~(2) A utility need not give notice of an incident that meets only criteria of subsections (1)(b) and (c) of this section if it occurred solely as a result of, or in connection with, planned or routine maintenance or construction.~~

~~(3) Each notice required by subsection (1) of this section shall be made by telephone to the commission's chief engineer, gas pipeline safety branch, or designated staff; and shall include the following numbers:~~

~~(a) Names of operator and person making report and their telephone numbers.~~

~~(b) Location of incident.~~

~~(c) Time of incident.~~

~~(d) Number of fatalities.~~

~~(e) All other significant facts known by the operator that are relevant to the cause of the incident or extent of damage.~~

~~(4) If designated staff cannot be contacted, required information shall be reported by telephone to the nearest post of Kentucky State Police, followed by confirmation via electronic mail addressed to the commission.~~

~~(5) Each notice made in accordance with this section shall be supplemented by a written report within thirty (30) days giving full details such as cause; extent of injuries or damage; and steps, if any, taken to prevent reoccurrence. If additional information is received by the utility subsequent to the initial report indicating a different cause, more serious injury, or more serious property damage than was initially reported, a supplemental telephone call shall be made to the commission's chief engineer, gas pipeline safety branch, as soon as practicable.~~

~~Section 4. Addressee for Written Report. (1) Each written report required by this administrative regulation shall be transmitted to the Gas Pipeline Safety Branch, Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602.~~

~~(2) Each written report required by Sections 3 and 12 of this administrative regulation shall be transmitted to the Gas Pipeline Safety Branch, Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602; and one (1) copy shall be transmitted to the Resources Manager, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, Room 8417, 400 Seventh Street, SW, Washington, D.C. 20590.~~

~~Section 5. Distribution System: Annual Report. (1) Any utility operating a distribution system and submitting an annual report to USDOT pursuant to 49 C.F.R. Part 191 on USDOT Form DOT F-7100.1-1 shall concurrently file the annual report with the commission.~~

~~(2) The annual report required by subsection (1) of this section need not be submitted with respect to petroleum gas systems which serve less than 100 customers from a single source.~~

~~Section 6. Distribution Systems Reporting Transmission Pipelines; Transmission or Gathering Systems Reporting Distribution Pipelines. Any utility primarily engaged in gas distribution which also operates gas transmission or gathering pipelines and submits an incident report or annual report to USDOT pursuant to 49 C.F.R. Part 191.15 or 191.17 shall concurrently file a copy of the report with the commission. Any utility primarily engaged in gas transmission or gathering which also operates gas distribution pipelines and submits an incident report or annual report to USDOT pursuant to 49 C.F.R. Part 191.9 or 191.11 shall concurrently file a copy of the report with the commission.~~

~~Section 7. Transmission and Gathering Systems: Incident Report. (1) A utility operating a transmission or gathering system and submitting USDOT Form RSPA F7100.2 pursuant to 49 C.F.R. 191.15 shall concurrently file a copy of the report with the commission.~~

~~(2) When additional relevant information is obtained after a report is submitted in accordance with subsection (1) of this section, the utility shall make a supplemental report as soon as practicable with clear reference by date and subject to the original report.~~

~~Section 8. Transmission and Gathering Systems: Annual Report. A utility operating a transmission or gathering system and submitting USDOT Form DOT- F-7100.2-1 pursuant to 49 C.F.R. Part 191.17 shall concurrently file a copy of the report with the commission.~~

~~Section 9. Report Forms. Copies of prescribed report forms are available without charge upon request from the USDOT Office of Pipeline Safety or from the commission. Additional copies in this prescribed format may be reproduced and used if of same size and kind of paper.~~

~~Section 10. Reporting Safety-Related Conditions. (1) Except as provided in subsection (2) of this section, each utility shall report in accordance with Section 11 of this administrative regulation the existence of any of the following safety-related conditions involving facilities in service:~~

~~(a) In the case of a pipeline that operates at a hoop stress of twenty (20) percent or more of its specified minimum yield strength, general corrosion that has reduced wall thickness to less than that required for the maximum allowable operating pressure, and localized corrosion pitting to a degree where leakage might result.~~

~~(b) Unintended movement or abnormal loading by environmental causes, such as an earthquake, landslide, or flood, that impairs the serviceability of a pipeline.~~

~~(c)Any material defect or physical damage that impairs serviceability of a pipeline that operates at a hoop stress of twenty (20) percent or more of its specified minimum yield strength.~~

~~(d) Any malfunction or operating error that causes the pressure of a pipeline to rise above its maximum allowable operating pressure plus the buildup allowed for operation of pressure limiting or control devices.~~

~~(e) A leak in a pipeline that constitutes an emergency.~~

~~(f) Any safety-related condition that could lead to an imminent hazard and causes (either directly or indirectly by remedial action of the operator), for purposes other than abandonment, a twenty (20) percent or more reduction in operating pressure or shutdown of operation of a pipeline.~~

~~(2) A report is not required for any safety-related condition that:~~

~~(a) Exists on a master meter system or a customer-owned service line;~~

~~(b) Is an incident or results in an incident before the deadline for filing the safety-related condition report;~~

~~(c) Exists on a pipeline that is more than 220 yards from any building intended for human occupancy or outdoor place of assembly, except that reports are required for conditions within the right-of-way of an active railroad, paved road, street, or highway; or~~

~~(d) Is corrected by repair or replacement in accordance with applicable safety standards pursuant to 807 KAR 5:022 before the deadline for filing the safety-related condition report, except that reports are required for conditions under subsection (1)(a) of this section other than localized corrosion pitting on an effectively coated and cathodically protected pipeline.~~

~~Section 11. Filing Safety-related Condition Reports. (1) Each report of a safety-related condition under Section 10 of this administrative regulation shall be filed (received by the commission) in writing within five (5) working days (not including Saturday, Sunday, or federal holidays) after the day a representative of the utility first determines that the condition exists, but not later than ten (10) working days after the day a representative of the utility discovers the condition. Separate conditions may be described in a single report if they are closely related. To file a report by telefacsimile (fax) dial 502-564-7279.~~

~~(2) The report shall be headed "Safety-related Condition Report" and provide the following information:~~

~~(a) Name and principal address of utility.~~

~~(b) Date of report.~~

~~(c) Name, job title, and business telephone number of person submitting the report.~~

~~(d) Name, job title, and business telephone number of person who determined that the condition exists.~~

~~(e) Date condition was discovered and date condition was first determined to exist.~~

~~(f) Location of condition, with reference to the town, city or county, and as appropriate nearest street address, survey station number, milepost, landmark, or name of pipeline.~~

~~(g) Description of the condition, including circumstances leading to its discovery, any significant effects of the condition on safety, and name of commodity transported or stored.~~

~~(h) Corrective action taken (including reduction of pressure or shutdown) before the report is submitted and the planned follow-up future corrective action, including anticipated schedule for starting and concluding such action.~~]

This is to certify that the Public Service Commission Chairman has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 278.040(3).

GWEN PINSON, Executive Director
MICHAEL J. SCHMITT, Chairman

APPROVED BY AGENCY: November 28, 2017

FILED WITH LRC: November 29, 2017 at 11 a.m.

CONTACT PERSON: John Park, Staff Attorney, Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3940, fax (502) 564-7279, email john.park@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(As Amended at ARRS, March 12, 2018)

902 KAR 20:145. Operations and services; rural health clinics.

RELATES TO: KRS 216B.010-216B.130, 216B.990(1), (2), 218A.175(1), 45 C.F.R. ***Part*** 160, ***Part*** 164, 42 U.S.C. Part 254r, 42 U.S.C. 1320d-2 – 1320d-8

STATUTORY AUTHORITY: KRS 216B.042(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042(1) requires 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 health facilities and health services[~~regulate health facilities and health services~~]. This administrative regulation establishes the minimum requirements for the operation of and services provided by[~~of~~] rural health clinics.

Section 1. Location and Requirement to Provide Services. (1) A[~~health facility shall not be licensed or relicensed as a~~] rural health clinic shall[~~unless it~~]:

(a) Be[~~Is~~] located in:

1. A non-urbanized[~~an~~] area, as determined[~~designated~~] by the United States Census Bureau; and

2. An area designated or certified by the Health Resources and Services Administration[~~Public Health Service, Division of Shortage Designation~~] as a:

a.[~~1.~~] Health professional shortage area; or

b.[~~2.~~] Medically-underserved area; and

(b) Comply [~~Complies~~] with the requirements established in Sections 2 and 3 of this administrative regulation.

(2) A[~~The~~] rural health clinic shall[~~may~~] be:

(a) Freestanding;[~~,~~] or

(b)[~~may be~~] A subordinate part of a licensed health facility[~~,~~] or health service.

Section 2. Administration and Operation. (1) The licensee shall be legally responsible for the operation of the clinic and for compliance with federal, state, and local laws and administrative regulations[~~law~~] pertaining to the operation of the clinic.

(2) The rural health clinic shall be under the medical direction of a physician.

(3) The licensee shall:

(a) Establish written policies and lines of authority;[~~,~~] and

(b)[~~shall~~] Designate an administrator[~~the person~~] who shall be principally responsible for the daily operation of the clinic.

(4)[~~The licensee shall develop~~] Patient care policies shall be developed by:

(a)[~~with the advice of a group of professional personnel that~~

~~includes~~] One (1) or more physicians;

(b)[~~physician, and~~] One (1) or more advanced practice registered nurses[~~nurse~~] or physician assistants; and

(c)[~~assistant.~~] At least one (1) member who is[~~shall~~] not[~~be~~] an employee of the rural health clinic.

(5) The policies shall include:

(a) A description of the services provided directly by the rural health clinic or [~~and those provided~~] through agreement;

(b) Guidelines for the medical management of health problems, including [~~which include the~~] conditions that require[~~requiring~~] medical consultation and patient referral;

(c) Procedures for maintaining[~~, and the maintenance of~~] health records;

(d)[~~(c)~~] Procedures for[~~to be followed in~~] the storage, handling, and administration of drugs and biologicals; and

(e)[~~(d)~~] Procedures for an annual review and evaluation of[~~the~~] services provided by the clinic.

(6)[~~(5)~~] Personnel.

(a) The rural health clinic shall have:

1.[~~a staff that includes~~] At least one (1) physician;

2.[~~and~~] At least one (1) advanced practice registered nurse or physician assistant; and

3.[~~. The clinic shall employ~~] Other staff or ancillary personnel necessary to provide the services essential to the clinic's operation.

(b)[~~(a)~~] The physician shall:

1. Be responsible for all medical aspects of the clinic[~~center~~] and[~~shall~~] provide direct medical services in accordance with the Medical Practice Act, KRS Chapter 311;

2. Except in extraordinary circumstances, which shall be documented in the clinic's records, be physically present no less than once in every two (2) week period to provide medical direction, supervision, and consultation to the clinic's staff;

3. In conjunction with the advanced practice registered nurse or nurses,[~~nurse(s)~~] or physician assistant or assistants[~~assistant(s)~~], participate in developing, executing, and[~~periodically~~] reviewing the rural health clinic's written policies and services;

4.[~~Periodically~~] Review the rural health clinic's patient records;

5. Provide medical orders and medical care services to patients of the rural health clinic; and

6.[~~Be physically present for weekly consultation;~~

~~7.~~] Be available within one (1) hour, through direct telecommunication, for:

a. Consultation;

b.[~~,~~] Assistance with medical emergencies;[~~,~~] or

c. Patient referral.

(c)[~~(b)~~] The advanced practice registered nurse or physician assistant shall:

1. Participate in the development, execution, and[~~periodic~~] review of the written policies governing the services the rural health clinic provides;

2. Participate with the physician in[~~periodic~~] review of patient health records; and

3. Provide services in accordance with rural health clinic policies and[~~,~~] established protocols.

(d) If the practitioner is[~~; and a. For~~] an advanced practice registered nurse, the nurse shall comply with:

1. The Nurse Practice Act, KRS Chapter 314;[~~,~~] and

2. Administrative regulations relating to the practice of an advanced practice registered nurse***, 201 KAR Chapter 20***.

(e) If the practitioner is[~~; or~~

~~b. For~~] a physician assistant, the physician assistant shall comply with***:***

1. KRS 311.840 through 311.862; and

2.[~~KRS 311.565 and~~] Administrative regulations relating to the practice of a physician assistant***, 201 KAR 9:084***.

(f) The advanced practice registered nurse or physician assistant shall perform the following functions, to the extent they are not performed by a physician:

1.[~~4.~~] Arrange for, or refer a patient to,[~~a~~] needed services that are [~~service that is~~] not provided at the rural health clinic; and

2.[~~5.~~] Assure that adequate patient health records are maintained and transferred if[~~when~~] a patient is referred.

(7)[~~(6)~~] The rural health clinic shall have a written linkage agreement or an arrangement for the[~~patient~~] referral of patients to receive the following services, if required[~~with each of the following~~]:

(a) Inpatient hospital care;

(b) Physician services in a hospital, patient's home, or long term care facility;

(c) Additional and specialized diagnostic and laboratory services that are not available at the rural health clinic;

(d) Home health services[~~agency~~];

(e) Services provided by a local health department;

(f) Emergency medical services; and

(g) Pharmacy services.

(8) Medical Records.

(a)[~~(7)~~]The rural health clinic shall maintain patient records[~~a clinical record system~~] in accordance with written policies and procedures.

(b) A member of the clinic's professional staff shall:

1. Be[~~designated to be~~] responsible for maintaining the records; and

2. Ensure [~~for insuring~~] that the records are:

a. Systematically organized;

b.[~~,~~] Readily accessible; and

c. Accurately documented.

(9)[~~(8)~~] For a patient receiving health care services, the rural health clinic shall maintain a record that includes the following[~~,~~] as applicable:

(a) Identification and social data***;[;]***

(b)[~~,~~] Evidence of consent forms;

(c)[~~,~~] Pertinent medical history;

(d)[~~,~~] Assessment of the health status and health care needs of the patient;

(e)[~~, and~~] A brief summary of the episode, disposition, and instructions to the patient for each contact;

(f)[~~(b)~~] Reports of physical examinations, diagnostic, and laboratory test results;

(g)[~~, and~~] Consultative findings;

(h)[~~(c)~~] All orders, reports of treatments rendered, and medications given;

(i)[~~and other~~] Pertinent information necessary to monitor the patient's progress; and

(j)[~~(d)~~] Signature of the physician or other health care practitioner[~~professional~~] on each order written or treatment provided.

(10) Records.

(a) Ownership.

1. Medical records shall be the property of the clinic.

2. The original medical record shall not be removed from the clinic except by court order.

3. Copies of a medical record or portions of the record may be used and disclosed. Use and disclosure shall be as established in this administrative regulation.

(b) Confidentiality and Security: Use and Disclosure.

1. The clinic 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 clinic may use and disclose medical records. Use and disclosure shall be as established or required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, or as established in this administrative regulation.

3. A clinic may establish higher levels of confidentiality and security than required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164.

(c) Confidentiality of all patient records shall be maintained at all times.

(11) After the patient's death or discharge, the completed[~~(9) The rural health clinic shall maintain the confidentiality of medical record information and shall safeguard against loss, destruction, or unauthorized use. Written policies and procedures shall govern the use and removal of records from the clinic and the condition for release of information. (10)~~] medical record [~~records~~] shall be

placed in an inactive file and retained for a minimum of six (6)[~~five (5)~~] years, or in the case of a minor, a minimum of three (3) years after the patient reaches the age of majority under state law, whichever is the longest[~~longer~~].

(12)[~~(11)~~] The rural health clinic shall:

(a) Carry out or arrange for an annual evaluation of its total program;

(b)[~~,~~] Consider the findings of the evaluation;[~~,~~] and

(c) Take corrective action, if necessary.

(13) The evaluation shall include:

(a) The utilization of clinic services, including at least the:

1. Number of patients served; and

2.[~~the~~] Volume of services;

(b) A representative sample of both active and closed clinical records; and

(c) The rural health clinic's health care policies.

Section 3. Services. (1) The rural health clinic shall develop and maintain written protocols that shall:

(a) Be[~~Are~~] signed by a staff physician;

(b) Explicitly direct the step-by-step collection of subjective and objective medical data from a patient;

(c) Direct explicit medical action depending on the medical data collected; and

(d) Include:

1. Standing orders;

2. Rules of practice; and

3. Medical directives.

(2) The rural health clinic staff shall provide[~~furnish~~] diagnostic and therapeutic services, and supplies commonly furnished:

(a) In a physician's office;[~~,~~] or

(b) At the entry point into the health care delivery system.

(3) Clinic services shall include:

(a)[~~. These include~~] Medical history;

(b)[~~,~~] Physical examination;

(c)[~~,~~] Assessment of health status;

(d)[~~, and~~] Treatment for a variety of medical conditions;

(e)[~~. (3) The rural health clinic shall provide~~] Basic laboratory services essential to the immediate diagnosis and treatment of the patient as described in this paragraph[~~, including~~]:

1.[~~(a)~~] Chemical examinations of urine by stick or tablet methods, or both, including urine ketones;

2.[~~(b)~~] Hemoglobin or hematocrit;

3.[~~(c)~~] Glucose;

4.[~~(d)~~] Examination of stool specimens for occult blood;

5.[~~(e)~~] Pregnancy tests; and

6.[~~(f)~~] Primary culturing for transmittal to a hospital laboratory or licensed laboratory; and

(f)[~~. (4) The rural health clinic shall provide~~] Medical emergency procedures as a first response to common life-threatening injuries and acute illness.

(4) A clinic[~~, and~~] shall have available the drugs and biologicals commonly used in lifesaving procedures, including:

(a)[~~such as~~] Analgesics;

(b)[~~,~~] Local anesthetics;

(c)[~~,~~] Antibiotics;

(d)[~~,~~] Anticonvulsants;

(e)[~~,~~] Antidotes;

(f)[~~and~~] Emetics;

(g)[~~,~~] Serums; and

(h) Toxoids.

(5) A clinic shall not operate in the same manner as or otherwise provide services that are equivalent to the services provided by a pain management facility defined by KRS 218A.175(1).

(6) A[~~The~~] clinic shall post in a conspicuous area at the entrance, visible from the outside of the clinic:

(a)[~~,~~] The hours that emergency medical services will be available in the clinic;[~~,~~] and

(b) Where emergency medical services not provided by the clinic can be obtained during and after the clinic's regular scheduled hours of operation.

STEVEN D. DAVIS, Acting Inspector General
VICKIE YATES BROWN GLISSON, Secretary

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
(As Amended at ARRS, March 12, 2018)

907 KAR 17:005. Definitions for 907 KAR Chapter 17.

RELATES TO: KRS Chapter 13B, 194A.025(3), 199.555(2), Chapter 202A, 205.8451-205.8483, 311.550(12), 314.011(7), 387.510(15), 620.020(5), 42 U.S.C. 1382c, 1395tt, 1396-1396w-5[~~1396n(c)~~], 20 C.F.R. 416.2101, 42 C.F.R. 400.203, 405.2401(b), 412.62, Part 438, 440.40(b), 447.280, 482.58

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 U.S.C. 1396n(b), 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. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care. This administrative regulation establishes the definitions for 907 KAR Chapter 17[~~, which apply to the policies and procedures relating to the provision of Medicaid services through contracted managed care organizations pursuant to, and in accordance with, 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438~~].

Section 1. Definitions. (1) "1915(c) home and community based waiver program" means a Kentucky Medicaid program established pursuant to, and in accordance with, 42 U.S.C. 1396n(c).

(2) "Advanced practice registered nurse" is defined by KRS 314.011(7).

(3) "Adverse action" means:

(a) The denial or limited authorization of a requested service, including the type or level of service;

(b) The reduction, suspension, or termination of a previously authorized service;

(c) The denial, in whole or in part, of payment for a service;

(d) The failure to provide services in a timely manner; or

(e) The failure of a managed care organization to act within the timeframes provided in 42 C.F.R. 438.408(b).

(4)[~~"Aged" means at least sixty-five (65) years of age.~~

~~(5)~~] "Appeal" means a request for review of an adverse action or a decision by an MCO related to a covered service.

(5)[~~(6)~~] "Authorized representative" means:

(a) For an enrollee who is authorized by Kentucky law to provide written consent, an individual or entity acting on behalf of, and with written consent from, the enrollee; or

(b) A legal guardian.

(6)[~~(7)~~] "Behavioral health service" means a clinical, rehabilitative, or support service in an inpatient or outpatient setting to treat a mental illness, emotional disability, or substance use[~~abuse~~] disorder.

(7)[~~(8)~~] "Blind" is defined by 42 U.S.C. 1382c(a)(2).

(8)[~~(9)~~] "Capitation payment" means the total per enrollee, per month payment amount the department pays an MCO.

(9)[~~(10) "Capitation rate" means the negotiated amount to be paid on a monthly basis by the department to an MCO:~~

~~(a) Per enrollee; and~~

~~(b) Based on the enrollee's aid category, age, and gender.~~

~~(11)~~] "Care coordination" means the integration of all

processes in response to an enrollee's needs and strengths to ensure the:

(a) Achievement of desired outcomes; and

(b) Effectiveness of services.

(10)[~~(12)~~] "Case management" means a collaborative process that:

(a) Assesses, plans, implements, coordinates, monitors, and evaluates the options and services required to meet an enrollee's health and human service needs;

(b) Is characterized by advocacy, communication, and resource management;

(c) Promotes quality and cost-effective interventions and outcomes; and

(d) Is in addition to and not in lieu of targeted case management for individuals pursuant to 907 KAR Chapter 15[~~:~~

~~1. Adults with a chronic mental illness pursuant to 907 KAR 1:515; or~~

~~2. Children with a severe emotional disability pursuant to 907 KAR 1:525~~].

(11)[~~(13)~~] "CHFS OIG" means the Cabinet for Health and Family Services, Office of Inspector General.

(12)[~~(14)~~] "Child" means a person who:

(a)1. Is under the age of eighteen (18) years;

2.a. Is a full-time student in a secondary school or the equivalent level of vocational or technical training; and

b. Is expected to complete the program before the age of nineteen (19) years;

3. Is not self supporting;

4. Is not a participant in any of the United States Armed Forces; and

5. If previously emancipated by marriage, has returned to the home of his or her parents or to the home of another relative;

(b) Has not attained the age of nineteen (19) years in accordance with 42 U.S.C. 1396a(l)(1)(D);[~~or~~]

(c) Is under the age of nineteen (19) years if the person is a KCHIP recipient; or

(d) Is under the age of twenty-one (21) years for EPSDT.

(13)[~~(15) "Chronic Illness and Disability Payment System" means a diagnostic classification system that Medicaid programs use to make health-based, capitated payments for TANF and Medicaid beneficiaries with a disability.~~

~~(16) "Commission for Children with Special Health Care Needs" or "CCSHCN" means the Title V agency which provides specialty medical services for children with specific diagnoses and health care needs that make them eligible to participate in programs sponsored by the CCSHCN, including the provision of medical care.~~

~~(17) "Community mental health center" means a facility which meets the community mental health center requirements established in 902 KAR 20:091.~~

~~(18)~~] "Complex or chronic condition" means a physical, behavioral, or developmental condition that[~~which~~]:

(a) May have no known cure;

(b) Is progressive; or

(c) Can be debilitating or fatal if left untreated or under-treated.

(14)[~~(19) "Consumer Assessment of Healthcare Providers and Systems" or "CAHPS" means a program that develops standardized surveys that ask consumers and patients to report on and evaluate their experiences with health care.~~

~~(20)~~] "Court-ordered commitment" means an involuntary commitment by an order of a court to a psychiatric facility for treatment pursuant to KRS Chapter 202A.

(15)[~~(21)~~] "DAIL" means the Department for Aging and Independent Living.

(16)[~~(22)~~] "DCBS" means the Department for Community Based Services.

(17)[~~(23)~~] "Department" means the Department for Medicaid Services or its designee.

(18)[~~(24)~~] "Disabled" is defined by 42 U.S.C. 1382c(a)(3).

(19)[~~(25)~~] "DSM-IV" means a manual published by the American Psychiatric Association that covers all mental health disorders for both children and adults.

(20)[~~(26)~~] "Dual eligible" means an individual eligible for Medicare and Medicaid benefits.

(21)[~~(27)~~] "Early and periodic screening, diagnosis, and treatment" or "EPSDT" is defined by 42 C.F.R. 440.40(b).

(22)[~~(28)~~] "Emergency service" means "emergency services" as defined by 42 U.S.C. 1396u-2(b)(2)(B).

(23)[~~(29) "Encounter" means a health care visit of any type by an enrollee to a provider of care, drugs, items, or services.~~

~~(30)~~] "Enrollee" means a recipient who is enrolled with a managed care organization for the purpose of receiving Medicaid or KCHIP covered services.

(24)[~~(31) "External quality review organization" or "EQRO":~~

~~(a) Is defined by 42 C.F.R. 438.320; and~~

~~(b) Includes any affiliate or designee of the EQRO.~~

~~(32)~~] "Family planning service" means a counseling service, a medical service, or a pharmaceutical supply or device to prevent or delay pregnancy.

(25)[~~(33)~~] "Federally qualified health center" or "FQHC" is defined by 42 C.F.R. 405.2401(b).

(26) "Federally qualified health center look-alike" or "FQHC look-alike" means an entity that is currently approved by the United States Department of Health and Human Services, Health Resources and Services Administration, and the Centers for Medicare and Medicaid Services to be a federally qualified health center look-alike.

(27)[~~(34)~~] "Fee-for-service" means a reimbursement model in which a health insurer reimburses a provider for each service provided to a recipient.

(28)[~~(35)~~] "Foster care" is defined by KRS 620.020(5).

(29)[~~(36)~~] "Fraud" means any act that constitutes fraud under applicable federal law or KRS 205.8451 to KRS 205.8483.

(30)[~~(37)~~] "Grievance" is defined by 42 C.F.R. 438.400(b).

(31)[~~(38) "Grievance system" means a system that includes a grievance process, an appeal process, and access to the Commonwealth of Kentucky's fair hearing system.~~

~~(39) "Health maintenance organization" is defined by KRS 304.38-030(5).~~

~~(40) "Health risk assessment" or "HRA" means a health questionnaire used to provide individuals with an evaluation of their health risks and quality of life.~~

~~(41) "Healthcare Effectiveness Data and Information Set" or "HEDIS" means a tool used to measure performance regarding important dimensions of health care or services.~~

~~(42)~~] "Homeless individual" means an individual who:

(a) Lacks a fixed, regular, or nighttime residence;

(b) Is at risk of becoming homeless in a rural or urban area because the residence is not safe, decent, sanitary, or secure;

(c) Has a primary nighttime residence at a:

1. Publicly or privately operated shelter designed to provide temporary living accommodations; or

2. Public or private place not designed as regular sleeping accommodations; or

(d) Lacks access to normal accommodations due to violence or the threat of violence from a cohabitant.

(32)[~~(43)~~] "Individual with a special health care need" or "ISHCN" means an individual who:

(a) Has, or is at a high risk of having, a chronic physical, developmental, behavioral, neurological, or emotional condition; and

(b) May require a broad range of primary, specialized, medical, behavioral health, or related services.

(33)[~~(44) "Initial implementation" means the process of transitioning a current Medicaid or KCHIP recipient from fee-for-service into managed care.~~

~~(45)~~] "KCHIP" means the Kentucky Children's Health Insurance Program administered in accordance with 42 U.S.C. 1397aa to jj.

(34)[~~(46) "Kentucky Health Information Exchange" or "KHIE" means the name given to the system that will support the statewide exchange of health information among healthcare providers and organizations according to nationally-recognized standards.~~

~~(47)~~] "Managed care organization" or "MCO" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R.

438.2.

(35)[~~(48) "Marketing" means any activity conducted by or on behalf of an MCO in which information regarding the services offered by the MCO is disseminated in order to educate enrollees or potential enrollees about the MCO's services.~~

~~(49)~~] "Maternity care" means prenatal, delivery, and postpartum care and includes care related to complications from delivery.

(36)[~~(50)~~] "Medicaid works individual" means an individual who:

(a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(q)(2)(B), would be considered to be receiving SSI benefits;

(b) Is at least sixteen (16), but less than sixty-five (65), years of age;

(c) Is engaged in active employment verifiable with:

1. Paycheck stubs;

2. Tax returns;

3. 1099 forms; or

4. Proof of quarterly estimated tax;

(d) Meets the income standards established in 907 KAR 20:020; and

(e) Meets the resource standards established in 907 KAR 20:025.

(37)[~~(51)~~] "Medical record" means a single, complete record that documents all of the treatment plans developed for, and medical services received by, an individual.

(38)[~~(52) "Medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.~~

~~(53)~~] "Medicare qualified individual group 1 (QI-1)" means an eligibility category that includes, pursuant to 42 U.S.C. 1396a(a)(10)(E)(iv), an individual who would be a Qualified Medicaid beneficiary but for the fact that the individual's income:

(a) Exceeds the income level established in accordance with 42 U.S.C. 1396d(p)(2); and

(b) Is at least 120 percent, but less than 135 percent, of the federal poverty level for a family of the size involved and who is not otherwise eligible for Medicaid under the state plan.

(39)[~~(54) "National Practitioner Data Bank" means an electronic repository that collects:~~

~~(a) Information on adverse licensure activities, certain actions restricting clinical privileges, and professional society membership actions taken against physicians, dentists, and other practitioners; and~~

~~(b) Data on payments made on behalf of physicians in connection with liability settlements and judgments.~~

~~(55)~~] "Nonqualified alien" means a resident of the United States of America who does not meet the qualified alien requirements established in 907 KAR 20:005, Section 2(2)(a)2. or 3[~~1:011, Section 5(12)~~].

(40)[~~(56)~~] "Nursing facility" means:

(a) A facility:

1. To which the state survey agency has granted a nursing facility license;

2. For which the state survey agency has recommended to the department certification as a Medicaid provider; and

3. To which the department has granted certification for Medicaid participation; or

(b) A hospital swing bed that provides services in accordance with 42 U.S.C. 1395tt and 1396l, if the swing bed is certified to the department as meeting requirements for the provision of swing bed services in accordance with 42 U.S.C. 1396r(b), (c), and (d) and 42 C.F.R. 447.280 and 482.58[~~482.66~~].

(41)[~~(57)~~] "Olmstead decision" means the court decision of Olmstead v. L.C. and E.W., U.S. Supreme Court, No. 98–536, June 26, 1999 in which the U.S. Supreme Court ruled, "For the reasons stated, we conclude that, under Title II of the ADA, States are required to provide community-based treatment for persons with mental disabilities when the State's treatment professionals determine that such placement is appropriate, the affected persons do not oppose such treatment, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities."

(42)[~~(58)~~] "Open enrollment" means an annual period during which an enrollee can choose a different MCO.

(43)[~~(59)~~] "Out-of-network provider" means a person or entity that has not entered into a participating provider agreement with an MCO or any of the MCO's subcontractors.

(44)[~~(60)~~] "Physician" is defined by KRS 311.550(12).

(45)[~~(61)~~] "Post-stabilization services" means covered services related to an emergency medical condition that are provided to an enrollee:

(a) After an enrollee is stabilized in order to maintain the stabilized condition; or

(b) Under the circumstances described in 42 C.F.R. 438.114(e) to improve or resolve the enrollee's condition.

(46)[~~(62)~~] "Primary care center" means an entity that meets the primary care center requirements established in 902 KAR 20:058.

(47)[~~(63)~~] "Primary care provider" or "PCP" means a licensed or certified health care practitioner who meets the description as established in 907 KAR 17:010, Section 6(6)[~~7(6)~~].

(48)[~~(64)~~] "Prior authorization" means the advance approval by an MCO of a service or item provided to an enrollee.

(49)[~~(65)~~] "Provider" means any person or entity under contract with an MCO or its contractual agent that provides covered services to enrollees.

(50)[~~(66)~~] "Provider network" means the group of physicians, hospitals, and other medical care professionals that a managed care organization has contracted with to deliver medical services to its enrollees.

(51)[~~***(67)***~~] "QAPI" means the Quality Assessment and Performance Improvement Program established in accordance with 42 C.F.R. 438 Subpart D, ***438.206[438.200]*** to 438.242[~~907 KAR 17:025, Section 5~~].

(52)[~~(68)~~] "Qualified alien" means an alien who, at the time of applying for or receiving Medicaid benefits, meets the requirements established in 907 KAR 20:005, Section 2(2)(a)2. or 3[~~1:011, Section 5(12)~~].

(53)[~~(69)~~] "Qualified disabled and working individual" is defined by 42 U.S.C. 1396d(s).

(54)[~~(70)~~] "Qualified Medicare beneficiary" or "QMB" is defined by 42 U.S.C. 1396d(p)(1).

(55)[~~(71) "Quality improvement" or "QI" means the process of assuring that covered services provided to enrollees are appropriate, timely, accessible, available, and medically necessary and the level of performance of key processes and outcomes of the healthcare delivery system is improved through the MCO's policies and procedures.~~

~~(72)~~] "Recipient" is defined by[~~in~~] KRS 205.8451(9).

(56)[~~(73) "Region eight (8)" means the region containing Bell, Breathitt, Clay, Floyd, Harlan, Johnson, Knott, Knox, Laurel, Lee, Leslie, Letcher, Magoffin, Martin, Owsley, Perry, Pike, Whitley, and Wolfe Counties.~~

~~(74) "Region five (5)" means the region containing Anderson, Bourbon, Boyle, Clark, Estill, Fayette, Franklin, Garrard, Harrison, Jackson, Jessamine, Lincoln, Madison, Mercer, Montgomery, Nicholas, Owen, Powell, Rockcastle, Scott, and Woodford Counties.~~

~~(75) "Region four (4)" means the region containing Adair, Allen, Barren, Butler, Casey, Clinton, Cumberland, Edmonson, Green, Hart, Logan, McCreary, Metcalfe, Monroe, Pulaski, Russell, Simpson, Taylor, Warren, and Wayne Counties.~~

~~(76) "Region one (1)" means the region containing Ballard, Caldwell, Calloway, Carlisle, Crittenden, Fulton, Graves, Hickman, Livingston, Lyon, Marshall, and McCracken Counties.~~

~~(77) "Region seven (7)" means the region containing Bath, Boyd, Bracken, Carter, Elliott, Fleming, Greenup, Lawrence, Lewis, Mason, Menifee, Morgan, Robertson, and Rowan Counties.~~

~~(78) "Region six (6)" means the region containing Boone, Campbell, Gallatin, Grant, Kenton, and Pendleton Counties.~~

~~(79) "Region three (3)" means the region containing Breckenridge, Bullitt, Carroll, Grayson, Hardin, Henry, Jefferson, Larue, Marion, Meade, Nelson, Oldham, Shelby, Spencer, Trimble, and Washington Counties.~~

~~(80) "Region two (2)" means the region containing Christian, Daviess, Hancock, Henderson, Hopkins, McLean, Muhlenberg, Ohio, Todd, Trigg, Union, and Webster Counties.~~

~~(81) "Risk adjustment" means a corrective tool to reduce both the negative financial consequences for a managed care organization that enrolls high-risk users and the positive financial consequences for a managed care organization that enrolls low-risk users.~~

~~(82)~~] "Rural area" means an area not in an urban area.

(57)[~~(83)~~] "Rural health clinic" is defined by 42 C.F.R. 405.2401(b).

(58)[~~(84)~~] "Specialist" means a provider who provides specialty care.

(59)[~~(85)~~] "Specialty care" means care or a service that is provided by a provider who is not:

(a) A primary care provider; or

(b) Acting in the capacity of a primary care provider while providing the service.

(60)[~~(86)~~] "Specified low-income Medicare beneficiary" means an individual who meets the requirements established in 42 U.S.C. 1396a(a)(10)(E)(iii).

(61)[~~(87)~~] "State fair hearing" means an administrative hearing provided by the Cabinet for Health and Family Services pursuant to KRS Chapter 13B[~~and 907 KAR 1:563~~].

(62)[~~(88)~~] "State plan" is defined by 42 C.F.R. 400.203.

(63)[~~(89)~~] "State survey agency" means the Cabinet for Health and Family Services, Office of Inspector General, Division of Health Care Facilities and Services.

(64)[~~(90)~~] "State-funded adoption assistance" is defined by KRS 199.555(2).

(65)[~~(91) "Subcontract" means an agreement entered into, directly or indirectly, by an MCO to arrange for the provision of covered services, or any administrative, support or other health service, but does not include an agreement with a provider.~~

~~(92)~~] "Supplemental security income benefits" or "SSI benefits" is defined by 20 C.F.R. 416.2101(c).

(66)[~~(93) "Teaching hospital" means a hospital which has a teaching program approved as specified in 42 U.S.C. 1395x(b)(6).~~

~~(94) "Temporary Assistance for Needy Families" or "TANF" means a block grant program which is designed to:~~

~~(a) Assist needy families so that children can be cared for in their own homes;~~

~~(b) Reduce the dependency of needy parents by promoting job preparation, work, and marriage;~~

~~(c) Prevent out-of-wedlock pregnancies; and~~

~~(d) Encourage the formation and maintenance of two-parent families.~~

~~(95)~~] "Third party liability resource" means a resource available to an enrollee for the payment of expenses:

(a) Associated with the provision of covered services; and

(b) That does not include amounts exempt under Title XIX of the Social Security Act, 42 U.S.C. 1396 to 1396w-5[~~1396v~~].

(67)[~~(96)~~] "Transport time" means travel time:

(a) Under normal driving conditions; and

(b) With no extenuating circumstances.

(68)[~~(97)~~] "Urban area" is defined by 42 C.F.R. 412.62(f)(1)(ii).

(69)[~~(98)~~] "Urgent care" means care for a condition not likely to cause death or lasting harm but for which treatment should not wait for a normally scheduled appointment.

(70)[~~(99)~~] "Ward" is defined by[~~in~~] KRS 387.510(15). [~~(100) "Women, Infants and Children program" means a federally-funded health and nutrition program for women, infants, and children.~~]

STEPHEN P. MILLER, Commissioner
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: October 24, 2017

FILED WITH LRC: November 13, 2017 at 4 p.m.

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
(As Amended at ARRS, March 12, 2018)

907 KAR 17:010. Managed care organization requirements and policies relating to enrollees.

RELATES TO: KRS Chapter 13B, 194A.025(3), 205.624, 311.621-311.643, 387.500-387.800, 42 U.S.C. 1396a, 1396n[~~(c)~~], 1396u-2, 42 C.F.R. 422.112, ***422.113,*** 431.51, 431.200-***431.250, 433.138[431.241]***, Part 438, 45 C.F.R. 233.100

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 U.S.C. 1396n(b), 42 C.F.R. Part 438[~~, 2012 Ky Acts ch. 144, Part 1.G.3.b.(17)~~]

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. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care. This administrative regulation establishes the managed care organization requirements and policies relating to individuals enrolled with a Medicaid managed care organization.

Section 1. Enrollment of Medicaid or KCHIP Recipients into Managed Care. (1) Except as provided in subsection (3) of this section, enrollment into a managed care organization shall be mandatory for a Medicaid or KCHIP recipient.

(2) The provisions in this administrative regulation shall be applicable to a:

(a) Medicaid recipient; or

(b) KCHIP recipient.

(3) The following recipients shall not be required to enroll, and shall not enroll, into a managed care organization:

(a) A recipient who resides in:

1. A nursing facility for more than thirty (30) calendar days; or

2. An intermediate care facility for individuals with an intellectual disability; or

(b) A recipient who is:

1. Determined to be eligible for Medicaid benefits due to a nursing facility admission;

2. Receiving:

a. Services through the breast and cervical cancer program pursuant to 907 KAR 20:055;

b. Medicaid benefits in accordance with the spend-down policies established in 907 KAR 20:020;

c. Services through a 1915(c) home and community based services waiver program;

d. Hospice services in a nursing facility or intermediate care facility for individuals with an intellectual disability; or

e. Medicaid benefits as a Medicaid Works individual;

3. A Qualified Medicare beneficiary who is not otherwise eligible for Medicaid benefits;

4. A specified low-income Medicare beneficiary who is not otherwise eligible for Medicaid benefits;

5. A Medicare qualified individual group 1 (QI-1) individual;

6. A qualified disabled and working individual;

7. A qualified alien eligible for Medicaid benefits for a limited period of time; or

8. A nonqualified alien eligible for Medicaid benefits for a limited period of time.

(4)(a)**[~~Except for a child in foster care, a recipient who is eligible for enrollment into managed care shall be enrolled with an MCO that provides services to an enrollee whose primary residence is within the MCO's service area.~~**

[~~(b) A child in foster care shall be enrolled with an MCO in the county where the child's DCBS case is located.~~

[~~(5)(a)~~][~~During the department's implementation of managed care in accordance with this administrative regulation,~~] The department shall assign a recipient to an MCO based upon an

algorithm that considers:

1. Continuity of care; and

2. Enrollee preference of an MCO provider.

(b) An assignment shall focus on a need of a child or an individual with a special health care need.

(5)[~~(6)~~](a) A newly eligible recipient or a recipient who has had a break in eligibility of greater than two (2) months shall have an opportunity to choose an MCO during the eligibility application process.

(b) If a recipient does not choose an MCO during the eligibility application process, the department shall assign the recipient to an MCO **in accordance with subsections (4) and (6) of this section**.

(6)[~~(7)~~] Each member of a household shall be assigned to the same MCO.

(7)[~~(8)~~] The effective date of enrollment for a recipient described in subsection **(5)[~~(6)~~]** of this section shall be[~~:~~

~~(a)~~] the date of Medicaid eligibility[~~; and~~

~~(b) No earlier than January 1, 2013 for region three~~].

(8)[~~(9)~~] A recipient shall be given a choice of MCOs.

(9)[~~(10)~~] A recipient enrolled with an MCO who loses Medicaid eligibility for less than two (2) months shall be automatically reenrolled with the same MCO upon redetermination of Medicaid eligibility**[~~unless the recipient moves outside of the MCO's regional coverage~~]**.

(10)[~~(11)~~] A newborn who has been deemed eligible for Medicaid shall be automatically enrolled with the newborn's mother's MCO as an individual enrollee for up to sixty (60) calendar days.

(11)[~~(12)~~](a) An enrollee may change an MCO for any reason, regardless of whether the MCO was selected by the enrollee or assigned by the department:

1. Within ninety (90) calendar days of the effective date of enrollment;

2. Annually during an open enrollment period;

3. Upon automatic enrollment under subsection **(9)[~~(10)~~]** of this section, if a temporary loss of Medicaid eligibility caused the recipient to miss the annual opportunity in subparagraph 2. of this paragraph; or

4. When the Commonwealth of Kentucky imposes an intermediate sanction specified in 42 C.F.R. 438.702(a)(3).

(b) An MCO shall accept an enrollee who changes MCOs under this section.

(12)[~~(13)~~] Only the department ***may[~~shall have the authority to~~]***enroll a Medicaid recipient with an MCO in accordance with this section.

(13)[~~(14)~~] Upon enrollment with an MCO, an enrollee shall receive an identification card issued by the MCO[~~two (2) identification cards.~~

~~(a) A card shall be issued from the department that shall verify Medicaid eligibility.~~

~~(b) A card shall be issued by the MCO that shall verify enrollment with the MCO~~].

(14)[~~(15)~~](a) Within five (5) business days after receipt of notification of a new enrollee, an MCO shall send, by a method that shall not take more than three (3) calendar days to reach the enrollee, a confirmation letter to an enrollee.

(b) The confirmation letter shall include at least the following information:

1. The effective date of enrollment;

2. The name, location, and contact information of the PCP;

3. How to obtain a referral;

4. Care coordination;

5. The benefits of preventive health care;

6. The enrollee identification card;

7. A member handbook; and

8. A list of covered services.

(15)[~~(16)~~] Enrollment with an MCO shall be without restriction.

(16)[~~(17)~~] An MCO shall:

(a) Have continuous open enrollment for new enrollees; and

(b) Accept enrollees regardless of overall enrollment.

(17)[~~(18)~~](a) Except as provided in paragraphs[~~paragraph~~] (b) through (e) of this subsection, a recipient eligible to enroll with an MCO shall be enrolled beginning with the first day of the month that the enrollee applied for Medicaid.

(b) A newborn shall be enrolled beginning with the newborn's date of birth.

(c) An unemployed parent shall be enrolled beginning with the date the unemployed parent met the definition of unemployment in accordance with 45 C.F.R. 233.100.

(d)1. Except as provided in paragraph (e) of this subsection, if an enrollee is retroactively determined eligible for Medicaid, the retroactive eligibility shall be for a period up to three (3) months prior to the month that the enrollee applied for Medicaid.

2.[~~Except as established in paragraph (f) of this subsection,~~] An MCO shall be responsible for reimbursing for covered services provided to a retroactively determined eligible individual referenced in subparagraph 1. of this paragraph during the individual's retroactive eligibility period.

(e) If an enrollee is retroactively determined eligible for Medicaid as a result of being determined retroactively eligible for SSI benefits:

1. The individual's enrollment date with an MCO shall be the first of the month following the month in which the department is notified of the individual's retroactive eligibility for SSI benefits; and

2. The department shall be responsible for reimbursing for any services provided during the retroactive eligibility period for an individual determined to be retroactively eligible for SSI benefits. [~~(f) In addition to the reimbursement obligation established in paragraph (e)2. of this subsection, the department shall be responsible for reimbursing for services provided to an individual:~~

~~1. Determined to be retroactively eligible for any portion of the retroactive eligibility period which occurred prior to November 1, 2011 for regions one (1), two (2), four (4), five (5), six (6), seven (7), or eight (8) if the individual has a retroactive eligibility period prior to November 1, 2011; or~~

~~2. Determined to be retroactively eligible for any portion of the retroactive eligibility period which occurred prior to January 1, 2013 for region three (3) if the individual has a retroactive eligibility period prior to January 1, 2013.~~

~~(g) The requirements established in paragraph (e)2. and (f)2. of this subsection shall be effective January 1, 2013.~~]

(18)[~~(19)~~] For an enrollee whose eligibility resulted from a successful appeal of a denial of eligibility, the enrollment period shall begin:

(a)[~~1.~~] On the first day of the month of the original application for eligibility; or

(b)[~~2.~~] On the first day of the month of retroactive eligibility as referenced in subsection **(17)[~~(18)~~]**(d) or (e) of this section, if applicable[~~; and~~

~~(b) No earlier than:~~

~~1. November 1, 2011 for regions one (1), two (2), four (4), five (5), six (6), seven (7), or eight (8); or~~

~~2. January 1, 2013 for region three (3)~~].

(19)[~~(20)~~] A provider shall be responsible for verifying an individual's eligibility for Medicaid and enrollment in a managed care organization when providing a service.

Section 2. Disenrollment. (1) The policies established in 42 C.F.R. 438.56 shall apply to an MCO.

(2) Only the department ***may[~~shall have the authority to~~]*** disenroll a recipient from an MCO.

(3) A disenrollment of a recipient from an MCO shall[~~:~~

~~(a) Become effective on the first day of the month following disenrollment; and~~

~~(b)~~] occur:

(a)[~~1.~~] If the enrollee:

1.[~~a.~~]**[~~No longer resides in an area served by the MCO;~~**

2.][~~b.~~] Becomes incarcerated or deceased; or

2.[3.][~~c.~~] Is exempt from managed care enrollment in accordance with Section 1(3) of this administrative regulation; or

(b)[~~2.~~] In accordance with 42 C.F.R. 438.56.

(4) An MCO may recommend to the department that an enrollee be disenrolled if the enrollee:

(a) Is found guilty of fraud in a court of law or administratively determined to have committed fraud related to the Medicaid

Program;

(b) Is abusive or threatening but not for uncooperative or disruptive behavior resulting from his or her special needs (except if his or her continued enrollment in the MCO seriously impairs the entity's ability to furnish services to either this particular enrollee or other enrollees) pursuant to 42 C.F.R. 438.56(b)(2); **or**

(c) Becomes deceased**[; or**

(d) No longer resides in an area served by the MCO].

(5) An enrollee shall not be disenrolled by the department, nor shall the managed care organization recommend disenrollment of an enrollee, due to an adverse change in the enrollee's health.

(6)(a) An approved disenrollment shall be effective no later than the first day of the second month following the month the enrollee or the MCO files a request in accordance with 42 C.F.R. 438.56(e)(1).

(b) If the department fails to make a determination within the timeframe specified in paragraph (a) of this subsection, the disenrollment shall be considered approved in accordance with 42 C.F.R. 438.56(e)(2).

(7) If an enrollee is disenrolled from an MCO, the:

(a) Enrollee shall be enrolled with a new MCO if the enrollee is:

1. Eligible for Medicaid; and

2. Not excluded from managed care participation; and

(b) MCO shall:

1. Assist in the selection of a new primary care provider, if requested;

2. Cooperate with the new primary care provider in transitioning the enrollee's care; and

3. Make the enrollee's medical record available to the new primary care provider in accordance with state and federal law.

(8) An MCO shall notify the department or Social Security Administration in an enrollee's county of residence within five (5) working days of receiving notice of the death of an enrollee.

Section 3. Enrollee Rights and Responsibilities.[~~(1)~~] An MCO shall have written policies and procedures[~~:~~

~~(a)~~] to protect the rights of an enrollee that meets[~~includes the:~~

~~1. Protection against liability for payment in accordance with 42 U.S.C. 1396u-2(b)(6);~~

~~2. Rights specified in 42 C.F.R. 438.100;~~

~~3. Right to prepare an advance medical directive pursuant to KRS 311.621 through KRS 311.643;~~

~~4. Right to choose and change a primary care provider;~~

~~5. Right to file a grievance or an appeal;~~

~~6. Right to receive assistance in filing a grievance or an appeal;~~

~~7. Right to a state fair hearing;~~

~~8. Right to a timely referral and access to medically indicated specialty care; and~~

~~9. Right to access the enrollee's medical records in accordance with federal and state law; and~~

~~(b) Regarding the responsibilities of enrollees that include the responsibility to:~~

~~1. Become informed about:~~

~~a. Enrollee rights specified in paragraph (a) of this subsection; and~~

~~b. Service and treatment options;~~

~~2. Abide by the MCO's and department's policies and procedures;~~

~~3. Actively participate in personal health and care decisions;~~

~~4. Report suspected fraud or abuse; and~~

~~5. Keep appointments or call to cancel if unavailable to keep an appointment.~~

~~(2) The information specified in subsection (1) of this section shall meet~~] the information requirements established in 42 C.F.R. 438.10**[and the negotiated terms of the contract between the MCO and the department]**.

Section 4. MCO Internal Appeal Process. (1)[~~An MCO shall have written policies and procedures describing how an enrollee shall submit a request for:~~

~~(a) A grievance with the MCO;~~

~~(b) An appeal with the MCO; or~~

~~(c) A state fair hearing in accordance with KRS Chapter 13B.~~

~~(2)~~] An enrollee may[~~shall have thirty (30) calendar days from the date of an event causing dissatisfaction to~~] file a grievance orally or in writing with the MCO at any time.

(a) Within five (5) working days of receipt of a grievance, an MCO shall provide the enrollee with written notice that the grievance has been received and the expected date of its resolution.

(b) An investigation and final resolution of a grievance shall:

1. Be completed within thirty (30) calendar days of the date the grievance is received by the MCO; and

2. Include a resolution letter to the enrollee that shall include:

a. All information considered in investigating the grievance;

b. Findings and conclusions based on the investigation; and

c. The disposition of the grievance.

(2)[~~(3)~~] An MCO shall have an internal appeal process in place that allows an enrollee to challenge a denial of coverage of, or payment for, a service in accordance with 42 C.F.R. 438.400 through 438.424 and 42 U.S.C. 1396u-2(b)(4).

(3)[~~(4)~~](a) A provider shall not be an authorized representative of an enrollee without the enrollee's written consent for the specific action that is being appealed or that is the subject of a state fair hearing.

(b)1. For authorized representative purposes, written consent unique to an appeal or state fair hearing shall be required for the appeal or state fair hearing.

2. A single written consent shall not qualify as written consent for more than one (1):

a. Hospital admission;

b. Physician or other provider visit; or

c. Treatment plan.

(4)[~~(5)~~] A legal guardian of an enrollee who is a minor or an incapacitated adult or an authorized representative of an enrollee in accordance with subsection (3)[~~(4)~~] of this section ***may[~~shall have the right to~~]*** file an appeal on behalf of the enrollee.

(5)[~~(6)~~] An enrollee shall have sixty (60)[~~thirty (30)~~] calendar days from the date of receiving a notice of adverse action from an MCO to file an appeal either orally or in writing with the MCO.

(6)[~~(7)~~] An MCO shall resolve an appeal within thirty (30) calendar days from the date the initial oral or written appeal is received by the MCO.

(7)[~~(8)~~] An MCO shall have a process in place that ensures that an oral or written inquiry from an enrollee seeking to appeal an adverse action is treated as an appeal to establish the earliest possible filing date for the appeal.

(8)[~~(9)~~] An oral appeal shall be followed by a written appeal that is signed by the enrollee or an individual listed in subsection (4)[~~(5)~~] of this section within ten (10) calendar days.

(9)[~~(10)~~](a) Within five (5) working days of receipt of an appeal, an MCO shall provide the enrollee with written notice that the appeal has been received and the expected date of its resolution. A copy of this information shall also be sent to an individual listed in subsection (4)[~~(5)~~] of this section, if applicable.

(b) An MCO shall confirm in writing receipt of an oral appeal unless an expedited resolution has been requested.

(10)[~~(11)~~] An MCO shall extend the thirty (30) day timeframe for resolution of an appeal established in subsection (6)[~~(7)~~] of this section by fourteen (14) calendar days if:

(a) The enrollee requests the extension; or

(b)1. The MCO demonstrates to the department that there is need for additional information; and

2. The extension is in the enrollee's interest.

(11)[~~(12)~~] For an extension requested by an MCO, the MCO shall give the enrollee written notice of the extension and the reason for the extension within two (2) working days of the decision to extend.

(12)[~~(13)~~](a) For an appeal, an MCO shall provide written notice of its decision within thirty (30) calendar days to an enrollee or a provider, if the provider filed the appeal.

(b) The provider shall:

1. Give a copy of the notice to the enrollee; or

2. Inform the enrollee of the provisions of the notice.

(13)[~~(14)~~] An MCO shall:

(a) Continue to provide benefits to an enrollee, if the enrollee requested a continuation of benefits, until one (1) of the following occurs:

1. The enrollee withdraws the appeal;

2. Fourteen (14) calendar days have passed since the date of the resolution letter, if the resolution of the appeal was against the enrollee and the enrollee has not requested a state fair hearing or taken any further action; or

3. A state fair hearing decision adverse to the enrollee has been issued;

(b) Have an expedited review process for appeals if the MCO determines that allowing the time for a standard resolution could seriously jeopardize an enrollee's life or health or ability to attain, maintain, or regain maximum function;

(c) Resolve an expedited appeal within three (3) working days of receipt of the request; and

(d) Extend the timeframe for an expedited appeal established in paragraph (c) of this subsection by up to fourteen (14) calendar days if:

1. The enrollee requests the extension; or

2.a. The MCO demonstrates to the department that there is need for additional information; and

b. The extension is in the enrollee's interest.

(14)[~~(15)~~] For an extension requested by an MCO, the MCO shall give the enrollee written notice of the reason for the extension.

(15)[~~(16)~~] If an MCO denies a request for an expedited resolution of an appeal, the MCO[~~it~~] shall:

(a) Transfer the appeal to the thirty (30) day timeframe for a standard resolution, in which the thirty (30) day period shall begin on the date the MCO received the original request for appeal;

(b) Give prompt oral notice of the denial; and

(c) Follow up with a written notice within two (2) calendar days of the denial.

(16)[~~(17)~~] An MCO shall document in writing an oral request for an expedited resolution and shall maintain the documentation in the enrollee case file.

(17)[~~(18) An MCO shall:~~

~~(a) Provide information specified in 42 C.F.R. 438.10(g)(1) about the grievance system to a service provider and a subcontractor at the time they enter into a contract;~~

~~(b) Maintain a grievance or an appeal file in a secure and designated area;~~

~~(c) Make a grievance or an appeal file accessible to the department or its designee upon request;~~

~~(d) Retain a grievance or an appeal file for ten (10) years following a final decision by the MCO, the department, an administrative law judge, judicial appeal, or closure of a file, whichever occurs later;~~

~~(e) Have procedures for assuring that a grievance or an appeal file contains:~~

~~1. Information to identify the grievance or appeal;~~

~~2. The date a grievance or appeal was received;~~

~~3. The nature of the grievance or appeal;~~

~~4. A notice to the enrollee of receipt of the grievance or appeal;~~

~~5. Correspondence between the MCO and the enrollee;~~

~~6. The date the grievance or appeal is resolved;~~

~~7. The decision made by the MCO of the grievance or appeal;~~

~~8. The notice of a final decision to the enrollee; and~~

~~9. Information pertaining to the grievance or appeal; and~~

~~(f) Make available to an enrollee documentation regarding a grievance or an appeal.~~

~~(19) An MCO shall designate an individual to:~~

~~(a) Execute the policies and procedures for resolution of a grievance or appeal;~~

~~(b) Review patterns or trends in grievances or appeals; and~~

~~(c) Initiate a corrective action, if needed.~~

~~(20)~~] If an MCO takes adverse action at the conclusion of an internal appeal process, the MCO shall issue an adverse action letter to the enrollee that complies with KRS 13B.050(3)(d) and (e).

(18)[~~(21)~~](a) The requirements and policies stated in this section[~~of this administrative regulation~~] regarding an MCO appeal shall apply to an MCO.

(b) If a requirement or policy regarding an appeal or an MCO appeal stated in another Kentucky administrative regulation within Title 907 of the Kentucky Administrative Regulations contradicts a requirement or policy regarding an MCO appeal that is stated in this section[~~of this administrative regulation~~], the requirement or policy stated in the other administrative regulation shall not apply to an MCO.

Section 5. Department's State Fair Hearing for an Enrollee. (1) An enrollee ***may[shall]*** have***[a right to]*** a state fair hearing administered by the department in accordance with KRS Chapter 13B only after exhausting an MCO's internal appeal process.

(2) The department shall provide an enrollee with a hearing process that shall adhere to 907 KAR 1:563; 42 C.F.R. 438, Subpart F (438.400-438.424); and 42 C.F.R. 431, Subpart E (431.200-431.250).

(3)(a) An enrollee or authorized representative may request a state fair hearing by filing a written request with the department.

(b) If an enrollee or authorized representative requests a hearing, the request shall:

1. Be in writing and specify the reason for the request;

2. Indicate the date of service or the type of service denied; and

3. Be postmarked or filed within 120 calendar[~~forty five (45)~~] days from the date of the MCO adverse action letter issued at the conclusion of the MCO internal appeal process.

(4) A document supporting an MCO's adverse action shall be:

(a) Received by the department no later than five (5) calendar days from the date the MCO receives a notice from the department that a request for a state fair hearing has been filed by an enrollee; and

(b) Made available to an enrollee upon request by either the enrollee or the enrollee's legal counsel.

(5) An automatic ruling shall be made by the department in favor of an enrollee if an MCO fails to:

(a) Comply with the requirements of:

1. Section 4 of this administrative regulation; or

2. Subsection (4) of this section; or

(b) Participate in and present evidence at the state fair hearing.

Section 6.[~~Member Services. (1) An MCO shall have a member services function that includes a member call center and a behavioral health call center that shall:~~

~~(a) Be staffed Monday through Friday from 7:00 a.m. to 7:00 p.m. Eastern Time; and~~

~~(b) Meet the call center standards, which shall:~~

~~1. Be approved by the American Accreditation Health Care Commission or Utilization Review Accreditation Committee (URAC); and~~

~~2. Include provisions addressing the call center abandonment rate, blockage rate, and average speed of answer.~~

~~(2)(a) An MCO shall provide access to medical advice to an enrollee through a toll-free call-in system, available twenty-four (24) hours a day, seven (7) days a week.~~

~~(b) The call-in system shall be staffed by medical professionals to include:~~

~~1. Physicians;~~

~~2. Physician assistants;~~

~~3. Licensed practical nurses; or~~

~~4. Registered nurses.~~

~~(3) An MCO shall:~~

~~(a) Provide foreign language interpreter services, free of charge, for an enrollee;~~

~~(b) Respond to the special communication needs of the disabled, blind, deaf, or aged;~~

~~(c) Facilitate direct access to a specialty physician for an enrollee:~~

~~1. With a chronic or complex health condition;~~

~~2. Who is aged, blind, deaf, or disabled; or~~

~~3. Identified as having a special healthcare need and requiring a course of treatment or regular healthcare monitoring;~~

~~(d) Arrange for and assist with scheduling an EPSDT service in conformance with federal law governing EPSDT;~~

~~(e) Provide an enrollee with information or refer the enrollee to a support service;~~

~~(f) Facilitate direct access to a covered service in accordance with 907 KAR 17:020;~~

~~(g) Facilitate access to a:~~

~~1. Behavioral health service;~~

~~2. Pharmaceutical service; or~~

~~3. Service provided by a public health department, community mental health center, rural health clinic, federally qualified health center, the Commission for Children with Special Health Care Needs, or a charitable care provider;~~

~~(h) Assist an enrollee in:~~

~~1. Scheduling an appointment with a provider;~~

~~2. Obtaining transportation for an emergency or non-emergency service;~~

~~3. Completing a health risk assessment; or~~

~~4. Accessing an MCO health education program;~~

~~(i) Process, record, and track an enrollee grievance and appeal; or~~

~~(j) Refer an enrollee to case management or disease management.~~

~~Section 7.~~] Enrollee Selection of Primary Care Provider. (1) Except for an enrollee described in subsection (2) of this section, an MCO shall have a process for enrollee selection and assignment of a primary care provider.

(2) The following shall not be required to have, but may request, a primary care provider:

(a) A dual eligible;

(b) A child in foster care;

(c) A child under the age of eighteen (18) years who is disabled;[~~or~~]

(d) A pregnant woman who is presumptively eligible pursuant to 907 KAR 20:050; or

(e) An adult for whom the state is appointed a guardian[~~1:810~~].

(3)(a) For an enrollee who is not receiving supplemental security income benefits:

1. An MCO shall notify the enrollee within ten (10) calendar days of notification of enrollment by the department of the procedure for choosing a primary care provider; and

2. If the enrollee does not choose a primary care provider, an MCO shall assign to the enrollee a primary care provider who:

a. Has historically provided services to the enrollee; and

b. Meets the requirements of subsection (6) of this section.

(b) If no primary care provider meets the requirements of paragraph (a)2. of this subsection, an MCO shall assign the enrollee to a primary care provider who is within:

1. Thirty (30) miles or thirty (30) minutes from the enrollee's residence if the enrollee is in an urban area; or

2. Forty-five (45) miles or forty-five (45) minutes from the enrollee's residence if the enrollee is in a rural area.

(4)(a) For an enrollee who is receiving supplemental security income benefits and
is not a dual eligible, an MCO shall notify the enrollee of the procedure for choosing a primary care provider.

(b) If an enrollee has not chosen a primary care provider within thirty (30) calendar days, an MCO shall send a second notice to the enrollee.

(c) If an enrollee has not chosen a primary care provider within thirty (30) calendar days of the second notice, the MCO shall send a third notice to the enrollee.

(d) If an enrollee has not chosen a primary care provider within thirty (30) calendar days after the third notice, the MCO shall assign a primary care provider.

(e) Except for an enrollee who was previously enrolled with the MCO, an MCO shall not automatically assign a primary care provider within ninety (90) calendar days of the enrollee's initial enrollment.

(5)(a) An enrollee ***may[~~shall be allowed to~~]*** select from at least two (2) primary care providers within an MCO's provider network.

(b) At least one (1) of the two (2) primary care providers referenced in paragraph (a) of this subsection shall be a physician.

(6) A primary care provider shall:

(a) Be a licensed or certified health care practitioner who functions within the provider's scope of licensure or certification, including:

1. A physician;

2. An advanced practice registered nurse;

3. A physician assistant; or

4. A clinic, including a primary care center, federally qualified health center, federally qualified health center look-alike, or rural health clinic;

(b) Have admitting privileges at a hospital or a formal referral agreement with a provider possessing admitting privileges;

(c) Agree to provide twenty-four (24) hours a day, seven (7) days a week primary health care services to enrollees; and

(d) For an enrollee who has a gynecological or obstetrical health care need, a disability, or chronic illness, be a specialist who agrees to provide or arrange for primary and preventive care.

(7) Upon enrollment in an MCO, an enrollee ***may[~~shall have the right to~~]*** change primary care providers:

(a) Within the first ninety (90) calendar days of assignment;

(b) Once a year regardless of reason;

(c) At any time for a reason approved by the MCO;

(d) If, during a temporary loss of eligibility, an enrollee loses the opportunity provided by paragraph (b) of this subsection;

(e) If Medicare or Medicaid imposes a sanction on the PCP;

(f) If the PCP is no longer in the MCO provider network; or

(g) At any time with cause, which shall include the enrollee:

1. Receiving poor quality of care;

2. Lacking access to providers qualified to treat the enrollee's medical condition; or

3. Being denied access to needed medical services.

(8) A PCP shall not be able to request the reassignment of an enrollee to a different PCP for the following reasons:

(a) A change in the enrollee's health status or treatment needs;

(b) An enrollee's utilization of health services;

(c) An enrollee's diminished mental capacity; or

(d) Disruptive behavior of an enrollee due to the enrollee's special health care needs unless the behavior impairs the PCP's ability to provide services to the enrollee or others.

(9) A PCP change request shall not be based on race, color, national origin, disability, age, or gender.

(10) An MCO ***may[~~shall have the authority to~~]*** approve or deny a primary care provider change.

(11) An enrollee shall be able to obtain the following services outside of an MCO's provider network:

(a) A family planning service in accordance with 42 C.F.R. 431.51;

(b) An emergency service in accordance with 42 C.F.R. 438.114;

(c) A post-stabilization service in accordance with 42 C.F.R. 438.114 and 42 C.F.R. 422.113(c); or

(d) An out-of-network service that an MCO is unable to provide within its network to meet the medical need of the enrollee in accordance with 42 C.F.R. 438.206(b)(4) subject to any prior authorization requirements of the MCO.

(12) An MCO shall:

(a) Notify an enrollee within:

1. Thirty (30) calendar days of the effective date of a voluntary termination of the enrollee's primary care provider; or

2. Fifteen (15) calendar days of an involuntary termination of the enrollee's primary care provider; and

(b) Assist the enrollee in selecting a new primary care provider.

Section 7[8]. Member Handbook.[~~(1)~~] An MCO shall[~~:~~

~~(a)~~] send a member handbook to an enrollee as required by 42 C.F.R. 438.10**[and the negotiated terms of the contract between the MCO and the department]**[~~, by a method that shall not take more than three (3) days to reach the enrollee, within five (5) business days of enrollment;~~

~~(b) Review the member handbook at least annually;~~

~~(c) Communicate a change to the member handbook to an enrollee in writing; and~~

~~(d) Add a revision date to the member handbook after revising the member handbook.~~

~~(2) A member handbook shall:~~

~~(a) Be available:~~

~~1. In hardcopy in English, Spanish, and any other language spoken by at least five (5) percent of the potential enrollee or enrollee population; and~~

~~2. On the MCO's Web site;~~

~~(b) Be written at no higher than a sixth grade reading comprehension level;~~

~~(c) Include at a minimum the following information:~~

~~1. The MCO's network of primary care providers, including the names, telephone numbers, and service site addresses of available primary care providers, and, if desired by the MCO, the names and contact information for other providers included in the MCO's network;~~

~~2. The procedures for:~~

~~a. Selecting a PCP and scheduling an initial health appointment;~~

~~b. Obtaining:~~

~~(i) Emergency or non-emergency care after hours;~~

~~(ii) Transportation for emergency or non-emergency care;~~

~~(iii) An EPSDT service;~~

~~(iv) A covered service from an out-of-network provider; or~~

~~(v) A long term care service;~~

~~c. Notifying DCBS of a change in family size or address, a birth, or a death of an enrollee;~~

~~d. Selecting or requesting to change a PCP, which shall include:~~

~~(i) A reason a request for a change may be denied by the MCO; and~~

~~(ii) A reason a provider may request to transfer an enrollee to a different PCP; and~~

~~e. Filing a grievance or appeal, including the title, address, and telephone number of the person responsible for processing and resolving a grievance or appeal;~~

~~3. The name of the MCO, address, and telephone number from which it conducts its business;~~

~~4. The MCO's:~~

~~a. Business hours; and~~

~~b. Member service and toll-free medical call-in telephone numbers;~~

~~5. Covered services, an explanation of any service limitation or exclusion from coverage, and a notice stating that the MCO shall be liable only for those services authorized by the MCO, except for the services excluded in Section 7(11) of this administrative regulation;~~

~~6. Member rights and responsibilities;~~

~~7. For a life-threatening situation, instructions to use the emergency medical services available or to activate emergency medical services by dialing 911;~~

~~8. Information on:~~

~~a. The availability of maternity and family planning services, and for the prevention and treatment of sexually transmitted diseases;~~

~~b. Accessing the services referenced in clause a. of this subparagraph;~~

~~c. Accessing care before a primary care provider is assigned or chosen;~~

~~d. The Cabinet for Health and Family Services' independent ombudsman program; and~~

~~e. The availability of, and procedures for, obtaining:~~

~~(i) A behavioral health or substance abuse service;~~

~~(ii) A health education service; and~~

~~(iii) Care coordination, case management, and disease management services;~~

~~9. Direct access services that may be accessed without a referral; and~~

~~10. An enrollee's right to obtain a second opinion and information on obtaining a second opinion; and~~

~~(d) Meet the information requirements established in Section 11 of this administrative regulation.~~

~~(3) Changes to the member handbook shall be approved by the department prior to the publication of the handbook.~~

~~Section 9. Member Education and Outreach. (1) An MCO shall:~~

~~(a) Have an enrollee and community education and outreach program throughout the MCO's service area;~~

~~(b) Submit an annual outreach plan to the department for approval;~~

~~(c) Assess the homeless population within its service area by implementing and maintaining an outreach plan for homeless individuals, including victims of domestic violence; and~~

~~(d) Not differentiate between a service provided to an enrollee who is homeless and an enrollee who is not homeless.~~

~~(2) An MCO's outreach plan shall include:~~

~~(a) Utilizing existing community resources including shelters and clinics; and~~

~~(b) Face-to-face encounters~~].

Section 8[~~10~~]. Enrollee Non-Liability and Liability for Payment. (1)(a) Except as specified in Section 9 of this administrative regulation[~~907 KAR 17:030~~], an enrollee shall not be required to pay for a medically necessary covered service provided by the enrollee's MCO.

(b) An enrollee may be liable for the costs of services received during an appeal process in accordance with:

1.[~~907 KAR 17:025, Section 2(4)(b)2g;~~

~~2.~~] 42 C.F.R. 431.230; or

2.[~~3.~~] 42 C.F.R. 438.404.

(2)[~~(a)~~] An MCO shall not impose cost sharing on an enrollee greater than the limits established by the department in 907 KAR 1:604.

Section 9. Recoupment of Payment from an Enrollee for Fraud, Waste, or Abuse. (1) If an enrollee is determined to be ineligible for Medicaid through an administrative hearing or adjudication of fraud by the CHFS OIG, the department shall recoup a capitation payment it has made to an MCO on behalf of the enrollee.

(2) An MCO shall request a refund from the enrollee referenced in subsection (1) of this section of a payment the MCO has made to a provider for the service provided to the enrollee.

(3) If an MCO has been unable to collect a refund referenced in subsection (2) of this section within six (6) months, the commonwealth ***may[~~shall have the right to~~]*** recover the refund from the enrollee.

Section 10. Third Party Liability and Coordination of Benefits. (1) Medicaid shall be the payer of last resort for a service provided to an enrollee.

(2) An MCO shall:

(a) Exhaust a payment by a third party prior to payment for a service provided to an enrollee;

(b) Be responsible for determining a legal liability of a third party to pay for a service provided to an enrollee;

(c) Actively seek and identify a third party liability resource to pay for a service provided to an enrollee in accordance with 42 C.F.R. 433.138; and

(d) Assure that Medicaid shall be the payer of last resort for a service provided to an enrollee.

(3) In accordance with 907 KAR 20:005 and KRS 205.624, an enrollee shall:

(a) Assign, in writing, to the MCO the enrollee's rights to a medical support or payment from a third party for a medical service paid for by the MCO; and

(b) Cooperate with an MCO in identifying and providing information to assist the MCO in pursuing a third party that may be liable for care or services.

(4) If an MCO becomes aware of a third party liability resource after payment for a service provided to an enrollee, the MCO shall seek recovery from the third party resource.

Section 11.[~~(b) An MCO operating in Region 3 shall not impose cost sharing on an enrollee enrolled with the MCO in Region 3 prior to January 1, 2014.~~

~~Section 11. Provision of Information Requirements. (1) An MCO shall:~~

~~(a) Comply with the requirements established in 42 U.S.C. 1396u-2(a)(5) and 42 C.F.R. 438.10; and~~

~~(b) Provide translation services to an enrollee on site or via telephone.~~

~~(2) Written material provided by an MCO to an enrollee or potential enrollee shall:~~

~~(a) Be written at a sixth grade reading comprehension level;~~

~~(b) Be published in at least a fourteen (14) point font;~~

~~(c) Comply with the requirements established in 42 U.S.C. Chapter 126, the Americans with Disabilities Act;~~

~~(d) Be updated as necessary to maintain accuracy;~~

~~(e) Be available in Braille or in an audio format for an individual who is partially blind or blind; and~~

~~(f) Be provided and printed in each language spoken by five (5) percent or more of the enrollees in each county.~~

~~(3)(a) All written material intended for an enrollee, unless unique to an individual enrollee or exempted by the department, shall be submitted to the department for review and approval prior to publication or distribution to the enrollee.~~

~~(b) Written material submitted to the department for review by an MCO shall be considered approved by the department if the department does not object or notify an MCO within:~~

~~1. Thirty (30) days regarding a standard submission; or~~

~~2. Five (5) days regarding an expedited submission.~~

~~(c)1. Written material submitted to the department for review and approval shall be considered received for review beginning with the date that the commissioner or a deputy commissioner of the department acknowledges, to the MCO, receipt of the submission.~~

~~2. The acknowledgement referenced in subparagraph 1 of this paragraph shall be demonstrated by evidence of:~~

~~a. A return receipt if sent via U.S. Mail;~~

~~b. A read receipt if sent via e-mail; or~~

~~c. The signature of a Cabinet for Health and Family Services employee taking receipt of the submission in the case of hand-delivery, including overnight mail or courier delivery.~~

~~Section 12. Confidentiality of Medical Information. (1) An MCO shall:~~

~~(a) Maintain confidentiality of all enrollee eligibility information and medical records;~~

~~(b) Prevent unauthorized disclosure of the information referenced in this subsection in accordance with KRS 194A.060, KRS 214.185, KRS 434.840 to 434.860, and 42 C.F.R. 431 Subpart F, 431.300 to 431.307;~~

~~(c) Have written policies and procedures for maintaining the confidentiality of enrollee records;~~

~~(d) Comply with 42 U.S.C. 1320d-2, the Health Insurance Portability and Accountability Act, and 45 C.F.R. Parts 160 and 164;~~

~~(e) On behalf of its employees and agents:~~

~~1. Sign a confidentiality agreement attesting that it will comply with the confidentiality requirements established in this section; and~~

~~2. Submit the confidentiality agreement referenced in subparagraph 1. of this paragraph to the department;~~

~~(f) Limit access to medical information to a person or agency which requires the information in order to perform a duty related to the department's administration of the Medicaid program, including the department, the United States Department of Health and Human Services, the United States Attorney General, the CHFS OIG, the Kentucky Attorney General, or other agency required by the department; and~~

~~(g) Submit a request for disclosure of information referenced in this subsection which has been received by the MCO to the department within twenty-four (24) hours.~~

~~(2) Information referenced in subsection (1)(g) of this section shall not be disclosed by an MCO pursuant to the request without prior written authorization from the department.~~

~~Section 13. Americans with Disabilities Act and Cabinet Ombudsman. (1) An MCO shall:~~

~~(a) Require by contract with its network providers and subcontractors that a service location meets:~~

~~1. The requirements established in 42 U.S.C. Chapter 126, the Americans with Disabilities Act; and~~

~~2. All local requirements which apply to health facilities pertaining to adequate space, supplies, sanitation, and fire and safety procedures;~~

~~(b) Fully cooperate with the Cabinet for Health and Family Services independent ombudsman; and~~

~~(c) Provide immediate access to the Cabinet for Health and Family Services independent ombudsman to an enrollee's records if the enrollee has given consent.~~

~~(2) An MCO's member handbook shall contain information regarding the Cabinet for Health and Family Services independent ombudsman program.~~

~~Section 14. Marketing. (1) An MCO shall:~~

~~(a) Comply with the requirements established in 42 C.F.R. 438.104 regarding marketing activities;~~

~~(b) Have a system of control over the content, form, and method of dissemination of its marketing and information materials;~~

~~(c) Submit a marketing plan and marketing materials to the department for written approval prior to implementation or distribution;~~

~~(d) If conducting mass media marketing, direct the marketing activities to enrollees in the entire service area pursuant to the marketing plan;~~

~~(e) Not conduct face-to-face marketing;~~

~~(f) Not use fraudulent, misleading, or misrepresentative information in its marketing materials;~~

~~(g) Not offer material or financial gain to a:~~

~~1. Potential enrollee as an inducement to select a particular provider or use a product; or~~

~~2. Person for the purpose of soliciting, referring, or otherwise facilitating the enrollment of an enrollee;~~

~~(h) Not conduct:~~

~~1. Direct telephone marketing to enrollees or potential enrollees who do not reside in the MCO service area; or~~

~~2. Direct or indirect door-to-door, telephone, or other cold-call marketing activity; and~~

~~(i) Not include in its marketing materials an assertion or statement that the Centers for Medicare and Medicaid Services (CMS), the federal government, the Commonwealth, or another entity endorses the MCO.~~

~~(2) An MCO's marketing material shall meet the information requirements established in Section 11 of this administrative regulation.~~

~~Section 15.~~] Legal Guardians. (1) A parent, custodial parent, person exercising custodial control or supervision, or an agency with a legal responsibility for a child by virtue of a voluntary commitment or of an emergency or temporary custody order ***may[~~shall be authorized to~~]*** act on behalf of an enrollee who is under the age of eighteen (18) years, a potential enrollee, or a former enrollee for the purpose of:

(a) Selecting a primary care provider;

(b) Filing a grievance or appeal; or

(c) Taking an action on behalf of the child regarding an interaction with an MCO.

(2)(a) A legal guardian who has been appointed pursuant to KRS 387.500 to 387.800 ***may[~~shall be allowed to~~]*** act on behalf of an enrollee who is a ward of the commonwealth.

(b) A person authorized to make a health care decision pursuant to KRS 311.621 to 311.643 ***may[~~shall be allowed to~~]*** act on behalf of an enrollee, potential enrollee, or former enrollee in making the health care decisions.

(c) An enrollee ***may[~~shall have the right to~~]***:

1. Represent the enrollee; or

2. Use legal counsel, a relative, a friend, or other spokesperson.

Section 12[~~16. Enrollee Surveys. (1) An MCO shall:~~

~~(a) Conduct an annual survey of enrollee satisfaction of the quality and accessibility to a service provided by an MCO;~~

~~(b) Satisfy a member satisfaction survey requirement by participating in the Agency for Health Research and Quality's current Consumer Assessment of Healthcare Providers and Systems Survey (CAHPS) for Medicaid Adults and Children, which shall be administered by an NCQA-certified survey vendor;~~

~~(c) Provide a copy of the current CAHPS survey referenced in~~

~~paragraph (b) of this subsection to the department;~~

~~(d) Annually assess the need for conducting other surveys to support quality and performance improvement initiatives;~~

~~(e) Submit to the department for approval the survey tool used to conduct the survey referenced in paragraph (a) of this subsection; and~~

~~(f) Provide to the department:~~

~~1. A copy of the results of the enrollee survey referenced in paragraph (a) of this subsection;~~

~~2. A description of a methodology to be used to conduct each survey;~~

~~3. The number and percentage of enrollees surveyed;~~

~~4. Enrollee survey response rates;~~

~~5. Enrollee survey findings; and~~

~~6. Interventions conducted or planned by the MCO related to activities in this section.~~

~~(2) The department shall:~~

~~(a) Approve enrollee survey instruments prior to implementation; and~~

~~(b) Approve or disapprove an MCO's enrollee survey tool within fifteen (15) days of receipt of the survey tool.~~

~~(3) If an MCO conducts a survey that targets a subpopulation's perspective or experience with access, treatment, or services, the MCO shall comply with the requirements established in subsection (1)(e) and (f) of this section.~~

~~Section 17~~]. Enrollees with Special Health Care Needs. (1)(a) In accordance with 42 C.F.R. 438.208, the following shall be considered an individual with a special health care need:

1. A child in or receiving foster care or state-funded adoption assistance;

2. A homeless individual;

3. An individual with a chronic physical or behavioral illness;

4. A blind or disabled child;

5. An individual who is eligible for SSI benefits; or

6. An adult who is a ward of the Commonwealth in accordance with 910 KAR Chapter 2.

(b) In accordance with 42 C.F.R. 438.208, an MCO shall:

1. Have a process to target enrollees for the purpose of screening and identifying those with special health care needs;

2. Assess each enrollee identified by the department as having a special health care need to determine if the enrollee needs case management or regular care monitoring;

3. Include the use of appropriate health care professionals to perform an assessment; and

4. Have a treatment plan for an enrollee with a special health care need who has been determined, through an assessment, to need a course of treatment or regular care monitoring.

(c)1. An enrollee who is a child in foster care[~~or receiving adoption assistance~~] shall be enrolled with an MCO through a service plan that shall be completed for the enrollee by DCBS prior to being enrolled with the MCO.

2.a. The service plan referenced in subparagraph 1. of this paragraph shall be used by DCBS and the MCO to determine the enrollee's medical needs and to identify if there is a need for case management.

b. The MCO shall be available to meet with DCBS at least quarterly[~~once a month~~] to discuss the health care needs of the child as identified in the service plan. The child's caretaker may attend each meeting held to discuss the health care needs of that child.

c. If a service plan identifies the need for case management or DCBS requests case management for an enrollee, the foster parent of the child or DCBS shall work with the MCO to develop a case management plan of care.

d. The MCO shall consult with DCBS prior to developing or modifying a case management plan of care.

e. If the service plan accomplishes a requirement stated in paragraph (b) of this subsection, the requirement stated in paragraph[~~subsection~~] (b) shall be considered to have been met.

(2) A treatment plan referenced in subsection (1)(b)4. of this section shall be developed:

(a) With participation from the enrollee or the enrollee's legal guardian as referenced in Section 11[~~15~~] of this administrative regulation; and

(b) By the enrollee's primary care provider, if the enrollee has a primary care provider.

(3) An MCO shall:

(a)1. Develop materials specific to the needs of an enrollee with a special health care need; and

2. Provide the materials referenced in subparagraph 1. of this paragraph to the enrollee, caregiver, parent, or legal guardian;

(b) Have a mechanism to allow an enrollee identified as having a special health care need to directly access a specialist, as appropriate, for the enrollee's condition and identified need; and

(c) Be responsible for the ongoing care coordination for an enrollee with a special health care need.

(4) The information referenced in subsection (3)(a) of this section shall include health educational material to assist the enrollee with a special health care need or the enrollee's caregiver, parent, or legal guardian in understanding the enrollee's special need.

(5)(a) An enrollee who is a ward of the commonwealth shall be enrolled with an MCO through a service plan that shall be completed for the enrollee by DAIL prior to being enrolled with the MCO.

(b) If the service plan referenced in paragraph (a) of this subsection identifies the need for case management, the MCO shall work with DAIL or the enrollee to develop a case management plan of care.

Section 13[~~18~~]. Second Opinion. An enrollee ***may get[~~shall have the right to~~]*** a second opinion within the MCO's provider network for a surgical procedure or diagnosis and treatment of a complex or chronic condition.

Section 14[~~19~~]. Managed Care Requirements. (1) All aspects of managed care**[~~and the requirements of 907 KAR Chapter 17~~]** shall be governed and controlled by the applicable federal and state laws, including 42 C.F.R. Part 438, 42 U.S.C. 1396n, and 42 U.S.C. 1396u-2, and the negotiated terms of the contract between a managed care organization and the department.

(2) The current MCO contracts shall be posted on the department's Web site at http://chfs.ky.gov/dms/contracts.htm.

Section 15. Centers for Medicare and Medicaid Services Approval and Federal Financial Participation. A policy established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

(1) Denies or does not provide federal financial participation for the policy; or

(2) Disapproves the policy.

STEPHEN P. MILLER, Commissioner
SCOTT W. BRINKMAN, Acting Secretary

APPROVED BY AGENCY: February 14, 2018

FILED WITH LRC: February 15, 2018 at 11 a.m.

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
(As Amended at ARRS, March 12, 2018)

907 KAR 17:035. External independent third-party review.

RELATES TO: KRS 194A.025(3), 205.646, ***304.17A-607(1)(b),*** 42 C.F.R. Part 438

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), 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. KRS 205.646 requires the department to promulgate administrative regulations to implement the[an] external independent third-party review required by that statute[of a managed care organization's internal appeal process]. 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) for a date of service or request for service on or after December 1, 2016, 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 if[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 disputes to the:

1. Documentation[information] the provider submitted for the MCO's[MCO] internal appeal process; and

2. Any other information contained in the MCO's final decision; and

(d) 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, Section 5.

(b) If an enrollee files a request for an administrative hearing pursuant to 907 KAR 17:010, Section 5, 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 subsection (1) of this section.

(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;

(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, which shall include[.] a claim involving a medical necessity determination; or

(b) Service coverage requirements, which shall include[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) Only one (1) claim shall be 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 information specified[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 administrative hearing[~~appeal~~] referenced in subsection (1) of this section shall be received by[~~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[~~appeal~~] shall be sent to the department:

1. Electronically;
2. By fax; or
3. By postal mail.

Section 5. Within sixty (60) calendar days from the exhaustion of appeal rights after a final decision against an MCO, whether rendered in an administrative proceeding or a court of law, the MCO shall submit complete payment as required by the decision.

Section 6. Appeals. (1) Except as provided by subsection (2) of this section, an appeal from denial of a service or services provided by a Medicaid managed care organization for medical necessity or denial, limitation, or termination of a health care service in a case involving a medical or surgical specialty or subspecialty, shall, upon request of the recipient, authorized person, or provider, include a review by a board-eligible or board-certified physician in the appropriate specialty or subspecialty area.

(2) If the health care service was rendered by a chiropractor or optometrist, the denial shall be made respectively by a chiropractor or optometrist duly licensed in Kentucky as required by KRS 304.17A-607(1)(b).

(3) The reviewer shall not have participated in the initial review and denial of service and shall not be the provider of service or services under consideration in the appeal.

STEPHEN P. MILLER, Commissioner
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: October 24, 2017

FILED WITH LRC: November 13, 2017 at 4 p.m.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email Laura.Begin@ky.gov.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

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~~]**, 2018[~~April 11, 2017~~], 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 **3/14/18[~~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 1/12/18[~~9/13/10~~])
3.11 Drug Free Workplace Employee Drug Testing (Amended 12/10/13)
3.14 Employee Time and Attendance Requirements (Amended 6/14/16)
3.17 Uniformed Employee Dress Code (Amended 1/12/18[~~4/11/17~~])
3.22 Staff Sexual Offenses (Amended 12/10/13)
3.23 Internal Affairs Investigation (Added 8/25/09)
5.1 Research**, Surveys** and **Data Requests** **[~~Survey Projects~~]** (Amended **3/14/18[~~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 **3/14/18[~~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 4/11/17)
10.3 Safekeepers and Contract Prisoners (Amended 1/12/18 [~~9/15/04~~])
11.2 Dietary Procedures and Compliance (Amended 1/12/17)
11.4 Alternative Dietary Patterns (Amended 1/12/17)
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)
14.4 Legal Services Program (Amended 3/14/14)
14.5 [~~Board of~~] Claims Commission (Amended 1/12/18 [~~10/14/05~~])
14.6 Inmate Grievance Procedure (Amended **3/14/18[~~4/11/17~~]**)
14.7 Sexual Abuse Prevention and Intervention Programs (Amended **3/14/18[~~6/14/16~~]**)
14.8 Lesbian, Gay, Bisexual, Transgender, and Intersex Offenders (Amended 1/12/18[~~Added 4/11/17~~])
15.1 Hair, Grooming and ID Card Standards (Amended 1/12/18[~~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 **3/14/18[~~11/7/16~~]**)
15.7 Inmate Accounts (Amended 1/12/18[~~4/11/17~~])
15.8 Possession or Use of Unauthorized Substance and Substance Abuse Testing (Amended 1/12/18[~~1/12/17~~])
16.1 Inmate Visits (Amended 4/11/17)
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 **3/14/18[~~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 **3/14/18[~~1/15/15~~]**)
18.2 Central Office Classification Committee (Amended 1/12/18[~~8/20/13~~])
18.3 Confinement of Youthful Offenders (Added 6/9/15)
18.5 Custody and Security Guidelines (Amended **3/14/18 [~~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 **3/14/18[~~2/26/16~~]**)
18.15 Protective Custody (Amended 1/12/18[~~2/26/16~~])
18.16 Information to the Parole Board (Amended 1/12/18 [~~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 **3/14/18 [~~1/15/15~~]**)
19.4 Work Release for State Inmates (Added 3/14/18)
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 **3/14/18**[~~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 Inmate Furloughs (Added 3/14/18)
25.6 Community Service Center Program and Jail Placement (Amended **3/14/18[~~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 1/12/18[~~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. This material may be obtained from the Department of Corrections website in the policies and procedures area at https://corrections.ky.gov/Pages/default.aspx.

JAMES ERWIN, Acting Commissioner
APPROVED BY AGENCY: March 13, 2018
FILED WITH LRC: March 14, 2018 at noon
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, 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, 532.100, 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, 197.020, and 532.100 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, 3,907 employees, 24,680 inmates, visitors, volunteers, others who enter state correctional institutions, jailers, and work release employers.
(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. Jailers, jail employees, and work release employers will have to comply with CPP 19.4 if the jail participates in the work release program. 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. CPP 19.4 addresses statutory changes allowing jails and state inmates to participate in work release.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No increase in funding is anticipated.
(b) On a continuing basis: 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 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. CPP 19.4 impacts county jails to the extent the jail participates in the work release program.
(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, 532.100, 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? Any revenue increase to a jail is currently uncertain and depends

on whether a jail participates in the program and how many inmates at the jail are eligible, choose to participate, and locate work. If it is assumed that a participating inmate earns minimum wage of $7.25 and works 40 hours per week, his gross pay would be $290. If after taxes the net pay is $245, the jail could receive $49 per week from that inmate. The total amount for the jail would depend on the number of inmates participating in the program. The Department of Corrections does not anticipate any revenue from this new program.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? See estimate above.

(c) How much will it cost to administer this program for the first year? The amendment to this regulation impacts how the Kentucky Department of Corrections and state correctional institutions operate. The costs for the amendment are not expected to increase the Kentucky Department of Corrections budgeted funds for the biennium. The operational costs for a jail in the work program are not currently known. It is possible that a jail may have to hire additional full time or part time staff to run the new program.

(d) How much will it cost to administer this program for subsequent years? The amendment to this regulation impacts 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 operational costs for a jail in the work program are not currently known. It is possible that a jail may have to hire additional full time or part time staff to run the new program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(Amended After Comments)

922 KAR 2:280. Background checks for child care staff members, reporting requirements, and appeals.

RELATES TO: KRS 17.165, 17.500-17.580, 199.011(14), 199.466, 199.894, 336.220, 620.050-620.120, 45 C.F.R. 98.43, 34 U.S.C. 20921, 42 U.S.C. 9857-9858q

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2), 199.8965(8), 199.8982(1)(f), 199.8994(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law, qualify for the receipt of federal funds, and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its program. KRS 199.896(2), 199.8982(1)(f), and 199.8994(6) authorize the cabinet to promulgate administrative regulations pertaining to standards of a child-care center, family child-care home, and a child care provider that receives a child care subsidy administered by the cabinet, including criminal convictions that impact the safety and security of children in care. KRS 199.8965(8) requires the cabinet to promulgate an administrative regulation necessary to implement child care staff member background checks in accordance with 42 U.S.C. 9858f and implementing federal rule. This administrative regulation establishes background check requirements for child care staff members, reporting requirements, and appeals.

Section 1. Definitions. (1) "Address check" means a cabinet search of the Kentucky or National Sex Offender Registry to determine if a person's residence is a known address of a registered sex offender.

(2) "Cabinet" is defined by KRS 199.894(1).

(3) "Child-care center" is defined by KRS 199.894(3).

(4) "Child care provider" is defined by 45 C.F.R. 98.43(a)(2)(i).

(5) "Child care staff member" is defined by 45 C.F.R. 98.43(a)(2)(ii).

(6) "Family child-care home" is defined by KRS 199.894(5).

(7) "Kentucky National Background Check Program" or "NBCP" means a background screening program administered by the cabinet in accordance with 906 KAR 1:190.

(8) "Rap back system" is defined by KRS 199.011(13).

(9) "Type II child-care center" means the primary residence of the licensee in which child care is regularly provided for at least seven (7), but not more than twelve (12), children including children related to the licensee.

Section 2. Applicability and Exceptions. This administrative regulation shall apply to a child care staff member age eighteen (18) or older, including:

(1) An owner, operator, or employee of a child care provider;

(2) A child-care center licensee or director;

(3) An adult household member of a Type II child-care center, family child-care home, or provider registered in accordance with 922 KAR 2:180;

(4) An employee**[~~or volunteer~~]** who is present during the time a child is receiving care;

(5) Any person with supervisory or disciplinary control over a child in care; and

(6) Any person having unsupervised contact with a child in care.

Section 3. Implementation and Enforcement. (1) A person who is a child care staff member prior to January 1, 2018, shall submit to and complete background checks in accordance with this administrative regulation no later than September 30, 2018.

(2) A child care staff member hired on or after **April[~~January~~]** 1, 2018, shall:

(a) Have completed the background checks required in accordance with this administrative regulation and been found to have no disqualifying offense prior to becoming a child care staff member; or

(b)1. Have submitted to the background checks required in accordance with this administrative regulation;

2. Not be left unsupervised with a child in care pending the completion of the background checks in accordance with this administrative regulation; and

3. Be dismissed or relocated from the residence if the person is found to have a disqualifying background check result.

(3) To assure timely processing of background checks and organize background checks of existing child care staff members, the cabinet shall prioritize the processing of background checks for an individual who is a:

(a) New hire on or after **April[~~January~~]** 1, 2018; or

(b) Child care staff member before January 1, 2018, using the following schedule:

Background Check Submission and Fingerprinting Month	Renewal Month of the Child Care Provider's License, Certification, or Registration
March 2018	**June, July**
April 2018	**August**
May 2018	**September or October**
June 2018	**November or December**
July or August 2018	**January, February, or March**
September 2018	**April or May**
[~~January or February 2018~~	**~~April or May~~**
~~March 2018~~	**~~June or July~~**
~~April 2018~~	**~~August~~**
~~May 2018~~	**~~September or October~~**
~~June 2018~~	**~~November or December~~**
~~July or August 2018~~	**~~January or February~~**
~~September 2018~~	**~~March~~]**

(4) A current or prospective child care staff member shall be subject to background checks in accordance with Sections 4 and 5

of this administrative regulation at intervals pursuant to 45 C.F.R. 98.43(d).

(5) This administrative regulation shall govern a pilot of child care staff member's background check that shall:

(a) Commence in **[~~December~~]**2018; and

(b) Include volunteer child care providers representing differing provider types and geographical areas of the state.

Section 4. Procedures and Payments. (1) To initiate the process for obtaining background checks on a prospective child care staff member, the child care provider shall:

(a) Request that the prospective child care staff member provide a copy of his or her driver's license or other government-issued photo identification and verify that the photograph clearly matches the prospective child care staff member;

(b) Request that the prospective child care staff member complete and sign the:

1. DCC-500, Applicant Child Care Staff Member Waiver Agreement and Statement; and

2. DCC-501, Disclosures to Be Provided to and Signed by the Applicant Child Care Staff Member; and

(c) Log on to the NBCP portal and enter the prospective child care staff member's demographic information for a check of the:

1. Child abuse and neglect central registry pursuant to 922 KAR 1:470;

2. National Crime Information Center's National Sex Offender Registry in accordance with 34 U.S.C. 20921; and

3. Sex Offender Registry established in accordance with KRS 17.500 through 17.580.

(2)(a) In accordance with KRS 199.8965(8), 336.220, and 45 C.F.R. 98.43(f), a child care provider shall submit payment via credit or debit card for a state and national fingerprint-supported criminal history background check performed by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI), including the rap back system. If a child care staff member's rap back has not expired, a new fingerprint check shall not be needed.

(b) A child care provider enrolled in the Kentucky NBCP shall pay a fee not to exceed twenty-five (25) dollars in addition to any fees charged in accordance with paragraph (a) of this subsection for the actual cost of processing a fingerprint-supported state and national criminal background check and for providing rap back services.

(3) To the extent funds are available, the:

(a) Race to the Top-Early Learning Challenge Grant in accordance with Pub. L. 112-10 shall cover the cost of background checks performed in accordance with subsection (1) of this section until close of the grant or exhaustion of grant funds, whichever occurs first; or

(b) Cabinet shall absorb, in whole or in part, fees using funding in accordance with 42 U.S.C. 9857-9858q.

(4)(a) Upon submission of payment in accordance with subsections (2) and (3) of this section, the child care provider shall print a copy of the DCC-504, Applicant Child Care Staff Member Live Scan Fingerprinting Form, from the NBCP portal and provide the form to the child care staff member.

(b) The child care staff member shall:

1. Have no more than ninety (90) calendar days from the date of payment pursuant to subsections (2) and (3) of this section to submit the child care staff member's fingerprints at an authorized collection site for NBCP; and

2. Present the DCC-504 and driver's license or other government-issued photo identification to the designated agent at an authorized collection site prior to fingerprint submission.

(5) Upon completion of the background checks in accordance with this section and Section 5 of this administrative regulation, the cabinet:

(a) Shall provide notice to the child care provider in accordance with 45 C.F.R. 98.43(e) that the prospective child care staff member is:

1. Eligible for hire; or

2. Not eligible for hire if the prospective child care staff member is found by the cabinet to have a disqualifying background check result in accordance with Section 6 of this administrative regulation;

(b) May release any record of state criminal history found in the files of the Kentucky centralized criminal history record information system to the child care provider or another entity provided on the waiver in accordance with subsection (1)(b) of this section; and

(c) Shall, upon receipt of written request from an applicant, send a copy of a KSP or FBI criminal history report to the prospective child care staff member by certified mail, restricted delivery service. The prospective child care staff member shall show proof of identity and sign to receive his or her criminal history report from the local post office.

(6) A child care provider shall not be obligated to employ or offer employment to an individual who has been found by the cabinet to be eligible for hire pursuant to subsection (5)(a) of this section.

(7) A child care staff member may submit a request for a protection and permanency record in accordance with 922 KAR 1:510.

Section 5. Checks of Other States. (1) In accordance with 45 C.F.R. 98.43(b)(3), a prospective child care staff member who resides in or has resided in another state within the last five (5) years shall:

(a) Request from each state of current or prior residency, in accordance with the state's laws, policies, and procedures, with a courtesy notice to the cabinet:

1. An in-state criminal records check by:

a. Means of fingerprints for the state of residence; or

b. Any means accepted by a state of prior residency;

2. A check of the state's sex offender registry or repository; and

3. A check of the state-based child abuse and neglect registry and database; and

(b) Direct results of the checks required in paragraph (a) of this subsection to the Department for Community Based Services, Division of Child Care, 275 East Main Street, 3C-F, Frankfort, Kentucky 40601.

(2) If the prospective child care staff member's current or prior state of residency participates in the FBI's National Fingerprint File Program, a prospective child care staff member shall be exempt from the requirements of subsection (1)(a)1. of this section.

(3) In accordance with KRS 336.220, a child care provider shall pay any fee charged by another state for a background check as permitted pursuant to 45 C.F.R. 98.43(f) for a prospective child care staff member.

(4) If another state fails to respond to a check submitted in accordance with subsection (1) of this section within thirty (30) calendar days from the date of the background check's request as verified by the child care staff member, the cabinet shall:

(a) Process a child care staff member's background checks and issue notice to the child care provider in accordance with Section 4(5) of this administrative regulation to ensure compliance with 45 C.F.R. 98.43(e); and

(b) Send notice in accordance with Section 4(5) of this administrative regulation if:

1. Another state provides requested background check results at a later date; and

2. A disqualifying background check result is identified.

(5) A child abuse and neglect central registry check in accordance with 922 KAR 1:470 may be requested by a:

(a) Parent or legal guardian in accordance with KRS 199.466; or

(b) Child care staff member in another state.

Section 6. Disqualifying Background Check Results. (1) Unless a rehabilitative review pursuant to Section 9 of the administrative regulation determines the individual is eligible to be hired, an individual shall be ineligible to:

(a) Be hired or otherwise serve as a child care staff member if the individual:

1. Meets a criterion specified in 45 C.F.R. 98.43(c);

2. Has been convicted of, or has entered an Alford plea, a plea

of guilty, or a plea of nolo contendere to, a:

a. Drug-related felony, and five (5) years has not elapsed since the person was fully discharged from imprisonment, probation, or parole;

b. Sex or violent crime pursuant to KRS 17.165; or

c. A felony offense under:

(i) KRS Chapter 506, inchoate offenses;

(ii) KRS Chapter 511, burglary and related offenses;

(iii) KRS Chapter 515, robbery;

(iv) KRS Chapter 520, escape and other offense related to custody;

(v) KRS Chapter 525, riot, disorderly conduct, and related offenses;

(vi) KRS Chapter 527, offense relating to firearms and weapons;

(vii) KRS Chapter 529, prostitution offenses; or

(viii) KRS Chapter 530, family offenses;

3. Is listed on the:

a. Central registry established in accordance with 922 KAR 1:470; or

b. Another state's state-based child abuse and neglect registry or database;

4. Has been convicted of, or has entered an Alford plea, plea of guilty, or a plea of nolo contendere to, an offense under a criminal statute of the United States or of another state similar to an offense specified in this paragraph;

5. Has an open warrant;

6. Has a criminal background check result indicating that the individual should be approached with caution by authorities; or

7. Has a pending charge for a criminal offense specified in this paragraph; or

(b) Serve as a child-care center's applicant, licensee, or director if the individual has been convicted of, or has entered an Alford plea, a plea of guilty, or a plea of nolo contendere to, a felony offense involving fraud, embezzlement, theft, or forgery.

(2) An individual who has received a pardon for a disqualifying offense, has had the record expunged, or has evidenced dismissal of a warrant or disqualifying charge may serve as a child care staff member.

(3) Unless there is a pending informal review, rehabilitative review, or appeal in accordance with Section 7 of this administrative regulation, a child care provider shall be ineligible for the Child Care Assistance Program and shall be subject to a cabinet action against the child care provider's license in accordance with 922 KAR 2:090, certification in accordance with 922 KAR 2:100, or registration in accordance with 922 KAR 2:180, if the child care provider:

(a) Employs a child care staff member who is ineligible for employment under subsections (1) and (2) of this section; or

(b) Is a registered child care provider, certified family child-care home, or Type II licensed child-care center and includes an adult household member who has a disqualifying background check result in accordance with subsections (1)(a) and (2) of this section.

Section 7. Notice of a Disqualifying Background Check Result and Appeals. (1) The cabinet shall notify each prospective or current child care staff member determined to have a disqualifying background check result in accordance with Section 6 of this administrative regulation.

(2) In addition to the cabinet's notification in accordance with subsection (1) of this section, a child care provider that receives notice from the cabinet that a prospective or current child care staff member has been determined to have a disqualifying background check result in accordance with Section 6 of this administrative regulation shall notify the child care staff member of the cabinet's determination within three (3) business days of receipt of the notice.

(3) Pursuant to 45 C.F.R. 98.43(e)(3), a prospective or current child care staff member who receives notice of having a disqualifying background check result in accordance with Section 6 of this administrative regulation may:

(a) Challenge the accuracy of the cabinet's determination by submitting a written request for informal review, including any information the individual wishes to be considered, to the Department for Community Based Services, Division of Child Care, 275 East Main Street, 3C-F, Frankfort, Kentucky 40621, within ten (10) calendar days of the date of notice in accordance with subsection (1) of this section; or

(b) Request a rehabilitative review pursuant to Section 9 of this administrative regulation.

(4) Upon completion of an informal review upon request pursuant to subsection (3)(a) of this section, the cabinet shall provide written notice of the cabinet's decision to uphold or rescind the notice of disqualifying background check result to the prospective or current child care staff member.

(5) A prospective or current child care staff member may appeal the results of an informal review or a rehabilitative review pursuant to Section 9 of this administrative regulation and 45 C.F.R. 98.43(e)(3), in accordance with 922 KAR 2:260.

(6) If a prospective or current child care staff member wishes to challenge the accuracy of a criminal background check, the cabinet shall refer the individual to the appropriate state or federal law enforcement agency.

(7) If a prospective or current child care staff member challenges the finding that he or she is the true subject of the results from a registry or repository check, the cabinet shall refer the individual to the agency responsible for maintaining the registry or repository.

Section 8. Termination or Relocation of a Child Care Staff Member upon Receipt of Notice of a Disqualifying Background Check Result. (1) If a prospective or current child care staff member has not requested an informal review or a rehabilitative review in accordance with Section 9 of this administrative regulation, the child care provider shall:

(a)1. Terminate the child care staff member no later than ten (10) calendar days after receipt of notice of the cabinet's determination, including the disqualifying background check result; or

2. Change residence of an adult household member in the child care provider's home no later than fifteen (15) calendar days after receipt of notice of the cabinet's determination, including disqualifying background check result; and

(b) Use the NBCP to provide electronic notification to the cabinet affirming the child care staff member's dismissal or household member's change in residence within three (3) business days of termination or residence change.

(2)(a) If a prospective or current child care staff member requests an informal review or a rehabilitative review in accordance with Section 9 of this administrative regulation, the child care provider:

1. May retain the child care staff member pending resolution of the informal review or rehabilitative review; and

2. Shall ensure that the child care staff member:

a. Is subject to direct, onsite supervision; or

b. Does not have duties or proximity that involves one-on-one contact with a child in care.

(b) A child care provider shall terminate the child care staff member or relocate the adult household member if the:

1. Informal review upholds the cabinet's determination of a disqualifying background check result, or the rehabilitative review committee does not grant a waiver; and

2. Child care staff member does not request an administrative hearing in accordance with Section 7(5) of this administrative regulation, in which the child care provider shall terminate the child care staff member or relocate the adult household member no later than the thirty-first calendar day following written notice of the results of the informal review or rehabilitative review.

(c) If a child care staff member requests an administrative hearing in accordance with Section 7(5) of this administrative regulation to appeal the decision from an informal review or rehabilitative review, the child care provider:

1. May retain the child care staff member pending the appeal's resolution if the child care staff member:

a. Remains subject to direct, onsite supervision; or

b. Does not have duties or proximity that involves one-on-one

contact with a child in care; and

2. Shall terminate the child care staff member or relocate the adult household member no later than the thirty-first calendar day from the issuance of the final order if the child care staff member or adult household member does not prevail.

(d) Using the NBCP, the child care provider shall provide electronic notification to the cabinet affirming the individual's dismissal or relocation within three (3) business days of the termination or relocation.

Section 9. Rehabilitative Review. (1)(a) A prospective or current child care staff member found to have a disqualifying background check result shall be eligible for consideration of rehabilitation under an independent review process.

(b) Consideration of a disqualifying background check result under the rehabilitative review process described in this section shall not apply to:

1. A disqualifying felony offense that occurred less than ten (10) years prior to the date of the criminal background check;

2. Any disqualifying felony or misdemeanor offense related to abuse, neglect, or exploitation of a child;

3. Registration as a sex offender under federal law or under the law of any state;

4. A sex or violent crime as defined by KRS 17.165; or

5. A child abuse and neglect substantiated finding that:

a. Occurred less than five (5) years prior to the date of the registry check; or

b. Involved:

(i) Sex abuse or sex exploitation of a child;

(ii) A child fatality related to abuse or neglect;

(iii) A near fatality of a child related to abuse or neglect; or

(iv) The involuntary termination of parental rights in accordance with KRS 625.050 through 625.120.

(2)(a) A prospective or current child care staff member may submit a written request for a rehabilitative review to the cabinet no later than fourteen (14) calendar days from the date of the notice of the cabinet's determination issued pursuant to Section 4(5) or 7(4) of this administrative regulation regarding a determination of a disqualifying background check result.

(b) If a prospective or current child care staff member requests a rehabilitative review, the child care staff member:

1. May be retained by the child care provider pending the rehabilitative review; and

2. Shall be subject to restrictions and termination or relocation in accordance with Section 8 of this administrative regulation.

(3) The request for a rehabilitative review shall include the following information:

(a) A written explanation of each disqualifying background check result, including:

1. A description of the events related to the disqualifying background check result;

2. The number of years since the occurrence of the disqualifying background check result;

3. The age of the individual at the time of the disqualifying background check result; and

4. Any other circumstances surrounding the disqualifying background check result;

(b) Official documentation showing that all fines, including court-imposed fines or restitution, have been paid or documentation showing adherence to a payment schedule, if applicable;

(c) The date probation or parole was satisfactorily completed, if applicable;

(d) Employment and character references, including any other evidence demonstrating the ability of the individual to perform the employment responsibilities and duties competently; and

(e) Evidence that the individual has pursued or achieved rehabilitation with regard to a disqualifying background check result.

(4) A rehabilitative review shall be conducted by a committee of three (3) employees of the cabinet, none of whom was responsible for determining that the individual has a disqualifying background check result.

(5) The committee shall consider the information required under subsection (3) of this section, and shall also consider mitigating circumstances including:

(a) The amount of time that has elapsed since the disqualifying background check result;

(b) The lack of a relationship between the disqualifying background check result and the position for which the individual has applied; and

(c) Evidence that the applicant has pursued or achieved rehabilitation with regard to the disqualifying background check result.

(6) No later than thirty (30) calendar days from receipt of the written request for the rehabilitative review, the cabinet shall send the committee's determination on the rehabilitation waiver to the prospective or current child care staff member.

(7) The decision of the committee shall be subject to appeal in accordance with Section 7(5) of this administrative regulation.

(8) A child care provider shall not be obligated to accept an individual who is granted a waiver pursuant to this section as a child care staff member.

Section 10. Transparency. The cabinet shall maintain information concerning the background check processes in accordance with this administrative regulation on its Web site in accordance with 45 C.F.R. 98.43(g).

Section 11. Status of Employment. (1) A child care provider shall maintain the employment or residential status of each child care staff member who has submitted to a fingerprint-based criminal background check by reporting the status using the NBCP Web-based system.

(2) The cabinet shall inspect a child care provider to verify conformity with this administrative regulation.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DCC-500, Applicant Child Care Staff Member Waiver Agreement and Statement", 12/2017;

(b) "DCC-501, Disclosures to Be Provided to and Signed by the Applicant Child Care Staff Member", 12/2017; and

(c) "DCC-504, Applicant Child Care Staff Member Live Scan Fingerprinting Form", 12/2017.

(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
SCOTT W. BRINKMAN, Acting Secretary

APPROVED BY AGENCY: 14, 2018

FILED WITH LRC: March 15, 2018 at 10 a.m.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email Elizabeth.Caywood@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes background check requirements for child care staff members, reporting requirements, and appeals.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish background check requirements for child care staff members, reporting requirements, and appeals.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of child care staff members' background checks, reporting

requirements, and appeals.

(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 through its establishment of child care staff member background checks, reporting requirements, and appeals. The emergency administrative regulation supports initiation of a pilot program and implementation of the new background check requirements in late 2017 and 2018, respectively, to ensure the state's compliance with the federally mandated deadline and children's 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 is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The department has projected upwards of 24,000 new and existing child care staff members will be subject to this administrative regulation in its first year.

(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: Child care providers will be required to submit anyone meeting the federal definition of "child care staff member" to background checks in accordance with this administrative regulation. Federal law and related federal waiver mandate the background checks be performed on new hires and existing child care staff members no later than September 30, 2018.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Regulated entities will be required to absorb fees imposed by agencies for the provision of background checks. To the extent possible, the department plans to use its resources to absorb or offset costs for regulated entities, thereby ensuring that child care providers are paying the same or only slightly more than present day for more comprehensive background checks. In addition, the department has been successful in securing federal Race to the Top-Early Learning Challenge Grant funds to absorb all costs for providers through the exhaustion of those funds or the sunset of the grant, whichever is first. In addition, the rap back feature will help child care providers avoid costs if the child care staff member remains with the provider or within the child care provider community for five years.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will have access to more comprehensive background checks for child care staff members. The health, safety, and welfare of children served by regulated entities will be better preserved. The utilization of the Kentucky National Background Check Program is also consistent with federal recommendations and is unique opportunity available in Kentucky due to a prior federal grant through the Centers for Medicare and Medicaid Services.

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

(a) Initially: The department has secured federal Race to the Top-Early Learning Challenge Grant funds to assist with initial implementation, projected to be $1.5 million. If the state fails to adhere to the new federal mandate, the state risks being subject to corrective action and a minimal, initial federal penalty of no less than $4.4 million of its Child Care and Development Fund award, which will increase in amount in subsequent years of noncompliance.

(b) On a continuing basis: After initial implementation, which will include checks of existing child care staff members, the department will absorb or offset costs associated with implementation of the federal mandate within its existing appropriations, including federal award, to the extent possible.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Initial implementation and enforcement of this administrative regulation will include the use of federal Race to the Top-Early Learning Challenge Grant funds. The Child Care and Development Fund Block Grant, state match, and maintenance of effort for the block grant, and limited agency funds will support the ongoing implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: At this time, this administrative regulation does not directly establish any fees, but rather, passes along fees established by the agencies conducting the background checks, most often law enforcement. The cabinet has no control over the fees charged by law enforcement agencies. Per state law, law enforcement agencies and the cabinet cannot charge a child care provider more than the actual cost of processing the background check.

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

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98.43, 42 U.S.C. 9857-9858q

(2) State compliance standards. KRS 194A.050(1), 199.896(2), 199.8965(8), 199.8982(1)(f), 199.8994(6)

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

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional or different responsibilities or requirements than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services will be impacted by this administrative regulation. Quasi-governmental agencies, local governments, and school districts that operate a licensed child-care center will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.896(2), 199.8965(8), 199.8982(1)(f), 199.8994(6), 45 C.F.R. 98.43, 42 U.S.C. 9857-9858q

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for the first year? This administrative regulation will generate no revenue in its first year. Fees passed along to regulated entities will be established by the agency conducting the background check and are not allowed to exceed the actual cost of performing the check.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no revenues in its subsequent years.

(c) How much will it cost to administer this program for the first year? This program is anticipated to cost upwards of $1.5 million within its first year of implementation due to the federal requirement applying to new hires and existing child care staff members. The department has identified federal grant funds to cover most, if not all, these initial costs.

(d) How much will it cost to administer this program for subsequent years? Ongoing costs are unknown, but are projected to be much less than the possible $4.4 million federal penalty that can be levied upon the state for the first year of noncompliance with the federal mandate. The department anticipates being able to absorb or offset costs within its existing state and federal awards. The enhanced safety measures afforded through the more comprehensive background checks will also ensure avoidance of costs that are associated with child maltreatment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PROPOSED AMENDMENTS

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)(h), (8), 314.011, 314.042, 314.091, 314.103, 314.109, 314.161, 314.470

STATUTORY AUTHORITY: KRS 218A.205(3)(h), (8), 314.042, 314.103, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.205(3)(h) 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(8) 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 criminal record check by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI).

(a) The applicant shall use the FBI Applicant Fingerprint Card.

(b) The applicant shall pay any required fee to the KSP and the FBI.

(c) The criminal record check shall be within six (6) months of the date of the application.

(d) If there are any misdemeanor or felony convictions, the applicant shall provide:

1. A certified or attested copy of the court record as required by 201 KAR 20:370, Section 1(3); and

2. A letter of explanation that addresses each conviction[~~:~~

~~(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)(h) 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; 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 and submit evidence of current certification by a recognized national certifying organization.

(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 current certification or recertification has been obtained and provide evidence of the certification or recertification prior to the expiration date.

(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 who does not provide evidence of current certification or recertification prior to its expiration date 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, 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 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.

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.

LEWIS PERKINS, President

APPROVED BY AGENCY: February 15, 2018

FILED WITH LRC: March 1, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 23, 2018 at 10:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until end of day (11:59 p.m.) April 30, 2018. 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) 429-1248, 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 to obtain an Advanced Practice Registered Nurse (APRN) license.

(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 promulgate an administrative regulation concerning obtaining an APRN license.

(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 setting the standards and process for obtaining an APRN 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 changes the process for obtaining a criminal background check of an applicant for licensure. The applicant will no longer have to submit two separate requests (one to the Kentucky State Police and one to the Administrative Office of the Courts), but need only submit one request to the State Police.

(b) The necessity of the amendment to this administrative regulation: The process was cumbersome and confusing. Eliminating the need to submit a request to the AOC will simplify the process for applicants but obtain the same, if not better, information needed to protect the public.

(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 simplifying the process for an applicant.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: APRN applicants for licensure, number unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The applicant will only have to submit one request for a criminal background check.

(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 change in the cost to the applicant. KSP charges the same amount as the AOC ($20). The FBI fee remains the same at $12.

(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 Nursing
(Amendment)

201 KAR 20:070. Licensure by examination.

RELATES TO: KRS 194A.540, 314.041, 314.051(3), (6), 314.103, 314.109, 314.470

STATUTORY AUTHORITY: KRS 314.041(2), 314.051(3), 314.103, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Kentucky Board of Nursing to promulgate administrative regulations to implement the provisions

of KRS 314.011 to 314.991. KRS 314.041(2) requires an applicant for licensure as a registered nurse to pass an examination prescribed by the board. KRS 314.103 authorizes the board to require a criminal background check investigation of an applicant or nurse. KRS 314.051(3) requires an applicant for licensure as a licensed practical nurse to pass an examination prescribed by the board. This administrative regulation establishes the requirements for the licensure of nurses by examination.

Section 1. Eligibility for Licensure by Examination for a Graduate of a Kentucky Program or Other State or Territorial Nursing Program. (1) To be eligible for licensure by examination, an applicant shall:

(a) Submit:

1. A properly executed application for licensure, as required by and incorporated by reference in 201 KAR 20:370, Section 1(1);

2. The licensure application fee as established in 201 KAR 20:240;

3. A criminal record check by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI) using the FBI Applicant Fingerprint Card and paying any required fee to the KSP and the FBI and that is within six (6) months of the date of the application[~~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;~~

~~4. 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~~];

4[~~5~~]. 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);

5[~~6~~]. A letter of explanation that addresses each conviction, if applicable;

6[~~7~~]. A certified copy of any disciplinary action taken on any professional or business license in another jurisdiction with a letter of explanation or a report if there is any disciplinary action pending on any professional or business license in another jurisdiction; and

7[~~8~~]. Evidence of completion of the jurisprudence examination required by KRS 314.041(4) for RN applications or KRS 314.051(4) for LPN applications;

(b) Notify the board as soon as a new address is established after submitting the application;

(c) Submit a copy of a marriage certificate, divorce decree, Social Security card, or court order to change the applicant's name, if the applicant's name is changed after the original application is filed;

(d) While taking the examination, abide by and cooperate with security procedures adopted by the board; and

(e) Apply to take and pass the National Council Licensure Examination.

(2) An application for licensure shall be valid for a period of one (1) year from the date the application is filed with the board office or until the board receives the results of the examination.

(3)(a) Except as provided in paragraph (b) of this subsection, the name of the applicant shall appear on the Certified List of Kentucky Program of Nursing Graduates or the Certified List of Out-of-state Program of Nursing Graduates.

(b) If the name does not appear on the list, the applicant shall request that the program submit to the board an official transcript verifying completion of program requirements.

(c) The Certified List of Out-of-state Program of Nursing Graduates shall be submitted by the nurse administrator of the out-of-state program of nursing.

(4)(a) The applicant shall complete the three (3) hour continuing education course on domestic violence within three (3) years of licensure as required by KRS 194A.540.

(b) The applicant shall complete the one and one-half (1.5) contact hour continuing education course on pediatric abusive head trauma within three (3) years of licensure as required by 201 KAR 20:215, Section 5(3).

(5) An applicant shall not be licensed until a report is received from the FBI pursuant to the request submitted pursuant to subsection (1)(a)3 of this section and any conviction is addressed by the board.

(6) A graduate of a school of nursing in Puerto Rico after September 1, 2006, in addition to the other requirements of this section, shall provide evidence of evaluation of the graduate's transcript by the Commission on Graduates of Foreign Nursing Schools or a credential evaluation organization that is a member of the National Association of Credentialing Evaluation Services. The evaluation shall indicate that the school of nursing is substantially equivalent to a school of nursing in this state.

Section 2. Retaking the Examination. (1) An examination candidate who fails to achieve a passing result may retake the examination after meeting the requirements of Section 1 of this administrative regulation.

(2) The applicant shall not be eligible to take the examination more often than once every forty-five (45) days.

Section 3. Release of Examination Results. The board shall release examination results to:

(1) The candidate;

(2) Other state boards of nursing;

(3) The National Council of State Boards of Nursing, Inc.;

(4) The candidate's program of nursing; and

(5) An individual or agency who submits an applicant's or licensee's written authorization for their release, if applicable.

Section 4. Provisional License. (1) An applicant shall request a provisional license by completing the application for licensure required by Section 1 of this administrative regulation.

(2)(a) The board shall issue the provisional license to the applicant after Section 1(1)(a) and (3) of this administrative regulation are met, but not until the report is received from the FBI and any conviction is addressed by the board.

(b) In the case of a graduate of a foreign nursing school, the board shall issue the provisional license after the requirements of 201 KAR 20:480, Section 1(1) and (4), are met.

(3) To qualify as direct supervision pursuant to KRS 314.041(5) and KRS 314.051(6), the nurse responsible for the applicant shall be physically present in the facility and immediately available to the applicant during work hours while the applicant holds a provisional license.

(4) The nurse responsible for the applicant shall be currently licensed or privileged to practice pursuant to KRS 314.470 as a nurse in Kentucky.

(5) Upon notification to the board that the applicant has failed the NCLEX examination, the provisional license shall be voided.

Section 5. (1) An applicant not from a party state under the Nurse Licensure Compact who is issued a license and who does not have permanent residency in Kentucky shall be issued a license that indicates on the license that it is only valid in Kentucky.

(2) The board may request that an applicant provide evidence of the applicant's state of residence.

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

(a) "Certified List of Kentucky Program of Nursing Graduates", 6/10, Kentucky Board of Nursing; and

(b) "Certified List of Out-of-State Program of Nursing Graduates", 6/10, Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

LEWIS PERKINS, President

APPROVED BY AGENCY: February 15, 2018

FILED WITH LRC: March 1, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 23, 2018 at 10:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville,

Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until end of day (11:59 p.m.) April 30, 2018. 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) 429-1248, 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 to obtain an RN or LPN license by examination.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.041 and KRS 314.051.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 314.041 and KRS 314.051 which requires the Board to promulgate an administrative regulation concerning obtaining an RN or LPN license.

(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 setting the standards and process for obtaining an RN or LPN 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 changes the process for obtaining a criminal background check of an applicant for licensure. The applicant will no longer have to submit two separate requests (one to the Kentucky State Police and one to the Administrative Office of the Courts), but need only submit one request to the State Police.

(b) The necessity of the amendment to this administrative regulation: The process was cumbersome and confusing. Eliminating the need to submit a request to the AOC will simplify the process for applicants but obtain the same, if not better, information needed to protect the public.

(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 simplifying the process for an applicant.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: RN and LPN applicants for licensure, number unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The applicant will only have to submit one request for a criminal background check.

(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 change in the cost to the applicant. KSP charges the same amount as the AOC ($20). The FBI fee remains the same at $12.

(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 Nursing
(Amendment)

201 KAR 20:110. Licensure by endorsement.

RELATES TO: KRS 194A.540, 314.031, 314.041, 314.051, 314.091, 314.103, 314.109, 314.470, 314.991

STATUTORY AUTHORITY: KRS 314.041(7), 314.051(8), 314.101(4), 314.103, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to implement the provisions of KRS 314.011 to 314.991. KRS 314.041(7) and 314.051(8) authorize the board to issue a license to practice nursing as a registered nurse or a licensed practical nurse to an applicant who has passed the required examination or its equivalent and who was licensed to practice nursing in another jurisdiction. KRS 314.103 authorizes the board to

require a criminal background check investigation of an applicant or nurse. KRS 314.101(4) authorizes the board to issue a temporary work permit to a person who has completed the requirements for, applied for, and paid the fee for licensure by endorsement. This administrative regulation establishes the requirements for licensure by endorsement and establishes the requirements for a temporary work permit for an applicant to practice nursing while the application for a license is being processed.

Section 1. Eligibility for Licensure by Endorsement. (1) To be eligible for licensure by endorsement, an applicant shall:

(a)1. Have completed a state approved program of nursing equivalent to Kentucky requirements; or

2. Have completed that portion of a state-approved program of nursing that is equivalent to a Kentucky program of nursing;

(b) Have taken and passed the State Board Test Pool Examination or National Council Licensure Examination or an examination that is consistent with Section 4 of this administrative regulation;

(c) Complete the application form, as required by 201 KAR 20:370, Section 1(1);

(d) Submit the current fee for a licensure application, as established by 201 KAR 20:240;

(e) Report and submit a certified or attested copy of each disciplinary action taken or pending on a nursing or other professional or business license by another jurisdiction and a letter of explanation;

(f) Submit a certified copy of the court record of each misdemeanor or felony conviction and a letter of explanation that addresses each conviction as required by 201 KAR 20:370, Section 1(3);

(g) Request the U.S. jurisdiction, territory, or foreign country of initial licensure to submit to the board a verification of licensure by examination, which shall include the following information:

1. a. Name of the program of nursing completed and date of graduation; or

b. Name of the program of nursing attended and date of completion of the requirements for eligibility to take the licensure examination in that jurisdiction; and

2. A statement that the applicant's license has not been revoked, suspended, limited, probated, or otherwise disciplined by the licensing authority and is not subject to disciplinary action;

(h) Submit a criminal record check by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI) using the FBI Applicant Fingerprint Card and paying any required fee to the KSP and the FBI and that is within six (6) months of the date of the application[~~completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI~~]; and

(i) Submit evidence of completion of the jurisprudence examination required by KRS 314.041(4) for RN applications or KRS 314.051(4) for LPN applications as approved by the board[~~; and~~

~~(j) Submit 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~~].

(2) An application shall be valid for a period of six (6) months. The applicant shall:

(a) Submit a copy of a marriage certificate, divorce decree, Social Security card, or court order to change the applicant's name, if the applicant's name is changed after the original application is filed; and

(b) Notify the board in writing as soon as a new address is established after submitting the application.

(3) After six (6) months if the requirements for licensure have not been met, the applicant shall:

(a) Submit a new application;

(b) Submit the current licensure application fee; and

(c) Meet the requirements established in this section.

(4)(a) The applicant shall complete the three (3) hour continuing education course on domestic violence within three (3) years of licensure as required by KRS 194A.540.

(b) The applicant shall complete the one and one-half (1.5) contact hour continuing education course on pediatric abusive head trauma within three (3) years of licensure as required by 201 KAR 20:215, Section 5(3).

(5) An applicant shall not be licensed until a report is received from the FBI pursuant to the request submitted under subsection (1)(h) of this section and any conviction is addressed by the board.

(6) A graduate of a school of nursing in Puerto Rico after September 1, 2006, in addition to the other requirements of this section, shall provide evidence of evaluation of the graduate's transcript by the Commission on Graduates of Foreign Nursing Schools or a credential evaluation organization that is a member of the National Association of Credentialing Evaluation Services. The evaluation shall indicate that the school of nursing is substantially equivalent to a school of nursing in this state.

Section 2. Nursing Practice and Continuing Education Requirements. (1) Except as provided in subsection (2) of this section, an applicant shall complete fourteen (14) contact hours in continuing education for each year since the last year in which the applicant is able to demonstrate at least 100 hours of practice.

(2) The requirement established in subsection (1) of this section shall not apply to an applicant who:

(a) Has been licensed for less than five (5) years from the date of initial licensure;

(b) Has been actively licensed and engaged in nursing practice for at least 500 hours during the preceding five (5) years; or

(c) Has not been engaged in nursing practice during the five (5) years preceding the date of the application. This applicant shall complete at least 120 contact hours of continuing education earned within one (1) year of the date of the application.

(3) At least fourteen (14) contact hours shall have been earned within the twelve (12) months preceding the date of application for active Kentucky licensure status.

(4) Continuing education earned more than five (5) years preceding the date of application shall not be counted toward meeting the requirements established in subsections (1) and (3) of this section.

Section 3. Temporary Work Permit. (1) An applicant for licensure by endorsement who meets all of the requirements of Section 1(1)(a) through (j), except for paragraph (g) of this administrative regulation shall be issued a temporary work permit, but not until the report is received from the FBI and any conviction is addressed by the board.

(2) A temporary work permit shall be valid for a period not to exceed six (6) months.

(3) An individual who practices as a nurse in Kentucky without a current temporary work permit prior to issuance of a current active license shall be considered to be practicing without a license in violation of KRS 314.031 and shall be subject to the penalties listed in KRS 314.091 and 314.991.

Section 4. Licensing Examination Standards. An applicant who has taken an examination other than the State Board Test Pool Examination or the National Council Licensure Examination shall provide evidence to the board that the examination met the following standards of equivalency:

(1) Accepted psychometric procedures shall be used in the development of the examination;

(2) The examination shall be available to the board in the English language;

(3) The examination test plan blueprint shall be available for board review and adequately identifies test content and content weighting;

(4) Test items shall be available for board review and demonstrate the testing of competency necessary for safe practice;

(5) At least one (1) of the reliability estimates for the examination shall be 0.80 or higher;

(6) The examination shall be revised after each administration to ensure currency and security of content; and

(7) The examination shall be given under strict security measures.

Section 5. Applicants for LPN license pursuant to KRS 314.041(13). An applicant for an LPN license pursuant to KRS 314.041(13) shall meet the requirements of this administrative regulation.

Section 6. (1) An applicant not from a party state under the Nurse Licensure Compact who is issued a license and does not have permanent residency in Kentucky shall be issued a license that indicates on the license that it is only valid in Kentucky.

(2) The board may request that an applicant provide evidence of the applicant's state of residence.

LEWIS PERKINS, President

APPROVED BY AGENCY: February 15, 2018

FILED WITH LRC: March 1, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 23, 2018 at 10:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until end of day (11:59 p.m.) April 30, 2018. 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, (502) 429-3309, fax (502) 429-1248, 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 to obtain an RN or LPN license by endorsement.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.041 and KRS 314.051.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 314.041 and KRS 314.051 which requires the Board to promulgate an administrative regulation concerning obtaining an RN or LPN license.

(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 setting the standards and process for obtaining an RN or LPN 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 changes the process for obtaining a criminal background check of an applicant for licensure. The applicant will no longer have to submit two separate requests (one to the Kentucky State Police and one to the Administrative Office of the Courts), but need only submit one request to the State Police.

(b) The necessity of the amendment to this administrative regulation: The process was cumbersome and confusing. Eliminating the need to submit a request to the AOC will simplify the process for applicants but obtain the same, if not better, information needed to protect the public.

(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 simplifying the process for an applicant.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: RN and LPN applicants for licensure, number unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The applicant will only have to submit one request for a criminal background check.

(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 change in the cost to the applicant. KSP charges the same amount as the AOC ($20). The FBI fee remains the same at $12.

(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 Nursing
(Amendment)

201 KAR 20:225. Reinstatement of license.

RELATES TO: KRS 164.772, 194A.540, 314.041(11), 314.042(6), 314.051(11), 314.071, 314.073, 314.075, 314.085(1), 314.091, 314.103, 314.109

STATUTORY AUTHORITY: KRS 314.103, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to implement the provisions of KRS 314.011 to 314.991. KRS 314.103 authorizes the board to require a criminal background check investigation of an applicant or nurse. KRS 314.041(11), 314.042(6), and 314.051(11) allow a person whose license has lapsed due to failure to renew to be able to reinstate the license. KRS 314.091 authorizes the board to discipline a licensee for a violation of KRS Chapter 314 or 201 KAR Chapter 20. This administrative regulation establishes procedures for reinstatement of a license that has lapsed or has been subject to disciplinary action.

Section 1. Reinstatement of Lapsed or Retired License. (1) A license shall be lapsed if it has expired because of the licensee's failure to:

(a) Submit a completed and timely application for renewal;

(b) Submit data required to enable the board to complete the processing of an application;

(c) Submit the current application fee; or

(d) Meet all requirements for renewal of a license, in accordance with KRS 314.071.

(2) A lapsed or retired license may be reinstated by:

(a) Submitting a completed application form required by 201 KAR 20:370, Section 1(1)(a) or (c);

(b) Paying the current application fee required by 201 KAR 20:240, Section 1(2)(g) or (l);

(c) Submitting a criminal record check by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI) using the FBI Applicant Fingerprint Card and paying any required fee of the KSP and the FBI and that is within six (6) months of the date of the application[~~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, the board receiving the report from the FBI, and any conviction is addressed by the board~~];

(d)[~~Submitting a criminal record check report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;~~

~~(e)~~] Submitting 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);

(e)[~~(f)~~] Submitting a letter of explanation that addresses each conviction, if applicable;

(f)[~~(g)~~] Submitting a certified copy of any disciplinary action taken on a nursing or other professional or business license in another jurisdiction with a letter of explanation or a report if there is any disciplinary action pending on a nursing or other professional or business license in another jurisdiction; and

(g)[~~(h)~~] Meeting all other requirements of this section.

(3)(a) If an individual applies for reinstatement of a lapsed license to active status, the applicant shall complete fourteen (14) contact hours of continuing education for each year since the date of last active licensure, if the date of last active licensure is within five (5) years of the application for reinstatement, but more than one (1) year from the date of last active licensure.

1. Fourteen (14) hours of continuing education shall have been earned within twelve (12) months of the date of the application.

2. Continuing education earned more than five (5) years preceding the date of application shall not be counted toward meeting this requirement.

(b) If an applicant has not been engaged in nursing practice during the five (5) years preceding the date of the application, the applicant shall complete at least 120 contact hours of continuing education earned within one (1) year of the date of the application.

(c) An individual may use the continuing competency methods set out in 201 KAR 20:215, Section 3, for reinstatement if that individual allowed the license to lapse and applies for reinstatement of a lapsed license within one (1) year from the date of lapse.

(d) Continuing competency used for reinstatement pursuant to paragraph (c) of this subsection shall not be used for renewal of the license.

(4)(a) If the applicant has been currently licensed and actively engaged in nursing practice in another jurisdiction for at least 500 hours during the preceding five (5) years, the requirements of subsection (3) of this section shall not apply.

(b) The applicant shall submit evidence to verify active practice.

(5) In addition to the requirements of this administrative regulation, an applicant whose license has lapsed for one (1) year or more shall submit evidence of completion of the jurisprudence examination required by KRS 314.041(11) for registered nurses and KRS 314.051(11) for licensed practical nurses as approved by the board.

Section 2. Reinstatement of License Subject to Disciplinary Action. (1) If a license has been revoked, an individual may apply for reinstatement by:

(a) Completing the appropriate application required by 201 KAR 20:370, Section 1(1)(a) or (c);

(b) Paying the current application fee required by 201 KAR 20:240, Section 1(2)(g) or (l);

(c) Meeting the terms of the disciplinary order; and

(d) Retaking the licensure examination and achieving a passing score.

(2) A hearing shall be held to determine if the issuance of a license would no longer be a threat to public safety and health.

(3)(a) If a license has been suspended or voluntarily surrendered, an individual may apply for reinstatement by:

1. Completing an application required by 201 KAR 20:370, Section 1(1)(a) or (c);

2. Paying the fee required by 201 KAR 20:240, Section 1(2)(g) or (l); and

3. Notifying the board, in writing, that the requirements of the decision or agreed order have been met.

(b) If the decision or agreed order requires that a hearing be held, the individual shall notify the board, in writing, to request that a hearing be scheduled.

(4) An individual whose license has been suspended or voluntarily surrendered shall be required to comply with the continuing education requirements of KRS 314.073 for the period during which the license was suspended or surrendered.

(5)(a) If a license has been probated and the individual has allowed the license to expire prior to the end of the probationary period, and the individual later applies for reinstatement, the license shall be reinstated subject to the remaining probationary period.

(b) The individual shall comply with all requirements for reinstatement, in accordance with KRS 314.071.

(6)(a) A person may seek reinstatement of a license pursuant to subsection (3) of this section, if an order of immediate temporary suspension has been issued pursuant to:

1. KRS 314.085(1) because of a person's failure to obtain an evaluation and the person subsequently obtains the evaluation;

2. KRS 314.075 because of a person's submission of a bad check and the person subsequently makes the check good; or

3. KRS 164.772 because of a notice from the Kentucky Higher Education Assistance Authority that a person is in default on a student loan and the Kentucky Higher Education Assistance Authority subsequently notifies the board that the person is no longer in default.

(b) A request for reinstatement of a license following the issuance of an order of immediate temporary suspension as listed in paragraph (a) of this subsection shall be denied, if in the opinion of the board, continuance of the temporary suspension is

necessary in order to protect the public.

Section 3. Miscellaneous Requirements. (1)(a) A copy of an official name change document shall be submitted by the applicant if making application, if applicable.

(b) Verification of the name change shall be made by submitting a copy of a:

1. Court order;
2. Marriage certificate;
3. Divorce decree; or
4. Social Security card.

(2) An individual whose license lapsed, was suspended, or voluntarily surrendered prior to July 15, 1996 shall earn three (3) hours of continuing education in domestic violence within three (3) years of reinstatement of the license as required by KRS 194A.540.

(3) An individual who holds a nursing license that was revoked by disciplinary order of the board prior to December 31, 1987 shall meet all requirements of Section 2 of this administrative regulation except Section 2(1)(d) of this administrative regulation.

(4) An individual whose license lapsed, was suspended, or voluntarily surrendered prior to July 15, 2010 shall earn one and one-half (1.5) hours of continuing education in pediatric abusive head trauma as required by KRS 314.073(6) within three (3) years of reinstatement of the license.

LEWIS PERKINS, President

APPROVED BY AGENCY: February 15, 2018

FILED WITH LRC: March 1, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 23, 2018 at 10:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until end of day (11:59 p.m.) April 30, 2018. 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) 429-1248, 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 to reinstate an RN or LPN license.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.041 and KRS 314.051.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 314.041 and KRS 314.051 which requires the Board to promulgate an administrative regulation concerning reinstating an RN or LPN license.

(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 setting the standards and process for reinstating an RN or LPN 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 changes the process for obtaining a criminal background check of an applicant for licensure. The applicant will no longer have to submit two separate requests (one to the Kentucky State Police and one to the Administrative Office of the Courts), but need only submit one request to the State Police.

(b) The necessity of the amendment to this administrative regulation: The process was cumbersome and confusing. Eliminating the need to submit a request to the AOC will simplify the process for applicants but obtain the same, if not better, information needed to protect the public.

(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 simplifying the process for an applicant.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: RN and LPN applicants for licensure, number unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The applicant will only have to submit one request for a criminal background check.

(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 change in the cost to the applicant. KSP charges the same amount as the AOC ($20). The FBI fee remains the same at $12.

(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 Nursing
(Amendment)

201 KAR 20:370. Applications for licensure.

RELATES TO: KRS 314.041, 314.042, 314.051, 314.071, 314.091, 314.103, 314.470

STATUTORY AUTHORITY: KRS 314.041, 314.042, 314.051, 314.071, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.041, 314.042, 314.051, and 314.071 require the board to review an application for licensure and a licensee for conformity with KRS Chapter 314. This administrative regulation establishes requirements and procedures for licensure.

Section 1. To be eligible for licensure by examination, endorsement, renewal, reinstatement, retired licensure status, or for advanced practice registered nurse licensure, renewal, or reinstatement, an applicant shall:

(1) Submit the completed application form to the board office, as follows:

(a) For RN or LPN licensure by examination, endorsement, or reinstatement, Application for Licensure;

(b) For RN or LPN Renewal, Annual Licensure Renewal Application: RN or LPN;(c) For licensure or reinstatement as an advanced practice registered nurse, Application for Licensure as an Advanced Practice Registered Nurse;

(d) For renewal as an RN and an APRN, Annual Licensure Renewal Application: RN and APRN;

(e) For licensure as an RN and as an APRN, Application for RN and APRN Licensure;

(f) For retired licensure status, Application for Retired Status;

(g) For APRN renewal with an RN Compact license, Annual Licensure Renewal Application: APRN with RN Compact License (not Kentucky); or

(h) In addition to any other renewal form, for APRN renewal, APRN Practice Data;

(2) Submit the current application fee, as required by 201 KAR 20:240;

(3) Submit a certified or attested copy of the court record of each misdemeanor or felony conviction in this or any other jurisdiction and a letter of explanation that addresses each conviction, except for traffic-related misdemeanors (other than DUI) or misdemeanors older than five (5) years;

(4) Submit a certified copy of a disciplinary action taken in another jurisdiction with a letter of explanation or report a disciplinary action pending on a nurse licensure application or license in another jurisdiction;

(5) Have paid all monies due to the board;

(6) Submit a copy of an official name change document (court order, marriage certificate, divorce decree, Social Security card), if applicable;

(7) Submit additional information as required by the board in 201 KAR Chapter 20;

(8) Meet the additional requirements for:

(a) Licensure by examination established by 201 KAR 20:070;

(b) Licensure by endorsement established by 201 KAR 20:110;

(c) Licensure by reinstatement established by 201 KAR 20:225;

(d) Licensure by renewal established by 201 KAR 20:230;

(e) Retired nurse or inactive licensure status established by 201 KAR 20:095; or

(f) Advanced practice registered nurse licensure, renewal, or reinstatement established by 201 KAR 20:056;

(9) If not a citizen of the United States, maintain proof of legal permanent or temporary residency under the laws and regulations of the United States; and

(10) Notify the board upon establishment of a new mailing address.

Section 2. A completed renewal application form and all information needed to determine that an applicant meets the requirements for renewal of licensure shall be postmarked or received by the board no later than the last day for renewal of license.

Section 3. An application shall lapse and the fee shall be forfeited if the application is not completed as follows:

(1) For an application for licensure by endorsement, within six (6) months from the date the application form is filed with the board office;

(2) For an application for licensure by examination, within one (1) year from the date the application form is filed with the board office or the date the applicant fails the examination, whichever comes first; or

(3) For all other applications except renewal of license applications, within one (1) year from the date the application form is filed with the board office.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Licensure", 1/2016, Kentucky Board of Nursing;

(b) "Annual Licensure Renewal Application: RN or LPN", 2/2018[~~1/2016~~], Kentucky Board of Nursing;

(c) "Application for Licensure as an Advanced Practice Registered Nurse", 1/2016, Kentucky Board of Nursing;

(d) "Annual Licensure Renewal Application: RN and APRN", 2/2018[~~1/2016~~], Kentucky Board of Nursing;

(e) "Application for RN and APRN Licensure", 1/2016, Kentucky Board of Nursing;

(f) "Application for Retired Status", 8/2004, Kentucky Board of Nursing;

(g) "Annual Licensure Renewal Application: APRN with RN Compact License (not Kentucky)", 2/2018[~~1/2016~~], Kentucky Board of Nursing; and

(h) "APRN Practice Data", 6/2012, Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

LEWIS PERKINS, President

APPROVED BY AGENCY: February 15, 2018

FILED WITH LRC: March 14, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 23, 2018 at 10:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish

to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until end of day (11:59 p.m.) April 30, 2018. 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) 429-1248, 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 incorporates the various application forms used by the Board for licensure, etc.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.041, 314.042 and 314.051.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the statutes by incorporating the application forms.

(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 incorporating the application forms.

(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 updates the application forms. The primary change are the questions concerning criminal convictions.

(b) The necessity of the amendment to this administrative regulation: The application forms need periodic updates for currency.

(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 updating the forms.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for licensure, number unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The applicant will use the updated application form.

(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 change in the cost to the applicant. KSP charges the same amount as the AOC ($20). The FBI fee remains the same at $12.

(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 Nursing
(Amendment)

201 KAR 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements.

RELATES TO: KRS 216B.400(2), (4), 314.011(14), 314.103, 314.142, 314.470, 403.707, 421.500-421.575

STATUTORY AUTHORITY: KRS 314.131(1), 314.142(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.142(1) requires the board to promulgate administrative regulations to create a Sexual Assault Nurse Examiner Program. This administrative regulation establishes the requirements relating to a sexual assault nurse examiner course and the credentials of a sexual assault nurse examiner.

Section 1. Definition. "SANE course" means a formal, organized course of instruction that is designed to prepare a registered nurse to perform forensic evaluation of a sexual assault victim fourteen (14) years of age or older and to promote and preserve the victim's biological, psychological, and social health.

Section 2. SANE Course Approval Application. (1) On the form Application for Initial or Continued SANE Course Approval, the applicant for approval of a SANE course shall submit evidence to the board of completion of the requirements for course approval that consists of the following documentation:

(a) Position description and qualifications of the nurse administrator of the SANE course;

(b) Qualifications and description of the faculty;

(c) Course syllabus;
(d) Course completion requirements;
(e) Tentative course presentation dates;
(f) Records maintenance policy; and
(g) Copy of certificate of course completion form.

(2) Nurse administrator of SANE course. A registered nurse, with current, active Kentucky licensure or a multistate licensure privilege pursuant to KRS 314.470, a baccalaureate or higher degree in nursing, and experience in adult and nursing education shall be administratively responsible for assessment, planning, development, implementation, and evaluation of the SANE course.

(3) Faculty qualifications. The course shall be taught by multidisciplinary faculty with documented expertise in the subject matter. The name, title, and credentials identifying the educational and professional qualifications for each instructor shall be provided as part of the application.

(4) Course syllabus. The syllabus shall include:
(a) Course prerequisites, requirements, and fees;
(b) Course outcomes, which shall provide statements of observable competencies, which if taken as a whole, present a clear description of the entry level
behaviors to be achieved by the learner;
(c) Unit objectives for an individual, which shall be stated in operational or behavioral terms with supportive content identified;
(d) Content, which shall be described in detailed outline format with corresponding lesson plans and time frame, and which shall be related to, and consistent with, the unit objectives, and support achievement of expected course outcomes;
1. The SANE course shall include:
a. A minimum of forty (40) hours of didactic instruction pursuant to subparagraph 3. of this paragraph; and
b. The clinical practice experience required by subparagraph 2. of this paragraph.
2. Clinical practice. The clinical portion of the course shall include:
a. Detailed genital and anal inspection, including speculum insertion, visualization techniques, and use of equipment supervised by a physician, a physician assistant, an advanced practice registered nurse, or a sexual assault nurse examiner until the student is deemed competent by the supervisor;
b. Sexual assault history taking and examination techniques with evaluation supervised by a physician, a physician assistant, an advanced practice registered nurse, or a sexual assault nurse examiner;
c. Observing live or previously recorded criminal trials and meeting with the Commonwealth Attorney or a representative from the Commonwealth Attorney's office in order to gain an understanding of the trial process including testifying;
d. Meeting with the local rape crisis center and a rape crisis center victim advocate in order to gain an understanding of the services provided to victims by rape crisis centers and the role of an advocate; and
e. Meeting with local law enforcement officers or investigators responsible for investigating reports of rape or sexual assault in order to gain an understanding of the investigative process.
3. The didactic portion of the course shall include instruction consistent with the Sexual Assault Nurse Examiner (SANE) Education Guidelines. It shall also include:
a. Application of the Kentucky statewide medical protocol relating to the forensic and medical examination of an individual reporting sexual assault pursuant to KRS 216B.400(2) and (4); and
b. The victim's bill of rights, KRS 421.500 through 421.575.
(e) Teaching methods with the activities of both instructor and learner specified in relation to the content outline, and which shall be congruent with stated course objectives and content, and reflect the application of adult learning principles;
(f) Evaluation methods, which shall be clearly defined for evaluating the learner's achievement of course outcomes, and which shall include a process for annual course evaluation by students, providers, faculty, and administration; and
(g) Instructional or reference materials required, which shall be identified.

(5) Completion requirements. Requirements for successful completion of the SANE course shall be clearly specified and shall include demonstration of clinical competency. A statement of policy regarding a candidate who fails to successfully complete the course shall be included.

Section 3. (1) Contact hour credit for continuing education. The SANE course shall be approved for contact hour credit which may be applied to licensure requirements.

(2) Approval period. Board approval for a SANE course shall be granted for a four (4) year period.

(3) Records shall be maintained for a period of five (5) years, including the following:
(a) Provider name, date, and site of the course; and
(b) Participant roster, containing at a minimum the name, Social Security number, and license number for each participant.

(4) A participant shall receive a certificate of completion that documents the following:
(a) Name of participant;
(b) Title of course, date, and location;
(c) Provider's name; and
(d) Name and signature of authorized provider representative.

Section 4. Continued Board Approval of a SANE Course. (1) An application for continued approval of a SANE course shall be submitted on the Application for Initial or Continued SANE Course Approval at least three (3) months prior to the end of the current approval period.

(2) A SANE course syllabus shall be submitted with the Application for Initial or Continued SANE Course Approval.

(3) Continued approval shall be based on the past approval period performance and compliance with the board standards described in this administrative regulation.

Section 5. The board may deny, revoke, or suspend the approval status of a SANE course for violation of this administrative regulation.

Section 6. Appeal. If a SANE course administrator is dissatisfied with a board decision concerning approval and wishes a review of the decision, the procedure established in this section shall be followed. (1) A written request for the review shall be filed with the board within thirty (30) days after the date of notification of the board action which the SANE course administrator contests.

(2) The board, or its designee, shall conduct a review in which the SANE course administrator may appear in person and with counsel to present reasons why the board's decision should be set aside or modified.

Section 7. Requirements for Sexual Assault Nurse Examiner (SANE) Credential. (1) The applicant for the SANE credential shall:
(a) Hold a current, active registered nurse license in Kentucky or a multistate licensure privilege pursuant to KRS 314.470;
(b) Have completed a board approved SANE educational course or a comparable course;
1. The board or its designee shall evaluate the applicant's course to determine its course comparability; and
2. The board or its designee shall advise an applicant if the course is not comparable and specify what additional components shall be completed to allow the applicant to be credentialed;
(c) Complete the Sexual Assault Nurse Examiner Application for Credential;
(d) Pay the fee established in 201 KAR 20:240;
(e) Provide a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and pay the fee required by the FBI that is within six (6) months of the date of the application;
(f) Provide 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;
(g) Provide a certified copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and
(h) Provide a letter of explanation that addresses each conviction, if applicable.

(2) Upon completion of the application process, the board shall issue the SANE credential for a period ending October 31.

(3) An applicant shall not be credentialed until a report is received from the FBI pursuant to the request submitted under subsection (1)(e) of this section and any conviction is addressed by the board.

Section 8. Renewal. (1) To renew the SANE credential for the next period, each sexual assault nurse examiner shall complete at least five (5) contact hours of continuing education related to the role of the sexual assault nurse examiner or forensic nursing within each continuing education earning period. A provider of a board approved SANE course may offer continuing education related to the role of the sexual assault nurse examiner.

(2) Upon completion of the required continuing education, completion of the Annual Credential Renewal Application: SANE Credential with RN in Kentucky or Annual Credential Renewal Application: SANE with RN Compact License (Not Kentucky), as applicable, and payment of the fee established in 201 KAR 20:240, the SANE credential shall be renewed at the same time the registered nurse license is renewed.

(3) The five (5) contact hours may count toward the required contact hours of continuing education for renewal of the registered nurse license.

(4) Failure to meet the five (5) contact hour continuing education requirement shall cause the SANE credential to lapse.

Section 9. Reinstatement. (1) If the SANE credential has lapsed for a period of less than four (4) consecutive registered nurse licensure periods, and the individual wants the credential reinstated, the individual shall apply to reinstate the credential by:

(a) Submitting the Sexual Assault Nurse Examiner Application for Credential;

(b) Paying the fee established in 201 KAR 20:240;

(c) Submitting evidence of earning the continuing education requirement referenced in Section 8(1) of this administrative regulation for the number of registered nurse licensure periods since the SANE credential lapsed;

(d) Providing a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and paying the fee required by the FBI that is within six (6) months of the date of the application;

(e) Providing 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;

(f) Providing a certified copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

(g) Providing a letter of explanation that addresses each conviction, if applicable.

(2) An applicant shall not be credentialed until a report is received from the FBI pursuant to the request submitted under subsection (1)(d) of this section and any conviction is addressed by the board.

(3) If the SANE credential has lapsed for more than four (4) consecutive licensure periods, the nurse shall complete a SANE course prior to reinstatement.

Section 10. The board shall obtain input from the Sexual Assault Response Team Advisory Committee concerning any proposed amendment to this administrative regulation as follows:

(1) The board shall send a draft copy of any proposed amendment to the co-chairs of the Sexual Assault Response Team Advisory Committee prior to approval by the board;

(2) The board shall request that comments on the proposed amendment be forwarded to the board's designated staff person within ninety (90) days; and

(3) At the conclusion of that time period or upon receipt of comments, whichever is sooner, the board, at its next regularly-scheduled meeting, shall consider the comments.

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

(a) "Application for Initial or Continued SANE Course Approval", 6/2014, Kentucky Board of Nursing;

(b) "Sexual Assault Nurse Examiner Application for Credential", 8/2016, Kentucky Board of Nursing;

(c) "Annual Credential Renewal Application: SANE Credential with RN in Kentucky", 2/2018[~~8/2016~~], Kentucky Board of Nursing;

(d) "Annual Credential Renewal Application: SANE with RN Compact License (Not Kentucky)", 2/2018[~~8/2016~~], Kentucky Board of Nursing; and

(e) "Sexual Assault Nurse Examiner (SANE) Education Guidelines", 2015, International Association of Forensic Nurses.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222-5172, Monday through Friday, 8:00 a.m. to 4:30 p.m.

LEWIS PERKINS, President

APPROVED BY AGENCY: February 15, 2018

FILED WITH LRC: March 14, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 23, 2018 at 10:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until end of day (11:59 p.m.) April 30, 2018. 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) 429-1248, 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 incorporates the various application forms used by the Board for Sexual Assault Nurse Examiners (SANE).

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.142.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the statute by incorporating the application forms.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statute by incorporating the application forms.

(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 updates the application forms. The primary change are the questions concerning criminal convictions.

(b) The necessity of the amendment to this administrative regulation: The application forms need periodic updates for currency.

(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 updating the forms.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for SANE credential, number

unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The applicant will use the updated application form.

(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 change in cost.

(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 Nursing
(Amendment)

201 KAR 20:470. Dialysis technician credentialing requirements and training program standards.

RELATES TO: KRS 314.035, 314.089, 314.091, 314.137, 314.991

STATUTORY AUTHORITY: KRS 314.131(1), 314.137

NECESSITY, FUNCTION AND CONFORMITY: KRS 314.137 requires the board to promulgate administrative regulations to regulate dialysis technicians. This administrative regulation establishes the requirements for dialysis technician training programs and for credentialing dialysis technicians.

Section 1. Definitions. (1) "Approved dialysis technician training program" means a program to train dialysis technicians that is approved by the board in accordance with Sections 7 through 10 of this administrative regulation.

(2) "Central venous catheter" means a catheter that is inserted in such a manner that the distal tip is located in the superior vena cava.

(3) "Conviction" is defined by KRS 314.011(21).

(4) "Dialysis technician applicant" means an individual who has applied for a dialysis technician credential.

(5) "Dialysis technician trainee" means an individual who is enrolled in an approved dialysis technician training program. (6) "Supervision" means:

(a) Initial and ongoing direction, procedural guidance, observation, and evaluation by a registered nurse or physician; and

(b) While a patient is being dialyzed the registered nurse or physician is in the immediate clinical area.

Section 2. Requirements for Dialysis Technician Credential. (1)(a) An individual who applies to be credentialed as a dialysis technician in order to engage in dialysis care shall:

1. File with the board the completed Application for Dialysis Technician Credential;

2. Have completed an approved dialysis technician training program or an out-of-state dialysis training program pursuant to paragraph (b) of this subsection;

3. Pay the fee established in Section 12 of this administrative regulation;

4. Provide a criminal record check report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is dated within six (6) months of the submission date of the Application for Dialysis Technician Credential;

5. Provide a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is within six (6) months of the submission date of the Application for Dialysis Technician Credential;

6. Provide to the board a certified copy of the court record of any misdemeanor or felony conviction from any jurisdiction, except for:

a. Traffic-related misdemeanors (other than DUI); or

b. Misdemeanors older than five (5) years; and

7. Provide to the board a letter of explanation that addresses each conviction identified pursuant to subparagraph 6. of this paragraph.

(b)1. If the dialysis technician applicant has completed an out-of-state dialysis technician training program, the applicant shall submit the training program curriculum and evidence of completion to the board.

2.a. The board or its designee shall evaluate the applicant's training program to determine its comparability with the standards as established in Section 7 of this administrative regulation.

b. The board or its designee shall advise an applicant if the training program is not comparable and specify what additional components shall be completed to meet the requirements of Section 7 of this administrative regulation.

3. A dialysis technician applicant who has completed an out-of-state dialysis technician training program shall be required to complete that portion of a board-approved dialysis technician training program related to specific portions of the legal and ethical aspects of practice as established in the Dialysis Technician Training Program Guide.

4. An applicant shall submit evidence to the board of successful completion of the following sections of the Dialysis Technician Training Program Guide:

a. State and Federal Regulations Governing Dialysis;

b. The Principles and Legal Aspects of Documentation, Communication and Patient Rights;

c. The Roles of the Dialysis Technician and other Multidisciplinary Team Members; and

d. Principles Related to Patient Safety.

5. A dialysis technician applicant who has completed an out-of-state dialysis technician training program shall submit the completed Checklist for Dialysis Technician Competency Validation signed by the applicant's immediate supervisor in Kentucky. The Checklist for Dialysis Technician Competency Validation shall be filed after the submission of the Application for Dialysis Technician Credential.

6. A dialysis technician applicant who has completed an out-of-state dialysis technician training program shall submit evidence of:

a. Successful completion of a comprehensive, written final examination from a board-approved dialysis technician training program; or

b. Dialysis technician certification issued within the past two (2) years by the Nephrology Nursing Certification Commission, the Board of Nephrology Examiners Nursing and Technology, or the National Nephrology Certification Organization.

(2) An individual shall be exempt from the credentialing requirement while enrolled in an approved dialysis technician training program. The individual shall use the title dialysis technician trainee.

(3) Upon approval, pursuant to subsection (1) of this section, of the Application for Dialysis Technician Credential, the board shall initially issue the dialysis technician credential for twenty-four (24) months following the month of issuance. The credential shall lapse on the last day of the credentialing period.

(4)(a) An applicant for a dialysis technician credential may engage in dialysis care as a dialysis technician applicant upon:

1. Receipt by the board of the Application for Dialysis Technician Credential; and

2. Meeting the requirements of subsection (6) of this section.

(b) The dialysis technician applicant shall only practice dialysis care as an applicant until:

1. The credential is issued; or

2. The application is denied by the board.

(5) An Application for Dialysis Technician Credential submitted for initial credentialing shall be valid for six (6) months from the date of receipt by the board.

(6) A felony or misdemeanor conviction shall be reviewed to determine, based on Section 6(2)(c) of this administrative regulation, if:

(a) The Application for Dialysis Technician Credential shall be processed with no further action; or

(b) The Application for Dialysis Technician Credential shall be processed only after:

1. The applicant has entered into an agreed order with the board with terms and conditions as agreed by the parties; or

2. If the parties are unable to agree on terms and conditions, a hearing is held pursuant to KRS 314.091 and 201 KAR 20:162, and a final decision is entered by the board.

(7) An applicant shall not be credentialed until a report is received from the FBI pursuant to the request submitted pursuant to subsection (1)(a)5 of this section and any conviction is addressed by the board.

Section 3. Renewal. (1) To be eligible for renewal of the credential, the dialysis technician shall submit, no later than one (1) month prior to the expiration date of the credential:

(a) The completed Application for Renewal of the Dialysis Technician Credential; and

(b) The fee established in Section 12 of this administrative regulation.

(2) Upon approval of the Application for Renewal of the Dialysis Technician Credential, the credential shall be renewed for twenty-four (24) months. The credential shall lapse on the last day of the credentialing period.

(3) A dialysis technician shall report to the board at renewal the name of the national certification program that has issued the technician's certification and provide a copy of the certification certificate to the board.

Section 4. Reinstatement. (1) Before beginning practice as a dialysis technician or a dialysis technician applicant, the individual shall meet the requirements of this section. If the dialysis technician credential has lapsed for a period of less than one (1) credentialing period, the individual may reinstate the credential. The reinstatement shall be accomplished by:

(a) Submitting the completed Application for Dialysis Technician Credential;

(b) Paying the fee established in Section 12 of this administrative regulation; and

(c) Providing a criminal record check report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is dated within six (6) months of the submission date of the Application for Dialysis Technician Credential.

(2) If the dialysis technician credential has lapsed for more than one (1) credentialing period, the dialysis technician may reinstate the credential. The reinstatement shall be accomplished by:

(a) Completing a dialysis technician training program approved by the board pursuant to the criteria established in the Dialysis Technician Training Program Guide before submitting the Application for Dialysis Technician Credential. While enrolled in a training program, the individual shall be referred to as a dialysis technician trainee;

(b) Submitting the completed Application for Dialysis Technician Credential;

(c) Paying the fee established in Section 12 of this administrative regulation;

(d) Submitting the Checklist for Dialysis Technician Competency Validation signed by the individual's immediate supervisor;

(e) Providing a criminal record check report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is dated within six (6) months of the submission date of the Application for Dialysis Technician Credential; and

(f) Providing a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is dated within six (6) months of the submission date of the Application for Dialysis Technician Credential.

(3) An Application for Dialysis Technician Credential submitted for reinstatement shall be valid for six (6) months from the date of receipt by the board.

(4) Upon approval of the Application for Dialysis Technician Credential pursuant to Section 2(1) of this administrative regulation, the credential shall be reinstated for twenty-four (24) months following the month of issuance. The credential shall lapse on the last day of the credentialing period.

(5) An applicant shall not be credentialed until a report is received from the FBI pursuant to the request submitted pursuant to subsection (2)(f) of this section and any conviction is addressed by the board.

Section 5. Scope of Practice. (1) The scope of practice of a dialysis technician shall include the following and shall be performed under the direct, on-site supervision of a registered nurse or a physician:

(a) Preparation and cannulation of peripheral access sites (arterial-venous fistulas and arterial-venous grafts);

(b) Initiating, delivering, or discontinuing dialysis care;

(c) Administration of the following medications only:

1. Heparin 1:1000 units or less concentration either to prime the pump, initiate treatment, or for administration throughout the treatment, in an amount prescribed by a physician, physician's assistant, or advanced registered nurse practitioner. The dialysis technician shall not administer heparin in concentrations greater than 1:1000 units;

2. Normal saline via the dialysis machine to correct dialysis-induced hypotension based on the facility's medical protocol. Amounts beyond that established in the facility's medical protocol shall not be administered without direction from a registered nurse or a physician; and

3. Intradermal lidocaine, in an amount prescribed by a physician, physician's assistant, or advanced practice registered nurse;

(d) Assistance to the registered nurse in data collection;

(e) Obtaining a blood specimen via a dialysis line or a peripheral access site;

(f) Responding to complications that arise in conjunction with dialysis care; and

(g) Performance of other acts as delegated by the registered nurse pursuant to 201 KAR 20:400.

(2) The scope of practice of a dialysis technician shall not include:

(a) Dialysis care for a patient whose condition is determined by the registered nurse to be critical, fluctuating, unstable, or unpredictable;

(b) The connection and disconnection of patients from, and the site care and catheter port preparation of, percutaneously or surgically inserted central venous catheters; and

(c) The administration of blood and blood products.

Section 6. Discipline of a Dialysis Technician. (1) The board shall have the authority to discipline a dialysis technician for:

(a) Failure to safely and competently perform the duties of a dialysis technician as established in Section 5 of this administrative regulation;

(b) Practicing beyond the scope of practice as established in Section 5 of this administrative regulation;

(c) Conviction of any felony, or a misdemeanor involving drugs, alcohol, fraud, deceit, falsification of records, a breach of trust, physical harm or endangerment to others, or dishonesty under the laws of any state or of the United States. The record of conviction or a copy thereof, certified by the clerk of the court or by the judge who presided over the conviction, shall be conclusive evidence;

(d) Obtaining or attempting to obtain a credential by fraud or deceit;

(e) Abusing controlled substances, prescription medications, or alcohol;

(f) Personal misuse or misappropriation for use of others of any drug placed in the custody of the dialysis technician for administration;

(g) Falsifying or in a negligent manner making incorrect entries or failing to make essential entries on essential records;

(h) Having a dialysis technician credential disciplined by another jurisdiction on grounds sufficient to cause a credential to be disciplined in this Commonwealth;

(i) Practicing without filing an Application for Dialysis Technician Credential or without holding a dialysis technician credential;

(j) Abuse of a patient;

(k) Theft of facility or patient property;

(l) Having disciplinary action on a professional or business license;

(m) Violating any lawful order or directive previously entered by the board;

(n) Violating any applicable requirement of 201 KAR Chapter 20;

(o) Having been listed on the nurse aide abuse registry with a substantiated finding of abuse, neglect, or misappropriation of property; or

(p) Having violated the confidentiality of information or knowledge concerning any patient, except as authorized or required by law.

(2) The discipline may include the following:

(a) Immediate temporary suspension of the credential, following the procedure established in KRS 314.089;

(b) Reprimand of the credential;

(c) Probation of the credential for a specified period of time, with or without limitations and conditions;

(d) Suspension of the credential for a specified period of time;

(e) Permanent revocation of the credential; or

(f) Denying the Application for Dialysis Technician Credential.

(3) The board shall follow the procedures established in and have the authority established in KRS 314.091, 201 KAR 20:161, and 201 KAR 20:162 for management and resolution of complaints filed against a dialysis technician.

(4) In addition to the provisions of subsection (3) of this section, the board may impose a civil penalty of up to $10,000.

Section 7. Dialysis Technician Training Program Standards. (1) Program administrator. Each dialysis technician training program shall have a registered nurse who holds a current Kentucky license, temporary work permit, or multistate privilege, with at least one (1) year of experience in dialysis care, who shall be administratively responsible for planning, development, implementation, and evaluation of the dialysis technician training program.

(a) The name, title, and credentials identifying the educational and professional qualifications of the program administrator shall be provided to the board.

(b) A change in the program administrator shall be reported to the board within thirty (30) days of the change.

(2) Faculty qualifications.

(a) The dialysis technician training program shall be taught by multidisciplinary faculty with expertise in the subject matter.

(b) The name, title, and credentials identifying the educational and professional qualifications of each didactic and clinical instructor shall be provided to the board.

(3) The dialysis technician training program shall be based upon the Dialysis Technician Training Program Guide.

(4) The dialysis technician training program syllabus shall include:

(a) Prerequisites for admission to the program;

(b) Program outcomes. The outcomes shall provide statements of measurable competencies to be demonstrated by the learner; supportive content identified;

(c) Content. The content shall be described in outline format with corresponding time frame and testing schedules;

(d) Teaching methods. The activities of both instructor and learner shall be specified. These activities shall be congruent with stated objectives and content and shall reflect application of adult learning principles;

(e) Instructional or reference materials. All required instructional reference materials shall be identified; and

(f) Evaluation. There shall be:

1. Clearly defined criteria for evaluating the learner's achievement of program outcomes; and

2. A process for annual program evaluation by trainees, program administrator, faculty, and employers.

(5) Any proposed substantive changes to the dialysis technician training program syllabus after initial submission shall be submitted to the board in writing and shall not be implemented without approval from the board pursuant to the criteria established in the Dialysis Technician Training Program Guide.

(6) Trainee clinical practice requirements. The dialysis technician trainee enrolled in a dialysis technician training program shall practice dialysis care incidental to the training program only under the supervision of a faculty member or the faculty member's designee.

(7) The dialysis technician training program shall be at least 400 hours in length. A minimum of 200 hours shall be didactic.

(8) Completion requirements. Requirements for successful completion of the dialysis technician training program shall be clearly specified.

(a) The requirements shall include demonstration of clinical competency and successful completion of a comprehensive, written final examination.

(b) The final examination shall be administered only during the final forty (40) hours of the training program.

(c) There shall be a statement of policy regarding a trainee who fails to successfully complete the training program.

(9) The program shall establish a written records retention plan describing the location and length of time records shall be maintained. At a minimum, the following records shall be maintained by the program:

(a) Provider name, dates of program offerings, and sites of the training program;

(b) The program code number issued by the board; and

(c) Trainee roster, with a minimum of name, date of birth, Social Security number, and program completion date.

(10) An individual who successfully completes the training program shall receive a certificate of completion that documents the following:

(a) Name of individual;

(b) Title of training program, date of completion, and location;

(c) Provider's name;

(d) The program code number issued by the board; and

(e) Name and signature of program administrator.

(11) The program shall submit the List of Dialysis Technician Training Program Graduates within three (3) working days of the program completion date.

(12)(a) The program shall notify the board in writing within thirty (30) days of a training program closure.

(b) The notification shall include:

1. The date of closing;

2. A copy of the program trainee roster from the date of the last renewal to the date of closing;

3. The location of the program's records as established in subsection (9) of this section; and

4. The name and address of the custodian of the records.

(13) A dialysis technician training program that conducts either the didactic portion or the clinical portion in this state shall be required to be approved by the board pursuant to the criteria established in the Dialysis Technician Training Program Guide, and the program shall meet the requirements of this section.

Section 8. Dialysis Technician Training Program Initial Approval. (1) To receive initial approval, a dialysis technician training program shall:

(a) File a completed Application for Dialysis Technician Training Program Approval; and

(b) Pay the fee established in Section 12 of this administrative regulation.

(2) Board approval for a dialysis technician training program shall be:

(a) Based on compliance with the standards established in Section 7 of this administrative regulation; and

(b) Granted for a two (2) year period from the date of approval.

(3) Upon approval, the board shall issue a program code number.

Section 9. Continued Board of Approval of a Dialysis Technician Training Program. (1) To receive continued approval, a dialysis technician training program shall:

(a) File a completed Application for Dialysis Technician Training Program Approval;

(b) Submit an annual program evaluation summary report and any actions taken as a result of the evaluation as required by Section 7(4)(f) of this administrative regulation;

(c) Submit a list of current faculty including the name, title, and credential identifying the educational and professional qualifications of each instructor;

(d) Submit a copy of the program trainee roster for the past two (2) years as required by Section 7(9)(c) of this administrative regulation; and

(e) Pay the fee established in Section 12 of this administrative regulation.

(2) The completed Application for Dialysis Technician Training Program Approval shall be submitted at least two (2) months prior to the end of the current approval period.

(3) Continued approval shall be based on compliance with the standards established in Section 7 of this administrative regulation.

(4) Continued approval shall be granted for a two (2) year period.

(5) If a program fails to maintain continued approval, the approval shall lapse.

Section 10. Reinstatement of Dialysis Technician Training Programs. A program with lapsed approval that seeks to reinstate that approval shall:

(1) File a completed Application for Dialysis Technician Training Program Approval; and

(2) Pay the fee established in Section 12 of this administrative regulation.

Section 11. Board Actions on Dialysis Technician Training Programs. (1) A representative of the board may make a site visit to a dialysis technician training program to evaluate compliance with 201 KAR Chapter 20.

(2) The board shall prepare a report of the site visit, identifying deficiencies for the training program if applicable, and shall include recommendations and requirements to be met in order to maintain compliance with standards.

(3) The program administrator shall submit to the board a response to the site visit report.

(4) Based on the report of deficiencies, the training program's response, and any other relevant evidence, the board shall grant approval, continue approval, continue approval with stipulations, or propose to deny or withdraw approval of the program.

(5) A dialysis technician training program administrator may request a review of a board decision concerning approval. A review shall be conducted using the procedure established in this subsection.

(a) A written request for the review shall be filed with the board within thirty (30) days after the date of notification of the board action that the dialysis technician training program administrator contests.

(b) The board, or the board's designee, shall conduct a review. The dialysis technician training program administrator may appear in person to present reasons why the board's decision should be set aside or modified.

(c) The dialysis technician training program administrator shall be notified of the board's decision.

(6) The board shall deny or withdraw approval of a program after an administrative hearing conducted pursuant to KRS Chapter 13B.

Section 12. Fees. (1) The application fee for the initial credential shall be seventy (70) dollars.

(2) The credential renewal fee shall be seventy (70) dollars.

(3) The credential reinstatement fee shall be $100.

(4) The dialysis technician training program initial approval fee shall be $950.

(5) The dialysis technician training program continued approval fee shall be $800.

(6) The dialysis technician training program reinstatement fee shall be $950.

(7) An additional fee of twenty-five (25) dollars shall be charged for an Application for Renewal of Dialysis Technician Credential that is filed after the deadline for filing.

(8) An additional fee of $150 shall be charged for an Application for Dialysis Technician Training Program Approval that is filed after the deadline for continued approval filing.

(9) A fee of ten (10) dollars shall be charged for issuing a duplicate of the credential.

(10) A check submitted to the board for payment of a fee that is returned by the bank for nonpayment shall be assessed a return check fee of thirty-five (35) dollars.

(11) A fee of ten (10) dollars shall be charged for written verification of a dialysis technician credential. If submitted in list format, a fee of ten (10) dollars for the first name shall be assessed and a fee of one (1) dollar shall be assessed for each additional name.

(12) A fee of twenty-five (25) dollars shall be charged for a duplicate application form that is issued due to the failure to maintain a current mailing address as required by Section 13 of this administrative regulation.

(13) A fee of thirty five (35) dollars shall be charged for a name change and the issuance of a new credential.

(14) All fees shall be nonrefundable.

Section 13. Miscellaneous Requirements. (1) Any person credentialed by the board as a dialysis technician shall maintain a

current mailing address with the board and immediately notify the board in writing of a change of mailing address.

(2)(a) Holding a credential shall constitute consent by the dialysis technician to service of notices or orders of the board. Notices and orders shall be sent to the mailing address on file with the board.

(b) Any notice or order of the board mailed or delivered to the mailing address on file with the board shall constitute valid service of the notice or order.

(3)(a) Any dialysis technician credentialed by the board shall, within ninety (90) days of entry of the final judgment, notify the board in writing of any misdemeanor or felony conviction in this or any other jurisdiction.

(b) Upon learning of any failure to notify the board pursuant to this subsection, the board shall initiate an action for immediate temporary suspension until the person submits the required notification.

(4) Any dialysis technician credentialed by the board shall immediately notify the board in writing if any professional or business license that is issued to the person by any agency of the commonwealth or any other jurisdiction:

(a) Is surrendered or terminated under threat of disciplinary action;

(b) Is refused, limited, suspended, or revoked; or

(c) If renewal of continuance is denied.

(5) If the board has reasonable cause to believe that any dialysis technician is unable to practice with reasonable skill and safety or has abused alcohol or drugs, it shall require the person to submit to a chemical dependency evaluation or a mental or physical examination by a practitioner it designates.

(a) Holding a credential shall constitute:

1. Consent by the dialysis technician to a chemical dependency evaluation, mental examination, or physical examination if directed in writing by the board. The direction to submit to an evaluation or examination shall contain the basis for the board's concern that the technician is unable to practice safely and effectively; and

2. Waiver of objections to the admissibility of the examining practitioner's testimony or examination reports on the grounds of privileged communication.

(b) The dialysis technician shall bear the cost of chemical dependency evaluation, mental examination, or physical examination ordered by the board.

(c) Upon failure of the dialysis technician to submit to a chemical dependency evaluation, mental examination, or physical examination ordered by the board, unless due to circumstances beyond the person's control, the board shall initiate an action for immediate temporary suspension pursuant to KRS 314.089 or deny an application until the person submits to the required examination.

(d) If a chemical dependency evaluation, mental examination, or physical examination pursuant to this subsection results in a finding that indicates that the dialysis technician is unable to practice with reasonable skill and safety or has abused alcohol or drugs, the dialysis technician shall be subject to disciplinary procedures as established in Section 6 of this administrative regulation.

Section 14. Due process procedures, including appeal, pertaining to this administrative regulation shall be conducted in accordance with KRS Chapter 13B.

Section 15. Incorporation by Reference. (1) The following materials are incorporated by reference:

(a) "Application for Dialysis Technician Training Program Approval", Kentucky Board of Nursing, 6/2006;

(b) "Application for Dialysis Technician Credential", Kentucky Board of Nursing, 1/2016;

(c) "Application for Renewal of Dialysis Technician Credential", Kentucky Board of Nursing, 2/2018[~~1/2016~~];

(d) "Checklist for Dialysis Technician Competency Validation", Kentucky Board of Nursing, 9/2007;

(e) "Dialysis Technician Training Program Guide", August 14, 2001, Kentucky Board of Nursing; and

(f) "List of Dialysis Technician Training Program Graduates", Kentucky Board of Nursing, 9/2007.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222-5172, Monday through Friday, 8 a.m. to 4:30 p.m.

LEWIS PERKINS, President

APPROVED BY AGENCY: February 15, 2018

FILED WITH LRC: March 14, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 23, 2018 at 10:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until end of day (11:59 p.m.) April 30, 2018. 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) 429-330, fax (502) 429-1248, 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 incorporates the various application forms used by the Board for dialysis technicians (DT).

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.137.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the statute by incorporating the application forms.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statute by incorporating the application forms.

(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 updates the application forms. The primary change are the questions concerning criminal convictions.

(b) The necessity of the amendment to this administrative regulation: The application forms need periodic updates for currency.

(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 updating the forms.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for DT credential, number unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative

regulation or amendment: The applicant will use the updated application form.

(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 change in cost.

(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
Board of Physical Therapy
(Amendment)

201 KAR 22:020. Eligibility and credentialing procedure.

RELATES TO: KRS 164.772, 327.010, 327.050, 327.060, 327.075, 327.080, 327.310

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

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

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

(1) Examination;

(2) Endorsement; or

(3) Reinstatement.

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

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

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

(c) Have successfully completed the Jurisprudence Exam;

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

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

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

(g) Register for the NPTE examination; and

(h) Effective <u>six (6) months after the Board receives an Originating Agency Number from the Federal Bureau of Investigation</u> [~~May 1, 2018~~], submit to the Board a completed nationwide criminal background check as required by KRS 327.310 with the background investigation completed no later than six (6) months prior to the date of the filing of the application.

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

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

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

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

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

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

(2) Register with the FSBPT Score Transfer Service to have results submitted to Kentucky.

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

(1) Meet the qualifications of Section 2 or 3 of this administrative regulation, except for the retake provisions in Section 2(3) of this administrative regulation;

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

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

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

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

(b) Has an unrestricted license.

(2) A supervising physical therapist:

(a) Shall be on-site at all times during the practice of the

applicant with a temporary permit;

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

(c) Shall review, approve, date, and co-sign all physical therapy documentation by the applicant with a temporary permit;

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

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

(3) The applicant with a temporary permit shall:

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

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

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

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

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

(b) Notice of exam results by the board.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) "Supervisory Agreement for Applicant with Temporary Permit", January 2017; and

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

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

TALIA BARTON, Board Chair
LOUIS D. KELLY, General Counsel

APPROVED BY AGENCY: March 13, 2018

FILED WITH LRC: March 14, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 30, 2018, at 1:00 p.m. (EST) at 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until April 30, 2018. 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: Scott D. Majors, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140 and fax (502) 429-7142, email ScottD.Majors@ky.gov; and Louis D. Kelly, Esq., General Counsel, Board of Physical Therapy, Adams, Stepner, Woltermann & Dusing, 40 W. Pike Street, P.O. Box 861, Covington, Kentucky 41012, phone (859) 394-6200 and fax (859) 392-7239, email lkelly@aswdlaw.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Scott D. Majors and Louis D. Kelly, Esq.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the eligibility and credentialing procedure for physical therapists and physical therapist assistants in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of KRS 327.050.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It establishes the eligibility and credentialing procedure for physical therapists and physical therapist assistants in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the eligibility and credentialing procedure for physical therapists and physical therapist assistants 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: The amendment adds a requirement that any applicant must submit to a nationwide criminal background investigation conducted by the Kentucky State Police and Federal Bureau of Investigation in compliance with KRS 327.310, effective six months after the Board obtains an Originating Agency Identification number.

(b) The necessity of the amendment to this administrative regulation: To comply with the provisions of KRS 327.310.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment requires all applicants to submit to a nationwide criminal background investigation conducted by the Kentucky State Police and Federal Bureau of Investigation consistent with the requirements of KRS 327.310.

(d) How the amendment will assist in the effective administration of the statutes: The amendment requires all applicants to submit to a nationwide criminal background investigation conducted by the Kentucky State Police and Federal Bureau of Investigation consistent with the requirements of KRS 327.310, effective six months after the Board obtains an Originating Agency Identification number.

(3) List the type and number of individuals, businesses,

organizations, or state and local governments affected by this administrative regulation: Approximately 5,600 physical therapists and physical therapist assistants.

(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: Applicants will be required to submit to a nationwide criminal background investigation conducted by the Kentucky State Police and Federal Bureau of Investigation, effective six months after the Board obtains an Originating Agency Identification number.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The nationwide criminal background investigation is at the applicant's expense and currently costs approximately $40.00 for all associated fees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Assuming all other criteria for licensure is met, applicants will be granted a credential to work as a physical therapist or physical therapist assistant 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: No cost to the board.

(b) On a continuing basis: No cost to the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency Revenue 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: There will be no increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Applicants will have to pay fees charged by the Kentucky State Police and Federal Bureau of Investigation to perform the background checks.

(9) TIERING: Is tiering applied? Tiering was not used 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? Applicants for physical therapist or physical therapist assistant credentials.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 327.040, 327.050, 327.310

(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. No effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 Physical Therapy
(Amendment)

201 KAR 22:040. Procedure for renewal or reinstatement of a credential for a physical therapist or physical therapist assistant.

RELATES TO: KRS 164.772, 327.050(8), (9), 327.070

STATUTORY AUTHORITY: KRS 327.040(10), (11), 327.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the Board of Physical Therapy to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327, and 327.040(10) authorizes the board to promulgate administrative regulations establishing a measure of continued competency as a condition of license renewal. This administrative regulation establishes the requirements and procedures for the renewal and reinstatement of credentials.

Section 1. A credential shall be renewed upon:

(1) Payment of the renewal fee established in 201 KAR 22:135 on or before March 31st of each odd numbered year. The fee shall be waived for renewal of license or certificate held by active duty member of Armed Forces as set forth in KRS 12.355;

(2) Submission of the completed Renewal Application or Reinstatement Application;

(3) Verification of continued competence as established in 201 KAR 22:045.

Section 2. Credentials not renewed by the board by March 31 of each odd numbered year shall lapse.

Section 3. (1) A credential holder who has a credential that has lapsed may, within three (3) years of the lapsed date, reinstate upon:

(a) Meeting the requirements of Section 1(2) of this administrative regulation for the current renewal period;

(b) Verification of having obtained within two (2) years prior to the date of submission of the completed Renewal Application or Reinstatement Application:

1. Thirty (30) hours of continued competency as established in 201 KAR 22:045, Section 2(1)(a)1, 2, and 3 and (c) for a physical therapist; or

2. Twenty (20) hours of continued competency as established in 201 KAR 22:045, Section 2(1)(b)1, 2, and 3 and (c) for a physical therapist assistant;

(c) Submission of payment of the reinstatement fee established in 201 KAR 22:135; and [.]

(d) Effective six (6) months after the Board receives an Originating Agency Identification Number from the Federal Bureau of Investigation [~~May 1, 2018~~], submitting to the Board a completed nationwide criminal background check as required by KRS 327.310 with the background investigation completed no later than six (6) months prior to the date of the filing of the application.

(2) Continued competency hours submitted under subsection (1)(b) of this section for reinstatement shall satisfy the continued competency hours for the next renewal period as established in 201 KAR 22:045, Section 2(2) and (3).

Section 4. A credential holder who has a credential that has lapsed may, more than three (3) years of the lapsed date, reinstate upon:

(1) Meeting the requirements of Section 3 of this administrative regulation;

(2) Submission of all credentials from other jurisdictions since last renewal; and

(3) Completing the following requirements of the board if not

holding a current credential from any other jurisdiction since last renewal:

(a) Submission of evidence of professional competency;

(b) An agreement to practice physical therapy under direct supervision not to exceed six (6) months;

(c) Successful completion of the board-approved examination; or

(d) Any combination of paragraphs (a) through (c) of this subsection.

Section 5. Incorporation by Reference. (1) "Renewal Application", July 2015; and

(2) "Reinstatement Application", July 2015.

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

TALIA BARTON, Board Chair
LOUIS D. KELLY, General Counsel

APPROVED BY AGENCY: March 13, 2018

FILED WITH LRC: March 14, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 30, 2018 at 4:00 p.m. E.T. at 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until April 30, 2018. 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: Scott D. Majors, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140 and fax (502) 429-7142, email ScottD.Majors@ky.gov; and Louis D. Kelly, Esq., General Counsel, Board of Physical Therapy, Adams, Stepner, Woltermann & Dusing, 40 W. Pike Street, P.O. Box 861, Covington, Kentucky 41012, phone (859) 394-6200 and fax (859) 392-7239, email lkelly@aswdlaw.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Scott D. Majors, and Louis D. Kelly, Esq.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements and procedures for the renewal and reinstatement of credentials.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of KRS Chapter 327.050.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the requirements and procedures for renewal and reinstatement of credentials.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides the requirements and procedures for renewal and reinstatement of credentials.

(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 requirement that any applicant for reinstatement must submit to a nationwide criminal background investigation conducted by the Kentucky State Police and Federal Bureau of Investigation in compliance with KRS 327.310, effective six months after the Board receives an Originating Agency Identification number.

(b) The necessity of the amendment to this administrative regulation: To comply with recent statutory changes to KRS 327.310.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment makes the regulation consistent with the requirements of KRS 327.310.

(d) How the amendment will assist in the effective administration of the statutes: The amendment adds a requirement that any applicant for reinstatement must submit to a nationwide criminal background investigation conducted by the Kentucky State Police and Federal Bureau of Investigation in compliance with KRS 327.310 effective six months after the Board receives an Originating Agency Identification number.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 5,600 physical therapists and physical therapist assistants.

(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: Any applicant for reinstatement must submit to a nationwide criminal background investigation conducted by the Kentucky State Police and Federal Bureau of Investigation in compliance with KRS 327.310, effective six months after the Board receives an Originating Agency Identification number.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The nationwide criminal background investigation is at the applicant's expense and currently costs approximately $40.00 for all associated fees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Assuming all other criteria is met, applicants for reinstatement will be granted a credential to work as a physical therapist or physical therapist assistant 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: No cost to the board.

(b) On a continuing basis: No cost to the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency Revenue 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: There will be no increase in 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 change the fees assessed by the Board directly or indirectly. Applicants will have to pay fees charged by the Kentucky State Police and Federal Bureau of Investigation to perform the background checks.

(9) TIERING: Is tiering applied? Tiering was not used 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? Physical therapists and physical therapists assistants credentialed by the Board.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 327.040, 327.050, 327.310.

(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. No effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 Physical Therapy
(Amendment)

201 KAR 22:070. Requirements for foreign-educated physical therapists.

RELATES TO: KRS 327.050, 327.060

STATUTORY AUTHORITY: KRS 327.040(1), (11), 327.060(3), 327.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the Board of Physical Therapy to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327. KRS 327.060(3) authorizes the board to approve services to provide an evaluation of a foreign-educated physical therapist applicant's educational credentials. This administrative regulation establishes the requirements a foreign-educated physical therapist shall satisfy to become credentialed in the state of Kentucky.

Section 1. A foreign-educated physical therapist applicant shall be credentialed if the applicant:

(1) Complies with the requirements of KRS 327.060(1)(b).

(2) In accordance with KRS 327.060(1)(b), meets the following requirements:

(a) Furnishes the board a favorable educational credentials evaluation report from a credentialing agency that uses the appropriate edition of the "Coursework Evaluation Tool" (CWT) copyrighted by the Federation of State Boards of Physical Therapy (FSBPT). An academic deficiency in general education coursework identified by the CWT shall be satisfied by the applicant through submission of evidence identifying one (1) of the following:

1. Completion of appropriate coursework at a regionally accredited academic institution:

2. Continuing education in a course approved by the board; or

3. Submission of a portfolio including a detailed resume and description of relevant work experience approved by the board;

(b) Shows proof of English Language Proficiency:

1. A score of not less than fifty (50) on the Test of Spoken English (TSE);

2. Verification that the applicant has achieved the following minimum scores for each category of the Test of English as a Foreign Language, TOEFLE Internet-based test (TOEFL iBT): Writing, twenty-two (22), Speaking, twenty-four (24), Listening, twenty-one (21), Reading, twenty-two (22); with an overall score of not less than eighty-nine (89); or

3. Verification that English is the native language of the country of origin.

(c) Submits a satisfactorily-completed application and appropriate fee as required by 201 KAR 22:135;

(d) Completes the Jurisprudence Exam;

(e) Obtains a passing score on the National Physical Therapy Examination (NPTE). The requirements of 201 KAR 22:020, Section 2(3) and (4) shall be applicable to examination candidates; and

(f) Has successfully completed a minimum of three (3) months and no more than six (6) months of practice under the on-site supervision of a physical therapist credentialed under KRS Chapter 327 at a Kentucky facility previously approved by the board which satisfies the following requirements:

1. The supervised practice shall be a minimum of 390 hours in a three (3) month period, in a facility which is serving as a clinical education site for students enrolled in a program in physical therapist education accredited by the Commission for Accreditation of Physical Therapy Education (CAPTE);

2. The applicant shall furnish the board a favorable evaluation of on-site supervision performed by a clinical supervisor who utilizes the "Performance Evaluation Tool for Foreign Educated Therapists Completing a Supervised Clinical Practice in the United States" copyrighted by FSBPT. The clinical supervisor shall submit the evaluation to the board after three (3) months practice, and if required, after the sixth month, when the required score denoting clinical competency shall have been reached;

3. The supervising physical therapist shall, within the three (3) years prior to serving as a supervisor, have previously acted as clinical supervisor for a physical therapist student as part of a CAPTE accredited program; and

4. The supervisor shall countersign all of the candidate's physical therapy records within fourteen (14) days.

(3) Effective six (6) months after the board receives an Originating Agency Number from the Federal Bureau of Investigation[~~May 1, 2018~~], submits to the board a completed nationwide criminal background check as required by KRS 327.310 with the background investigation completed no later than six (6) months prior to the date of the filing of the application.

Section 2. Temporary Permits for Foreign-educated Physical Therapist Applicants. (1) An applicant who has not satisfactorily completed three (3) months of supervised practice as a physical therapist shall be issued a temporary permit to complete Section 1(2)(f) of this administrative regulation if the applicant has:

(a) Completed the requirements of Section 1(2)(a) through (e) of this administrative regulation; and

(b) Submitted an approved "Supervisory Agreement for Physical Therapists Educated in a Foreign Country".

(2) The temporary permit shall be revoked if the applicant has not satisfactorily completed the supervised practice within a six (6) month period.

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

(a) "Supervisory Agreement for Physical Therapists Educated in a Foreign Country, August 2017".

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

TALIA BARTON, Board Chair

LOUIS D. KELLY, General Counsel

APPROVED BY AGENCY: March13, 2018

FILED WITH LRC: March 14, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 30, 2018 at 4:00 p.m. E.T. at 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public

hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until April 30, 2018. 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: Scott D. Majors, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140 and fax (502) 429-7142, email ScottD.Majors@ky.gov; and Louis D. Kelly, Esq., General Counsel, Board of Physical Therapy, Adams, Stepner, Woltermann & Dusing, 40 W. Pike Street, P.O. Box 861, Covington, Kentucky 41012, phone (859) 394-6200 and fax (859) 392-7239, email lkelly@aswdlaw.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Scott D. Majors and Louis D. Kelly, Esq.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements a foreign-educated physical therapist shall satisfy to become credentialed in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS Chapter 327.060.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the requirements and procedures for credentialing foreign-educated applicants.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides the requirements and procedures for foreign-educated applicants.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds a requirement that any foreign-educated applicant must submit to a nationwide criminal background investigation conducted by the Kentucky State Police and Federal Bureau of Investigation in compliance with KRS 327.310, effective six months after the Board obtains an Originating Agency Identification number.

(b) The necessity of the amendment to this administrative regulation: To comply with the provisions of KRS 327.310.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment requires all foreign-educated applicants to submit to a nationwide criminal background investigation conducted by the Kentucky State Police and Federal Bureau of Investigation consistent with the requirements of KRS 327.310.

(d) How the amendment will assist in the effective administration of the statutes: The amendment requires all foreign-educated applicants to submit to a nationwide criminal background investigation conducted by the Kentucky State Police and Federal Bureau of Investigation consistent with the requirements of KRS 327.310, effective six months after the Board obtains an Originating Agency Identification number.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 5,600 physical therapists and physical therapist assistants.

(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: Foreign-educated applicants will be required to submit to a nationwide criminal background investigation conducted by the Kentucky State Police and Federal Bureau of Investigation, effective six months after the Board obtains an Originating Agency Identification number.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The nationwide criminal background investigation is at the applicant's expense and currently costs approximately $40.00 for all associated fees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Assuming all other criteria for licensure is met, foreign-educated applicants will be granted a license to practice physical therapy 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: No cost to the board.

(b) On a continuing basis: No cost to the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency Revenue 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: There will be no increase in 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 change the fees assessed by the Board directly or indirectly. Applicants will have to pay fees charged by the Kentucky State Police and Federal Bureau of Investigation to perform the background checks.

(9) TIERING: Is tiering applied? Tiering was not used 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? Foreign-educated applicants for physical therapy credentials.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 327.040, 327.050, 327.060, 327.310.

(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. No effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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:

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

301 KAR 2:049. Small game and furbearer hunting and trapping on public areas.

RELATES TO: KRS 150.010, 150.092, 150.170, 150.370, 150.399, 150.990, 150.995

STATUTORY AUTHORITY: KRS 150.025(1), 150.175(7), (9), 150.360, 150.400, 150.410, 150.620

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 statewide or to a limited area. KRS 150.175(7) and (9) authorize the department to issue licenses, permits, and tags for hunting and trapping. KRS 150.360 requires restrictions on the taking of wildlife and authorizes the department to promulgate administrative regulations establishing the requirements for hunting coyotes at night. KRS 150.400 authorizes the department to establish the types of traps that can legally be used by trappers. KRS 150.410 authorizes the department to regulate trap tags, trap visitation, and trap placement to protect domestic animals. KRS 150.620 authorizes the department to promulgate administrative regulations for the maintenance and operation of the lands the department has acquired for public recreation. This administrative regulation establishes exceptions to statewide small game and furbearer requirements on public areas.

Section 1. Definitions. (1) "Adult" means a person who is at least eighteen (18) years of age.

(2) "Body-gripping trap" means a commercially manufactured spring-loaded trap designed to kill an animal upon capture.

(3) "Dry land set" means a trap that is set so that no portion of the trap touches the water of a stream, river, pond, lake, wetland, or other water course.

(4) "Furbearer" means mink, muskrat, beaver, raccoon, opossum, gray fox, red fox, least weasel, long-tailed weasel, river otter, bobcat, coyote, or striped skunk.

(5) [~~"Upland bird" means a ruffed grouse or northern bobwhite.~~

~~(6)~~] "Wildlife Management Area" or "WMA" means a tract of land:

(a) Controlled by the department through ownership, lease, license, or cooperative agreement; and

(b) That has "Wildlife Management Area" or "WMA" as part of its official name.

(6)[~~(7)~~] "Youth" means a person under the age of sixteen (16) by the date of the hunt or the trapping date.

Section 2. This administrative regulation shall establish exceptions to the statewide requirements established in 301 KAR 2:122, 2:251, and 3:010.

Section 3. General Requirements on a Wildlife Management Area or Outdoor Recreation Area. (1) Except as established in subsection (2) of this section, a person hunting any species during daylight hours, and any person accompanying that hunter, shall comply with hunter orange requirements as established in 301 KAR 2:132, 2:172, and 2:300.

(2) The hunter orange clothing requirement in subsection (1) of this section shall not apply to a person:

(a) Hunting waterfowl or doves as established in 301 KAR 2:225; or

(b) Hunting waterfowl as established in 301 KAR 2:221, 2:222, or 2:226.

(3) There shall be a free youth small game hunting week for seven (7) consecutive days beginning on the Saturday after Christmas, in which a youth may take small game without a hunting license.

(4) There shall be a free youth trapping week for seven (7) consecutive days beginning on the Saturday after Christmas, in which a youth may trap without a trapping license.

(5) A body-gripping trap used as a dry land set shall have a maximum inside jaw spread of five and one-quarter (5 1/4) inches measured:

(a) In the center of the trap; and

(b) In the unset position.

(6) Dry land sets shall not be placed closer than ten (10) feet apart.

(7) Prior to trapping on a WMA or Outdoor Recreation Area, a person shall complete for each area a KDFWR Public Area Trapping Registration Form obtained from a department office or the department's Web site at fw.ky.gov.

Section 4. Exceptions on Wildlife Management Areas and Outdoor Recreation Areas. (1) Barren River Wildlife Management Area.

(a) The WMA shall be considered to be entirely within the Eastern Zone, as established in 301 KAR 2:122.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(c) On the Peninsula Unit, including Narrows, Goose, and Grass Islands, a person shall not hunt with a breech-loading firearm.

(2) Beaver Creek WMA, including private inholdings.

(a) Ruffed grouse season shall be open from October 1 through December 31.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(c) A person shall hunt coyotes during daylight hours only.

(3) Cane Creek WMA, including private inholdings.

(a) Ruffed grouse season shall be open from October 1 through December 31.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(c) A person shall hunt coyotes during daylight hours only.

(4) Cedar Creek Lake WMA.

(a) Rabbit season shall be closed after December 31.

(b) With the exception of the statewide squirrel season, the area shall be closed to all other small game and furbearer hunting.

(5) Clay WMA.

(a) The area shall be closed for four (4) consecutive days beginning on the first Friday in December to all hunting except archery deer hunting, muzzleloader deer hunting, as established in 301 KAR 2:178, and the pheasant quota hunt, as established in Section 5 of this administrative regulation.

(b) Rabbit season shall be closed after December 31.

(c) Any person hunting rabbits shall:

1. Check in and check out at a self service kiosk; and

2. Clearly display a department-provided hang-tag in a vehicle[~~Ruffed grouse and northern bobwhite hunting shall be restricted to quota hunt dates established in Section 5 of this administrative regulation. All other small game hunting shall be closed until 2:00 p.m. on upland bird quota hunt dates~~].

(d) Northern bobwhite and ruffed grouse hunting shall be open from November 1 through December 31 on Tuesday and Saturday except:

1. After 3:00 p.m.;

2. During a quota deer hunt as established in 301 KAR 2:178;

3. During opening weekend of modern gun deer season as established in 301 KAR 2:172; and

4. During a pheasant quota hunt, as established in Section 5 of this administrative regulation.

(e) The daily bag limit shall be:

1. Four (4) northern bobwhite; and

2. Two (2) ruffed grouse.

(f) A northern bobwhite or ruffed grouse hunter shall:

1. Check in and check out at a self-service kiosk; and

2. Clearly display a department-provided hang-tag in a vehicle.

(g) Pheasants may be taken beginning on the Tuesday following the pheasant quota hunt through December 31.

1. Any person with a valid hunting license may take a pheasant.

2. The daily limit per hunter shall be three (3) pheasants of either sex.

(h)[~~(e)~~] Quota fox hunting field trials.

1. There shall be a maximum of two (2) four (4) day events per calendar year.

2. Each event shall be limited to 250 participants.

3. The area shall be closed to nonparticipants.

4. A participant shall:

a. Wear a laminated identification badge issued by the department during the event; and

b. Return the laminated badge at the close of the event.

(6) Curtis Gates Lloyd WMA.

(a) Northern bobwhite and rabbit seasons shall be closed after December 31.

(b) A person shall not allow a dog to be unleashed from April 1 until the third Saturday in August except if squirrel hunting.

(7) Dix River WMA.

(a) Northern bobwhite and rabbit seasons shall be closed after December 31.

(b) Ruffed grouse season shall be open from October 1 through December 31.

(8) Fleming WMA.

(a) Northern bobwhite and rabbit seasons shall be closed after December 31.

(b) Ruffed grouse season shall be open from October 1 through December 31.

(9) Green River Lake WMA.

(a) The area shall be closed to all hunting for four (4) consecutive days beginning on the third Friday in November, except for archery deer hunting and the pheasant quota hunt established in Section 5 of this administrative regulation.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(c) Pheasant.

1. Beginning on the Tuesday following the pheasant quota hunt through December 31, any person with a valid hunting license may take a pheasant.

2. The daily limit per hunter shall be three (3) pheasants of either sex.

(d) The area shall be closed to ruffed grouse hunting and trapping.

(10) Higginson-Henry WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(11) Kleber WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(12) Lake Cumberland WMA.

(a) Ruffed grouse season shall be open from October 1 through December 31.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(13) Mill Creek WMA.

(a) Northern bobwhite and rabbit seasons shall be closed after December 31.

(b) A person shall hunt coyotes during daylight hours only.

(14) Miller-Welch Central Kentucky WMA.

(a) Small game and furbearer hunting seasons shall be closed, except that squirrel season shall be open.

(b) A person shall not allow a dog to be unleashed:

1. From April 1 until the third Saturday in August; or

2. On a Monday, Wednesday, or Friday during the remainder of the year, except:

a. If a person is hunting squirrels during an open season; or

b. If a person is participating in an authorized field trial.

(15) Mullins WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(16) Nolin Lake WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(17) Otter Creek Outdoor Recreation Area.

(a) Except as authorized by the department, a person shall not enter the area during a deer quota hunt without a valid quota hunt confirmation number.

(b) Northern bobwhite season shall be closed.

(c) Rabbit hunting season shall be from December 1 through December 31.

(d) Trapping season shall be from January 1 through the last day in February.

(e) A person who traps on the area shall:

1. First obtain prior authorization from the area manager; and

2. Only trap in department designated areas.

(f) Except during deer quota hunts, a person shall not use the following to take furbearers:

1. A rifle;

2. Ball ammunition; or

3. Slug ammunition.

(g) A person shall not use a rimfire gun to take small game, except during a deer quota hunt.

(18) Paul Van Booven WMA. The area shall be closed to vehicle access from one (1) hour after sunset until one (1) hour before sunrise.

(19) Peabody WMA.

(a) A person hunting northern bobwhite [~~hunting~~] on the Sinclair Unit shall:

1. Only hunt[~~Have shooting hours~~] between 7:30 a.m. and 3:00 p.m.;[~~and~~]

2. Only hunt on Thursday and[~~Be closed on~~] Sunday; and

3. Not take more than four (4) northern bobwhite daily.

(b) A person hunting northern bobwhite on the Ken Unit shall:

1. Only hunt between 7:30 a.m. and 3:00 p.m.;

2. Only hunt on Wednesday and Saturday; and

3. Not take more than four (4) northern bobwhite daily.

(c) A northern bobwhite or rabbit hunter on the Sinclair Unit or Ken Unit shall:

1. Check in and check out at a self-service kiosk[~~the Peabody WMA office~~]; and

2. Clearly[~~Visibly~~] display a department-provided hang-tag in a[~~hunting log on the dashboard of the hunter's~~] vehicle.

(20) Pennyrile Forest WMA.

(a) Ruffed grouse season shall be open from December 1 through December 31.

(b) The daily limit shall be two (2) ruffed grouse.

(21) Pioneer Weapons WMA.

(a) A person shall not hunt with a breech-loading firearm.

(b) A person shall hunt coyotes during daylight hours only.

(22) Redbird WMA. A person shall hunt coyotes during daylight hours only.

(23) Robinson Forest WMA.

(a) Hunting shall not be permitted on the Main Block.

(b) The remainder of the WMA shall be open under statewide requirements.

(24) Rockcastle WMA.

(a) Rabbit season shall be closed after December 31.

(b) A rabbit hunter shall:

1. Check in and check out at a self-service kiosk; and

2. Clearly display a department-provided hang-tag in a vehicle.

(c) Northern bobwhite and ruffed grouse hunting shall be open on Tuesday and Saturday until 3:00 p.m. from November 1 through December 31, except it shall be closed during:

1. A deer quota hunt as established in 301 KAR 2:178; and

2. Opening weekend of modern gun deer season, as established in 301 KAR 2:172.

(d) The daily bag limit shall be:

1. Four (4) northern bobwhite; and

2. Two (2) ruffed grouse daily.

(e) A northern bobwhite or ruffed grouse hunter shall:

1. Check in and check out at a self-service kiosk; and

2. Clearly display a department-provided hang-tag in a vehicle.

(25) Taylorsville Lake WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(26)[~~(25)~~] Tradewater WMA.

(a) Ruffed grouse season shall be open from December 1 through December 31.

(b) The daily limit shall be two (2) ruffed grouse.

(27)[~~(26)~~] West Kentucky WMA.

(a) A person shall check in daily at a designated check station prior to using an "A" tract.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31 on Tracts 2, 3, 6, and 7.

(c) Northern bobwhite and rabbit seasons shall be open on Tracts 1, 4, 5, and "A" beginning one-half (1/2) hour before sunrise until 1:00 p.m. local time from January 1 through January 10, except if harvest limits are reached prior to January 10.

1. A hunter shall report harvest numbers and total hours hunted to the area supervisor on a daily basis.

2. If a tract is closed prior to January 10, a sign indicating closure shall be posted at the hunter check station at least twenty-four (24) hours prior to the closure.

(d) A person shall not:

1. Use a rifle, ball, or slug ammunition;

2. Operate a vehicle on Tract 6 from February 1 through April 16; or

3. Allow a dog to be unleashed from April 1 until the third Saturday in August, except while squirrel hunting.

(28)[~~(27)~~] Yellowbank WMA.

(a) Northern bobwhite and rabbit seasons shall be closed after December 31.

(b) The area shall be closed for four (4) consecutive days beginning on the first Friday in December to all hunting except archery deer hunting, muzzleloader deer hunting, and the pheasant quota hunt as established in Section 5 of this administrative regulation[~~Pheasants may be taken beginning on the Tuesday following the pheasant quota hunt through December 31~~].

(c) A person shall:

1. Possess a valid hunting license to take pheasant, unless exempt pursuant to KRS 150.170; and

2. Not take more than three (3) pheasants of either sex.

Section 5. Pheasant Quota Hunts. (1) There shall be a pheasant quota hunt on:

(a) Green River Wildlife Management Area for three (3) consecutive days beginning the third Friday in November;

(b) Clay Wildlife Management Area for three (3) consecutive days beginning the first Friday in December; and

(c) Yellowbank Wildlife Management Area for three (3) consecutive days beginning on the first Friday in December.

(2) There shall be a one (1) day clean-up hunt immediately following each of the hunts for pheasant quota hunters drawn for that particular WMA.

(3) Hunt hours for each day shall be from 9:00 a.m. to 4:00 p.m.:

(a) Eastern time for the Green River Wildlife Management Area and Clay Wildlife Management Area hunts; and

(b) Central time for the Yellowbank Wildlife Management Area hunt.

(4) During a quota hunt or clean-up hunt, a person shall wear hunter orange clothing as established in 301 KAR 2:172.

(5) The daily bag limit per hunter shall be two (2) pheasants of either sex, except there shall be a daily bag limit of three (3) pheasants of either sex during the one (1) day clean-up hunt.

(6) Pheasant quota hunt procedures.

(a) A person selected for a pheasant quota hunt may hunt on the one (1) day clean-up hunt for that area.

(b) A person applying for a pheasant quota hunt shall not apply:

1. More than one (1) time for each hunt and shall not be drawn for more than one (1) hunt; and

2. As a group of more than five (5) people.

(c) A person who is drawn to hunt shall pay the pheasant quota hunt permit fee established in 301 KAR 3:022 prior to the hunt.

Section 6. Pheasant Quota Hunt Requirements[~~Northern Bobwhite and Upland Bird Quota Hunts. (1) There shall be one (1) day northern bobwhite quota hunts on one (1) tract of Peabody WMA on the:~~

~~(a) Fourth Saturday in November, which shall only be a youth-mentor hunt;~~

~~(b) Tuesday following the fourth Saturday in November;~~

~~(c) Tuesday following the third Saturday in December;~~

~~(d) First Saturday in January;~~

~~(e) Second Saturday in January; and~~

~~(f) Tuesday following the third Saturday in January.~~

~~(2) There shall be one (1) day upland bird quota hunts on Clay WMA on the:~~

~~(a) Wednesday following the first Saturday in November;~~

~~(b) Third Sunday in November;~~

~~(c) Third Saturday in December; and~~

~~(d) Fourth Tuesday in December.~~

~~(3) A person participating in a quota hunt shall:~~

~~(a) Only hunt from one-half (1/2) hour before sunrise to 2:00 p.m.;~~

~~(b) Wear hunter orange clothing pursuant to 301 KAR 2:172; and~~

~~(c) Not take more than four (4) northern bobwhite on a daily basis.~~

~~(4) A person who participates in an upland bird quota hunt:~~

~~(a) Shall not take more than four (4) ruffed grouse daily; and~~

~~(b) May take woodcock. Woodcock shall only be taken pursuant to the requirements established in 301 KAR 2:225.~~

~~(5) A person applying for a northern bobwhite or upland bird quota hunt shall not apply:~~

~~(a) More than one (1) time for each hunt and shall not be drawn for more than one (1) hunt; and~~

~~(b) As a group of more than three (3) people.~~

~~(6) A person selected for a quota hunt shall only hunt the species identified on the permit.~~

~~Section 7. General Quota Hunt Requirements~~]. (1) A person applying for a pheasant[~~, northern bobwhite, or upland bird~~] quota hunt shall:

(a) Complete the pheasant quota hunt application process on the department's Web site[~~Call the toll-free number listed in the current Fall Hunting and Trapping Guide or apply online~~] at fw.ky.gov between September 1 and September 30; and

(b) [~~Enter each applicant's Social Security number;~~

~~(c) Indicate a choice of days to hunt; and~~

~~(d)~~] Pay a non-refundable three (3) dollar application fee for each applicant [~~prior to the drawing by:~~

~~1. Check;~~

~~2. Money order;~~

~~3. Visa; or~~

~~4. MasterCard~~].

(2) A person, prior to participating in a quota hunt, shall be required to show a:

(a) Department-issued quota hunt permit;

(b) Valid Kentucky hunting license or proof of exemption; and

(c) Hunter education card, if required pursuant to 301 KAR 2:185.

(3) [~~A person or group participating in a northern bobwhite or upland bird quota hunt shall submit a hunting log within seven (7) days after the hunt.~~

~~(4)~~] A youth-mentor quota hunt party shall have a minimum of one (1) youth as a member of the party.

(4)[~~(5)~~] A person shall comply with all quota hunt requirements or be ineligible to apply for any other quota hunt during the following year, except for an elk quota hunt.

(5)[~~(6)~~] A person who is ineligible to apply for a quota hunt pursuant to subsection (5) of this section shall maintain all preference points that were accrued in other quota hunts.

(6)[~~(7)~~] A youth shall only apply as part of a party that has at least one (1) adult.

(7)[~~(8)~~] The department shall extend the application deadline if technical difficulties with the automated application system prevent applications from being accepted for one (1) or more days during the application period.

(8)[~~(9)~~] A quota hunt applicant who is not selected and who applies to hunt the following year shall be given one (1) preference point for each year the applicant was not selected.

(9)[~~(10)~~] A random selection of hunters with preference points shall be made for each year's quota hunts before those without preference points are chosen.

(10)[~~(11)~~] A person shall forfeit all accumulated points if, in a given year, the person does not apply for the hunt in which points were earned, except as established in subsection (6) of this section.

Section 8. Dog Training Areas on Wildlife Management Areas. (1) A group or club may request that a dedicated dog training area be authorized by the department on a specific WMA.

(2) The department shall authorize a dog training area if:

(a) The department approves a suitable location for the dog training area; and

(b) A signed memorandum of understanding is entered into with the club or group.

(3) The conditions established in this subsection shall apply for each dog training area on a WMA.

(a) All northern bobwhite [~~quail~~] to be used in training shall be banded with aluminum leg bands and individually placed in the dog training area.

(b) Dog training areas shall remain open to all other legal WMA uses.

(c) A person shall comply with all dog training area requirements pursuant to 301 KAR 2:041, unless otherwise stated in the memorandum of understanding.

(d) Unleashed dogs shall be allowed within the boundaries of the dog training area year-round, except for:

1. May 15 through August 15;

2. The youth statewide turkey season; and

3. The statewide turkey season.

(e) Released northern bobwhite [~~quail~~] with aluminum leg bands, chukars, pheasants, or pigeons may be harvested on legal dog training days.

(f) Immediately prior to dog training, a person shall:

1. Walk and examine the entire dog training area to ensure that no wild northern bobwhite [~~quail~~] are present; and

2. Then place released birds in the training area.

Section 9. General Requirements on Federally Owned Areas. (1) Season dates, bag limits, and other requirements of 301 KAR 2:251 and 2:050 shall apply, except as otherwise established in this administrative regulation.

(2) Hunter orange requirements established in Section 3 of this administrative regulation shall apply to a person hunting or trapping on federal areas referenced in this section.

(3) A person shall:

(a) Obtain permission from the landowner before hunting;

(b) Not hunt except on assigned dates and in assigned areas; and

(c) Comply with all requirements established by the agency controlling the area.

Section 10. Exceptions on Specific Federally Owned Areas. (1) If hunting is not prohibited by other area priorities, Fort Campbell, Fort Knox, Land Between the Lakes National Recreation Area, Bluegrass Army Depot, and Reelfoot National Wildlife Refuge may allow hunting if in compliance with 301 KAR 2:122 and 2:251 for:

(a) Squirrels, from June 1 through June 14;

(b) Northern bobwhite and rabbit, no earlier than November 1 nor later than the last day of February;

(c) Furbearers, no earlier than October 1 nor later than the last day of February;

(d) Frogs, year round; or

(e) Crows, for a maximum of 124 days between September 1 and the last day of February.

(2) A person shall hunt coyotes during daylight hours only on lands managed by:

(a) Daniel Boone National Forest;

(b) George Washington and Jefferson National Forests;

(c) Land Between the Lakes National Recreation Area;

(d) Clarks River National Wildlife Refuge; and

(e) Reelfoot National Wildlife Refuge.

(3) Fort Knox shall not allow more than thirty (30) days of ruffed grouse hunting between October 1 and the last day of February.

(4) On Land Between the Lakes National Recreation Area, a person hunting the species listed in this administrative regulation shall not use:

(a) Crossbows;

(b) Shotgun slugs or shot larger than BB; or

(c) Center-fire rifles or center-fire handguns, except during designated groundhog or coyote hunts.

(5) Big South Fork National River and Recreation Area.

(a) Ruffed grouse season shall be open from October 1 through December 31.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(c) A person hunting coyotes shall comply with any federal requirements established by the National Park Service.

Section 11. Incorporation by Reference. (1) "KDFWR Public Area Trapping Registration Form", 2016 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Eastern Time.

GREGORY K. JOHNSON, Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: March 8, 2018

FILED WITH LRC: March 13, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 24, 2018 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, 2018. 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 exceptions to statewide hunting and trapping regulations for small game and furbearers on public land and other federally owned areas.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to properly manage small game and furbearer populations, and to provide reasonable hunting and trapping opportunity on public lands.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the Department to promulgate administrative regulations establishing open seasons for the taking of wildlife, to regulate bag limits, and to make these requirements apply to a limited area. KRS 150.175(7) and (9) authorize the department to issues licenses, permits, and tags for hunting and trapping. KRS 150.360 requires restrictions on the taking of wildlife and authorizes the department to promulgate administrative regulations establishing the requirements for hunting coyotes at night. KRS 150.400 authorizes the department to establish the types of traps that can legally be used by trappers. KRS 150.410 authorizes the department to regulate trap tags, trap visitation, and trap placement to protect domestic animals. KRS 150.620 authorizes the department to promulgate administrative regulations for the maintenance and operation of lands it has acquired for public recreation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in administering the above statutes by defining exceptions to the statewide seasons, bag limits, and methods used to hunt and trap small game and furbearers on public lands 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: These amendments eliminate small game quota hunts on Clay and Peabody WMAs. They also establish limited small game hunting on Clay, Peabody, and Rockcastle WMAs. Finally, changes to the pheasant hunt application process eliminate the use of social security numbers and the call-in procedures.

(b) The necessity of the amendment to this administrative regulation: This amendment will control the harvest of small game on Clay, Peabody, and Rockcastle WMAs for sustainable management of small game populations on the areas. It establishes the process to apply for pheasant quota hunts.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All those who participate in small game hunting on Clay, Peabody, and Rockcastle WMAs and all those who apply for a pheasant quota hunt are affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Small game hunters will be required to check-in and check-out on Clay, Peabody, and Rockcastle WMAs. Small game hunters applying for a pheasant quota hunt must complete the online application to be eligible.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no direct cost to hunters as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Small game hunters will benefit from sustainable small game populations on Clay, Peabody, and Rockcastle WMAs and from a streamlined application process for pheasant quota hunts that protects privacy.

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

(a) Initially: There will be no administrative cost to the department to implement this administrative regulation.

(b) On a continuing basis: There will be no cost to the department on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. It will not be necessary to increase any other fees or to increase funding to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees are established directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering was not applied as all small game hunting participants must comply with 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 Department of Fish and Wildlife Resources' Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1), 150.175(7), (9), 150.360, 150.400, 150.410, 150.620.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No additional revenue will be generated for subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no administrative cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no administrative costs incurred 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:

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Regulation and Inspection
(Amendment)

302 KAR 16:020. Inspection and operation of amusement rides or amusement attractions.

RELATES TO: KRS 247.232, 247.234(3), 247.236(3)

STATUTORY AUTHORITY: KRS 247.234, 247.236

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.234(3)(b) and (d) require the department to promulgate administrative regulations establishing initial safety inspection fees and safety requirements for amusement rides or attractions. KRS 247.236(3) requires the department to promulgate an administrative regulation establishing the requirements for the construction of safety barriers around an amusement ride or attraction. This administrative regulation establishes safety guidelines for the operation and inspection of amusement rides or attractions and establishes the initial safety inspection fees.

Section 1. Definitions. (1) "Air inflatable device" means an object that is filled with air by an electric motor-driven blower.

(2) "Chair lift or aerial tramway" means an amusement ride or amusement attraction that is operated by a series of cables and pulleys.

(3) "Dark ride" means an amusement ride or amusement attraction which is enclosed and has the lights turned off during the duration of the ride, and is a nonmechanized self-propelled amusement.

(4) "Go-cart facility" means an amusement ride or amusement attraction that carries a rider on a fixed path and includes the vehicle which travels the fixed path.

(5) "Inspection fee" means a fee required to be paid to operate any amusement ride or amusement attraction in Kentucky.

(6) "Kiddie ride" means an amusement ride or amusement attraction that has a height requirement of forty-two (42) inches or less to ride.

(7) "Major ride" means any ride that:

(a) Has height requirement of forty-three (43) inches or greater to ride; and

(b) Does not have a specific fee established for it in Section 2 of this administrative regulation.

(8) "Play port" means an object designed for use by children on which a child can swing, walk, climb, or slide, and which follows a fixed path.

(9) "Steel roller coaster" means roller coaster of which the track portion is constructed of steel or other metal material.

(10) "Walk through" means a fun house, glass house, or laser tag that is nonmechanized and self-propelled.

(11) "Water ride" means an amusement ride or amusement attraction which uses water as a means of propulsion and includes bumper boats and water park slides which are in excess of fifteen

(15) feet at the highest point of the slide.

(12) "Wooden roller coaster" means a roller coaster of which the track portion is constructed of wood material.

Section 2. (1) All amusement ride and amusement attractions operating in Kentucky shall bear an initial safety inspection seal. Following an initial safety inspection, an initial safety inspection seal shall be affixed to a permanent and accessible section of the amusement ride or amusement attraction.

(2) If the required initial safety inspection seal does not appear on the amusement ride or amusement attraction, operation of the amusement ride or amusement attraction shall be stopped until proof of an initial inspection is provided.

Section 3. Initial safety inspection fees shall be levied for each amusement ride and amusement attraction. The initial safety inspection fees shall be assessed as follows:

(1) Air inflatable devices shall be fifty (50) dollars;[~~(2) Euro or turbo bungee shall be seventy-five (75) dollars;~~]

(2)[~~(3)~~] Kiddie rides shall be seventy-five (75) dollars;

(3)[~~(4)~~] Play port shall be seventy-five (75) dollars;[~~(5) Climbing walls shall be seventy-five (75) dollars;~~]

(4)[~~(6)~~] Water rides shall be seventy-five (75) dollars;

(5)[~~(7)~~] Dark rides shall be seventy-five (75) dollars;

(6)[~~(8)~~] Walk throughs and glass houses shall be seventy-five (75) dollars;

(7)[~~(9)~~] Tracked or trackless trains shall be $100;

(8)[~~(10)~~] Go cart facility shall be $125;

(9)[~~(11)~~] Major rides shall be $150;

(10)[~~(12)~~] Steel roller coaster shall be $200;[~~(13) Bungee or ejector seat shall be $200;~~]

(11)[~~(14)~~] Wooden roller coaster shall be $300; and

(12)[~~(15)~~] Any amusement ride or amusement attraction not listed in this section shall be $150.

Section 4. All new permanent amusement rides and amusement attractions shall have all required state and local permits before the initial safety inspection.

Section 5. All amusement rides and amusement attractions shall be under the supervision of an operator at all times during the operation of the amusement ride or amusement attraction.

Section 6. (1) All amusement rides and amusement attractions which are potentially hazardous to spectators shall be fenced to provide protection to bystanders and riders in accordance with KRS 247.236(3).

(2) A barrier providing a safe distance from the outermost arc shall be present for aerial amusement rides or swings.

Section 7. Properly charged fire extinguishers shall be present at all amusement rides and amusement attractions not more than seventy-five (75) feet from any point of a ride. A first aid kit shall be available at the park, fair, event, or ride location.

Section 8. The operator of an amusement ride or amusement attraction shall deny admittance to an amusement ride or amusement attraction to persons who appear to be under the influence of alcohol or drugs, persons who are wearing footwear or clothing that may cause a safety concern, or persons who have in their possession any object that can be dropped from the amusement ride or amusement attraction.

Section 9. (1) All power units shall be shielded to provide for public safety.

(2) An amusement ride or amusement attraction, or its power unit, shall not be located where it may present a fire hazard to adjacent buildings, exhibits, or other structures.

(3) Use of gasoline engines and storage of gasoline in or adjacent to a riding device shall be in an approved safety container and at a safe distance from the amusement ride or amusement attraction.

(4) All electrical wires leading to and from the amusement ride or amusement attraction shall be protected and insulated to prevent shock hazard and shall be properly grounded. All electrical junction boxes shall be locked or sealed.

Section 10. Pre-operation Inspection. (1) The owner or operator shall provide to the department's safety inspectors the manufacturer pre-operational inspection checklist specific to each ride or attraction.

(2) The owner of the ride or attraction shall develop a daily pre-opening checklist which shall contain, at a minimum, all requirements listed in the operator manual, the date and time of the pre-operation inspection, printed name of the person completing the pre-operation inspection, and signature of the person completing the pre-operation inspection.

(3) The owner or operator of an amusement ride or attraction shall perform a pre-opening daily pre-operation inspection prior to public use of the ride or attraction, using the checklist provided by the owner, in accordance with subsection (2) of this section. This pre-opening inspection shall include rides or attractions that do not require an operator.

(4) Upon request, the owner or operator shall immediately provide to the safety inspector a logbook containing all pre-operation daily inspections for the previous twelve (12) months. This logbook shall be kept in close proximity to the ride or attraction.

Section 11. Amusement rides and attractions shall be operated according to manufacturer's guidelines.

Section 12. To assure continued safety of amusement rides and amusement attractions, routine inspections may be conducted at undetermined times throughout the year.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: March 14, 2018

FILED WITH LRC: March 15, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 23, 2018, at 10:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through April 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation removes fees for items considered amusement rides by the KDA.

(b) The necessity of this administrative regulation: This regulation is necessary due to statute and regulatory changes that govern aerial recreational devices.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 247.232(1)(b) authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations to designate other rides and attractions that are not included in the definition of "amusement ride or attraction". This administrative regulation establishes the list of rides or attractions not specifically mentioned in the statute that are not included in the definition. This change removes the fees for removed

items.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the guidance for persons seeking to determine which regulatory structure a particular item may be subject to, including the fee structure.

(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 fee structure for three items items not considered amusement rides by the KDA.

(b) The necessity of the amendment to this administrative regulation: This regulation is necessary due to statute and regulatory changes that govern aerial recreational devices.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 247.232(1)(b) authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations to designate other rides and attractions that are not included in the definition of "amusement ride or attraction". This administrative regulation establishes the list of rides or attractions not specifically mentioned in the statute that are not included in the definition. This amendment helps do that. This change removes the fees for removed items.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation This administrative regulation provides the guidance for persons seeking to determine which regulatory structure a particular item may be subject to, including stripping of fees for items not regulated as amusement rides.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: No more than 650 possible entities, comprising of amusement ride companies, operators, and the KDA.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Participants will spend nothing to comply with this regulation, but may be subject to 302 KAR 17:010.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of knowing how devices are classified and regulated.

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

(a) Initially: No additional cost to this program.

(b) On a continuing basis: No additional cost to this program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No source funds are required.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established in any form.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 247.232(1)(b)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is associated with this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is associated with this amendment.

(c) How much will it cost to administer this program for the first year? No additional costs are anticipated, and this is an ongoing program.

(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated, and this is an ongoing program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Regulation and Inspection
(Amendment)

302 KAR 16:091. Rides and attractions not included in the definition of amusement ride or attraction.

RELATES TO: KRS 247.232

STATUTORY AUTHORITY: KRS 247.232

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.232(1)(b) authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations to designate other rides and attractions that are not included in the definition of "amusement ride or attraction". This administrative regulation establishes the list of rides or attractions not specifically mentioned in the statute that are not included in the definition.

Section 1. Amusement ride or attraction shall not include:

(1) Dinner trains;

(2) Any amusement ride or attraction utilizing animals;

(3) Structures holding slides less than fifteen (15) feet above the ground at the base of the slide;

(4) Items, devices, and contrivances used for educational purposes as part of a structured class or program, including team building and challenge courses;

(5) All terrain vehicles, paddleboats, canoes, or rafts;

(6) Haunted houses;

(7) Hay rides;

(8) Corn Mazes or any other noninflatable obstacle course;

(9) Mechanical bulls;

(10) Ski lifts, aerial lifts, or aerial tramways;

(11) Bicycles or bicycle courses;

(12) Children's toys;

(13) Watercraft other than bumper boats;

(14) Swamp buggies;

(15) Ice skating facilities;

(16) Roller skating facilities;

(17) Base jumping equipment;

(18) Paintball equipment or courses;

(19) Lazy rivers;

(20) Wave pools;

(21) Trampolines not requiring an assistive device;

(22) Self or manual belayed rappelling equipment and facilities;

(23) Privately owned, not open to the public, facilities;

(24) Mobile and permanent ziplines;

(25) Rope courses;

(26) Tree swings;
(27) Platform swings;
(28) Canopy tours;
(29) Tree platforms;
(30) Balloons;
(31) Pools and pool items;
(32) Swinging bridges;[~~and~~]
(33) Obstacle courses;[~~.~~]
(34) Climbing walls;
(35) Bungees; and
(36) Euro-Bungees.

RYAN F. QUARLES, Commissioner
APPROVED BY AGENCY: March 14, 2018
FILED WITH LRC: March 15, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 23, 2018, at 10:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through April 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation add items to the list of items not considered amusement rides by the KDA.

(b) The necessity of this administrative regulation: This regulation is necessary due to statute and regulatory changes that govern aerial recreational devices.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 247.232(1)(b) authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations to designate other rides and attractions that are not included in the definition of "amusement ride or attraction". This administrative regulation establishes the list of rides or attractions not specifically mentioned in the statute that are not included in the definition.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the guidance for persons seeking to determine which regulatory structure a particular item may be subject to.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds three items to the list of items not considered amusement rides by the KDA.

(b) The necessity of the amendment to this administrative regulation: This regulation is necessary due to statute and regulatory changes that govern aerial recreational devices.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 247.232(1)(b) authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations to designate other rides and attractions that are not included in the definition of "amusement ride or attraction". This administrative regulation establishes the list of rides or attractions not specifically mentioned in the statute that are not included in the definition. This amendment helps do that.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation This administrative regulation provides the guidance for persons seeking to determine which regulatory structure a particular item may be subject to.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: No more than 650 possible entities, comprising of amusement ride companies, operators, and the KDA.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Participants will spend nothing to comply with this regulation, but may be subject to 302 KAR 17:010.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of knowing how devices are classified and regulated.

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

(a) Initially: No additional cost to this program.

(b) On a continuing basis: No additional cost to this program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No source funds are required.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established in any form.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 247.232(1)(b)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is associated with this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is associated with this amendment.

(c) How much will it cost to administer this program for the first year? No additional costs are anticipated, and this is an ongoing program.

(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated, and this is an ongoing program.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 6:030. Kentucky State Reformatory.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Kentucky State Reformatory.

Section 1. Incorporation by Reference. (1) "Kentucky State Reformatory policies and procedures", March 14, 2018[~~April 11, 2017~~], are incorporated by reference. Kentucky State Reformatory policies and procedures include:

KSR 01-00-08 Communication Among the Warden, Management Staff, Department Heads and Inmates (Amended 3/14/18[~~Added 4/11/16~~])
KSR 02-00-01 Inmate Canteen (Amended 1/12/17)
KSR 02-00-03 Screening Disbursements from Inmate Accounts (Amended 1/12/17)
KSR 02-00-11 Inmate Accounts (Amended 3/14/18[~~1/12/17~~])KSR 02-00-13 Inmate Canteen Committee (Amended 4/11/16)
KSR 06-00-03 Kentucky Open Records Law and Release of Institutional and Medical Records (Amended 1/12/17)
KSR 09-00-28 Restricted Areas (Amended 12/14/15)
KSR 09-00-30 Parole Board (Amended 1/12/17)
KSR 10-01-02 Restrictive Housing Unit General Operational Procedures (Amended 1/12/17)
KSR 10-01-03 Restrictive Housing Unit - Inmate Tracking System and Record System (Amended 1/12/17)
KSR 10-01-09 Hold Ticket Inmates (Amended 3/14/18[~~3/11/16~~])
KSR 11-00-01 Meal Planning and Procedure (Amended 3/14/18[~~1/12/17~~])
KSR 11-00-05 Food Service Department Clothing Issuance, Laundry and Sanitation (Amended 12/14/15)
KSR 11-00-06 Health Standards for Food Service Employees (Amended 1/12/17)
KSR 12-00-03 State and Personal Hygiene Items Issued to Inmates (Amended 3/14/18[~~12/14/15~~])
KSR 12-00-07 Inmate Barbershop (Amended 4/11/16)
KSR 12-00-09 Treatment of Inmates with Body Lice (Amended 3/14/18[~~12/14/15~~])
KSR 13-00-03 Medication for Inmates Leaving Institutional Grounds (Amended 12/14/15)
KSR 13-00-04 Medical and Dental Care (Amended 3/14/18[~~1/12/17~~])
KSR 13-00-05 Medical Records (Amended 4/11/16)
KSR 13-00-09 Institutional Pharmacy Procedures (Amended 1/12/17)
KSR 13-00-10 Requirements for Medical Personnel (Amended 12/14/15)
KSR 13-00-17 Special Care (Amended 12/14/15)
KSR 13-01-01 Death of an Inmate and Notification of Inmate Family About a Critical Medical Emergency (Added 12/14/15)
KSR 13-02-01 Mental Health Services (Amended 12/14/15)
KSR 13-02-03 Suicide Prevention and Intervention Program (Amended 3/14/18[~~4/11/16~~])
KSR 13-02-08 Inmate Observer Program (Amended 1/12/17)
KSR 14-00-02 Americans with Disabilities Act and Inmate Program Access (Amended 12/14/15)
KSR 15-00-06 Inmate Identification Cards (Amended 3/14/18 [~~12/14/15~~])
KSR 15-00-09 Tobacco Free Environment (Amended 12/14/15)
KSR 15-00-10 Program Services for Special Housing Placement (Amended 3/14/18[~~4/11/16~~])
KSR 15-01-01 Responsibilities of Staff Assigned to Units A, B & C (Amended 3/14/18[~~4/11/16~~])
KSR 15-01-02 Staff Operational Procedures for Units A, B, & C (Amended 3/14/18[~~1/12/17~~])
KSR 15-01-03 Inmate Rules for General Population Living Areas (Amended 3/14/18[~~4/11/17~~])
KSR 15-01-06 Honor Housing Criteria and Rules (Amended 1/12/17)
KSR 15-01-07 Nursing Care Facility Operational Procedures and Rules (Amended 1/12/17)
KSR 15-01-08 Outside Detail (Added 3/14/18[~~1/12/17~~])
KSR 16-00-02 Inmate Correspondence and Mailroom Operations (Amended 3/14/18[~~1/12/17~~])
KSR 16-00-03 Inmate Access to Telephones (Amended 3/14/18[~~12/14/15~~])
KSR 16-01-01 Inmate Visiting (Amended 3/14/18[~~1/12/17~~])
KSR 17-00-05 Inmate Reception and Orientation (Amended 3/14/18[~~1/12/17~~])
KSR 17-00-07 Inmate Personal Property (Amended 3/14/18[~~12/14/15~~])
KSR 18-00-04 Inmate Transfers, Admission, and Discharge Procedures (Amended 3/14/18[~~12/14/15~~])
KSR 18-00-06 Classification (Amended 12/14/15)
KSR 18-00-07 Kentucky State Reformatory Placement Committee (Amended 12/14/15)
KSR 18-01-00 Youthful Offenders (Amended 4/11/17)
KSR 18-02-01 Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) (Amended 1/12/17)
KSR 19-00-02 Inmate Work Programs (Amended 3/14/18[~~1/12/17~~])
KSR 19-00-03 Safety Inspections of Inmate Work Assignment Locations (Amended 3/14/18[~~12/14/15~~])
KSR 20-00-01 LaGrange Education Center Programming (Amended 3/14/18[~~1/12/17~~])
KSR 20-00-06 English as a Second Language (Amended 12/14/15)
KSR 21-00-01 Legal Aide Office and Inmate Law Library Services and Supervision (Amended 3/14/18[~~1/12/17~~])
KSR 21-00-02 Library Services (Amended 3/14/18[~~4/11/16~~])
KSR 22-00-03 Inmate Organizations (Amended 3/14/18[~~1/12/17~~])
KSR 22-00-07 Inmate Magazine (Amended 1/12/17)
KSR 23-00-03 Religious Programming (Added 4/11/17)
KSR 24-00-01 Social Services Staff (Added 12/14/15)
KSR 24-00-02 Substance Abuse and Chemical Dependency Program (Amended 1/12/17)
KSR 24-00-03 Social Services Program (Amended 3/14/18[~~1/12/17~~])
KSR 25-00-01 Discharge of an Inmate to Hospital or Nursing Home (Amended 12/14/15)
KSR 26-00-01 Volunteer Services Program (Amended 1/12/17)

JAMES ERWIN, Acting Commissioner
APPROVED BY AGENCY: March 13, 2018
FILED WITH LRC: March 14, 2018 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 24, 2018, 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, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.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 operation of the Kentucky State Reformatory.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020 and to meet American Correctional Association (ACA) standard requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operation of the Kentucky State Reformatory.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to Kentucky State Reformatory employees and the inmate population as to their duties, rights, privileges and responsibilities.

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

(a) How the amendment will change this existing administrative regulation: The amendment brings the policies and procedures into compliance with ACA standards and updates current practices for the institution.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020.

(c) How the amendment conforms to the content of the authorizing statutes: 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 Reformatory.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff, inmates, and visitors information concerning rules and procedures for the effective and orderly management of the institution.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 650 employees of the Kentucky State Reformatory and 1,612 inmates, and all visitors to Kentucky State Reformatory.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff and inmates of KSR will have to change their actions to comply with any operational changes made by this amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the institution.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky State Reformatory budgeted funds.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment does not increase or decrease any fee.

(9) TIERING: Is tiering applied? No, tiering was not appropriate in this administrative regulation because the administrative regulations applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendment to this regulation impacts the operation of the Kentucky State Reformatory.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.870 – 61.884, 196.035, 197.020, 197.025, 422.317, 439.510

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to this regulation does not create any revenue for the Kentucky State Reformatory.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment to this regulation does not create any revenue for the Kentucky State Reformatory.

(c) How much will it cost to administer this program for the first year? No additional cost is anticipated.

(d) How much will it cost to administer this program for subsequent years? No additional cost is anticipated.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 6:170. Green River Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Green River Correctional Complex.

Section 1. Incorporation by Reference. (1) "Green River Correctional Complex Policies and Procedures", March 14, 2018[~~January 12, 2017~~], is incorporated by reference. Green River

Correctional Complex Policies and Procedures include:

GRCC 01-06-01 Inmate Access to and Communication with GRCC Staff (Amended 11/15/07)
GRCC 01-07-01 Institutional Tours of GRCC (Amended 11/15/07)
GRCC 01-08-01 GRCC Cooperation with Outside Bodies Including Courts, Governmental, Legislative, Executive, and Community Agencies (Amended 11/15/07)
GRCC 01-12-01 Public Information and Media Communication (Amended 11/15/07)
GRCC 01-13-01 Tobacco Free (Amended 4/14/14)
GRCC 02-01-02 Fiscal Management: Accounting Procedures (Amended 11/15/07)
GRCC 02-01-03 Fiscal Management: Agency Funds (Amended 11/15/07)
GRCC 02-06-01 Inmate Canteen (Amended 11/15/07)
GRCC 02-07-01 Inmate Personal Funds (Amended 11/15/07)
GRCC 03-12-01 Confidentiality of Information, Roles and Services of Consultants, Contract Personnel, Volunteers, and Student Interns (Amended 11/15/07)
GRCC 05-02-01 Outside Consultation and Research (Amended 11/15/07)
GRCC 06-01-01 Offender Records (Amended 4/14/14)
GRCC 08-02-01 Fire Safety (Amended 4/14/14)
GRCC 09-01-01 Inmate Counts (Amended 4/14/14)
GRCC 09-02-01 Inmate Unauthorized Substance Abuse Testing (Amended 2/13/14)
GRCC 09-04-01 Inmate Death (Amended 2/13/14)
GRCC 10-01-01 Restrictive Housing Unit (Amended 3/14/18 [~~1/12/17~~])
GRCC 11-01-01 Food Service: General Guidelines (Amended 4/14/14)
GRCC 11-02-01 Food Service: Security (Amended 2/13/14)
GRCC 11-03-01 Dining Room Guidelines (Amended 2/13/14)
GRCC 11-04-01 Food Service: Meals (Amended 2/13/14)
GRCC 11-04-02 Food Service: Menu, Nutrition and Restricted Diets (Amended 2/13/14)
GRCC 11-06-01 Health Requirements of Food Handlers (Amended 11/15/07)
GRCC 11-07-01 Food Service: Inspections and Sanitation (Amended 2/13/14)
GRCC 12-01-01 Clothing, Bedding, Hygiene Supplies, and Barber Shop (Amended 4/14/14)
GRCC 13-02-01 Medical Services: Sick Call, Physician's Clinics and Pill Call (Amended 9/14/2005)
GRCC 13-02-02 Medical Services: Copayment (Amended 9/14/2005)
GRCC 13-02-03 Continuing of Care: Health Evaluations, Intrasystem Transfer, Individual Treatment Plans (Amended 9/14/2005)
GRCC 13-03-01 Use of Pharmaceutical Products (Amended 9/14/2005)
GRCC 13-04-01 Health Records (Amended 9/14/2005)
GRCC 13-04-02 Psychological and Psychiatric Reports (Amended 11/8/2005)
GRCC 13-05-01 Management of Serious and Infectious Diseases (Amended 9/14/2005)
GRCC 13-06-01 Mental Health Services (Amended 2/26/16)
GRCC 13-08-01 Eye Care (Amended 5/10/16)
GRCC 13-09-01 Dental Care (Amended 9/14/2005)
GRCC 13-10-01 Transfers and Medical Profiles (Amended 2/26/16)
GRCC 13-11-01 Informed Consent (Amended 2/26/16)
GRCC 13-12-01 Medical Housing Unit[~~Infirmary Care~~] (Amended 3/14/18[~~9/14/2005~~])
GRCC 13-13-01 Inmate Self-administration of Medication (Amended 2/26/16)
GRCC 13-15-01 Health Education Program and Detoxification (Amended 9/14/2005)
GRCC 14-01-01 Inmate Rights and Responsibilities (Amended 11/15/07)
GRCC 14-02-01 Legal Services Program (Amended 1/12/17)
GRCC 16-01-01 Inmate Visiting (Amended 1/12/17)
GRCC 16-02-02 Inmate Correspondence and Privileged Mail (Amended 2/13/14)
GRCC 16-03-01 Inmate Telephone Communications (Amended 1/12/17)
GRCC 16-04-01 Inmate Packages (Amended 11/15/07)
GRCC 17-01-01 Inmate Property Control (Amended 2/13/14)
GRCC 17-02-01 GRCC Inmate Receiving and Orientation Process (Amended 11/15/07)
GRCC 17-03-01 Procedure for Sending Televisions to Outside Dealer for Repair (Amended 11/15/07)
GRCC 18-01-01 Inmate Classification (Amended 1/12/17)
GRCC 18-02-01 Meritorious Housing (Amended 1/12/17)
GRCC 18-02-02 Meritorious Visitation Program (Amended 2/13/14)
GRCC 18-03-01 Minimum Security Unit: Operating Procedures and Living Conditions (Added 11/15/07)
GRCC 18-04-01 Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) (Added 5/10/16)
GRCC 19-01-01 Inmate Work Program (Amended 11/15/07)
GRCC 19-01-02 90-Day Unassigned Status (Amended 2/13/14)
GRCC 20-01-01 Educational Programs (Amended 2/26/16)
GRCC 21-01-01 Library Services (Amended 2/13/14)
GRCC 22-01-01 Recreation Programs (Amended 11/15/07)
GRCC 22-02-01 Inmate Clubs and Organizations (Amended 2/13/14)
GRCC 22-04-01 Arts and Crafts Projects (Amended 11/15/07)
[~~GRCC 22-05-01 Inmate Photo Project (Amended 2/13/14)~~]
GRCC 23-01-01 Religious Programs (Amended 11/15/07)
GRCC 23-02-01 Death or Hospitalization of an Inmate's Family Member and Notification of Inmates (Amended 2/13/14)
GRCC 24-01-01 Social Services and Counseling Program (Amended 11/15/07)
GRCC 25-01-01 Prerelease Program (Amended 1/12/17)
GRCC 25-01-02 Inmate Release Process (Amended 5/10/16)
GRCC 25-02-01 Parole Hearing Procedure (Amended 2/26/16)
GRCC 26-01-01 Citizen Involvement and Volunteer Services Program (Amended 3/14/18[~~2/13/14~~])

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Office, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686 Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES ERWIN, Acting Commissioner
APPROVED BY AGENCY: March 13, 2018
FILED WITH LRC: March 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 24, 2018, 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, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.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 Green River Correctional Complex including the rights and responsibilities of employees and the inmate population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020 and to meet ACA requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of the Green River Correctional Complex.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to employees concerning employee duties, inmate responsibilities, and the procedures that govern operations of the institution.

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

(a) How the amendment will change this existing administrative regulation: The amendment brings the Green River Correctional Complex into compliance with ACA Standards and updates current practices for the institution.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020.

(c) How the amendment conforms to the content of the authorizing statutes: The Commissioner or his authorized representative is permitted to implement or amend practices or procedures to ensure the safe and efficient operation of the Green River Correctional Complex.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and inmates information concerning the effective and orderly management of this institution.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Green River Correctional Complex 230 employees, 969 inmates, and all volunteers and visitors to the institution.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff and inmates will have to follow the changes made in the policies and procedures. The institution, employees, and inmates will have to change their actions to comply with any operational changes made by this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An increase in cost is not anticipated to the entities from the changes in operations made in the amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the institution.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Green River Correctional Complex budgeted funds

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment does not increase or decrease any fee.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendments to this regulation impact the operation of Green River Correctional Complex.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035 and 197.020

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

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

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

(c) How much will it cost to administer this program for the first year? The amendment to this regulation impacts how GRCC operates but does not increase costs from what was previously budgeted.

(d) How much will it cost to administer this program for subsequent years? The amendment to this regulation impacts how GRCC operates but does not increase costs from what was previously budgeted.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TRANSPORTATION CABINET
Office of Civil Rights and Small Business Development
(Amendment)

600 KAR 4:010. Certification of disadvantaged business enterprises.

RELATES TO: 49 C.F.R. Parts 23, 26, 15 U.S.C. 637 (a), (d), (m), Titles 23 U.S.C., 49 U.S.C., Pub. L. 114-94[~~KRS 96A.090, 176.080, 176.100, 176.110, 176.130, 176.140, 176.150, 176.240, 177.410, 183.120, 183.130, 183.137, 183.160, 13 C.F.R. 121.201, 40 C.F.R. Parts 23, 26, 15 U.S.C. 637(a), (d), (m)~~]

STATUTORY AUTHORITY: KRS 174.080, 49 C.F.R. 26.3, 26.21

NECESSITY, FUNCTION, AND CONFORMITY: 49 C.F.R. 26.3 and 26.21 require[~~requires~~] that recipients of federal-aid highway funds authorized under Titles I and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Titles 23 and 49 U.S.C., or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), and Fix America's Surface Transportation Act of 2015 (FAST), Pub. L. 114-94, from the United States Department of Transportation (USDOT) implement a program to ensure nondiscrimination in the award and administration of USDOT-assisted contracts in its highway financial assistance programs. The Kentucky Transportation Cabinet, as a recipient of these funds, is required by 49 C.F.R. 26.21 to have a program that requires the participation of disadvantaged, minority, and women-owned[~~women~~] business enterprises in contracts

financed in whole or in part with these funds. This administrative regulation establishes the requirements for certification of DBE firms pursuant to federal law.

Section 1. Definitions. (1) "ACDBE" means an Airport Concessionaire Disadvantaged Business Enterprise as defined by 49 C.F.R. 23.3(2).

(2)"Applicant" or "firm" means any corporation, partnership, sole proprietorship, or joint venture applying with the Transportation Cabinet for certification or continuation as a disadvantaged business enterprise.

(3) "Approval" means that the applicant has been determined by the DBE Certification Committee to comply with the disadvantaged business enterprise eligibility criteria as established in 49 C.F.R. Part 26, Subpart D and 49 C.F.R. Part 23.

(4) "Cabinet" means the Transportation Cabinet.

(5) "Certification" means the process used by the Transportation Cabinet to determine if an applicant complies with the disadvantaged business enterprise criteria established in 49 C.F.R. Part 26, Subpart D and 49 C.F.R. Part 23.

(6) "Denial" means the cabinet has determined that the applicant does not comply with the disadvantaged business enterprise eligibility criteria established in 49 C.F.R. Part 26, Subpart D and as required by this administrative regulation.

(7) "Department" or "DOT" means the United States Department of Transportation.

(8) "Disadvantaged business enterprise" or "DBE" is defined by 49 C.F.R. 26.5, Subpart D.

(9) "Ineligibility complaint" means an action of a third party alleging verbally or in writing that a firm is ineligible to participate in the DBE program.

(10) "Notice" means a written notice from the Transportation Cabinet or Office for Civil Rights and Small Business Development delivered via certified mail to the business address listed on the application form.

(11) "On-site visit" means an interview conducted by the Office of Civil Rights and Small Business Development with principals of the firm at its primary place of business, reviewing business-related documents, and inspecting business facilities or equipment pursuant to 49 C.F.R. 26.83(c).

(12) "Program" is defined by 49 C.F.R. 26.5

(13) "Removal" or "removed" means that a firm or business enterprise that has been certified by the cabinet as a disadvantaged business enterprise has been determined to be ineligible, and is no longer entitled to the rights and privileges of a firm or business that has been certified by the cabinet as a disadvantaged business enterprise.

(14) "Small Business Administration" or "SBA" is defined by 49 C.F.R. 26.5.

(15) "Small business concern" is defined by 49 C.F.R. 26.5.

(16) "Socially and economically disadvantaged individual" is defined by 49 C.F.R. 26.5.

(17) "USDOT" means the United States Department of Transportation.

(18) "Unified Certification Program" or "UCP" is defined by 40 C.F.R. 26.81.

Section 2. Certification Committee. (1) The cabinet shall establish and maintain a Certification Committee for the purpose of determining the eligibility of an applicant for certification as a DBE as established in 49 C.F.R. 26.83.

(2) The Certification Committee shall include:

(a) The following voting members:

1. Executive Director, Office for Civil Rights and Small Business Development, or a proxy;

2. Executive Director of the Office of Legal Services, or a proxy; and

3. Director of the Division of Internal Audits, or a proxy; and

(b) The non-voting member, Manager of the Small Business Development Branch, or a proxy who shall chair the Certification Committee.

(3) The Kentucky administrator of the Federal Highway Administration or FHWA, or a proxy may attend Certification Committee meetings ex officio.

Section 3. Advisory Panel. (1) The cabinet shall establish a DBE Certification Advisory Panel whose members may be called upon as needed by the Certification Committee to provide technical counsel regarding a firm's eligibility.

(2) The DBE Certification Advisory Panel shall be comprised of representatives of the following cabinet divisions:

(a) Division of Contract Procurement;

(b) Division of Professional Services;

(c) Division of Highway Design;

(d) Division of Audits;

(e) Division of Highway Safety; and

(f) Division of Licensing.

Section 4. Certification Committee Procedures. (1) The Executive Director of the Office for Civil Rights and Small Business Development or the executive director's proxy, and a voting member of the DBE Certification Committee shall constitute a quorum and shall each have one (1) vote. In the event of a tie, the deciding vote shall be rendered by the executive director or his or her proxy.

(2) A summary record of each DBE Certification Committee meeting shall be retained by the Office for Civil Rights and Small Business Development for at least three (3) years from the date of initial notice of certification.

(3) The completed applications, staff summaries, and recommendations shall be provided to the DBE Certification Committee members no less than five (5) business days in advance of the scheduled meeting in which the application is to be considered.

(4) The Certification Committee shall have the authority to remove a firm's eligibility for DBE certification as established in 49 C.F.R. 26.87.

Section 5. Applications for Certification. (1) The UCP application review process for approval of certification, and continuation of certification as a DBE, or ACDBE shall be conducted pursuant to 49 C.F.R. 26.83, 26.85, and 26.86.

(2) A UCP application shall be approved by the Federal Highway Administration pursuant to Appendix F to 49 C.F.R. Part 26. A link to the electronic version of the application form shall be available on the Kentucky Transportation Cabinet Web site.

(3) The completed UCP application shall be submitted electronically to the cabinet's Office for Civil Rights and Small Business.

(4) An incomplete UCP application missing the required information or documentation shall not be processed until the documentation and information requirements are received by the Office for Civil Rights and Small Business Development.

(5) A UCP application submitted by a firm having a principal business office registered in the Commonwealth of Kentucky shall be reviewed in accordance with 49 C.F.R. Parts 23 and 26, Subpart D.

(6) A UCP application submitted by a firm whose primary office is registered in a state other than Kentucky shall be submitted for approval of DBE certification in Kentucky to the Office for Civil Rights and Small Business Development for review in accordance with 49 C.F.R. 23 and 49 C.F.R. 26.85.

(7) The Office for Civil Rights and Small Business Development shall conduct an on-site visit at the firm's primary place of business pursuant to 49 C.F.R. 26.83(c).

(8) An applicant for DBE, or ACDBE certification, or a certified DBE or ACDBE may withdraw without penalty from the DBE program prior to the Certification Committee making a decision regarding the application.

Section 6. Appeals. (1) The appeal of a decision by the Certification Committee shall be submitted to the United States Department of Transportation, Office of Civil Rights, 1200 New Jersey Avenue, SE, Washington D.C. 20590 within ninety (90) days of the date of the decision of the committee.

(2) An applicant who is denied certification, or whose

certification is removed by the committee, shall not reapply for DBE certification for six (6) months from the date of notice of the denial or removal.[~~"Applicant" or "firm" means any corporation, partnership, sole proprietorship, or joint venture applying with the Transportation Cabinet for certification or continuation as a disadvantaged business enterprise.~~

~~(2) "Approval" means that the applicant has been determined by the DBE Certification Committee to meet the disadvantaged business enterprise eligibility criteria as outlined in 49 C.F.R. Part 26.~~

~~(3) "Cabinet" means the Transportation Cabinet.~~

~~(4) "Certification" means the process whereby the Transportation Cabinet determines if an applicant meets the disadvantaged business enterprise criteria.~~

~~(5) "Decertified" means that a firm or business enterprise which has been certified by the Transportation Cabinet as a disadvantaged business enterprise has been determined to be ineligible and is, therefore, no longer entitled to the rights and privileges accorded to those who are certified by the Transportation Cabinet as a disadvantaged business enterprise.~~

~~(6) "Denial" means that the applicant does not meet disadvantaged business enterprise eligibility criteria as outlined in 49 C.F.R. Part 26 and as required by this administrative regulation.~~

~~(7) "Department" or "DOT" is defined by 49 C.F.R. 26.5.~~

~~(8) "Disadvantaged business enterprise" or "DBE" is defined by 49 C.F.R. 26.5.~~

~~(9) "Ineligibility complaint" means an action of a third party alleging that a firm is ineligible to participate in the DBE program.~~

~~(10) "Notice" means written notice from the Transportation Cabinet or Office of Minority Affairs delivered certified mail to the business address listed on the application form.~~

~~(11) "On-site inspection" means conducting an interview with principals of the firm at its primary place of business, reviewing business-related documents, and inspecting business facilities or equipment.~~

~~(12) "Program" is defined by 49 C.F.R. 26.5.~~

~~(13) "Small Business Administration" or "SBA" is defined by 49 C.F.R. 26.5.~~

~~(14) "Small business concern" is defined by 49 C.F.R. 26.5.~~

~~(15) "Socially and economically disadvantaged individual" is defined by 49 C.F.R. 26.5.~~

~~Section 2. Adoption of Governing Federal Material. (1) 49 C.F.R. Part 26, effective October 1, 2003, is adopted without change. This federal regulation governs the federal Department of Transportation's and the Kentucky Transportation Cabinet's relationship with and responsibility to each other in the DBE Program. It further sets forth the basic requirements that the Transportation Cabinet shall impose on firms desiring certification.~~

~~(2) Kentucky's DBE Program shall be implemented in accordance with this administrative regulation and the Kentucky Transportation Cabinet DBE Program Plan as approved by the Federal Highway Administration.~~

~~Section 3. Application Process. (1)(a) Application for certification or continuation of certification as a DBE shall be pursuant to and governed by the procedures set forth in 49 C.F.R. Part 26 Subparts D and E.~~

~~(b) An application for certification shall be submitted on the Uniform Certification Application published by the Federal Highway Administration as Appendix F to 49 C.F.R. Part 26, effective June 16, 2003, and incorporated by reference in this administrative regulation.~~

~~(c) Each application form shall be completed in full.~~

~~(d) All documentation required by the application shall be attached to the completed application.~~

~~(e) The person signing the application shall be one (1) of the persons on whom the DBE status is based and shall identify that person's position with the firm or business enterprise applying for certification.~~

~~(f) The completed application shall be submitted to the Transportation Cabinet, Office of Minority Affairs.~~

~~(2) If the application is not complete, the Office of Minority Affairs shall return the application to the applicant firm requesting that the omitted information be included. An incomplete application shall not be considered by the Office of Minority Affairs. The Transportation Cabinet may request additional information in order to determine if an applicant firm should be certified. Failure of the applicant firm to provide the requested information shall be cause for the Transportation Cabinet to deny the application.~~

~~(3)(a) The Transportation Cabinet shall perform an on-site inspection of each new applicant located within the boundary of Kentucky.~~

~~(b) The Transportation Cabinet may certify out-of-state firms in accordance with 49 C.F.R. 26.81. All out-of-state firms shall first be certified in their home state prior to becoming certified by the Transportation Cabinet.~~

~~(c) Failure of the applicant firm to participate in the on-site inspection shall be sufficient cause for the Transportation Cabinet to deny the application.~~

~~Section 4. Evaluation of Application. The Transportation Cabinet shall use the eligibility standards set forth in 49 C.F.R. Part 26, Subpart D to determine the eligibility of a firm to be certified.~~

~~Section 5. DBE Certification Committee. (1) The DBE Certification Committee established in the Transportation Cabinet shall:~~

~~(a) Determine the eligibility of each applicant firm to be certified or renewed as a DBE; and~~

~~(b) If an issue regarding eligibility has arisen, determine whether a firm is eligible to remain certified as a DBE.~~

~~(2) The DBE Certification Committee shall be comprised of the following members:~~

~~(a) Executive Director, Office of Minority Affairs or a designee, as chair and as a nonvoting member;~~

~~(b) Deputy Secretary of the Transportation Cabinet or a designee;~~

~~(c) Director, Division of Construction or a designee;~~

~~(d) Director, Division of Highway Design or a designee;~~

~~(e) Audit Manager, Internal Audit Branch or a designee;~~

~~(f) Director, Division of Contract Procurement, or a designee;~~

~~(g) Director, Division of Professional Services, or a designee;~~

~~(h) Executive Director, Office of General Counsel or a designee, nonvoting member; and~~

~~(i) Kentucky Administrator of the Federal Highway Administration or a designee, ex officio, nonvoting member.~~

~~(3) The Chairman of the DBE Certification Committee shall schedule meetings as needed.~~

~~(4) Four (4) of the voting members of the DBE Certification Committee shall constitute a quorum.~~

~~(5) (a) A simple majority of the voting members present at a meeting with a quorum shall be required to approve or deny an application or decertification submitted to the committee.~~

~~(b) A summary record of each meeting shall be maintained by the Office of Minority Affairs and presented for review and approval at the next meeting of the committee which has a quorum present.~~

~~(6) At least seven (7) working days prior to the meeting of the committee if an application or decertification is to be considered, the Office of Minority Affairs shall provide an agenda and a complete copy of the application and staff summary and recommendation to each member of the committee.~~

~~(7) The DBE Liaison Officer shall be present at committee meeting to answer questions and provide technical information.~~

~~(8) If requested by a committee member, the Executive Director of the Office of Minority Affairs shall have the technical staff member available to answer questions regarding an application or decertification.~~

~~(9) Consistent with the decision of the DBE Certification Committee, the Transportation Cabinet shall issue a written determination regarding the applicant's eligibility for certification within ninety (90) days of receipt of a completed original application if an ineligibility complaint as set forth in Section 10 of this administrative regulation has not been received.~~

~~Section 6. Certification of Applicant Firm. (1) If an application for certification as a DBE is approved by the Transportation~~

~~Cabinet and an ineligibility complaint questioning the status of a firm from a third party as set forth in Section 10 of this administrative regulation is not received during the time the Transportation Cabinet is evaluating the application, the written notification required by Section 5(9) of this administrative regulation shall be the notice to the applicant firm of certification as a DBE.~~

~~(2) Certification as a DBE shall be valid for three (3) years from the date of notice of certification, except as provided by 49 C.F.R. 26.83(h) or Section 9 of this administrative regulation.~~

~~(3) Records of a certified firm shall be retained by the Office of Minority Affairs for a period of not less than three (3) years from the date of notice of certification.~~

~~(4) A certified DBE shall immediately notify the Office of Minority Affairs of any change of condition that may impact its certification status.~~

~~Section 7. Continuation. At least thirty (30) days prior to its certification continuation date, a certified DBE that intends to continue its certification shall submit a new Uniform Certification Application to the Transportation Cabinet, Office of Minority Affairs.~~

~~Section 8. Denial of Certification. (1) If an application for certification as a DBE is denied by the Transportation Cabinet, the notification required by Section 5(9) of this administrative regulation shall set forth the reasons for denial.~~

~~(2) A denial may be appealed to the Transportation Cabinet within thirty (30) days of the notice. The appeal shall be filed in accordance with Section 11 of this administrative regulation.~~

~~(3) An applicant firm shall not reapply for certification for one (1) year from the effective date of denial.~~

~~(4) The effective date of denial shall be one (1) of the following dates:~~

~~(a) If the denial is not appealed, the date the notice is received or delivery is attempted;~~

~~(b) If the denial is appealed and the denial is upheld, the date of the notice of final action on behalf of the Transportation Cabinet; or~~

~~(c) If the denial is appealed and the appellant withdraws, cancels, or otherwise suspends the appeal, the date of the withdrawal, cancellation, or suspension of the appeal.~~

~~Section 9. Decertification. (1) The Transportation Cabinet shall decertify a noncompliant DBE pursuant to the provisions of 49 C.F.R. 26.87.~~

~~(2) A firm may appeal a decision to decertify in accordance with Section 11 of this administrative regulation.~~

~~(3) Decertification shall be for a specific period of time as determined by the Transportation Cabinet but shall not be for a period of less than one (1) year.~~

~~Section 10. Ineligibility Complaints. (1)(a) A third party may file a written complaint alleging that a firm is ineligible to participate in the DBE program and specifying the alleged reasons why the firm is ineligible. An individual who has a current certification from the Small Business Administration issued pursuant to 15 U.S.C. 637 shall be rebuttably presumed to be socially and economically disadvantaged if that individual is an owner of a firm certified by or seeking certification from the Transportation Cabinet, Office of Minority Affairs as a DBE.~~

~~(b) The ineligibility complaint shall be made in writing to the Office of Minority Affairs.~~

~~(2) With its letter, the complaining third party shall include all information available to it which is relevant to a determination of whether the firm at issue is in fact socially and economically disadvantaged and a qualified DBE.~~

~~(3) The Transportation Cabinet shall determine, on the basis of the information provided by the ineligibility complaint and its subsequent investigation, if there is reason to believe that the firm at issue is in fact not socially and economically disadvantaged and a qualified DBE.~~

~~(4) If the Transportation Cabinet determines that there is not reason to believe that the firm at issue is not socially and economically disadvantaged and not qualified DBE, the cabinet shall so inform the complaining party and the firm in writing. This shall terminate the proceeding.~~

~~(5)(a) If the Transportation Cabinet determines that there is sufficient reason to believe that the firm at issue is not socially and economically disadvantaged and not a qualified DBE, the office shall notify the firm at issue that its status as a socially and economically disadvantaged enterprise has been challenged. The notice shall:~~

~~1. Summarize the grounds for the ineligibility complaint and the subsequent findings of the investigation; and~~

~~2. Require the firm at issue to provide to the Office of Minority Affairs, within thirty (30) days, information sufficient to evaluate its status as socially and economically disadvantaged and qualified DBE.~~

~~(b) Failure to provide the requested information within the time limit shall be cause for the DBE to be decertified or to be denied certification.~~

~~(6) If the social and economic disadvantaged status of a new applicant is challenged, the ineligibility complaint shall be reviewed and investigated prior to completion of the certification process.~~

~~(7) The Transportation Cabinet shall evaluate the information available and make a determination of the social and economic disadvantage of the firm at issue. The office shall notify both parties of this determination, setting forth the reasons for its proposal.~~

~~(8) In making the determinations called for in this section the Transportation Cabinet shall use the standards set forth in 49 C.F.R. 26.87.~~

~~(9) During the pendency of an ineligibility complaint filed under this section, the presumption that the challenged party is a socially and economically disadvantaged individual shall remain in effect.~~

~~(10) The decision of the Transportation Cabinet after an appeal and hearing before the Secretary of the Transportation Cabinet as set forth in Section 11 of this administrative regulation may be appealed to the United States Department of Transportation, by the adversely affected party to the proceeding under the procedures of 49 C.F.R. 26.89.~~

~~Section 11. Appeal and Hearing. (1) A party adversely affected by a decision of the Transportation Cabinet may appeal that decision within thirty (30) days of the notice of determination. The appeal shall be filed in writing with the Transportation Cabinet, Office of Minority Affairs, Executive Director, Station: W6-06-01, 200 Mero Street, Frankfort, Kentucky 40622. Alternatively, an appeal may be made directly to United States Department of Transportation, Office of Civil Rights, 400 7th Street, SW, Room 5414, Washington, DC, 20590.~~

~~(2)(a) The Transportation Cabinet shall schedule the date for the hearing on the appeal not less than fifteen (15) nor more than thirty (30) days after the appeal is received unless otherwise agreed upon by the parties.~~

~~(b) If an appeal hearing is rescheduled beyond thirty (30) days from the date of the notification to deny certification at the request of the applicant firm and the firm is not currently certified, the firm's certification has expired, or the firm's request for recertification has been denied, the Office of Minority Affairs shall not approve as part of an established DBE goal any of the work contracted by the applicant.~~

~~(3) The Transportation Cabinet shall conduct the administrative hearing pursuant to the provisions of KRS Chapter 13B.~~

~~(4) The hearing officer's findings of fact shall be based on conditions existing at the time the on-site inspection or owner interview was conducted by the Transportation Cabinet. Changes made in an applicant's firm since the on-site inspection or owner interview shall not be considered by the Transportation Cabinet or a hearing examiner in determining the eligibility of the firm.~~

~~(5) An appeal from the Transportation Cabinet's final decision may be made to the United States Department of Transportation in accordance with the provisions of 49 C.F.R. 26.89.~~

~~Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) The Uniform Certification Application, 68 Fed. Reg. 35542,~~

~~June 16, 2003; and~~
~~(b) Kentucky Transportation Cabinet DBE Program Plan as approved by the Federal Highway Administration, revised February 2002.~~
~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet, Office of Minority Affairs, Station W6-06-01, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.~~]

GREG THOMAS, Secretary
JAMIR DAVIS, Executive Director

APPROVED BY AGENCY: March 8, 2018

FILED WITH LRC: March 13, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 25, 2018 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, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Ann DAngelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the
requirements for certification of a Disadvantaged Business Enterprise or DBE firm.

(b) The necessity of this administrative regulation: As a recipient of federal highway funds,
the cabinet is required by 49 C.F.R. 26.21 to have a program that requires the participation of disadvantaged, minority, and women-owned businesses. This regulation establishes the requirements for the certification of those businesses.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The
federal government requires that recipients of federal highway funds, disbursed by the Federal Highway Administration, establish and implement a DBE program as a condition of receipt of those funds.

(d) How this administrative regulation currently assists or will assist in the effective
administration of the statutes: This amended administrative regulation updates the processes of the DBE program. This administrative regulation has not been amended since 2004.

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

(a) How the amendment will change this existing administrative regulation: This amendment will update: definitions related to the cabinet's DBE program; reorganize the cabinet's DBE Certification Committee to improve efficiency of the review of certification of DBE program applications; expedite the certification process; and streamline appeals of certification decisions.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to inform the public of the most current requirements in the DBE program.

(c) How the amendment conforms to the content of the authorizing statutes: The establishment and implementation of a DBE program is required by 49 C.F.R. Parts 23 and 26 as a condition for receipt of federal highway funding.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will update the administrative regulation and inform applicants of the most current DBE requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects disadvantaged, minority, and women-owned businesses desiring to apply for certification with the cabinet's DBE program. This administrative regulation also affects the KYTC Office for Civil Rights and Small Business Development.

(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: Applicants to the DBE program will continue to submit their applications as usual, however, the processes for review and requested appeals will be more efficient.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question 3): This amendment will improve the efficiency of the DBE program and streamline the appeals of certification decisions.

(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 associated with these amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Fees are not necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Fees are not established by this administrative regulation.

(9) TIERING: Is tiering applied? No. All DBE applicants are subject to the same scrutiny and regulations. However, non-resident applicant firms who are certified under the federal DBE program in their home state are subject to a provision in the federal regulations (49 C.F.R. 26.85) that provides a presumption of eligibility if making an initial application for DBE certification by the cabinet.

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 Office for Civil Rights and Small Business Development in the Kentucky Transportation Cabinet.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 174.080, 49 C.F.R. 26.3, 26.21

(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 amendment will not affect expenditures or revenues.

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

(d) How much will it cost to administer this program for subsequent years? There will not be any costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 10:040. Kentucky youth camps.

RELATES TO: KRS 194A.005(1), 194A.381-383, 217.005-217.215[~~211.180~~]

STATUTORY AUTHORITY: KRS 194A.050(1)[~~Chapter 13B, 194.050~~], 211.090(3), 211.180(1)(c)[~~EO 96-862~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of[~~211.180 authorizes~~] the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.180(1)(c) requires the cabinet to enforce administrative regulations promulgated for the regulation and control of[~~regulate certain public health matters including~~] the sanitation of public and semipublic recreational areas[~~; the detection, prevention and control of communicable disease and health hazards; and to provide for the protection and improvement of the health of school age children~~]. This administrative regulation establishes uniform standards for youth camps necessary to insure a safe and sanitary environment to protect the health and safety of children attending camps in this state.[~~Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services.~~]

Section 1. Definitions.[~~As used in this administrative regulation the following definitions shall apply:~~] (1)[~~"Approved" means that which is acceptable to the cabinet.~~

~~(2)~~] "Cabinet" is defined by KRS 194A.005(1)[~~means the Cabinet for Health Services and its designated agents~~].

(2)[~~(3)~~] "Camp" or "youth camp":

(a) Means an[~~any~~] area, parcel, or tract of land, under the control of a[~~any~~] person on which facilities are established, maintained, or operated for recreational, educational, or vacation purposes for five (5) or more children to attend no longer than two (2) weeks, either free of charge[,] or for payment of a fee;[.]

(b)[~~(a) This definition~~] Includes a[~~the following types of camps~~]:

1. Day camp[~~"Day camp" means a camp operated for all or part of the day, but does not include overnight lodging of campers~~];

2. Primitive or outpost camp[~~"Primitive or outpost camp" means a portion of the residential camp premises or other site under control of the camp operator which is intended only for occasional use as an overnight tent camping site, and has no permanent structures or facilities~~]; or [~~and~~]

3. Residential camp; and

(c) Does[~~"Residential camp" means a camp operated on a permanent campsite with overnight lodging facilities~~.

~~(b) This definition shall~~] not include a[~~the following~~]:

1. Camp, campsite, or camping session[~~Developed or primitive camps or campsites open to the general public on public lands, except that use of these sites or areas for operation of a youth camp shall be included in this definition;~~

~~2. Camps, campsites, or camping sessions~~] operated solely for family or adult camping;

2.[~~3.~~] Privately owned camp[~~camps~~] or campsite[~~campsites~~] intended for the sole use of the owner, their family, or[~~and~~] invited guests;

3.[~~4. Day care or similar facilities which are operated with the intent to provide child care on a routine basis for infant, toddler, preschool, or school age groups individually or collectively during parents' working hours, before or after school or during school vacation periods;~~

~~5.~~] Weekend or similar overnight troop or trip camping activities conducted by an organized youth troop[~~troops~~] or association[~~associations~~] of less than seventy-two (72) hours duration, and not a part of an established youth camp operating session;

4. Facility that is operated as an instructional studio or center that provides lessons or other activities for school age children individually or collectively during parents' working hours, before or after school, or during school vacation periods;

5. A vacation bible school, bible day school, or similar activity held in a church for school age children individually or collectively during parents' working hours, before or after school, or during school vacation periods; or

6. A wilderness camp licensed as a private child caring facility pursuant to 922 KAR 1:460.

(3)[~~(4) "Camper" means any child under eighteen (18) years of age living apart from, or with the intention of living apart from, his relatives, parents, or legal guardians, while attending a youth camp.~~

~~(5)~~] "Camp director" means the individual agent of the camp operator on the premises of any youth camp who has the primary responsibility for the administration, operation, and supervision of the camp and its staff.

(4)[~~(6)~~] "Camp operator" means the person that owns[,] a youth camp, whether the camp is operated for profit or not for profit.

(5) "Camper" means a child under eighteen (18) years of age living apart from relatives, parents, or legal guardians, while attending a youth camp.

(6) "Day camp":

(a) Means a camp operated for all or part of the day; and

(b) Does not include:

1. Overnight lodging of campers; or

2. A camp operating at a facility under a different cabinet license or permit or that is already subject to routine sanitation and safety inspection by the cabinet.

(7) "Permanent structure" means a[~~any~~] building and appurtenances owned or operated by the camp management for living, dining, kitchen, sleeping, toilet, bathing, shelter, tool shed, storage, assembly, infirmary, or stabling purposes, constructed to be immobile and permanent.

(8)[~~"Permit" means a written document issued by the cabinet giving a designated person permission to operate a specific camp.~~

~~(9)~~] "Person" means an[~~any~~] individual, firm, partnership, company, corporation, organization, trustee, association, or other[~~any~~] public or private entity.

(9) "Primitive or outpost camp" means a portion of the residential camp premises or other site under control of the camp operator that is intended only for occasional use as an overnight tent camping site and has no permanent structure or facility.

(10) "Residential camp" means a camp operated on a permanent campsite with overnight lodging facilities.

(11)[~~(10)~~] "Semipermanent structure" means a[~~any~~] building, tent, structure, or trailer and appurtenances owned or operated by the camp management for sleeping, living, dining, toilet, bathing, kitchen, tool shed, storage, assembly, infirmary, or animal sheltering purposes, that is constructed to be movable, may be easily disassembled, and not permanent in nature.

Section 2. Permits. (1) A permit to operate a youth camp issued pursuant to this administrative regulation shall not exempt a child-care facility or program from the licensure required by 922 KAR Chapter 2.

(2) A[No] person shall not operate a youth camp within the Commonwealth of Kentucky without possession of a valid permit issued by the cabinet.

(3) Only a person who complies with the requirements of this administrative regulation shall be entitled to receive and retain a permit.

(4) A permit[Permits] shall not be transferable from one (1) person to another person or place.

(5) The permit shall be posted or readily available at every camp.

(6) Each permit shall expire on the December 31[next] following its date of issuance.

Section 3. Application for a Permit. (1) A[Any] person desiring to operate a camp shall complete and submit form DFS-200, Application for a Permit, incorporated by reference in 902 KAR 45:005[make written application on form DFS-233- Application to Operate, provided by the cabinet. The application shall include:

(a) Applicant's full name and address and indicate whether the applicant is an individual, firm or corporation;

(b) If a partnership, the names of the partners, and their addresses;

(c) The location of the camp;

(d) The type of camp; and

(e) The signature of the applicant or applicants].

(2) A person desiring to operate a day camp shall complete and submit form DFS-200, Application for a Permit, and form DFS-340, Application and Permit to Operate Day Camp Facilities.

(3)[(2)] Upon receipt of an application, the cabinet shall make an inspection of the camp to determine compliance with the provisions of this administrative regulation. If inspection discloses that the applicable requirements of this administrative regulation have been met, a permit shall be issued to the applicant by the cabinet.

Section 4. Camp Site. The camp site shall be located on land that provides[good] natural drainage. The area on which[the] tents, buildings, or structures are erected, and[together with] other areas frequently used for camp activities, shall be[well] drained and not located in a swamp or similar place in which mosquitoes may breed.

Section 5. Camp Facilities. (1) All camp structures used for human occupancy or assembly, and all electrical, heating, ventilating, air conditioning, plumbing, and lighting systems in those structures shall be designed and constructed pursuant to 815 KAR 7:120, Kentucky[the State] Building Code, except for tents, which shall meet federal flammability standards.

(2) All camp food preparation and service facilities shall comply with the provisions of KRS 217.005 – 217.215[219.011 to 219.081 and 219.991] and 902 KAR 45:005[the State Food Service Code]. If food for campers and staff is not prepared by the camp, food shall be obtained from a commercial food service establishment holding a valid permit from the cabinet.

(3) Floors, walls, ceilings, and attached or freestanding appurtenances, fixtures, and equipment in all permanent and semipermanent structures shall be kept clean and in good repair.

(4) All gas or oil burning heating and cooking facilities used in any camp shall meet applicable state fire codes for installation, operation, and maintenance.

(5) All structures used as sleeping quarters shall have all outer openings screened or protected to prevent the entry of insects and other vermin.

Section 6. Sleeping Facilities. (1) A minimum of thirty (30) square feet of floor space shall be provided for each camper in all structures used for sleeping purposes.

(2)(a) All structures used as sleeping quarters shall be designed to provide a minimum of two (2) feet separation between beds, cots, or sleeping bags on all sides.

(b) Beds, cots, or sleeping bags shall be placed so that the heads of campers are at least six (6) feet apart.

(c)[, and] If double-decked beds are used, there shall be not less than twenty-seven (27) inches of separation between the lower mattress and the bottom of the upper bed.

(3)(a) Mattresses shall be covered in materials that[which] are water repellent, easily cleanable, and meet federal flammability standards, or shall be encased in a separate mattress cover that[which] meets these requirements.

(b) Each occupied bed or cot shall be provided with one (1) sheet, one (1) pillow, one (1) pillowcase, and one (1) blanket either by the camp[,] or by the individual camper.[;] except that this requirement shall not apply if a camper provides his or her own sleeping bag.

(4)(a) All articles of bedding provided by the camp shall be kept clean and in good repair.

(b) Linen shall be changed at least once weekly and more often if necessary, or if there is a new camper occupying the bed or cot.

Section 7. Personal Hygiene Facilities. (1) Each residential or day camp shall provide personal hygiene facilities consisting of water closets and[,] hand-washing and shower facilities for each sex accommodated, pursuant to the design, construction, and sanitary fixture requirements of the State Plumbing Code.

(2) Personal hygiene facilities shall have natural and artificial lighting of at least twenty (20) foot-candles.

(3) Personal hygiene facilities shall be located no more than 500 feet from any permanent or semipermanent structure or tent used for human occupancy or assembly.

(4) Hot and cold or tempered water service shall be provided to all lavatories and showers, and approved temperature limited devices meeting State Plumbing Code requirements shall be used to prevent delivery of water at a temperature above 120 degrees Fahrenheit[,that could scald a camper; except that existing camps will not be required to furnish hot or tempered water at existing lavatories or showers].

(5) Lavatories or hand-washing facilities shall be conveniently located to all toilet facilities. Water, hand-cleansing soap, and approved sanitary towels or other approved hand-drying device shall be provided at all lavatories and hand-washing facilities.

(6) All personal hygiene facilities shall be maintained in good repair and shall be kept clean at all times.

(7) Adequate toilet tissue shall be provided at each toilet facility.

(8) Flame retardant, easily cleanable refuse containers shall be provided in all toilet facilities. Covered waste receptacles shall be accessible in each toilet stall designed[and shall be covered in toilets] for females.

(9) All windows used for room ventilation shall be screened and outer openings protected in toilet and personal hygiene facilities to prevent the entry of insects and other vermin.

Section 8. Sewage and Waste Water Disposal. (1) All sewage and waste water shall be disposed of into a public sewer system[,] if available.

(2) In the event a public sewer system is not available, disposal shall be made into a private sewage disposal system designed, constructed, and operated pursuant to the requirements of the cabinet and[or] the Energy and Environment[Natural Resources and Environmental Protection] Cabinet;

(3) If a public sewer system subsequently becomes available, connections shall be made to it and the camp sewer system shall be discontinued.

Section 9. Water Supply System. (1) The water supply shall be potable, adequate, and from an approved public supply of a municipality or water district[,] if available.

(2) If a public water supply of a municipality or water district is not available, the supply for the camp shall be developed and approved pursuant to applicable requirements of the Energy and Environment[Natural Resources and Environmental Protection]

Cabinet;

(3) If a public water supply of a municipality or water district subsequently becomes available, connections shall be made to it and the camp supply shall be discontinued.

(4)[~~(2)~~] Adequate drinking fountains meeting State Plumbing Code requirements or portable drinking water containers of an approved type shall be used within the camp. Common drinking cups, glasses, and[~~or~~] vessels are prohibited.

(5)[~~(3)~~] If portable drinking water containers are used, they shall be of easily cleanable construction[~~,~~] kept securely closed and designed so that water may be withdrawn from the container only by water tap or faucet and shall be maintained in a sanitary condition.

(6)[~~(4)~~] All ice used shall be from an approved source and shall be handled and stored in a manner to prevent contamination. If ice is made on the premises of any camp, the ice-making machine shall be of approved construction and the water shall be of the same bacteriological quality as approved drinking water.

Section 10. Refuse Handling. (1) The storage, collection, and disposal of refuse shall be conducted to not create a health hazard, rodent harborage, insect breeding area, accident or fire hazard, or air pollution violation and shall conform to all other requirements of the Energy and Environment[~~Natural Resources and Environmental Protection~~] Cabinet.

(2) All refuse shall be stored in flytight, watertight, rodent proof containers and containers shall be emptied and cleaned at a frequency necessary to prevent a nuisance.

(3) Approved container storage shall be provided and shall be designed and maintained to not create a nuisance.

(4) All refuse containing garbage shall be collected at least once per week or more often if deemed necessary.

Section 11. Maintenance of Animal Facilities. (1) Barns, stables, corrals or other structures used to house[~~horses and other~~] animals shall be located at least 500 feet from any sleeping, eating, or food preparation area. Tie-rails[~~,~~] or hitching posts shall not be located within 200 feet of a[~~any~~] dining hall, kitchen, or other place where food is prepared, cooked, or served.

(2) Barns, stables, and corrals shall be located on a well-drained sloping area and situated to prevent contamination of any water supply.

(3)(a) Manure shall be removed from barns, stalls, and corrals as often as necessary to prevent a fly problem. Fly repellents or other precautions shall be used to prevent these shelters from becoming an attractant for or breeding place for flies.

(b) Manure disposal shall be handled in a manner that[~~which~~] does not create a nuisance or contaminate surface or groundwater.

Section 12. Swimming Facilities and Recreational Water Activities. (1) A public swimming and bathing facility[~~All swimming pools, beaches, and natural bathing places~~] shall comply with 902 KAR 10:120[~~, the Kentucky public swimming and bathing facility administrative regulation~~].

(2) All small craft and boating activities shall be conducted in compliance with applicable rules and administrative regulations of the Energy and Environment[~~Natural Resources and Environmental Protection~~] Cabinet[~~, Division of Water Patrol~~].

(3) All swimming and small craft and boating activities shall be under the supervision of a person holding a current American Red Cross[~~Senior Life Saving Certificate~~] Lifeguard Certification or its equivalent at all times.

Section 13. Insect, Rodent and Pest Control. (1) Grounds, buildings, and structures shall be maintained free of insect and rodent harborage and infestations. Extermination methods and other measures to control insects and rodents shall be pursuant to applicable state laws and administrative regulations.

(2) Camps shall be maintained free of accumulations of debris that[~~which~~] may provide rodent harborage or breeding places for[~~flies, mosquitoes or~~] other pests.

(3) Storage areas shall be maintained to prevent rodent harborage. Lumber, pipe, and other building materials shall be stored at least one (1) foot above the ground.

Section 14. Camp Director, Records and Reports, Medical Supervision, and First Aid. (1) The camp operator shall assure that a camp director or an authorized agent is available within the camp boundaries at all times while the camp is in operation.

(2)(a) Pursuant to KRS 194A.382, the camp operator shall require an applicant, contractor, or volunteer to complete the form DPP-156 pursuant to 922 KAR 1:470, Section 3.

(b) The applicant, contractor, or volunteer shall submit to the camp operator a letter from the cabinet stating that the individual has no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the cabinet prior to the individual's presence at the camp or involvement in any program of the camp.

(c) The letter from the cabinet shall be kept on camp premises and made available for examination upon request of the cabinet.

(3) Records or personal data, including a medical history, shall be kept on each person attending a camp. Minimum records shall include:

(a) The name, date of birth, and address of each person in the camp;

(b) The name, address, and telephone number of parents or guardians; and

(c) The medical history[~~,~~] and dates of hospital admission and discharge (if applicable) of each camper.

(4)[~~(3)~~] Residential camps shall have facilities for isolation of persons suspected of having a communicable disease. Other camps shall provide for the immediate isolation of campers suspected of having a communicable disease.

(5)[~~(4)~~] Adequate first aid supplies and equipment as designated by the available or on call physician[~~on call~~] shall be located within the camp. An American Red Cross certificate required by paragraph (a) or (b) of this subsection shall be kept on camp premises and made available for examination upon request of the cabinet.

(a) Residential camps shall have a person holding an American Red Cross Standard First Aid and Personal Safety Certificate or its equivalent on site twenty-four (24) hours a day while the camp is in session.

(b) All other camps shall have a person holding, as a minimum, a first aid course certificate from the American Red Cross or its equivalent on site while camp is in session.[~~The certificates shall be made available for examination upon request of an authorized agent of the cabinet.~~]

(6)[~~(5)~~] All prescription drugs shall be kept in a locked cabinet or container with the exception of medications for which a patient has documentation from a licensed health care provider that states:

(a) The purpose of the medication;

(b) How the medication is to be administered; and

(c) That the medication may be retained by the patient for immediate use.

(7)[~~(6)~~] A nearby physician or emergency room shall be available or on call for medical emergencies and the camp shall have access to a telephone[~~,~~] with emergency telephone numbers posted. Transportation shall be available at all times in the event of an emergency.

(8)[~~(7)~~] All serious illnesses and accidents resulting in death or injury, other than minor injuries that[~~which~~] require only first aid treatment and that[~~which~~] do not involve medical treatment, shall be reported to the cabinet by the next business day[~~at the end of the camping season, but not later than December 31 of each year,~~] on form DFS-309,[-] Kentucky Youth Camp Accident/Illness Report [~~provided by the cabinet~~].

Section 15. Safety and Accident Prevention. (1) All camps shall comply with applicable rules and administrative regulations of the State Fire Marshal and applicable local fire codes pertaining to fire safety, fuel supply, and fuel connections.

(2) In every camp with an electrical system, the wiring, fixtures, and equipment shall be installed and maintained pursuant to applicable codes and administrative regulations.

(3) Protection from[;] natural hazards.

(a) Natural hazards within the boundaries of the camp shall be plainly marked and measures and procedures[approved by the cabinet] shall be followed to insure the safety of the campers.

(b) Poison plants such as poison sumac and poison ivy shall be subject to control and elimination from areas where their presence is hazardous to campers.

(4) Elimination of artificial hazards.

(a) All buildings, grounds, and equipment shall be maintained in a manner to eliminate or minimize the danger from holes, glass, splinters, sharp projections, and other hazardous conditions to protect the safety of all persons residing in or using the facilities at the camp site.

(b) All insecticides, pesticides, and chemical poisons shall be plainly labeled and stored in a locked and secured[safe] place.

(c) Gasoline and other highly flammable fluids shall be plainly marked and stored in a locked container or building not occupied by residents of the camp and at a safe distance from sleeping quarters or buildings where people congregate.

Section 16. Plan Review for Future Construction. (1) Any person contemplating construction, alteration, addition to, or change in the construction of any permanent camp shall, prior to the initiation of any such construction, submit plans in triplicate, through the local health department concerned, of any proposed camp, additions, alterations, or change in construction.

(2) The plans[which] shall show:

(a) The name and address of the owner or operator of the camp;

(b) The area and dimension of the site;

(c) The property lines;

(d) A separate floor plan of all buildings and other improvements constructed or to be constructed including location and number of personal hygiene facilities, including water closets, urinals, showers, and hand-washing facilities and including a plumbing riser diagram;

(e) Detailed[Detail] drawings of sewage disposal facilities, including written specifications;

(f) Detailed[Detail] drawings of water supply if source is other than public; and

(g) The location and size of water and sewer lines within the camp.

(3)[(2)] If central food preparation and food service buildings are to be provided, plans and specifications shall be submitted showing the kitchen floor plan, layout and type of equipment, storage area, restrooms, and dining area pursuant to 902 KAR 45:005[, the state food service code].

(4)[(3)] If artificially constructed swimming pools or beaches are contemplated, plans and specifications shall be submitted to the cabinet for review and approval prior to construction pursuant to 902 KAR 10:120.

Section 17. Inspection of Camp. (1) Each camping season, an inspection shall be made by the cabinet on each camp at least once prior to the opening of the camp and at least once while the camp is in actual operation. The cabinet shall make as many additional inspections and reinspections as are necessary for the enforcement of this administrative regulation.

(2) If an agent of the cabinet makes an inspection of a camp, findings[he] shall be recorded[record his findings] on an official cabinet inspection report form, DFS-308,[-] Youth Camp Inspection Report, and a copy provided to[provide] the permit holder or operator[with a copy]. The inspection report shall:

(a) Set forth any violation[violation(s) if] found;

(b) Establish a specific and reasonable period of time for the correction of any violation[the violations(s)] found; and

(c) State that failure to comply with a[any] notice issued pursuant to the provisions of this administrative regulation may result in suspension or revocation of the permit.

Section 18. Suspension of Permit. (1) If the cabinet has reason to believe that an imminent public health hazard exists, or if the permit holder has interfered with the authorized agents of the cabinet in the performance of their duties, the permit may be suspended immediately upon notice to the permit holder without a hearing on form DFS-212,[-] Request for Hearing. The permit holder may request a hearing, which shall be granted as soon as practicable.

(2) Failure to comply with the criminal background check and employment requirements established in KRS 194A.382 shall result in penalties pursuant to KRS 194A.383.

(3)(a) In all other instances of violation of the provisions of this administrative regulation, the cabinet shall serve upon the holder of the permit a written notice specifying the violation[violation(s)] in question and afford the holder a reasonable opportunity to correct it [them].

(b) If a permit holder or operator has failed to comply with[any] written notice issued under the provisions of this administrative regulation, the permit holder or operator shall be notified in writing that the permit shall be suspended at the end of five (5) business days following service of the notice, unless a written request for a conference[hearing] is submitted to[filed with] the cabinet[,] by the permit holder[,] within the five (5) business day period.

(4)[(3)] All administrative conferences[hearings] shall be conducted in accordance with 902 KAR 1:400.

Section 19. Reinstatement of Suspended Permits. (1) A[Any] person whose permit has been suspended may, at any time, make application for[a] reinspection on form DFS-215,[-] Application for Reinstatement of Suspended Permits for the purpose of reinstatement of the permit.

(2) Within five (5) business days following receipt of written request, including a statement signed by the applicant that in his or her opinion the conditions causing the suspension of the permit have been corrected, the cabinet shall make a reinspection.

(3) If the applicant is found to be in compliance with the requirements of this administrative regulation, the permit shall be reinstated.

Section 20. Revocation of Permits. (1) For[serious or] repeated violations of any of the requirements of this administrative regulation[or for interference with the agents of the cabinet in the performance of their duties], the permit may be permanently revoked after an opportunity for a hearing has been provided in accordance with 902 KAR 1:400.

(2) Prior to such action, the cabinet shall notify the permit holder in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be permanently revoked at the end of ten (10) business days following service of the notice, unless a request for a hearing is filed with the cabinet, in accordance with 902 KAR 1:400, by the permit holder, within the ten (10) business day period.

Section 21. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DFS-308, Youth Camp Inspection Report", 3/2018;

(b) "DFS-309, Kentucky Youth Camp Accident/Illness Report", 3/2018; and

(c) "DFS-340, Application and Permit to Operate Day Camp Facilities", 3/2018.

(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.[Existing Facilities and Equipment. Notwithstanding the other provisions of this administrative regulation, facilities and equipment being used by existing youth camps holding valid permits on the effective date of this administrative regulation, which do not fully meet the design and construction requirements of the administrative regulation, may be continued in use, if in good repair, capable of being maintained in a sanitary condition, and create no health or safety hazard.]

JEFFREY D. HOWARD, JR., M.D., Acting Commissioner
SCOTT W. BRINKMAN, Acting Secretary
APPROVED BY AGENCY: March 2, 2018

FILED WITH LRC: March 6, 2018 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on April 23, 2018, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by April 16, 2018, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until April 30, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Trish Okeson, 502-564-3970, email Tricia.Okeson@ky.gov, and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: The purpose of this regulation is to set forth uniform sanitation and safety standards for youth camps, in order to ensure a safe and sanitary environment for the individuals who work at and attend these camps.

(b) The necessity of this administrative regulation: KRS 211.180(1)(c) requires the cabinet to enforce administrative regulations promulgated for the regulation and control of the sanitation of public and semi-public recreational areas. This regulation provides for the permitting and inspection of youth camps throughout the state in order to protect the children who attend these camps.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation focuses on the health, safety, and sanitation of public and semi-public youth camps, which is required by KRS 211.180.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation currently assists with permitting, inspecting, and the enforcement of health and sanitation issues in youth camps. New sections of KRS 194A were created in Regular Session 2017 that required background checks be performed for applicants, contractors, or volunteers working in youth camps. This amendment is necessary for the administration of these statutes.

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

(a) How the amendment will change this existing administrative regulation: This amendment is being made in response to the passage of Regular Session 2017 Senate Bill 236, which amended KRS 194A to require background checks at Kentucky youth camps. This administrative regulation is also being amended for compliance with KRS Chapter 13A and to make clarifying points, including that being permitted as a youth camp does not exempt a child-care facility or program from the licensure required by 922 KAR Chapter 2, if applicable.

(b) The necessity of the amendment to this administrative regulation: RS 2017 Senate Bill 236, codified as KRS 194A.380-383, has an effective date of July 1, 2018.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment requires background checks be performed for any applicant, contractor, or volunteer attempting to be present at a Kentucky youth camp or involved in any program of the camp.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is necessary to meet the requirements of KRS 194.380-383, effective July 1, 2018.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This will affect all 120 local health departments located within the state. This will also affect the permitted youth camps within the state, which currently number 518.

(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: A camp operator shall require an applicant, contractor, or volunteer to complete a central registry check and submit back to the camp operator a letter from the cabinet stating that the individual has no findings of substantiated child abuse or neglect found through records maintained by the cabinet. These letters shall be kept on camp premises and made available for examination upon request of the cabinet or its designee. Local health department inspectors will be checking this paperwork upon inspection, which is twice per operating season.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): There is no additional cost to the youth camp. Local health departments will not incur additional costs, only extra time upon inspection to review the required paperwork. The applicant, contractor, or volunteer will have to pay the cost of a criminal background check.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Children should be safer with the new requirement that youth camp employees, contractors, and volunteers have undergone background checks.

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

(a) Initially: $0

(b) On a continuing basis: $0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding will be used for implementation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This did not establish any additional fees or fee increases.

(9) TIERING: Is tiering applied? Tiering is not applied as all youth camps are applicable to 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? Local health departments and the Kentucky Department for Public Health.

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), 194A.381-383, 211.090(3), 211.180(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.

(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 administrative costs will be incurred.

(d) How much will it cost to administer this program for subsequent years? No additional administrative costs will be incurred.

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
Department of Agriculture
Division of Regulation and Inspection
(Repealer)

302 KAR 16:081. Repeal of 302 KAR 16:080.

RELATES TO: RELATES TO: KRS 247.232, 247.234
STATUTORY AUTHORITY: KRS 247.232, 247.234, 247.236
NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.234 requires the Department of Agriculture to establish the criteria for obtaining a permit to operate an amusement ride or attraction in the Commonwealth of Kentucky. 302 KAR 16:080 established requirements for designated bungee jumping or similar apparatus. This administrative regulation repeals 302 KAR 16:080 because the enactment of KRS 247.238 makes these devices an aerial recreational device thus subject to the requirements of that statute and 302 KAR 17:010.

Section 1. 302 KAR 16:080. Qualifications and inspection criteria for bungee jumping or similar apparatus permit, is hereby repealed.

RYAN F. QUARLES, Commissioner
APPROVED BY AGENCY: March 14, 2018
FILED WITH LRC: March 15, 2018 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 23, 2018, at 10:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through April 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.
CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation removes specifications for bungees, that are now covered by 302 17:010.
(b) The necessity of this administrative regulation: This regulation is necessary due to statute and regulatory changes that govern aerial recreational devices.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 247.232(1)(b) authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations to designate other rides and attractions that are not included in the definition of "amusement ride or attraction". 302 17:010 and its authorizing statute make this administrative regulation unnecessary.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the guidance for persons seeking to determine which regulatory structure a particular item may be subject to, including the fee structure, by eliminating any possible confusion.
(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: No more than 650 possible entities, comprising of amusement ride companies, operators, and the KDA.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Participants will spend nothing to comply with this regulation repeal, but may be subject to 302 KAR 17:010.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of knowing how devices are classified and regulated.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No additional cost to this program.
(b) On a continuing basis: No additional cost to this program.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No source funds are required.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fees are associated with this amendment.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established in any form.
(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture.
(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 247.232(1)(b)
(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There are no anticipated impacts to state or local government associated with this repealer.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There are no anticipated impacts to state or local government associated with this repealer.
(c) How much will it cost to administer this program for the first year? There are no anticipated impacts to state or local government associated with this repealer.
(d) How much will it cost to administer this program for

subsequent years? There are no anticipated impacts to state or local government associated with this repealer.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality
(New Administrative Regulation)

401 KAR 51:240. Cross-State Air Pollution Rule (CSAPR) NO_x annual trading program.

RELATES TO: KRS 224.1-010(8), KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 97.401- 97.435, 42 U.S.C. 7410

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.20-110, 42 U.S.C. 7410

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes the requirements for the control of annual nitrogen oxides (NO_x) emissions from large boilers and turbines used in power plants, pursuant to the Cross-State Air Pollution Rule (CSAPR) NO_x annual trading program, 40 C.F.R. 97.401 through 97.435, Subpart AAAAA for sources located in the Commonwealth of Kentucky. This administrative regulation is not more stringent than the provisions of the federal regulations.

Section 1. Definitions. (1) Except as established in subsection (2) of this section, terms shall have the meaning established in 40 C.F.R. 97.402 and 97.403, as published July 1, 2017.

(2) "Permitting Authority" means:

(a) For a unit located in Kentucky, the cabinet, as defined by KRS 224.1-010(8); and

(b) For a unit located outside of the Commonwealth of Kentucky participating in the trading program, "permitting authority" as defined by 40 C.F.R. 97.402.

Section 2. Applicability. This administrative regulation shall apply to CSAPR NO_x Annual units in Kentucky subject to 40 C.F.R. 97.404, as published July 1, 2017.

Section 3. Compliance Requirements. CSAPR NO_x Annual units shall comply with:

(1) 40 C.F.R. 97.401, Purpose, as published July 1, 2017;

(2)(a) 40 C.F.R. 97.404, Applicability, as published July 1, 2017; and

(b) In 40 C.F.R. 97.404(a)(1) and (b), the phrase "in a state (and Indian Country within the borders of such state)" shall be replaced with "in Kentucky".

(3) 40 C.F.R. 97.405, Retired Unit Exemption, as published July 1, 2017;

(4) 40 C.F.R. 97.406, Standard Requirements, as published July 1, 2017;

(5) 40 C.F.R. 97.407, Computation of Time, as published July 1, 2017;

(6) 40 C.F.R. 97.408, Administrative Appeal Procedures, as published July 1, 2017;

(7)(a) State NO_x Annual Trading Budgets, New Unit Set-Asides, and Variability Limits for the 2017 control period and thereafter:

1. The NO_x Annual trading budget shall be 77,238 tons;

2. The new unit set-aside shall be 3,090 tons; and

3. The variability limit shall be 13,903 tons; and

(b) Each Kentucky NO_x Annual trading budget in subsection (a) of this section shall include any tons in the new unit set-aside but shall not include any tons in the variability limit;

(8) 40 C.F.R. 97.411(a) through (b)(1) and (c)(1) through (c)(5)(ii), Timing Requirements for CSAPR NO_x Annual Allowance Allocations, as published July 1, 2017;

(9) 40 C.F.R. 97.412(a), CSAPR NO_x Annual Allowance Allocations to New Units, as published July 1, 2017;

(10) 40 C.F.R. 97.413, Authorization of Designated Representative and Alternate Designated Representative, as published July 1, 2017;

(11) 40 C.F.R. 97.414, Responsibilities of Designated Representative and Alternate Designated Representative, as published July 1, 2017;

(12) 40 C.F.R. 97.415, Changing Designated Representative and Alternate Designated Representative; Changes in Owners and Operators; Changes in Units at the Source, as published July 1, 2017;

(13) 40 C.F.R. 97.416, Certificate of Representation, as published July 1, 2017;

(14) 40 C.F.R. 97.417, Objections Concerning Designated Representative and Alternate Designated Representative, as published July 1, 2017;

(15) 40 C.F.R. 97.418, Delegation by Designated Representative and Alternate Designated Representative, as published July 1, 2017;

(16) 40 C.F.R. 97.420, Establishment of Compliance Accounts, Assurance Accounts, and General Accounts, as published July 1, 2017;

(17) 40 C.F.R. 97.421(a) through (g), (i), and (k) through (l), Recordation of CSAPR NO_x Annual Allowance Allocations and Auction Results, as published July 1, 2017;

(18) 40 C.F.R. 97.422, Submission of CSAPR NO_x Annual Allowance Transfers, as published July 1, 2017;

(19) 40 C.F.R. 97.423, Recordation of CSAPR Annual Allowance Transfers, as published July 1, 2017;

(20) 40 C.F.R. 97.424, Compliance with CSAPR NO_x Annual Emissions Limitation, as published July 1, 2017;

(21) 40 C.F.R. 97.425, Compliance with CSAPR NO_x Annual Assurance Provisions, as published July 1, 2017;

(22) 40 C.F.R. 97.426, Banking, as published July 1, 2017;

(23) 40 C.F.R. 97.427, Account Error, as published July 1, 2017;

(24) 40 C.F.R. 97.428, Administrator's Action on Submissions, as published July 1, 2017;

(25) 40 C.F.R. 97.430, General Monitoring, Recordkeeping, and Reporting Requirements, as published July 1, 2017;

(26) 40 C.F.R. 97.431, Initial Monitoring System Certification and Recertification Procedures, as published July 1, 2017;

(27) 40 C.F.R. 97.432, Monitoring System Out-of-Control Periods, as published July 1, 2017;

(28) 40 C.F.R. 97.433, Notifications Concerning Monitoring, as published July 1, 2017;

(29) 40 C.F.R. 97.434, Recordkeeping and Reporting, as published July 1, 2017; and

(30) 40 C.F.R. 97.435, Petitions for Alternative to Monitoring, Recordkeeping, or Reporting Requirements, as published July 1, 2017.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: March 8, 2018

FILED WITH LRC: March 13, 2018 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation and State Implementation Plan (SIP) amendment will be held on April 25, 2018, at 10:00 a.m. (Eastern Time) in Conference Room 216 at 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by April 18, 2018, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing shall be cancelled, and notification of the cancellation shall be posted at http://air.ky.gov/pages/publicnoticesandhearings.aspx. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public

hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until April 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person. This administrative regulation will be added to Kentucky's SIP approved by US EPA. The SIP revision package for the regulation will be submitted to US EPA once the administrative regulation becomes effective. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Chris Ewing, Environmental Scientist, Division for Air Quality, 300 Sower Blvd., Frankfort, Kentucky 40601, phone (502) 782-6604, fax (502) 564-4245, email Christian.Ewing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Christian Ewing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the control of nitrogen oxides (NO_x) emissions from electricity generating units (EGUs) subject to the provisions of the Cross-State Air Pollution Rule (CSAPR) NO_x Annual Trading Program. This administrative regulation will assist in mitigating interstate transport of annual NO_x emissions for downwind states.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to reduce annual NO_x emissions from EGUs. This administrative regulation will assist with implementing the 1997 and 2006 fine particulate matter National Ambient Air Quality Standards (NAAQS) and the 1997 ozone NAAQS. A reduction in annual NO_x emissions will result in other criteria pollutant reductions because NO_x is a precursor to particulate matter and contributes to the formation of ozone. The United States Environmental Protection Agency (US EPA) is requiring states to address the interstate transport of fine particulates and nitrogen oxides in their State Implementation Plans (SIPs).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) authorizes the Energy and Environment Cabinet (Cabinet) to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation reduces annual NO_x emissions from EGUs. This administrative regulation will address Clean Air Act Section 110, requirements for interstate transport. This administrative regulation will be part of the Kentucky SIP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of KRS 224.10-100(5) by reducing annual NO_x emissions from EGUs, resulting in the protection of human health and the environment. This administrative regulation will address Clean Air Act Section 110, requirements for interstate transport.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of 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. Owners, operators, and designated representatives of stationary, fossil-fuel-fired boilers or stationary, fossil-fuel-fired combustion turbines serving at any time, on or after January 1, 2005, a generator with nameplate capacity of more than 25 Megawatt electrical (MWe) producing electricity for sale, subject to the provisions of the CSAPR NO_x Annual Trading Program will be affected by this administrative regulation. This includes 8 organizations: American Electric Power/Kentucky Power, Eastern Kentucky Power Cooperative, Big Rivers Electric Corporation, Louisville Gas &Electric/Kentucky Utilities, Duke Energy Kentucky, Owensboro Municipal Utilities, Tennessee Valley Authority, and Riverside Generating Company. These organizations represent a total of 78 affected units.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will not have to take any additional actions to comply with this proposed administrative regulation. Regulated entities are already subject to the requirements of the CSAPR Federal Implementation Plan (FIP).

(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 costs to the regulated entities to comply with this administrative regulation. These entities are already subject to the requirements of the CSAPR FIP.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, annual NO_x emissions will be reduced from 85,086 tons to 77,238 tons, a reduction of approximately 9 percent.

(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 initially.

(b) On a continuing basis: The Cabinet will not incur any additional costs for the implementation of this administrative regulation on a continual basis.

(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 and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation 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. The requirements of this administrative regulation apply to stationary, fossil-fuel-fired boilers or stationary, fossil-fuel-fired combustion turbines serving a generator with a nameplate capacity of more than 25 MWe producing electricity for sale.

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? This administrative regulation will affect any unit, part, or division of state or local government operating a unit subject to the provisions of the Cross-State Air Pollution Rule (CSAPR) Nitrogen Oxide (NO_x) Annual Trading Program. Henderson Municipal Power & Light (HMP&L), owned by the City of Henderson, and Owensboro Municipal Utilities (OMU), owned by the City of Owensboro, operate units affected by this administrative regulation. However, both of the above utilities are already subject to the requirements of this administrative regulation pursuant to the CSAPR FIP.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation.

KRS 224.10-100(5), 224.20-110, 224.20-120, 42 U.S.C. 7410, and 40 C.F.R. Part 97, Subpart AAAAA CSAPR NO_x Annual Trading Program

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 Energy and Environment Cabinet's (Cabinet) current operating budget will be used to administer this program for the first year. Costs incurred by HMP&L and OMU will not be more than what is already required by the CSAPR Federal Implementation Plan (FIP).

(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. Expenditures from HMP&L and OMU will not be more than the costs already required under the CSAPR FIP.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
The federal mandate for this administrative regulation is in 40 C.F.R. Part 97, Subpart AAAAA, Cross-State Air Pollution Rule (CSAPR) Nitrogen Oxide (NO_x) Annual Trading Program and Clean Air Act (CAA) Section 110. On July 6, 2011, the United States Environmental Protection Agency (US EPA) issued a Federal Implementation Plan (FIP) for the CSAPR Nitrogen Oxide (NO_x) annual emission budgets for affected units. The Energy and Environment Cabinet (Cabinet) is promulgating this administrative regulation to address CAA Section 110 requirements for interstate transport.

2. State compliance standards. This administrative regulation adopts the federal standards for the control of NO_x emissions from electricity generating units subject to the provisions of the CSAPR NO_x Annual Trading Program.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires states to revise their State Implementation Plan (SIP) to reduce the emission of NO_x. Each affected unit will have to hold allocations for the tons of emissions of NO_x for each control period. The NO_x Annual trading budget is 77,238 tons. The new-unit set aside is 3,090 tons and the variability is 13,903 tons. This administrative regulation will reduce annual NO_x emissions from 85,086 tons to 77,238 tons, a reduction of approximately 9 percent.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation establishes the same requirements as the federal CSAPR NO_x Annual Trading Program and will impose no more stringent requirements than those required by the CSAPR FIP.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards or additional or different responsibilities and requirements are not imposed.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality
(New Administrative Regulation)

401 KAR 51:250. Cross-State Air Pollution Rule (CSAPR) NO_x ozone season group 2 trading program.

RELATES TO: KRS 224.1-010, 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 97.801-97.835, 42 U.S.C. 7410

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.20-110, 42 U.S.C. 7410

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes the requirements for the control of ozone season nitrogen oxides (NO_x) emissions from large boilers and turbines used in power plants, pursuant to the Cross-State Air Pollution Rule (CSAPR) NO_x ozone season group 2 trading program, 40 C.F.R. 97.801 through 97.835, Subpart EEEEE for sources located in the Commonwealth of Kentucky. This administrative regulation is not more stringent than the provisions of the federal regulations.

Section 1. Definitions. (1) Except as established in subsection (2) of this section, terms shall have the meaning established in 40 C.F.R. 97.802 and 97.803, as published July 1, 2017.

(2) "Permitting Authority" means:

(a) For a unit located in Kentucky, the cabinet, as defined by KRS 224.1-010(8); and

(b) For a unit located outside of the Commonwealth of Kentucky participating in the trading program, "permitting authority" as defined by 40 C.F.R. 97.802.

Section 2. Applicability. This administrative regulation shall apply to CSAPR NO_x Ozone Season Group 2 units in Kentucky subject to 40 C.F.R. 97.804, as published July 1, 2017.

Section 3. Compliance Requirements. CSAPR NO_x Ozone Season Group 2 units shall comply with:

(1) 40 C.F.R. 97.801, Purpose, as published July 1, 2017;

(2)(a) 40 C.F.R. 97.804, Applicability, as published July 1, 2017; and

(b) In 40 C.F.R. 97.804(a)(1) and (b), the phrase "in a State (and Indian Country within the borders of such state)" shall be replaced with "in Kentucky".

(3) 40 C.F.R. 97.805, Retired Unit Exemption, as published July 1, 2017;

(4) 40 C.F.R. 97.806, Standard Requirements, as published July 1, 2017;

(5) 40 C.F.R. 97.807, Computation of Time, as published July 1, 2017;

(6) 40 C.F.R. 97.808, Administrative Appeal Procedures, as published July 1, 2017;

(7)(a) State NO_x Ozone Season Trading Budgets, New Unit Set-Asides, and Variability Limits for the 2017 control period and thereafter:

1. The NO_x Ozone Season trading budget shall be 21,115 tons;

2. The new unit set-aside shall be 426 tons; and

3. The variability limit shall be 4,434 tons; and

(b) Each Kentucky NO_x Ozone Season Group 2 trading budget in subsection (a) of this section shall include any tons in the new unit set-aside but shall not include any tons in the variability limit;

(8) 40 C.F.R. 97.811(a) through (b)(1) and (c)(1) through (c)(5)(ii), Timing Requirements for CSAPR NO_x Ozone Season Group 2 Allowance Allocations, as published July 1, 2017;

(9) 40 C.F.R. 97.812(a), CSAPR NO_x Ozone Season Group 2 Allowance Allocations to New Units, as published July 1, 2017;

(10) 40 C.F.R. 97.813, Authorization of Designated Representative and Alternate Designated Representative, as published July 1, 2017;

(11) 40 C.F.R. 97.814, Responsibilities of Designated

Representative and Alternate Designated Representative, as published July 1, 2017;

(12) 40 C.F.R. 97.815, Changing Designated Representative and Alternate Designated Representative; Changes in Owners and Operators; Change in Units at the Source, as published July 1, 2017;

(13) 40 C.F.R. 97.816, Certificate of Representation, as published July 1, 2017;

(14) 40 C.F.R. 97.817, Objections Concerning Designated Representative and Alternate Designated Representative, as published July 1, 2017;

(15) 40 C.F.R. 97.818, Delegation by Designated Representative and Alternate Designated Representative, as published July 1, 2017;

(16) 40 C.F.R. 97.820, Establishment of Compliance Accounts, Assurance Accounts, and General Accounts, as published July 1, 2017;

(17) 40 C.F.R. 97.821(a) through (g), (i), and (k) through (l), Recordation of CSAPR NO_x Ozone Season Group 2 Allowance Allocations and Auction Results, as published July 1, 2017;

(18) 40 C.F.R. 97.822, Submission of CSAPR NO_x Ozone Season Group 2 Allowance Transfers, as published by July 1, 2017;

(19) 40 C.F.R. 97.823, Recordation of CSAPR Ozone Season Group 2 Allowance Transfers, as published July 1, 2017;

(20) 40 C.F.R. 97.824, Compliance with CSAPR NO_x Ozone Season Group 2 Emissions Limitation, as published July 1, 2017;

(21) 40 C.F.R. 97.825, Compliance with CSAPR NO_x Ozone Season Group 2 Assurance Provisions, as published July 1, 2017;

(22) 40 C.F.R. 97.826, Banking, as published July 1, 2017;

(23) 40 C.F.R. 97.827, Account Error, as published July 1, 2017;

(24) 40 C.F.R. 97.828, Administrator's Action on Submissions, as published July 1, 2017;

(25) 40 C.F.R. 97.830, General Monitoring, Recordkeeping, and Reporting Requirements, as published July 1, 2017;

(26) 40 C.F.R. 97.831, Initial Monitoring System Certification and Recertification Procedures, as published July 1, 2017;

(27) 40 C.F.R. 97.832, Monitoring System Out-of-Control Periods, as published July 1, 2017;

(28) 40 C.F.R. 97.833, Notifications Concerning Monitoring, as published July 1, 2017;

(29) 40 C.F.R. 97.834, Recordkeeping and Reporting, as published July 1, 2017; and

(30) 40 C.F.R. 97.835, Petitions for Alternative to Monitoring, Recordkeeping, or Reporting Requirements, as published July 1, 2017.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: March 8, 2018

FILED WITH LRC: March 13, 2018 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation and State Implementation Plan (SIP) amendment will be held on April 25, 2018, at 10:00 a.m. (Eastern Time) in Conference Room 216 at 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by April 18, 2018, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing shall be cancelled, and notification of the cancellation shall be posted at http://air.ky.gov/pages/publicnoticesandhearings.aspx. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until April 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person. This administrative regulation will be added to Kentucky's SIP approved by US EPA. The SIP revision package for the regulation will be submitted to US EPA once the administrative regulation becomes effective. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Chris Ewing, Environmental Scientist, Division for Air Quality, 300 Sower Blvd., Frankfort, Kentucky 40601, phone (502) 782-6604, fax (502) 564-4245, email Christian.Ewing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chris Ewing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the control of nitrogen oxides (NO_x) emissions from electricity generating units (EGUs) subject to the provisions of the Cross-State Air Pollution Rule (CSAPR) NO_x Ozone Season Trading Program. This administrative regulation will assist in mitigating interstate transport of NO_x emissions during the months of May through September in downwind states.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to reduce NO_x emissions from EGUs during the months of May through September. This administrative regulation will assist with implementation of the 2008 ozone National Ambient Air Quality Standards (NAAQS) and the 2015 ozone NAAQS. Ozone formation occurs when NO_x reacts with other compounds in the atmosphere in the presence of sunlight. The United States Environmental Protection Agency (US EPA) is requiring states to address the interstate transport of fine particulates and nitrogen oxides in their State Implementation Plans (SIPs).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) authorizes the Energy and Environment Cabinet (Cabinet) to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation will address Clean Air Act Section 110 requirements for interstate transport. This administrative regulation reduces NO_x emissions from EGUs. This administrative regulation will be part of the Kentucky SIP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of KRS 224.10-100(5) by reducing ozone season NO_x emissions, resulting in the protection of human health and the environment. This administrative regulation will address Clean Air Act Section 110 requirements for interstate transport.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of 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. Owners, operators, and designated representatives of stationary, fossil-fuel-fired boilers or stationary, fossil-fuel-fired combustion turbines serving at any time, on or after January 1, 2005, a generator with nameplate capacity of more than 25 Megawatt electrical (MWe) producing electricity for sale, subject to the provisions of the CSAPR NO_x Ozone Season Trading Program will be affected by this administrative regulation. This includes 9 organizations: American Electric Power/Kentucky Power, Eastern Kentucky Power Cooperative, Big Rivers Electric Corporation, Louisville Gas & Electric/Kentucky Utilities, Duke Energy Kentucky, Owensboro Municipal Utilities, Tennessee Valley Authority, Paducah Power Systems, and Riverside Generating Company. These organizations represent a total of 83 affected units.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will not have to take any additional actions to comply with this proposed administrative regulation. Regulated entities are already subject to the requirements of the CSAPR Federal Implementation Plan (FIP).

(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 costs to the regulated entities to comply with this administrative regulation. These entities are already subject to the requirements of the CSAPR FIP.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, ozone season NO_x emissions will be reduced from 27,731 tons to 21,115 tons, a reduction of approximately 24 percent.

(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 initially.

(b) On a continuing basis: The Cabinet will not incur any additional costs for the implementation of this administrative regulation on a continual basis.

(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 and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation 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. The requirements of this administrative regulation apply to stationary, fossil-fuel-fired boilers or stationary, fossil-fuel-fired combustion turbines serving at any time, on or after January 1, 2005, a generator with a nameplate capacity of more than 25 MWe producing electricity for sale.

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? This administrative regulation will affect any unit, part, or division of state or local government operating a unit subject to the provisions of the Cross-State Air Pollution Rule (CSAPR) Nitrogen Oxide (NO_x) Ozone Season Trading Program. Henderson Municipal Power & Light (HMP&L), owned by the City of Henderson, and Owensboro Municipal Utilities (OMU), owned by the City of Owensboro, operate units affected by this administrative regulation. However, both of the above utilities are already subject to the requirements of this administrative regulation pursuant to the CSAPR Federal Implementation Plan (FIP).

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 224.10-100(5), 224.20-110, 224.20-120, 42 U.S.C. 7410, and 40 C.F.R. Part 97, Subpart EEEEE CSAPR NO_x Ozone Season Group 2 Trading Program.

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 Energy and Environment Cabinet's (Cabinet) current operating budget will be used to administer this program for the first year. Costs incurred by HMP&L and OMU will not be more than what is already required by the CSAPR FIP.

(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. Expenditures from HMP&L and OMU will not be more than the costs already required under the CSAPR FIP.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate for this administrative regulation is in 40 C.F.R. Part 97 Subpart EEEEE Cross-State Air Pollution Rule (CSAPR) Nitrogen Oxide (NO_x) Ozone Season Group 2 Trading Program and Clean Air Act (CAA) Section 110. On September 7, 2016, the United States Environmental Protection Agency (US EPA) issued a Federal Implementation Plan (FIP) for the Cross-State Air Pollution Rule (CSAPR) Nitrogen Oxide (NO_x) ozone season emission budgets for affected units. The Energy and Environment Cabinet (Cabinet) is promulgating this administrative regulation to address CAA Section 110, requirements for interstate transport.

2. State compliance standards. This administrative regulation adopts the federal standards for the control of NO_x emissions from electricity generating units subject to the provisions of the CSAPR NO_x Ozone Season Trading Program.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires states to revise their State Implementation Plan (SIP) to reduce the emission of NO_x. Each affected unit will have to hold allocations for the tons of emissions of NO_x for each control period. The NO_x Ozone Season trading budget is 21,115 tons. The new-unit set aside is 426 tons and the variability limit is 4,434 tons. This administrative regulation will reduce ozone season NO_x emissions from 27,731 tons to 21,115 tons, a reduction of approximately 24 percent.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation establishes the same requirements as the federal CSAPR NO_x Ozone Season Trading Program and will impose no more stringent requirements than those required by the CSAPR FIP.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards or additional or different responsibilities or requirements are not imposed.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality
(New Administrative Regulation)

401 KAR 51:260. Cross-State Air Pollution Rule (CSAPR) SO_2 group 1 trading program.

RELATES TO: KRS 224.1-010, KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 97.601-97.635, 42 U.S.C. 7410

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.20-110, 42 U.S.C. 7410

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes the

requirements for the control of sulfur dioxide (SO_2) emissions from large boilers and turbines used in power plants, pursuant to the Cross-State Air Pollution Rule (CSAPR) SO_2 group 1 trading program, 40 C.F.R. 97.601 through 97.635, Subpart CCCCC for sources located in the Commonwealth of Kentucky. This administrative regulation is not more stringent than the provisions of the federal regulations.

Section 1. Definitions. (1) Except as established in subsection (2) of this section, terms shall have the meaning established in 40 C.F.R. 97.602 and 97.603, as published July 1, 2017.

(2) "Permitting Authority" means:

(a) For a unit located in Kentucky, the cabinet, as defined by KRS 224.1-010(8); and

(b) For a unit located outside of the Commonwealth of Kentucky participating in the trading program, "permitting authority" as defined by 40 C.F.R. 97.602.

Section 2. Applicability. This administrative regulation shall apply to CSAPR SO_2 Group 1 units in Kentucky subject to 40 C.F.R. 97.604, as published July 1, 2017.

Section 3. Compliance Requirements. CSAPR SO_2 Group 1 units shall comply with:

(1) 40 C.F.R. 97.601, Purpose, as published July 1, 2017;

(2)(a) 40 C.F.R. 97.604, Applicability, as published July 1, 2017; and

(b) In 40 C.F.R. 97.604(a)(1) and (b), the phrase "in a State (and Indian Country within the borders of such state)" shall be replaced with "in Kentucky".

(3) 40 C.F.R. 97.605, Retired Unit Exemption, as published July 1, 2017;

(4) 40 C.F.R. 97.606, Standard Requirements, as published July 1, 2017;

(5) 40 C.F.R. 97.607, Computation of Time, as published July 1, 2017;

(6) 40 C.F.R. 97.608, Administrative Appeal Procedures, as published July 1, 2017;

(7) State SO_2 Trading Budgets, New Unit Set-Asides, and Variability Limits for the 2017 control period and thereafter;

(a) The SO_2 trading budget shall be 106,284 tons;

(b) The new unit set-aside shall be 6,377 tons; and

(c) The variability limit shall be 19,131 tons; and

(d) Each Kentucky SO_2 trading budget in subsection (a) of this section shall include any tons in the new unit set-aside but shall not include any tons in the variability limit;

(8) 40 C.F.R. 97.611(a) through (b)(1) and (c)(1) through (c)(5)(ii), Timing Requirements for CSAPR SO_2 Group 1 Allowance Allocations, as published July 1, 2017;

(9) 40 C.F.R. 97.612(a), CSAPR SO_2 Group 1 Allowance Allocations to New Units, as published July 1, 2017;

(10) 40 C.F.R. 97.613, Authorization of Designated Representative and Alternate Designated Representative, as published July 1, 2017;

(11) 40 C.F.R. 97.614, Responsibilities of Designated Representative and Alternate Designated Representative, as published July 1, 2017;

(12) 40 C.F.R. 97.615, Changing Designated Representative and Alternate Designated Representative; Changes in Owners and Operators; Change in Units at the Source, as published July 1, 2017;

(13) 40 C.F.R. 97.616, Certificate of Representation, as published July 1, 2017;

(14) 40 C.F.R. 97.617, Objections Concerning Designated Representative and Alternate Designated Representative, as published July 1, 2017;

(15) 40 C.F.R. 97.618, Delegation by Designated Representative and Alternate Designated Representative, as published July 1, 2017;

(16) 40 C.F.R. 97.620, Establishment of Compliance Accounts, Assurance Accounts, and General Accounts, as published July 1, 2017;

(17) 40 C.F.R. 97.621(a) through (g), (i), and (k) through (l), Recordation of SO_2 Group 1 Allowance Allocations and Auction Results, as published July 1, 2017;

(18) 40 C.F.R. 97.622, Submission of CSAPR SO_2 Group 1 Allowance Transfers, as published by July 1, 2017;

(19) 40 C.F.R. 97.623, Recordation of CSAPR SO_2 Group 1 Allowance Transfers, as published July 1, 2017;

(20) 40 C.F.R. 97.624, Compliance with CSAPR SO_2 Group 1 Emissions Limitation, as published July 1, 2017;

(21) 40 C.F.R. 97.625, Compliance with CSAPR SO_2 Group 1 Assurance Provisions, as published July 1, 2017;

(22) 40 C.F.R. 97.626, Banking, as published July 1, 2017;

(23) 40 C.F.R. 97.627, Account Error, as published July 1, 2017;

(24) 40 C.F.R. 97.628, Administrator's Action on Submissions, as published July 1, 2017;

(25) 40 C.F.R. 97.630, General Monitoring, Recordkeeping, and Reporting Requirements, as published July 1, 2017;

(26) 40 C.F.R. 97.631, Initial Monitoring System Certification and Recertification Procedures, as published July 1, 2017;

(27) 40 C.F.R. 97.632, Monitoring System Out-of-Control Periods, as published July 1, 2017;

(28) 40 C.F.R. 97.633, Notifications Concerning Monitoring, as published July 1, 2017;

(29) 40 C.F.R. 97.634, Recordkeeping and Reporting, as published July 1, 2017; and

(30) 40 C.F.R. 97.635, Petitions for Alternative to Monitoring, Recordkeeping, or Reporting Requirements, as published July 1, 2017.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: March 8, 2018

FILED WITH LRC: March 13, 2018 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation and State Implementation Plan (SIP) amendment will be held on April 25, 2018, at 10:00 a.m. (Eastern Time) in Conference Room 216 at 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by April 18, 2018, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing shall be cancelled, and notification of the cancellation shall be posted at http://air.ky.gov/pages/publicnoticesandhearings.aspx. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until April 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person. This administrative regulation will be added to Kentucky's SIP approved by US EPA. The SIP revision package for the regulation will be submitted to US EPA once the administrative regulation becomes effective. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Chris Ewing, Environmental Scientist, Division for Air Quality, 300 Sower Blvd., Frankfort, Kentucky 40601, phone (502) 782-6604, fax (502) 564-4245, email Christian.Ewing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chris Ewing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the control of sulfur dioxide (SO_2) emissions from electricity generating units (EGUs) subject to the provisions of the Cross-State Air Pollution Rule (CSAPR) SO_2 Group 1 Trading program. This administrative regulation will assist in mitigating interstate transport of SO_2 emissions in downwind states.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to reduce SO_2 emissions from EGUs. This administrative regulation will assist with attaining the 1997 and 2006 fine particulate matter National Ambient Air Quality

Standards (NAAQS) and the 1997 ozone NAAQS. The United States Environmental Protection Agency (US EPA) is requiring states to address the interstate transport of SO_2 in their State Implementation Plans (SIPs).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) authorizes the Energy and Environment Cabinet (Cabinet) to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation will address Clean Air Act Section 110 requirements for interstate transport. This administrative regulation reduces SO_2 emissions from EGUs. This administrative regulation will be part of the Kentucky SIP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of KRS 224.10-100(5) by reducing SO_2 emissions, resulting in the protection of human health and the environment. This administrative regulation will address Clean Air Act Section 110 requirements for interstate transport.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of 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. Owners, operators, and designated representatives of stationary, fossil-fuel-fired boilers or stationary, fossil-fuel-fired combustion turbines serving at any time, on or after January 1, 2005, a generator with nameplate capacity of more than 25 Megawatt electrical (MWe) producing electricity for sale, subject to the provisions of the CSAPR SO_2 Group 1 Trading Program, will be affected by this administrative regulation. This includes 7 organizations: American Electric Power/Kentucky Power, Eastern Kentucky Power Cooperative, Big Rivers Electric Corporation, Louisville Gas &Electric/Kentucky Utilities, Duke Energy Kentucky, Owensboro Municipal Utilities, and Tennessee Valley Authority. These organizations represent a total of 51 affected units.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will not have to take any additional actions to comply with this proposed administrative regulation. Regulated entities are already subject to the requirements of the CSAPR Federal Implementation Plan (FIP).

(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 to the regulated entities to comply with this administrative regulation. These entities are already subject to the requirements of the CSAPR FIP.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, SO_2 emissions will be reduced from 232,662 tons to 106,284 tons, a reduction of approximately 54 percent.

(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 initially.

(b) On a continuing basis: The Cabinet will not incur any additional costs for the implementation of this administrative regulation on a continual basis.

(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 and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation 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. The requirements of this administrative regulation apply to stationary, fossil-fuel-fired boilers or stationary, fossil-fuel-fired combustion turbines serving at any time, on or after January 1, 2005, a generator with a nameplate capacity of more than 25 MWe producing electricity for sale.

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? This administrative regulation will affect any unit, part, or division of state or local government operating a unit subject to the provisions of the Cross-State Air Pollution Rule (CSAPR) Sulfur Dioxide (SO_2) Group 1 Trading Program. Henderson Municipal Power & Light (HMP&L), owned by the City of Henderson and, Owensboro Municipal Utilities (OMU), owned by the City of Owensboro, operate units affected by this administrative regulation. However, both of the above utilities are already subject to the requirements of this administrative regulation pursuant to the CSAPR Federal Implementation Plan (FIP).

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation.
KRS 224.10-100(5), 224.20-110, 224.20-120, 42 U.S.C. 7410, and 40 C.F.R. Part 97, Subpart CCCCC CSAPR SO_2 Group 1 Trading Program

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 Energy and Environment Cabinet's (Cabinet) current operating budget will be used to administer this program for the first year. Costs incurred by HMP&L and OMU will not be more than what is already required by the CSAPR FIP.

(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. Expenditures from HMP&L and OMU will not be more than the costs already required under the CSAPR FIP.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
The federal mandate for this administrative regulation is in 40 C.F.R. Part 97, Subpart CCCCC Cross-State Air Pollution Rule (CSAPR) Sulfur Dioxide (SO_2) Group 1 Trading Program and Clean Air Act (CAA) Section 110. On July 6, 2011, the United States Environmental Protection Agency (US EPA) issued a

Federal Implementation Plan (FIP) for CSAPR SO_2 emission budgets for affected units. The Energy and Environment Cabinet (Cabinet) is promulgating this administrative regulation to address CAA Section 110 requirements for interstate transport.

2. State compliance standards. This administrative regulation adopts the federal standards for the control of SO_2 emissions from electricity generating units subject to the provisions of the CSAPR SO_2 Group 1 Trading Program.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires states to revise their SIP to reduce the emission of SO_2. Each affected unit will have to hold allocations for the tons of emissions of SO_2 for each control period. The SO_2 Group 1 trading budget is 106,284 tons. The new-unit set aside is 6,377 tons and the variability is 19,131 tons. This administrative regulation will reduce SO_2 emissions from 232,662 tons to 106,284 tons, a reduction of approximately 54 percent.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation establishes the same requirements as the federal CSAPR SO_2 Group 1 Trading Program and will impose no more stringent requirements than those required by the CSAPR FIP.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards or additional or different responsibilities or requirements are not imposed.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of MARCH 12, 2018

Call to Order and Roll Call

The March meeting of the Administrative Regulation Review Subcommittee was held on Monday, March 12, 2018, at 1:00 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 2018 meeting were approved.

Present were:
Members: Senators Ernie Harris, Perry Clark, and Alice Forgy Kerr; and Representatives David Hale and Mary Lou Marzian.

LRC Staff: Sarah Amburgey, Stacy Auterson, Emily Caudill, Betsy Cupp, Ange Darnell, Emily Harkenrider, Karen Howard, and Carrie Klaber.

Guests: Brent Gregory, Lisa Swiger, Department of Revenue; Leanne Diakov, Board of Medical Licensure; Angela Evans, Board of Emergency Medical Services; Amber Arnett, Ron Brooks, Gabe Jenkins, Karen Waldrop, Department for Fish and Wildlife Resources; Aaron Keatley, Department for Environmental Protection; Anthony Cotto, Department of Insurance; John Lyons, John Parks, Public Service Commission; Stephanie Brammer Barnes, Steve Davis, Office Inspector General; Donna Little, Ann Tyler Morgan, Catherine York, Department for Medicaid Services.

The Administrative Regulation Review Subcommittee met on Monday, March 12, 2018, and submits this report:

Administrative Regulations Reviewed by the subcommittee:
FINANCE AND ADMINISTRATION CABINET: Department of Revenue: General Administration

103 KAR 1:010. Protests and appeals. Brent Gregory, executive director, Office of Property Valuation, and Lisa Swiger, tax policy consultant and regulations administrator, represented the department.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; and Sections 1 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT: Board of Medical Licensure

201 KAR 9:310. Continuing medical education. Leanne Diakov, general counsel, represented the board.

COMMUNITY AND TECHNICAL COLLEGE SYSTEM: Board of Emergency Medical Services

202 KAR 7:501. Ambulance agency licensure. Angela Evans, general counsel, and Chuck O'Neal, deputy director, represented the board.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 through 5, 7, and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

202 KAR 7:545. License classifications.

In response to questions by Co-Chair Harris, Mr. O'Neal stated that this administrative regulation prohibited an EMS agency from holding more than one (1) license per level of classification in one (1) geographic service area because a ground ambulance service with a defined geographic service area only needed one (1) license. The board previously had problems with agencies obtaining multiple licenses to sell to competitors, to stall local government processes, or for the purposes of avoiding disciplinary repercussions. An agency with more than one (1) license number for the same level of classification in one (1) geographic service area could use the second license number to avoid disciplinary measures placed on the other license. An agency could also use the second license to circumvent licensure revocation as a disciplinary penalty. Licenses were determined based on geographic service area through the certificate of need process.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency the amendments were approved.

202 KAR 7:550. Required equipment and vehicle standards.

In response to questions by Co-Chair Harris, Mr. O'Neal stated that Class I emergency vehicles were usually for emergency and nonemergency services within a geographic service area. Class III emergency vehicles were usually for specialty care transport between medical facilities. The different classes of emergency vehicles did not always carry the same equipment because some equipment was only for specialty care transport. Class III emergency vehicles were emergency and nonemergency vehicles but were only used for transport between medical facilities.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4, 6, 9, 10, and 12 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

202 KAR 7:555. Ground agencies.

In response to questions by Co-Chair Harris, Mr. O'Neal stated that the requirement that a ground agency respond within ten (10) minutes meant that the vehicle was fully ready and had begun the response, not that the vehicle had to be at the destination by that time limit. Prior authorization was usually not needed for emergency services between geographic service areas. Prior authorization was sometimes required for nonemergency transport between medical facilities between geographic service areas. That authorization was usually facilitated within seconds or minutes.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

202 KAR 7:560. Ground vehicle staff.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 1(7)(c)4. to add a registered nurse to the list of licensed health professionals authorized to serve as an "additional attendant" in a Class III Neonatal Specialty Care Ambulance. Without objection, and with agreement of the agency, the amendments were approved.

202 KAR 7:565. Clinical pilot programs.

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

301 KAR 1:015. Boat and motor restrictions. Amber Arnett,

counsel; Ron Brooks, fisheries director; Gabe Jenkins, elk program manager; and Karen Waldrop, deputy commissioner represented the department.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Game

301 KAR 2:132. Elk hunting seasons, permits, zones, and requirements.

In response to questions by Co-Chair Hale, Ms. Waldrop stated that a person drawn for an elk quota hunt shall be ineligible to be drawn for any elk quota hunt for the following three (3) years thereafter, regardless of the sex of elk for which the person was drawn. Requirements regarding taking an antlerless elk with a crossbow were not changed as part of this amendment.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Water: Public Water Supply

401 KAR 8:510. Disinfectant residuals, disinfection by-products, and disinfection by-product precursors. Aaron Keatley, commissioner, represented the division.

PUBLIC PROTECTION CABINET: Department of Insurance: Commissioner's Office: Insurance Contract

806 KAR 14:006. Property and casualty insurance form filings. Anthony Cotto, executive advisor, represented the office.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to add procedures for filing electronically; and (2) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Casualty Insurance Contracts

806 KAR 20:010. Declination, cancellation, and nonrenewal of property and casualty insurance.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1(2) to no longer require an insurer to give the specific reason for declination of a policy pursuant to KRS 304.20-040 relating to automobile liability insurance policies; and (2) to amend the TITLE; the RELATES TO and STATUTORY AUTHORITY paragraphs; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 20:021. Repeal of 806 KAR 20:020.

ENERGY AND ENVIRONMENT CABINET: Public Service Commission: Utilities

807 KAR 5:027. Gas pipeline safety; reports of leaks; drug testing. John Lyons, deputy executive director, and John Parks, staff attorney, represented the commission.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

807 KAR 5:081. Repeal of 807 KAR 5:023 & 807 KAR 5:031.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Office of Inspector General: Division of Healthcare: Health Services and Facilities

902 KAR 20:058. Operation and services; primary care center. Stephanie Brammer–Barnes, regulation coordinator, and Steve Davis, inspector general, represented the division.

In response to questions by Co-Chair Harris, Mr. Davis stated that the cabinet was unaware of any negative impact that could result from physicians not having hospital privileges. Providers were in support of the change. Ms. Brammer-Barnes stated that this administrative regulation was amended upon request by the Primary Care Association's Technical Advisory Committee. The changes in visitation provisions were for conformity with federal standards.

902 KAR 20:145. Operations and services; rural health clinics.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Medicaid Services: Managed Care

907 KAR 17:005. Definitions for 907 KAR Chapter 17. Donna Little, deputy executive director; Anne-Tyler Morgan, deputy commissioner; and Catherine York, deputy general counsel, represented the department.

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.

907 KAR 17:010. Managed care organization requirements and policies relating to enrollees.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 2, 4 through 6, 9, 11, and 13 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 17:015. Managed care organization requirements and policies relating to providers.

907 KAR 17:026. Repeal of 907 KAR 17:026 and 907 KAR 17:030.

907 KAR 17:035. External independent third-party.

Ms. Little stated that the agency amendment to this administrative regulation included provisions established in the budget bill, 2016 through current, and in the House version of the budget. Because the provisions were not budgetary, they were moved into this administrative regulation.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a statutory citation; (2) to add a new Section 6(1) to specify that an appeal from a denial of service shall, upon request of the recipient, include a review by a board-eligible or board-certified physician in the appropriate specialty or subspecialty area; (3) to add a new Section 6(2) to specify that a denial of a health care service rendered by a chiropractor or optometrist shall be made respectively by a chiropractor or optometrist duly licensed in Kentucky; and (4) to add a new Section 6(3) to require use of a reviewer who did not participate in the initial review and denial of service and was not the provider of the service at issue. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred or removed from the March 12, 2018, subcommittee agenda:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Education Professional Standards Board: Teaching Certificates

16 KAR 2:010. Kentucky Professional and Provisional Teacher Certificates.

Administrative Certificates

16 KAR 5:030. Proficiency evaluation.

GENERAL GOVERNMENT: Board of Podiatry

201 KAR 25:090. Prescribing and dispensing controlled substances.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 6:020. Corrections policies and procedures.

Capital Punishment

501 KAR 16:290. Preliminary and post-execution procedures concerning condemned person.

501 KAR 16:300. Execution procedures concerning attorneys representing the condemned, witnesses, visitors, and demonstrators.

501 KAR 16:310. Pre-execution medical actions.

501 KAR 16:330. Lethal injection protocols.

501 KAR 16:340. Electrocution protocol.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Driver Licensing: Administration

601 KAR 2:030 & E. Ignition interlock.

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Quotas

804 KAR 9:051. Repeal of 804 KAR 9:010, 804 KAR 9:040, and 804 KAR 9:050.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Office of Inspector General: Division of Healthcare: Health Services and Facilities

902 KAR 20:016. Hospitals; operations and services.

Department for Medicaid Services: Managed Care

907 KAR 17:020. Managed care organization service and service coverage requirements and policies.

Department for Community Based Services: Division of Family Support: K-TAP, Kentucky Works, Welfare to Work, State Supplementation

921 KAR 2:015 & E. Supplemental programs for persons who are aged, blind, or have a disability.

Department for Community Based Services: Division of Child Care: Daycare

922 KAR 2:280 & E. Background checks for child care staff members, reporting requirements, and appeals.

The subcommittee adjourned at 1:30 p.m. The next meeting of the subcommittee is tentatively scheduled for April 12, 2018, at 1 p.m.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(10), 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.

SENATE STANDING COMMITTEE ON TRANSPORTATION
Meeting of February 14, 2018

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Transportation for its meeting of Senate - February 14, 2018, House - February 28, 2018, having been referred to the Committee on February 7, 2018, pursuant to KRS 13A.290(6):

603 KAR 5:025

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the Senate - February 14, 2018 House - February 28, 2018 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

HOUSE STANDING COMMITTEE ON TRANSPORTATION
Meeting of February 28, 2018

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Transportation for its meeting of Senate - February 14, 2018, House - February 28, 2018, having been referred to the Committee on February 7, 2018, pursuant to KRS 13A.290(6):

603 KAR 5:025

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the Senate - February 14, 2018 House - February 28, 2018 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

HOUSE STANDING COMMITTEE ON HEALTH AND FAMILY SERVICES
Meeting of March 14, 2018

The following administrative regulations were available for consideration and placed on the agenda of the House Standing Committee on Health and Family Services for its meeting of March 15, 2018, having been referred to the Committee on March 7, 2018, pursuant to KRS 13A.290(6):

201 KAR 9:480
201 KAR 22:170
900 KAR 1:009
900 KAR 6:130
900 KAR 10:031
921 KAR 2:040 & E
922 KAR 2:160 & E
922 KAR 2:260 & E

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the March 15, 2018 meeting, which are hereby incorporated by reference.

SENATE STANDING COMMITTEE ON HEALTH AND WELFARE
Meeting of March 15, 2018

The following administrative regulations were available for consideration and placed on the agenda of the Senate Standing Committee on Health and Welfare for its meeting of March 14, 2018, having been referred to the Committee on March 7, 2018, pursuant to KRS 13A.290(6):

201 KAR 09:480
201 KAR 22:170
900 KAR 01:009
900 KAR 06:130
900 KAR 10:031
921 KAR 02:040
922 KAR 02:160
922 KAR 02:260

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the March 14, 2018 meeting, which are hereby incorporated by reference.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates **J - 2**

The Locator Index lists all administrative regulations published in VOLUME 44 of the *Administrative Register of Kentucky* from July 2017 through June 2018. 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 43 are those administrative regulations that were originally published in VOLUME 43 (last year's) issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the *2017 Kentucky Administrative Regulations Service* was published.

KRS Index **J - 16**

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 44 of the *Administrative Register of Kentucky*.

Technical Amendment Index **J - 29**

The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments entered since being published in the 2017 *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 44 of the *Administrative Register of Kentucky*, and is mainly broken down by agency.

VOLUME 43

The administrative regulations listed under VOLUME 43 are those administrative regulations that were originally published in Volume 43 (last year's) issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the *2017 Kentucky Administrative Regulations Service* was published.

SYMBOL KEY:

* Statement of Consideration not filed by deadline
** Withdrawn, not in effect within 1 year of publication
*** Withdrawn before being printed in Register
‡ Withdrawn deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
IJC Interim Joint Committee
(r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

Regulation Number	43 Ky.R. Page No.	Effective Date
301 KAR 2:225E	2112	5-12-2017
Replaced	2199	8-3-2017
501 KAR 1:030E	2115	4-17-2017
Replaced		See 44 Ky.R.
787 KAR 2:040E	1922	3-31-2017
Replaced		See 44 Ky.R.
907 KAR 1:041E(r)	1924	3-31-2017
Expired		9-27-2017
907 KAR 3:206E(r)	1925	3-31-2017
Expired		9-27-2017
907 KAR 23:001E	1927	3-31-2017
Expired		9-27-2017
907 KAR 23:010E	1930	3-31-2017
Replaced		See 44 Ky.R.
907 KAR 23:020E	1935	3-31-2017
Replaced		See 44 Ky.R.

ORDINARY ADMINISTRATIVE REGULATIONS:

Regulation Number	43 Ky.R. Page No.	Effective Date
4 KAR 1:010		
Amended	2176	See 44 Ky.R.
4 KAR 1:040		
Amended	2178	See 44 Ky.R.
4 KAR 1:050	2239	See 44 Ky.R.
16 KAR 2:020		
Amended	2005	See 44 Ky.R.
16 KAR 5:020		
Amended	2008	See 44 Ky.R.
16 KAR 6:020		
Amended	1627	7-7-2017
16 KAR 8:040		
Amended	2011	See 44 Ky.R.
30 KAR 2:010		
Amended	2180	See 44 Ky.R.
30 KAR 5:060		
Amended	2182	See 44 Ky.R.
40 KAR 2:145		
Amended	2013	See 44 Ky.R.
40 KAR 2:150		
Amended	2015	See 44 Ky.R.
200 KAR 5:080		
Repealed	2240	9-1-2017
200 KAR 5:081*(r)*	2240	9-1-2017
201 KAR 2:074		
Amended	1796	See 44 Ky.R.
201 KAR 2:076		
Amended	2184	See 44 Ky.R.
201 KAR 20:056		
Amended	1799	
As Amended	2125	6-21-2017
201 KAR 20:057		
Amended	1802	6-21-2017
201 KAR 20:070		
Amended	2187	See 44 Ky.R.
201 KAR 20:110		
Amended	2189	See 44 Ky.R.
201 KAR 20:225		
Amended	2191	8-16-2017
201 KAR 20:480		
Amended	2193	8-16-2017
201 KAR 22:070		
Amended	2022	See 44 Ky.R.
201 KAR 26:125		
Amended	1805	See 44 Ky.R.
201 KAR 26:130		
Amended	1807	See 44 Ky.R.
201 KAR 26:140		
Amended	1809	See 44 Ky.R.
201 KAR 26:145		
Amended	1811	See 44 Ky.R.
201 KAR 26:155		
Amended	1814	See 44 Ky.R.
201 KAR 26:160		
Amended	1816	See 44 Ky.R.
201 KAR 26:165		
Amended	1818	See 44 Ky.R.
201 KAR 26:171		
Amended	1819	See 44 Ky.R.
201 KAR 26:175		
Amended	1823	
Reprint	2109	
Am Comments	2156	See 44 Ky.R.
201 KAR 26:180		
Amended	1826	
Am Comments	2158	See 44 Ky.R.
201 KAR 26:185		
Amended	1827	See 44 Ky.R.
201 KAR 26:190		
Amended	1829	See 44 Ky.R.
201 KAR 26:200		
Amended	1831	See 44 Ky.R.
201 KAR 26:210		
Amended	1833	See 44 Ky.R.
201 KAR 26:215		
Amended	1834	See 44 Ky.R.
201 KAR 26:225	1900	See 44 Ky.R.
201 KAR 26:250		
Amended	1836	See 44 Ky.R.
201 KAR 26:280		
Amended	1838	See 44 Ky.R.
201 KAR 26:290		
Amended	1840	See 44 Ky.R.
201 KAR 32:050		
Amended	1841	See 44 Ky.R.
201 KAR 32:060		
Amended	1843	See 44 Ky.R.
201 KAR 34:020		
Amended	2023	See 44 Ky.R.
201 KAR 34:030		
Amended	2025	See 44 Ky.R.
201 KAR 34:050		
Amended	2029	See 44 Ky.R.
201 KAR 39:001		

Regulation Number	43 Ky.R. Page No.	Effective Date
Amended	1636	
Am Comments	2160	See 44 Ky.R.
201 KAR 39:030		
Amended	1639	See 44 Ky.R.
201 KAR 39:050		
Amended	1846	See 44 Ky.R.-
201 KAR 39:070		
Amended	1640	
Am Comments	2162	See 44 Ky.R.
201 KAR 44:090		
Amended	2031	See 44 Ky.R.
201 KAR 46:035	2077	See 44 Ky.R.
201 KAR 46:040		
Amended	1648	
Am Comments	1987	See 44 Ky.R.
201 KAR 46:060		
Amended	1651	7-17-2017
201 KAR 46:070		
Amended	1653	See 44 Ky.R.
201 KAR 46:090		
Amended	1654	See 44 Ky.R.
301 KAR 2:075		
Amended	1848	
As Amended	2127	7-6-2017
301 KAR 2:083		
Amended	1850	7-6-2017
301 KAR 2:178		
Amended	1661	
As Amended	2128	7-6-2017
301 KAR 2:221		
Amended	2032	7-6-2017
301 KAR 2:222		
Amended	2195	8-3-2017
301 KAR 2:225		
Amended	2199	8-3-2017
301 KAR 2:300		7-6-2017
Amended	2034	See 44 Ky.R.
301 KAR 3:022		
Amended	2038	See 44 Ky.R.
400 KAR 1:001		
Amended	1853	See 44 Ky.R.
400 KAR 1:030		
Repealed	1901	8-4-2017
400 KAR 1:031*(r)*	1901	8-4-2017
400 KAR 1:090		
Amended	1855	
Am Comments	2164	See 44 Ky.R.
400 KAR 1:100	1902	See 44 Ky.R.
401 KAR 8:010		
Amended	2040	9-8-2017
401 KAR 8:011*(r)*	2078	9-8-2017
401 KAR 8:020		
Amended	2043	See 44 Ky.R.
401 KAR 8:040		
Amended	2047	9-8-2017
401 KAR 8:070		
Repealed	2078	9-8-2017
401 KAR 8:075		
Amended	2049	See 44 Ky.R.
401 KAR 8:100		
Amended	2051	See 44 Ky.R.
401 KAR 8:101		
Repealed	2078	9-8-2017
401 KAR 8:250		
Amended	2055	9-8-2017
401 KAR 8:550		
Repealed	2078	9-8-2017
401 KAR 8:600		
Repealed	2078	9-8-2017
401 KAR 49:011		
Amended	2202	See 44 Ky.R.
401 KAR 49:040		
Repealed	2205	9-8-2017
401 KAR 49:080		
Amended	2205	9-8-2017
401 KAR 49:090		
Repealed	2205	9-8-2017
401 KAR 49:091*(r)*	2241	9-8-2017
401 KAR 49:210		
Repealed	2205	9-8-2017
401 KAR 100:010		
Repealed	1906	8-4-2017
401 KAR 100:011*(r)*	1906	8-4-2017
405 KAR 5:095		
Amended	1869	See 44 Ky.R.
405 KAR 7:091		
Repealed	1907	8-4-2017
405 KAR 7:092		
Amended	1876	See 44 Ky.R.
405 KAR 7:093*(r)*	1907	8-4-2017
501 KAR 1:030		
Amended	2209	See 44 Ky.R.
501 KAR 6:040		
Amended	1889	
As Amended	2134	7-7-2017
501 KAR 6:140		
Amended	2212	See 44 Ky.R.
505 KAR 1:130		
Amended	2214	See 44 Ky.R.
601 KAR 1:018		
Amended	1890	7-7-2017
601 KAR 1:113		
Amended	2056	See 44 Ky.R.
601 KAR 2:030		
Amended	2216	
Withdrawn		11-15-2017
725 KAR 2:060		
Amended	2060	
Withdrawn	**	6-5-2017
725 KAR 2:070		
Amended	2063	See 44 Ky.R.
787 KAR 1:070		
Amended	612	See 44 Ky.R.
787 KAR 2:040		
Amended	2065	See 44 Ky.R.
804 KAR 4:230		
Amended	2222	See 44 Ky.R.
804 KAR 10:010		
Amended	2224	
As Amended		See 44 Ky.R.
806 KAR 17:575	2079	See 44 Ky.R.
815 KAR 7:120		
Amended	2067	See 44 Ky.R.
900 KAR 6:125		
Amended	2225	See 44 Ky.R.
900 KAR 7:030		
Amended	2228	See 44 Ky.R.
900 KAR 7:040		
Amended	2232	See 44 Ky.R.
900 KAR 10:041*(r)*	1908	6-21-2017
900 KAR 10:050		
Repealed	1908	6-21-2017
900 KAR 10:060		
Repealed	1908	6-21-2017
901 KAR 5:060		
Repealed	2242	8-16-2017
901 KAR 5:061*(r)*	2242	8-16-2017
901 KAR 5:120	2243	See 44 Ky.R.
902 KAR 2:060		
Amended	1454	
Am Comments	1989	
As Amended	2143	See 44 Ky.R.

Regulation Number	43 Ky.R. Page No.	Effective Date
902 KAR 20:053(r)	2082	7-17-2017
902 KAR 20:054		
Repealed	2082	7-17-2017
902 KAR 21:030	1910	
As Amended	2148	6-21-2017
902 KAR 22:010		
Repealed	2084	7-17-2017
902 KAR 22:011*(r)*	2084	7-17-2017
902 KAR 22:030		
Repealed	2084	7-17-2017
902 KAR 55:075		
Repealed	2085	7-17-2017
902 KAR 55:076*(r)*	2085	7-17-2017
902 KAR 55:100		
Repealed	2085	7-17-2017
902 KAR 95:040		
Amended	2234	See 44 Ky.R.
906 KAR 1:080		
Repealed	2086	7-17-2017
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907 KAR 23:020	2096	See 44 Ky.R.
910 KAR 1:210		
Amended	2070	7-17-2017

SYMBOL KEY:

* Statement of Consideration not filed by deadline
** Withdrawn, not in effect within 1 year of publication
*** Withdrawn before being printed in Register
‡ Withdrawn deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
IJC Interim Joint Committee
(r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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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.)

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.)

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31 KAR 3:010E	1914	1-23-2018
32 KAR 1:020E	496	8-15-2017
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32 KAR 1:045E	876	9-29-2017
Replaced	1493	1-29-2018
101 KAR 2:210E	725	9-15-2017
Replaced	769	1-5-2018
105 KAR 1:140E	1474	12-15-2017
201 KAR 2:390E	498	8-15-2017
Replaced	1501	1-18-2018
201 KAR 2:400E	500	8-15-2017
Replaced	1502	1-18-2018
201 KAR 12:082E	877	10-13-2017
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201 KAR 20:505E	727	1-5-2018
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201 KAR 22:020E	2180	3-14-2018
201 KAR 22:040E	2182	3-14-2018
201 KAR 22:070E	2184	3-14-2018
301 KAR 1:152E	4	5-26-2017
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501 KAR 6:270E	183	6-28-2017
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601 KAR 2:030E	1479	11-15-2017
803 KAR 2:425E	185	6-26-2017
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803 KAR 2:505E	1485	12-4-2017
900 KAR 11:010E	187	6-29-2017
Replaced	956	11-15-2017
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907 KAR 3:066E	6	6-14-2017
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922 KAR 1:550E	207	6-29-2017
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405 KAR 20:080		
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405 KAR 20:090	703	
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500 KAR 8:010		
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501 KAR 1:030		See 43 Ky.R.
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701 KAR 5:110		
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701 KAR 8:010	1172	
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739 KAR 2:050		
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803 KAR 3:050		
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803 KAR 3:051*(r)*	1192	2-2-2018
803 KAR 6:010		
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806 KAR 3:010		
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806 KAR 3:011*(r)*	466	12-1-2017
806 KAR 3:020		
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806 KAR 3:210		
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806 KAR 3:220		
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806 KAR 5:030		
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806 KAR 5:031*(r)*	468	10-24-2017
806 KAR 5:040		
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806 KAR 7:010		
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806 KAR 9:050		
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806 KAR 39:030		
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815 KAR 7:120		See 43 Ky.R.
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815 KAR 15:027		
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815 KAR 15:040		
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900 KAR 6:125		See 43 Ky.R.
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900 KAR 10:100		
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900 KAR 11:010	472	
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* Statement of Consideration not filed by deadline

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‡ Withdrawn deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))

IJC Interim Joint Committee

(r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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189A.010	601 KAR 2:030
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189A.085	601 KAR 2:030
189A.090	601 KAR 2:030
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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
194A	921 KAR 2:015
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194A.005	900 KAR 1:009
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194A.030	922 KAR 1:320
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194A.050	900 KAR 10:031
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194A.060	922 KAR 2:160
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194A.062	900 KAR 1:009
194A.209	922 KAR 5:090
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196.070	501 KAR 16:290
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196.180	501 KAR 16:290
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199.466	922 KAR 1:470
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199.895	922 KAR 2:090
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199.896	922 KAR 1:470
	922 KAR 2:090
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	922 KAR 2:120
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199.897	922 KAR 2:100
199.898	922 KAR 2:090
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209.030	922 KAR 5:040
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216B.055	902 KAR 20:016
216B.062	900 KAR 6:090
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216C.040	900 KAR 11:010
216C.050	900 KAR 11:010
216C.060	900 KAR 11:010
216C.070	900 KAR 11:010
216C.080	900 KAR 11:010
216C.090	900 KAR 11:010
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311B.150	201 KAR 46:081
311B.160	201 KAR 46:095
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311B.190	201 KAR 46:020
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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 *2017 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.

‡ - A technical change was made to this administrative regulation during the promulgation process, pursuant to KRS 13A.320(1)(e).

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101 KAR 1:365		1-22-2018		
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907 KAR 10:015		11-16-2017		
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