



ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, July 15, 2019.

MEETING NOTICES

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet on August 9, 2019, at 1:00 p.m. in room 149 Capitol Annex.

ARRS Tentative Agenda – [305](#) Updated as needed online

INDEXES & OTHER INFORMATION

Regulation Review Procedure	310	KRS Index	A – 9
ARRS Report	837	Certifications	A – 16
Other Committee Reports	843	Technical Amendments	A – 19
Locator Index - Effective Dates	A – 2	Subject Index	A – 20

EMERGENCIES

Department for Environmental Protection

401 KAR 006:001E . Definitions for 401 KAR Chapter 006	311
401 KAR 006:310E . Water supply well construction practices and standard	313
401 KAR 006:320E . Certification of water well drillers and water well driller assistants	323
401 KAR 006:350E . Monitoring well construction practices ad standards	327

Department of Workers' Claims

803 KAR 025:271E . Pharmaceutical formulary	333
(Withdrawn)	

Office of Inspector General

902 KAR 020:430E . Facilities specifications, operation and services; behavioral health services organizations for mental health treatment	336
--	-----

Department for Medicaid Services

907 KAR 010:830E . Acute care inpatient hospital reimbursement	347
907 KAR 015:005E . Definitions for 907 KAR Chapter 015	356
907 KAR 015:010E . Coverage provisions and requirements regarding behavioral health services provided by individual approved behavioral health practitioners, behavioral health provider groups, and behavioral health multi-specialty groups	359
907 KAR 015:015E . Reimbursement provisions and requirements for behavioral health services provided by individual approved behavioral health practitioners, behavioral health provider groups or behavioral health multi-specialty groups	371
907 KAR 015:020E . Coverage provisions and requirement regarding services	

provided by behavioral health services organizations for mental health treatment	374
907 KAR 015:022E . Coverage provisions and requirements regarding services provided by behavioral health services organizations for substance use disorder treatment and co-occurring disorders	385
907 KAR 015:025E . Reimbursement provisions and requirements regarding behavioral health services provided by behavioral health services organizations	396

Department for Community Based Services

922 KAR 001:320E . Service appeals	400
--	-----

AS AMENDED

Executive Branch Ethics Commission

009 KAR 001:010 . Statement of financial disclosure	405
009 KAR 001:040 . Executive agency lobbyist, employer or executive agency lobbyist, and real party in interest registration and expenditure statements; financial transactions and termination forms; and enforcement	405

PERSONNEL CABINET

101 KAR 002:180 . Employee performance evaluation system	407
101 KAR 002:190 . Employee performance management system	409

Board of Pharmacy

201 KAR 002:010 . Schools approved by the board.	410
201 KAR 002:090 . Reference material and prescription equipment.	410
201 KAR 002:100 . Security and control of drugs and prescriptions	411
201 KAR 002:116 . Substitution of drugs, biologics and biosimilar products.	412

201 KAR 002:225	Special limited pharmacy permit – medical gas.....	412
201 KAR 002:240	Special limited pharmacy permit – charitable.....	413
201 KAR 002:270	Expungement.....	414
201 KAR 002:340	Special limited pharmacy permit – clinical practice.....	414
Board of Licensure for Long-Term Care Administrators		
201 KAR 006:030	Temporary permits.....	415
201 KAR 006:040	Renewal, reinstatement, and reactivation of license.....	416
Board of Ophthalmic Dispensers		
201 KAR 013:040	Licensing.....	417
201 KAR 013:055	Continuing education requirements.....	419
201 KAR 013:060	Military service; reciprocity; endorsement.....	420
Board of Nursing		
201 KAR 020:370	Applications for licensure.....	420
Board of Podiatry		
201 KAR 025:090	Prescribing and dispensing controlled substances.....	421
Board of Private Investigators		
201 KAR 041:030	Examination.....	423
201 KAR 041:040	Fees.....	424
201 KAR 041:065	Inactive status.....	425
201 KAR 041:070	Continuing professional education requirements.....	425
201 KAR 041:080	Compliant procedure.....	427
Board of Emergency Medical Services		
202 KAR 007:560	Ground vehicle staff.....	428
Department Of Agriculture		
302 KAR 016:010	Business identification number required.....	430
302 KAR 016:020	Inspection and operation of amusement rides or amusement attractions.....	430
302 KAR 016:040	Correction of safety violations and right to re-inspection.....	431
302 KAR 016:111	Violations, civil penalties, revocations, and suspensions of business identification number.....	432
302 KAR 016:121	Inflatable rides or attractions.....	433
302 KAR 016:131	Maintenance and repair of amusement ride or attractions.....	433
Animal Control Officers		
302 KAR 101:010	Training requirements for Kentucky Animal Control Officers.....	433
Department for Natural Resources		
805 KAR 003:110	Employees' personal protection.....	434
Department of Insurance		
806 KAR 047:010	Fraud prevention.....	434
Public Service Commission		
807 KAR 005:056	Fuel adjustment clause.....	435
Real Estate Authority		
Board of Auctioneers		
831 KAR 001:010	Licensing fees and applications.....	436
831 KAR 001:030	Education requirements.....	437
Department for Public Health		
902 KAR 009:010	Environmental health.....	439
Department for Behavioral Health, Developmental and Intellectual Disabilities		
908 KAR 001:370	Licensing procedures, fees, and general requirements for nonhospital-based alcohol and other drug treatment entities.....	441
908 KAR 001:372	Licensure of residential alcohol and other drug treatment entities.....	459
908 KAR 001:374	Licensure of nonhospital-based outpatient alcohol and other drug treatment entities.....	464
Department for Income Support		
921 KAR 001:380	Child support enforcement program application and intergovernmental process.....	472

Department for Community Based Services	
922 KAR 001:510	Authorization for disclosure of protection and permanency records.....

AMENDED AFTER COMMENTS

Department for Public Health	
902 KAR 002:070	Rabies control.....
902 KAR 015:010	Manufactured and mobile homes.....
Office of Inspector General	
902 KAR 020:036	Operation and services; personal care homes.....
Department for Public Health	
902 KAR 045:065	Tattooing.....
902 KAR 045:070	Body piercing and ear piercing.....
Department for Medicaid Services	
907 KAR 001:604	Recipient cost-sharing.....
Department for Aging and Independent Living	
910 KAR 002:020	Referral process for adult guardianship.....
Department for Community Based Services	
922 KAR 001:310	Standards for child-placing agencies.....
922 KAR 001:350	Requirements for public child welfare agency foster parents, adoptive parents, and respite care providers.....
922 KAR 001:495	Training requirements for foster parents, adoptive parents, and respite care providers for children in the custody of the cabinet.....

PROPOSED AMENDMENTS

Council On Post Secondary Education	
013 KAR 001:020	Private College licensing.....
Personnel Cabinet	
101 KAR 002:102	Classified leave general requirements.....
101 KAR 003:015	Leave requirements for unclassified service.....
Department of Revenue	
103 KAR 025:131	Current month accelerated payment of sales and use taxes by larger taxpayers.....
103 KAR 026:070	Contractors.....
103 KAR 026:090	Veterinarians and pet care providers.....
103 KAR 027:180	Vending machines.....
103 KAR 028:010	Admissions.....
103 KAR 030:170	Containers, wrapping, and packing materials.....
Real Estate Authority	
201 KAR 011:121	Standards of professional conduct.....
201 KAR 011:170	Education provider requirements.....
201 KAR 011:190	Consumer and administrative complaints; discipline; administrative hearings.....
201 KAR 011:210	Licensing, education, and testing requirements.....
201 KAR 011:220	Errors and omissions insurance requirements.....
Board of Cosmetology	
201 KAR 012:030	Licensing, permits, and examinations.....
Department of Fish and Wildlife Resources	
301 KAR 001:201	Taking of fish by traditional fishing methods.....
301 KAR 001:410	Taking of fish by nontraditional fishing methods.....
301 KAR 002:185	Hunter education.....
Department of Agriculture	
302 KAR 075:130	Packaging and labeling.....
302 KAR 076:100	Method of sale.....
302 KAR 080:010	Examination procedure for price verification.....

302 KAR 081:010	Technical requirements for commercial weighing and measuring devices.	626
Department for Environmental Protection		
401 KAR 006:001	Definitions for 401 KAR Chapter 006	628
401 KAR 006:310	Water supply well construction practices and standards.	631
401 KAR 006:320	Certification of water well drillers and water well driller assistants.....	640
401 KAR 006:350	Monitoring well construction practices ad standards	645
401 KAR 051:010	Attainment status designations.	651
Department of Corrections		
501 KAR 006:060	Northpoint Training Center.....	655
501 KAR 006:140	Bell County Forestry Camp.....	657
Department of Juvenile Justice		
505 KAR 001:160	Department of Juvenile Justice Policy and Procedures Manual: juvenile sexual offender treatment program.	659
Department for Natural Resources		
805 KAR 001:020	Protection of fresh water zones.....	660
805 KAR 001:030	Well location and as-drilled location plat, preparation, form and contents.	663
805 KAR 001:050	Bonds, requirements, cancellation.	665
805 KAR 001:060	Plugging wells.	667
805 KAR 001:080	Gas storage reservoirs; drilling, plugging in vicinity.....	670
805 KAR 001:110	Underground injection control.	674
805 KAR 001:120	Operating or deepening existing wells and drilling deeper than the permitted depth.....	681
805 KAR 001:140	Directional and horizontal wells.....	682
805 KAR 001:170	Content of the operations and reclamation plan.....	685
805 KAR 001:180	Production reporting.	689
805 KAR 001:190	Gathering lines	691
805 KAR 001:200	General information associated with oil and gas permits.....	697
Department of Financial Institutions		
808 KAR 001:170	Licensing and registration.	699
808 KAR 009:050	Licensee change of control.....	703
Office of Inspector General		
902 KAR 020:370	Operations and services; private duty nursing agencies.	705
902 KAR 020:430	Facilities specifications, operation and services; behavioral health services organizations for mental health treatment.....	709
Department for Public Health		
902 KAR 021:020	Kentucky Colon Screening Program.....	719
902 KAR 050:005	Milk Advisory Committee	721
Department for Medicaid Services		
907 KAR 010:830	Acute care inpatient hospital reimbursement.	723
907 KAR 015:005	Definitions for 907 KAR Chapter 015	733
907 KAR 015:010	Coverage provisions and requirements regarding behavioral health services provided by individual approved behavioral health practitioners, behavioral health provider groups, and behavioral health multi-specialty groups.....	736
907 KAR 015:015	Reimbursement provisions and requirements for behavioral health services provided by individual approved behavioral health practitioners, behavioral health provider groups or behavioral	

	health multi-specialty groups	748
907 KAR 015:020	Coverage provisions and requirement regarding services provided by behavioral health services organizations for mental health treatment.....	751
907 KAR 015:025	Reimbursement provisions and requirements regarding behavioral health services provided by behavioral health services organizations	762
Department for Community Based Services		
922 KAR 001:320	Service appeals.....	766
922 KAR 001:560	Putative father registry and operating procedures.....	771
922 KAR 001:565	Service array for a relative or fictive kin caregiver.	773

NEW ADMINISTRATIVE REGULATION

Teachers' Retirement System

102 KAR 001:032	Bona Fide Retirement	778
103 KAR 041:220	Applications, stamp orders, returns, reports, and statements to be filed electronically – waiver.	779

Real Estate Authority

201 KAR 011:002	Repeal of 201 KAR 011:030, 201 KAR 011:045, 201 KAR 011:062, 201 KAR 011:090, 201 KAR 011:095, 201 KAR 011:100, 201 KAR 011:110, 201 KAR 011:115, 201 KAR 011:135, 201 KAR 011:145, 201 KAR 011:147, 201 KAR 011:175, 201 KAR 011:180, 201 KAR 011:195, 201 KAR 011:215, 201 KAR 011:225, 201 KAR 011:230, 201 KAR 011:232, 201 KAR 011:235, 201 KAR 011:240, 201 KAR 011:245, 201 KAR 011:250, 201 KAR 011:300, 201 KAR 011:350, 201 KAR 011:400, 201 KAR 011:410, 201 KAR 011:440, 201 KAR 011:450, and 201 KAR 011:460.	780
---------------------------------	---	-----

Board of Veterinary Examiners

201 KAR 016:011	Repeal of 201 KAR 016:010, 201 KAR 016:015, 201 KAR 016:020, 201 KAR 016:030, 201 KAR 016:040, 201 KAR 016:050, 201 KAR 016:060, 201 KAR 016:080, 201 KAR 016:090, 201 KAR 016:100, and 201 KAR 016:110.....	782
201 KAR 016:200	Code of ethical conduct for veterinarians.....	784
201 KAR 016:210	Fees for veterinarians.....	786
201 KAR 016:212	Fees for veterinary technicians.	788
201 KAR 016:214	Fees for animal control agencies and animal euthanasia specialists.	790
201 KAR 016:216	Fees – other fees.	791
201 KAR 016:220	Approved veterinary colleges; approved programs for veterinary technicians.	793
201 KAR 016:230	Examination requirements for veterinarians and veterinary technicians.	794
201 KAR 016:240	Application requirements for veterinarians and veterinary technicians.	795
201 KAR 016:250	Authorization for animal control agencies to apply for a restricted controlled substances certificate from DEA.....	797
201 KAR 016:260	Certification as an animal euthanasia specialist.	799

<u>201 KAR 016:270</u>	License renewal for veterinarians and veterinary technicians; renewal notice.....	801
<u>201 KAR 016:272</u>	License renewal for registered animal control agencies and animal euthanasia specialists; renewal notice.....	802
<u>201 KAR 016:280</u>	License, inactive and retired statuses.....	804
<u>201 KAR 016:290</u>	Continuing education.....	805
<u>201 KAR 016:300</u>	Prescription and dispensation of drugs for animal use.....	807
<u>201 KAR 016:310</u>	Procedures for grievances, investigations, and administrative charges.....	810
<u>201 KAR 016:400</u>	Material Incorporated by Reference ...	811
Department of Fish and Wildlife Resources		
<u>301 KAR 001:185</u>	Pay lakes	813
Department of Agriculture		
<u>302 KAR 034:011</u>	Repeal of 302 KAR 034:010, 302 KAR 034:020, 302 KAR 034:030, 302 KAR 034:040, 302 KAR 034:050 and 302 KAR 034:060.....	815
<u>302 KAR 035:011</u>	Repeal of 302 KAR 035:020, 302 KAR 035:030, 302 KAR 035:040, 302 KAR 035:050, 302 KAR 035:060, and 302 KAR 035:070.....	816
<u>302 KAR 036:011</u>	Repeal of 302 KAR 036:010	817
Department for Environmental Protection		
<u>401 KAR 006:211</u>	Repeal of 401 KAR 006:200	818
Department for Natural Resources		
<u>805 KAR 001:001</u>	Definitions for 805 KAR Chapter 001 ..	819
<u>805 KAR 009:011</u>	Repeal of 805 KAR Chapter 009.....	821
Department for Public Health		
<u>902 KAR 050:003</u>	Repeal of 902 KAR 050:002	823
Office of Inspector General		
<u>902 KAR 055:120</u>	Disposal of prescription controlled substances	824
Department for Medicaid Services		
<u>907 KAR 015:022</u>	Coverage provisions and requirements regarding services provided by behavioral health services organizations for substance use disorder treatment and co-occurring disorders.....	826

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2018 Edition of the
KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE.

HOW TO CITE: Cite all material in the **ADMINISTRATIVE REGISTER OF KENTUCKY** by Volume number and Page number. Example: Volume 45, Kentucky Register, page 318 (short form: 45 Ky.R. 318).

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

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

ADMINISTRATIVE REGISTER OF KENTUCKY

(ISSN 0096-1493)

© 2019 Legislative Research Commission, All Rights Reserved

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

KENTUCKY LEGISLATIVE RESEARCH COMMISSION

Chairmen

Senator Robert Stivers
Senate President

Representative David W. Osborne
Speaker of the House

Senate and House Members

Senator David Givens
President Pro Tempore

Representative David Meade
Speaker Pro Tempore

Senator Damon Thayer
Majority Floor Leader

Representative John Bam Carney
Majority Floor Leader

Senator Morgan McGarvey
Minority Floor Leader

Representative Rocky Adkins
Minority Floor Leader

Senator Julie Raque Adams
Majority Caucus Chair

Representative Suzanne Miles
Majority Caucus Chair

Senator Johnny Ray Turner
Minority Caucus Chair

Representative Derrick Graham
Minority Caucus Chair

Senator Mike Wilson
Majority Whip

Representative Chad McCoy
Majority Whip

Senator Dennis Parrett
Minority Whip

Representative Joni L. Jenkins
Minority Whip

Jay Hartz, Director
Joe Cox, Printing and Publications Officer

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Members

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
Senator Julie Raque Adams
Senator Perry B. Clark
Senator Alice Kerr
Representative Deanna Frazier
Representative Mary Lou Marzian
Representative Tommy Turner

Staff

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



Administrative Regulation Review Subcommittee
TENTATIVE Meeting Agenda
FRIDAY, August 9, 2019, 1:00 PM
Annex Room 149



1. CALL TO ORDER AND ROLL CALL

2. REGULATIONS FOR COMMITTEE REVIEW

STATE BOARD OF ELECTIONS

Forms and Procedures

031 KAR 004:120. Additional and emergency precinct officers. (Not Amended After Comments) (Deferred from April)

DEPARTMENT OF STATE

Registry of Election Finance

Reports and Forms

032 KAR 001:061. Repeal of 032 KAR 001:060.

PERSONNEL CABINET

Personnel Cabinet, Classified

101 KAR 002:230. Kentucky Employee Mediation and Workplace Resolution Programs.

FINANCE AND ADMINISTRATION CABINET

Department of Revenue

General Administration

103 KAR 001:010. Protests.

103 KAR 001:060. Electronic fund transfer.

Inheritance Tax

103 KAR 002:030. Policies and circulars relating to inheritance tax.

Ad Valorem Tax, Administration

103 KAR 005:151. Repeal of 103 KAR 005:150.

103 KAR 005:160. Property valuation administrator office employees: payment of leave upon separation.

Ad Valorem Tax; Local Assessment

103 KAR 007:031. Repeal of 103 KAR 007:030.

Ad Valorem Tax; State Assessment

103 KAR 008:011. Repeal of 103 KAR 008:010.

103 KAR 008:110. Apportioned vehicles.

103 KAR 008:130. Ad valorem taxation of machinery actually engaged in the manufacturing of coal, crushed stone, sand, gravel and hot asphalt.

103 KAR 008:141. Repeal of 103 KAR 008:140 and 103 KAR 008:150.

Income Tax; General Administration

103 KAR 015:050. Filing dates and extensions. (Deferred from July)

Income Tax; Corporations

103 KAR 016:200. Consolidated Kentucky corporation income tax return.

103 KAR 016:250. Net operating loss computation and deduction for corporations.

103 KAR 016:400. Combined Unitary Kentucky corporation income tax return.

Sales and Use Tax; Service and Professional Occupations

103 KAR 026:010. Nontaxable service enterprises.

Sales and Use Tax; Miscellaneous Retailer Occupations

103 KAR 027:140. Publishers of newspapers, magazines and periodicals.

Sales and Use Tax; General Exemptions

103 KAR 030:261. Repeal of 103 KAR 030:260.

Sales and Use Tax; Administration and Accounting

103 KAR 031:030. Direct pay authorization.

103 KAR 031:111. Sales and purchases for resale.

KENTUCKY RETIREMENT SYSTEMS

General Rules

105 KAR 001:200. Retirement procedures and forms.

105 KAR 001:390 & E. Employment after retirement. ("E" expires 12-09-2019)

FINANCE AND ADMINISTRATION CABINET

Office of Financial Management

State Investment Commission

200 KAR 014:201. Repeal of 200 KAR 014:200. (Deferred from July)

BOARDS AND COMMISSIONS

Board of Pharmacy

201 KAR 002:095. Pharmacist interns. (Deferred from July)

Board of Dentistry

201 KAR 008:540. Dental practices and prescription writing.

201 KAR 008:581. Charity dental practices. (Not Amended After Comments)

Real Estate Commission

201 KAR 011:011. Definitions for 201 KAR Chapter 011.

201 KAR 011:105. Advertising

201 KAR 011:461. Repeal of 201 KAR 011:420.

Board of Embalmers and Funeral Directors

201 KAR 015:010. Definitions.

201 KAR 015:015. Per Diem compensation of board members.

201 KAR 015:030. Fees.

201 KAR 015:040. Examination.

201 KAR 015:050. Apprenticeship and supervision requirements.

201 KAR 015:080. Complaints.

201 KAR 015:110. Funeral establishment criteria.

201 KAR 015:120. Requirements for applicants holding a license in another state.

201 KAR 015:125. Surface Transportation Permit.

Board of Social Work

201 KAR 023:150. Complaint procedure, disciplinary action, and reconsideration. (Deferred from December)

Real Estate Appraisers Board

201 KAR 030:010. Definitions for 201 KAR Chapter 030.

201 KAR 030:021. Repeal of 201 KAR 030:020, 201 KAR 030:030, 201 KAR 030:050, 201 KAR 030:060, 201 KAR 030:120, 201 KAR 030:125, 201 KAR 030:150, 201 KAR 030:160, 201 KAR 030:170, 201 KAR 030:180, 201 KAR 030:200, 201 KAR 030:310, 201 KAR 030:315, 201 KAR 030:360, 201 KAR 030:375, and 201 KAR 030:380.

201 KAR 030:040. Professional standards of practice and conduct.

201 KAR 030:070. Grievances.

201 KAR 030:110. Appraiser roster and fees.

201 KAR 030:130. Education provider, instructor, and course.

201 KAR 030:190. Certification and licensing requirements.

201 KAR 030:330. Registration and supervision of appraisal management companies.

OFFICE OF HOMELAND SECURITY

911 Services Board

202 KAR 006:010. Definitions for 202 KAR Chapter 006.

202 KAR 006:020. CMRS provider cost recovery.

202 KAR 006:030. Confidential and proprietary information.

202 KAR 006:050. PSAP certification.

202 KAR 006:060. PSAP pro data fund disbursement.

202 KAR 006:070. PSAP workload fund disbursement.

202 KAR 006:080. CMRS surcharge remittance and reporting.

202 KAR 006:090. Permitted uses by PSAPs and CMRS funds.

202 KAR 006:100. PSAP Phase II certification.

TOURISM, ARTS AND HERITAGE CABINET

Department of Fish and Wildlife Services

Fish

301 KAR 001:152 & E. Harvest and sale of Asian carp. ("E" expires 11-20-2019)

Wildlife

301 KAR 004:090. Taxidermy and the buying and selling of inedible wildlife parts.

ENERGY AND ENVIRONMENT CABINET

Department for Environmental Protection

Division of Water

Water Quality Standards

401 KAR 010:001. Definitions for 401 KAR Chapter 010.

401 KAR 010:026. Designation of uses of surface waters.

401 KAR 010:029. General provisions.

401 KAR 010:030. Antidegradation policy implementation methodology.

401 KAR 010:031. Surface water standards.

VOLUME 46, NUMBER 2– AUGUST 1, 2019

Division for Air Quality

Asbestos

401 KAR 058:005. Accreditation of asbestos professionals.

Department for Natural Resources

Division of Mine Permits

Bond and Insurance Requirements

405 KAR 010: 001. Definitions for 405 KAR Chapter 010. (Amended After Comments) (Deferred from July)

405 KAR 010:015. General bonding provisions. (Not Amended After Comments) (Deferred from July)

JUSTICE AND PUBLIC SAFETY CABINET

Asset Forfeiture

500 KAR 009:011. Repeal of 500 KAR 009:010, 500 KAR 009:020, 500 KAR 009:030, and 500 KAR 009:040. (Deferred from June)

Motorcycle Safety Education Commission

500 KAR 015:010 & E. Motorcycle safety education program. ("E" expires 10-02-2019) (Not Amended After Comments) (Deferred from July)

Department of Corrections

Office of the Secretary

501 KAR 006:110. Roederer Correctional Complex.

501 KAR 006:160. Correctional Industries.

TRANSPORTATION CABINET

Department of Vehicle Regulation

Division of Driver Licensing

Administration

601 KAR 002:030 & E. Ignition interlock. ("E" expires 08-07-2019) (Not Amended After Comments) (Deferred from May)

Department of Vehicle Licensing

Division of Motor Licensing

Motor Vehicle Tax

601 KAR 009:130. Motor vehicle registration.

Driver Improvement

601 KAR 013:090. Medical Review Board; basis for examination, evaluation, tests.

601 KAR 013:100. Medical standards for operators of motor vehicles.

Department of Highways

Division of Maintenance

Traffic

603 KAR 005:150. Encroachment permits.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Board of Education

Department of Education

Office of Chief State School Officer

701 KAR 005:090. Teacher disciplinary hearings.

Office of District Support Services

School Administration and Finance

702 KAR 003:130. Internal accounting.

School Terms, Attendance, and Operation

702 KAR 007:065. Designation of agent to manage middle and high school interscholastic athletics.

Office of Employment and Training

Apprenticeship Standards

787 KAR 003:010. Registration of apprenticeship programs.

PUBLIC PROTECTION CABINET

Department of Alcoholic Beverage Control

Local Administrators

804 KAR 010:040. Cities with quotas for quota retail package licenses in excess of statutory default quotas.

Department of Insurance

Authorization of Insurers and General Requirements

806 KAR 003:240. Corporate Governance Annual Disclosure.

Agents, Consultants, Solicitors, and Adjustors

806 KAR 009:001. Prelicensing courses of study. (Deferred from June)

806 KAR 009:020. False or deceptive names, titles, prohibited. (Deferred from June)

806 KAR 009:030. Adjuster licensing restrictions. (Deferred from July)

VOLUME 46, NUMBER 2– AUGUST 1, 2019

806 KAR 009:061. Repeal of 806 KAR 009:060. (Deferred from June)

806 KAR 009:070. Examinations. (Deferred from June)

806 KAR 009:190. Disclosure requirements for financial institutions authorized to engage in insurance agency activities. (Deferred from July)

806 KAR 009:200. Volume of insurance agent exchange of business. (Deferred from July)

806 KAR 009:310. Life settlement licenses. (Deferred from June)

806 KAR 009:321. Repeal of 806 KAR 009:320. (Deferred from June)

806 KAR 009:341. Repeal of 806 KAR 009:341. (Deferred from July)

806 KAR 009:350. Recognition of financial planning certification and designation for receipt of fees and commissions. (Deferred from July)

Rates and Rating Organizations

806 KAR 013:120. Workers' compensation deductible policies.

Life Insurance and Annuity Contracts

806 KAR 015:081. Repeal of 806 KAR 015:080. (Deferred from July)

LABOR CABINET

Department of Financial Institutions

Administration

808 KAR 001:180. Use of special restricted funds. (Deferred from February)

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Epidemiology and Health Planning

Communicable Diseases

902 KAR 002:070. Rabies control. (Amended After Comments)

Mobile Homes and Recreational Vehicles Parks; Facilities Standards

902 KAR 015:010. Manufactured and mobile homes. (Amended After Comments)

Office of Inspector General

Division of Healthcare

Health Services and Facilities

902 KAR 020:036. Operation and services; personal care homes. (Amended After Comments)

Department for Public Health

Division of Public Health Protection and Safety

Food and Cosmetics

902 KAR 045:065. Tattooing. (Amended After Comments)

902 KAR 045:070. Body piercing and ear piercing. (Amended After Comments)

902 KAR 045:075. Tanning facilities. (Not Amended After Comments)

902 KAR 045:090 & E. Home-based processors and farmers market home-based microprocessors. ("E" expires 12-11-2019)

Controlled Substances

902 KAR 055:070. Emergency medication kits in long-term care facilities.

Department for Medicaid Services

Division of Policy and Operations

Medicaid Services

907 KAR 001:604 & E. Recipient cost-sharing. ("E" expires 10-12-2019) (Amended After Comments)

Payments and Services

907 KAR 003:170 & E. Telehealth service coverage and reimbursements. ("E" expires 12-11-2019)

Department for Aging and Independent Living

Division of Guardianship

910 KAR 002:020. Referral process for adult guardianship. (Amended After Comments)

Department for Community Based Services

Division of Protection and Permanency

Child Welfare

922 KAR 001:310 & E. Standards for child-placing agencies. ("E" expires 10-29-2019) (Amended After Comments)

922 KAR 001:350 & E. Requirements for public child welfare agency foster parents, adoptive parents, and respite care providers. ("E" expires 10-29-2019) (Amended After Comments)

922 KAR 001:495 & E. Training requirements for foster parents, adoptive parents, and respite care providers for children in the custody of the cabinet. ("E" expires 10-29-2019) (Amended After Comments)

3. REGULATIONS REMOVED FROM AUGUST'S AGENDA

FINANCE AND ADMINISTRATION CABINET

Department of Revenue

Inheritance Tax

~~103 KAR 002:005. Life expectancy table. (Withdrawn)~~

VOLUME 46, NUMBER 2– AUGUST 1, 2019

BOARDS AND COMMISSIONS

Board of Pharmacy

201 KAR 002:165. Transfer of prescription information. (Comments Received; SOC ext., due 08-15-2019)

201 KAR 002:310. Compounding for a veterinarian's office or institutional administration for veterinary use. (Comments Received; SOC ext., due 08-15-2019)

ENERGY AND ENVIRONMENT CABINET

Department for Environmental Protection

Division of Water

Water Quality

401 KAR 005:010. Operation of wastewater systems by certified operators. (Comments Received; SOC ext., due 08-15-2019)

Water Quality Certification

401 KAR 008:030. Water treatment plant and water distribution system classification and staffing. (Comments Received; SOC ext., due 08-15-2019)

401 KAR 008:050. Drinking water program fees. (Comments Received; SOC ext., due 08-15-2019)

Certified Operators

401 KAR 011:001. Definitions for 401 KAR Chapter 011. (Comments Received; SOC ext., due 08-15-2019)

401 KAR 011:030. Wastewater treatment and collection system operators; classification and qualifications. (Comments Received; SOC ext., due 08-15-2019)

401 KAR 011:040. Water treatment and distribution system operators; classification and qualifications. (Comments Received; SOC ext., due 08-15-2019)

401 KAR 011:050. Operator and training provider certification. (Comments Received; SOC ext., due 08-15-2019)

401 KAR 011:060. Operator and training provider certification fees. (Comments Received; SOC ext., due 08-15-2019)

PUBLIC PROTECTION CABINET

Department of Insurance

Agents, Consultants, Solicitors, and Adjustors

806 KAR 009:110. Agent's rights after contract termination. (Comments Received; SOC ext. due 08-15-2019)

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Public Health Protection and Safety

Public Accommodations

902 KAR 007:010. Hotel and motel code. (Comments Received; SOC ext., due 08-15-2019)

Department for Aging and Independent Living

Division of Guardianship

910 KAR 002:040. Service provisions for adult guardianship. (Comments Received; SOC ext., due 08-15-2019)

Department for Community Based Services

Division of Protection and Permanency

Child Welfare

922 KAR 001:470. Central registry. (Comments Received; SOC ext., due 08-15-2019)

ADMINISTRATIVE REGULATION REVIEW PROCEDURE - OVERVIEW
(See KRS Chapter 13A for specific provisions)

Filing and Publication

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

Public Hearing and Public Comment Period

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

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

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

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

Review Procedure

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

EMERGENCY ADMINISTRATIVE REGULATIONS

STATEMENT OF EMERGENCY
401 KAR 6:001E

This emergency administrative regulation is being promulgated to implement the certification of water well driller assistants as required by Senate Bill 32 of 2019. This emergency administrative regulation is necessary to protect human health and the environment while making the certification program immediately available. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
CHARLES G. SNAVELY, Secretary

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Emergency Amendment)

401 KAR 6:001E. Definitions for 401 KAR Chapter 6.

RELATES TO: KRS 223.400 through 223.460[223.400-223.460], 223.991[-EO 2008-507, 2008-531]

STATUTORY AUTHORITY: KRS 223.420(1)(e), 223.435, 224.10-100, 224.70-100, 224.70110

EFFECTIVE: July 11, 2019

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.420 requires the cabinet to promulgate administrative regulations to carry out the purposes of KRS 223.405 through 223.460. KRS 223.435 requires the cabinet to promulgate administrative regulations establishing standards of practice for water well construction.~~[EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet.]~~ This administrative regulation is necessary to define terms used by the cabinet in 401 KAR Chapter 6.

Section 1. Definitions. (1) "Abandon" means to seal or plug a well or borehole to prevent entry of surface water or contaminants and to prevent mixing of water from different water-bearing formations.

(2) "Annular space" means the opening between a well-bore or excavation and the well casing or between an outer casing pipe and an inner casing pipe or liner pipe.

(3) "Aquifer" means a water-bearing formation that transmits water in sufficient quantity to supply a well.

(4) "Base flood elevation" means the elevation of surface water resulting from a flood that has a one (1) percent chance of equaling or exceeding that level in any given year.

(5) "Bedrock" means a consolidated rock exposed at the surface of the earth or overlain by unconsolidated materials or soils.

(6)[(5)] "Bentonite" means a clay in the montmorillonite series with a predominance of sodium as its major cation, having the property of expanding several times its original volume if saturated, and used to seal or plug wells, well annuluses, and well bores.

(7)[(6)] "Board" is defined by KRS 223.400(2).

(8)[(7)] "Bridging" means the deliberate or accidental closing or plugging of a section of a drill hole or annulus, beneath which is an open borehole or unfilled annulus.

(9) "Certified well driller" means a person who has met all requirements of 401 KAR 6:320 and to whom the cabinet has issued a well driller certificate.

(10) "Certified well driller assistant" means a person who has met all requirements of 401 KAR 6:320 and to whom the cabinet has issued a well driller assistant certificate.

(11)[(8)] "Confining layers[zones]" and "confining formation"

means a zone[body] of sufficiently low permeability[impermeable material] as to impede the vertical migration of groundwater.

(12)[(9)] "Consolidated formation" means a geological rock formation that has grains that are bonded together[is bedrock].

(13)[(40)] "Construction" means all acts necessary for obtaining groundwater by wells, including drilling or excavation of the well and installation or modification of casing, but excluding the installation of permanent pumps and pumping equipment.

(14)[(44)] "Direct supervision" means that a certified water well driller shall oversee and manage the work of the water well driller's assistant, including providing specific instruction regarding the construction, modification, alteration, repair, and abandonment of a water well, but the certified water well driller shall not be required to provide in-person supervision at the drilling site.

(15) "Driller" means "water well driller" as defined by KRS 223.400(8).

(16)[(42)] "Drilling derived waste" or "DDW" means soils, drill cuttings, drilling fluids, product-contaminated water, and decontamination rinsate.

(17)[(43)] "Finished ground surface" means the final or permanent elevation of the ground surface at the site of the well or abandoned borehole.

(18)[(44)] "Grout-pipe method" means that grout is placed[emplaced] into the borehole or annulus from bottom to top via gravity flow or by pumping through a pipe or funnel-like apparatus[with a funnel or hopper-like top].

(19)[(45)] "High solids sodium bentonite" means bentonite containing a minimum of thirty (30) percent solids.

(20)[(46)] "Impervious" means a material that will not permit the passage of water at a rate greater than 1×10^{-7} centimeters per second (cm/sec).

(21)[(47)] "Modification" means a change, replacement, or alteration of the water well.

(22)[(48)] "Monitoring well" means a well constructed when[if] the actual or intended use in whole or part is the removal of water for sampling, measuring, treating, or test pumping for scientific, engineering, or regulatory purposes.

(23)[(49)] "Perched" means a region in the unsaturated zone separated from an underlying aquifer where the materials are locally saturated because they overlie a confining layer.

(24) "Person" shall be defined by KRS 223.400(5) "Natural person" means an individual person distinguished from a person as defined in KRS 224.01-010(17).

(25)[(20)] "Pit" means a hole, shaft, or cavity in the ground.

(26)[(24)] "Pitless well adapter" means a device designed for attachment to one (1) or more openings through a well casing.

(27)[(22)] "Pitless well unit" means an assembly that extends from the upper end of the well casing to above the finished ground surface.

(28)[(23)] "Perched" means a region in the unsaturated zone separated from an underlying aquifer where the materials are locally saturated because they overlie a low-permeability unit.

(29)[(24)] "Potable water" means water that meets the provisions of 401 KAR Chapter 8, the quality of which is approved by the cabinet for human consumption.

(30)[(25)] "Sealing materials" means neat cement, cement-bentonite grout, or bentonite.~~[Drill cuttings are not sealing materials.]~~

(31) "Special flood zone" means an area that is subject to a one (1) percent or greater chance of flooding in any given year.

(32) "Special well types" means a well that is:

(a) Bored;

(b) Driven;

(c) Irrigation; or

(d) Radial collector.

(33)[(26)] "Static water level" means the level at which water stands in a well when water is not being taken from the aquifer either by pumping or by free flow.

(34)[(27)] "Unconsolidated formation" means a loose-grained, non-lithified geological formation such as soil, sand, or gravel.

(35)[(28)] "Undesirable geologic formation" means a geologic

formation with physical characteristics or water quality not conducive to the construction and use of a well.

(36)[(29)] "Undesirable groundwater" means groundwater not suitable for human or animal consumption, irrigation, manufacturing process water, or cooling.

(37)[(30)] "Water supply well" means "water well" or "well" as defined by KRS 223.400(7).

(38) "Water well driller's assistant" shall be defined by KRS 223.400.

(39)[(31)] "Water supply well" means "water well" or "well" as defined by KRS 223.400(7).

(32)] "Well unsuitable for its intended use" means a well:

(a) The use of which has been permanently discontinued;

(b) That is in such a state of disrepair that it cannot be used to supply groundwater;

(c) That presents a health or safety hazard;

(d) From which usable groundwater is not obtainable; or

(e) With boreholes that:

1. Are dry;

2. Have caved in; or

3. Are unsuitable for further development and well construction.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 9, 2019

FILED WITH LRC: July 11, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, August 22, 2019 at 6:00 p.m. Eastern Standard Time at the Department for Environmental Protection, Training Room B, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. 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: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email: water@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for terms used in 401 KAR Chapter 6.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define terms used in 401 KAR Chapter 6.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.420 requires the cabinet to promulgate regulations to carry out the purposes of KRS 223.405 through 223.460. KRS 223.435 requires the cabinet to promulgate administrative regulations establishing standards of practice for water well construction.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides definitions for terms used throughout 401 KAR Chapter 6 for proper interpretation and enforcement.

(2) If this is an amendment to an existing administrative

regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment clarifies statutory authority, clarifies the terms "abandon", "aquifer", "confining layers", "consolidated formation", "finished ground surface", "grout-pipe method", "monitoring well", "person", and "unconsolidated formation", and adds definitions for "base flood elevation", "certified well driller", "certified well driller's assistant", "direct supervision", "special flood zone", "special well types", "water well driller's assistant".

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary for clarification of terms used in 401 KAR Chapter 6 required by Senate Bill 32 of the 2019 legislative session which amended KRS 223.400 through 223.460.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.420 requires the cabinet to promulgate regulations to carry out the purposes of KRS 223.405 through 223.460. KRS 223.435 requires the cabinet to promulgate administrative regulations establishing standards of practice for water well construction.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies ten (10) definitions, and adds three (3) definitions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 1000 water well owners per year, approximately 200 certified water well drillers and potentially 400 well driller assistants, and as many as 300 drilling/consulting companies. This administrative regulation also affects the Kentucky Division of Water, Kentucky Water Well Certification Board, and the Kentucky Ground Water Association.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation establishes definitions only. No further actions will be needed to comply.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation establishes definitions only. No additional costs will be incurred to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Affected entities will have clear definitions for understanding the terms used throughout 401 KAR Chapter 6.

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

(a) Initially: This administrative regulation will not result in additional costs.

(b) On a continuing basis: This administrative regulation will not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation establishes definitions only. No changes in funding are 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: This administrative regulation establishes definitions only. No changes in fees or funding will be necessary.

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

(9) TIERING: Is tiering applied? Tiering is not applied because definitions do not require tiering.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Kentucky Division of Water and any division of state or local government that may employ a certified water well driller and well driller's assistant.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.420 requires the cabinet to promulgate regulations to carry out the purposes of KRS 223.405 through 223.460. KRS 223.435 requires the cabinet to promulgate administrative regulations establishing standards of practice for water well construction.

(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 establishes definitions only and will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation establishes definitions only and will not generate revenue.

(c) How much will it cost to administer this program for the first year? This administrative regulation establishes definitions only and will not result in additional costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation establishes definitions only and will not result in additional costs.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: This administrative regulation establishes definitions only and will not result in additional revenue or costs.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate regarding well construction.

2. State compliance standards. KRS 223.420(1)(e), 223.435, 224.10-100, 224.70-100, 224.70-110

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate regarding well construction.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? There is no federal mandate regarding well construction.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate regarding well construction.

STATEMENT OF EMERGENCY

401 KAR 6:310E

This emergency administrative regulation is being promulgated to implement the certification of water well driller assistants as required by Senate Bill 32 of 2019. This emergency administrative regulation is necessary to protect human health and the environment while making the certification program immediately available. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency

administrative regulation.

MATTHEW G. BEVIN, Governor

CHARLES G. SNAVELY, Secretary

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Emergency Amendment)

401 KAR 6:310E Water supply well construction practices and standards.

RELATES TO: KRS 223.400 through 223.460~~[223.400-223.460], 223.991, 224.1-010, 224.1-400~~~~[224.01-010, 224.01-400, EO-2008-507, 2008-531]~~

STATUTORY AUTHORITY: KRS~~[151.110,]~~ 223.420(1)(e), 223.435, 224.10-100, 224.70-100, 224.70-110

EFFECTIVE: July 11, 2019

NECESSITY, FUNCTION AND CONFORMITY: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.435 requires the cabinet to promulgate administrative regulations establishing standards of practice for water well construction.~~[EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet.]~~ This administrative regulation provides minimum standards and requirements for construction, modification, and abandonment of water supply wells.

Section 1. General Requirements. (1)~~[Certified water supply well driller requirement.]~~ Each water supply well subject to this administrative regulation shall be constructed, modified, or abandoned only by a certified water supply well driller or certified well driller assistant as established in~~[natural persons certified to drill water supply wells in accordance with]~~ KRS 223.425 and 401 KAR 6:320.

(2) A water supply well driller's assistant shall work under the direct supervision, as defined by 401 KAR 6:001(14), of a certified water supply well driller.

(3) Well specifications shall:

(a) Be provided by the certified well driller to the well driller's assistant, as required under direct supervision defined by 401 KAR 6:001(14), for the work to be conducted including:

1. Construction;

2. Alteration;

3. Maintenance;

4. Repair;

5. Reworking;

6. Development;

7. Abandonment; or

8. Plugging; and

(b) Shall be recorded on the Uniform Kentucky Well Construction Record which shall be:

1. Retained by the water supply well driller's assistant; and

2. Available for inspection upon request by the cabinet.

(c) Changes made to water supply well specifications during any work being conducted on a water supply well shall be:

1. Approved in advance by a certified waters supply well driller;

2. Recorded on an amended Uniform Kentucky Well Construction Record;

3. Retained by the water supply well driller's assistant; and

4. Available for inspection upon request by the cabinet.

(4)[Construction and well performance requirement.] Permanent and temporary water supply wells shall be constructed, modified, and abandoned in[such] a manner that prevents~~[as to prevent]~~ the introduction or migration of contamination to a water-bearing zone or aquifer through the casing, drill hole, or annular materials.

(5)[(3) Reporting requirement.] Within sixty (60) days after a water supply well has been completed, modified, or abandoned, the certified water supply well driller shall submit~~[a report of well construction, modification, or abandonment]~~ to the cabinet~~[using]~~ the Uniform Kentucky Well Construction Record or the Uniform

Kentucky Well Maintenance and Plugging Record, as appropriate. The report shall include:

(a) All information about the depth and the materials used in the water supply well construction, modification, or abandonment; ~~and shall also be recorded.~~

(b) ~~The certified water supply well driller shall complete the bacteriological section on the Uniform Kentucky Well Construction Record to report the~~ results of the ~~bacteriological~~ coliform sampling as ~~established~~ required in Section 9(6) of this administrative regulation. ~~The certified driller shall retain the results of the bacteriological sample analysis.~~

~~(6)~~ (4) Records to water supply well owner. Within sixty (60) days after the water supply well has been completed or modified, the certified water well driller shall provide ~~the following material~~ to the well owner a copy of the:

(a) ~~A copy of the~~ Uniform Kentucky Well Construction Record or the Uniform Kentucky Well Maintenance and Plugging Record submitted to the cabinet; ~~as appropriate~~;

(b) ~~A copy of the~~ Results of bacteriological sample analysis collected in accordance with Section 9(6) of this administrative regulation;

(c) Water Well Owner's Guide; and

(d) ~~A copy of~~ Analytical results if additional water quality analysis is conducted.

~~(7)~~ (5) ~~The certified well driller shall tag~~ Each well constructed or modified shall be tagged with a well identification number tag provided by the cabinet.

(a) An existing well identification number shall be included on the Uniform Kentucky Well Maintenance and Plugging Record for any well being modified or abandoned.

(b) If a well identification number does not exist at the time of modification or abandonment, the well shall be tagged ~~certified driller shall tag the well, as appropriate,~~ and ~~include~~ the well identification number assigned shall be recorded on the Uniform Kentucky Well Maintenance and Plugging Record.

~~(8)~~ (6) Variances. If conditions exist or are believed to exist that preclude compliance with the requirements established in ~~of~~ this administrative regulation, the certified water supply well driller may request a variance prior to well construction, modification, or abandonment. The variance request shall be submitted to the cabinet on the Kentucky Water Well Variance Request form.

(a) The variance request shall include ~~the following~~:

1. A thorough description of the land use at the site and adjacent properties;

2. The distance between the proposed well location and existing water supply wells and monitoring wells on adjacent properties;

3. The distance between the proposed well location and potential pollution sources, both on site and on adjacent properties, including septic systems, sewers, and petroleum and chemical storage tanks;

4. A description of the geologic conditions at the site, including soil thickness, type of bedrock, perched water, confining zones, and the depth to groundwater;

5. A summary of the provisions, including the section numbers of this administrative regulation, for which the variance is requested;

6. A justification for the variance; and

7. a. The proposed well construction procedures to be used in lieu of compliance with this administrative regulation; and

b. An explanation ~~of~~ as to how the alternate well construction procedures ensure the protection of the quality of the groundwater and the protection of public health and safety.

(b) Written variance procedure.

1. The certified water supply well driller shall request a variance by submitting to the cabinet a Water Well Variance Request form signed by the certified water supply well driller and water supply well owner, and shall obtain written cabinet approval before well construction begins. ~~1. The driller shall submit the Kentucky Water Well Variance Request form, signed by the certified driller and well owner, and obtain written cabinet approval before well construction begins.~~

2. The cabinet shall notify the applicant in writing within ten

(10) days of its decision to either grant or deny the variance.

3. The cabinet shall not issue a variance if the proposed water supply well construction will not ensure the protection of groundwater quality and public health and safety.

(c) Verbal variance for an emergency.

1. A certified water supply well driller may request a verbal variance for an emergency if the delay incurred due to the written variance procedure in paragraph (b) of this subsection may result in:

a. Loss of access to potable water for the intended user;

b. Failure to address an existing or impending environmental emergency in accordance with KRS ~~224.1-400~~ 224.01-400; or

c. A risk to public health or safety.

2. The cabinet shall not issue a variance for an emergency if the proposed water supply well construction will not ensure the protection of groundwater quality and public health and safety.

3. Within fifteen (15) days of the date the cabinet approves the verbal variance for an emergency, the certified water well driller shall submit to the cabinet a Kentucky Water Well Variance Request form; ~~signed by the certified water supply well driller and water supply well owner,~~ signed by the certified water supply well driller and water supply well owner, ~~to the cabinet.~~

(d) The variance approval shall list the conditions of the variance, including the:

1. ~~The~~ Approved alternate well construction procedures;

2. ~~The~~ Well sampling requirements; and

3. ~~The~~ Requirement to notify surrounding property and well owners of the variance, if applicable.

(e) Within sixty (60) days of completing the well, the certified water supply well driller shall submit to the cabinet a copy of the Kentucky Water Well Variance Request form; ~~signed by the certified water supply well driller and the water supply well owner,~~ signed by the certified water supply well driller and the water supply well owner, ~~to the cabinet within sixty (60) days after the well is completed.~~

(f) 1. After a variance is issued regarding the location of a well with respect to various pollution sources as established in Section 5(1) of this administrative regulation, ~~the certified well driller for which a variance has been issued shall collect~~ water samples from the well shall be collected and ~~have these samples~~ analyzed for the parameters as specified in the ~~Kentucky Water Well Variance Request~~ variance approval ~~letter~~ issued by the cabinet.

2. The certified water well driller shall submit a copy of the analytical results on the Water Well Bacterial Report and Chain of Custody form to the well owner and the cabinet within ten (10) days of the receipt of the analytical results from the laboratory.

Section 2. Construction Materials and Requirements. (1) All materials ~~to be~~ used for the construction, modification, or abandonment of water supply wells shall be approved for use in water wells by ~~the one (1) or more of the following~~:

(a) National Sanitation Foundation (N.S.F.) ~~(NSF)~~;

(b) American Society for Testing and Materials (A.S.T.M.) ~~(ASTM)~~; or

(c) American Petroleum Institute.

(2) Permanent well casing and liners.

(a) Well casing and liners shall be able to withstand the physical forces acting upon them during and following their installation and during their use including forces; ~~This includes forces~~

1. Due to suspension in the borehole, grouting, development, purging, pumping, or sampling; ~~and~~

2. ~~forces~~ Exerted on the well casing and liners by the surrounding geologic materials.

(b) Steel or PVC well casing and liners shall have a minimum inside diameter of four (4) inches, except for driven point wells and jetted wells as established ~~which are addressed~~ in Section 8(3) of this administrative regulation.

(c) ~~The certified well driller shall install~~ Well casing and liners shall be installed in accordance with manufacturer specifications.

(d) ~~The certified well driller shall not install~~ Used, damaged, or contaminated well casing or liner pipe shall not be installed.

(e) Steel well casing and liners.

1. Steel well casing and liners shall meet or exceed the minimum standards established ~~provided~~ in Table A of this administrative regulation.

VOLUME 46, NUMBER 2– AUGUST 1, 2019

Size (inches)	External Diameter (inches)	Thickness (inches)	Weight (pounds per foot) per foot
4	4.500	0.188	8.66
5	5.563	0.188	10.79
6	6.625	0.188	12.92
8	8.625	0.277	24.70
10	10.750	0.307	34.24
12	12.750	0.330	43.77
14	14.000	0.375	54.57
16	16.000	0.375	62.58
18	18.000	0.375	70.59
20	20.000	0.375	78.60

2. Joints and couplings shall be welded or threaded.

3. Joints shall be watertight.

(f) PVC well casing and liners.

1. PVC well casing and liners shall:

a. Meet[or-exceed] the minimum standards established[provided] in Table B of this administrative regulation;

Size (inches)	SDR	External Diameter (inches)	Minimum Wall (inches)
4	26	4.500	0.173
5	26	5.563	0.214
6	26	6.625	0.255
8	26	8.625	0.332
10	26	10.750	0.413
12	26	12.750	0.490
14	26	14.000	0.539
16	26	16.000	0.616

b.[Have minimum Standard Dimension Ratio (SDR) 26;

c.] Have a minimum Impact Classification of IC-1; and

c.[d.] At a minimum, meet[or-exceed]

(i) ~~A.S.T.M.[American Society for Testing and Materials (ASTM)] Specification D1784-11[D1784-07] or F480-14[F480-066] found in A.S.T.M.[American Society for Testing and Materials (A.S.T.M.)] Specification D1784-11[D1784-07], Standard Specification for Rigid Poly (Vinyl Chloride) (PVC) Compounds and Chlorinated Poly(Vinyl Chloride) (CPVC) Compounds and A.S.T.M.[American Society for Testing and Materials (A.S.T.M.)] Specification F480-14[F480-066], Standard Specification for Thermoplastic Well Casing Pipe and Couplings Made in Standard Dimension Ratios (SDR), SCH 40 and SCH 80;~~

(ii) ~~N.S.F.[e. Meet or exceed the National Sanitation Foundation (NSF)] Standard 14-2018[14] for potable water applications found in N.S.F.[National Sanitation Foundation (N.S.F.)] Standard 14-2018[14], Plastics Piping System Components and Related Materials; and~~

(iii) ~~N.S.F.[f. Meet or exceed the NSF Standard 61 found in National Sanitation Foundation (N.S.F.)] Standard 61-2018, Drinking Water System Components – Health Effects[61, Drinking Water System Components Health Effects].~~

2. Joints and couplings shall be welded, cemented, or threaded.

3. Joints shall be watertight.

4. PVC casing shall not be driven or pushed by force of the rig, either by direct hydraulic force or by hammer.

(3)(a) Temporary outer casing. Temporary outer casing used during well construction shall be sufficiently strong to permit installation without distorting or rupturing, and shall be removed upon well completion.

(b) If[the driller determines that] temporary outer casing is to be used as permanent outer casing, the temporary outer casing shall be grouted in place.

(4) Well screens.

(a) 1. Well screens shall be capable of withstanding the stress to which the pipe will be subjected and the corrosiveness of the water with which it comes in contact.

2. Used, damaged, or contaminated well screens shall not be installed.

(b) Steel or PVC well screens with a minimum inside diameter of four (4) inches shall be installed, except for bored, driven, or jetted wells.

(c) Well screens shall be:

1. Installed in accordance with the manufacturer's specifications; and[.]

2.[Wells screens shall be] Centered in the borehole.

(d)[(e)] Steel screens. Joints and couplings shall be welded or threaded.

(e)[(f)] PVC screens shall:

1. Have minimum Standard Dimension Ratio (SDR) 26;

2. Have a minimum Impact Classification of IC-1;

3. At a minimum, meet[or-exceed]

a. ~~A.S.T.M. [ASTM] Specification D1784-11[D1784-07] or F480-14[F480-066] found in A.S.T.M.[American Society for Testing and Materials (A.S.T.M.)] Specification D1784-11[D1784-07], Standard Specification for Rigid Poly (Vinyl Chloride) (PVC) Compounds and Chlorinated Poly(Vinyl Chloride) (CPVC) Compounds and A.S.T.M.[American Society for Testing and Materials (A.S.T.M.)] Specification F480-14[F480-066], Standard Specification for Thermoplastic Well Casing Pipe and Couplings Made in Standard Dimension Ratios (SDR), SCH 40 and SCH 80;~~

b. ~~N.S.F.[4. Meet or exceed the NSF] Standard 14-2018[14] for potable water applications found in N.S.F.[National Sanitation Foundation (N.S.F.)] Standard 14-2018[14], Plastics Piping System Components and Related Materials and rated potable water (PW) or well casing (WC); and~~

4.[5]. Joints and couplings shall be welded, cemented, or threaded.

(f)[(g)] Screen slot size shall be selected to prevent the entry of sediment or other harmful material into the well.

(5) Air rotary drilling. Water shall be injected into the air stream at a rate sufficient to eliminate dust and to keep the borehole clean of cuttings.

(6) Mud rotary drilling[method]. Pits to contain or re-circulate drilling fluids shall be constructed in a manner as to isolate the drilling fluid from runoff to a stream or other waterway.

(7)[Lead.] Materials containing lead shall not be used in the construction of a water supply well.

Section 3. Sealing Materials. (1)~~[Mixing.]~~ Sealing materials and additives that control or affect setting times or physical properties of the sealing materials shall be mixed in accordance with the manufacturer's specifications.

(2) Application. Grouting shall be performed using the grout-pipe method or a pressure grouting device to add the sealing materials and other materials used to seal the annulus from the bottom of the annulus upward in one (1) continuous operation until the annulus is filled to two (2) feet below the surface or to the point of pitless adapter attachment. If temporary or permanent outer casing is used, sealing materials shall~~[may]~~ be added prior to installing the inner casing.

(a) Cement and concrete grout. The appropriate type of neat cement and concrete grout for the conditions present in the well shall be used in accordance with the manufacturer's specifications~~[guidelines]~~.

(b) Neat cement-bentonite grout. Neat cement-bentonite grout shall set for a minimum of seventy two (72) hours prior to resuming drilling operations.

(c)~~[4-]~~ Bentonite grout.

1. Bentonite grout shall set until the slurry has hydrated according to the manufacturer's specifications.

2. Bentonite grout shall not be used if chlorides in groundwater exceed 1,000 parts per million (ppm).

(d) Reduced setting time. Setting time may be reduced with additives if used in accordance with the manufacturer's specifications.

(e) Bentonite in pellet, chip, or granular form. If bentonite pellets, chips, or granules are placed above the water table~~[the certified driller shall comply with the following]~~:

1. Dry bentonite pellets, chips, or granules shall be placed in increments not greater than two (2) feet in thickness to provide proper hydration and prevent bridging;

2. Each increment shall be hydrated prior to the continued placement of dry bentonite pellets, chips, or granules; and

3. Bentonite pellets, chips, or granules shall not be used if chlorides in groundwater exceed 1,000 parts per million (ppm).

(f) Construction water. Water used in the drilling or decontamination process shall be potable.

(g) 1. Drill cuttings.~~[The certified well driller may use]~~ Clay, shale, or limestone drill cuttings may be used if cuttings are allowed to seal portions of the annulus.

2. Sandstone cuttings shall not be used.

Section 4. Design Factors. Each well shall be constructed to include~~[the following]~~:

(1) Natural protection. The well shall be located to protect groundwater quality and public health and safety.

(2) Geologic formations.

(a) The well construction shall be adapted to the local or site-specific geologic formations and groundwater conditions.

(b) Undesirable groundwater shall be cased off or otherwise prevented from contributing to a well.

(3) Capacity. The well shall be constructed to optimize yield while maintaining the safe functioning and integrity of the aquifer.

(4) Pitless well adapters.

(a) A well casing shall not be cut off or cut into below finished ground surface ~~except [by a certified water supply well driller]~~ to install a pitless well adapter, a pitless well unit, or to make modifications.

(b) Construction or installation of pitless well adapters or pitless well units shall~~[be done in such a manner as to]~~ provide a leak-proof seal. If a frost-free hydrant is installed, a Double~~[Dual]~~ Check Valve Backflow Preventer that meets the specifications of American Society of Sanitary Engineering (A.S.S.E.) 1015-2011~~[4024]~~ Performance Requirements for Double~~[Dual]~~ Check Backflow Prevention Assemblies~~[Preventers]~~ shall be installed between the pitless adapter and the frost-free hydrant.

(5) Flowing artesian wells. A flowing artesian well shall be constructed to:

(a) Maintain the head pressure within the aquifer; and

(b) Prevent an uncontrolled discharge of groundwater into the environment.

~~(6)[Accessibility.]~~ The well shall be constructed to allow access for repairs, maintenance, treatment, and inspection.

Section 5. Setback Requirements. (1) Wells shall be installed~~[in accordance]~~ with the minimum lateral distances between the well and potential pollution sources established in Table C of this administrative regulation.

Table C: Setback Requirements	
Lateral Sources of Contamination	Minimum Distances
Leaching Pit	100 Feet
Petroleum Storage Tank	100 Feet
Grave or Cemetery	75 Feet
Manure Pile, Animal Waste Storage, or Confined Animal Feeding Operation	75 Feet
Wastewater Treatment Disposal System	75 Feet
Side Wall of Lateral Trench, Bed, or Lagoon	70 Feet
Geothermal – Closed Loop, Un- grouted	70 Feet
Water Supply Well	50 Feet
Septic Tank or Sewer Line	50 Feet
Livestock Pen, Corral, or Stable	50 Feet
Surface Water Body	25 Feet
Geothermal – Closed Loop, Grouted; Abandoned Water Well Grouted	20 Feet
Property Lines, Utility Lines, or Roadway Right of Way	10 feet

(2) The certified water supply well driller shall evaluate land-use activities, both on the property on which the well is to be located and on adjacent properties, and identify other potential pollution sources not listed subsection (1) of this section.

(3) If the unconsolidated material is less than twenty (20) feet thick and composed of predominantly sand or gravel, the minimum lateral distances established in subsection (1) of this section shall be doubled.

(4) A well~~[Wells]~~ may be constructed in an identified special flood hazard area~~[constructed in flood zones]~~ if an alternate site does not exist.

~~(5)[The certified well driller shall terminate]~~ The casing shall be terminated:

(a) A minimum of two (2) feet above the highest base~~[maximum known]~~ flood elevation at the site; and~~[or]~~

(b) Any known conditions of flooding by drainage or run-off from the surrounding land.

~~(6)[Buildings.]~~ The well extended vertically shall clear a projection from a building by a minimum of five (5) feet.

~~(7)[Pits and basements.]~~ Wells shall not be constructed in pits or basements.

Section 6. Wells Drilled into Consolidated Formations Using the Cable Tool, Air Rotary, Mud Rotary, Reverse Rotary, or Sonic Methods. (1) Borehole construction.

(a) The diameter of the borehole shall be a minimum of 1.75 inches greater than the outer diameter of the casing.

(b) Steel casing may be driven or advanced through unconsolidated material without over-drilling using the dry-driven grout method in accordance with Section 8(2) of this administrative regulation.

(c) The borehole diameter of the open-hole portion of the well shall be smaller than the inside diameter of the lowermost permanent casing so~~[in order]~~ that the:

1. Permanent casing can rest on the shoulder of the open borehole; and~~[in order that the]~~

2. Lower portion of the permanent casing can be properly sealed.

(d) Plumbness and alignment. The borehole shall:

1. Be sufficiently plumb and straight to receive well casing, liner, and screen without binding; and~~[shall]~~

2. Not interfere with the installation and operation of the pump.

(2) Casing installation.

(a) Casing shall extend below the surface a minimum of twenty (20) feet.

(b) Single-cased wells.

1.~~[Unconsolidated material thirty (30) feet thick or less.]~~ If

unconsolidated material is thirty (30) feet thick or less, the ~~certified well driller shall install~~ casing shall be installed to extend ~~extending~~ a minimum of ten (10) feet into bedrock.

2. ~~Unconsolidated material greater than thirty (30) feet thick.~~ If unconsolidated material is greater than thirty (30) feet thick, the ~~certified well driller shall install~~ casing shall be installed to extend ~~extending~~ a minimum of two (2) feet into bedrock.

3. ~~Fractures, crevices, voids, and undesirable geologic formations.~~ Permanent casing shall be installed a minimum of two (2) feet below any fractures, crevices, voids, or undesirable geologic formations that may introduce harmful materials, pollutants, or undesirable groundwater to the well.

4. ~~The certified driller shall case off~~ Undesirable water-bearing formations shall be cased off, leaving a minimum of two (2) feet below the bottom of the production zone.

(c) Multiple-cased wells.

1. ~~a.~~ Temporary outer casing shall ~~;~~

~~a.~~ Have an ~~The~~ inside diameter ~~of temporary outer casing shall be~~ a minimum of two (2) inches greater than the outside diameter of the inner casing ~~;~~

~~b.~~ ~~Temporary outer casing shall~~ Be removed prior to well completion ~~;~~ and ~~;~~

~~c.~~ If ~~the driller determines that~~ temporary outer casing is to be used as permanent outer casing, the temporary outer casing shall be grouted in place.

2. ~~Permanent outer casing.~~ The inside diameter of permanent outer casing shall be a minimum of two (2) inches greater than the outside diameter of the inner casing.

3. ~~Inner casing. The certified well driller shall install~~ Permanent inner casing shall be installed in accordance with the requirements established in ~~off~~ subsection (2)(b) of this section.

(3) Screen and liner installation.

~~a.~~ ~~If a screen or liner is installed,~~ Screen or liner slot size shall ~~be selected to~~ prevent the entry of fine-grained sediment and other anticipated harmful material into the well.

~~b.~~ Screens and liners shall conform to the requirements established in ~~off~~ Section 2 of this administrative regulation.

(4) Filter pack.

~~a.~~ ~~If~~ An artificial filter pack ~~is installed, the filter pack~~ shall ~~meet the following criteria~~:

1. ~~(a) Filter pack material~~ Be of a size that works ~~shall work~~ in conjunction with the well screen to prevent the entry of fine material and sediment into the well;

2. ~~(b) Filter pack material shall~~ Be disinfected prior to placement in the well or shall be disinfected in the well; and

3. ~~(c) The filter pack shall~~ Extend a minimum of two (2) feet above the screen ~~;~~ and ~~;~~

~~(b.)~~ ~~(d)~~ Filter pack refill pipes may be installed if refill pipes:

1. Terminate above finished ground surface ~~;~~

2. Are provided with a watertight cap ~~;~~ and

3. Are sealed in the annulus.

(5) Annular seal.

~~a.~~ The ~~certified well driller shall seal the~~ annulus shall be sealed in a manner that prevents the migration of pollutants through the annulus and ~~The certified well driller shall seal the annulus~~ by ~~one (1) of the following methods~~:

1. Sealing the entire annulus with sealing materials;

2. Sealing a minimum of the bottom two (2) feet of the annulus between the borehole and the permanent casing and sealing the remainder of the annulus with impervious drill cuttings, sealing materials, native clay, or a combination of these materials; or

3. Using the methods in subparagraphs 1 or 2 of this paragraph used in combination with a mechanical packer.

(b) Single-cased wells.

1. Open-hole construction. ~~The certified well driller shall seal~~

~~a.~~ The bottom two (2) feet of the annulus shall be sealed with sealing materials; and ~~shall seal~~

~~b.~~ The remainder of the annulus shall be filled with ~~impervious~~ drill cuttings, sealing materials, native clay, or a combination of these materials.

2. Screened construction. ~~The certified well driller shall seal~~

~~a.~~ The bottom two (2) feet above the filter pack shall be sealed with sealing materials; and ~~shall seal~~

~~b.~~ The remainder of the annulus shall be filled with ~~impervious~~ drill cuttings, sealing materials, native clay, or a combination of these materials.

(c) Multiple-cased wells.

1. Temporary outer casing.

~~a.~~ The ~~certified well driller shall seal the~~ annulus shall be sealed below the temporary outer casing prior to removal of the temporary outer casing; and ~~;~~

~~b.~~ The ~~certified well driller shall seal the~~ remainder of the annulus shall be filled in the zone where temporary outer casing was used upon removal of the temporary outer casing.

2. Permanent outer casing. ~~The certified well driller shall seal~~

~~a.~~ The annulus shall be sealed between the borehole and permanent outer casing at the installation of the permanent outer casing ~~;~~ ~~The certified well driller shall seal~~

~~b.~~ The bottom two (2) feet of the annulus shall be sealed between the bore hole and the permanent outer casing with sealing materials; and ~~shall seal~~

~~c.~~ The remainder of the annulus shall be filled with ~~impervious~~ drill cuttings, sealing materials, native clay, or a combination of these materials.

3. Inner casing. ~~The certified well driller shall seal~~

~~a.~~ The entire annulus shall be sealed around the inner casing, including the annulus between the outer and inner casing ~~;~~ ~~The certified well driller shall seal~~

~~b.~~ The bottom two (2) feet of the annulus shall be sealed between the outer casing and the inner casing with sealing materials; and ~~shall seal~~

~~c.~~ The remainder of the annulus shall be filled with ~~impervious~~ drill cuttings, sealing materials, native clay, or a combination of these materials.

Section 7. Wells Drilled in Unconsolidated Formations. (1) Borehole construction.

(a) The borehole diameter shall be a minimum of four (4) inches greater than the outside diameter of the well casing and screen; or

(b) Steel casing may be driven or advanced without over-drilling using the dry-driven grout method in accordance with Section 8(2) of this administrative regulation.

(c) Plumbness and alignment. The borehole shall:

~~a.~~ Be sufficiently plumb and straight to receive well casing, liner, and screen without binding; and ~~shall~~

~~b.~~ Not interfere with the installation and operation of the pump.

(2) Casing installation.

(a) Single-cased wells. A minimum of twenty (20) feet of permanent casing shall be installed below finished ground surface excluding the screened interval.

(b) Multiple-cased wells.

1. Temporary outer casing.

~~a.~~ The inside diameter of temporary outer casing shall be a minimum of four (4) inches greater than the outside diameter of the inner casing.

~~b.~~ Temporary outer casing shall be removed prior to well completion.

2. Permanent outer casing. The inside diameter of permanent outer casing shall be a minimum of four (4) inches greater than the outside diameter of the inner casing.

3. Inner casing. A minimum of twenty (20) feet of permanent inner casing shall be installed below finished ground surface excluding the screened interval.

(3) ~~Screen installation.~~ Screen slot size shall ~~be selected to~~ prevent the entry of fine sediment or other harmful material into the well.

(4) Filter pack. The natural formation may be developed to serve as a filter pack, or an artificial filter pack shall be installed.

~~a.~~ The artificial filter pack shall ~~meet the following criteria~~:

1. ~~(a) Filter pack material shall~~ Be sized to prevent the entry of fine sediment or other harmful material into the well;

2. ~~(b) Filter pack material shall~~ Be disinfected prior to placement in the well, or disinfected in place; and

3. ~~(c) The filter pack shall~~ Extend a minimum of two (2) feet above the screen ~~;~~ and ~~;~~

~~(b)(4)~~ Filter pack refill pipes may be installed if they:

1. Terminate above finished ground surface; and
2. Are provided with a watertight cap; and
3. Are sealed in the annulus.

(5) Annular seal.

(a) The annulus shall be sealed in a manner that prevents the migration of groundwater and pollutants through the annulus ~~and~~. ~~The certified well driller shall seal the annulus by one (1) of the following methods:~~

1. Sealing the entire annulus with sealing materials;

2. Sealing the:

a. Two (2) feet of annulus directly above the filter pack with sealing materials; and ~~sealing the~~

b. Remainder of the annulus with drill cuttings, sealing materials, native clay, or a combination of these materials; or

3. Using the method established in subparagraph 2 ~~(outlined above)~~ in combination with a mechanical packer.

(b) Single-cased wells.

1. ~~The certified well driller shall seal~~ The annulus shall be sealed by sealing the ~~(using one (1) of the following methods):~~

a. ~~Sealing the~~ Entire annulus with sealing materials; or

b. ~~(i) Sealing the~~ Two (2) feet of annulus directly above the filter pack with sealing materials; and

~~(ii) sealing the~~ Remainder of the annulus with drill cuttings, sealing materials, native clay, or a combination of these materials.

2. The annular seal shall extend to a minimum depth of eighteen (18) feet below finished ground surface.

(c) Multiple-cased wells.

1. Temporary outer casing. ~~The certified well driller shall seal~~

a. The bottom two (2) feet of the annulus shall be sealed above the filter pack with sealing materials; and

b. The remainder of the annulus shall be sealed below the temporary outer casing with drill cuttings, sealing materials, native clay, or a combination of these materials prior to removal of the temporary outer casing.

2. Permanent outer casing. ~~The certified well driller shall seal~~

a. The bottom two (2) feet of the annulus shall be sealed between the borehole and permanent outer casing above the filter pack with sealing materials; and

b. The remainder of the annulus shall be sealed between the borehole and permanent outer casing with drill cuttings, sealing materials, native clay, or a combination of these materials at the installation of the permanent outer casing.

3. Inner casing. ~~The certified well driller shall seal~~

a. The bottom two (2) feet of the annulus shall be sealed between the inner casing and outer casing with sealing materials; and

b. The remainder of the annulus shall be sealed between the inner casing and outer casing ~~shall be sealed~~ with drill cuttings, sealing materials, native clay, or a combination of these materials.

Section 8. Special Well Types. Wells in this classification shall include bored, driven, irrigation, and radial collector wells. (1) Bored well construction. Bored wells shall be constructed using the concrete-collar or the buried-slab method.

~~(a) Borehole diameter.~~ The borehole diameter shall be a minimum of four (4) inches greater than the outside diameter of the well casing or precast concrete tiles used below the buried-slab or concrete-collar method.

~~(b) Casing materials.~~ Casing materials for bored wells shall consist of pre-cast concrete tiles or corrugated fiberglass casing that meet the material construction standards established ~~(set out)~~ in Section 2 of this administrative regulation.

(c) Filter pack. The natural formation may serve as a filter pack, or an artificial filter pack may be installed in the annulus below the buried slab. ~~The filter pack shall meet the following criteria:~~

1. ~~An~~ The artificial filter pack ~~material~~ shall:

a. Be sized to prevent the entry of fine-grained sediment and other material into the well; ~~and shall~~

b. Be free from clay, silt, or other deleterious material;

c. ~~2. Artificial filter pack material shall~~ Be disinfected prior to placement in the well; and

~~d. 3. The filter pack shall~~ Not extend above the buried slab or concrete collar; ~~and~~

~~2. 4. Filter pack refill pipes shall~~ ~~may be installed if they~~ terminate above finished ground surface, are provided with a watertight cap, and are sealed in the annulus.

(d) Bored well construction using the buried-slab method.

1. The buried slab shall:

a. Be a minimum of ten (10) feet below ground surface; and

b. ~~2. The slab shall~~ Consist of reinforced concrete constructed without joints; ~~and~~

c. ~~3. The buried slab shall~~ Have a diameter sufficient to extend to the outer edge of the casing or tiles installed below the buried slab.

~~2. 4.~~ The top of the buried slab shall slope away from the center and shall provide a watertight joint where the buried slab rests on the well casing.

~~3. 5.~~ A coupling shall be cast in the buried slab in which to install the upper well casing.

~~4. 6.~~ The joint between the well casing and coupling shall be water tight.

~~5. 7. Bentonite seal.~~ A bentonite seal shall be:

a. ~~Installed~~ ~~The certified well driller shall install a bentonite seal~~ above the buried slab that extends the entire diameter of the borehole; ~~and~~

b. ~~The bentonite seal shall be~~ A minimum of twelve (12) inches thick.

~~6. 8.~~ Upper well casing shall:

a. ~~Be installed~~ ~~The certified well driller shall install well casing~~ above the buried slab to extend a minimum of eight (8) inches above the ground surface; and

b. ~~Have an~~ The inside diameter of at least ~~(the casing shall be a minimum of)~~ four (4) inches; and

c. ~~The upper casing shall~~ Conform to the requirements of Section 2 of this administrative regulation; and

~~d. shall~~ Have only threaded or welded joints.

~~7. 9.~~ Pitless adapter.

a. ~~If a pitless adapter is installed, installation of the~~ pitless adapter ~~adapters~~ shall be installed so that it provides ~~(done in such a manner as to provide)~~ a leak-proof seal.

b. If a frost-free hydrant is installed, a Double ~~Dual~~ Check Valve Backflow Preventer that meets the specifications of A.S.S.E. ~~American Society of Sanitary Engineering (A.S.S.E.)~~ 1015-2011 ~~14024~~ Performance Requirements for Double ~~Dual~~ Check Backflow Prevention Assemblies ~~Preventers~~ shall be installed between the pitless adapter and the frost-free hydrant.

~~8. 10.~~ The annulus fill for the upper casing above the bentonite seal shall consist of sealing materials or clean, inert earth materials.

~~9. 11. The certified well driller shall install~~ A water-tight well cap shall be installed at the top of casing.

(e) Bored well construction with concrete-collar method.

1. The upper ten (10) feet of the borehole diameter shall be a minimum of six (6) inches greater than the outside diameter of the well casing.

2. The annular space in the upper ten (10) feet of the borehole between the excavation and the installed concrete collar casing shall be sealed with concrete or sealing materials.

3. The diameter of the borehole below the grouting shall be a minimum of four (4) inches greater than the outside diameter of the well casing.

4. The casing shall extend a minimum of eight (8) inches above the finished ground surface.

5. The cover slab shall be a minimum of four (4) inches thick.

6. A pipe sleeve shall be cast in place in the slab to accommodate the type of pump or pump piping to be used for the well.

7. A watertight joint shall be made where the slab rests on the well casing.

(2) Dry-driven grout method.

(a) General.

1. Steel casing may be driven using the dry-driven grout method.

2. PVC casing shall not be driven or pushed by force of the rig,

either by direct hydraulic force or by hammer.

(b) ~~[Pilot hole.]~~ A pilot hole shall be constructed a minimum of three (3) feet deep and a minimum of six (6) inches larger in diameter than the outside diameter of the casing to be driven.

(c) Casing installation.

1. Dry bentonite granules no less~~[not smaller]~~ than fifty (50) mesh and no more~~[not larger]~~ than eight (8) mesh shall be poured into the pilot hole prior to driving the casing.

2. Bentonite shall continue to be poured into the pilot hole as the casing is driven and bentonite is drawn into the annulus.

(3) Driven point wells and jetted wells. Driven point wells and jetted wells shall be used for temporary dewatering purposes only.

(a) The well point, drive pipe, and joints shall be structurally suitable to prevent rupture or distortion during driving.

(b) ~~[Driven point wells and jetted wells shall not supply water for human consumption.]~~

(e) Driven point wells shall have a water-tight cap.

(c) ~~[(d)]~~ Driven point wells and jetted wells shall:

1. Not supply water for human consumption; and

2. Be abandoned in accordance with Section 11 of this administrative regulation.

(4) Radial collector wells.

(a) The certified water well driller shall submit plans for a proposed radial collector well to the cabinet and receive written approval prior to construction of a radial collector well.

(b) Factors that shall be considered for approval of a radial collector well include:

1. Depth of the well;

2. Types of formations;

3. The location of the well;

4. Sources of potential contamination in the area surrounding the well;

5. Intended use of the well; and

6. Planned or approved treatment schemes, if applicable.

(5) Irrigation wells.

(a) Irrigation wells shall be constructed with Double Check Valve Backflow Preventers that meet the specifications of the A.S.S.E. 1015-2011 Performance Requirements for Double Check Backflow Prevention Assemblies to prevent reverse flow of discharged water into the wellhead and aquifer.

(b) Reduced Pressure Backflow Preventers that meet the specifications of A.S.S.E. 1013-2011 Performance Requirements for Reduced Pressure Principle Backflow Preventers shall be installed:

1. Onto irrigation wells that are capable of pumping greater than ten thousand gallons per day or supplying groundwater to center pivot irrigation systems; and

2. In line between the final discharge point and the well discharge head.

Section 9. Well Finishing, Disinfection, and Testing. (1) Upper terminal. Upon well completion, ~~the [certified driller shall]~~ requirements established in this section shall be completed.~~[comply with the following:]~~

(a) Upper terminal. The casing shall be terminated:

1. ~~[The certified well driller shall terminate the casing]~~ A minimum of four (4) inches above finished ground surface and shall slope the ground surface away from the well; and

2. In a flood zone;[-]

(b) ~~Flood zones. The certified well driller shall terminate the casing]~~ a minimum of two (2) feet above the highest base~~[maximum-known]~~ flood elevation at the site.

(2) ~~[Well development:]~~ Newly installed water supply wells shall be developed until the column of water in the well is free of visible sediment.

(3) Disinfection. Wells shall be disinfected in accordance with the procedures established in this paragraph.~~[following procedures:]~~

(a) Determine the;

1. Feet of water in the well by subtracting the static water level from the total depth of the well;

2. ~~[(b) Determine the]~~ Amount of chlorine disinfectant to use in order to provide a minimum chlorine concentration of 100 parts per

million (ppm) in the well as established in this subparagraph;

a. ~~[1-]~~ For a four (4) inch-diameter well, ~~[the certified well driller shall use]~~ a minimum of three (3) cups of chlorine bleach or two (2) ounces of hypochlorite granules per 150 feet of water in the well.

b. ~~[2-]~~ For a six (6) inch-diameter well, ~~[the certified well driller shall use]~~ a minimum of three (3) cups of chlorine bleach or two (2) ounces of hypochlorite granules per seventy-five (75) feet of water in the well.

c. ~~[3-]~~ For an eight (8) inch-diameter well, ~~[the certified well driller shall use]~~ a minimum of three (3) cups of chlorine bleach or two (2) ounces of hypochlorite granules per fifty (50) feet of water in the well.

d. ~~[4-]~~ For a twenty-four (24) inch-diameter well, ~~[the certified well driller shall use]~~ a minimum of eight (8) cups of chlorine bleach or five (5) ounces of hypochlorite granules per ten (10) feet of water in the well; and

(b) ~~[(e)]~~ Chlorine disinfection procedure.

1. Introduce the chlorine or hypochlorite granules into the well.

2. Circulate the chlorine solution throughout the well for a minimum of thirty (30) minutes, ensuring that the chlorinated water contacts all parts of the well casing, borehole, discharge pipes, and all internal well components.

3. Allow chlorinated water to stand in the well for a minimum of thirty (30) minutes.

4. After the chlorinated water solution has stood in the well for a minimum of thirty (30) minutes, purge the well of all chlorinated water.

5. Chlorinated water shall:

a. Be discharged to the ground in a manner that prevents environmental harm; and

b. ~~[shall]~~ Not be discharged to a surface water body.

(4) A sanitary seal or watertight well cap shall be installed~~[Well cap-]~~

(a) ~~The certified well driller shall install a well cap or sanitary seal.~~

(b) ~~The well cap shall be watertight.]~~

(5) Vents. (a) A vent shall consist of a pipe;

1. That extends~~[extending]~~ above the top of the well and above base~~[known]~~ flood elevation; ~~[elevations;]~~

2. With the open end turned down; ~~[;]~~ and

3. The open end shall be covered with twenty-four (24) mesh or finer screen of durable material.

(b) For wells with naturally occurring methane, a vent shall be installed.

(6) Bacteriological~~[Fecal coliform]~~ sampling.

(a) A well~~[If the well is]~~ for potable use, ~~[- the certified well driller]~~ shall be~~[have the well]~~ analyzed for E. coli~~[fecal coliform bacteria]~~ within thirty (30) days of the completion of the well.

(b) The sample shall not be collected until all residual chlorine has been purged from the well.

(c) Sample containers shall be sterile glass or plastic.

(d) Samples for E. coli~~[fecal coliform bacteria]~~ shall be:

1. Delivered to the laboratory within six (6) hours of the time they are collected; ~~[-]~~

2. ~~[(d) Samples shall be]~~ Kept at four (4) degrees Centigrade (forty (40) degrees Fahrenheit) until delivered to the laboratory; and ~~[- during that time samples shall not be frozen.]~~

(e) Sample containers shall be sterile glass or plastic.]

3. Analyzed~~[(f) Fecal coliform analysis shall be conducted]~~ at a laboratory certified in accordance with 401 KAR 8:040.

Section 10. Well Modification. (1) General. ~~[If]~~ A water supply well being~~[is]~~ modified shall be brought~~[- the certified driller shall bring the well construction]~~ into compliance with this administrative regulation.

(2) Well pits.

(a) A new well pit shall not be constructed, and ~~[a person shall not modify]~~ an existing well pit shall not be modified.

(b) When a well is being modified, the:

1. ~~The certified well driller modifying a well shall eliminate an~~ Existing well pit shall be eliminated; and

2. Casing shall be extended~~[shall extend the casing]~~ a minimum of four (4) inches above the finished ground surface.

(c) 1. Flooring and the walls of the pit shall be broken and removed;~~;~~ and

2. The pit shall be filled with compacted earth.

(3) Finishing and testing. The well~~[certified well-driller]~~ shall be:

1. Finished~~[Finish the well]; and~~

2.~~[Have the well]~~ Tested for E. coli~~[fecal coliform bacteria]~~ in accordance with Section 9(6) of this administrative regulation.

~~(4)[Reporting requirement.]~~ Within sixty (60) days of modification of a well, the certified water supply well driller shall submit a Uniform Kentucky Well Maintenance and Plugging Record to the well owner and the cabinet as established ~~in[accordance with] Section 1[4(3) and Section 1(4)]~~ of this administrative regulation.

Section 11. Well Abandonment. (1) Well unsuitable for its intended use. A water supply well that has been damaged, or is otherwise unsuitable for use as a water supply well, shall be abandoned within thirty (30) days from the date it is determined that the well is no longer suitable for its intended use.

(a) Water supply wells shall be abandoned ~~in[such]~~ a manner that prevents~~[as to prevent]~~ the migration of:

1. Surface water or contaminants to the subsurface; and

2.~~[to prevent migration of]~~ Contaminants among water bearing zones.

(b) A record of the abandonment of a water supply well shall be submitted by the certified water supply well driller on the Uniform Kentucky Well Maintenance and Plugging Record to the cabinet~~[water well-drillers program]~~ within sixty (60) days from the date abandoned.

(2) Well preparation for abandonment.

(a) Measurements. Prior to abandoning a water supply well, the certified water supply well driller shall record the measurements established in subparagraphs 1 through 3 of this paragraph on the Well Maintenance and Plugging Record:

1.~~[Measure the]~~ Well depth;

2.~~[Measure the]~~ Well diameter; and

3.~~[Measure the]~~ Depth to static water level;~~;~~ and

4. ~~Record the information in subparagraphs 1 through 3 of this paragraph on the Uniform Kentucky Well Maintenance and Plugging Record].~~

(b) Obstructions.

1. All obstructions shall be removed from the well prior to abandoning; or

2. If the pump or equipment is stuck in the well and cannot be removed,~~[the certified driller shall push]~~ the material shall be pushed to the bottom of the well~~;~~ as far as possible.

~~(c)[Disinfection.]~~ The~~[certified well-driller shall disinfect the]~~ well shall be disinfected as established ~~in[accordance with] Section 9(3) of this administrative regulation.~~

(3) Drilled wells.

(a) Well casing, screen, and liner removal.

1.~~[a.]~~ All well casing, screens, and liners;

a. Shall be removed from the well prior to placing the sealing material by pulling or over-drilling; and~~;~~

b.~~[Well casing, screens, and liners]~~ May be removed simultaneously with the introduction of sealing material if necessary to avoid borehole collapse.

2.a. If the well casing has been grouted in place and~~[the driller is unable to remove]~~ the casing cannot be removed, the casing may be cut off,~~[the certified well-driller may cut off the casing]~~ a minimum of five (5) feet below the ground surface.

b. The~~[driller shall fill the]~~ well shall be filled with sealing materials or inert earth materials from the bottom of the well to a minimum of twenty (20) feet below the ground surface.

c. The~~[certified well-driller shall fill the]~~ remainder of the well shall be filled with sealing materials to a minimum of five (5) feet below the ground surface.

d. The uppermost five (5) feet of the well shall be filled with sealing materials or other inert earth material suitable to land use at the site.

(b) Sealing material placement.

1.~~[a.]~~ The~~[certified well-driller shall fill the]~~ well or borehole shall be filled:

a. With sealing materials or other inert materials from the bottom to a minimum of twenty (20) feet below the ground surface; and~~;~~

b.~~[Filling the well or borehole with sealing materials or inert material shall be done in a manner]~~ So that all voids are completely filled and in a manner that prevents bridging across the well or well bore.

2. The~~[certified well-driller shall fill the]~~ well or borehole shall be filled with sealing materials from a minimum of twenty (20) feet below ground surface to a minimum of five (5) feet below the ground surface~~;~~ in a manner that prevents the migration of pollutants along the well or well bore.

3.~~[The certified well-driller shall use]~~ Sealing materials, clay, or other inert material suitable to the proposed land use shall be used to fill the upper five (5) feet or less of a well being abandoned.

(4) Wells with multiple casing. The~~[certified well-driller shall remove the]~~ innermost well casing, screen, or liner shall be removed first and~~[fill]~~ the well filled up to the level of the bottom of the next outer casing before removing the next outer casing.

(a) Voids. The~~[certified well-driller shall fill the]~~ well or borehole shall be filled with sealing materials or other inert materials from the bottom of the well to a minimum of five (5) feet below the bottom of a void.

1. A packer, expansion bridge, or other support shall be placed at the top of the void.

2. A permanent bridge consisting of a minimum of ten (10) feet of sealing materials shall be placed above the expansion bridge.

(b) 1. The~~[certified well-driller shall plug the]~~ remainder of the well or borehole shall be plugged with sealing materials or other inert materials from the bottom to a minimum of twenty (20) feet below the ground surface; and~~[- The certified well-driller shall]~~

2.~~[Fill]~~ The well or borehole shall be filled with sealing materials from a maximum of twenty (20) feet below the ground surface to a minimum of five (5) feet below the ground surface.

(c)~~[The certified well-driller shall use]~~ Sealing materials, clay, or other inert material suitable to the proposed land use shall be used to fill the upper five (5) feet or less of a well being abandoned.

(5) Bored~~[and hand-dug]~~ wells.

(a) The~~[certified well-driller shall fill the]~~ well shall be filled with sealing materials, dense grade aggregate, limestone sand, or native clay from the bottom of the well to a maximum of five (5) feet below finished ground surface.

(b) The~~[certified well-driller shall remove the]~~ upper five ~~(5)~~[(five)] feet of well casing, tiles, or other well-wall material shall be removed. A minimum one (1) foot thick concrete surface seal shall be poured and allowed to cure for twenty-four (24) hours. and ~~fill]~~ The uppermost five (5) feet of the borehole shall be filled with clay or an inert~~[impermeable]~~ material appropriate to the intended use of the land.

(6) Driven wells.

(a)~~[The certified well-driller shall remove]~~ Well casing and screens shall be removed~~;~~ and sealing materials shall be introduced~~[simultaneously]~~ from the bottom of the well to a maximum~~[of]~~ five (5) feet below finished ground surface. A minimum one (1) foot thick concrete surface seal shall be poured and allowed to cure for twenty-four (24) hours.

(b)~~[The certified well-driller shall use]~~ Sealing materials, clay, or other inert material suitable to the proposed land use shall be used to fill the upper five (5) feet or less of a well being abandoned.

(7) Flowing artesian wells.

(a)~~[The certified well-driller shall plug]~~ Flowing artesian wells or wells in which there is upward movement of water between aquifers shall be plugged with neat cement grout that is pumped under pressure and mixed with the minimum quantity of water that will permit handling.

(b)~~[The driller may restrict]~~ artesian flow may be restricted if necessary.

(c)~~[The certified well-driller shall place]~~ A well packer, cast-iron plug, or temporary bridge shall be placed at the bottom of the confining formation immediately overlying the artesian water-bearing horizon to seal off the flow.

(8) Hand dug wells.

(a) The pumps, casing, and equipment shall be removed and

the well surface pad shall be demolished.

(b) The well shall be filled from the bottom to the top with clean rock, gravel, or sand to within five (5) feet of the ground surface.

(c) The poured concrete surface seal shall be:

1. A minimum of one (1) foot thick; and

2. Allowed to cure for twenty-four (24) hours before finishing to the ground surface.

(d) The remaining three (3) feet or less of annular space shall be filled from the top of the surface seal to the ground surface with clean soil or other appropriate surface material.

(9)[Reporting requirement.] Within sixty (60) days after a water well has been abandoned, the certified water supply well driller shall complete and submit a Uniform Kentucky Well Maintenance and Plugging Record to the well owner, if known, and to the cabinet.

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

(a) "Uniform Kentucky Well Construction Record", DEP No. DOW6010, July 2019[April 2008];

(b) "Water Well Owner's Guide", Kentucky Energy and Environment Cabinet, DEP No. DOW6020, September 8, 2009[July 2008];

(c) "Kentucky Water Well Variance Request", DEP No. DOW6030, July 2019[2008];

(d) "Uniform Kentucky Well Maintenance and Plugging Record", DEP No. DOW6040, Month 2019[April 2008];

(e) Water Well Bacterial Report and Chain of Custody form, DEP No. DOW6050, July 2019;

(f) American Society for Testing and Materials (A.S.T.M.) Specification D1784-11[D1784-07], "Standard Specification for Rigid Poly (Vinyl Chloride) (PVC) Compounds and Chlorinated Poly(Vinyl Chloride) (CPVC) Compounds", 2011[November 2007];

(g)[(f)] American Society for Testing and Materials (A.S.T.M.) Specification F480-14[F480-96b], "Standard Specification for Thermoplastic Well Casing Pipe and Couplings Made in Standard Dimension Ratios (SDR), SCH 40 and SCH 80", 2014[August 2006];

(h)[(g)] National Sanitation Foundation (N.S.F.) Standard 14-2018[14], "Plastics Piping System Components and Related Materials", June 2018[March 2007];

(i)[(h)] National Sanitation Foundation (N.S.F.) Standard 61-2018, "Drinking Water System Components – Health Effects" [61, "Drinking Water System Components Health Effects"], February 2018[May 2008]; and

(j)[(i)] American Society of Sanitary Engineering (A.S.S.E.) 1015-2011[1024], "Performance Requirements for Double[Dual] Check Backflow Prevention Assemblies and Double Check Fire Protection Backflow Prevention Assemblies[Preventers]", August 2011[2004].

(k) American Society of Sanitary Engineering (A.S.S.E.) 1013-2011, "Performance Requirements for Reduced Pressure Principle Backflow Preventers and Reduced Pressure Principle Fire Protection Backflow Preventers", August 2011.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material in subsection (1)(a) through (d) of this section is also available on the Division of Water Web site, <https://eec.ky.gov/Environmental-Protection/Water/GW/Pages/default.aspx?www.water-ky.gov>.

(3)(a) American Society for Testing and Materials (A.S.T.M.) Specification D1784-11, "Standard Specification for Rigid Poly (Vinyl Chloride) (PVC) Compounds and Chlorinated Poly(Vinyl Chloride) (CPVC) Compounds", 2011, may also be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA, 19428-2949; Phone 1-610-832-9585.

(b) American Society for Testing and Materials (A.S.T.M.) Specification F480-14, "Standard Specification for Thermoplastic Well Casing Pipe and Couplings Made in Standard Dimension Ratios (SDR), SCH 40 and SCH 80", 2014, may also be obtained from the American Society for Testing Materials, 100 Barr Harbor

Drive, P.O. Box C700, West Conshohocken, PA, 19428-2949; Phone 1-610-832-9585.

(c) National Sanitation Foundation (N.S.F.) Standard 14-2018, "Plastics Piping System Components and Related Materials", June 2018, may also be obtained from the National Sanitation Foundation International, P.O. Box 130140, 789 N. Dixboro Road, Ann Arbor, MI, 48105; Phone 1-800-673-6275.

(d) National Sanitation Foundation (N.S.F.) Standard 61-2018 "Drinking Water System Components – Health Effects" [61, "Drinking Water System Components Health Effects"], February 2018, may also be obtained from the National Sanitation Foundation International, P.O. Box 130140, 789 N. Dixboro Road, Ann Arbor, MI, 48105; Phone 1-800-673-6275.

(e) American Society of Sanitary Engineering (A.S.S.E.) 1015-2011, "Performance Requirements for Double Check Backflow Prevention Assemblies and Double Check Fire Protection Backflow Prevention Assemblies", August 2011, may also be obtained from the American Society of Sanitary Engineering, 18927 Hickory Creek Drive, Suite 220, Mokena, IL, 60448; Phone (708) 995-3019.

(f) American Society of Sanitary Engineering (A.S.S.E.) 1013-2011, "Performance Requirements for Reduced Pressure Principle Backflow Preventers and Reduced Pressure Principle Fire Protection Backflow Preventers", August 2011, may also be obtained from the American Society of Sanitary Engineering, 18927 Hickory Creek Drive, Suite 220, Mokena, IL, 60448; Phone (708) 995-3019.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 9, 2019

FILED WITH LRC: July 11, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, August 22, 2019 at 6:00 p.m. Eastern Standard Time at the Department for Environmental Protection, Training Room B, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. 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: Carole J. Catafo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email: water@ky.gov (Subject line: "Chapter 6 regulations")

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catafo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides performance standards and minimum standards for the construction, modification, and abandonment of water supply wells.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards of practice for water well construction as required by KRS 223.435.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.435 requires the cabinet to promulgate administrative regulations establishing standards of practice for water well construction. This administrative regulation provides minimum standards and requirements for construction, modification, and abandonment of water supply wells.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes performance standards and minimum standards and requirements for the construction, modification, and abandonment of water supply wells as required by KRS 223.435.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation revises language to conform to the requirements of KRS 13A, adds "well driller assistant" roles and responsibilities, adds specifications for irrigation, hand dug, and flowing artesian wells, clarifies requirements for bored and driven wells, adds a Water Well Bacterial Report and Chain of Custody form, and updates Materials Incorporated by Reference.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to include well driller assistant roles and responsibilities required by Senate Bill 32 of the 2019 legislative session which amended KRS 223.400 through 223.460, and to update standards and practices for well construction, modification, and abandonment to current standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100, 224.70-100, and 224.70110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.435 requires the cabinet to promulgate administrative regulations establishing standards of practice for water well construction. This administrative regulation provides minimum standards and requirements for construction, modification, and abandonment of water supply wells.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will provide clear, updated standards for certified well drillers and well driller assistants in the construction, modification, and abandonment of water supply wells.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 1000 water well owners per year, approximately 200 certified water well drillers and potentially 400 well driller assistants, and as many as 300 drilling/consulting companies. This administrative regulation also affects the Kentucky Division of Water, Kentucky Water Well Certification Board, and the Kentucky Ground Water Association.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified in question (3) will need to comply with the updated minimum standards for the location, construction, modification, and abandonment of water supply wells.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation is not expected to increase costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in question (3) will be in compliance with all statutory requirements established in KRS 223.400 through 223.460.

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

(a) Initially: The amendment to this administrative regulation will not result in additional costs.

(b) On a continuing basis: The amendment to this administrative regulation will not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Water well driller and well driller assistant certification fees, Clean

Water Act Section 106 for groundwater, and general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The amendment to this administrative regulation will not necessitate increased fees or funding.

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

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation because it establishes minimum standards for the construction, modification, and abandonment of water wells.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Water and those divisions of state or local government that would require a certified well driller to construct, modify, or abandon a water well, such as a municipally owned public water system.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.70-100, and 224.70110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.435 requires the cabinet to promulgate administrative regulations establishing standards of practice for water well construction. This administrative regulation provides minimum standards and requirements for construction, modification, and abandonment of water supply wells.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate additional revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate additional revenue.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not result in additional costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not result in additional costs.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: This administrative regulation will not generate additional revenue or result in additional costs.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate for the construction, modification, or abandonment of water wells.

2. State compliance standards. KRS 223.435, 224.10-100, 224.70-100, 224.70-110

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate for the construction, modification, or abandonment of water wells.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? There is no federal mandate for the construction, modification, or

abandonment of water wells.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate for the construction, modification, or abandonment of water wells.

STATEMENT OF EMERGENCY
401 KAR 6:320E

This emergency administrative regulation is being promulgated to implement the certification of water well driller assistants as required by Senate Bill 32 of 2019. This emergency administrative regulation is necessary to protect human health and the environment while making the certification program immediately available. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
CHARLES G. SNAVELY, Secretary

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Emergency Amendment)

401 KAR 6:320E Certification of water well drillers and water well driller assistants.

RELATES TO: KRS 223.400 through 223.460[223.400-223.460], 223.991, 224.10-010, 224.10-100, 224.10-410 through 224.10-470[224.10-410 - 224.10-470], Chapter 322, Chapter 322A[; EO 2008-507, 2008-534]

STATUTORY AUTHORITY: KRS 223.410, 223.420(1)(e), 223.435, 224.10-100, 224.70-100, 224.70-110

EFFECTIVE: July 11, 2019

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.420[223.420(1)(e)] requires the cabinet to promulgate administrative regulations concerning examination and certification of water well drillers and water well driller assistants.[EO 2008-507 and 2008-534, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet.] This administrative regulation provides for the certification of water well drillers and water well driller assistants, including the requirements for examination, application, and disciplinary action.

Section 1. General Requirements. (1) The cabinet shall issue a water well driller or water well driller assistant[drillers] certificate [pursuant to KRS Chapter 223] to qualified applicants as established in KRS Chapter 223 and[natural persons who qualify under] this administrative regulation.

(2) Certificate issuance.[The cabinet shall issue separate certificates for separate methods and activities as follows:]

(a) Monitoring well driller. A certificate[Separate certificates] shall be issued for drilling monitoring wells that[The certificates] shall specify the[for which] methods for which the certified driller is qualified to drill, including:

1. Cable tool drilling;
2. Air rotary drilling;
- 3.[Mud rotary drilling;
- 4.] Reverse rotary drilling;
- 4.[5.] Jetting and driving wells in unconsolidated material;[or]
5. Sonic drilling;
6. Direct push; or
- 7.[6.] Boring and augering in unconsolidated materials.[- and]

(b) Water supply well driller. A certificate[Separate certificates] shall be issued for drilling water supply wells that[The certificates] shall specify the[for which] methods for which the certified driller is

qualified to drill, including:

1. Cable tool drilling;
2. Air rotary drilling;
3. Mud rotary drilling;
4. Reverse rotary drilling;
5. Jetting and driving wells in unconsolidated material;[or]
6. Sonic drilling;
7. Direct push; or
8. Boring and augering in unconsolidated materials.

(c) A combined certificate may be issued for drilling monitoring wells and water supply wells that shall specify the methods for which the water well driller is qualified to drill as established in this subsection.

(3) A person shall not construct, alter, repair, or abandon a water well without first obtaining a water well driller[driller's] or water well driller assistant certificate from the cabinet.

(4) Each water well driller or water well driller assistant certified to drill water supply wells may construct, alter, repair, or abandon water supply wells using the drilling method or methods specified on the[driller's] certificate.

(5) Each water well driller or water well driller assistant certified to drill monitoring wells may construct, alter, repair, or abandon monitoring wells using the drilling method or methods specified on the[driller's] certificate.

(6) In order to receive a water well driller or water well driller assistant certificate, an applicant[a driller] shall:

(a) Submit a complete[Provide an] application as established in[pursuant to] this administrative regulation;

(b) Earn a minimum passing score of seventy (70) percent on[Pass] applicable examinations as established in[taken pursuant to] this administrative regulation;

(c) Demonstrate that the:

1. Applicant[Driller] has the education and experience to qualify for a certificate as established in KRS Chapter 223 and[pursuant to] this administrative regulation; and

2. Applicant's[d] Demonstrate that the Driller's] certificate is not under suspension, temporary revocation, or permanent revocation as established in[pursuant to] Section 6[6(2)] of this administrative regulation.

Section 2. Applications. (1) Water well driller application. Each person desiring a water well driller certificate shall submit to the cabinet a complete[provide the Cabinet with an] application which shall include:-]

(a)[Each application for certification shall be accompanied by] Payment of the application fee as established[specified] in KRS 223.447;[-]

(b)[The application shall be made on] The[Water Well and Monitoring Well Driller's Certification] Application for Certification;[- provided by the cabinet.

(2) The application shall include:]

(c)[(a)] All[The] information required by KRS 223.425;[- including proof the applicant is eligible to be a driller pursuant to KRS 223.425(2)];

(d)[(b)] Proof of the insurance and bond required by[pursuant to] KRS 223.430; and

(e)[(c)] 1. A notarized statement from a certified water well driller, a driller in another state, or another person who has directly supervised the applicant, that the applicant has worked under the driller's supervision for a minimum of two (2) years as established in[the statutory period of time pursuant to] KRS 223.425(2); or

2. Notarized proof of other qualifying experience, including:

a. Employment as an environmental professional working with the design and installation of wells and well drilling operations for a minimum of two (2) years; and

b.[One (1) of the following:]

(i) Employment as a registered professional geologist as established in[accordance with] KRS Chapter 322A;

(ii) Employment as a registered professional engineer as established in[accordance with] KRS Chapter 322; or

(iii) A graduate, bachelors, or associates degree in a natural science.

(2) Water well driller assistant application. An applicant

desiring a water well driller assistant certification shall submit a completed application to the cabinet which shall include:

- (a) The Application for Certification;
- (b) All information required by KRS 223.425(5); and
- (c) Payment of the application fee as established in KRS 223.447.

Section 3. Examinations. (1) An applicant for a water well driller or water well driller assistant certification shall earn a minimum passing score of seventy (70) percent on an applicable examination in order to receive a certificate~~[All persons receiving a certification shall pass an exam].~~

(2) The cabinet shall prepare and administer the examinations that determine the knowledge, ability, and judgment of approved applicants as established in this section and~~[in accordance with] Section 1[2] of this administrative regulation.~~

(a)1. Examinations shall be administered at least annually~~[at a place and time scheduled]~~ by the cabinet.

2. The applicant and cabinet shall schedule the cabinet-administered examination at a mutually agreeable date and time~~[The cabinet shall provide an advanced announcement of each examination and the availability of National Groundwater Association examinations].~~

(b) The applicant shall schedule to take other examinations required by this administrative regulation directly with the National Groundwater Association.~~[Arrangements may be made with the cabinet to take the examination at an alternate time].~~

(3) The cabinet shall administer the examination only to a qualified applicant who has:

- (a) Submitted a complete application;
- (b) Met all requirements established in~~[of]~~ KRS 223.425;
- (c) Met all requirements established in~~[of]~~ Sections 1 and 2 of this administrative regulation; and
- (d) Paid the examination fee~~[all applicable fees for the examination]~~ as established~~[listed]~~ in KRS 223.447.

(4)~~[The cabinet shall certify those applicants who pass the applicable examination.]~~

(a) An~~[Each]~~ applicant shall achieve a score of not less than seventy (70) percent to pass each examination administered.

(b)1. Each applicant who does not pass an examination may repeat the examination after forty-five (45) days from the date the cabinet notifies the applicant~~[is notified]~~ of the results.

(b)2. An applicant shall not repeat an examination more than six (6) times per calendar year.

(c) Examinations shall not be returned to the applicant, but the applicant may review results with a member of the board or an employee of the cabinet upon request.

(5) Contents of the water supply well driller examination.

(a) For a certificate to drill water supply wells, an examination shall consist of~~[the following]~~:

- 1. The Kentucky Water Well Certification Examination;
- 2. The National Ground Water Association General Exam; and
- 3. One (1) or more of the~~[following]~~ National Ground Water Association specialty examinations applicable~~[applying]~~ to each drilling method for which the applicant wishes to be certified, including:

- a. Cable Tool Drilling Exam;
- b. Air Rotary Drilling Exam;
- c. Mud Rotary Drilling Exam;
- d. Reverse Rotary Drilling Exam;
- e. Jetting and Driving Wells in Unconsolidated Material Exam;
- f. Boring and Augering in Unconsolidated Materials Exam; or
- g. A substitute examination as identified or developed~~[jointly]~~ by the cabinet in consultation with~~[and]~~ the board to test~~[testing for]~~ knowledge of local laws or regulations as established in~~[accordance with]~~ KRS 223.410.

(b) For a certificate to drill monitoring wells using hollow stem auger, solid stem auger, or direct push method, an examination shall consist of~~[the following]~~:

- 1. The Kentucky Monitoring Well Certification Examination;
- 2. The National Ground Water Association General Exam; and
- 3. The National Ground Water Association Augering and Monitoring Exam; or

4. A substitute examination as identified or developed~~[jointly]~~ by the cabinet in consultation with~~[and]~~ the board to test~~[testing for]~~ knowledge of local laws or regulations as established in~~[accordance with]~~ KRS 223.410.

(c) For a certificate to drill monitoring wells using another method, an examination shall consist of~~[the following]~~:

- 1. The Kentucky Monitoring Well Certification Examination;
- 2. The National Ground Water Association General Examination;
- 3. The National Ground Water Association Augering and Monitoring Exam; and
- 4. One (1) or more of the~~[following]~~ National Ground Water Association specialty examinations applicable~~[applying]~~ to each drilling method for which the applicant wishes to be certified, including:

- a. Cable Tool Drilling Exam;
- b. Air Rotary Drilling Exam;
- c. Mud Rotary Drilling Exam;
- d. Reverse Rotary Drilling Exam;
- e. Jetting and Driving Wells in Unconsolidated Material Exam;
- f. Boring and Augering in Unconsolidated Materials Exam; or
- g. A substitute examination as identified or developed~~[jointly]~~ by the cabinet in consultation with~~[and]~~ the board to test~~[testing for]~~ knowledge of local laws or regulations as established in~~[accordance with]~~ KRS 223.410.

(6) Contents of the water supply well driller assistant examination. An applicant shall earn a minimum passing score of seventy (70) percent on:

(a) The Kentucky Water Well Driller Assistant Certification Examination; or

(b) A substitute examination as identified or developed by the cabinet in consultation with the board to test knowledge of local laws or regulations as established in KRS 223.410.

(7) Contents of the monitoring well driller assistant examination. An applicant shall earn a minimum passing score of seventy (70) percent on the:

(a) Kentucky Monitoring Well Driller Assistant Certification Examination; or

(b) A substitute examination as identified or developed by the cabinet in consultation with the board to test knowledge of local laws or regulations as established in KRS 223.410.

Section 4. Issuance of Certificate. (1)~~[Upon satisfactory fulfillment of the requirements established in~~~~[of]~~ this administrative regulation.] The cabinet shall issue a certificate~~[to the applicant]~~ designating the classification~~[of drilling]~~ for which the water well driller or water well driller assistant has demonstrated competence~~[.].~~

(a) Upon satisfactory fulfillment of the requirements established in~~[of]~~ this administrative regulation; and

(b) Payment of the initial certification fee as established in KRS 223.447.

(2) A~~[If the driller's employment or mailing address changes from that listed on the application, the]~~ water well driller or water well driller assistant shall provide written notification to the cabinet within thirty (30) days of a change of employment or mailing address.

(3) Display of certificate number.

(a) A certified water well driller shall have the certificate number affixed and prominently displayed on the drill rig used at the well site.

(b) The certificate number shall be:

1. Inscribed with the format~~[in the following manner]~~: KY. CERT. XXXX-XXXX-XX[XXXX-XXXX] (insert certificate number in place of the Xs);~~[.].~~

2.~~[e)]~~ Inscribed with numbers that are~~[Numbers shall be]~~ at least three (3) inches in height and of a color that shall be easily distinguishable from that of the drill rig; and~~[.].~~

3.~~[d)]~~ This number shall be Removed if the;

a. Drill rig is scrapped, sold, or otherwise changes ownership;~~[.].~~ or

b. if the Certified water well driller's certificate becomes invalid.

Section 5. Service of Process. Each applicant, certified water well driller, and certified water well driller assistant shall provide the cabinet with an address for receipt of applicable legal documents for service of process. The last address provided to the cabinet ~~[pursuant to this provision]~~ shall be the address at which the cabinet shall tender applicable legal notices in connection with an enforcement or disciplinary action.

Section 6. Disciplinary Action. (1) A certified water well driller or certified water well driller assistant shall be subject to disciplinary action if the water well driller or water well driller assistant:

(a) Practiced fraud or deception in obtaining a certificate or filing cabinet mandated reports;

(b) Did not use reasonable care or judgment in the performance of duties;

(c) Failed to apply knowledge in the performance of duties;

(d) Is ~~incompetent,~~ unable, or unwilling to properly perform duties; or

(e) Does not have bond and insurance required by KRS 223.430.

(2) The disciplinary action shall take the form of ~~the following~~ sanctions established in this subsection depending on the severity, duration, and number of the violations, including:

(a) Probation, not to exceed one (1) year;

(b) Suspension of the water well driller's or water well driller assistant certificate, not to exceed one (1) year, during which the certificate shall be considered void;

(c) ~~Temporary revocation of the driller's certificate which~~ Temporary revocation shall be greater than one (1) year and not more than four (4) years;

(d) Permanent revocation of the driller's certificate ~~certification~~; or

(e) Civil or criminal penalties against the driller.

(3) Initial review procedures. Valid ~~Written~~ complaints or a significant enforcement action against a water well driller or water well driller assistant may, ~~unless duplicitous or frivolous, shall~~ be reviewed at the next regularly scheduled board meeting.

(a) If the board decides a complaint or enforcement action warrants ~~complaints warrant~~ further investigation, the water well driller or water well driller assistant shall be requested to appear before the board.

(b) Upon completion of its review of the complaint and available facts, the board shall send its recommendation and supporting facts to the cabinet.

(c) The cabinet shall:

1. Decide whether to take disciplinary action against the water well driller or water well driller assistant based on the board's recommendation and supporting facts;

2. ~~The cabinet shall~~ Notify the water well driller or water well driller assistant and the board of its decision and the facts supporting its decision.

~~The cabinet shall notify the board of its decision and the facts supporting its decision.~~

(4) Action taken by the cabinet pursuant to this section shall not preclude the cabinet from pursuing additional civil or criminal action.

(5)(a) A water well driller or water well driller assistant whose certificate has been suspended or revoked shall not drill wells.

(b) If a certificate is permanently revoked, the water well driller or water well driller assistant shall be ineligible to receive a certificate as a water supply well driller, ~~or~~ monitoring well driller, or well driller assistant in the future.

(c) Experience gained during a suspension or temporary revocation shall not be included toward meeting the requirements established in ~~of~~ Section 2 ~~7(5)~~ of this administrative regulation.

(6)(a) Sanction review and removal. During the water well driller's or water well driller assistant's probation or suspension the board and cabinet shall monitor the water well driller's or water well driller assistant's work activities.

(b) At the end of the sanction period, the board shall recommend that the cabinet lift the sanction or take additional action against the water well driller or water well driller assistant.

(7) Pursuant to KRS 224.10-420(2), a water well driller or water well driller assistant may contest ~~who considers himself aggrieved by~~ a disciplinary action of the cabinet by filing ~~may file~~ a petition for a hearing with the cabinet.

Section 7. Expiration and Renewal of Certificates. (1) All certified water well drillers and water well driller assistants shall renew their certificates annually.

(2)(a) Certificates shall be valid from the date of issuance until the following June 30. If an initial certificate is issued after May 1, it shall be effective until June 30 of the next calendar year.

(b) Certificates shall be renewed by July 1 of each year.

~~(3) Certificate renewal shall require submitting to the cabinet:~~ ~~(3)(a) A certified water well driller desiring to renew a certificate shall file~~

~~(a) A complete Application for Certification Renewal~~ Application with the cabinet; and

~~(b) Payment of the renewal fee as established~~ Pay the fees specified in KRS 223.447. ~~(b) The renewal application shall be made on the Well Driller's Certification Renewal Application.~~

(4)(a) If the certificate renewal fee is not received within sixty (60) days of the renewal date of July 1, the certificate shall expire.

(b) Expired certificates may be renewed without examination within two (2) years of the expiration date, if the applicant:

1. Pays the renewal fee as established in KRS 223.447;

2. Meets the continuing education requirements established ~~outlined~~ in Subsection 5 ~~five (5)~~ of this section within the twelve (12) months immediately preceding ~~prior to~~ recertification; and

3. Meets all other statutory and regulatory requirements for certification.

(5) Continuing education requirement.

(a) Certified water well drillers shall complete five (5) hours of cabinet-approved continuing education for certificate renewal. A minimum of three (3) hours of continuing education shall pertain directly to well drilling.

(b) Certified well driller assistants shall complete a minimum of eight (8) hours of cabinet-approved continuing education as established in KRS 223.425. A minimum of four (4) hours of continuing education shall pertain directly to well drilling.

~~(c)(a)~~ Continuing education shall include correspondence courses, short courses, trade association meetings, and other job training courses relevant to water well construction.

~~(d)(b)~~ A ~~The~~ certified water well driller or water well driller assistant shall obtain written approval from the cabinet prior to completing the continuing education training.

~~(e)(c)~~ The cabinet shall approve continuing education training events that meet ~~for all drillers if the training meets~~ the requirements established in paragraphs ~~of paragraph~~ (a) and (b) of this subsection.

(d) An applicant for certificate renewal shall submit documentation of continuing education ~~training~~ with the renewal application.

Section 8. Certificates and Wallet Cards. (1) The cabinet shall provide certified water well drillers and water well driller assistants with certificates and wallet cards.

(2) A certified water well driller or water well driller assistant ~~The driller~~ shall carry wallet cards at the job site.

Section 9. ~~Rig Operators. Rig operator cards shall not be issued after the most recent effective date of this administrative regulation.~~

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

~~(a) "Application for Certification", DEP No. DOW6060, July 2019; "Water Well and Monitoring Well Driller's Certification Application", July 2008; and;~~

~~(b) "Application for Certification Renewal", DEP No. DOW6070, July 2019; "Well Driller's Certification Renewal Application", July 2008; and~~

~~(c) "Affidavit of Supervision", DEP No. DOW6080, July 2019.~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Division of Water Web site at <https://eec.ky.gov/Environmental-Protection/Water/GW/Pages/GWDrillers.aspx> [www.water.ky.gov].

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 9, 2019

FILED WITH LRC: July 11, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, August 22, 2019 at 6:00 p.m. Eastern Standard Time at the Department for Environmental Protection, Training Room B, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. 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: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email: water@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for certification and certification renewal for water well and monitoring well drillers and well drillers assistants, including examinations, applications, disciplinary action, and certification renewal.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the requirement to promulgate administrative regulations for well driller and well driller assistants pursuant to KRS 223.420.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.420(1)(e) requires the cabinet to promulgate administrative regulations concerning examination and certification of water well drillers. This administrative regulation provides for the certification of water well drillers and water well driller assistants, including the requirements for examination, application, and disciplinary action.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.420(1)(e) requires the cabinet to promulgate administrative regulations concerning examination and certification of water well drillers. This administrative regulation provides for the certification of water well drillers and water well driller assistants, including the requirements for examination, application, and disciplinary action.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation revises language to comply with the requirements of KRS 13A, renames the regulation to include water well driller assistants, adds certification standards and requirements for water well driller assistants, establishes a minimum passing score of seventy percent (70%) on applicable examinations, provides that cabinet

examinations shall be scheduled at a mutually agreeable date and time with the applicant, requires payment of the initial certification fee before a certificate will issue, establishes a continuing education requirement of eight (8) hours per year for well driller assistants, requires that at least fifty percent (50%) of continuing education units be pertinent to well drilling, updates existing Materials Incorporated by Reference, and adds an Affidavit of Supervision required for certified well driller assistants.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative is necessary to establish a water well driller's assistant program required by Senate Bill 32 of the 2019 legislative session, which amended KRS 223.400 through 223.460.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.420(1)(e) requires the cabinet to promulgate administrative regulations concerning examination and certification of water well drillers. This administrative regulation provides for the certification of water well drillers and water well driller assistants, including the requirements for examination, application, and disciplinary action.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation establishes a water well driller's assistant program required by Senate Bill 32 of the 2019 legislative session which amended KRS 223.400 through 223.460.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 1000 water well owners per year, approximately 200 certified water well drillers and potentially 400 well driller assistants, and as many as 300 drilling/consulting companies. This administrative regulation also affects the Kentucky Division of Water, Kentucky Water Well Certification Board, and the Kentucky Ground Water Association.

(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 individuals identified in question (3) will need to comply with the requirements for becoming certified, and to renew certification, as a water well driller's assistant.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): In complying with this administrative regulation, an applicant for initial certification as a water well driller or water well driller's assistant will pay a total of \$330 (\$50 application fee, eighty dollar \$80 examination fee, and \$200 certification fee) as established in KRS 223.447. Certified well drillers must also pay for the cost of the surety bond and \$1000,000 of general liability insurance. Certification renewal for water well drillers and water well driller assistants will cost \$200 as established in KRS 223.447.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in question (3) will be in compliance with all statutory requirements of KRS 223.400 through 223.600. Additionally, the entities will benefit from having a new water well driller's assistant program.

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

(a) Initially: The current cost of the program is about \$300,000 for 2.5 FTEs for certified water well drillers, which is well above the current annual revenue between approximately \$15,000 to \$20,000. The certified population could potentially triple, from about 150 to 450, with implementation of the new water well driller's assistant program.

(b) On a continuing basis: Should the new program triple the number of applicants, the program would require at least one additional FTE which would cost approximately \$69,000, to bring total annual cost to about \$369,000.

(6) What is the source of the funding to be used for the

implementation and enforcement of this administrative regulation: Water well driller and water well driller assistant certification fees, Clean Water Act Section 106 grant for groundwater, and general funds allocated by the legislature.

(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: Senate Bill 32 of the 2019 legislative session amended KRS 223.447 (Fees for water well driller certification) by increasing fees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The fees contained in this administrative regulation were established by Senate Bill 32 of the 2019 legislative session, which amended KRS 223.447 (Fees for water well driller certification) by increasing fees.

(9) TIERING: Is tiering applied? Tiering is applied. The fees and information required for certification are based on whether the certification is for a water well driller or water well driller's assistant, and whether certification is initial or a renewal.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Water, which certifies water well drillers and water well driller assistants, and those divisions of state or local government that may employ certified water well drillers and water well driller assistants and pay their certification or renewal fees.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.420(1)(e) requires the cabinet to promulgate administrative regulations concerning examination and certification of water well drillers. This administrative regulation provides for the certification of water well drillers and water well driller assistants, including the requirements for examination, application, and disciplinary action.

(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 revenue generated by the certification fees revised by amendments to KRS 223.447 will result in revenue to the Division of Water of about \$136,800 if the new water well driller assistant program triples the current certified population.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The revenue generated by the certification fees revised by amendments to KRS 223.447 will result in revenue to the Division of Water of about \$136,800 if the new water well driller's assistant program triples the current certified population.

(c) How much will it cost to administer this program for the first year? The current cost of the program is about \$300,000 for 2.5 FTEs.

(d) How much will it cost to administer this program for subsequent years? The Division of Water may require an additional FTE if the new water well driller's assistant program triples the certified population, which will cost approximately \$369,000 per year.

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

Revenues (+/-): Approximately \$136,800
Expenditures (+/-): Approximately \$369,000
Other Explanation: N/A

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate for the certification of water well drillers or water well drillers assistants.

2. State compliance standards. KRS 223.410, 223.420(1)(e), 223.435, 224.10-100, 224.70-100, 224.70-110

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate for the certification of water well drillers or water well drillers assistants.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? There is no federal mandate for the certification of water well drillers or water well drillers assistants.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate for the certification of water well drillers or water well drillers assistants.

STATEMENT OF EMERGENCY 401 KAR 6:350E

This emergency administrative regulation is being promulgated to implement the certification of water well driller assistants as required by Senate Bill 32 of 2019. This emergency administrative regulation is necessary to protect human health and the environment while making the certification program immediately available. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
CHARLES G. SNAVELY, Secretary

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Water (Emergency Amendment)

401 KAR 6:350E. Monitoring well construction practices and standards.

RELATES TO: KRS 223.400 through 223.460~~[223.400—223.460]~~, 223.991, 224.1-400, 224.1-405, 224.43-010 through 224.43-815, 224.46-012 through 224.46-870, 224.60-100 through 224.60-160~~[224.01-400, 224.01-405, 224.43-010 — 224.43-815, 224.46-012—224.46-870, 224.60-100—224.60-160, EO 2008-507, 2008-531]~~

STATUTORY AUTHORITY: KRS 151.110, 223.435, 224.10-100, 224.70-100, 224.70-110

EFFECTIVE: July 11, 2019

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.435 requires the Secretary of the Cabinet to promulgate administrative regulations establishing standards of practice for water well construction.~~[EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet.]~~ This administrative regulation establishes requirements for the construction of monitoring wells, including temporary monitoring wells, and provides minimum standards for location, construction, modification, and abandonment.

Section 1. General Requirements. (1)~~[Certified monitoring well driller requirement.]~~ Each monitoring well shall be constructed, modified, or abandoned by a monitoring well driller or monitoring well driller assistant~~[natural persons]~~ certified in accordance with KRS 223.425 and 401 KAR 6:320.

(2) A monitoring well driller's assistant shall work under the

direct supervision, as defined by 401 KAR 6:001(14), of a certified monitoring water well driller.

(3) Well specifications shall:

(a) Be provided by the certified well driller to the well driller's assistant, as required under direct supervision defined by 401 KAR 6:001(14), for the work to be conducted including:

1. Construction;
2. Alteration;
3. Maintenance;
4. Repair;
5. Reworking;
6. Development;
7. Abandonment; or
8. Plugging; and

(b) Shall be recorded on the Uniform Kentucky Well Construction Record which shall be:

1. Retained by the well driller's assistant; and
2. Available for inspection upon request by the cabinet.

(c) Changes made to well specifications during any work being conducted on a well shall be:

1. Approved in advance by a certified well driller;
2. Recorded on an amended Uniform Kentucky Well Construction Record;

3. Retained by the well driller's assistant; and
4. Available for inspection upon request by the cabinet.

(4) [Construction and well performance requirement.] Permanent and temporary monitoring wells shall be constructed, modified, and abandoned in [such] a manner that prevents [as to prevent] the introduction or migration of contamination to a water-bearing zone or aquifer through the casing, drill hole, or annular materials.

(5) [(3)] Reporting requirement. Within sixty (60) days after completion, modification, or abandonment of a monitoring well or temporary monitoring well, the certified monitoring well driller shall [submit a report of well construction to the cabinet.]

(a) Record all information about the depth and the materials used in the monitoring well construction, modification, or abandonment; and [shall also be recorded.]

(b) Submit a complete [The report shall be submitted on the form.] Uniform Kentucky Well Construction Record form to the cabinet and monitoring well owner.

(6) [(4)] Records to monitoring well owner. The certified monitoring well driller shall provide a copy of the Uniform Kentucky Well Construction Record to the monitoring well owner within sixty (60) days after a monitoring well has been constructed, modified, or abandoned.

(7) [(5)] The certified well driller shall tag Each well constructed or modified shall be tagged with a well identification number tag provided by the cabinet.

(a) An existing well identification number shall be included on the Uniform Kentucky Well Maintenance and Plugging Record for any well being modified or abandoned.

(b) If a well identification number does not exist at the time of modification or abandonment, the well shall be tagged [certified driller shall tag the well, as appropriate,] and [include] the well identification number assigned shall be recorded on [in] the Uniform Kentucky Well Maintenance and Plugging Record.

(8) [(6)] Variance. If conditions exist or are believed to exist that preclude compliance with the requirements established in [of] this administrative regulation, the certified monitoring well driller may request a variance from the cabinet [water well drillers program] prior to well construction or well abandonment.

(a) The variance request shall be submitted in writing on the Kentucky Monitoring Well Variance Request form and shall include:-

(a) The variance shall include the following:

1. A thorough description of the;
 - a. Land use at the site and at adjacent and surrounding properties; and
 - b. Expected geologic conditions at the site, including:
 - (i) Soil thickness;
 - (ii) Type of bedrock;
 - (iii) Depth to groundwater;
 - (iv) Perched water; and

(v) Confining zones;

2. Distance between the proposed monitoring well [monitoring-well] location and;

a. Other existing water-supply wells or monitoring wells on adjacent properties; and

b. [3. Distance between the proposed monitoring well location and] Potential pollution sources, both on site and on adjacent properties, including:

(i) Septic systems; [;]

(ii) Sewers; and [;]

(iii) Petroleum and chemical storage tanks, or other potential pollution sources;

3. [4. A description of the geologic conditions expected at the site, including soil thickness, type of bedrock, if present, perched water, confining zones, and depth to groundwater;]

5. A summary of the provisions, including the section numbers of this administrative regulation, for which the variance is requested;

4. [6.] A justification for the variance; [and]

5. [7.] Proposed construction, modification, or abandonment procedures to be used in lieu of compliance with this administrative regulation; and

6. An explanation of [as to] how the alternate well construction procedures will ensure the protection of the quality of the groundwater and the protection of public health and safety.

(b) Written variance procedure.

1. The certified monitoring well driller shall:

a. Request a variance by submitting to the cabinet a complete Kentucky Monitoring Well Variance Request form signed by the certified monitoring well driller and, if possible, by the monitoring well owner; and

b. Obtain cabinet approval before well construction begins. [4. The driller shall submit the Kentucky Water Well Variance Request form, signed by the certified driller and well owner, and obtain written cabinet approval before well construction begins.]

2. The cabinet shall:

a. Notify the applicant in writing within ten (10) days of its decision to either grant or deny the variance; and [;]

b. [3. The cabinet shall] Not issue a variance if the proposed monitoring [water supply] well construction will not ensure the protection of groundwater quality and public health and safety.

(c) Verbal variance for an emergency.

1. A certified monitoring well driller may request a verbal variance for an emergency if the delay incurred due to the written variance procedure established in paragraph (b) of this subsection may result in:

a. [Loss of access to potable water for the intended user;

b.] Failure to address an existing or impending environmental emergency in accordance with KRS 224.1-400 [224.01-400]; or

b. [c.] A risk to public health or safety.

2. The cabinet shall not issue a variance if the proposed monitoring [water supply] well construction will not ensure the protection of groundwater quality and public health and safety.

3. Within fifteen (15) days of the date the cabinet approves the verbal variance for an emergency, the certified monitoring [water] well driller shall submit to the cabinet a complete Kentucky Monitoring [Water] Well Variance [variance] Request form [;] signed by the certified monitoring well driller and monitoring well owner [; to the cabinet].

(d) The variance approval shall list the conditions of the variance, including the:

1. [The] Approved alternate well construction procedures;

2. [The] Well sampling requirements; and

3. [The] Requirement to notify surrounding property and well owners of the variance, if applicable.

(e) The certified monitoring well driller shall submit to the cabinet and the monitoring well owner a copy of the Kentucky Monitoring Well Variance Request form [;] signed by the certified monitoring well driller and the monitoring well owner [; to the cabinet and the monitoring well owner] within sixty (60) days after the well is completed.

Section 2. Design Factors. Monitoring well construction shall

comply with the requirements established in this section. ~~The certified monitoring well driller shall construct each monitoring well to comply with the following:~~ (1) Monitoring wells shall not be constructed in an identified special flood hazard area unless: ~~(constructed in flood zones;)~~

(a) An alternate site ~~(If a reasonable location)~~ does not exist; ~~;~~
(b) ~~monitoring wells may be constructed in flood zones providing~~ The well is water tight; and

1. The well is of flush mounted construction; or ~~and~~
2. The well casing extends a minimum of two (2) feet above the highest base ~~(maximum known)~~ flood elevation at the site.

(2) ~~(b)~~ Measures shall be taken during drilling and well construction to prevent the introduction or migration of contaminants to a water-bearing zone or aquifer. ~~;~~

(3) ~~(2)~~ Water used in the drilling or decontamination process shall be potable. ~~;~~ and

(4) ~~(a)~~ ~~(3)~~ Each water-bearing zone that is intercepted during the drilling phase but not intended for groundwater monitoring shall be:

1. Sealed off to prevent down-hole cross contamination before advancing the borehole. ~~;~~ and

2. ~~(a) Each water-bearing zone that is intercepted during the drilling phase but not intended for groundwater monitoring shall be~~ Prevented from contributing to a well by installing outer casing with a watertight seal.

(b) The permanent outer casing shall have a minimum two (2) inch annulus between the:

1. Borehole and the outside diameter of the outer casing; and
2. ~~a minimum two (2) inch annulus between the~~ Outer casing and the inner casing.

(c) The outer casing shall be grouted with sealing materials using a grout pipe.

(d) A minimum cure time in accordance with ~~(following)~~ the sealing material manufacturer's specifications ~~(recommendation)~~ shall be required before drilling through the grout seal.

(e) Temporary outer casing may be installed.

Section 3. Monitoring Well Construction. (1) General Requirements.

(a) All permanent and temporary monitoring wells shall be constructed, modified, and abandoned in a manner that prevents ~~(as to prevent)~~ the introduction or migration of contamination to a water-bearing zone or aquifer through the casing, drill hole, or annular materials.

(b) Monitoring wells shall be constructed in a manner that yields ~~(as to yield)~~ both groundwater samples and groundwater level measurements that shall be representative of the water-bearing zone or aquifer to be monitored.

(2) Boreholes.

(a) 1. Boreholes drilled in unconsolidated formations shall be a minimum of four (4) inches greater than the outside diameter of the well casing and well screen except for sonic wells, direct push wells, and temporary wells.

2. ~~The driller shall clean out the~~ open borehole shall be cleaned if soil or rock fall into the open borehole during auger or drill-stem retrieval.

(b) Boreholes drilled in consolidated formations shall be a minimum of two (2) inches greater than the outside diameter of the well casing and screen.

(c) Boreholes drilled by the hollow-stem auger or sonic drill method shall have a minimum auger or casing inner diameter (ID) as established in this subsection. ~~(for the following:)~~

1. Four and one quarter (41/4) inches ID for the installation of two (2) inch monitoring well casing;

2. Six and one quarter (61/4) inches ID for the installation of four (4) inch monitoring well casing; or

3. Larger augers shall be required if installation difficulties due to geologic conditions or greater depths are anticipated.

(3) (a) Lubricant shall not be used on drill pipe threads, hollow-stem or solid-stem augers, or on the exterior of the drill pipe, unless approved in advance by the cabinet following the variance procedure established in Section 1(8) ~~(4-6)~~ of this administrative regulation.

(b) A request to use a lubricant shall:

1. Be submitted by the certified monitoring well driller in writing to the cabinet ~~(water well drillers program,)~~ and

2. Include a (Material) Safety Data Sheet [(MSDS)] for the proposed lubricant ~~(shall be submitted with the request).~~

(4) (a) If the air rotary drilling method is used drill cuttings shall be contained.

(b) Air rotary drills using screw compressor systems shall have a coalescing filter system that captures excess entrained compressor oils.

(5) Drilling Derived Waste (DDW) shall be properly containerized.

Section 4. Monitoring Wells Completed Below Ground Surface.

(1) (a) Flush mount wells may be approved in ~~(used for parking lot)~~ areas where above-ground completion is not practical or poses a threat to monitoring well integrity and safety ~~(with high traffic, and limited space, such as Underground Storage Tank (UST) facilities, if installed in a manner that prevents surface water or contaminants from migrating into the well).~~

(b) Monitoring wells completed below ground surface shall have a flush-mount manhole with a bolt-down well cover and waterproof seals installed to prevent the inflow of surface water and contaminants.

(2) The concrete surface pad shall slope away from the monitoring well to prevent precipitation or contaminants from accumulating around the well.

(3) (a) Waterproof seals shall be installed between the cover and the box. ~~;~~ and

(b) O-rings or gaskets shall be installed around the bolts that mount on the cover.

(4) The cover shall consist of material able to withstand the maximum expected loadings.

(5) A water-tight lockable cap shall be attached to the top of the well casing.

(6) The well casing shall be cut so that the locking cap shall install properly and provide a waterproof seal.

(7) A flush-mount monitoring well shall have a concrete surface pad that shall be a minimum of four (4) inches thick with a minimum two (2) foot diameter or square pad centered on the well.

Section 5. Direct Push Monitoring Wells. (1) Direct push monitoring wells installed using direct push technology shall be constructed, modified, and abandoned in ~~(such)~~ a manner that prevents ~~(as to prevent)~~ the introduction or migration of contamination to a water-bearing zone or aquifer through the casing, drill hole, or annular materials.

(2) Temporary monitoring wells installed by the direct push method shall:

(a) Be constructed in ~~(such)~~ a manner that yields ~~(as to yield)~~ both groundwater samples and groundwater level measurements that shall be representative of the water-bearing zone or aquifer to be monitored. ~~;~~

(b) Not allow the mixing of hydrogeologically distinct groundwater zones;

(c) Not exceed fifty (50) feet in depth unless otherwise approved by the cabinet; and

(d) Comply with requirements as established in Section 6 of this administrative regulation.

(3) Direct push monitoring wells shall also comply with the ~~(following)~~ additional standards established in this subsection. ~~;~~

(a) The outside diameter of the borehole shall be a minimum of one (1) inch greater than the outside diameter of the well casing;

(b) Premixed bentonite slurry or bentonite chips with a minimum of one-eighth (1/8) inch diameter shall be used in the sealed interval below the static water level; and

(c) 1. Direct push monitoring wells shall not be constructed through more than one (1) water-bearing formation unless the upper water bearing zone is isolated by temporary or permanent casing.

2. The direct push tool string may serve as temporary casing.

(4) Prepacked well screens may be used.

Section 6. Temporary Monitoring Wells. (1) Temporary monitoring wells shall be:

(a) Constructed, modified, and abandoned in ~~such~~ a manner ~~that prevents as to prevent~~ the introduction or migration of contamination to a water-bearing zone or aquifer through the casing, drill hole, or annular materials; ~~and~~ [-]

~~(b)(a) Temporary monitoring wells shall be~~ Constructed in ~~such~~ a manner ~~that yields as to yield~~ both groundwater samples and groundwater level measurements that shall be representative of the water-bearing zone or aquifer to be monitored.

~~(2)(b)~~ The annulus between the borehole and the well casing shall be sealed at the surface with a bentonite seal to prevent surface water from migrating into the borehole.

~~(3)(2)~~ Each temporary monitoring well shall be properly abandoned within seventy-two (72) hours after the well was constructed.

~~(4)(3)(a)~~ A record of a temporary monitoring well constructed and abandoned shall be submitted by the certified monitoring well driller on the Uniform Kentucky Well Maintenance and Plugging Record to the cabinet and the monitoring well owner within sixty (60) days from the date abandoned. ~~(b) A copy of the Uniform Kentucky Well Construction Record and the Uniform Kentucky Well Maintenance and Plugging Record shall also be submitted to the Division of Waste Management program regulating the facility, if applicable.~~

Section 7. Materials for Monitoring Wells and Temporary Monitoring Wells. (1) Well casing and screens.

(a) Monitoring well casing and screens ~~well screen materials~~ shall:

1. Be constructed of materials determined on a site-specific basis to ensure that the integrity of the material shall not be affected by contaminants or introduce contaminants to the groundwater; [-]

2. ~~(b) Well casing and screens shall~~ Be resistant to chemical and microbiological corrosion and degradation; [-]

3. ~~(c) Monitoring well casings and screens shall~~ Be able to withstand the physical forces acting upon them during and following their installation, and during their use, including force; [- This includes force]

a. Due to suspension in the borehole, grouting, development, purging, pumping, sampling; [-] and

b. ~~forces~~ Exerted on the well casing and screens by the surrounding geologic materials; ~~and~~ [-]

4. Have a minimum inside diameter of two (2) inches except for direct push and temporary wells.

~~(b)(d) The certified driller shall not install~~ Used, damaged, or contaminated well casing or screens shall not be installed. ~~(e) Well casing and screens shall have a minimum inside diameter of two (2) inches except for direct push and temporary wells.~~

(2) Joints and couplings.

(a) 1. All joints and couplings shall be flush type.

2. All joints shall be watertight.

(b) The monitoring well casing shall extend a minimum of two and one half (2 1/2) feet above ground surface, except as established ~~provided for~~ in Section 4 of this administrative regulation.

(c) 1. A minimum annular space of two (2) inches shall be maintained between the borehole wall and the outside diameter of the monitoring well casing.

2. In a multi-cased monitoring well the annulus between the well casings shall be a minimum of two (2) inches.

(d) Centralizers shall be installed:

1. ~~Used~~ In monitoring wells greater than fifty (50) feet in depth; ~~and~~ [-]

2. ~~Centralizers shall be installed~~ At a minimum of ten (10) foot intervals.

(3) Filter pack.

(a) ~~1.~~ The filter pack materials shall:

1. Consist of clean, rounded to well-rounded, insoluble particles of quartz silica composition; ~~and~~ [-]

2. ~~The filter pack materials shall~~ Be of a size that minimizes

head losses through the filter pack and prevents sediment movement through the well screen into the well.

(b) The filter pack shall be placed:

1. In the annulus in ~~such~~ a manner ~~that prevents as to prevent~~ bridging; ~~and~~ [-]

2. ~~At a minimum, the filter pack shall be placed~~ Slowly and carefully by the free-fall method; ~~or~~

3. Using another method that ensures proper placement of the filter pack.

(c) The depth to the filter pack shall be continually monitored during installation.

(d) 1. A minimum of six (6) inches of filter pack shall be placed below the bottom of the well screen.

2. The filter pack shall extend at least two (2) feet above the top of the well screen.

(e) Prepacked well screens may be used if the filter-pack material, filter-pack grain size, and the screen slots are properly sized for the monitoring zones.

(4) Sealing materials.

(a) Only potable water shall be used in mixing sealing materials used in the construction or abandonment of monitoring wells.

(b) The sealing material shall be placed in the annulus by a grout pipe, starting at the top of the bentonite seal to within three (3) feet of the ground surface.

(c) Side-discharge grout pipes shall be used if sealing the annulus for wells that are 100 feet deep or greater.

(d) The concrete surface pad or surface casing shall not be installed until the sealing materials placed in the annulus have settled and cured.

(e) Bentonite seal.

1. The bentonite seal shall:

a. Consist of high solids sodium bentonite pellets with a minimum of thirty (30) percent solids; and

b. ~~shall~~ Be placed in the annulus by a method that ensures the prevention of bridging.

2.a. The depth to the bentonite seal shall be continually monitored during installation.

b. The bentonite seal shall extend a minimum of two (2) feet above the top of the filter pack.

3.a. Hydration time of the bentonite seal shall be according to the manufacturer's specifications ~~recommendation~~.

b. Only potable water shall be used ~~if necessary~~ as the hydration medium.

c. The surface opening and the annulus shall be protected during the hydration period to prevent material from falling into the borehole.

(f) Annular seal.

1. The annular seal shall be installed in ~~such~~ a manner ~~that prevents as to prevent~~ the migration of contaminants or pollutants along the monitoring well annulus into the well.

2. The sealing material shall be placed so that pollutants cannot migrate through the annulus.

3. The sealing materials shall not have a harmful effect on the well casings or screens or damage the surface completion of the well.

Section 8. Surface Completion. (1) Surface casing.

(a) Monitoring wells completed with the well casing extending above ground surface shall be constructed with a steel, anodized aluminum, or PVC outer protective surface casing with a locking cap.

(b) A water tight well cap shall be installed on the well casing.

(c) The well casing shall be cut in a manner so that the locking cap shall install properly and provide a waterproof seal.

~~(d)(1-a.) The outer~~ ~~Outer~~ protective surface casing ~~casings~~ shall:

1. Have a minimum of two (2) inches of clearance between the inside diameter of the outer protective casing and the outside diameter of the well casing; [-]

2. ~~The outer protective surface casing shall~~ Extend a minimum of one (1) inch and a maximum of twelve (12) inches above the inner well casing; [-]

~~3. a. [c. The outer protective surface casing shall] Be installed by pouring a concrete slurry mix into the borehole from the top of the annular seal to the ground surface; and [.]~~

~~b. [2. The outer protective surface casing shall] Then be pushed into the wet concrete slurry a minimum of two (2) feet below the ground surface; [.]~~

~~4. a. [3. The outer protective surface casing shall] Have a minimum of two (2) weep holes for drainage; [.]~~

~~b. The weep holes shall be a minimum diameter of one-quarter (1/4) inch and shall be located directly above the top of the concrete surface pad; and [.]~~

~~5. [4. The outer protective surface casing shall] Bear the Kentucky Water Well Tag with the water well number.~~

~~(2) Bumper guards.~~

~~(a) Monitoring wells extending above ground surface shall have:~~

~~1. Four (4) protective bumper guards consisting of steel pipes a minimum of three (3) inches in diameter; and~~

~~2. A minimum of five (5) feet in length.~~

~~(b) [(a) 1.] The bumper guards shall:~~

~~1. Be installed to a minimum depth of two (2) feet below ground surface in a concrete footing; and~~

~~2. [shall] Extend a minimum of three (3) feet above ground surface; [.]~~

~~3. Be filled with concrete for additional strength if the bumper guards are steel pipe; and~~

~~4. [2. Concrete shall be placed into the steel pipe bumper guards for additional strength.~~

~~(b) The bumper guards shall] Be painted a highly visible color.~~

~~(c) A modification to the bumper guard requirement shall be pre-approved by the cabinet [water well drillers program] according to the variance procedure established in Section 1(8)[4(6)] of this administrative regulation.~~

~~(3) Concrete surface pad.~~

~~(a) All monitoring wells shall have a concrete surface pad a minimum of six (6) inches thick with a minimum three (3) foot diameter or square pad centered on the well.~~

~~(b) The concrete surface pad shall slope away from the monitoring well in a manner as to prevent precipitation or contaminants from accumulating around the well.~~

Section 9. Well Development. (1) Newly installed monitoring wells shall be developed until the column of water in the well is free of visible sediment.

(2) The [This] well-development protocol established in paragraph 1 of this Section shall not be used as a method for purging prior to water quality sampling.

Section 10. Repairs or modifications to the well casing shall be performed by a certified monitoring well driller and shall be reported to the cabinet by the certified monitoring well driller [water well drillers program] on the Uniform Kentucky Well Maintenance and Plugging Record.

Section 11. Monitoring Well Abandonment. (1) General requirements.

(a) A monitoring well that has been damaged or is otherwise unsuitable for use as a monitoring well, shall be abandoned:

1. Within thirty (30) days from the last sampling date; or

2. Thirty (30) days from the date it is determined that the well is no longer suitable for its intended use.

(b) [(a)] Monitoring wells shall be abandoned in [such] a manner that prevents [as to prevent] the migration of:

1. Surface water or contaminants to the subsurface; and

2. [to prevent migration of] Contaminants among water bearing zones.

(c) [(b)] A Division of Waste Management program that permits or regulates the facility at which a monitoring well is to be abandoned shall be notified by the certified monitoring well driller a minimum of ten (10) working days prior to abandonment of each monitoring well.

(d) A [(e) Each] temporary monitoring well shall be abandoned within seventy-two (72) hours after installation.

~~(e) [(d) 1.] A record of the monitoring well abandonment shall be submitted to the cabinet by the certified monitoring well driller on the Uniform Kentucky Well Maintenance and Plugging Record [to the water well drillers program] within sixty (60) days from the date abandoned. [2. A copy of the Uniform Kentucky Well Maintenance and Plugging Record shall be submitted to the cabinet program regulating the facility, if applicable.]~~

(2) Abandonment methods and sealing materials for all types of monitoring wells.

(a) The surface casing, monitoring well casing, well screen, filter pack, bentonite seal, and cement shall be removed.

(b) The borehole shall be plugged with sealing material by grout-pipe method or by pressure injection from the bottom of the boring to within three (3) feet of the top of the borehole, except as established [provided] in paragraph (c) of this subsection.

(c) The borehole may be plugged using the gravitational displacement, or free-flow method to a maximum depth of fifty (50) feet with bentonite; [If this method is employed, the well driller shall use bentonite]

1. With a minimum particle size of three-eighths (3/8) inch, and
2. [the bentonite shall be] Used according to the manufacturer's specifications [recommendation].

(d) The top two (2) feet of the borehole shall be filled with materials consistent with the surrounding ground surface.

(e) If the well casing cannot be removed, an alternate method of abandonment may be used [employed,] if approved in advance by the cabinet in accordance with the variance process established in Section 1(8)[4(6)] of this administrative regulation.

Section 12. Division of Waste Management Program Requirements. (1) Prior to the installation or abandonment of a monitoring well at a facility regulated by the cabinet [Division of Waste Management], all monitoring well [monitoring well] construction designs and all monitoring-well materials shall be pre-approved by the cabinet [Division of Waste Management] in accordance with the requirements established in KRS 224.1-400, 224.1-405 [224.01-400, 224.01-405,] 224.43-010 through 224.43-815, 224.46-012 through 224.46-870, and 224.60-100 through 224.60-160.

(2) The cabinet [Division of Waste Management regulating program] shall be notified at least ten (10) working days prior to a monitoring well [monitoring well] construction, modification, or abandonment so that a cabinet representative may be present at the construction, modification, or abandonment.

[(3) A copy of the Uniform Kentucky Well Construction Record and the Uniform Kentucky Well Maintenance and Plugging Record shall be submitted to the Division of Waste Management program regulating the facility, if applicable.]

Section 13. Documents Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Uniform Kentucky Well Construction Record", DEP No. DOW6010, July 2019 [April 2008];

(b) "Uniform Kentucky Well Maintenance and Plugging Record", DEP No. DOW6040, July 2019 [April 2008]; and

(c) "Kentucky Monitoring Well Variance Request", DEP No. DOW6090, July 2019 [2008].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Division of Water Web site, <https://eec.ky.gov/Environmental-Protection/Water/GW/Pages/GWDrillers.aspx>; www.water.ky.gov/.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 9, 2019

FILED WITH LRC: July 11, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, August 22, 2019 at 6:00 p.m. Eastern Standard Time at the Department for Environmental Protection, Training Room B, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in

writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. 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: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email: water@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements and minimum standards for the location, construction, modification, and abandonment of monitoring wells and temporary monitoring wells.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards of practice for water well construction as required by KRS 223.435.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.435 requires the Secretary of the Cabinet to promulgate administrative regulations establishing standards of practice for water well construction. This administrative regulation establishes requirements for the construction of monitoring wells, including temporary monitoring wells, and provides minimum standards for location, construction, modification, and abandonment.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements and minimum standards for the location, construction, modification, and abandonment of monitoring wells and temporary monitoring wells as required by KRS 223.435.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation revises language to conform to the requirements of KRS 13A, adds "well driller assistant" roles and responsibilities, clarifies that the administrative regulation applies to monitoring wells rather than water supply wells, replaces "flood zones" with "identified special flood hazard area" to align with current terminology, replaces "known" with "base" flood elevation; adds additional requirements for temporary monitoring wells installed by the direct push method; clarifies monitoring well abandonment requirements regarding the plugging of boreholes, and updates Materials Incorporated by Reference.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to include well driller assistant roles and responsibilities as required by Senate Bill 32 of the 2019 legislative session which amended KRS 223.400 through 223.460, and to update standards and practices for monitoring well construction, modification, and abandonment to current standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.435 requires the Secretary of the Cabinet to promulgate administrative regulations establishing standards of practice for water well construction. This administrative regulation establishes requirements for the construction of monitoring wells, including temporary monitoring

wells, and provides minimum standards for location, construction, modification, and abandonment.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will provide clear, updated standards for certified well drillers and well driller assistants in the construction, modification, and abandonment of monitoring wells.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 1000 water well owners per year, approximately 200 certified water well drillers and potentially 400 well driller assistants, and as many as 300 drilling/consulting companies. This administrative regulation also affects the Kentucky Division of Water, Kentucky Water Well Certification Board, and the Kentucky Ground Water Association.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified in question (3) will need to comply with the updated minimum standards for the location, construction, modification, and abandonment of monitoring wells.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation is not expected to increase costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in question (3) will be in compliance with all statutory requirements established in KRS 223.400 through 223.460.

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

(a) Initially: The amendment to this administrative regulation will not result in additional costs.

(b) On a continuing basis: The amendment to this administrative regulation will not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Monitoring well driller and monitoring well driller assistant certification fees, Clean Water Act Section 106 grant for groundwater, and general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The amendment to this administrative regulation will not necessitate increased fees or funding.

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

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation because it establishes minimum standards for the construction, modification, and abandonment of monitoring wells.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Water and those divisions of state or local government that would require a certified well driller to construct, modify, or abandon a monitoring well, such as a municipally owned public water system.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.70-100, and 224.70110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.435 requires the cabinet to promulgate administrative regulations establishing standards of practice for

water well construction. This administrative regulation provides minimum standards and requirements for construction, modification, and abandonment of water supply wells.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate additional revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate additional revenue.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not result in additional costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not result in additional costs.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: This administrative regulation will not generate additional revenue or result in additional costs.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate for the construction, modification, or abandonment of monitoring wells.

2. State compliance standards. KRS 223.435, 224.10-100, 224.70-100, 224.70-110

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate for the construction, modification, or abandonment of monitoring wells.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? There is no federal mandate for the construction, modification, or abandonment of monitoring wells.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate for the construction, modification, or abandonment of monitoring wells.

STATEMENT OF EMERGENCY 803 KAR 25:271E

This emergency administrative regulation must be placed in effect in order to meet the requirement placed on the Commissioner of the Department of Workers' Claims by HB 2. The Commissioner was required to develop or adopt a pharmaceutical formulary for medications prescribed for the cure of and relief from the effects of a work injury or occupational disease and promulgate administrative regulations to implement the developed or adopted pharmaceutical formulary on or before December 31, 2018. Due to delays incurred in the promulgation process, the ordinary administrative regulation that establishes the pharmaceutical formulary will not be in effect within the time limit imposed by HB 2. As such, there would be a period in which no administrative regulation is in effect in contravention of the mandate in HB 2. This emergency administrative regulation will meet the mandate provided in HB 2 and be replaced by the ordinary administrative regulation when effective. This emergency administrative regulation will not be replaced by an ordinary because the pharmaceutical formulary established in 803 KAR 25:270 will become effective.

MATTHEW G. BEVIN, Governor
ROBERT L. SWISHER, Commissioner

LABOR CABINET Department of Workers' Claims (New Emergency Administrative Regulation)

803 KAR 25:271E. Pharmaceutical formulary.

RELATES TO: KRS 342.0011(13), 342.020, 342.035
STATUTORY AUTHORITY: 342.035, 342.260, 342.265, 342.270, 342.275

EFFECTIVE: June 21, 2019

WITHDRAWN: July 11, 2019

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260(1) requires the commissioner to promulgate administrative regulations necessary to carry on the work of the department and the work of administrative law judges so long as those administrative regulations are consistent with KRS Chapter 342 and KRS Chapter 13A. KRS 342.035 requires the commissioner to develop or adopt a pharmaceutical formulary and promulgate administrative regulations to implement the developed or adopted pharmaceutical formulary. This administrative regulation establishes the formulary and provides guidance to implement the adopted formulary.

Section 1. Definitions.

(1) "Carrier" or "Insurance Carrier" means any insurer authorized to insure the liability of employers arising under Chapter 342 of the Kentucky Revised Statutes, an employer authorized by the commissioner to pay directly the compensation provided in Chapter 342 of the Kentucky Revised Statutes as those liabilities are incurred, a self-insured group, and any person acting on behalf of or as an agent of the insurer, self-insured employer, or self-insured group.

(2) "Commissioner" means the commissioner charged in KRS 342.228 to administer the Department of Workers' Claims and whose duties are stated in KRS 342.230. (3) "Compound or Compounding" means the process of combining, mixing, or altering ingredients to create a medication that is tailored to meet the needs of an individual patient.

(4) "Department" or "Department of Workers' Claims" means the governmental agency whose responsibilities are provided in KRS 342.228.

(5) "Dispense" means to deliver a drug to an ultimate user pursuant to the lawful order of a medical provider, including the packaging, labeling, or compounding necessary to prepare the drug for delivery.

(6) "Drug" means a substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or any supplement to them, which is intended for use in the diagnosis, care, mitigation, treatment, or prevention of disease in man.

(7) "Employee" means those natural persons constituting an employee subject to the provisions of the Act as defined in KRS 342.640 and the employee's legal counsel.

(8) "Employer" means those persons constituting an employer as defined in KRS 342.630, the employer's insurance carrier, self-insured group or other payment obligor, third party administrator, other person acting on behalf of the employer in a workers' compensation matter, and the employer's legal counsel.

(9) "Formulary" or "Pharmaceutical Formulary" means the pharmaceutical formulary developed or adopted by the commissioner pursuant to KRS 342.035(8)(b).

(10) "Medical Provider" means a natural person who has prescriptive authority for drugs under the professional licensing laws of Kentucky, another state, or federal law, unless that person's license has been revoked, suspended, restricted, or probated.

(11) "N" or "N status" means the drug is a non-preferred drug.

(12) "Natural person" means a biological human being.

(13) "Non-prescription drug" or "over-the-counter-drug" means a drug that may be sold without a prescription.

(14) "Person" means an individual, corporation, government, governmental subdivision, agency, business, estate, trust, partnership, association, or any other legal entity.

(15) "Pharmacist" means a natural person lawfully licensed to engage in the practice of the profession of pharmacy.

(16) "Preauthorization" means the process whereby payment for a medical service or course of treatment is assured in advance by a carrier.

(17) "Prescription" or "prescribed" means a written, electronic, or oral order for a drug, signed, given, or authorized by a medical provider and intended for use in the diagnosis, care, mitigation, treatment, or prevention of disease in man.

(18) "Prescription Drug" means:

(a) A substance for which federal or state law requires a prescription before the substance may be legally dispensed to the public;

(b) A drug that under federal law is required, before being dispensed or delivered, to be labeled with the statement: "Caution: federal law prohibits dispensing without prescription"; "Rx only"; or another legend that complies with federal law; or

(c) A drug that is required by federal or state statute or regulation to be dispensed on prescription or that is restricted to use by a medical provider only.

(19) "Refill" means a prescription for the same drug, at the same dose or strength, in the same quantity and frequency, and with the same instructions as was initially prescribed.

(20) "Utilization Review" is defined by 803 KAR 25:190.

(21) "Y" or "Y status" means the drug is a preferred drug.

Section 2. Purpose and Adoption.

(1) The purpose of the formulary is to facilitate the safe and appropriate use of prescription drugs in the treatment of work-related injury and occupational disease.

(2) The commissioner adopts the current edition and any future published updates of the ODG formulary currently published by MCG Health. The commissioner shall review the formulary not less than annually and update or amend this regulation, if necessary, to ensure that the formulary is consistent with the provisions of KRS 342.020 and KRS 342.035.

(3) The formulary shall be made available by the department. Subsequent updates shall be effective on the first day of the month following the update.

(4) To the extent this regulation or the formulary conflict with any state or federal statute or regulation limiting prescriptive authority, including KRS 218A.020(3), 218A.172, 314.011(8) and 201 KAR 9:260, the statute or administrative regulation limiting prescriptive authority shall apply.

Section 3. Application.

(1) An employer or its payment obligor is liable for payment of up to a seven (7)-day supply of a "Y" drug dispensed to or prescribed for an injured employee within seven (7) days of a work-related injury in treatment of that work-related injury even if the employer ultimately denies liability for the claim. Payment by the employer or its payment obligor pursuant to this subsection does not waive the employer's right to contest its liability for the claim or benefits to be provided.

(2) Unless the employer, in good faith, denies the claim as not compensable, drugs assigned "Y" status in the formulary on the date the prescription is issued shall be filled without the need for preauthorization and without delay if prescribed for and appropriate for the work injury or occupational disease. Utilization review shall not be required for a "Y" drug but may be conducted retrospectively to determine medical reasonableness and necessity. A denial of a "Y" drug based on retrospective utilization review shall apply only to refill prescriptions of that drug after the date of the utilization review.

(3) Unless the employer, in good faith, denies the claim as not compensable, drugs assigned "N" status in the formulary on the date the prescription is issued shall require preauthorization. A prescription for a drug with an "N" status issued without articulated sound medical reasoning does not constitute a request for preauthorization nor a request for payment. Within two (2)

business days of presentation of a prescription for a drug with an "N" status without articulated sound medical reasoning, the insurance carrier shall notify the medical provider and injured employee that preauthorization is required for the prescribed drug.

(4) Any prescription drug not listed in the formulary shall require preauthorization. Any non-prescription drug shall not require preauthorization.

(5) Compound medications require preauthorization even if all of the components of the compound are listed as "Y" drugs in the formulary.

(6) Medical providers are required to prescribe in accordance with the formulary unless the medical provider can sufficiently articulate sound medical reasoning for deviating from the formulary, which may include:

(a) Documentation that reasonable alternatives allowable in the formulary have been adequately trialed and failed;

(b) The clinical rationale that justifies the proposed treatment plan, including criteria that will constitute a clinically meaningful benefit; or

(c) Any other circumstances that reasonably preclude the approved formulary options.

(7) Before an employer denies authorization for a drug that requires preauthorization, the employer must consider any sound medical reasoning furnished by the medical provider for prescribing that drug.

Section 4. Preauthorization.

(1) Requests for preauthorization shall be subject to utilization review unless the employer waives utilization review.

(2) Except as modified in this Section, 803 KAR 25:190 Sections 5, 7, and 8 apply to all prescriptions for which preauthorization is required under this administrative regulation. If the medical provider has provided sound medical reasoning for the prescription, the employer shall not deny a prescribed drug based solely on the status of the drug in the formulary.

(3) If as a result of utilization review the carrier denies a request for preauthorization, the medical provider may request reconsideration of the denial to include a peer-to-peer conference with a utilization review physician. The request for a peer-to-peer conference shall be made by electronic communication and shall provide:

(a) A telephone number for the reviewing physician to call;

(b) A date for the conference not less than two (2) business days after the date of the request; and

(c) A one (1) - hour period during which the requesting medical provider (or its designee) will be available to participate in the conference between the hours of 8:00 a.m. and 6:00 p.m. (Eastern Time), Monday through Friday.

(4) The peer-to-peer conference must be conducted by a physician of the same specialty as the medical provider requesting reconsideration.

(5) Failure of the reviewing physician to participate in the peer-to-peer conference during the date and time specified shall result in the approval of the request for preauthorization and approval of the requested prescription. Failure of the requesting medical provider or its designee to participate in the peer-to-peer conference during the time he or she specified availability may result in denial of the request for reconsideration.

(6) Pursuant to 803 KAR 25:190 Section 8(1)(c), a written reconsideration decision shall be rendered within ten (10) days of date of the peer-to-peer conference. The written decision shall be entitled "FINAL UTILIZATION REVIEW DECISION".

(7) If a Final Utilization Review Decision is rendered denying authorization for a prescribed drug before an award has been entered by or agreement approved by an administrative law judge, the requesting medical provider or the injured employee may file a medical dispute pursuant to 803 KAR 25:012. If a Final Utilization Review Decision is rendered denying authorization for a prescribed drug after an award has been entered by or agreement approved by an administrative law judge, the employer shall file a medical dispute pursuant to 803 KAR 25:012.

(8) Pursuant to KRS 342.285(1), a decision of an administrative law judge on a medical dispute is subject to review

by the workers' compensation board under the procedures set out in 803 KAR 25:010, Section 22.

Section 5. Effective Dates.

(1) For claims with a date of injury or last exposure on or after January 1, 2019, the formulary applies to all drugs that are prescribed or dispensed on or after July 1, 2019, for outpatient use.

(2) For claims with a date of injury or last exposure prior to January 1, 2019, the formulary applies as follows:

(a) For a prescription that is not a refill prescription, the formulary applies to all drugs prescribed or dispensed on or after July 1, 2019, for outpatient use;

(b) For a refill prescription of a drug initially prescribed prior to July 1, 2019, the formulary applies to all drugs prescribed or dispensed on or after January 1, 2020, for outpatient use.

This is to certify that the commissioner has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 342.260 and 342.035.

ROBERT L. SWISHER, Commissioner

APPROVED BY AGENCY: June 21, 2019

FILED WITH LRC: June 21, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this emergency administrative regulation shall be held on August 30, 2019, at 1:00 p.m. (prevailing local time) at the office of the Department of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend no later than five (5) workdays prior to the hearing. If no notification of intent to attend is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. 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: B. Dale Hamblin, Jr., Assistant General Counsel, Workers' Claims Legal Division, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, phone (502) 782-4404, fax (502) 564-0681, Dale.hamblin@ky.gov, water@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: B. Dale Hamblin, Jr.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation adopts a pharmaceutical formulary for medications prescribed for the cure of and relief of a work injury or occupational disease and provides guidance for its implementation and use.

(b) The necessity of this administrative regulation: KRS 342.035(8) requires the commissioner to promulgate an administrative regulation to implement the pharmaceutical formulary.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 342.035 requires the commissioner to adopt a pharmaceutical formulary for medications prescribed for the cure of and relief of a work injury or occupational disease and to promulgate an administrative regulation to implement that formulary.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 342.020 provides an employer is responsible to pay for the cure and relief from the effects of an injury or occupational disease as may reasonably be required at the time of injury and thereafter during disability or as may be required for the cure and treatment of an occupational disease. KRS 342.035 requires the commissioner to

adopt a pharmaceutical formulary for medications prescribed for the cure of and relief of a work injury or occupational disease. This administrative regulation provides guidance to the employee and employer with respect to that pharmaceutical formulary.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All injured employees, physicians and medical providers providing services to injured workers pursuant to KRS Chapter 342, insurance carriers, self-insurance groups, self-insured employers, insured employers, and third party administrators.

(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: Physicians and medical providers are required to use the pharmaceutical formulary adopted by the commissioner. Employers and their payment obligors will apply the pharmaceutical formulary when paying for treatment as required by KRS 342.020.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of completing the medical report cannot exceed \$100. The cost to the payment obligors cannot be ascertained until treatment is sought and provided to the injured employee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Injured employees are less likely to receive inappropriate prescription drugs and more likely to receive the appropriate prescription drugs in a more timely fashion. Employers may experience a long-term reduction in medical benefit costs.

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

(a) Initially: None

(b) On a continuing basis: The cost associated with this administrative regulation is the cost of maintaining the pharmaceutical formulary on the Cabinet's website.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Workers' Claims normal budget is the source of funding.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied; the regulation applies to all parties 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 Department of Workers' Claims and all agencies or departments of government with employees.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 342.020, 342.035, 342.260, 342.265, 342.275.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There should be no direct effect on expenditures.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? The cost of maintaining the pharmaceutical formulary on the Cabinet's website is nominal.

(d) How much will it cost to administer this program for subsequent years? Other than the cost to maintain the pharmaceutical formulary on the Cabinet's website, it does not appear there will be additional 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: It is possible the application of the pharmaceutical formulary will cause drug costs to stabilize or reduce, providing a reduction of costs to the workers' compensation system as a whole.

STATEMENT OF EMERGENCY 902 KAR 20:430E

This emergency administrative regulation is being filed concurrently with 907 KAR 15:005E, 15:010E, 15:015E, 15:020E, 15:022E, and 15:025E. This emergency administrative regulation is being promulgated in accordance with 2018 Ky. Acts ch. 61 (HB 124), which required the Cabinet for Health and Family Services to conduct a comprehensive review of all current state licensure and quality standards that apply to substance use disorder treatment and recovery programs and develop enhanced licensure and quality standards. In addition to the Cabinet's recent efforts to enhance standards for alcohol and other drug treatment entities (AODE) licensed under 908 KAR 1:370, this amendment therefore seeks to streamline the licensure process for greater efficiency by eliminating the requirement for AODE programs to be separately licensed as a behavioral health services organization (BHSO) for purposes of enrollment in the Kentucky Medicaid Program. This emergency administrative regulation is needed pursuant to KRS 13A.190(a)1. and 2., the same reason established by the statement of emergency for 907 KAR 15:020E. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor

ADAM MEIER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES Office of Inspector General Division of Health Care (Emergency Amendment)

902 KAR 20:430E. Facilities specifications, operation and services; behavioral health services organizations for mental health treatment.

RELATES TO: KRS 17.500, 198B.260, 200.503(2), 205.510, 210.005(2), (3), 216B.050, 216B.105, 309.080, 309.130, 311.860,

314.042, 319.050, 319.056, 319.064, 319C.010, 335.080, 335.100, 335.300, 335.500, 439.3401, 442 C.F.R. Part 2, 45 C.F.R. Parts 160, 164, 20 U.S.C. 1400 et seq., 29 U.S.C. 701 et seq., 42 U.S.C. 1320d-2 – 1320d-8, 42 U.S.C. 290ee-3

STATUTORY AUTHORITY: KRS 216B.042

EFFECTIVE: June 28, 2019

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. This administrative regulation establishes minimum licensure requirements for the operation of behavioral health services organizations (BHSO) that[which] provide behavioral health services necessary to treat, support, and encourage individuals with [a substance use disorder,] mental health disorder [, or co-occurring disorder] to achieve and maintain the highest possible level of health and self-sufficiency.

Section 1. Definitions. (1) "Adult peer support specialist" means an individual who meets the requirements for an adult peer support specialist established by 908 KAR 2:220.

(2) "Behavioral health professional" means:

(a) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc., or the American Osteopathic Board of Neurology and Psychiatry;

(b) A physician licensed in Kentucky to practice medicine or osteopathy in accordance with KRS 311.571;

(c) A psychologist licensed and practicing in accordance with KRS 319.050;

(d) A certified psychologist with autonomous functioning or licensed psychological practitioner practicing in accordance with KRS 319.056;

(e) A clinical social worker licensed and practicing in accordance with KRS 335.100;

(f) An advanced practice registered nurse licensed and practicing in accordance with KRS 314.042;

(g) A physician assistant licensed under KRS 311.840 to 311.862;

(h) A licensed marriage and family therapist as defined by [licensed and practicing in accordance with] KRS 335.300;

(i) A licensed professional clinical counselor as defined by [licensed and practicing in accordance with] KRS 335.500; [or]

(j) A licensed professional art therapist as defined by KRS 309.130(2); or

(k) A licensed behavior analyst as defined by KRS 319C.010(6).

(3) [(2)] "Behavioral health professional under clinical supervision" means a:

(a) Psychologist certified and practicing in accordance with KRS 319.056;

(b) Licensed psychological associate licensed and practicing in accordance with KRS 319.064;

(c) Marriage and family therapist associate as defined by KRS 335.300(3);

(d) Social worker certified and practicing in accordance with KRS 335.080;

(e) Licensed professional counselor associate as defined by KRS 335.500(4); [or]

(f) Licensed professional art therapist associate as defined by KRS 309.130(3); or

(g) Licensed assistant behavioral analyst defined by KRS 319C.010(7).

(4) [(3)] "Behavioral health services organization" means an entity licensed under this administrative regulation to provide behavioral health services as described in Section 5 [6] of this administrative regulation.

(5) [(4)] "Cabinet" means the Cabinet for Health and Family Services. [(5)] "Certified alcohol and drug counselor" is defined by KRS 309.080(2);

(6) "Child with a serious[severe] emotional disability" is defined by KRS 200.503(3).

(7) "Community support associate" means a paraprofessional who meets the application, training, and supervision requirements of 908 KAR 2:250.

(8) "Family peer support specialist" means an individual who meets the requirements for a family peer support specialist established by 908 KAR 2:230.

~~(9) "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).~~

~~(9) "Licensed behavior analyst" is defined by KRS 319C.010(6).~~

~~(10) "Peer support specialist" means a paraprofessional who:~~

~~(a) Meets the application, training, examination, and supervision requirements of 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240; and~~

~~(b) Works under the supervision of one (1) of the following:~~

- ~~1. Physician;~~
- ~~2. Psychiatrist;~~
- ~~3. Licensed psychologist;~~
- ~~4. Licensed psychological practitioner;~~
- ~~5. Licensed psychological associate;~~
- ~~6. Licensed clinical social worker;~~
- ~~7. Licensed marriage and family therapist;~~
- ~~8. Licensed professional clinical counselor;~~
- ~~9. Certified social worker;~~
- ~~10. Licensed marriage and family therapist associate;~~
- ~~11. Licensed professional counselor associate;~~
- ~~12. Licensed professional art therapist;~~
- ~~13. Licensed professional art therapist associate;~~
- ~~14. Advanced practice registered nurse;~~
- ~~15. Physician assistant; or~~
- ~~16. Certified alcohol and drug counselor.~~

~~(11) "Severe mental illness" means the conditions defined by KRS 210.005(2) and (3).~~

(10) "Targeted case manager" is defined by 908 KAR 2:260, Section 1(16).

(11) "Telehealth" is defined by KRS 205.510(15).

(12) "Youth peer support specialist" means an individual who meets the requirements for a youth peer support specialist established by 908 KAR 2:240(12). "Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms resulting from use of a substance which the individual continues to take despite experiencing substance-related problems as a result, including:

- (a) Intoxication;
- (b) Withdrawal; or
- (c) A substance induced mental health disorder].

Section 2. Licensure Application and Fees. (1) An applicant for initial licensure as a behavioral health services organization shall submit to the Office of Inspector General:

(a) A completed Application for License to Operate a Behavioral Health Services Organization; and

(b) An accompanying initial licensure fee in the amount of \$750, made payable to the Kentucky State Treasurer.

(2) At least sixty (60) calendar days prior to the date of annual renewal, a behavioral health services organization shall submit to the Office of Inspector General:

(a) A completed Application for License to Operate a Behavioral Health Services Organization; and

(b) An annual renewal fee of \$500, made payable to the Kentucky State Treasurer.

(3) A behavioral health services organization:

(a) May provide behavioral health services as described in Section 5[6] of this administrative regulation at extension locations separate from its permanent facility; and

(b) Shall pay a fee in the amount of \$250 per extension, submitted to the Office of Inspector General at the time of initial licensure, renewal, or the addition of a new extension to the organization's license.

(4)(a) Name change. A behavioral health services organization shall:

1. Notify the Office of Inspector General in writing within ten (10) calendar days of the effective date of a change in the organization's name; and

2. Submit a processing fee of twenty-five (25) dollars.

(b) Change of location. A behavioral health services organization shall not change the location where a program is operated until an Application for License to Operate a Behavioral Health Services Organization accompanied by a fee of \$100 is filed with the Office of Inspector General.

(c) Change of ownership.

1. The new owner of a behavioral health services organization shall submit to the Office of Inspector General an Application for License to Operate a Behavioral Health Services Organization accompanied by a fee of \$750 within ten (10) calendar days of the effective date of the ownership change.

2. A change of ownership for a license shall be deemed to occur if more than twenty-five (25) percent of an existing behavioral health services organization or capital stock or voting rights of a corporation is purchased, leased, or otherwise acquired by one (1) person from another.

(5) To obtain approval of initial licensure or renew a license to operate a behavioral health services organization, the licensee shall be in compliance with this administrative regulation and federal, state, and local laws and regulations pertaining to the operation of the organization.

Section 3. Scope of Operation and Services. (1) A behavioral health services organization shall:

(a) Provide behavioral health services, as described in Section 5[6] of this administrative regulation, to meet client needs; and

(b) Unless an extension is granted pursuant to subsection (2) of this section, become accredited within one (1) year of initial licensure by one (1) of the following:

1. Joint Commission;
2. Commission on Accreditation of Rehabilitation Facilities;
3. Council on Accreditation; or
4. A nationally recognized accreditation organization.

(2)(a) If a behavioral health services organization has not obtained accreditation in accordance with subsection (1)(b) of this section within one (1) year of initial licensure, the organization may request a one (1) time only extension to complete the accreditation process.

(b) A request for extension shall:

1. Be submitted in writing to the Office of Inspector General at least sixty (60) days prior to the date of annual renewal;

2. Include evidence that the organization initiated the process of becoming accredited within sixty (60) days of initial licensure and is continuing its efforts to obtain accreditation; and

3. Include an estimated timeframe by which approval of accreditation is anticipated.

(3) The cabinet shall revoke a license if a behavioral health services organization fails to meet one (1) of the following requirements:

(a) Become accredited in accordance with subsection (1)(b) of this section;

(b) Request an extension in accordance with subsection (2) of this section if accreditation has not been obtained within one (1) year of initial licensure; or

(c) Maintain accreditation.

(4) Proof of accreditation shall be provided to the Office of Inspector General upon receiving accreditation and at the time of annual renewal described in Section 2(2) of this administrative regulation.

Section 4. Administration and Operation. (1) Licensee. The licensee shall be legally responsible for:

(a) The behavioral health services organization;

(b) The establishment of administrative policy; and

(c) Ensuring compliance with federal, state, and local laws and regulations pertaining to the operation of the organization.

(2) Executive director. The licensee shall establish lines of authority and designate an executive director who:

(a) May serve in a dual role as the organization's program

director described in subsection (5)(a) of this section;

(b) Shall be responsible for the administrative management of the organization, including:

1. The total program of the organization in accordance with the organization's written policies; and
2. Evaluation of the program as it relates to the needs of each client; and

(c) Shall have a master's degree in business administration or a human services field, or a bachelor's degree in a human services field, including:

1. Social work;
2. Sociology;
3. Psychology;
4. Guidance and counseling;
5. Education;
6. Religion;
7. Business administration;
8. Criminal justice;
9. Public administration;
10. Child care administration;
11. Christian education;
12. Divinity;
13. Pastoral counseling;
14. Nursing;
15. Public health; or
16. Another human service field related to working with children with ~~serious~~[severe] emotional disabilities or clients with severe mental illness.

(3) An executive director with a master's degree shall have a minimum of two (2) years of prior supervisory experience in a human services program.

(4) An executive director with a bachelor's degree shall have a minimum of two (2) years of prior experience in a human services program plus two (2) years of prior supervisory experience in a human services program.

(5) Personnel. A behavioral health services organization shall employ the following personnel directly or by contract:

(a) A program director who shall be a:

1. Psychiatrist;
2. Physician;
3. Certified or licensed psychologist;
4. Licensed psychological practitioner;
5. Advanced practice registered nurse;
6. Licensed professional clinical counselor;
7. Licensed marriage and family therapist;
8. Licensed professional art therapist;
9. Licensed board certified behavior analyst; or
10. Licensed clinical social worker; and

(b) A sufficient number of personnel to provide behavioral health services, which may include:

1. Behavioral health professionals;
2. Behavioral health professionals under clinical supervision;
3. ~~Targeted~~[Licensed behavior analysts; 4. Licensed assistant behavior analysts; 5.] case managers[as described in subsections (6), (7), and (8) of this section];
- 4.[6.] Peer support specialists; or
- 5.[7.] Certified alcohol and drug counselors; or
- 8.[.] Community support associates.

(6)[A case manager who provides targeted case management services to clients with a substance use disorder shall:

(a) Have a bachelor's degree in a human services field, including:

1. Psychology;
2. Sociology;
3. Social work;
4. Family studies;
5. Human services;
6. Counseling;
7. Nursing; or
8. Another human service degree program related to working with individuals with substance use disorders, mental health disorders, or co-occurring disorders;

(b)1. Have a minimum of one (1) year of full-time employment

working directly with adolescents or adults in a human service setting after completion of a bachelor's degree as described in paragraph (a) of this subsection; or

2. Have a master's degree in a human services field as described in paragraph (a) of this subsection;

(c)1. Have successfully completed case management training approved by the Department for Behavioral Health, Developmental and Intellectual Disabilities (DBHDID) in accordance with 908 KAR 2:260 within six (6) months of employment; and

2. Have successfully completed recertification requirements approved by DBHDID in accordance with 908 KAR 2:260 every three (3) years thereafter; and

(d) Be supervised by a behavioral health professional who:

1. Has completed case management training approved by DBHDID in accordance with 908 KAR 2:260; and

2. Has supervisory contact at least two (2) times per month with at least one (1) of the contacts on an individual in person basis.

(7) A case manager who provides targeted case management services to clients with co-occurring mental health or substance use disorders and chronic or complex physical health issues shall:

(a) Have a bachelor's degree in a human services field as described in subsection (6)(a) of this section;

(b)1. After completion of a bachelor's degree, have a minimum of five (5) years of experience providing service coordination or referring clients with complex behavioral health needs and co-occurring disorders or multi-agency involvement to community based services; or

2. After completion of a master's degree in social work, family studies, clinical counseling, psychology, nursing, or another human service degree program related to working with individuals with substance use disorders, mental health disorders, or co-occurring disorders, have a minimum of two (2) years of experience providing service coordination or referring clients with complex behavioral health needs and co-occurring disorders or multi-agency involvement to community based services;

(c)1. Have successfully completed case management training approved by the DBHDID in accordance with 908 KAR 2:260 within six (6) months of employment; and

2. Have successfully completed recertification requirements approved by DBHDID in accordance with 908 KAR 2:260 every three (3) years thereafter; and

(d) For a bachelor's level case manager, be supervised by a behavioral health professional who:

1. Has completed case management training approved by DBHDID in accordance with 908 KAR 2:260; and

2. Has supervisory contact at least three (3) times per month with at least two (2) of the contacts on an individual in person basis.

(8) A case manager who provides targeted case management services to children with a severe emotional disability or clients with a severe mental illness shall:

(a) Have a bachelor's degree in a human services field as described in subsection (6)(a) of this section;

(b)1. Have a minimum of one (1) year of full-time employment working directly with individuals with behavioral health needs after completion of a bachelor's degree in a behavioral science field as described in subsection (6)(a) of this section; or

2. Have a master's degree in a human services field as described in subsection (6)(a) of this section;

(c)1. Have successfully completed case management training approved by DBHDID in accordance with 908 KAR 2:260 within six (6) months of employment; and

2. Have successfully completed recertification requirements approved by DBHDID in accordance with 908 KAR 2:260 every three (3) years thereafter; and

(d) Be supervised by a behavioral health professional who:

1. Has completed case management training approved by DBHDID in accordance with 908 KAR 2:260; and

2. Has supervisory contact at least two (2) times per month with at least one (1) of the contacts on an individual in person basis.

(9)] Background checks.

(a) The executive director and all personnel of a behavioral health services organization shall:

1. Have a criminal record check performed upon initial hire through the Administrative Office of the Courts or the Kentucky State Police;[and]

2. Not have a criminal conviction, or plea of guilty, to a:

- a. Sex crime as specified in KRS 17.500;
- b. Violent crime as specified in KRS 439.3401;
- c. Criminal offense against a minor as specified in KRS 17.500;

or

d. Class A felony; and

3. Not be listed on the following:

a. Central registry established by 922 KAR 1:470, if the BHSO provides services to clients under age eighteen (18);

b. Nurse aide or home health aide abuse registry established by 906 KAR 1:100; or

c. Caregiver misconduct registry established by [922–KAR 5:120E and] 922 KAR 5:120.

~~(b)[A behavioral health services organization may use Kentucky's national background check system established by 906 KAR 1:190 to satisfy the background check requirements of paragraph (a) of this subsection.~~

(e)] A behavioral health services organization shall perform annual criminal record and registry checks as described in paragraph (a) of this subsection on a random sample of at least twenty-five (25) percent of all personnel.

(7)](14)] Policies. The behavioral health services organization shall establish written policies for the administration and operation of the organization which shall be available to all personnel and include:

(a) A description of the organizational structure specifying the responsibility, function, and interrelations of each organizational unit, and the lines of administrative and clinical authority;

(b) The organization's method and procedure for storage, dispensing, and administering a drug or biological agent;

(c) A client grievance procedure as described in subsection (11)](14)] of this section;

(d) The organization's procedure for maintaining the confidentiality of client records in accordance with federal, state, and local statutes and regulations; and

(e) Personnel policy, including:

1. A job description and qualifications for each personnel category;

2. A plan for orientation of personnel to the policies and objectives of the organization and on-the-job training, if necessary; and

3. An annual training program for staff which shall include:

- a. Detection and reporting of abuse, neglect, or exploitation;
- b. Behavioral management, including de-escalation training;
- c. Physical management procedures and techniques; and
- d. Emergency and safety procedures.

(8)](11)] Personnel record. A personnel record shall be kept on each staff member and shall contain the following items:

(a) Name and address;

(b) Verification of all training and experience, including licensure, certification, registration, or renewals;

(c) Verification of submission to the background check requirements of subsection (6)](9)] of this section;

(d) Annual performance appraisals; and

(e) Employee incident reports.

(9)](12)] After hours services.

(a) The behavioral health services organization shall provide, directly or through written agreement with another behavioral health services provider, access to[face-to-face] emergency services face-to-face or via telehealth twenty-four (24) hours per day, seven (7) days per week.

(b) Emergency services shall include interventions necessary to screen, assess, refer, and treat an individual from the point of the identified emergency or behavioral health crisis to the point of resolution of the emergency or crisis.

(10)](13)] Quality assurance and utilization review.

(a) The behavioral health services organization shall have a

quality assurance and utilization review program designed to:

1. Enhance treatment and care through the ongoing objective assessment of services provided, including the correction of identified problems; and

2. Provide an effective mechanism for review and evaluation of the service needs of each client.

(b) The need for continuing services shall be evaluated immediately upon a change in a client's service needs or a change in the client's condition to ensure that proper arrangements have been made for:

- 1. Discharge;
- 2. Transfer; or
- 3. Referral to another service provider, if appropriate.

(11)](14)] Client grievance policy. The behavioral health services organization shall have written policies and procedures governing client grievances which shall include the following:

(a) Identification of a behavioral health services organization ombudsman;

(b) A process for filing a written client grievance;

(c) An appeals process with time frames for filing and responding to a grievance in writing;

(d) Protection for a client from interference, coercion, discrimination, or reprisal; and

(e) Conspicuous posting of the grievance procedures in a public area to inform a client of:

- 1. His or her right to file a grievance;
- 2. The process for filing a grievance; and
- 3. The address and telephone number of the behavioral health services organization's and cabinet's ombudsman.

Section 5. Services.~~[Residential Services for Substance Use Disorders. (1) If a behavioral health services organization licensed under this administrative regulation provides residential services to clients with a substance use disorder, the organization shall obtain separate licensure as an alcohol and other drug abuse treatment program pursuant to 908 KAR 1:370.~~

~~(2) In addition to meeting the requirements of 908 KAR 1:370 for residential treatment programs, a behavioral health services organization that provides residential services for substance use disorders shall:~~

~~(a) Provide intensive treatment and skills building in a structured and supportive environment;~~

~~(b) Assist the client in abstaining from alcohol or substance use and in entering alcohol or drug addiction recovery;~~

~~(c) Provide services in a twenty-four (24) hour a day, live-in facility that offers a planned and structured regimen of care aimed at treating individuals with addiction or co-occurring mental health and substance use disorders;~~

~~(d) Assist the client in making necessary changes to enable the individual to live drug- or alcohol-free;~~

~~(e) Provide services under the medical direction of a physician; and~~

~~(f) Provide continuous nursing services in which a registered nurse shall be:~~

- 1. On-site during traditional first shift hours, Monday through Friday;
- 2. Continuously available by phone after hours; and
- 3. On-site as needed in follow-up to telephone consultation after hours.

Section 6. Services. (1) A behavioral health services organization licensed under this administrative regulation shall obtain separate licensure as an alcohol and other drug abuse treatment program pursuant to 908 KAR 1:370 if the organization provides any of the following outpatient services for the treatment of individuals with a substance use disorder or co-occurring disorder in which substance use disorder is the primary diagnosis:

- (a) Screening;
- (b) Assessment;
- (c) Crisis intervention;
- (d) Mobile crisis services;
- (e) Day treatment;
- (f) Peer support;

- (g) Intensive outpatient program services;
- (h) Individual outpatient therapy;
- (i) Group outpatient therapy;
- (j) Family outpatient therapy;
- (k) Collateral outpatient therapy;
- (l) Screening, brief intervention and referral to treatment; or
- (m) Targeted case management.

(2) A behavioral health services organization shall provide treatment to meet client needs, including one (1) or more of the following:

(1)(a) Screening which shall be provided face-to-face or via telehealth by a behavioral health professional or behavioral health professional under clinical supervision or ~~certified alcohol and drug counselor~~ to determine the:

- (a) [1-] Likelihood that an individual has a mental health, substance use, or co-occurring disorder; and
- (b) [2-] Need for an in-depth assessment;

(2)(b) Assessment which shall:

(a) [1-] Be provided face-to-face or via telehealth by a behavioral health professional or behavioral health professional under clinical supervision or ~~licensed behavior analyst, licensed assistant behavior analyst working under the supervision of a licensed behavior analyst, or a certified alcohol and drug counselor~~ who gathers information and engages in a process with the client thereby enabling the professional to:

- 1. [a-] Establish the presence or absence of a mental health or substance use, or co-occurring disorder;
- 2. [b-] Determine the client's readiness for change;
- 3. [c-] Identify the client's strengths or problem areas that ~~which~~ may affect the treatment and recovery processes; and
- 4. [d-] Engage the client in developing an appropriate treatment relationship;

(b) [2-] Establish or rule out the existence of a clinical disorder or service need;

(c) [3-] Include working with the client to develop a plan of care if a clinical disorder or service need is assessed; and

(d) [4-] Not include psychological or psychiatric evaluations or assessments;

(3)(e) Psychological testing which shall:

(a) [1-] Be performed by a licensed psychologist, certified psychologist with autonomous functioning, certified psychologist, licensed psychological associate, or licensed psychological practitioner; and

(b) [2-] Include a psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities, and interpretation and written report of testing results;

(4)(d) Crisis intervention which:

(a) [1-] Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to the client or another individual;

(b) [2-] Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities;

(c) [3-] Shall be provided:

1. [a-] On-site at the behavioral health services organization's facility or office;

2. [b-] As an immediate relief to the presenting problem or threat; and

3. [c-] In a face-to-face, one (1) on one (1) encounter or as a comparable service provided via telehealth;

(d) [4-] May include verbal de-escalation, risk assessment, or cognitive therapy; 5-] Shall be provided by a:

- 1. [a-] Behavioral health professional; or
- 2. [b-] Behavioral health professional under clinical supervision;

or ~~c. Certified alcohol and drug counselor;~~

(e) [6-] Shall be followed by a referral to noncrisis services, if applicable; and

(f) [7-] May include:

1. [a-] Further service prevention planning, including or ~~(i)~~ lethal means reduction for suicide risk; or

2. ~~(ii) Substance use disorder relapse prevention; or b-] Verbal de-escalation, risk assessment, or cognitive therapy;~~

(5)(e) Mobile crisis services which shall:

(a) [4-] Be available twenty-four (24) hours a day, seven (7) days a week, every day of the year;

(b) [2-] Be provided for a duration of less than twenty-four (24) hours;

(c) [3-] Not be an overnight service;

(d) [4-] Be a multi-disciplinary team based intervention that ensures access to acute mental health ~~and substance use~~ services and supports to:

1. [a-] Reduce symptoms or harm; or

2. [b-] Safely transition an individual in an acute crisis to the appropriate, least restrictive level of care;

(e) [5-] Involve all services and supports necessary to provide:

1. [a-] Integrated crisis prevention;

2. [b-] Assessment and disposition;

3. [c-] Intervention;

4. [d-] Continuity of care recommendations; and

5. [e-] Follow-up services;

(f) [6-] Be provided face-to-face in a home or community setting by [a]:

1. A [a-] behavioral health professional;

2. A [b-] behavioral health professional under clinical supervision; or

3. An adult, family, or youth peer support specialist, as appropriate, working under the supervision of a behavioral health professional ~~c. Certified alcohol and drug counselor~~; and

(g) [7-] Ensure access to a board certified or board-eligible psychiatrist twenty-four (24) hours a day, seven (7) days a week, every day of the year;

(6)(f) Day treatment which shall:

(a) [1-] Be a nonresidential, intensive treatment program designed for children who:

1. [a-] Have a ~~substance use disorder,~~ mental health disorder or co-occurring disorder;

2. [b-] Are under twenty-one (21) years of age; and

3. [c-] Are at high risk of out-of-home placement due to a behavioral health issue;

(b) [2-] Consist of an organized, behavioral health program of treatment and rehabilitative services ~~for substance use disorder,~~ mental health disorder or a co-occurring disorder;

(c) [3-] Have unified policies and procedures that address the organization's philosophy, admission and discharge criteria, admission and discharge process, staff training, and integrated case planning;

(d) [4-] Include the following:

1. [a-] Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;

2. [b-] Behavior management and social skill training;

3. [c-] Independent living skills that correlate to the age and development stage of the client; or

4. [d-] Services designed to explore and link with community resources before discharge and to assist the client and family with transition to community services after discharge;

(e) [5-] Be provided as follows:

1. [a-] In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);

2. [b-] On school days and during scheduled school breaks;

3. [c-] In coordination with the child's individual educational plan or Section 504 plan if the child has an individual educational plan or Section 504 plan;

4. [d-] By personnel that includes a behavioral health professional, a behavioral health professional under clinical supervision, or a family or youth peer support specialist, as appropriate, and working under the supervision of a behavioral health professional ~~a certified alcohol and drug counselor or a peer support specialist~~; and

5. [e-] According to a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider; and

(f) [6-] Not include a therapeutic clinical service that is included in a child's individualized education plan;

(7)(g) Peer support which shall:

(a)(1-) Be provided face-to-face by an adult, family, or youth[a] peer support specialist, as appropriate, working under the supervision of a behavioral health professional;

(b)(2-) Be a structured and scheduled nonclinical therapeutic activity with a client or group of clients;

(c)(3-) Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills;~~and~~

(d)(4-) Be identified in the client's plan of care developed through a person-centered planning process; and

(e) If provided to clients in a group setting, not to exceed eight (8) individuals within any group at a time;

(8)(h) Intensive outpatient program services which shall:

(a)(4-) Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;

(b)(2-) Be provided at least:

1. Three (3) hours per day at least three (3) days per week for adults; or

2. Six (6) hours per week for adolescents;

(c)(3-) Include~~the following~~:

1.~~a.~~ Individual outpatient therapy;~~b.~~ group outpatient therapy;~~or c.~~ family outpatient therapy unless contraindicated;

2.~~d.~~ Crisis intervention; or

3.~~e.~~ Psycho-education that is related to identified goals in the client's treatment plan. If psycho-education is provided, ~~during which~~ the client or client's family member shall be:

~~a.~~(i) Provided with knowledge regarding the client's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and

~~b.~~(ii) Taught how to cope with the client's diagnosis or condition in a successful manner;

(e)(4-) Include a treatment plan which shall:

1.~~a.~~ Be individualized; and

2.~~b.~~ Focus on stabilization and transition to a lower level of care;

(f)(5-) Be provided by a behavioral health professional ~~or~~ behavioral health professional under clinical supervision~~or a certified alcohol and drug counselor~~;

(g)(6-) Include access to a board-certified or board-eligible psychiatrist for consultation;

(h)(7-) Include access to a psychiatrist, other physician, or advanced practice registered nurse for medication prescribing and monitoring; and

(i)(8-) Be provided in a setting with a minimum client-to-staff ratio of ten (10) clients to one (1) staff person;

(9)(i) Individual outpatient therapy which shall:

(a)(4-) Be provided to promote the:

1.~~a.~~ Health and wellbeing of the client; and

2. Restoration of a client to his or her best possible functional level;

(b)~~or b.~~ Recovery from a substance-related disorder;

2-: Consist of a:

1.~~a.~~[A] Face-to-face, one (1) on one (1) encounter between program staff and[with] the client; or

b. Telehealth consultation; and

2.~~b.~~ A Behavioral health therapeutic intervention provided in accordance with the client's plan of care;

(c)(3-) Be aimed at:

1.~~a.~~ Reducing adverse symptoms;

2.~~b.~~ Reducing or eliminating the presenting problem of the client; and

3.~~c.~~ Improving functioning;

(d)(4-) Not exceed three (3) hours per day alone or in combination with any other outpatient therapy unless additional time with the client is medically necessary in accordance with 907 KAR 3:130; and

(e)(5-) Be provided by a behavioral health professional ~~or~~ behavioral health professional under clinical supervision~~licensed behavior analyst, licensed assistant behavior analyst working under the supervision of a licensed behavior analyst, or a certified alcohol and drug counselor~~;

(10)(f) Group outpatient therapy which shall:

(a)(4-) Be provided to promote the:

1.~~a.~~ Health and wellbeing of the client; and

2. Restoration of a client to his or her best possible functional level;

(b)~~or b.~~ Recovery from a substance-related disorder; 2-: Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the client's plan of care;

(c)(3-) Excluding multi-family group therapy, be provided in a group setting of nonrelated individuals, not to exceed twelve (12) individuals in size. For group outpatient therapy, a nonrelated individual means any individual who is not a spouse, significant other, parent or person with custodial control, child, sibling, stepparent, stepchild, step-brother, step-sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, or grandchild;

(d)(4-) Focus on the psychological needs of the client as evidenced in the client's plan of care;

(e)(5-) Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;

(f)(6-) Not include physical exercise, a recreational activity, an educational activity, or a social activity;

(g)(7-) Not exceed three (3) hours per day alone or in combination with any other outpatient therapy[per client] unless additional time with the client is medically necessary in accordance with 907 KAR 3:130;

(h)(8-) Ensure that the group has a deliberate focus and defined course of treatment;

(i)(9-) Ensure that the subject of group outpatient therapy ~~is~~ [shall be] related to each client participating in the group; and

(j)(10-) Be provided by a behavioral health professional ~~or~~ behavioral health professional under clinical supervision~~licensed behavior analyst, licensed assistant behavior analyst working under the supervision of a licensed behavior analyst, or a certified alcohol and drug counselor~~ who shall maintain individual notes regarding each client within the group in the client's record;

(11)(k) Family outpatient therapy which shall:

(a)(4-) Consist of a ~~face-to-face~~ behavioral health therapeutic intervention provided face-to-face or via telehealth through scheduled therapeutic visits between the therapist, the client, and at least one (1) member of the client's family;

(b)(2-) Address issues interfering with the relational functioning of the family;

(c)(3-) Seek to improve interpersonal relationships within the client's home environment;

(d)(4-) Be provided to promote the health and wellbeing of the client, including restoration of a client to his or her best possible functional level [or recovery from a substance-use disorder];

(e)(5-) Not exceed three (3) hours per day alone or in combination with any other outpatient therapy[per client] unless additional time with the client is medically necessary in accordance with 907 KAR 3:130; and

(f)(6-) Be provided by a behavioral health professional ~~or~~ behavioral health professional under clinical supervision~~or a certified alcohol and drug counselor~~;

(12)(l) Collateral outpatient therapy which shall consist of a face-to-face or telehealth[behavioral health] consultation:

(a)(4-) With a parent, caregiver, or person who has custodial control of a client under the age of twenty-one (21), household member, legal representative, school personnel, or treating professional;

(b)(2-) Provided by a behavioral health professional ~~or~~ behavioral health professional under clinical supervision~~licensed behavior analyst, licensed assistant behavior analyst working under the supervision of a licensed behavior analyst, or a certified alcohol and drug counselor~~; and

(c)(3-) Provided upon the written consent of a parent, caregiver, or person who has custodial control of a client under the age of twenty-one (21). Documentation of written consent shall be signed and maintained in the client's record;

(13)(m) Service planning which shall be provided face-to-face by a behavioral health professional ~~or~~ behavioral health

professional under clinical supervision, either of which shall be of the client's choosing, licensed behavior analyst, or licensed assistant behavior analyst working under the supervision of a licensed behavior analyst to:

(a)[1-] Assist the[a] client in creating an individualized plan for services and developing measurable goals and objectives needed for maximum reduction of the effects of [a] mental health disorder;

(b)[2-] Restore the[a] client's functional level to the client's best possible functional level; and

(c)[3-] Develop a service plan which:

1.[a-] Shall be directed and signed by the client; and

2.[b-] May include:

a.[(i)] A mental health advance directive being filed with a local hospital;

b.[(ii)] A crisis plan; or

c.[(iii)] A relapse prevention strategy or plan;

(14)[(n)] Residential services for substance use disorders as described in Section 5 of this administrative regulation;

(o) Screening, brief intervention and referral to treatment for substance use disorders which shall:

1- Be an evidence-based early intervention approach for an individual with non-dependent substance use prior to the need for more extensive or specialized treatment;

2- Consist of:

a- Using a standardized screening tool to assess the individual for risky substance use behavior;

b- Engaging a client who demonstrates risky substance use behavior in a short conversation, providing feedback and advice;

c- Referring the client to therapy or other services that address substance use if the client is determined to need additional services; and

3- Be provided by a behavioral health professional, behavioral health professional under clinical supervision, or a certified alcohol and drug counselor;

(p) Assertive community treatment for mental health disorders which shall:

(a)[1-] Include assessment, treatment planning, case management, psychiatric services, [medication prescribing and monitoring, individual, family, or [and] group therapy, peer support, mobile crisis services, crisis intervention, mental health consultation with other treating professionals who may have information for the purpose of treatment planning and service delivery, family support to improve family relations to reduce conflict and increase the client's autonomy and independent functioning, or [and] basic living skills focused on teaching activities of daily living necessary to maintain independent functioning and community living;

(b)[2-] Be provided face-to-face by a multidisciplinary team of at least four (4) professionals, including a [psychiatrist,] nurse, case manager, peer support specialist, and any other behavioral health professional or behavioral health professional under clinical supervision; and

(c)[3-] Have adequate staffing to ensure that no caseload size exceeds ten (10) participants per team member;

(15)[(q)] Comprehensive community support services which shall:

a)[1-] Consist of activities needed to allow an individual with a mental health disorder to live with maximum independence in the community through the use of skills training as identified in the client's treatment plan;

(b)[2-] Consist of using a variety of psychiatric rehabilitation techniques to:

1.[a-] Improve daily living skills;

2.[b-] Improve self-monitoring of symptoms and side effects;

3.[c-] Improve emotional regulation skills;

4.[d-] Improve crisis coping skills; and

5.[e-] Develop and enhance interpersonal skills; and

(c)[3-] Be provided face-to-face by a:

1.[i- a-] Behavioral health professional;

2.[b-] Behavioral health professional under clinical supervision;

3.[c-] Community support associate under the supervision of a behavioral health professional; or

4. Licensed assistant behavioral analyst under the supervision

of a licensed behavioral analyst;

(16)[d. Licensed behavior analyst; or

e. Licensed assistant behavior analyst working under the supervision of a licensed behavior analyst;

(f) Therapeutic rehabilitation program for an adult with a severe mental illness or child with a serious[severe] emotional disability which shall:

(a)[1-] Include face-to-face services designed to maximize the reduction of mental illness or emotional disability and restoration of the client's functional level to the individual's best possible functioning;

(b) Require the client to be responsible for establishing his or her[2- Establish the client's] own rehabilitative goals within the person-centered plan of care;

(c)[3-] Be delivered using a variety of psychiatric rehabilitation techniques focused on:

1.[a-] Improving daily living skills;

2.[b-] Self-monitoring of symptoms and side effects;

3.[c-] Emotional regulation skills;

4.[d-] Crisis coping skills; and

5.[e-] Interpersonal skills; and

(d)[4-] Be provided individually or in a group by a:

1.[a-] Behavioral health professional, except for a licensed behavioral analyst;

2.[b-] Behavioral health professional under clinical supervision, except for a licensed assistant behavioral analyst; or

3.[c-] Peer support specialist under the supervision of a behavioral health professional;

(17)[(r-s)] Targeted case management services which shall:

(a)[1-] Include services to [one (1) or more of the following target groups]:

1.[a- An adult or a child with substance use disorder; b- An adult or child with co-occurring mental health or substance use disorder and chronic or complex physical health issues; c-] A child with a serious[severe] emotional disability; or

2.[d-] An adult with severe mental illness;

(b)[2-] Be provided by a targeted case manager[as described in Section 4(6), (7), or (8) of this administrative regulation]; and

(c)[3-] Include the following assistance:

1.[a-] Comprehensive assessment and reassessment of client needs to determine the need for medical, educational, social, or other services. The reassessment shall be conducted annually or more often if needed based on changes in the client's condition;

2.[b-] Development of a specific care plan which shall be based on information collected during the assessment and revised if needed upon reassessment;

3.[c-] Referral and related activities, which may include:

a.[(i)] Scheduling appointments for the client to help the individual obtain needed services; or

b.[(ii)] Activities that help link the client with medical, social, educational providers, or other programs and services which address identified needs and achieve goals specified in the care plan; and

4.[d-] Monitoring which shall be face-to-face and occur no less than once every three (3) months to determine that:

a.[(i)] Services are furnished according to the client's care plan;

b.[(ii)] Services in the care plan are adequate; and

c.[(iii)] Changes in the needs or status of the client are reflected in the care plan; and

5.[e-] Contacts with the client, family members, service providers, or others are conducted as frequently as needed to help the client:

a.[(i)] Access services;

b.[(ii)] Identify needs and supports to assist the client in obtaining services; and

c.[(iii)] Identify changes in the client's needs; or

(18) Partial hospitalization which:

(a) Shall be short-term, with an average of four (4) to six (6) weeks;

(b) Shall be an intensive treatment program for an individual who is experiencing significant impairment to daily functioning due to a mental health disorder;

(c) May be provided to an adult or a minor;

(d) Shall be based on an inability of community-based therapies or intensive outpatient services to adequately treat the client;

(e) Shall consist of:

1. Individual outpatient therapy;
2. Group outpatient therapy;
3. Family outpatient therapy; or
4. Medication management;

(f) If provided to minors, shall include an agreement with the local educational authority including those provided through 20 U.S.C. 1400 et seq. or 29 U.S.C. 701 et seq.;

(g) Shall be provided for at least five (5) hours per day, four (4) days per week, and focused on one (1) primary presenting problem;

(h) Shall include the following personnel for the purpose of providing medical care, if necessary:

1. An on-site advanced practice registered nurse, physician assistant, or physician; and
2. A board-certified or board-eligible psychiatrist available for consultation; and

(i) Shall provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles. (3) Excluding methadone-based treatment which is restricted to regulation under 908 KAR 1:340, a behavioral health services organization may employ or have an affiliation with a physician or physicians who prescribe FDA-approved drugs for the treatment of opioid addiction in adult patients. The behavioral health services organization shall comply with the following requirements:

(a) Ensure that the physician documents in the patient's record whether the patient is compliant with prescribed dosing as evidenced by the results of:

1. A KASPER report released to the physician pursuant to KRS 218A.202(6)(c); and
2. Drug testing;

(b) Offer individual and group outpatient therapy as a service and document monitoring of compliance with recommended non-medication therapies even if the therapies are provided in another behavioral health setting; and

(c) Ensure that the physician complies with the prescribing and dispensing standards in 201 KAR 9:270 for FDA-approved drugs used for the treatment of opioid addiction.

(4) A narcotic treatment program (NTP) licensed under 908 KAR 1:340 may obtain licensure as a behavioral health services organization if the NTP employs or has an affiliation with a physician or physicians who prescribe FDA-approved drugs other than methadone for the treatment of opioid addiction in adult patients.]

Section 6.[7.] Plan of Care. (1) Each client receiving direct treatment from a behavioral health services organization shall have an individual plan of care signed by a behavioral health professional.

(2) A plan of care shall:

- (a) Describe the services to be provided to the client, including the frequency of services;
- (b) Contain measurable goals for the client to achieve, including the expected date of achievement for each goal;
- (c) Describe the client's functional abilities and limitations, or diagnosis listed in the current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders;
- (d) Specify each staff member assigned to work with the client;
- (e) Identify methods of involving the client's family or significant others if indicated;
- (f) Specify criteria to be met for termination of treatment;
- (g) Include any referrals necessary for services not provided directly by the behavioral health services organization; and
- (h) The date scheduled for review of the plan.

(3) The client shall participate to the maximum extent feasible in the development of his or her plan of care, and the participation shall be documented in the client's record.

(4)(a) The initial plan of care shall be developed through multidisciplinary team conferences as clinically indicated and at least thirty (30) days following the first ten (10) days of treatment.

(b)1. The plan of care for individuals receiving[~~residential services for substance use disorder or~~] intensive outpatient program services or partial hospitalization shall be reviewed every thirty (30) days thereafter and updated every sixty (60) days or earlier if clinically indicated.

2. The plan of care for individuals receiving any other outpatient service[~~services~~] as described by Section 5[~~in Section 6(2)(a) through (g) and (i) through (s)~~] of this administrative regulation[~~]~~ shall be reviewed and updated every six (6) months thereafter or earlier if clinically indicated.

(c) The plan of care and each review and update shall be signed by the participants in the multidisciplinary team conference that developed it.

(5) A medical service, including a change of medication, a diet restriction, or a restriction on physical activity shall be ordered by a physician or other ordering practitioner acting within the limits of his or her statutory scope of practice.

Section 7.[8.] Client Records. (1) A client record shall be maintained for each individual receiving services.

(2) Each entry shall be current, dated, signed, and indexed according to the service received.

(3) Each client record shall contain:

- (a) An identification sheet, including the client's name, address, age, gender, marital status, expected source of payment, and referral source;
- (b) Information on the purpose for seeking a service;
- (c) If applicable, consent of appropriate family members or guardians for admission, evaluation, and treatment;
- (d) Screening information pertaining to the mental health[~~or substance use~~] disorder;
- (e) If applicable, a psychosocial history;
- (f) If applicable, staff notes on services provided;
- (g) If applicable, the client's plan of care;
- (h) If applicable, disposition;
- (i) If applicable, assigned status;
- (j) If applicable, assigned therapists; and
- (k) If applicable, a termination study recapitulating findings and events during treatment, clinical impressions, and condition on termination.

(4) Ownership.

(a) Client records shall be the property of the organization.

(b) The original client record shall not be removed from the organization except by court order or subpoena.

(c) Copies of a client record or portions of the record may be used and disclosed. Use and disclosure shall be as established by subsection (6) of this section.

(5) Retention of records. After a client's death or discharge, the completed client record shall be placed in an inactive file and:

(a) Retained for six (6) years; or

(b) If a minor, three (3) years after the client reaches the age of majority under state law, whichever is the longest.

(6) Confidentiality and Security: Use and Disclosure.

(a) The organization shall maintain the confidentiality and security of client records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 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, including 42 U.S.C. 290 ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2].~~

(b) The organization may use and disclose client records. Use and disclosure shall be as established or required by [~~42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164; or 2. 42 U.S.C. 290 ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2].~~

(c) A behavioral health services organization 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[~~or 42 U.S.C. 290 ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2].~~

Section ~~8~~[9:] Client Rights. (1) A behavioral health services organization shall have written policies and procedures to ensure that the rights of a client are protected while receiving one (1) or more services as described in Section ~~5~~[6] of this administrative regulation.

(2) A behavioral health services organization shall have written policies and procedures governing client grievances pursuant to Section ~~4~~[11][~~(44)~~] of this administrative regulation.

(3) A client shall not be unlawfully discriminated against in determining eligibility for a service.

(4) During a behavioral health services organization's intake procedures, a client shall sign a statement which specifies that the client has the right to:

(a) Give informed consent to receive a service.

1. An adult shall sign an informed consent to receive a service.

2. A parent, caregiver, or person who has custodial control of a child shall sign an informed consent for the child to receive a service;

(b) Have input into his or her plan of care and be informed of the plan's content;

(c) Receive individualized treatment;

(d) File a grievance, recommendation, or opinion regarding the services the client receives;

(e) Give informed written consent regarding participation in a research study with the exception of a child whose parent or guardian shall give informed written consent;

(f) Confidentiality according to Section 7(6) of this administrative regulation;

(g) Request a written statement of the charge for a service and be informed of the policy for the assessment and payment of fees;

(h) Be informed of the rules of client conduct and responsibilities ~~[, including the consequences for the use of alcohol and other drugs or other infractions that may result in disciplinary action or discharge];~~

(i) Be treated with consideration, respect, and personal dignity;

(j) Review his or her client record in accordance with the organization's policy; and

(k) Receive one (1) free copy of his or her client record.

(5) The statement of client rights as described in subsection (4) of this section shall be:

(a) Provided to the client;

(b) If the client is a minor or incapacitated, provided to the client's parent, guardian, or other legal representative in addition to the client; and

(c) Read to the client or client's parent, guardian, or other legal representative if requested or if either cannot read.

~~(6) [A program providing twenty-four (24) hour care shall also specify on the client rights statement that a client has the right to:~~

~~(a) Vote in a political election; and~~

~~(b) Reasonable accommodations to afford privacy in bathing and toileting.~~

~~(7) If a client is restricted from exercising a client right because it is contraindicated by the client's physical or mental condition, there shall be documentation in the client record of the reason for the restriction and of the explanation given to the client.~~

Section ~~9~~[10:] Physical Environment. (1) Accessibility. A behavioral health services organization shall meet requirements for making buildings and facilities accessible to and usable by individuals with physical disabilities pursuant to KRS 198B.260 and 815 KAR 7:120.

(2) Fire safety. A behavioral health services organization shall be approved by the State Fire Marshal's office prior to initial licensure or if an organization changes location.

(3) Physical location and overall environment.

(a) A behavioral health services organization shall:

1. Comply with building codes, ordinances, and administrative regulations ~~that~~[which] are enforced by city, county, or state jurisdictions;

2. Display a sign that can be viewed by the public that contains the facility name, hours of operation, and a street address;

3. Have a publicly listed telephone number and a dedicated phone number to send and receive faxes with a fax machine that

shall be operational twenty-four (24) hours per day;

4. Have a reception and waiting area;

5. Provide a restroom; and

6. Have an administrative area.

(b) The condition of the physical location and the overall environment shall be maintained in such a manner that the safety and well-being of clients, personnel, and visitors are assured.

(4) Prior to occupancy, the facility shall have final approval from appropriate agencies.

Section ~~10~~[14:] License Procedures. The behavioral health services organization shall be subject to the provisions of 902 KAR 20:008, Sections 1, 2, 5, 6, and 7.

Section ~~11~~[12:] Denial and Revocation. (1) The cabinet shall deny an Application for License to Operate a Behavioral Health Services Organization if:

(a) Any person with ownership interest in the organization has had previous ownership interest in a health care facility that had its license revoked or voluntarily relinquished its license as the result of an investigation or pending disciplinary action;

(b) Any person with ownership interest in the organization has been discontinued from participation in the Medicaid Program due to fraud or abuse of the program; or

(c) The applicant fails after the initial inspection to submit an acceptable plan of correction or fails to submit an acceptable amended plan of correction within the timeframes required by 902 KAR 20:008, Section ~~2~~[13][~~(5)~~].

(2) The cabinet shall revoke a license if it finds that:

(a) In accordance with KRS 216B.105(2), there has been a substantial failure by the behavioral health services organization to comply with the provisions of this administrative regulation;

(b) The behavioral health services organization fails to submit an acceptable plan of correction or fails to submit an acceptable amended plan of correction within the timeframes required by 902 KAR 20:008, Section ~~2~~[13][~~(5)~~]; or

~~(c) [The behavioral health services organization fails to comply with the requirements of Section 6(3) of this administrative regulation if the organization employs or has an affiliation with a physician or physicians who prescribe FDA-approved drugs, excluding methadone, to adults for the treatment of opioid addiction; or~~

~~(d) The behavioral health services organization is terminated from participation in the Medicaid Program pursuant to 907 KAR 1:671.~~

(3) The denial or revocation of a behavioral health services organization's license shall be mailed to the applicant or licensee, by certified mail, return receipt requested, or by personal service. Notice of the denial or revocation shall set forth the particular reasons for the action.

(4) The denial or revocation shall become final and conclusive thirty (30) days after notice is given, unless the applicant or licensee, within the thirty (30) day period, files a request in writing for a hearing with the cabinet.

(5) Urgent action to suspend a license.

(a) The cabinet shall take urgent action to suspend a behavioral health services organization's license if the cabinet has probable cause to believe that ~~[(c) If the cabinet issues an urgent suspension of the behavioral health services organization's license pursuant to paragraph (a)2 of this subsection, the cabinet shall refer the physician to the Kentucky Board of Medical Licensure and appropriate law enforcement agency.]~~ the continued operation of the organization would constitute an immediate danger to the health, welfare, or safety of its patients ~~[(c) If the cabinet issues an urgent suspension of the behavioral health services organization's license pursuant to paragraph (a)2 of this subsection, the cabinet shall refer the physician to the Kentucky Board of Medical Licensure and appropriate law enforcement agency.]~~ or 2. A physician employed by or affiliated with the organization may be engaged in the improper or inappropriate prescribing or dispensing of an FDA-approved drug for the treatment of opioid addiction.

(b)1. The behavioral health services organization shall be served with notice of the hearing on the urgent suspension to be held no sooner than twenty (20) days from the delivery of the notice.

2. Notice of the urgent suspension shall set forth the particular reasons for the action. ~~[(c) If the cabinet issues an urgent suspension of the behavioral health services organization's license pursuant to paragraph (a)2 of this subsection, the cabinet shall refer the physician to the Kentucky Board of Medical Licensure and appropriate law enforcement agency.]~~

(6) Notice of a hearing on an urgent suspension shall be served on the behavioral health services organization by certified mail, return receipt requested, or by personal service.

(7)(a) Within five (5) working days of completion of the hearing, the cabinet's hearing officer shall render a written decision affirming, modifying, or revoking the urgent suspension.

(b) The urgent suspension shall be affirmed if there is substantial evidence of an immediate danger to the public health, safety, or welfare.

(8) The decision rendered under subsection (7) of this section shall be a final order of the agency on the matter, and any party aggrieved by the decision may appeal to circuit court.

(9) If the cabinet issues an urgent suspension, the cabinet shall take action to revoke the behavioral health services organization's license pursuant to subsection (3) of this section if:

(a) The organization fails to attend the expedited hearing; or

(b) The decision rendered under subsection (7) of this section affirms that there is substantial evidence of an immediate danger to the public health, safety, or welfare ~~[-or~~

~~(c) Referral to the Kentucky Board of Medical Licensure and law enforcement agency in accordance with subsection (5)(c) of this section results in an administrative sanction or criminal conviction against a physician employed by or affiliated with the organization].~~

(10) Pursuant to KRS 216B.050, the cabinet may compel obedience to its lawful orders.

Section 13. Incorporation by Reference. (1) The OIG 20:430, "Application for License to Operate a Behavioral Health Services Organization", July 2019~~[October 2014]~~ edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN D. DAVIS, Inspector General

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 27, 2019

FILED WITH LRC: June 28, 2019 at 4 p.m.

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone: 502-564-6746; fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Stephanie Brammer-Barnes, email: stephanie.brammer@ky.gov, phone: 502-564-2888; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes minimum licensure requirements for the operation of behavioral health services organizations (BHSO) for mental health treatment. The BHSO licensure category was originally created via emergency administrative regulation on July 15, 2014, to enhance access to behavioral health services and address the Kentucky Medicaid Program's efforts to expand the behavioral health network.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the minimum requirements for the licensure of BHSOs that provide services to treat, support, and encourage individuals with mental health disorder to achieve and maintain the highest possible level of health and self-sufficiency.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of

the statutes by establishing standards for licensed BHSOs for mental health treatment.

(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 filed concurrently with the Department for Medicaid Services' behavioral health services regulation, 907 KAR 15:020. Changes to this administrative regulation, 902 KAR 20:430, are as follows: Adds clarifying language to the title of this administrative regulation that aligns with the title of 907 KAR 15:020, thereby emphasizing that this licensure level will be for the treatment of mental health disorder only; Deletes the definition of "peer support specialist" and adds definitions for "adult peer support specialist", "family peer support specialist", and "youth peer support specialist" to Section 1; Adds definitions for "targeted case manager" and "telehealth" to Section 1; Moves "licensed behavioral analyst" under the definition of "behavioral health professional"; Moves "licensed assistant behavioral analyst" under the definition of "behavioral health professional under clinical supervision"; Deletes "certified alcohol and drug counselor" and "substance use disorder" from Section 1 and removes references to these terms throughout the body of this administrative regulation; Amends Section 4 to delete unnecessarily duplicative language related to case managers because the training requirements and qualifications for targeted case managers are established in 908 KAR 2:260; Removes language allowing BHSOs to use the Kentucky National Background Check Program (NBCP) to satisfy the State-level criminal record check requirements. Use of the NBCP was originally included in this administrative regulation by error, prior to receiving additional information from the Federal Bureau of Investigation which clarified that the Kentucky State Police relies upon a federal statute, Section 6201 of the Affordable Care Act, for the submission of fingerprints to the FBI for direct patient access employees in voluntarily participating long-term care settings. Because BHSOs are not included in the statutory definition of a "long-term care facility" or otherwise covered under Section 6201 of the ACA, BHSOs cannot voluntarily participate in the NBCP; Allows for after-hours services to be provided via telehealth; Removes the requirement for a BHSO to be separately licensed as an alcohol and other drug treatment entity (AODE) if the BHSO provides residential or outpatient services to clients with substance use disorder (SUD) or a co-occurring disorder in which SUD is the primary diagnosis. This change aligns with efforts to streamline the licensure process and improve the AODE regulations pursuant to the passage of HB 124 from the 2018 legislative session. Therefore, all requirements related to treatment of SUD have been deleted from this administrative regulation as such is covered under 908 KAR Chapter 1; Allows for screening, assessment, crisis intervention, individual outpatient therapy, family outpatient therapy, and collateral outpatient therapy to be provided via telehealth; Adds partial hospitalization as a service that a BHSO for mental health treatment may provide; and Makes technical changes for clarity.

(b) The necessity of the amendment to this administrative regulation: The passage of HB 124 from the 2018 legislative session required the Cabinet to conduct a comprehensive review of all current state licensure and quality standards applicable to SUD treatment programs as well as develop enhanced standards for treatment and recovery services. Therefore, in addition to the Cabinet's efforts to enhance the AODE standards under 908 KAR Chapter 1, this amendment seeks to streamline the licensure process for greater efficiency by eliminating the requirement for AODE programs to be separately licensed as a BHSO for purposes of Medicaid enrollment. Eliminating the dual licensure requirement will have the effect of transforming the BHSO licensure category so that BHSO services will be for the treatment of mental health disorder only. SUD treatment programs are subject to AODE licensure standards established under 908 KAR Chapter 1 and will be allowed to enroll in Medicaid under the appropriate tier.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216B.042 by establishing standards for licensed behavioral health services organizations for mental health treatment.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by establishing standards for licensed behavioral health services organizations for mental health treatment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts licensed behavioral health services organizations. A directory of all currently licensed BHSO programs may be downloaded from the following link:
<https://chfs.ky.gov/agencies/os/oig/dhc/Pages/hcf.aspx>.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities interested in applying for licensure as a BHSO for mental health treatment will be required to comply with the standards established by this administrative regulation, including: State Fire Marshall approval of the facility's location prior to initial licensure or a change of location; Accreditation within one (1) year of initial licensure, unless an extension is granted; Implementation of administrative and personnel policies as well as policies that ensure that the rights of clients are protected; Compliance with federal, state, and local laws and administrative regulations pertaining to the operation of the organization; Designation of an executive director who may also serve as the organization's program director if the individual is a behavioral health professional as defined by Section 1 of this administrative regulation; Employment of a sufficient number of personnel to provide behavioral health services; Compliance with abuse registry and criminal background check requirements; Implementation of a process for quality assurance and utilization review; Client records; Implementation of a process for responding to client grievances; and The delivery of one (1) or more of the following outpatient behavioral health services: Screening; Assessment; Psychological testing; Crisis intervention; Mobile crisis services; Day treatment; Peer support; Intensive outpatient program (IOP); Individual outpatient therapy; Group outpatient therapy; Family outpatient therapy; Collateral outpatient therapy; Service planning; Assertive community treatment; Comprehensive community support services; Therapeutic rehabilitation for adults with severe mental illness or children with serious emotional disabilities; Targeted case management services; or Partial hospitalization.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensed behavioral health services organizations may enroll in the Kentucky Medicaid Program for reimbursement of covered behavioral health services provided to Medicaid recipients in need of mental health treatment.

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

(a) Initially: There are no additional costs to the cabinet for implementation of this administrative regulation.

(b) On a continuing basis: There are no additional costs to the cabinet for implementation of this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of this administrative regulation is from licensure fees collected from behavioral health services organizations and state

general funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts licensed behavioral health services organizations and the Cabinet for Health and Family Services, Office of Inspector General.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042(1)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any additional 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 amendment will not generate any additional revenue.

(c) How much will it cost to administer this program for the first year? This amendment imposes no additional costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This amendment imposes no additional costs on the administrative body.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320d-2 - 1320d-8

2. State compliance standards. KRS 216B.042

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 160, 164, and 42 U.S.C. 1320d-2 – 1320d-8 establish the HIPAA privacy rules to protect individuals' medical records and other personal health information.

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 requirements that are more strict than federal laws or regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

**STATEMENT OF EMERGENCY
907 KAR 10:830E**

This emergency administrative regulation is being promulgated to implement changes to the graduate medical education and indirect medical education reimbursement programs. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)2. To prevent a loss of state and federal funds. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to the emergency administrative regulation.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Fiscal Management
(Emergency Amendment)**

907 KAR 10:830E. Acute care inpatient hospital reimbursement.

RELATES TO: KRS 13B.140, 142.303, 205.510(16), 205.565, 205.637, 205.638, 205.639, 205.640, 205.641, 216.380, 42 C.F.R. Parts 412, 413, 440.10, 440.140, 447.250-447.280, 42 U.S.C. 1395f(l), 1395ww(d)(5)(F), 1395x(mm), 1396a, 1396b, 1396d, 1396r-4[~~, Pub.L. 111-148~~]

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(2), 205.637(3), 205.640(1), 205.641(2), 216.380(12), 42 C.F.R. 447.200, 447.250, 447.252, 447.253, 447.271, 447.272, 42 U.S.C. 1396a, 1396r-4

EFFECTIVE June 18, 2019

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 for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the Department for Medicaid Services' reimbursement provisions and requirements for acute care inpatient hospital services provided to a Medicaid recipient who is not enrolled with a managed care organization.

Section 1. Definitions. (1) "Acute care hospital" is defined by KRS 205.639(1).

(2) "Appalachian Regional Hospital System" means a private, not-for-profit hospital chain operating in a Kentucky county that receives coal severance tax proceeds.

(3) "Capital cost" means capital related expenses including insurance, taxes, interest, and depreciation related to plant and equipment.

(4) "CMS" means the Centers for Medicare and Medicaid Services.

(5) "CMS IPPS Pricer Program" means the software program published on the CMS website of <http://www.cms.hhs.gov>, which shows the Medicare rate components and payment rates under the Medicare inpatient prospective payment system for a discharge within a given federal fiscal year.

(6) "Cost outlier" means a claim for which estimated cost exceeds the outlier threshold.

(7) "Critical access hospital" or "CAH" means a hospital:

(a) Meeting the licensure requirements established in 906 KAR 1:110; and

(b) Designated as a critical access hospital by the department.

(8) "Department" means the Department for Medicaid Services or its designated agent.

(9) "Diagnosis code" means a code:

(a) Maintained by the Centers for Medicare and Medicaid Services (CMS) to group and identify a disease, disorder, symptom, or medical sign; and

(b) Used to measure morbidity and mortality.

(10) "Diagnosis related group" or "DRG" means a clinically similar grouping of services that can be expected to consume similar amounts of hospital resources.

(11) "Distinct part unit" means a separate unit within an acute care hospital that meets the qualifications established in 42 C.F.R. 412.25 and is designated as a distinct part unit by the department.

(12) "DRG base payment" means the sum of the operating base payment and capital base payment, calculated as described in Section 2(4)(b) and (c) of this administrative regulation.

(13) "DRG geometric mean length-of-stay" means an average hospital length-of-stay, expressed in days, for each DRG, with the geometric mean calculated by taking the nth (number of values in the set) root of the product of all length-of-stay values within a given DRG.

(14) "Enrollee" means a recipient who is enrolled with a managed care organization.

(15) "Enrollee day" means a day of an inpatient hospital stay of a Medicaid recipient who is enrolled with a managed care organization.

(16) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(17) "Fixed loss cost threshold" means an amount, established annually by CMS, which is combined with the full DRG payment or transfer payment for each DRG to determine the outlier threshold.

(18) "Government entity" means an entity that qualifies as a unit of government for the purposes of 42 U.S.C. 1396b(w)(6)(A).

(19) "Graduate medical education program" means a Medicare-approved education and training program for interns and residents in medicine, osteopathy, dentistry, or podiatry.

(20) "Hospital-acquired condition" means a condition:

(a) Associated with a diagnosis code selected by the Secretary of the U.S. Department of Health and Human Services pursuant to 42 U.S.C. 1395ww(d)(4)(D); and

2. Not present upon the recipient's admission to the hospital; and

(b) ~~That~~Which is recognized by the Centers for Medicare and Medicaid Services as a hospital acquired condition.

(21)~~[(20)]~~ "Indirect medical education costs" means additional costs of serving Medicaid recipients, incurred by teaching hospitals, to provide training and education to interns and residents in graduate medical education programs, which are not reimbursed through direct graduate medical education payments.

(22)~~[(24)]~~ "Long-term acute care hospital" means a long term care hospital that meets the requirements established in 42 C.F.R. 412.23(e).

(23)~~[(22)]~~ "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined by~~in~~ 42 C.F.R. 438.2.

(24)~~[(23)]~~ "Medicaid fee-for-service" means a service associated with a Medicaid recipient who is not enrolled with a managed care organization.

(25)~~[(24)]~~ "Medicaid fee-for-service covered day" means an inpatient hospital day associated with a Medicaid recipient who is not enrolled with a managed care organization.

(26)~~[(25)]~~ "Medicaid shortfall" means the difference between a provider's allowable cost of providing services to Medicaid recipients and the amount received in accordance with the payment provisions established in Section 2 of this administrative regulation.

~~[(26)] "Medical education costs" means direct and allowable costs that are:~~

~~(a) Associated with an approved intern and resident program; and~~

~~(b) Subject to limits established by Medicare.]~~

(27) "Medically necessary" or "medical necessity" means that a covered benefit shall be provided in accordance with 907 KAR 3:130.

(28) "Medicare-dependent hospital" means a hospital designated as a Medicare dependent hospital by the Centers for Medicare and Medicaid Services.

(29) "Medicare IPPS Final Rule Data Files and Tables" means information related to Medicare hospital reimbursement that is:

(a) Published annually by the Centers for Medicare and Medicaid Services; and

(b) Located online at the Centers for Medicare and Medicaid

Services acute inpatient PPS Web site located at: <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/index.html>.

(30) "Medicare operating and capital cost-to-charge ratios" means two (2) hospital-specific calculations:

(a) Completed by Medicare using CMS 2552 cost report information;

(b) In which:

1. Medicare operating costs are divided by total applicable charges to determine a Medicare operating cost-to-charge ratio; and

2. Medicare capital costs are divided by total applicable charges to determine a Medicare capital cost-to-charge ratio; and

(c) That are published annually by CMS in an impact file released with the Medicare IPPS Final Rule Data Files and Tables for a given federal fiscal year.

(31) "Never event" means:

(a) A procedure, service, or hospitalization not reimbursable by Medicare pursuant to CMS Manual System Pub 100-03 Medicare National Coverage Determinations Transmittal 101; or

(b) A hospital-acquired condition.

(32) "Outlier threshold" means the sum of the DRG base payment or transfer payment and the fixed loss cost threshold.

(33) "Pediatric teaching hospital" is defined by^[in] KRS 205.565(1).

(34) "Per diem rate" means the per diem rate paid by the department for:

(a) Inpatient care in an in-state psychiatric or rehabilitation hospital;

(b) Inpatient care in a long-term acute care hospital;

(c) Inpatient care in a critical access hospital^[.];

(d) Psychiatric, substance use disorder, or rehabilitation services in an in-state acute care hospital which has a distinct part unit; or

(e) A psychiatric or rehabilitation service in an in-state acute care hospital.

(35) "Psychiatric hospital" means a hospital ~~that~~^[which] meets the licensure requirements as established in 902 KAR 20:180.

(36) "Quality improvement organization" or "QIO" means an organization that complies with 42 C.F.R. 475.101.

(37) "Rehabilitation hospital" means a hospital meeting the licensure requirements as established in 902 KAR 20:240.

(38) "Relative weight" means the factor assigned to each Medicare DRG classification that represents the average resources required for a Medicare DRG classification paid under the DRG methodology relative to the average resources required for all DRG discharges paid under the DRG methodology for the same period.

(39) "Resident" means an individual living in Kentucky who is not receiving public assistance in another state.

(40) "Rural hospital" means a hospital located in a rural area pursuant to 42 C.F.R. 412.64(b)(1)(ii)(C).

(41) "Sole community hospital" means a hospital that is currently designated as a sole community hospital by the Centers for Medicare and Medicaid Services.

(42) "State university" means the University of Kentucky or the University of Louisville.

(43) "State university teaching hospital" means^[:]:

(a) a hospital that is owned or operated by a ~~state~~^[Kentucky state-supported] university, or a state university-related party organization, as allowed by 42 C.F.R. 413.17, with a state university affiliated graduate medical education program^[with a medical school]; or

(b) A hospital:

1. In which three (3) or more departments or major divisions of the University of Kentucky or University of Louisville medical school are physically located and which are used as the primary (greater than fifty (50) percent) medical teaching facility for the medical students at the University of Kentucky or the University of Louisville; and

2. That does not possess only a residency program or rotation agreement^[.].

~~(44)~~⁽⁴³⁾ "Transfer payment" means a payment made for a recipient who is transferred to or from another hospital for a service

reimbursed on a prospective discharge basis.~~[(44) "Type III hospital" means an in-state disproportionate share state university teaching hospital, owned or operated by either the University of Kentucky or the University of Louisville Medical School.]~~

(45) "Universal rate year" means the twelve (12) month period under the prospective payment system, beginning October 1 of each year, for which a payment rate is established for a hospital regardless of the hospital's fiscal year end.

(46) "Urban hospital" means a hospital located in an urban area pursuant to 42 C.F.R. 412.64(b)(1)(ii).

(47) "Urban trauma center hospital" means an acute care hospital that:

(a) Is designated as a Level I Trauma Center by the American College of Surgeons;

(b) Has a Medicaid utilization rate greater than twenty-five (25) percent; and

(c) Has at least fifty (50) percent of its Medicaid population as residents of the county in which the hospital is located.

Section 2. Payment for an Inpatient Acute Care Service in an In-state Acute Care Hospital. (1)(a) The department shall reimburse an in-state acute care hospital for an inpatient acute care service, except for a service not covered pursuant to 907 KAR 10:012, on a fully-prospective per discharge basis.

(b) The department's reimbursement pursuant to this administrative regulation shall approximate ninety-five (95) percent of a hospital's Medicare reimbursement excluding the following Medicare reimbursement components:

1. A Medicare low-volume hospital payment;

2. A Medicare end stage renal disease payment;

3. A Medicare new technology add-on payment;

4. A Medicare routine pass-through payment;

5. A Medicare ancillary pass-through payment;

6. A Medicare value-based purchasing payment or penalty;

7. A Medicare readmission penalty in accordance with paragraph (c) of this subsection;

8. A Medicare hospital-acquired condition penalty in accordance with paragraph (c) of this subsection;

9. Any type of Medicare payment implemented by Medicare after October 1, 2015; or

10. Any type of Medicare payment not described in this administrative regulation.

(c) The department's:

1. Never event and hospital-acquired condition provisions established in Section 3 of this administrative regulation shall apply to acute care inpatient hospital reimbursement under this administrative regulation; and

2. Readmission provisions established in Section 12 of this administrative regulation shall apply to acute care inpatient hospital reimbursement under this administrative regulation.

(2)(a) For an inpatient acute care service, except for a service not covered pursuant to 907 KAR 10:012, in an in-state acute care hospital, the total hospital-specific per discharge payment shall be the sum of:

1. A DRG base payment; and

2. If applicable, a cost outlier payment.

(b) The resulting payment shall be limited to ninety-five (95) percent of the calculated value.

(c) If applicable, a transplant acquisition fee payment shall be added pursuant to subsection (11)(b) of this section.

(3)(a) The department shall assign a DRG classification to each unique discharge billed by an acute care hospital.

(b)1. The DRG assignment shall be based on the most recent Medicare Severity DRG (MS-DRG) grouping software released by the Centers for Medicare and Medicaid Services beginning with version 32 on October 1, 2015 unless CMS releases version 33 on October 1, 2015.

2. If CMS releases version 33 on October 1, 2015, the department shall make interim payments for dates of service beginning October 1, 2015 based on version 32 and then retroactively adjust claims for dates of service beginning October 1, 2015 using version 33.

3. The grouper version shall be updated in accordance with

Section 8 of this administrative regulation.

(c) In assigning a DRG for a claim, the department shall exclude from consideration any secondary diagnosis code associated with a never event.

(4)(a) A DRG base payment shall be the sum of the operating base payment and the capital base payment calculated as described in paragraphs (c) and (d) of this subsection.

(b) All calculations in this subsection shall be subject to special rate-setting provisions for sole community hospitals and Medicare dependent hospitals as described in Sections 5 and 6 of this administrative regulation.

(c)1. The operating base payment shall be determined by multiplying the hospital-specific operating rate by the DRG relative weight.

2. If applicable, the resulting product of subparagraph 1. of this paragraph shall be multiplied by the sum of one (1) and a hospital-specific operating indirect medical education (IME) factor determined in accordance with subparagraph 7₂ of this paragraph.

3. Beginning October 1, 2015, the hospital-specific operating rate referenced in subparagraph 1₂ of this paragraph shall be calculated using inputs from the Federal Fiscal Year 2016 Medicare IPPS Final Rule Data Files and Tables published by CMS as described in subparagraphs 4₂ through 6₂ of this paragraph.

4. The Medicare IPPS standard amount established for operating labor costs shall be multiplied by the wage index associated with the final Core Based Statistical Area (CBSA) assigned to the hospital by Medicare, inclusive of any Section 505 adjustments applied by Medicare.

5. The resulting product of subparagraph 4₂ of this paragraph shall be added to the Medicare IPPS standard amount for non-labor operating costs.

6. The operating rate shall be updated in accordance with Section 8 of this administrative regulation.

7.a. Beginning October 1, 2015, the hospital-specific operating IME factor shall be taken from the Federal Fiscal Year 2016 Medicare Inpatient Prospective Payment System (IPPS) Final Rule Data Files and Tables published by CMS.

b. The operating IME factor shall be updated in accordance with Section 8 of this administrative regulation.

(d)1. The capital base payment shall be determined by multiplying the hospital-specific capital rate by the DRG relative weight.

2. If applicable, the resulting product of subparagraph 1. of this paragraph shall be multiplied by the sum of one (1) and a hospital-specific capital indirect medical education factor determined in accordance with subparagraph 6₂ of this paragraph.

3. Beginning October 1, 2015, the hospital-specific capital rate referenced in subparagraph 1₂ of this paragraph shall be calculated using inputs from the Federal Fiscal Year 2016 Medicare IPPS Final Rule Data Files and Tables published by CMS as described in subparagraphs 4₂ and 5₂ of this paragraph.

4. The Medicare IPPS standard amount established for capital costs shall be multiplied by the geographic adjustment factor (GAF) associated with the final CBSA assigned to the hospital by Medicare.

5. The capital rate shall be updated in accordance with Section 8 of this administrative regulation.

6.a. Beginning October 1, 2015, the hospital-specific capital IME factor shall be taken from the Medicare Inpatient Prospective Payment System (IPPS) Final Rule Data Files and Tables published by CMS.

b. The capital IME factor shall be updated in accordance with Section 8 of this administrative regulation.

(e)1. Effective during the fiscal year ending on June 30, 2019 pursuant to federal approval, the department shall make an annual IME payment to state university teaching hospitals, in addition to the adjustments specified in paragraphs (c)2. and (d)2. of this subsection, equal to:

a. The total of all operating base payments, as determined under paragraph (c)1. of this subsection, received by the hospital during the previous year multiplied by the sum of one (1) and the adjusted hospital-specific education (IME) factor determined in

accordance with subparagraph 2. of this paragraph; plus

b. The total of all capital base payments, as determined under paragraph (d)1. of this subsection, received by the hospital during the previous year multiplied by the sum of one (1) and the adjusted hospital-specific education (IME) factor determined in accordance with subparagraph 2. of this paragraph; plus

c. The total of all inpatient hospital payments received from managed care organizations in the previous year multiplied by the sum of one (1) and the adjusted hospital-specific education (IME) factor determined in accordance with clause b. of this subparagraph; minus

d. The amount of IME adjustments to the operating base rate received during the previous year pursuant to paragraph (c)2. of this subsection; minus

e. The amount of IME adjustments to the capital base rate received during the previous year pursuant to paragraph (d)2. of this subsection; minus

f. The amount of IME adjustments received from managed care organizations during the previous year.

2. The adjusted hospital-specific operating IME factor shall be calculated pursuant to 42 C.F.R. 412.105(d), except that there shall be no caps on the number of full-time equivalent residents included in the formula.

(5)(a) The department shall make a cost outlier payment for an approved discharge meeting the Medicaid criteria for a cost outlier for each DRG as established in paragraphs (b) to (e) of this subsection.

(b) A cost outlier shall be subject to QIO review and approval.

(c) A discharge shall qualify for a cost outlier payment if its estimated cost exceeds the DRG's outlier threshold.

(d)1. The department shall calculate the estimated cost of a discharge:

a. For purposes of comparing the discharge cost to the outlier threshold; and

b. By multiplying the sum of the hospital-specific Medicare operating and capital-related cost-to-charge ratios by the Medicaid allowed charges.

2.a. A Medicare operating and capital-related cost-to-charge ratio shall be extracted from the Federal Fiscal Year 2016 Medicare IPPS Final Rule Data Files and Tables published by CMS.

b. The Medicare operating and capital cost-to-charge ratios shall be updated in accordance with Section 8 of this administrative regulation.

(e)1. The department shall calculate an outlier threshold as the sum of a hospital's DRG base payment or transfer payment and the fixed loss cost threshold.

2.a. Beginning October 1, 2015, the fixed loss cost threshold shall equal the Medicare fixed loss cost threshold established for Federal Fiscal Year 2016.

b. The fixed loss cost threshold shall be updated in accordance with Section 8 of this administrative regulation.

(f)1. For specialized burn DRGs as established by Medicare, a cost outlier payment shall equal ninety (90) percent of the amount by which estimated costs exceed a discharge's outlier threshold.

2. For all other DRGs, a cost outlier payment shall equal eighty (80) percent of the amount by which estimated costs exceed a discharge's outlier threshold.

(6)(a) The department shall establish DRG relative weights obtained from the Medicare IPPS Final Rule Data Files and Tables corresponding to the grouper version in effect under subsection (3) of this section.

(b) Relative weights shall be revised to match the grouping software version for updates in accordance with Section 8 of this administrative regulation.

(7) The department shall separately reimburse for a mother's stay and a newborn's stay based on the DRGs assigned to the mother's stay and the newborn's stay.

(8)(a) If a patient is transferred to or from another hospital, the department shall make a transfer payment to the transferring hospital if the initial admission and the transfer are determined to be medically necessary.

(b) For a service reimbursed on a prospective discharge basis,

the department shall calculate the transfer payment amount based on the average daily rate of the transferring hospital's payment for each covered day the patient remains in that hospital, plus one (1) day, up to 100 percent of the allowable per discharge reimbursement amount.

(c)1. The department shall calculate an average daily discharge rate by dividing the DRG base payment by the Medicare geometric mean length-of-stay for a patient's DRG classification.

2. The Medicare geometric length-of-stay shall be obtained from the Medicare IPPS Final Rule Data Files and Tables corresponding to the grouper version in effect under subsection (3) of this section.

3. The geometric length-of-stay values shall be revised to match the grouping software version for updates in accordance with Section 8 of this administrative regulation.

(d) Total reimbursement to the transferring hospital shall be the transfer payment amount and, if applicable, a cost outlier payment amount, limited to ninety-five (95) percent of the amount calculated for each.

(e) For a hospital receiving a transferred patient, the department shall reimburse the standard DRG payment established in subsection (2) of this section.

(9)(a) The department shall reimburse a transferring hospital for a transfer from an acute care hospital to a qualifying post-acute care facility for selected DRGs in accordance with paragraphs (b) through (d) of this subsection as a post-acute care transfer.

(b) The following shall qualify as a post-acute care setting:

1. A skilled nursing facility;
2. A cancer or children's hospital;
3. A home health agency;
4. A rehabilitation hospital or rehabilitation distinct part unit located within an acute care hospital;
5. A long-term acute care hospital; or
6. A psychiatric hospital or psychiatric distinct part unit located within an acute care hospital.

(c) A DRG eligible for a post-acute care transfer payment shall be in accordance with 42 U.S.C. 1395ww(d)(5)(4)(J).

(d)1. The department shall pay each transferring hospital an average daily rate for each day of a stay.

2. A transfer-related payment shall not exceed the full DRG payment that would have been made if the patient had been discharged without being transferred.

3. A DRG identified by CMS as being eligible for special payment shall receive fifty (50) percent of the full DRG payment plus the average daily rate for the first day of the stay and fifty (50) percent of the average daily rate for the remaining days of the stay up to the full DRG base payment.

4. A DRG that is referenced in paragraph (b) of this subsection and not referenced in subparagraph 2_ of this paragraph shall receive twice the average daily rate for the first day of the stay and the average daily rate for each following day of the stay prior to the transfer.

5. Total reimbursement to the transferring hospital shall be the transfer payment amount and, if applicable, a cost outlier payment amount, limited to ninety-five (95) percent of the amount calculated for each.

(e)1. The average daily rate shall be the base DRG payment allowed divided by the Medicare geometric mean length-of-stay for a patient's DRG classification.

2. The Medicare geometric mean length-of-stay shall be determined and updated in accordance with subsection (8)(c) of this section.

(10) The department shall reimburse a receiving hospital for a transfer to a rehabilitation or psychiatric distinct part unit the facility-specific distinct part unit per diem rate, in accordance with 907 KAR 10:815, for each day the patient remains in the distinct part unit.

(11)(a) The department shall reimburse for an organ transplant on a prospective per discharge method according to the recipient's DRG classification.

(b)1. The department's organ transplant reimbursement shall include an interim reimbursement followed by a final reimbursement.

2. The final reimbursement shall:

a. Include a cost settlement process based on the Medicare 2552 cost report form; and

b. Be designed to reimburse hospitals for ninety-five (95) percent of organ acquisition costs.

3.a. An interim organ acquisition payment shall be made using a fixed-rate add-on to the standard DRG payment using the rates established in subclauses (i), (ii), (iii), (iv), and (v) of this clause:

- (i) Kidney Acquisition - \$65,000;
- (ii) Liver Acquisition - \$55,000;
- (iii) Heart Acquisition - \$70,000;
- (iv) Lung Acquisition - \$65,000; or
- (v) Pancreas Acquisition - \$40,000.

b. Upon receipt of a hospital's as-filed Medicare cost report, the department shall calculate a tentative settlement at ninety-five (95) percent of costs for organ acquisition costs utilizing worksheet D-4 of the CMS 2552 cost report for each organ specified in clause a. of this subparagraph.

c. Upon receipt of a hospital's finalized Medicare cost report, the department shall calculate a final reimbursement, which shall be a cost settlement at ninety-five (95) percent of costs for organ acquisition costs utilizing worksheet D-4 of the CMS 2552 cost report for each organ specified in clause a. of this subparagraph.

d. The final cost settlement shall reflect any cost report adjustments made by CMS.

Section 3. Never Events. (1) For each diagnosis on a claim, a hospital shall specify on the claim whether the diagnosis was present upon the individual's admission to the hospital.

(2) In assigning a DRG for a claim, the department shall exclude from the DRG assignment consideration of any secondary diagnosis code associated with a hospital-acquired condition.

(3) A hospital shall not seek payment for treatment for or related to a never event through:

- (a) A recipient;
- (b) The Cabinet for Health and Family Services for a child in the custody of the cabinet; or
- (c) The Department for Juvenile Justice for a child in the custody of the Department for Juvenile Justice.

(4) A recipient, the Cabinet for Health and Family Services, or the Department for Juvenile Justice shall not be liable for treatment for or related to a never event.

Section 4. Preadmission Services for an Inpatient Acute Care Service. A preadmission service provided within three (3) calendar days immediately preceding an inpatient admission reimbursable under the prospective per discharge reimbursement methodology shall:

- (1) Be included with the related inpatient billing and shall not be billed separately as an outpatient service; and
- (2) Exclude a service furnished by a home health agency, a skilled nursing facility, or hospice, unless it is a diagnostic service related to an inpatient admission or an outpatient maintenance dialysis service.

Section 5. Reimbursement for Sole Community Hospitals. An operating rate for sole community hospitals shall be calculated as described in subsections (1) and (2) of this section.

(1)(a) For each sole community hospital, the department shall utilize the hospital's hospital-specific (HSP) rate calculated by Medicare.

(b) The HSP rate shall be extracted from the Federal Fiscal Year 2016 Medicare IPPS Final Rule Data Files and Tables.

(c) Effective October 1, 2016 and for subsequent years on October 1, the HSP rate shall be updated in accordance with Section 8 of this administrative regulation.

(2)(a) The department shall compare the rate referenced in subsection (1) of this section with the operating rate calculated in Section 2(4)(c) of this administrative regulation.

(b) The higher of the two (2) rates compared in paragraph (a) of this subsection shall be utilized as the operating rate for sole community hospitals.

Section 6. Reimbursement for Medicare Dependent Hospitals. (1)(a) For a Medicare-dependent hospital, the department shall utilize the hospital's hospital-specific (HSP) rate calculated by Medicare.

(b) The HSP rate shall be extracted from the Federal Fiscal Year 2016 Medicare IPPS Final Rule Data Files and Tables.

(c) Effective October 1, 2016 and for subsequent years on October 1, the HSP rate shall be updated in accordance with Section 8 of this administrative regulation.

(2)(a) The department shall compare the rate referenced in subsection (1) of this section with the operating rate calculated in Section 2(4)(c) of this administrative regulation.

(b) If the Section 2(4)(c) rate is higher, it shall be utilized as the hospital's operating rate for the period.

(c)1. If the rate referenced in subsection (1) of this section is higher, the department shall calculate the arithmetic difference between the two (2) rates.

2. The difference shall be multiplied by seventy-five (75) percent.

3. The resulting product shall be added to the Section 2(4)(c) rate to determine the hospital's operating rate for the period.

(d) If CMS terminates the Medicare-dependent hospital program, a hospital that is a Medicare-dependent hospital at the time that CMS terminates the program shall receive operating rates as calculated in Section 2(4)(c) of this administrative regulation.

Section 7. Direct Graduate Medical Education Costs at In-state Hospitals with [Medicare-approved] Graduate Medical Education Programs. (1) If federal financial participation for direct graduate medical education (DGME) costs is not provided to the department, the department shall not reimburse eligible in-state hospitals for direct graduate medical education costs.

(2) If federal financial participation for direct graduate medical education costs is provided to the department, the department shall provide a base DGME payment to in-state hospitals[reimburse] for the direct costs of a graduate medical education program approved by Medicare as established in this subsection.

(a) A base DGME payment shall be made:

1. Separately from the per discharge and per diem payment methodologies; and

2. On an annual basis corresponding to the hospital's fiscal year.

(b) The department shall determine an annual base DGME payment amount for a hospital as established in subparagraphs 1₁ through 4₂ of this paragraph.

1. Total direct graduate medical education costs shall be obtained from a facility's as-filed CMS 2552 cost report, worksheet E-4, line 25.

2.a. The facility's Medicaid utilization shall be calculated by dividing Medicaid fee-for-service covered days during the cost report period, as reported by the Medicaid Management Information System, by total inpatient hospital days, as reported on worksheet E-4, line 27 of the CMS 2552 cost report.

b. The resulting Medicaid utilization factor shall be rounded to six (6) decimals.

3. The total graduate medical education costs referenced in subparagraph 1₁ of this paragraph shall be multiplied by the Medicaid utilization factor calculated in subparagraph 2₂ of this paragraph to determine the total graduate medical education costs related to the fee-for-service Medicaid program.

4. Medicaid program graduate medical education costs shall then be multiplied by ninety-five (95) percent to determine the annual base DGME payment amount.

(3) Effective during the fiscal year ending on June 30, 2019 pursuant to federal approval, the department shall provide a supplemental direct graduate medical education (supplemental DGME) payment for the direct costs of graduate medical education incurred by eligible in-state hospitals as established in paragraph (a) of this subsection.

(a) In-state hospitals eligible for supplemental DGME shall include:

1. Those hospitals receiving direct graduate medical education

payments from the department as of April 1, 2019; and

2. Any hospital that sponsors a graduate medical education program affiliated with a state university on or after April 1, 2019.

(b) A supplemental DGME payment shall be made:

1. Separately from the per discharge and per diem payment methodologies;

2. In addition to any base DGME payment made pursuant to subsection (2) of this section; and

3. On an annual basis corresponding to the hospital's fiscal year.

(c) The annual supplemental DGME payment shall be calculated by the department by subtracting any base DGME payments made by the department pursuant to subsection (2) of this section and any DGME payments received from Medicaid managed care organizations from the total DGME amount determined under paragraph (d) of this subsection.

(d) The total DGME amount shall equal the product of:

1. Total DGME costs, obtained from Worksheet B, Part 1, Lines 21 and 22; and

2. The hospital's Medicaid utilization, calculated by dividing the total number of Medicaid inpatient days, including both fee for service and managed care days, by total inpatient days.

(e) Only the portion of the supplemental DGME payment associated with Medicaid fee for service days shall count towards the upper payment limit described in Section 18 of this administrative regulation.

Section 8. Reimbursement Updating Procedures. (1)(a) The department shall annually update the Medicare grouper software to the most current version used by the Medicare program. The annual update shall be effective October 1 of each year, except as provided in paragraph (b) of this subsection.

(b) If Medicare does not release a new grouper version effective October 1 of a given year:

1. The current grouper effective prior to October 1 shall remain in effect until a new grouper is released; and

2. When the new grouper is released by Medicare, the department shall update the Medicare grouper software to the most current version used by the Medicare program.

(c) The department shall not update the Medicare grouper software more than once per federal fiscal year, which shall be October 1 through September 30 of the following year.

(2) At the time of the grouper update referenced in subsection (1) of this section, all DRG relative weights and geometric length-of-stay values shall be updated to match the most recent relative weights and geometric length-of-stay values effective for the Medicare program.

(3)(a) Annually, on October 1, all values obtained from the Medicare IPPS Final Rule Data Files and Tables shall be updated to reflect the most current Medicare IPPS final rule in effect.

(b)1. Within thirty (30) days after the Centers for Medicare and Medicaid Services publishes the Medicare IPPS Final Rule Data Files and Tables for a given year, the department shall send a notice to each hospital containing the hospital's data from the Medicare IPPS Final Rule Data Files and Tables to be used by the department to establish diagnosis related group rates on October 1.

2. The notice referenced in subparagraph 1₁ of this paragraph shall request that the hospital:

a. Review the information; and

b. If the hospital discovers that the data in the notice sent by the department does not match the data published by the Centers for Medicare and Medicaid Services, notify the department of the discrepancy prior to October 1.

(4) All Medicare IPPS final rule values utilized in this administrative regulation shall be updated to reflect any correction notices issued by CMS, if applicable.

(5) Except for an appeal in accordance with Section 22 of this administrative regulation, the department shall make no other adjustment.

Section 9. Universal Rate Year. (1) A universal rate year shall be established as October 1 of one (1) year through September 30

of the following year.

(2) A hospital shall not be required to change its fiscal year to conform with a universal rate year.

Section 10. Cost Reporting Requirements. (1)(a) An in-state hospital participating in the Medicaid Program shall submit to the department, in accordance with the requirements in this section:

1. A copy of each Medicare cost report it submits to CMS;
2. An electronic cost report file (ECR);
3. The Supplemental Medicaid Schedule KMAP-1;
4. The Supplemental Medicaid Schedule KMAP-4; and
5. The Supplemental Medicaid Schedule KMAP-6.

(b) A document listed in paragraph (a) of this subsection shall be submitted:

1. For the fiscal year used by the hospital; and
2. Within five (5) months after the close of the hospital's fiscal year.

(c) Except as provided in subparagraph 1₁ or 2₁ of this paragraph, the department shall not grant a cost report submittal extension.

1. If an extension has been granted by Medicare, the cost report shall be submitted simultaneously with the submittal of the Medicare cost report.~~[1-01]~~

2. If a catastrophic circumstance exists, for example flood, fire, or other equivalent occurrence, the department shall grant a thirty (30) day extension.

(2) If a cost report submittal date lapses and no extension has been granted, the department shall immediately suspend all payments to the hospital until a complete cost report is received.

(3) A cost report submitted by a hospital to the department shall be subject to audit and review.

(4) An in-state hospital shall submit to the department a final Medicare-audited cost report upon completion by the Medicare intermediary along with an electronic cost report file (ECR).

Section 11. Unallowable Costs. (1) The following shall not be allowable costs for Medicaid reimbursement:

(a) A cost associated with a political contribution;

(b) A cost associated with a legal fee for an unsuccessful lawsuit against the Cabinet for Health and Family Services. A legal fee relating to a lawsuit against the Cabinet for Health and Family Services shall only be included as a reimbursable cost in the period in which the suit is settled after a final decision has been made that the lawsuit is successful or if otherwise agreed to by the parties involved or ordered by the court; and

(c) A cost for travel and associated expenses outside the Commonwealth of Kentucky for the purpose of a convention, meeting, assembly, conference, or a related activity, subject to the limitations of subparagraphs 1₁ and 2₁ of this paragraph.

1. A cost for a training or educational purpose outside the Commonwealth of Kentucky shall be allowable.

2. If a meeting is not solely educational, the cost, excluding transportation, shall be allowable if an educational or training component is included.

(2) A hospital shall identify an unallowable cost on a Supplemental Medicaid Schedule KMAP-1.

(3) A Supplemental Medicaid Schedule KMAP-1 shall be completed and submitted to the department with an annual cost report.

Section 12. Readmissions. (1) An unplanned inpatient admission within fourteen (14) calendar days of discharge for the same diagnosis shall be considered a readmission and reviewed by the QIO.

(2) Reimbursement for an unplanned readmission with the same diagnosis shall be included in an initial admission payment and shall not be billed separately.

Section 13. Reimbursement for Out-of-State Hospitals. (1) The department shall reimburse an acute care out-of-state hospital for inpatient care on a fully prospective per discharge basis except for the following hospitals:

(a) A children's hospital located in a Metropolitan Statistical

Area as defined by the United States Office of Management and Budget whose boundaries overlap Kentucky and a bordering state; and

(b) Vanderbilt Medical Center.

(2) For an inpatient acute care service, except for a service not covered pursuant to 907 KAR 10:012, in an out-of-state acute care hospital the total hospital-specific per discharge payment shall be calculated in the same manner as an in-state hospital as described in Section 2(2) of this administrative regulation with modifications to rates used as described in subsections (3) through (7) of this section.

(3) The DRG payment parameters listed in this subsection shall be modified for out-of-state hospitals not specifically excluded in subsection (1) of this section.

(a) The operating rate used in the calculation of the operating base payment described in Section 2(4)(c)1. of this administrative regulation shall equal the average of all in-state acute care hospital operating rates calculated in accordance with Section 2(4)(c) of this administrative regulation multiplied by eighty (80) percent, excluding any adjustments made for:

1. Sole community hospitals pursuant to Section 5 of this administrative regulation; or

2. Medicare-dependent hospitals pursuant to Section 6 of this administrative regulation.

(b) The capital rate used in the calculation of the capital base payment described in Section 2(4)(c)1. of this administrative regulation shall equal the average of all in-state acute care hospital capital rates calculated in accordance with Section 2(4)(c) of this administrative regulation multiplied by eighty (80) percent.

(c) The DRG relative weights used in the calculation of the operating base payment described in Section 2(4)(c)1. of this administrative regulation and the calculation of the capital base payment described in Section 2(4)(c)1. of this administrative regulation shall be reduced by twenty (20) percent.

(d) The following provisions shall not be applied:

1. Medicare indirect medical education cost or reimbursement;
2. Organ acquisition cost settlements;
3. Disproportionate share hospital distributions; and
4. Any adjustment mandated for in-state hospitals pursuant to KRS 205.638.

(e) The Medicare operating and capital cost-to-charge ratios used to estimate the cost of each discharge, for purposes of comparing the estimated cost of each discharge to the outlier threshold, shall be determined by calculating the arithmetic mean of all in-state cost-to-charge ratios established in accordance with Section 2(5)(d) of this administrative regulation.

(4) The department shall reimburse for inpatient acute care provided by an out-of-state children's hospital located in a Metropolitan Statistical Area as defined by the United States Office of Management and Budget and whose boundaries overlap Kentucky and a bordering state, and except for Vanderbilt Medical Center, the average operating rate and average capital rate paid to in-state children's hospitals.

(5) The department shall reimburse for inpatient care provided by Vanderbilt Medical Center using the hospital-specific Medicare base rate extracted from the CMS IPPS Pricer Program in effect at the time that the care was provided multiplied by eighty-five (85) percent.

(6) The out-of-state hospitals referenced in subsections (4) and (5) of this section shall not be eligible to receive indirect medical education reimbursement, organ acquisition cost settlements, or disproportionate share hospital payments.

(7)(a) The department shall reimburse a hospital referenced in subsection (4) or (5) of this section a cost outlier payment for an approved discharge meeting Medicaid criteria for a cost outlier for each Medicare DRG.

(b) A cost outlier shall be subject to quality improvement organization review and approval.

(c) The department shall determine the cost outlier threshold for an out-of-state claim regarding a hospital referenced in subsection (4) or (5) of this section using the same method used to determine the cost outlier threshold for an in-state claim.

Section 14. Supplemental Payments. (1) Payment of a supplemental payment established in this section shall be contingent upon the department's receipt of corresponding federal financial participation.

(2) If federal financial participation is not provided to the department for a supplemental payment, the department shall not make the supplemental payment.

(3) In accordance with subsections (1) and (2) of this section, the department shall:

(a) In addition to a payment based on a rate developed under Section 2 of this administrative regulation, make quarterly supplemental payments to:

1. A hospital that qualifies as an in-state non-state owned pediatric teaching hospital in an amount:

a. Equal to the sum of the hospital's Medicaid shortfall for Medicaid fee-for-service recipients under the age of eighteen (18) plus an additional \$250,000 (\$1,000,000 annually); and

b. Prospectively determined by the department with an end of the year settlement based on actual patient days of Medicaid fee-for-service recipients under the age of eighteen (18);

2. A hospital that qualifies as a pediatric teaching hospital and additionally meets the criteria of a state university teaching hospital ~~[Type III hospital]~~ in an amount:

a. Equal to the difference between payments made in accordance with Sections 2 and 7 of this administrative regulation and the amount allowable under 42 C.F.R. 447.272, not to exceed the payment limit as specified in 42 C.F.R. 447.271;

b. That is prospectively determined subject to a year-end reconciliation; and

c. Based on the state matching contribution made available for this purpose by a facility that qualifies under this paragraph; and

3. A hospital that qualifies as an urban trauma center hospital in an amount:

a. Based on the state matching contribution made available for this purpose by a government entity on behalf of a facility that qualifies under this paragraph;

b. Based upon a hospital's proportion of Medicaid patient days to total Medicaid patient days for all hospitals that qualify under this paragraph;

c. That is prospectively determined with an end of the year settlement; and

d. That is consistent with the requirements of 42 C.F.R. 447.271;

(b) Make quarterly supplemental payments to the Appalachian Regional Hospital system:

1. In an amount that is equal to the lesser of:

a. The difference between what the department pays for inpatient services pursuant to Sections 2 and 7 of this administrative regulation and what Medicare would pay for inpatient services to Medicaid eligible individuals; or

b. \$7.5 million per year in aggregate;

2. For a service provided on or after July 1, 2005; and

3. Subject to the availability of coal severance funds, in addition to being subject to the availability of federal financial participation, which supply the state's share to be matched with federal funds; and

(c) Base a quarterly payment to a hospital in the Appalachian Regional Hospital System on its Medicaid claim volume in comparison to the Medicaid claim volume of each hospital within the Appalachian Regional Hospital System.

(4) An overpayment made to a hospital under this section shall be recovered by subtracting the overpayment amount from a succeeding year's payment to be made to the hospital.

(5) For the purpose of this section, Medicaid patient days shall not include enrollee days.

(6) A payment made under this section shall not duplicate a payment made via 907 KAR 10:820.

(7) A payment made in accordance with this section shall be in compliance with the limitations established in 42 C.F.R. 447.272.

Section 15. Certified Public Expenditures. (1)(a) The department shall reimburse an in-state public government-owned or operated hospital the full cost of a Medicaid fee-for-service

inpatient service provided during a given state fiscal year via a certified public expenditure (CPE) contingent upon approval by the Centers for Medicare and Medicaid Services (CMS).

(b) A payment referenced in paragraph (a) of this subsection shall be limited to the federal match portion of the hospital's uncompensated care cost for inpatient Medicaid fee-for-service recipients.

(2) To determine the amount of costs eligible for a CPE, a hospital's allowed charges shall be multiplied by cost-center specific cost-to-charge ratios from the hospital's 2552 cost report.

(3) The department shall verify whether or not a given CPE is allowable as a Medicaid cost.

(4)(a) Subsequent to a cost report being submitted to the department and finalized, a CPE shall be reconciled with the actual costs reported to determine the actual CPE for the period.

(b) If any difference between actual cost and submitted costs remains, the department shall reconcile any difference with the provider.

Section 16. Access to Subcontractor's Records. If a hospital has a contract with a subcontractor for services costing or valued at \$10,000 or more over a twelve (12) month period:

(1) The contract shall contain a provision granting the department access:

(a) To the subcontractor's financial information; and

(b) In accordance with 907 KAR 1:672; and

(2) Access shall be granted to the department for a subcontract between the subcontractor and an organization related to the subcontractor.

Section 17. New Provider, Change of Ownership, or Merged Facility. (1)(a) The department shall reimburse a new acute care hospital based on the Medicare IPPS Final Rule Data Files and Tables inputs described in this administrative regulation in effect at the time of the hospital's enrollment with the Medicaid program.

(b) If applicable rate information does not exist in the Medicare IPPS Final Rule Data Files and Tables for a given period for an in-state acute care hospital, the department shall use, for the in-state acute care hospital, the average of all in-state acute care hospitals for the operating rate, capital rate, and outlier cost-to-charge ratio, excluding any adjustments made for sole community hospitals or Medicare dependent hospitals.

(2) If a hospital undergoes a change of ownership, the new owner shall continue to be reimbursed at the rate in effect at the time of the change of ownership.

Section 18. Department reimbursement for inpatient hospital care shall not exceed the upper payment limit established in 42 C.F.R. 447.271 or 447.272.

Section 19. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse in accordance with this administrative regulation for a service covered pursuant to:

(1) 907 KAR 10:012; and

(2) This administrative regulation.

Section 20. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

Section 21. Matters Subject to an Appeal. A hospital may appeal whether the Medicare data specific to the hospital that was extracted by the department in establishing the hospital's reimbursement was the correct data.

Section 22. Appeal Process. (1) An appeal shall comply with the requirements and provisions established in this section.

(2)(a) A request for a review of an appealable issue shall be

received by the department within sixty (60) calendar days of the date of receipt by the provider of the department's notice of rates set under this administrative regulation.

(b) The request referenced in paragraph (a) of this subsection shall:

1. Be sent to the Office of the Commissioner, Department for Medicaid Services, Cabinet for Health and Family Services, 275 East Main Street, 6th Floor, Frankfort, Kentucky 40621-0002; and

2. Contain the specific issues to be reviewed with all supporting documentation necessary for the departmental review.

(3)(a) The department shall review the material referenced in subsection (2) of this section and notify the provider of the review results within thirty (30) days of its receipt except as established in paragraph (b) of this subsection.

(b) If the provider requests a review of a non-appealable issue under this administrative regulation, the department shall:

1. Not review the request; and

2. Notify the provider that the review is outside of the scope of this section.

(4)(a) A provider may appeal the result of the department's review, except for a notification that the review is outside the scope of this section, by sending a request for an administrative hearing to the Office of the Ombudsman and Administrative Review~~[Division for Administrative Hearings (DAH)]~~ within thirty (30) days of receipt of the department's notification of its review decision.

(b) A provider shall not appeal a notification that a review is outside of the scope of this section.

(5)(a) An administrative hearing shall be conducted in accordance with KRS Chapter 13B.

(b) Pursuant to KRS 13B.030, the secretary of the Cabinet for Health and Family Services delegates to the Cabinet for Health and Family Services, Office of the Ombudsman and Administrative Review~~[Division for Administrative Hearings (DAH)]~~ the authority to conduct administrative hearings under this administrative regulation.

(c) A notice of the administrative hearing shall comply with KRS 13B.050.

(d) The administrative hearing shall be held in Frankfort, Kentucky no later than ninety (90) calendar days from the date the request for the administrative hearing is received by the Office of the Ombudsman and Administrative Review~~[DAH]~~.

(e) The administrative hearing date may be extended beyond the ninety (90) calendar days by:

1. A mutual agreement by the provider and the department; or

2. A continuance granted by the hearing officer.

(f)1. If the prehearing conference is requested, it shall be held at least thirty (30) calendar days in advance of the hearing date.

2. Conduct of the prehearing conference shall comply with KRS 13B.070.

(g) If a provider does not appear at the hearing on the scheduled date, the hearing officer may find the provider in default pursuant to KRS 13B.050(3)(h).

(h) A hearing request shall be withdrawn only under the following circumstances:

1. The hearing officer receives a written statement from a provider stating that the request is withdrawn; or

2. A provider makes a statement on the record at the hearing that the provider is withdrawing the request for the hearing.

(i) Documentary evidence to be used at the hearing shall be made available in accordance with KRS 13B.090.

(j) The hearing officer shall:

1. Preside over the hearing; and

2. Conduct the hearing in accordance with KRS 13B.080 and 13B.090.

(k) The provider shall have the burden of proof concerning the appealable issues under this administrative regulation.

(l)1. The hearing officer shall issue a recommended order in accordance with KRS 13B.110.

2. An extension of time for completing the recommended order shall comply with the requirements of KRS 13B.110(2) and (3).

(m)1. A final order shall be entered in accordance with KRS 13B.120.

2. The cabinet shall maintain an official record of the hearing in compliance with KRS 13B.130.

3. In the correspondence transmitting the final order, clear reference shall be made to the availability of judicial review pursuant to KRS 13B.140, 13B.150, and 13B.160.

~~Section 23. [Effective Date. This administrative regulation shall become effective on October 1, 2015.]~~

~~Section 24.] Incorporation by Reference. (1) The following material is incorporated by reference:~~

(a) "Supplemental Medicaid Schedule KMAP-1"; 2013;

(b) "Supplemental Medicaid Schedule KMAP-4"; 2013;

(c) "Supplemental Medicaid Schedule KMAP-6"; 2013; and

(d) "CMS Manual System Pub 100-03 Medicare National Coverage Determinations Transmittal 101", June 12, 2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law:

(a) At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at <https://chfs.ky.gov/agencies/dms/Pages/regsmaterials.aspx> [<http://www.chfs.ky.gov/dms/incorporated.htm>].

CAROL H. STECKEL, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 17, 2019

FILED WITH LRC: June 19, 2019 at 10 a.m.

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; Phone: 502-564-6746; Fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services (DMS) reimbursement provisions and requirements for care provided by inpatient acute care hospitals to Medicaid recipients who are not enrolled with a managed care organization. Managed care organizations are not required to reimburse in the same manner as DMS for services provided by an inpatient acute care hospital.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS's reimbursement provisions and requirements for care provided by inpatient acute care hospitals to Medicaid recipients who are not enrolled with a managed care organization.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing a reimbursement model for care provided by inpatient acute care hospitals to Medicaid that will be able to pay claims following international adoption of ICD-10.

(d) How this administrative regulation currently assists or shall assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing a reimbursement model for care provided by inpatient acute care hospitals to Medicaid.

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

(a) How the amendment shall change this existing administrative regulation: The amendments change the administrative regulation by implementing changes to the graduate medical education and indirect medical education reimbursement programs. The amendments establish a new methodology for calculating an indirect medical education payment that will be directed to certain hospitals. A new supplemental direct graduate medical education payment is also established and implemented to clarify which hospitals are eligible for supplemental DGME, and

how the payments shall be made and calculated.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to implement new payment methodologies for certain hospitals. The enhanced payment methodology will enable hospitals to sustain and enhance services provided to Medicaid beneficiaries.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by securing and strengthening the hospital network providing care to some of the most vulnerable Kentucky residents, which includes Medicaid beneficiaries.

(d) How the amendment shall assist in the effective administration of the statutes: The amendments assist in the effective administration of the statutes by complying with federal and state mandates, and by implementing approved state plan amendments.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The amendment applies to all inpatient acute care hospitals. Currently, there are approximately sixty-five (65) acute care hospitals participating in the Kentucky Medicaid program. Two (2) state university hospitals and hospitals with which the state university teaching hospitals have affiliation agreements for graduate medical education will be directly affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) shall 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) shall have to take to comply with this administrative regulation or amendment. Hospitals will continue to need to annually submit cost report related documents to DMS.

(b) In complying with this administrative regulation or amendment, how much shall it cost each of the entities identified in question (3): This amendment imposes no cost on the regulated entities.

(c) As a result of compliance, what benefits shall accrue to the entities identified in question (3): Acute care inpatient hospitals will benefit from being able to potentially receive increased reimbursement for graduate medical education and indirect medical education programs.

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

(a) Initially: DMS anticipates no additional costs to the department to implement this administrative regulation as the state matching funds are being provided by the state university teaching hospitals.

(b) On a continuing basis: DMS anticipates no additional costs to the department to implement this administrative regulation as the state matching funds are being provided by the state university teaching hospitals.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching funds.

(7) Provide an assessment of whether an increase in fees or funding shall be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding shall be necessary to implement the amendment to this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is applied in that different reimbursement methodologies are utilized in relation to different hospital type. In addition in-state and out-of-state hospitals receive different reimbursement. However, the amendment applies equally to all regulated entities within each hospital type.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(30) and 42 C.F.R. 447.205.

2. State compliance standards. KRS 205.520(3) states, "to qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Medicaid reimbursement for services is required to be consistent with efficiency, economy and quality of care and be sufficient to attract enough providers to assure access to services. 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "... provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area." 42 C.F.R. 447.205 mandates that the state provide public notice of reimbursement changes.

4. Shall this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment does not impose stricter than federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The policy is not stricter than the federal standard.

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) shall be impacted by this administrative regulation? The Department for Medicaid Services (DMS) shall be impacted by the amendment.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(2), and 42 U.S.C. 1396a(a)(30).

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 shall this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS anticipates that these amendments will generate no additional revenue in the first year.

(b) How much revenue shall this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS anticipates that this administrative regulation will generate no additional revenue in the second year.

(c) How much shall it cost to administer this program for the first year? The amendment does not result in additional costs to the Department for Medicaid Services for the first year.

(d) How much shall it cost to administer this program for subsequent years? The amendment does not result in additional costs to the Department for Medicaid Services for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**STATEMENT OF EMERGENCY
907 KAR 15:005E**

This emergency administrative regulation is being promulgated to implement needed changes to terms used throughout the behavioral health administrative regulations administered by the department. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)1. to meet an imminent threat to public health and pursuant to KRS 13A.190(1)(a)2. to prevent a loss of federal funds. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is not identical to this emergency administrative regulation, as this emergency administrative regulation includes an additional Section 2 to establish an implementation date of July 1, 2019.

MATTHEW G. BEVIN, Governor
ADAM M. MEIER, Secretary

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(Emergency Amendment)**

907 KAR 15:005E. Definitions for 907 KAR Chapter 15.

RELATES TO: KRS 194A.025(3), 205.510(11), 205.8451, 309.080, 309.130(2), (3), 311.840(3), 314.011(5), (7), 319.053, 319.056, 319.064, 319C.010(6), (7), 335.080, 335.100, 335.300(2), (3), 335.500(3), (4), 42 C.F.R. 400.203, 438.2, 441.540, 29 U.S.C. 794

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.6311, 42 U.S.C. 1396a

EFFECTIVE: June 28, 2019

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the definitions for 907 KAR Chapter 15.

Section 1. Definitions. (1) "Adult peer support specialist" means an individual who meets the requirements for an adult peer support specialist established in 908 KAR 2:220.

(2) "Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7).

(3) "Approved behavioral health practitioner[services provider]" means an independently licensed[a] practitioner who is:

- (a) A physician;
- (b) A psychiatrist;
- (c) An advanced practice registered nurse;
- (d) A physician assistant;
- (e) A licensed psychologist;
- (f) A licensed psychological practitioner;
- (g) A certified psychologist with autonomous functioning;
- (h) A licensed clinical social worker;
- (i) A licensed professional clinical counselor;
- (j) A licensed marriage and family therapist;
- (k) ~~A licensed psychological associate working under the supervision of a board-approved licensed psychologist;~~
- (l) ~~A certified psychologist working under the supervision of a board-approved licensed psychologist;~~
- (m) ~~A marriage and family therapy associate working under the supervision of a billing supervisor;~~
- (n) ~~A certified social worker working under the supervision of a billing supervisor;~~
- (o) ~~A licensed professional counselor associate working under the supervision of a billing supervisor;~~
- (p) ~~A licensed professional art therapist;~~
- (q) ~~A licensed professional art therapist associate working under the supervision of a billing supervisor;~~

~~(r) A licensed clinical alcohol and drug counselor; or~~
~~(m) [(s) A licensed clinical alcohol and drug counselor associate working under the supervision of a billing supervisor;~~

~~(t) A certified alcohol and drug counselor working under the supervision of a billing supervisor;~~

~~(u) A licensed behavior analyst; or~~

~~(v) A licensed assistant behavior analyst working under the supervision of a billing supervisor].~~

(4) "Approved behavioral health practitioner under supervision" means an individual under billing supervision of an approved behavioral health practitioner who is:

(a)1. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;

2. A certified psychologist working under the supervision of a board-approved licensed psychologist;

3. A marriage and family therapy associate;

4. A certified social worker;

5. A licensed professional counselor associate;

6. A licensed professional art therapist associate;

7. A licensed clinical alcohol and drug counselor associate;

8. A certified alcohol and drug counselor; or

9. A licensed assistant behavior analyst; and

(b) Employed by or under contract with the same billing provider as the billing supervisor.

(5) "ASAM Criteria" means the most recent edition of "The ASAM Criteria, Treatment Criteria for Addictive, Substance-Related, and Co-Occurring Conditions" published by the American Society of Addiction Medicine.

(6) "Behavioral health multi-specialty group" means a group of more than one (1) individually licensed behavioral health practitioners of varying practitioner types who form a business entity to:

(a) Render behavioral health services; and

(b) Bill the Medicaid Program for services rendered to Medicaid recipients.

~~(7) [(5) "Behavioral health practitioner under supervision" means an individual who is:~~

~~(a)1. A licensed psychological associate;~~

~~2. A licensed professional counselor associate;~~

~~3. A licensed clinical alcohol and drug counselor associate;~~

~~4. A certified social worker;~~

~~5. A marriage and family therapy associate;~~

~~6. A licensed professional art therapist associate;~~

~~7. A licensed assistant behavior analyst;~~

~~8. A certified psychologist; or~~

~~9. A certified alcohol and drug counselor; and~~

~~(b) Employed by or under contract with the same billing provider as the billing supervisor.~~

(6) "Behavioral health provider group" means a group of more than one (1) individually licensed behavioral health practitioners of the same practitioner type who form a business entity to:

(a) Render behavioral health services; and

(b) Bill the Medicaid Program for services rendered to Medicaid recipients.

~~(8) [(7)] "Behavioral health services organization" means an entity that is licensed as a behavioral health services organization pursuant to;~~

(a) 902 KAR 20:430 for a behavioral health services organization tier I (BHSO I);

(b) 908 KAR 3:170 and 908 KAR 3:174 for a behavioral health services organization tier II (BHSO II); or

(c) 908 KAR 3:170 and 908 KAR 3:172 for a behavioral health services organization tier III (BHSO III).

~~(9) [(8)] "Billing provider" means the individual[who], group of individual providers[that], or organization that:~~

~~(a) Is authorized to bill the department or a managed care organization for a service; and~~

~~(b) Is eligible to be reimbursed by the department or a managed care organization for a service.~~

~~(10) [(9)] "Billing supervisor" means an individual who is:~~

~~(a)1. A physician;~~

~~2. A psychiatrist;~~

~~3. An advanced practice registered nurse;~~

4. A physician assistant;

5. A licensed clinical alcohol and drug counselor;

6.[5.] A licensed psychologist;

7.[6.] A licensed clinical social worker;

8.[7.] A licensed professional clinical counselor;

9.[8.] A licensed psychological practitioner;

10.[9.] A certified psychologist with autonomous functioning;

11.[40.] A licensed marriage and family therapist;

12.[41.] A licensed professional art therapist; or

13.[42.] A licensed behavior analyst; and

(b) Employed by or under contract with the same billing provider as the behavioral health practitioner under supervision who renders services under the supervision of the billing supervisor.

(11)[(40)] "Certified alcohol and drug counselor" is defined by KRS 309.080(2).

(12)[(41)] "Certified psychologist" means an individual who is a certified psychologist pursuant to KRS 319.056.

(13)[(42)] "Certified psychologist with autonomous functioning" means an individual who is a certified psychologist with autonomous functioning pursuant to KRS 319.056.

(14)[(43)] "Certified social worker" means an individual who meets the requirements established in KRS 335.080.

(15)[(44)] "Chemical dependency treatment center" means an entity that is licensed as a chemical dependency treatment center pursuant to 902 KAR 20:160.

(16)[(45)] "Community support associate" means a paraprofessional who meets the application, training, and supervision requirements of 908 KAR 2:250.

(17) "Co-occurring disorder" means a mental health and substance use disorder.

(18)[(46)] "Department" means the Department for Medicaid Services or its designee.

(19)[(47)] "Electronic signature" is defined by KRS 369.102(8).

(20)[(48)] "Enrollee" means a recipient who is enrolled with a managed care organization.

(21)[(49)] "Face-to-face" means occurring[
(a) in person[; or

(b) If authorized by 907 KAR 3:170, via a real-time, electronic communication that involves two (2) way interactive video and audio communication].

(22)[(20)] "Family peer support specialist" means an individual who meets the requirements for a Kentucky family peer support specialist established in 908 KAR 2:230.

(23)[(24)] "Federal financial participation" is defined by 42 C.F.R. 400.203.

(24)[(22)] "Healthcare common procedure coding system" or "HCPCS" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services (CMS) that represents procedures or items.

(25)[(23)] "Kentucky-specific Medicare Physician Fee Schedule" means the list or process by which[~~of~~] current reimbursement rates for physician services are established or published by the department[~~in accordance with 907 KAR 3:040, Section 3~~].

(26)[(24)] "Level I psychiatric residential treatment facility" means an entity that is licensed as a Level I psychiatric residential treatment facility pursuant to 902 KAR 20:320.

(27)[(25)] "Level II psychiatric residential treatment facility" means an entity that is licensed as a Level II psychiatric residential treatment facility pursuant to 902 KAR 20:320.

(28)[(26)] "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).

(29)[(27)] "Licensed behavior analyst" is defined by KRS 319C.010(6).

(30)[(28)] "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(4).

(31)[(29)] "Licensed clinical alcohol and drug counselor associate" is defined by KRS 309.080(5).

(32)[(30)] "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.

(33)[(31)] "Licensed marriage and family therapist" is defined

by KRS 335.300(2).

(34)[(32)] "Licensed professional art therapist" is defined by KRS 309.130(2).

(35)[(33)] "Licensed professional art therapist associate" is defined by KRS 309.130(3).

(36)[(34)] "Licensed professional clinical counselor" is defined by KRS 335.500(3).

(37)[(35)] "Licensed professional counselor associate" is defined by KRS 335.500(4).

(38)[(36)] "Licensed psychological associate" means an individual who meets the requirements established in KRS 319.064.

(39)[(37)] "Licensed psychological practitioner" means an individual who meets the requirements established in KRS 319.053.

(40)[(38)] "Licensed psychologist" means an individual who currently possesses a licensed psychologist license in accordance with KRS 319.010(6).

(41)[(39)] "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined by 42 C.F.R. 438.2.

(42)[(40)] "Marriage and family therapy associate" is defined by KRS 335.300(3).

(43)[(41)] "Medicaid-covered service" means a service covered by the department as established in Title 907 of the Kentucky Administrative Regulations.

(44)[(42)] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(45) "Medication assisted treatment" means the treatment of a substance use disorder with approved medications in combination with counseling, behavioral therapies, and other supports.

(46)[(43)] "Physician" is defined by KRS 205.510(11).

(47)[(44)] "Physician assistant" is defined by KRS 311.840(3).

(48) "Practitioner working under supervision" means:

(a) An approved behavioral health practitioner under supervision;

(b) A registered behavioral health technician;

(c) A community support associate; or

(d) A peer support specialist.

(49)[(45)] "Provider" is defined by KRS 205.8451(7).

(50)[(46)] "Provider abuse" is defined by KRS 205.8451(8).

(51)[(47)] "Psychiatric hospital" means an entity licensed as a psychiatric hospital pursuant to 902 KAR 20:180.

(52)[(48)] "Recipient" is defined by KRS 205.8451(9).

(53)[(49)] "Recipient abuse" is defined by KRS 205.8451(10).

(54)[(50)] "Recipient's representative" means:

(a) For a recipient who is authorized by Kentucky law to provide written consent, an individual acting on behalf of, and with written consent from, the recipient; or

(b) A legal guardian.

(55)[(51)] "Registered alcohol and drug peer support specialist" is defined by KRS 309.080(8).

(56) "Registered behavioral technician" means an individual who meets the following requirements provided by the Behavior Analyst Certification Board:

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

(b) Have a high school diploma or its equivalent;

(c) Complete a training program approved by the Behavior Analyst Certification Board conducted by Behavior Analyst Certification Board certificants;

(d) Pass the Registered Behavior Technician Competency Assessment administered by a Behavior Analyst Certification Board certificant; and

(e) Pass the Registered Behavior Technician exam provided by the Behavior Analyst Certification Board.

(57)[(52)] "Registered nurse" is defined by KRS 314.011(5).

(58)[(53)] "Residential crisis stabilization unit" means an entity that is licensed as a residential crisis stabilization unit pursuant to 902 KAR 20:440.

(59)[(54)] "Section 504 plan" means a plan developed:

(a) Under the auspices of Section 504 of the Rehabilitation Act

of 1973, as amended, 29 U.S.C. 794 (Section 504); and

(b) To ensure that a child who has a disability identified under the law and is attending an elementary or secondary educational institution receives accommodations to ensure the child's academic success and access to the learning environment.

(60) "Telehealth" is defined by KRS 205.510(15).

(61) "Withdrawal management" means a set of interventions aimed at managing acute intoxication and withdrawal based on the severity of the illness and co-occurring conditions identified through a comprehensive biopsychosocial assessment with linkage to addiction management services, and incorporated into a recipient's care as needed throughout the appropriate levels of care.

(62) [(65)] "Youth peer support specialist" means an individual who meets the requirements established for a Kentucky youth peer support specialist established in 908 KAR 2:240.

Section 2. Delayed Implementation Date. The provisions of this administrative regulation shall be implemented beginning July 1, 2019.

CAROL H. STECKEL, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 13, 2019

FILED WITH LRC: June 28, 2019 at 4 p.m.

Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, KY 40621; phone: 502-564-6746; fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonthant.scott@ky.gov; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the definitions for administrative regulations located in 907 KAR Chapter 15. Chapter 15 contains Medicaid administrative regulations regarding behavioral health services (treatment of mental health disorders as well as of substance use disorders) provided by independently enrolled behavioral health professionals, behavioral health service organizations, behavioral health provider groups, behavioral health multi-specialty groups, chemical dependency treatment centers, and residential crisis stabilization units.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the definitions for administrative regulations located in 907 KAR Chapter 15. Chapter 15 contains Medicaid administrative regulations regarding behavioral health services (treatment of mental health disorders as well as of substance use disorders) provided by independently enrolled behavioral health professionals, behavioral health service organizations, behavioral health provider groups, behavioral health multi-specialty groups, chemical dependency treatment centers, and residential crisis stabilization units. Medicaid programs are federally-mandated to cover behavioral health services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the definitions for administrative regulations located in 907 KAR Chapter 15.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing the definitions for administrative regulations located in 907 KAR Chapter 15.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation add definitions for the following: "approved behavioral health professional under supervision", "ASAM Criteria", "co-occurring disorder", "medication assisted treatment", "practitioner working under supervision", "registered behavior technician", "telehealth",

and "withdrawal management". Definitions for "approved behavioral health practitioner", "behavioral health services organization", and "face-to-face" have been expanded to reflect changes to 907 KAR 15:010, 15:020, and a new administrative regulation 907 KAR 15:022.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to clarify and expand terms used throughout 907 KAR Chapter 15. Amendments are being instituted in various places of 907 KAR Chapter 15 in order to implement 2018's HB 124 and an SUD 1115 Waiver for Kentucky HEALTH. The new terms also will assist in consolidating the length of certain administrative regulations in 907 KAR Chapter 15.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to the content of the authorizing statutes by clarifying and expanding terms used throughout 907 KAR Chapter 15.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist in the effective administration of the authorizing statutes by clarifying and expanding terms used throughout 907 KAR Chapter 15.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The following Medicaid-enrolled providers will be affected by this administrative regulation: individual Medicaid- behavioral health providers, behavioral health provider groups and multi-specialty groups, behavioral health services organizations, chemical dependency treatment centers, and residential crisis stabilization units. There are currently over 2,200 such individuals or entities enrolled in the Medicaid program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: As appropriate, providers may need to refer to this administrative regulation to clarify terms used in other administrative regulations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Providers and provider groups will not incur additional costs as a result of the changes to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Providers and provider groups will benefit due to the additional clarity provided by the amendments and new definitions included in this updated administrative regulation.

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

(a) Initially: No cost is necessary to implement the amendments to this administrative regulation.

(b) On a continuing basis: No cost is necessary to implement the amendments to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and state matching funds comprised of general fund and restricted fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding are necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor directly or indirectly increases any fees.

(9) Tiering: Is tiering applied? Tiering is applied to the extent that behavioral health services organizations are now separated depending on whether services are provided for only mental health, outpatient substance use disorder, or residential substance

VOLUME 46, NUMBER 2– AUGUST 1, 2019

use disorder services. However, within each tier of services the requirements apply equally to all providers.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate to define terms in an administrative regulation.

2. State compliance standards. KRS 194A.030(2) states, "The Department for Medicaid Services shall serve as the single state agency in the Commonwealth to administer Title XIX of the Federal Social Security Act."

KRS 205.6311 requires the Department for Medicaid Services to "promulgate administrative regulations. ... to expand the behavioral health network to allow providers to provide services within their licensure category."

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate to define terms in an administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.6311, 42 U.S.C. 1396a.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The department anticipates that these amendments will generate no new 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 department projects that these amendments will generate no new revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The department projects no additional costs in order to implement this administrative regulation in the first year.

(d) How much will it cost to administer this program for subsequent years? The department projects no additional costs in order to implement this administrative regulation in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other explanation:

STATEMENT OF EMERGENCY 907 KAR 15:010E

This emergency administrative regulation is being promulgated to implement state and federal changes to services provided by behavioral health provider groups and behavioral health multi-specialty groups. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)1. to meet an imminent

threat to public health and pursuant to KRS 13A.190(1)(a)2. to prevent a loss of federal funds. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is not identical to this emergency administrative regulation, as this emergency administrative regulation includes an additional Section 13 to establish an implementation date of July 1, 2019.

MATTHEW G. BEVIN, Governor

ADAM M. MEIER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Policy and Operations (Emergency Amendment)

907 KAR 15:010E. Coverage provisions and requirements regarding behavioral health services provided by individual approved behavioral health practitioners[providers], behavioral health provider groups, and behavioral health multi-specialty groups.

RELATES TO: KRS 205.520, Chapter 319, 369.101-369.120, 42 C.F.R. Part 2, 431.17, 45 C.F.R. Parts 160, 164, 20 U.S.C. 1400 et seq., 29 U.S.C. 701 et seq., 42 U.S.C. 290ee-3, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23), 12101 et seq., 1320d-2 - 1320d-8

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6311

EFFECTIVE: June 28, 2019

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program behavioral health services provided by certain licensed individual behavioral health professionals who are independently enrolled in the Medicaid Program, practitioners working for or under the supervision of the individual behavioral health providers, and individual behavioral health professionals and practitioners under supervision working in behavioral health provider groups or in behavioral health multi-specialty groups.

Section 1. General Coverage Requirements. (1) For the department to reimburse for a service covered under this administrative regulation, the service shall:

(a) Be medically necessary;

(b) Meet the coverage requirements established in Section 3 of this administrative regulation;

(c) Be provided to a recipient by:

1. An individual approved behavioral health practitioner[provider] who:

a. Is enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

b. Except as established in Section 2(1) of this administrative regulation, currently participates in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; and

c. Is an approved behavioral health practitioner:

(i) A physician;

(ii) A psychiatrist;

(iii) An advanced practice registered nurse;

(iv) A physician assistant;

(v) A licensed psychologist;

(vi) A licensed psychological practitioner;

(vii) A certified psychologist with autonomous functioning;

(viii) A licensed clinical social worker;

(ix) A licensed professional clinical counselor;

(x) A licensed marriage and family therapist;

(xi) A licensed professional art therapist;

(xii) A licensed clinical alcohol and drug counselor; or

(xiii) A licensed behavior analyst;

2. ~~An[Any of the] individual approved behavioral health practitioner[professionals listed in subparagraph 1.c. of this paragraph]~~ who is working for:

a. A behavioral health provider group that is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; or

b. A behavioral health multi-specialty group that is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;

3. An approved[A] behavioral health practitioner under supervision working for:

a. An individual approved behavioral health practitioner[professional listed in subparagraph 1.c. of this paragraph] who is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;

b. A behavioral health provider group that is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; or

c. A behavioral health multi-specialty group that is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;

4. ~~[A certified psychologist working under the supervision of a board-approved licensed psychologist who is:~~

~~a. (i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and~~

~~(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;~~

~~b. Working for a behavioral health provider group that is:~~

~~(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and~~

~~(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; or~~

~~c. Working for a behavioral health multi-specialty group that is:~~

~~(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and~~

~~(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; or~~

5.] An adult peer support specialist, family peer support specialist, youth peer support specialist, or registered alcohol and drug peer support specialist working for:

a. ~~[Any of the individual behavioral health professionals listed in subparagraph 1.c. of this paragraph who is:~~

~~(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and~~

~~(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;~~

b.] A behavioral health provider group that is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; or

b.[c.] A behavioral health multi-specialty group that is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; or

5. A community support associate working for a behavioral health multi-specialty group that is:

a. Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

b. Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; and

(d) Be billed to the department by the:

1. Individual approved behavioral health practitioner[provider] who provided the service or under whose supervision the service was rendered in accordance with Section 3 of this administrative regulation;

2. Behavioral health provider group on behalf of which the service was rendered in accordance with Section 3 of this administrative regulation; or

3. Behavioral health multi-specialty group on behalf of which the service was rendered in accordance with Section 3 of this administrative regulation.

(2)(a) Direct[Face-to-face] contact between a provider or practitioner and a recipient shall be required for each service except for:

1. Collateral outpatient therapy for a child under the age of twenty-one (21) years if the collateral outpatient therapy is in the child's plan of care;

2. A family outpatient therapy service in which the corresponding current procedural terminology code establishes that the recipient is not present;

3. A psychological testing service comprised of interpreting or explaining results of an examination or data to family members or others in which the corresponding current procedural terminology code establishes that the recipient is not present; or

4. A service planning activity in which the corresponding current procedural terminology code establishes that the recipient is not present.

(b) A service that does not meet the requirement in paragraph (a) of this subsection shall not be covered.

(3) A billable unit of service shall be actual time spent delivering a service in an[a face-to-face] encounter.

(4) A service shall be:

(a) Stated in a recipient's plan of care; and

(b) Provided in accordance with a recipient's plan of care.

(5)(a) A provider shall establish a plan of care for each recipient receiving services from the provider.

(b) A plan of care shall:

1. Describe the services to be provided to the client, including the frequency of services;

2. Contain measurable goals for the client to achieve, including the expected date of achievement for each goal;

3. Describe the client's functional abilities and limitations, or diagnosis listed in the current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders;

4. Specify each staff member assigned to work with the client;

5. Identify methods of involving the client's family or significant others if indicated;

6. Specify criteria to be met for termination of treatment;

7. Include any referrals necessary for services not provided directly by that provider; and

8. Include the date scheduled for review of the plan.

(c) A separate plan of care shall be established for each recipient receiving services for substance use disorder treatment in accordance with the plan of care requirements established in 908 KAR 1:370, Section 19.

Section 2. Provider Participation. (1) In accordance with 907 KAR 17:015, Section 3(3), a provider of a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

(2) A provider shall:

(a) Agree to provide services in compliance with federal and state laws regardless of age, sex, race, creed, religion, national origin, handicap, or disability; and

(b) Comply with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments to the Act.

(3) A behavioral health multi-specialty group that is providing services for substance use disorder or co-occurring disorders shall possess an alcohol and other drug entity license pursuant to 908 KAR 3:170 and 908 KAR 3:174.

(4)(a) A physician providing behavioral health services in a behavioral health multi-specialty group shall possess a psychiatric or addictionology specialty.

(b) An advanced practice registered nurse providing services in a behavioral health multi-specialty group shall possess a psychiatric or addictionology specialty.

(c) A physician assistant providing behavioral health services in a behavioral health multi-specialty group shall have a contractual relationship with a supervising physician with psychiatric or addictionology specialty.

Section 3. Covered Services. (1) Except as specified in the requirements stated for a given service, the services covered may be provided for a:

(a) Mental health disorder;

(b) Substance use disorder; or

(c) Co-occurring mental health and substance use disorders.

(2)[The following] Services shall be covered under this administrative regulation in accordance with the requirements established in this section[:

(a) A screening provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A physician assistant;

9. A licensed psychological practitioner;

10. A certified psychologist with autonomous functioning;

11. A licensed clinical and alcohol drug counselor;

12. A licensed professional art therapist; or

13. A behavioral health practitioner under supervision except for a licensed assistant behavior analyst;

(b) An assessment provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A physician assistant;

9. A licensed psychological practitioner;

10. A certified psychologist with autonomous functioning;

11. A licensed behavior analyst;

12. A licensed clinical alcohol and drug counselor;

13. A licensed professional art therapist; or

14. A behavioral health practitioner under supervision;

(c) Psychological testing provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner;

3. A licensed psychological associate;

4. A certified psychologist with autonomous functioning; or

5. A certified psychologist;

(d) Service planning provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A physician assistant;

9. A licensed psychological practitioner;

10. A certified psychologist with autonomous functioning;

11. A licensed professional art therapist;

12. A licensed behavior analyst; or

13. A behavioral health practitioner under supervision except for a:

a. Certified alcohol and drug counselor; or

b. Licensed clinical alcohol and drug counselor associate;

(e) Individual outpatient therapy, group outpatient therapy, collateral outpatient therapy, or crisis intervention services provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A physician assistant;

9. A licensed psychological practitioner;

10. A certified psychologist with autonomous functioning;

11. A licensed professional art therapist;

12. A licensed behavior analyst;

13. A licensed clinical alcohol and drug counselor; or

14. A behavioral health practitioner under supervision;

(f) Family outpatient therapy provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A physician assistant;

9. A licensed psychological practitioner;

10. A certified psychologist with autonomous functioning;

11. A licensed professional art therapist;

12. A licensed clinical alcohol and drug counselor; or

13. A behavioral health practitioner under supervision except for a licensed assistant behavior analyst;

(g) A screening, brief intervention, and referral to treatment for a substance use disorder or SBIRT provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A physician assistant;

9. A licensed psychological practitioner;

10. A certified psychologist with autonomous functioning;

11. A licensed professional art therapist;

12. A licensed clinical alcohol and drug counselor; or

13. A behavioral health practitioner under supervision except for a licensed assistant behavior analyst;

(h) Day treatment provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A physician assistant;

9. A licensed psychological practitioner;

10. A certified psychologist with autonomous functioning;

11. A licensed professional art therapist;

12. A licensed behavior analyst;

13. A behavioral health practitioner under supervision;

14. An adult peer support specialist, family peer support

specialist, or youth peer support specialist working under the supervision of an approved behavioral health services provider;

15. A registered alcohol and drug peer support specialist working under the supervision of an approved behavioral health services provider; or

16. A licensed clinical alcohol and drug counselor;

(i) Comprehensive community support services provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A physician assistant;

9. A licensed psychological practitioner;

10. A certified psychologist with autonomous functioning;

11. A licensed professional art therapist;

12. A licensed behavior analyst; or

13. A behavioral health practitioner under supervision except for a:

a. Certified alcohol and drug counselor; or

b. Licensed clinical alcohol and drug counselor associate;

(j) Peer support, except as established in subsection (3)(a) of this section, provided by:

1. An adult peer support specialist working under the supervision of an approved behavioral health service provider;

2. A youth peer support specialist working under the supervision of an approved behavioral health service provider;

3. A family peer support specialist working under the supervision of an approved behavioral health services provider; or

4. A registered alcohol and drug peer support specialist working under the supervision of an approved behavioral health services provider;

(k) Intensive outpatient program services, except as established in subsection (3)(b) of this section, provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A physician assistant;

9. A licensed psychological practitioner;

10. A behavioral health practitioner under supervision, except for a licensed assistant behavioral analyst;

11. A licensed professional art therapist; or

12. A licensed clinical alcohol and drug counselor; or

(l) Therapeutic rehabilitation program services provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A physician assistant;

9. A licensed psychological practitioner;

10. A certified psychologist with autonomous functioning;

11. A licensed professional art therapist;

12. A behavioral health practitioner under supervision except for a:

a. Certified alcohol and drug counselor;

b. Licensed clinical alcohol and drug counselor associate; or

c. Licensed assistant behavior analyst; or

13. An adult peer support specialist, family peer support specialist, or youth peer support specialist working under the supervision of an approved behavioral health services provider.

(3)(a) Peer support shall only be covered if provided by a behavioral health:

1. Provider group; or

2. Multi-specialty group.

(b) Intensive outpatient program services shall only be covered if provided by a behavioral health:

1. Provider group; or

2. Multi-specialty group].

(3)[(4)](a) A screening shall:

1. Determine the likelihood that an individual has a mental health disorder, substance use disorder, or co-occurring disorders;

2. Not establish the presence or specific type of disorder; [and]

3. Establish the need for an in-depth assessment;

4. Be provided face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170;

5. Be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(b) An assessment shall:

1. Include gathering information and engaging in a process with the individual that enables the provider to:

a. Establish the presence or absence of a mental health disorder, substance use disorder, or co-occurring disorders;

b. Determine the individual's readiness for change;

c. Identify the individual's strengths or problem areas that may affect the treatment and recovery processes; and

d. Engage the individual in developing an appropriate treatment relationship;

2. Establish or rule out the existence of a clinical disorder or service need;

3. Include working with the individual to develop a treatment and service plan; [and]

4. Not include psychological or psychiatric evaluations or assessments;

5. Be provided face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170;

6. If being made for the treatment of a substance use disorder, utilize a multidimensional assessment tool that complies with the most current edition of the ASAM Criteria to determine the most appropriate level of care; and

7. Be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision, except for a certified alcohol and drug counselor.

(c) Psychological testing shall:

1. Include:

a. A psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities; and

b. Interpretation and a written report of testing results; [and]

2. Be performed by an individual who has met the requirements of KRS Chapter 319 related to the necessary credentials to perform psychological testing;

3. Be provided face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170; and

4. Be provided by:

a. A licensed psychologist;

b. A licensed psychological practitioner;

c. A licensed psychological associate;

d. A certified psychologist with autonomous functioning; or

e. A certified psychologist.

(d) Crisis intervention:

1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to:

a. The recipient; or

b. Another individual;

2. Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities for individuals;

3. Shall be provided:

a. On-site at the provider's office;

b. As an immediate relief to the presenting problem or threat; and

c. In a face-to-face, one-on-one encounter between the provider and the recipient, including via telehealth as appropriate pursuant to 907 KAR 3:170;

4. May include:
 - a. Further service prevention planning including:
 - (i) Lethal means reduction for suicide risk; or
 - (ii) Substance use disorder relapse prevention; or
 - b. Verbal de-escalation, risk assessment, or cognitive therapy;and
5. Shall be followed by a referral to noncrisis services if applicable; and
6. Shall be provided by:
 - a. An approved behavioral health practitioner; or
 - b. An approved behavioral health practitioner under supervision.
- (e)1. Service planning shall:
 - a. Involve assisting a recipient in creating an individualized plan for services and developing measurable goals and objectives needed for maximum reduction of a mental health disorder, substance use disorder, or co-occurring disorders;
 - b. Involve restoring a recipient's functional level to the recipient's best possible functional level; and
 - c. Be performed using a person-centered planning process.
2. A service plan:
 - a. Shall be directed and signed by the recipient;
 - b. Shall include practitioners of the recipient's choosing; and
 - c. May include:
 - (i) A mental health advance directive being filed with a local hospital;
 - (ii) A crisis plan; or
 - (iii) A relapse prevention strategy or plan.
3. Service planning shall be provided face-to-face.
4. Service planning shall be provided by:
 - a. An approved behavioral health practitioner; or
 - b. An approved behavioral health practitioner under supervision, except for a certified alcohol and drug counselor.
- (f) Individual outpatient therapy shall:
 1. Be provided to promote the:
 - a. Health and well-being of the recipient; and
 - b. Restoration of a recipient to their best possible functional level[Recipient's recovery] from a substance use disorder, mental health disorder, or co-occurring mental health and substance use disorders;
 2. Consist of:
 - a. A face-to-face, one-on-one encounter between the provider and recipient, including via telehealth if appropriate pursuant to 907 KAR 3:170; and
 - b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified plan of care;
 3. Be aimed at:
 - a. Reducing adverse symptoms;
 - b. Reducing or eliminating the presenting problem of the recipient; and
 - c. Improving functioning;and
 4. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary; and
5. Be provided by:
 - a. An approved behavioral health practitioner; or
 - b. An approved behavioral health practitioner under supervision, except for a certified alcohol and drug counselor.
- (g)1. Family outpatient therapy shall consist of a face-to-face or appropriate telehealth, pursuant to 907 KAR 3:170, behavioral health therapeutic intervention provided:
 - a. Through scheduled therapeutic visits between the therapist and the recipient and at least one (1) member of the recipient's family; and
 - b. To address issues interfering with the relational functioning of the family and to improve interpersonal relationships within the recipient's home environment.
2. A family outpatient therapy session shall be billed as one (1) service regardless of the number of individuals (including multiple members from one (1) family) who participate in the session.
3. Family outpatient therapy shall:
 - a. Be provided to promote the:
 - (i) Health and wellbeing of the recipient; and

- (ii) Restoration of a recipient to their best possible functional level[Recipient's recovery] from a substance use disorder, mental health disorder, or co-occurring related disorders; and
 - b. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per individual unless additional time is medically necessary.
4. Family outpatient therapy shall be provided by:
 - a. An approved behavioral health practitioner; or
 - b. An approved behavioral health practitioner under supervision, except for a certified alcohol and drug counselor.
 - (h)1. Group outpatient therapy shall:
 - a. Be a behavioral health therapeutic intervention provided in accordance with a recipient's identified plan of care;
 - b. Be provided to promote the:
 - (i) Health and well-being of the recipient; and
 - (ii) Restoration of a recipient to their best possible functional level[Recipient's recovery] from a substance use disorder, mental health disorder, or co-occurring mental health and substance use disorders;
 - c. Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the recipient's identified plan of care;
 - d. Be provided to a recipient in a group setting:
 - (i) Of nonrelated individuals except for multi-family group therapy; and
 - (ii) Not to exceed twelve (12) individuals in size;
 - e. Focus on the psychological needs of the recipients as evidenced in each recipient's plan of care;
 - f. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;
 - g. Not include physical exercise, a recreational activity, an educational activity, or a social activity; and
 - h. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary.
 2. The group shall have a:
 - a. Deliberate focus; and
 - b. Defined course of treatment.
 3. The subject of group outpatient therapy shall be related to each recipient participating in the group.
 4. The provider shall keep individual notes regarding each recipient within the group and within each recipient's health record.
 5. Group outpatient therapy shall be provided by:
 - a. An approved behavioral health practitioner; or
 - b. An approved behavioral health practitioner under supervision, except for a certified alcohol and drug counselor.
 - (i)1. Collateral outpatient therapy shall:
 - a. Consist of a face-to-face or appropriate telehealth, pursuant to 907 KAR 3:170, behavioral health consultation:
 - (i) With a parent or caregiver of a recipient, household member of a recipient, legal representative of a recipient, school personnel, treating professional, or other person with custodial control or supervision of the recipient; and
 - (ii) That is provided in accordance with the recipient's plan of care; and
 - b. Not be reimbursable if the therapy is for a recipient who is at least twenty-one (21) years of age.
 2. Consent to discuss a recipient's treatment with any person other than a parent or legal guardian shall be signed and filed in the recipient's health record.
 3. Collateral outpatient therapy shall be provided by:
 - a. An approved behavioral health practitioner; or
 - b. An approved behavioral health practitioner under supervision, except for a certified alcohol and drug counselor.
 - (j) Screening, brief intervention, and referral to treatment for a substance use disorder shall:
 1. Be an evidence-based early intervention approach for an individual with non-dependent substance use to provide an effective strategy for intervention prior to the need for more extensive or specialized treatment;and
 2. Consist of:
 - a. Using a standardized screening tool to assess an individual

for risky substance use behavior;

b. Engaging a recipient who demonstrates risky substance use behavior in a short conversation and providing feedback and advice to the recipient; and

c. Referring a recipient to additional mental health disorder, substance use disorder, or co-occurring disorders services if the recipient is determined to need other additional services to address the recipient's substance use;

3. Be provided face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170; and

4. Be provided by:

a. An approved behavioral health practitioner, except for a licensed behavior analyst; or

b. An approved behavioral health practitioner under supervision, except for a licensed assistant behavior analyst.

(k)1. Day treatment shall be a nonresidential, intensive treatment program designed for a child under the age of twenty-one (21) years who has:

a. A mental health disorder, substance use disorder, or co-occurring [mental health and substance use] disorders; and

b. A high risk of out-of-home placement due to a behavioral health issue.

2. Day treatment shall:

a. Consist of an organized, behavioral health program of treatment and rehabilitative services;

b. Include:

(i) Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;

(ii) Behavior management and social skills training;

(iii) Independent living skills that correlate to the age and development stage of the recipient; or

(iv) Services designed to explore and link with community resources before discharge and to assist the recipient and family with transition to community services after discharge; and

c. Be provided:

(i) In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);

(ii) On school days and during scheduled breaks;

(iii) In coordination with the recipient's individualized education program[individual educational plan] if the recipient has an individualized education program [individual educational plan];

(iv) Under the supervision of an approved behavioral health practitioner [services provider]; [and]

(v) With a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider; and

(vi) Face-to-face.

3. To provide day treatment services, a provider shall have:

a. The capacity to employ staff authorized to provide day treatment services in accordance with this section and to coordinate the provision of services among team members; and

b. Knowledge of substance use disorders, mental health disorders, and co-occurring disorders.

4. Day treatment shall not include a therapeutic clinical service that is included in a child's individualized education program[plan].

5. Day treatment shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision, except for a certified alcohol and drug counselor.

6. Day treatment support services conducted by a behavioral health multi-specialty group or a behavioral health provider group by an individual working under the supervision of an approved behavioral health practitioner may be provided by:

a. A registered alcohol and drug peer support specialist;

b. An adult peer support specialist;

c. A family peer support specialist; or

d. A youth peer support specialist.

(l)1. Comprehensive community support services shall:

a. Be activities necessary to allow an individual to live with maximum independence in the community;

b. Be intended to ensure successful community living through

the utilization of skills training as identified in the recipient's plan of care; and

c. Consist of using a variety of psychiatric or behavioral rehabilitation techniques to:

(i) Improve emotional regulation skills;

(ii) Improve crisis coping skills;

(iii) Develop and enhance interpersonal skills;

(iv) Improve daily living skills; and

(v) Improve self-monitoring of symptoms and side effects.

2. To provide comprehensive community support services, a provider shall:

a. Have the capacity to employ staff authorized pursuant to 908 KAR 2:250 to provide comprehensive community support services [in accordance with subsection (2)(i) of this section] and to coordinate the provision of services among team members; and

b. Meet the requirements for comprehensive community support services established in 908 KAR 2:250.

3. Comprehensive community support services shall be provided face-to-face.

4. Comprehensive community support services shall be provided by:

a. An approved behavioral health practitioner, except for a licensed clinical alcohol and drug counselor; or

b. An approved behavioral health practitioner under supervision, except for a:

(i) Certified alcohol and drug counselor; or

(ii) Licensed clinical alcohol and drug counselor associate.

5. Support services for comprehensive community support services conducted by a behavioral health multi-specialty group or a behavioral health provider group by an individual working under the supervision of an approved behavioral health practitioner may be provided by:

a. A community support associate; or

b. A registered behavioral technician under the supervision of a licensed behavioral analyst.

(m)1. Peer support services shall:

a. Be emotional support that is provided by:

(i) An individual who has been trained and certified in accordance with 908 KAR 2:220 and who is experiencing or has experienced a mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders to a recipient by sharing a similar mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders in order to bring about a desired social or personal change;

(ii) A parent or other family member who has been trained and certified in accordance with 908 KAR 2:230 of a child having or who has had a mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders to a parent or family member of a child sharing a similar mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders in order to bring about a desired social or personal change;

(iii) An individual[A family member] who has been trained and certified in accordance with 908 KAR 2:240 and identified as having experienced as a child or youth an emotional, social, or behavioral disorder that is defined in the current version of the Diagnostic and Statistical Manual for Mental Disorders[2:230 of a child having or who has had a mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders to a parent or family member of a child sharing a similar mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders in order to bring about a desired social or personal change]; or

(iv) A registered alcohol and drug peer support specialist who is experiencing or has experienced a substance use disorder to a recipient by sharing a similar substance use disorder in order to bring about a desired social or personal change;

b. Be an evidence-based practice;

c. Be structured and scheduled nonclinical therapeutic activities with an individual recipient or a group of recipients;

d. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the

recipient;

e. Except for the engagement into substance use disorder treatment conducted through emergency department bridge clinics, be coordinated within the context of a comprehensive, individualized plan of care developed through a person-centered planning process;

f. Be identified in each recipient's plan of care;~~[and]~~

g. Be designed to directly contribute to the recipient's individualized goals as specified in the recipient's plan of care;and
h. Be provided face-to-face.

2. To provide peer support services, a provider shall:

a. Have demonstrated:

(i) The capacity to provide peer support services for the behavioral health population being served including the age range of the population being served; and

(ii) Experience in serving individuals with behavioral health disorders;

b. Employ:

(i) Adult peer support specialists, family peer support specialists, or youth peer support specialists who are qualified to provide peer support services in accordance with 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240; or

(ii) Registered alcohol and drug peer support specialists;~~[and]~~

c. Use an approved behavioral health practitioner~~[services provider]~~ to supervise adult peer support specialists, family peer support specialists, or youth peer support specialists;and

d. Require that:

(i) Individuals providing peer support services to recipients provide no more than 120 units per week of direct recipient contact; and

(ii) Peer support services provided to recipients in a group setting not exceed eight (8) individuals within any group at one (1) time.

3. Peer support shall only be covered if provided by a behavioral health:

a. Provider group; or

b. Multi-specialty group.

(n)1. Intensive outpatient program services shall:

a. Be an alternative to or transition from a higher level of care~~[inpatient hospitalization or partial hospitalization]~~ for a mental health or substance use disorder, or co-occurring disorders;

b. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is significantly more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;

c. For an intensive outpatient program providing services for SUD treatment, meet the service criteria including components for support systems, staffing, and therapies outlined in the most current edition of The ASAM Criteria for intensive outpatient level of care services;

d. Be provided face-to-face;

e. Be provided at least three (3) hours per day at least three (3) days per week for adults;

f. Be provided at least six (6) hours per week for adolescents; and

g.~~[d.]~~ Include:

(i) Individual outpatient therapy;

(ii) Group outpatient therapy;

(iii) Family outpatient therapy unless contraindicated;

(iv) Crisis intervention; or

(v) Psycho-education, related to identified goals in the recipient's treatment plan.

2. During psycho-education the recipient or recipient's family member shall be:

a. Provided with knowledge regarding the recipient's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and

b. Taught how to cope with the recipient's diagnosis or condition in a successful manner.

3. An intensive outpatient program services treatment plan shall:

a. Be individualized; and

b. Focus on stabilization and transition to a lesser level of care.

4. To provide intensive outpatient program services, a provider shall:

a. Be employed by a behavioral health multi-specialty group or behavioral health provider group; and

b. Have:

(i) Access to a board-certified or board-eligible psychiatrist for consultation;

(ii) Access to a psychiatrist, other physician, or advanced practice registered nurse for medication management;

(iii) The capacity to provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles;

(iv) The capacity to employ staff authorized to provide intensive outpatient program services in accordance with this section and to coordinate the provision of services among team members;

(v) The capacity to provide the full range of intensive outpatient program services as stated in this paragraph;

(vi) Demonstrated experience in serving individuals with behavioral health disorders;

(vii) The administrative capacity to ensure quality of services;

(viii) A financial management system that provides documentation of services and costs; and

(ix) The capacity to document and maintain individual case records.

5. Intensive outpatient program services shall be provided in a setting with a minimum recipient-to-staff ratio of ten (10) to one (1).

6. Intensive outpatient program services shall be provided by:

a. An approved behavioral health practitioner, except for a licensed behavior analyst; or

b. An approved behavioral health practitioner under supervision, except for a licensed assistant behavior analyst.

7. Intensive outpatient program services shall only be covered if provided by a behavioral health:

a. Provider group; or

b. Multi-specialty group.

(o)1. Therapeutic rehabilitation program services shall be:

a. Face-to-face, on-site, psychiatric rehabilitation and supports for an individual with a severe and persistent mental illness or an~~A rehabilitative service for an:~~

(i) Adult with a severe mental illness; or

(ii) individual under the age of twenty-one (21) years who has a severe emotional disability; and

b. Designed to maximize the reduction of a mental health disorder and the restoration of the individual's functional level to the individual's best possible functional level.

2. A recipient in a therapeutic rehabilitation program shall establish the recipient's own rehabilitation goals within the plan of care.

3. A therapeutic rehabilitation program shall:

a. Be delivered using a variety of psychiatric rehabilitation techniques;

b. Focus on:

(i) Improving daily living skills;

(ii) Self-monitoring of symptoms and side effects;

(iii) Emotional regulation skills;

(iv) Crisis coping skills; and

(v) Interpersonal skills; and

c. Be delivered individually or in a group.

4. Therapeutic rehabilitation programs shall include:

a. An individualized plan of care identifying measurable goals and objectives, including a discharge and relapse prevention plan; and

b. Coordination of services the individual may be receiving and referral to other necessary support services as needed.

5. Program staffing for a therapeutic rehabilitation program shall include:

a. Licensed clinical supervision, consultation, and support to direct care staff; and

b. Direct care staff to provide scheduled therapeutic activities, training, and support.

6. Therapeutic rehabilitation services shall be provided by:

a. An approved behavioral health practitioner, except for a:

(i) Licensed behavior analyst; or

(ii) Licensed clinical alcohol and drug counselor; or
b. An approved behavioral health practitioner under supervision, except for a:
(i) Licensed assistant behavior analyst;
(ii) Certified alcohol and drug counselor; or
(iii) Licensed clinical alcohol and drug counselor associate.
7. If not provided by an allowed practitioner pursuant to clause 6. of this subparagraph, support services for therapeutic rehabilitation services shall be conducted by a provider:
a. Working under the supervision of an approved behavioral health practitioner; and
b. Who is:
(i) An adult peer support specialist;
(ii) A family peer support specialist; or
(iii) A youth peer support specialist.
(p)1. Withdrawal management services shall:
a. Be provided face-to-face for recipients with a substance use disorder or co-occurring disorder and incorporated into a recipient's care along the continuum of care as needed;
b. Meet service criteria in accordance with the most current version of the ASAM Criteria for withdrawal management levels in an outpatient setting;
c. Be provided by:
(i) A behavioral health multi-specialty group;
(ii) A behavioral health provider group; or
(iii) An approved behavioral health practitioner or behavioral health practitioner under supervision with oversight by a physician, advanced practice registered nurse, or physician assistant; and
d. If provided in an outpatient setting, comply with 908 KAR 1:374, Section 2.
2.a. A recipient who is receiving withdrawal management services shall meet the most current edition of diagnostic criteria for substance withdrawal management as established by the most recent version of the Diagnostic and Statistical Manual of Mental Disorders.
3. Withdrawal management services in an outpatient setting shall be provided by:
a. A physician;
b. A psychiatrist;
c. A physician assistant;
d. An advanced practice registered nurse; or
e. An approved behavioral health practitioner or behavioral health practitioner under supervision with oversight by a physician, advanced practice registered nurse, or physician assistant.
(q)1. Medication assisted treatment services shall be provided by an authorized prescribing provider who:
a. Is:
(i) A physician;
(ii) An advanced practice registered nurse; or
(iii) A psychiatrist;
b. Meets standards established pursuant to 201 KAR 9:270 or 201 KAR 20:065;
c. Maintains a current waiver under 21 U.S.C. 823(g)(2) to prescribe buprenorphine products; and
d. Has experience and knowledge in addiction medicine.
2. Medication assisted treatment supporting behavioral health services shall:
a. Be co-located within the same practicing site as the practitioner who maintains a current waiver under 21 U.S.C. 823(g)(2) to prescribe buprenorphine products or via telehealth as appropriate pursuant to 907 KAR 3:170; or
b. Have agreements in place for linkage to appropriate behavioral health treatment providers who specialize in substance use disorders and are knowledgeable in biopsychosocial dimensions of alcohol and other substance use disorders, such as:
(i) A licensed behavioral health services organization;
(ii) A multi-specialty group;
(iii) A provider group; or
(iv) An individual behavioral health practitioner.
3. Medication assisted treatment may be provided in a provider group or multi-specialty group operating in accordance with 908 KAR 1:374, Section 7.
4. A medication assisted treatment program shall:

a. Assess the need for treatment including:
(i) A full patient history to determine the severity of the patient's substance use disorder; and
(ii) Identifying and addressing any underlying or co-occurring diseases or conditions, as necessary;
b. Educate the patient about how the medication works, including:
(i) The associated risks and benefits; and
(ii) Overdose prevention;
c. Evaluate the need for medically managed withdrawal from substances;
d. Refer patients for higher levels of care if necessary; and
e. Obtain informed consent prior to integrating pharmacologic or nonpharmacologic therapies.
(4)(a) Limited laboratory services shall be reimbursable in accordance with 907 KAR 1:028 when provided by a behavioral health provider group or behavioral health multi-specialty group if:
1. The behavioral health provider group or behavioral health multi-specialty group has the appropriate CLIA certificate to perform laboratory testing pursuant to 907 KAR 1:028; and
2. The services are prescribed by a physician, advanced practice registered nurse, or physician assistant who has a contractual relationship with the behavioral health provider group or behavioral health multi-specialty group.
(b) Partial limited laboratory services may be administered, as appropriate, by:
1. An approved behavioral health practitioner; or
2. An approved behavioral health practitioner under supervision. [(5) The extent and type of a screening shall depend upon the problem of the individual seeking or being referred for services.
(6) A diagnosis or clinic impression shall be made using terminology established in the most current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders.
(7) The department shall not reimburse for a service billed by or on behalf of an entity or individual who is not a billing provider.]

Section 4. Additional Limits and Noncovered Services or Activities. (1) The following services or activities shall not be covered under this administrative regulation:

(a) A service provided to:
1. A resident of:
a. A nursing facility; or
b. An intermediate care facility for individuals with an intellectual disability;
2. An inmate of a federal, local, or state:
a. Jail;
b. Detention center; or
c. Prison; or
3. An individual with an intellectual disability without documentation of an additional psychiatric diagnosis;
(b) Psychiatric or psychological testing for another agency, including a court or school, that does not result in the individual receiving psychiatric intervention or behavioral health therapy from the provider;
(c) A consultation or educational service provided to a recipient or to others;
(d) Collateral therapy for an individual aged twenty-one (21) years or older;
(e) A telephone call, an email, a text message, or other electronic contact that does not meet the requirements stated in the definition of "face-to-face", unless the electronic contact is appropriate as a comparable telehealth service pursuant to 907 KAR 3:170;
(f) Travel time;
(g) A field trip;
(h) A recreational activity;
(i) A social activity; or
(j) A physical exercise activity group.
(2)(a) A consultation by one (1) provider or professional with another shall not be covered under this administrative regulation except regarding collateral outpatient therapy as specified in

Section 3(3)(4)(i) of this administrative regulation.

(b) A third party contract shall not be covered under this administrative regulation.

(3)(a) Except as established in paragraph (b) of this subsection, unless a diagnosis is made and documented in the recipient's medical record within three (3) visits, the service shall not be covered.

(b) The requirement established in paragraph (a) of this subsection shall not apply to:

1. Crisis intervention;
2. A screening;~~[or]~~
3. An assessment;~~or~~
4. Peer support services for the engagement into substance use disorder treatment within an emergency department bridge clinic.

(4) The department shall not reimburse for both a screening and an SBIRT (screening, brief intervention, and referral to treatment for a substance use disorder) provided to a recipient on the same date of service.

(5) A billing supervisor arrangement between a billing supervisor and a behavioral health practitioner under supervision shall not:

(a) Violate the clinical supervision rules or policies of the respective professional licensure boards governing the billing supervisor and the behavioral health practitioner under supervision; or

(b) Substitute for the clinical supervision rules or policies of the respective professional licensure boards governing the billing supervisor and the behavioral health practitioner under supervision.

Section 5. Duplication of Service Prohibited. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider, of any program in which the service is covered, during the same time period.

(2) For example, if a recipient is receiving a behavioral health service from an individual behavioral health provider, the department shall not reimburse for the same service provided to the same recipient during the same time period by a behavioral health services organization.

Section 6. Records Maintenance, Documentation, Protection, and Security. (1) An individual provider, a behavioral health provider group, or a behavioral health multi-specialty group shall maintain a current health record for each recipient.

(2)(a) A health record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.~~(b) The individual who provided the service shall date and sign the health record within forty-eight (48) hours of the date that the individual provided the service.~~

(3) A health record shall:

(a) Include:

1. An identification and intake record including:

- a. Name;
- b. Social Security number;
- c. Date of intake;
- d. Home (legal) address;
- e. Health insurance information;
- f. If applicable, the referral source's name and address;
- g. Primary care physician's name and address;
- h. The reason the individual is seeking help including the presenting problem and diagnosis;
- i. Any physical health diagnosis, if a physical health diagnosis exists for the individual, and information regarding:
 - (i) Where the individual is receiving treatment for the physical health diagnosis; and
 - (ii) The physical health provider's name; and
- j. The name of the informant and any other information deemed necessary by the provider to comply with the requirements of:

- (i) This administrative regulation;
- (ii) The provider's licensure board, if applicable;

(iii) State law; or

(iv) Federal law;

2. Documentation of the:

- a. Screening;
- b. Assessment;
- c. Disposition if a disposition was performed; and
- d. Six (6) month review of a recipient's plan of care each time a six (6) month review occurs, and as needed;

3. A complete history including mental status and previous treatment;

4. An identification sheet;

5. A consent for treatment sheet that is accurately signed and dated; and

6. The individual's stated purpose for seeking services; and

(b) Be:

1. Maintained in an organized central file;
2. Furnished upon request to the:
 - a. Cabinet for Health and Family Services; or
 - b. For an enrollee, managed care organization in which the recipient is enrolled or has been enrolled in the past;
3. Made available for inspection and copying by:
 - a. Cabinet for Health and Family Services' personnel; or
 - b. Personnel of the managed care organization in which the recipient is enrolled if applicable;
4. Readily accessible; and
5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient if the recipient received services beyond a screening.

(4) Documentation of a screening shall include:

(a) Information relative to the individual's stated request for services; and

(b) Other stated personal or health concerns if other concerns are stated.

(5)(a) A behavioral health practitioner's service notes regarding a recipient shall:

1. Be made within forty-eight (48) hours of each service visit; ~~[and]~~
2. Indicate if the service was provided face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170; and

3. Describe the:

- a. Recipient's symptoms or behavior, reaction to treatment, and attitude;
- b. Behavioral health practitioner's intervention;
- c. Changes in the plan of care if changes are made; and
- d. Need for continued treatment if deemed necessary.

(b)1. Any edit to notes shall:

- a. Clearly display the changes; and
- b. Be initialed and dated by the person who edited the notes.

2. Notes shall not be erased or illegibly marked out.

(c)1. Notes recorded by a practitioner working under supervision shall be co-signed and dated by the supervising professional within thirty (30) days of each service visit.

2. If services are provided by a ~~behavioral health~~ practitioner working under supervision, there shall be a monthly supervisory note recorded by the supervising~~[supervision]~~ professional reflecting consultations with the practitioner working under supervision concerning the:

- a. Case; and
- b. Supervising professional's evaluation of the services being provided to the recipient.

(6) Immediately following a screening of a recipient, the behavioral health practitioner who performed the screening shall perform a disposition related to:

- (a) A provisional diagnosis;
- (b) A referral for further consultation and disposition, if applicable; or

(c)1. If applicable, termination of services and referral to an outside source for further services; or

2. If applicable, termination of services without a referral to further services.

(7)(a) A recipient's plan of care shall be reviewed at least once every six (6) months, or as needed earlier than six (6) months.

(b) Any change to a recipient's plan of care shall be

documented, signed, and dated by the rendering practitioner and by the recipient or recipient's representative.

(8)(a) Notes regarding services to a recipient shall:

1. Be organized in chronological order;
2. Be dated;
3. Be titled to indicate the service rendered;
4. State a starting and ending time for the service; and
5. Be recorded and signed by the rendering behavioral health practitioner and include the practitioner's professional title (for example, licensed clinical social worker).

(b) Initials, typed signatures, or stamped signatures shall not be accepted.

(c) Telephone contacts, family collateral contacts not coverable under this administrative regulation, or other non-reimbursable contacts shall:

1. Be recorded in the notes; and
2. Not be reimbursable.

(9) A termination summary shall:

(a) Be required, upon termination of services, for each recipient who received at least three (3) service visits; and

(b) Contain a summary of the significant findings and events during the course of treatment including the:

1. Final assessment regarding the progress of the individual toward reaching goals and objectives established in the individual's plan of care;

2. Final diagnosis of clinical impression; and

3. Individual's condition upon termination and disposition.

(c) A health record relating to an individual who terminated from receiving services shall be fully completed within ten (10) days following termination.

(10) If an individual's case is reopened within ninety (90) days of terminating services for the same or related issue, a reference to the prior case history with a note regarding the interval period shall be acceptable.

(11)(a) Except as established in paragraph (b) of this subsection, if a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring provider shall, within ten (10) business days of the transfer or referral, transfer the recipient's health record in a manner that complies with the records' use and disclosure requirements as established in or required by:

- 1.a. The Health Insurance Portability and Accountability Act;
- b. 42 U.S.C. 1320d-2 to 1320d-8; and
- c. 45 C.F.R. Parts 160 and 164; or
- 2.a. 42 U.S.C. 290ee-3; and
- b. 42 C.F.R. Part 2.

(b) If a recipient is transferred or referred to a residential crisis stabilization unit, a psychiatric hospital, a psychiatric distinct part unit in an acute care hospital, or an acute care hospital for care or treatment, the transferring provider shall, within forty-eight (48) hours of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

- 1.a. The Health Insurance Portability and Accountability Act;
- b. 42 U.S.C. 1320d-2 to 1320d-8; and
- c. 45 C.F.R. Parts 160 and 164; or
- 2.a. 42 U.S.C. 290ee-3; and
- b. 42 C.F.R. Part 2.

(12)(a) If an individual behavioral health practitioner[s] provider[s], a behavioral health provider group's, or a behavioral health multi-specialty group's Medicaid Program participation status changes as a result of voluntarily terminating from the Medicaid Program, involuntarily terminating from the Medicaid Program, or a licensure suspension, the health records of the individual behavioral health practitioner[provider], behavioral health provider group, or behavioral health multi-specialty group shall:

1. Remain the property of the individual behavioral health practitioner[provider], behavioral health provider group, or behavioral health multi-specialty group; and

2. Be subject to the retention requirements established in subsection (13) of this section.

(b)1. If an individual behavioral health practitioner[provider]

dies, the health records maintained by the individual behavioral health practitioner[provider] shall remain the property of the individual behavioral health practitioner[provider].

2. An individual behavioral health practitioner[provider] shall have a written plan addressing how to maintain health records following the provider's death in a manner that complies with the retention requirements established in subsection (13) of this section.

(13)(a) Except as established in paragraph (b) or (c) of this subsection, an individual behavioral health practitioner[provider], a behavioral health provider group, or a behavioral health specialty group shall maintain a health record regarding a recipient for at least five (5) years from the date of the service or until any audit dispute or issue is resolved beyond five (5) years.

(b) After a recipient's death or discharge from services, an individual behavioral health practitioner[provider], a behavioral health provider group, or a behavioral health multi-specialty group shall maintain the recipient's record for the longest of the following periods:

1. Five (5) years unless the recipient is a minor; or
2. If the recipient is a minor, three (3) years after the recipient reaches the age of majority under state law.

(c) If the Secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this subsection[section], pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(14)(a) An individual behavioral health practitioner[provider], a behavioral health provider group, or a behavioral health multi-specialty group shall comply with 45 C.F.R. Part[Chapter] 164.

(b) All information contained in a health record shall:

1. Be treated as confidential;
2. Not be disclosed to an unauthorized individual; and
3. Be disclosed to an authorized representative of:
 - a. The department;
 - b. Federal government; or
 - c. For an enrollee, the managed care organization in which the enrollee is enrolled.

(c)1. Upon request, an individual behavioral health practitioner[provider], a behavioral health provider group, or a behavioral health multi-specialty group shall provide to an authorized representative of the department, federal government, or managed care organization if applicable, information requested to substantiate:

- a. Staff notes detailing a service that was rendered;
- b. The professional who rendered a service; and
- c. The type of service rendered and any other requested information necessary to determine, on an individual basis, whether the service is reimbursable by the department or the managed care organization, if applicable.

2. Failure to provide information referenced in subparagraph 1. of this paragraph shall result in denial of payment for any service associated with the requested information.

Section 7. Medicaid Program Participation Compliance. (1) An individual behavioral health practitioner[provider], a behavioral health provider group, or a behavioral health multi-specialty group shall comply with:

- (a) 907 KAR 1:671;
- (b) 907 KAR 1:672; and
- (c) All applicable state and federal laws.

(2)(a) If an individual behavioral health practitioner[provider], a behavioral health provider group, or a behavioral health multi-specialty group receives any duplicate payment or overpayment from the department, regardless of reason, the individual behavioral health practitioner[provider], a behavioral health provider group, or behavioral health multi-specialty group shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection[section] may be:

1. Interpreted to be fraud or abuse; and
2. Prosecuted in accordance with applicable federal or state law.

(3)(a) When the department makes payment for a covered service and the individual behavioral health practitioner[provider], [a] behavioral health provider group, or behavioral health multi-specialty group accepts the payment:

1. The payment shall be considered payment in full;
2. A bill for the same service shall not be given to the recipient; and

3. Payment from the recipient for the same service shall not be accepted by the individual behavioral health practitioner[provider], a behavioral health provider group, or behavioral health multi-specialty group.

(b)1. An individual behavioral health practitioner[provider], a behavioral health provider group, or a behavioral health multi-specialty group may bill a recipient for a service that is not covered by the Kentucky Medicaid Program if the:

- a. Recipient requests the service; and
- b. Individual behavioral health practitioner[provider], [a] behavioral health provider group, or behavioral health multi-specialty group makes the recipient aware in advance of providing the service that the:
 - (i) Recipient is liable for the payment; and
 - (ii) Department is not covering the service.

2. If a recipient makes payment for a service in accordance with subparagraph 1. of this paragraph, the:

- a. Individual behavioral health practitioner[provider], [a] behavioral health provider group, or behavioral health multi-specialty group shall not bill the department for the service; and
- b. Department shall not:

(i) Be liable for any part of the payment associated with the service; and

(ii) Make any payment to the individual behavioral health practitioner[provider], [a] behavioral health provider group, or behavioral health multi-specialty group regarding the service.

(4)(a) An individual behavioral health practitioner[provider], a behavioral health provider group, or a behavioral health multi-specialty group shall attest by the individual behavioral health practitioner's[provider's] signature or signature of an individual on behalf of a behavioral health provider group or behavioral health multi-specialty group that any claim associated with a service is valid and submitted in good faith.

(b) Any claim and substantiating record associated with a service shall be subject to audit by the:

1. Department or its designee;
2. Cabinet for Health and Family Services, Office of Inspector General or its designee;
3. Kentucky Office of Attorney General or its designee;
4. Kentucky Office of the Auditor for Public Accounts or its designee; or
5. United States General Accounting Office or its designee.

(c) If an individual behavioral health practitioner[provider], a behavioral health provider group, or a behavioral health multi-specialty group receives a request from the department to provide a claim, related information, related documentation, or record for auditing purposes, the individual behavioral health practitioner[provider], [a] behavioral health provider group, or behavioral health multi-specialty group shall provide the requested information to the department within the timeframe requested by the department.

(d)1. All services provided shall be subject to review for recipient or provider abuse.

2. Willful abuse by an individual behavioral health practitioner[provider], a behavioral health provider group, or a behavioral health multi-specialty group shall result in the suspension or termination of the individual behavioral health practitioner[provider], [a] behavioral health provider group, or behavioral health multi-specialty group from Medicaid Program participation.

(5)(a) If an individual behavioral health practitioner[provider], a behavioral health provider group, or a behavioral health multi-specialty group renders a Medicaid-covered service to a recipient, regardless of if the service is billed through the individual behavioral health practitioner's[provider's], behavioral health provider group's, or behavioral health multi-specialty group's

Medicaid provider number or any other entity or individual including a non-Medicaid provider, the recipient shall not be charged or billed for the service.

(b) The department shall terminate from Medicaid Program participation an individual behavioral health practitioner[provider], a behavioral health provider group, or a behavioral health multi-specialty group that:

1. Charges or bills a recipient for a Medicaid-covered service; or

2. Participates in an arrangement in which an entity or individual bills a recipient for a Medicaid-covered service rendered by the individual behavioral health practitioner[provider], [a] behavioral health provider group, or behavioral health multi-specialty group.

Section 8. Third Party Liability. An individual behavioral health practitioner[provider], a behavioral health provider group, or a behavioral health multi-specialty group shall comply with KRS 205.622.

Section 9. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) An individual behavioral health practitioner[provider], a behavioral health provider group, or a behavioral health multi-specialty group that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the practitioner's[provider's] employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the individual behavioral health practitioner's[provider's], behavioral health provider group's, or behavioral health multi-specialty group's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.

Section 10. Auditing Authority. The department shall have the authority to audit any:

(1) Claim;

(2) Medical record; or

(3) Documentation associated with any claim or medical record.

Section 11. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 12. Appeals. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

Section 13. Delayed Effective Date. The provisions of this

administrative regulation shall not become effective until July 1, 2019.

CAROL H. STECKEL, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 11, 2019

FILED WITH LRC: June 28, 2019

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone: 502-564-6746; fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonthant.scott@ky.gov; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program behavioral health services provided by individual behavioral health providers, behavioral health provider groups, and behavioral health multi-specialty groups.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish the requirements for Medicaid Program behavioral health services provided by individual behavioral health providers, behavioral health provider groups, and behavioral health multi-specialty groups. These providers are a critical component of Medicaid Program substance use disorder and mental health disorder treatment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by providing Medicaid recipients access to mental health disorder and substance use disorder treatment from individual behavioral health professional practices.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by providing Medicaid recipients access to mental health disorder and substance use disorder treatment from individual behavioral health professional practices.

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

(a) How the amendment will change this existing administrative regulation: The amendments are being promulgated to establish substance use disorder (SUD) treatment guidelines as appropriate to existing services. The amendment changes this administrative regulation by using a defined term to refer to all providers. The amended regulation also allows community support associates to provide services within a behavioral health multi-specialty group, and establishes additional standards for a plan of care. The regulation also requires a behavioral health multi-specialty group that is providing services for substance use disorder treatment to possess an alcohol and other drug entity license, and requires physicians and advance practice registered nurses providing behavioral health services within a behavioral health multi-specialty group to have a psychiatry specialty. In addition, physician assistants are required to have a contractual relationship with a supervising physician with a psychiatry specialty in order to provide behavioral health services within a behavioral health multi-specialty group. The amendment also makes organizational changes by deleting language that listed the service and appropriate provider, this information has now been consolidated and included with the subsection that addresses covered services. Additional changes to the covered services subsection include: requiring an assessment for substance use disorder (SUD) utilize an ASAM Criteria compliant multidimensional assessment tool, clarifying which services may be provided face-to-face or via telehealth, and clarifying how day treatment support services and comprehensive community support services may be provided. In addition, amendments will allow for peer support services to include

engagement into SUD treatment within emergency department bridge clinics. Peer support services are also amended to protect peer support specialists by limiting them to 120 units per week of direct recipient contact, and prohibiting peer support services in a group setting from exceeding 8 individuals within any group at one time. Intensive outpatient programs providing services for SUD treatment are now required to meet the most current edition of The ASAM Criteria for intensive outpatient level of care. Therapeutic rehabilitation services are also amended to include additional requirements relating to plans of care, coordination of services, program staffing, and support services. New services and complying requirements that are included in this administrative regulation include withdrawal management services, and medication assisted treatment services requirements. A new subsection allows for certain laboratory services to be reimbursable if provided within a behavioral health multi-specialty group that has an appropriate clinical laboratory improvement amendments (CLIA) certificate.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to implement a SUD 1115 Waiver that is part of the Kentucky HEALTH 1115 Waiver and conforming state plan amendments.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by implementing an approved 1115 Waiver and conforming state plan amendments.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by enhancing Medicaid recipient access to behavioral health services and implementing the approved 1115 Waiver and state plan amendments.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Medicaid recipients who qualify for behavioral health services will be affected by this administrative regulation. There are approximately 2,170 individual behavioral health providers, behavioral health provider groups, and behavioral health multi-specialty groups enrolled in the Medicaid Program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. The amendment expands the authorized behavioral health professional base to include community support associates.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Community support associates will be allowed to bill for services provided to Medicaid recipients.

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

(a) Initially: The department anticipates no additional costs in the implementation of this amendment.

(b) On a continuing basis: The department anticipates no additional costs in the implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

VOLUME 46, NUMBER 2– AUGUST 1, 2019

This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is not applied as the requirements apply to all providers.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(10)(B) and 42 U.S.C. 1396a(a)(30)(A).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect." KRS 205.6311 requires the Department for Medicaid Services to "promulgate administrative regulations. . . to expand the behavioral health network to allow providers to provide services within their licensure category."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area. Medicaid reimbursement for services is required to be consistent with efficiency, economy and quality of care and be sufficient to attract enough providers to assure access to services. 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "...provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter than federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment to this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.6311, 42 U.S.C. 1396a(a)(10)(B), and 42 U.S.C. 1396a(a)(30)(A).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not expected to generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment is not expected to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? DMS does not expect any additional costs in administering these amendments during the first year.

(d) How much will it cost to administer this program for subsequent years? DMS does not expect any additional costs in administering these amendments during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 907 KAR 15:015E

This emergency administrative regulation is being promulgated to implement state and federal changes to services provided by behavioral health provider groups and behavioral health multi-specialty groups. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)1. to meet an imminent threat to public health and pursuant to KRS 13A.190(1)(a)2. to prevent a loss of federal funds. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is not identical to this emergency administrative regulation, as this emergency administrative regulation includes an additional Section 6 to establish an implementation date of July 1, 2019.

MATTHEW G. BEVIN, Governor

ADAM M. MEIER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Policy and Operations (Emergency Amendment)

907 KAR 15:015E. Reimbursement provisions and requirements for behavioral health services provided by individual approved behavioral health practitioners[providers], behavioral health provider groups, or behavioral health multi-specialty groups.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 1396a(a)(23), 1396a(a)(30)(A)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6311

EFFECTIVE: June 28, 2019

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the reimbursement provisions and requirements regarding Medicaid Program behavioral health services provided by ~~by certain licensed~~ individual approved behavioral health practitioners[professionals] who are independently enrolled in the Medicaid Program, practitioners working for or under the supervision of the individual approved behavioral health practitioners [professionals], and approved [individual] behavioral health [professionals and] practitioners under supervision working in behavioral health provider groups or in behavioral health multi-specialty groups, to Medicaid recipients who are not enrolled with a managed care organization.

Section 1. General Requirements. For the department to

reimburse for a service covered under this administrative regulation, the service shall be:

- (1) Covered in accordance with 907 KAR 15:010; and
- (2) Billed to the department by an individual approved behavioral health practitioner[provider], behavioral health provider group, or behavioral health multi-specialty group recognized as a Medicaid Program provider in accordance with 907 KAR 15:010.

Section 2. Reimbursement. (1) One (1) unit of service shall be:

(a) Fifteen (15) minutes in length unless a different unit of service exists for the service in the corresponding:

1. Current procedural terminology code; or
2. Healthcare common procedure coding system code; or

(b) The unit amount identified in the corresponding:

1. Current procedural terminology code if an amount is identified in the current procedural terminology code; or
2. Healthcare common procedure coding system code if an amount is identified in the healthcare common procedure coding system code.

(2) Except as provided by subsection (3) of this section, the rate per unit for a covered service shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or
2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; or
2. A licensed psychologist; or
3. A physician assistant;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;
2. Licensed clinical social worker;
3. Licensed psychological practitioner;
4. Certified psychologist with autonomous functioning;
5. Licensed marriage and family therapist;
6. Licensed professional art therapist;
7. Licensed behavior analyst; or
8. Licensed clinical alcohol and drug counselor;

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate;
2. Licensed professional counselor associate;
3. Licensed psychological associate;
4. Certified social worker;
5. [Physician assistant;
- 6.] Licensed professional art therapist associate;
- 6.[7.] Licensed assistant behavior analyst;
- 7.[8.] Certified psychologist; or
- 8.[9.] Licensed clinical alcohol and drug counselor associate;

or

(e) Thirty-seven and five-tenths (37.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a certified alcohol and drug counselor.

(3) Reimbursement[for the following services] shall be as established on the Kentucky Medicaid Behavioral Health and Substance Abuse Services Outpatient (Non-facility) Fee Schedule and this administrative regulation for those services that are eligible to be provided by each individual approved behavioral health practitioner, behavioral health provider group, or behavioral health multi-specialty group as established pursuant to 907 KAR 15:010:

(a) ~~Screening, brief intervention, and referral to treatment (SBIRT);~~

- (b) ~~Service planning;~~
- (c) ~~Day treatment;~~
- (d) ~~Comprehensive community support services;~~
- (e) ~~Peer support services;~~
- (f) ~~Intensive outpatient program services; or~~
- (g) ~~Therapeutic rehabilitation program services.~~

(4)(a) The department shall use the current version of the Kentucky-specific Medicare Physician Fee Schedule for reimbursement purposes.

(b) For example, if the Kentucky-specific Medicare Physician Fee Schedule currently published and used by the Centers for Medicare and Medicaid Services for the Medicare Program is:

1. An interim version, the department shall use the interim version until the final version has been published; or

2. The final version, the department shall use the final version.

(5) The department shall not reimburse for a service billed by or on behalf of an entity or individual that is not a billing provider.

Section 3. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse in accordance with this administrative regulation for a service covered pursuant to:

- (1) 907 KAR 15:010; and
- (2) This administrative regulation.

Section 4. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the reimbursement; and
- (2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

Section 5. Incorporation by Reference. (1) "Kentucky Medicaid Behavioral Health and Substance Abuse Services Outpatient (Non-Facility) Fee Schedule", July 2019[June 2016], is incorporated by reference.

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

(a) The Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at <https://chfs.ky.gov/agencies/dms/Pages/regsmaterials.aspx>[<http://www.chfs.ky.gov/dms/incorporated.htm>].

Section 6. Delayed Implementation Date. The provisions of this administrative regulation shall be implemented beginning July 1, 2019.

CAROL H. STECKEL, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 3, 2019

FILED WITH LRC: June 28, 2019 at 4 p.m.

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, KY 40621; phone: 502-564-6746; fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement provisions and requirements regarding Medicaid Program behavioral health services provided by individual behavioral health professionals enrolled in the Medicaid Program.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish the reimbursement provisions for Medicaid Program behavioral health services provided by individual behavioral health professionals. These providers are a critical component of Medicaid Program substance use disorder (SUD) and mental health disorder treatment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid

reimbursement for behavioral health services provided by individual behavioral health providers, behavioral health provider groups, and behavioral health multi-specialty groups.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing Medicaid reimbursement for behavioral health services provided by individual behavioral health providers, behavioral health provider groups, and behavioral health multi-specialty groups.

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

(a) How the amendment will change this existing administrative regulation: The amendments to the administrative regulation incorporate other changes made to 907 KAR Chapter 15. This administrative regulation in particular increases physician assistant's reimbursement to 63.75% of the Medicare Physician Fee Schedule. In addition, the fee schedule is updated, and the regulatory reference to the fee schedule is more accurately a reference to all appropriate covered services provided by each type of provider.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to ensure that reimbursement is available for SUD and co-occurring disorders. In addition, the amendments help to implement a SUD 1115 Waiver and HB 124 from the 2018 Regular Session.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to the content of the authorizing statutes by complying with federal mandates, and enhancing and ensuring Medicaid recipients' access to behavioral health services, including SUD services and co-occurring disorders provided in an AODE. In addition, the amendments help to implement a SUD 1115 Waiver and HB 124 from the 2018 Regular Session.

(d) How the amendment will assist in the effective administration of the statutes: The amendments assist in the effective administration of the statutes by complying with federal mandates, and enhancing and ensuring Medicaid recipients' access to behavioral health services, including SUD services and co-occurring disorders provided in an alcohol and other drug entity (AODE) facility. In addition, the amendments help to implement a SUD 1115 Waiver and HB 124 from the 2018 Regular Session.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Physician assistants will be able to receive a higher reimbursement for the services they provide.

(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. Physician assistants will need to continue billing for reimbursement for the services they provide.

(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 expected.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). A higher reimbursement rate for physician assistants will be available as a result of these changes.

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

(a) Initially: The department does not anticipate any additional costs on an initial basis.

(b) On a continuing basis: The department does not anticipate any additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX, and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or

funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Yes, tiering is applied because reimbursements are tiered to the level of the provider/practitioner based on the provider/practitioner's education and experience.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(10)(B) and 42 U.S.C. 1396a(a)(30)(A).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect." KRS 205.6311 requires the Department for Medicaid Services to "promulgate administrative regulations. ... to expand the behavioral health network to allow providers to provide services within their licensure category."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area. Medicaid reimbursement for services is required to be consistent with efficiency, economy and quality of care and be sufficient to attract enough providers to assure access to services. 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "...provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements than federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment to this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.6311, 42 U.S.C. 1396a.

3. Estimate the effect of this administrative regulation on the

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not expected to generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment is not expected to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? DMS does not expect any additional costs in administering these amendments during the first year.

(d) How much will it cost to administer this program for subsequent years? DMS does not expect any additional costs in administering these amendments during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 907 KAR 15:020E

This emergency administrative regulation is being promulgated to implement state and federal changes to services provided by behavioral health services organizations. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)1. to meet an imminent threat to public health and pursuant to KRS 13A.190(1)(a)2. to prevent a loss of federal funds. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is not identical to this emergency administrative regulation as this emergency administrative regulation includes an additional Section 13 to establish an implementation date of July 1, 2019.

MATTHEW G. BEVIN, Governor
ADAM M. MEIER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Policy and Operations (Emergency Amendment)

907 KAR 15:020E. Coverage provisions and requirements regarding services provided by behavioral health services organizations for mental health treatment.

RELATES TO: KRS 205.520, 20 U.S.C. 1400 et seq., 29 U.S.C. 701 et seq., 42 U.S.C. 290 ee-3, 1320d-2 to 1320d-8, 1396a(a)(10)(B), [42 U.S.C.] 1396a(a)(23), 42 C.F.R. Part 2, 431.17, 45 C.F.R. Parts 160, 164

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

EFFECTIVE: June 28, 2019

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program behavioral health services provided by tier I behavioral health services organizations.

Section 1. General Coverage Requirements. (1) For the

department to reimburse for a service covered under this administrative regulation, the service shall be:

(a) Medically necessary; and

(b) Provided:

1. To a recipient; and

2. By a behavioral health services organization that meets the provider participation requirements established in Section 2 of this administrative regulation.

(2)(a) Direct contact between a practitioner and a recipient shall be required for each service except for:

1. Collateral outpatient therapy for a child under the age of twenty-one (21) years if the collateral outpatient therapy is in the child's plan of care;

2. A family outpatient service in which the corresponding current procedural terminology code establishes that the recipient is not present; or

3. A psychological testing service comprised of interpreting or explaining results of an examination or data to family members or other kin if the corresponding current procedural terminology code establishes that the recipient is not present.

(b) A service that does not meet the requirement in paragraph (a) of this subsection shall not be covered.

(3) A billable unit of service shall be actual time spent delivering a service in an[a face-to-face] encounter.

(4) A service shall be:

(a) Stated in the recipient's plan of care; and

(b) Provided in accordance with the recipient's plan of care.

(5)(a) A behavioral health services organization shall establish a plan of care for each recipient receiving services from the behavioral health services organization.

(b) A plan of care shall meet the plan of care requirements established in 902 KAR 20:430.

Section 2. Provider Participation. (1) To be eligible to provide services under this administrative regulation, a behavioral health services organization shall:

(a) Be currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

(b)[~~Except as established in subsection (2) of this section,~~] Be currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; and

(c) Have:

1. For each service it provides, the capacity to provide the full range of the service as established in this administrative regulation;

2. Documented[~~Demonstrated~~] experience in serving individuals with behavioral health disorders;

3. The administrative capacity to ensure quality of services;

4. A financial management system that provides documentation of services and costs; and

5. The capacity to document and maintain individual case records.

(2)[~~In accordance with 907 KAR 17:015, Section 3(3), a behavioral health services organization which provides a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.~~

(3)] A behavioral health services organization shall:

(a) Agree to provide services in compliance with federal and state laws regardless of age, sex, race, creed, religion, national origin, handicap, or disability;[and]

(b) Comply with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments to the Act; and

(c) Provide, directly or through written agreement with another behavioral health services provider, access to face-to-face or telehealth, as appropriate pursuant to 907 KAR 3:170, emergency services twenty-four (24) hours per day, seven (7) days per week.

(3) A BHSO I shall:

(a) Not receive reimbursement for services provided for outpatient or residential substance use disorder treatment;

(b) Provide services in accordance with its licensure, 902 KAR 20:430, and Section 3 of this administrative regulation for mental health treatment; and

(c) Possess accreditation within one (1) year of initial enrollment by one (1) of the following:

1. The Joint Commission;
2. The Commission on Accreditation of Rehabilitation Facilities;
3. The Council on Accreditation; or
4. A nationally recognized accreditation organization.

Section 3. Covered Services. (1) The following providers shall not be eligible to provide services under this administrative regulation for a BHSO I:

- (a) A licensed clinical alcohol and drug counselor (LCADC);
- (b) A licensed clinical alcohol and drug counselor associate (LCADCA);

- (c) A certified alcohol and drug counselor (CADC); or
- (d) A substance use disorder peer support specialist.

(2) A physician providing behavioral health services in a BHSO I shall possess a psychiatric specialty.

(3) An advanced practice registered nurse providing behavioral health services in a BHSO I shall possess a psychiatric specialty.

(4) A physician assistant providing behavioral health services in a BHSO I shall have a contractual relationship with a supervising physician who has a psychiatric specialty.

(5) Except as specified in the requirements stated for a given service, the services covered may be provided for a[:

- (a)] mental health disorder;
- (b) Substance use disorder; or
- (c) Co-occurring mental health and substance use disorders].

(6)](2)] The[following] services established in this subsection shall be covered under this administrative regulation in accordance with the [corresponding following] requirements established in this section.[:]

(a) [A screening, crisis intervention, or intensive outpatient program service provided by:

1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A licensed clinical social worker;
4. A licensed professional clinical counselor;
5. A licensed professional art therapist;
6. A licensed marriage and family therapist;
7. A physician;
8. A psychiatrist;
9. An advanced practice registered nurse; or
10. A behavioral health practitioner under supervision except

for a licensed assistant behavior analyst;

(b) An assessment provided by:

1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A licensed clinical social worker;
4. A licensed professional clinical counselor;
5. A licensed professional art therapist;
6. A licensed marriage and family therapist;
7. A physician;
8. A psychiatrist;
9. An advanced practice registered nurse;
10. A licensed behavior analyst; or
11. A behavioral health practitioner under supervision;

(c) Psychological testing provided by:

1. A licensed psychologist;
2. A licensed psychological associate working under the supervision of a licensed psychologist; or
3. A licensed psychological practitioner;

(d) Day treatment, mobile crisis services, or residential services for substance use disorders provided by:

1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A licensed clinical social worker;
4. A licensed professional clinical counselor;
5. A licensed professional art therapist;
6. A licensed marriage and family therapist;
7. A physician;
8. A psychiatrist;
9. An advanced practice registered nurse;
10. A behavioral health practitioner under supervision except
- for a licensed assistant behavior analyst; or
11. A peer support specialist working under the supervision of:

- a. An approved behavioral health services provider; or
- b. A certified alcohol and drug counselor;
- (e) Peer support provided by a peer support specialist working under the supervision of:

1. An approved behavioral health services provider; or
2. A certified alcohol and drug counselor;
- (f) Individual outpatient therapy, group outpatient therapy, or collateral outpatient therapy provided by:

1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A licensed clinical social worker;
4. A licensed professional clinical counselor;
5. A licensed professional art therapist;
6. A licensed marriage and family therapist;
7. A physician;
8. A psychiatrist;
9. An advanced practice registered nurse;
10. A licensed behavior analyst; or
11. A behavioral health practitioner under supervision;
- (g) Family outpatient therapy provided by:
1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A licensed clinical social worker;
4. A licensed professional clinical counselor;
5. A licensed professional art therapist;
6. A licensed marriage and family therapist;
7. A physician;
8. A psychiatrist;
9. An advanced practice registered nurse; or
10. A behavioral health practitioner under supervision except

for a licensed assistant behavior analyst;

(h) Service planning provided by:

1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A licensed clinical social worker;
4. A licensed professional clinical counselor;
5. A licensed professional art therapist;
6. A licensed marriage and family therapist;
7. A physician;
8. A psychiatrist;
9. An advanced practice registered nurse;
10. A licensed behavior analyst; or
11. A behavioral health practitioner under supervision except

for a certified alcohol and drug counselor;

(i) A screening, brief intervention, and referral to treatment for a substance use disorder or SBIRT provided by:

1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A licensed clinical social worker;
4. A licensed professional clinical counselor;
5. A licensed professional art therapist;
6. A licensed marriage and family therapist;
7. A physician;
8. A psychiatrist;
9. An advanced practice registered nurse; or
10. A behavioral health practitioner under supervision except

for a licensed assistant behavior analyst;

(j) Assertive community treatment provided by:

1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A licensed clinical social worker;
4. A licensed professional clinical counselor;
5. A licensed professional art therapist;
6. A licensed marriage and family therapist;
7. A physician;
8. A psychiatrist;
9. An advanced practice registered nurse;
10. A behavioral health practitioner under supervision except

for a:

- a. Licensed assistant behavior analyst; or
- b. Certified alcohol and drug counselor;
11. A peer support specialist working under the supervision of an approved behavioral health services provider; or

12. A community support associate;
 (k) Comprehensive community support services provided by:
 1. A licensed psychologist;
 2. A licensed psychological practitioner;
 3. A licensed clinical social worker;
 4. A licensed professional clinical counselor;
 5. A licensed professional art therapist;
 6. A licensed marriage and family therapist;
 7. A physician;
 8. A psychiatrist;
 9. An advanced practice registered nurse;
 10. A licensed behavior analyst;
 11. A behavioral health practitioner under supervision except for a certified alcohol and drug counselor; or
 12. A community support associate; or
 (l) Therapeutic rehabilitation program services provided by:
 1. A licensed psychologist;
 2. A licensed psychological practitioner;
 3. A licensed clinical social worker;
 4. A licensed professional clinical counselor;
 5. A licensed professional art therapist;
 6. A licensed marriage and family therapist;
 7. A physician;
 8. A psychiatrist;
 9. An advanced practice registered nurse;
 10. A behavioral health practitioner under supervision except for a:
 a. Licensed assistant behavior analyst; or
 b. Certified alcohol and drug counselor; or
 11. A peer support specialist working under the supervision of an approved behavioral health services provider.
 (3)(a) A screening shall:
 1. ~~Determine~~~~Be the determination of~~ the likelihood that an individual has a mental health disorder, substance use disorder, or co-occurring disorders;
 2. Not establish the presence or specific type of disorder;~~and~~
 3. Establish the need for an in-depth assessment;
 4. Be face-to-face or via telehealth, as appropriate pursuant to 907 KAR 3:170; and
 5. Be provided by:
 a. An approved behavioral health practitioner; or
 b. An approved behavioral health practitioner under supervision.
 (b) An assessment shall:
 1. Include gathering information and engaging in a process with the individual that enables the practitioner to:
 a. Establish the presence or absence of a mental health disorder~~[- substance use disorder, or co-occurring disorders];~~
 b. Determine the individual's readiness for change;
 c. Identify the individual's strengths or problem areas that may affect the treatment and recovery processes; and
 d. Engage the individual in developing an appropriate treatment relationship;
 2. Establish or rule out the existence of a clinical disorder or service need;
 3. Include working with the individual to develop a plan of care;~~and~~
 4. Not include psychological or psychiatric evaluations or assessments;
 5. Be face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170; and
 6. Be provided by:
 a. An approved behavioral health practitioner; or
 b. An approved behavioral health practitioner under supervision.
 (c)1. Psychological testing shall include:
 a.~~[1.]~~ A psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities; and
 b.~~[2.]~~ Interpretation and a written report of testing results.
 2. Psychological testing shall be provided face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170.
 3. Psychological testing shall be provided by:
 a. A licensed psychologist;

b. A certified psychologist with autonomous functioning;
 c. A licensed psychological practitioner;
 d. A certified psychologist under supervision; or
 e. A licensed psychological associate under supervision.
 (d) Crisis intervention:
 1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to:
 a. The recipient; or
 b. Another individual;
 2. Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities for individuals;
 3. Shall be provided:
 a. On-site at the behavioral health services organization's office;
 b. As an immediate relief to the presenting problem or threat; and
 c. In a face-to-face, one (1) on one (1) encounter between the provider and the recipient or as a comparable service provided via telehealth as appropriate pursuant to 907 KAR 3:170;
 4. Shall be followed by a referral to non-crisis services if applicable;~~and~~
 5. May include:
 a. Further service prevention planning including:
 (i) lethal means reduction for suicide risk~~[- or~~
 (ii) Substance use disorder relapse prevention]; or
 b. Verbal de-escalation, risk assessment, or cognitive therapy;~~and~~
 6. Shall be provided by:
 a. An approved behavioral health practitioner; or
 b. An approved behavioral health practitioner under supervision.
 (e) Mobile crisis services shall:
 1. Be available twenty-four (24) hours a day, seven (7) days a week, every day of the year;
 2. Be provided for a duration of less than twenty-four (24) hours;
 3. Not be an overnight service;
 4. Be provided via face-to-face contact or telehealth, as appropriate pursuant to 907 KAR 3:170, by a multi-disciplinary team based intervention in a home or community setting that ensures access to mental health~~and substance use disorder~~ services and supports to:
 a.~~[(i)]~~ Reduce symptoms or harm; or
 b.~~[(ii)]~~ Safely transition an individual in an acute crisis to the appropriate least restrictive level of care;
 5. Involve all services and supports necessary to provide:
 a. Integrated crisis prevention;
 b. Assessment and disposition;
 c. Intervention;
 d. Continuity of care recommendations; and
 e. Follow-up services;~~and~~
 6. Be provided face-to-face in a home or community setting;
 7. Include access to a board-certified or board-eligible psychiatrist twenty-four (24) hours a day, seven (7) days a week, every day of the year; and
 8. Be provided by:
 a. An approved behavioral health practitioner;
 b. An approved behavioral health practitioner under supervision; or
 c. A peer support specialist who:
 (i) Is under the supervision of an approved behavioral health practitioner; and
 (ii) Provides support services under this paragraph.
 (f)1. Day treatment shall be a non-residential, intensive treatment program for a child under the age of twenty-one (21) years who has:
 a. A mental health disorder~~[- substance use disorder, or co-occurring mental health and substance use disorders];~~ and
 b. A high risk of out-of-home placement due to a behavioral health issue.
 2. Day treatment shall:

a. Consist of an organized, behavioral health program of treatment and rehabilitative services;

b. Include:

- (i) Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;
- (ii) Behavior management and social skills training;
- (iii) Independent living skills that correlate to the age and developmental stage of the recipient; or
- (iv) Services designed to explore and link with community resources before discharge and to assist the recipient and family with transition to community services after discharge; and

c. Be provided:

- (i) In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);
- (ii) On school days and during scheduled school breaks;
- (iii) In coordination with the recipient's individualized education program~~[educational plan]~~ or Section 504 plan if the recipient has an individualized education program~~[educational plan]~~ or Section 504 plan;
- (iv) Under the supervision of an approved~~[a licensed or certified]~~ behavioral health practitioner or an approved~~[a]~~ behavioral health practitioner ~~[working]~~ under~~[clinical]~~ supervision;~~[and]~~
- (v) With a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider; and
- (vi) Face-to-face.

3. To provide day treatment services, a behavioral health services organization shall have:

- a. The capacity to employ staff authorized to provide day treatment services in accordance with this section and to coordinate the provision of services among team members; and
- b. Knowledge of mental health~~[substance use]~~ disorders.

4. Day treatment shall not include a therapeutic clinical service that is included in a child's individualized education program~~[plan]~~ or Section 504 plan.

5.a. Day treatment shall be provided by:

- (i) An approved behavioral health practitioner; or
- (ii) An approved behavioral health practitioner under supervision.

b. A peer support specialist working under the supervision of an approved behavioral health practitioner may provide support services under this paragraph.

(g)1. Peer support services shall:

- a. Be emotional support that is provided by:

 - (i) An individual who has been trained and certified in accordance with 908 KAR 2:220 and who is experiencing or has experienced a mental health disorder~~[, substance use disorder, or co-occurring mental health and substance use disorders]~~ to a recipient by sharing a similar mental health disorder~~[, substance use disorder, or co-occurring mental health and substance use disorders]~~ in order to bring about a desired social or personal change;
 - (ii) A parent or other family member, who has been trained and certified in accordance with 908 KAR 2:230, of a child having or who has had a mental health disorder~~[, substance use, or co-occurring mental health and substance use disorders]~~ to a parent or family member of a child sharing a similar mental health disorder~~[, substance use, or co-occurring mental health and substance use disorders]~~ in order to bring about a desired social or personal change; or
 - (iii) An individual~~[A family member]~~, who has been trained and certified in accordance with 908 KAR 2:240 and identified as experiencing as a child or youth an emotional, social, or behavioral disorder that is defined in the current version of the Diagnostic and Statistical Manual for Mental Disorders~~[2:230, of a child having or who has had a mental health, substance use, or co-occurring mental health and substance use disorders to a parent or family member of a child sharing a similar mental health, substance use, or co-occurring mental health and substance use disorders in order to bring about a desired social or personal change]~~;

- b. Be an evidence-based practice;
- c. Be structured and scheduled non-clinical therapeutic activities with an individual recipient or a group of recipients;
- d. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient;
- e. Be coordinated within the context of a comprehensive, individualized plan of care developed through a person-centered planning process;
- f. Be identified in each recipient's plan of care;~~[and]~~
- g. Be designed to directly contribute to the recipient's individualized goals as specified in the recipient's plan of care; and
- h. Be provided face-to-face.

2. To provide peer support services, a behavioral health services organization shall:

- a. Have demonstrated:

 - (i) The capacity to provide peer support services for the behavioral health population being served including the age range of the population being served; and
 - (ii) Experience in serving individuals with behavioral health disorders;

- b. Employ peer support specialists who are qualified to provide peer support services in accordance with 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240;
- c. Use an approved behavioral health practitioner~~[services provider or certified alcohol and drug counselor]~~ to supervise peer support specialists;
- d. Have the capacity to coordinate the provision of services among team members;~~[and]~~
- e. Have the capacity to provide on-going continuing education and technical assistance to peer support specialists;
- f. Require individuals providing peer support services to recipients to provide no more than 120 units per week of direct recipient contact; and
- g. Require peer support services provided to recipients in a group setting not exceed eight (8) individuals within any group at a time.
- (h)1. Intensive outpatient program services shall:

 - a. Be an alternative to or transition from a higher level of care~~[inpatient hospitalization or partial hospitalization]~~ for a mental health disorder~~[, substance use disorder, or co-occurring disorders]~~;
 - b. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is significantly more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;
 - c. Be provided at least three (3) hours per day at least three (3) days per week for adults~~[and]~~
 - d. Be provided at least six (6) hours per week for adolescents;
 - e. Include:

 - (i) Individual outpatient therapy, group outpatient therapy, or family outpatient therapy unless contraindicated;
 - (ii) Crisis intervention; or
 - (iii) Psycho-education related to identified goals in the recipient's treatment plan; and
 - f. Be provided face-to-face.

2. During psycho-education, the recipient or recipient's family member shall be:

 - a. Provided with knowledge regarding the recipient's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and
 - b. Taught how to cope with the recipient's diagnosis or condition in a successful manner.

3. An intensive outpatient program services treatment plan shall:

 - a. Be individualized; and
 - b. Focus on stabilization and transition to a lesser level of care.

4. To provide intensive outpatient program services, a behavioral health services organization shall have:

 - a. Access to a board-certified or board-eligible psychiatrist for consultation;
 - b. Access to a psychiatrist, physician, or advanced practiced registered nurse for medication prescribing and monitoring;

c. Adequate staffing to ensure a minimum recipient-to-staff ratio of ten (10) recipients to one (1) staff person;

d. The capacity to provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles; and

e. The capacity to employ staff authorized to provide intensive outpatient program services in accordance with this section and to coordinate the provision of services among team members.

5. Intensive outpatient program services shall be provided by:

a. An approved behavioral health practitioner, except for a licensed behavior analyst; or

b. An approved behavioral health practitioner under supervision, except for a licensed assistant behavior analyst.

(i) Individual outpatient therapy shall:

1. Be provided to promote the:

a. Health and wellbeing of the individual; and

b. Restoration of a recipient to the recipient's best possible functional level[Recovery] from a[substance use disorder,] mental health disorder[, or co-occurring mental health and substance use disorders];

2. Consist of:

a. A face-to-face, one (1) on one (1) encounter between the provider and recipient or provided via telehealth as appropriate pursuant to 907 KAR 3:170; and

b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified plan of care;

3. Be aimed at:

a. Reducing adverse symptoms;

b. Reducing or eliminating the presenting problem of the recipient; and

c. Improving functioning; [and]

4. Not exceed three (3) hours per day, alone or in combination with any other outpatient therapy per recipient, unless additional time is medically necessary; and

5. Be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(j)1. Group outpatient therapy shall:

a. Be a behavioral health therapeutic intervention provided in accordance with a recipient's identified plan of care;

b. Be provided to promote the:

(i) Health and wellbeing of the individual; and

(ii) Restoration of a recipient to the recipient's best possible functional level[Recovery] from a[substance use disorder,] mental health disorder[, or co-occurring mental health and substance use disorders];

c. Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the recipient's identified plan of care;

d. Be provided to a recipient in a group setting:

(i) Of nonrelated individuals except for multi-family group therapy; and

(ii) Not to exceed twelve (12) individuals in size;

e. Focus on the psychological needs of the recipients as evidenced in each recipient's plan of care;

f. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;

g. Not include physical exercise, a recreational activity, an educational activity, or a social activity; and

h. Not exceed three (3) hours per day, alone or in combination with any other outpatient therapy, per recipient unless additional time is medically necessary.

2. The group shall have a:

a. Deliberate focus; and

b. Defined course of treatment.

3. The subject of group outpatient therapy shall relate to each recipient participating in the group.

4. The provider shall keep individual notes regarding each recipient within the group and within each recipient's health record.

5. Group outpatient therapy shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(k)1. Family outpatient therapy shall consist of a face-to-face behavioral health therapeutic intervention or occur via telehealth as appropriate pursuant to 907 KAR 3:170, provided:

a. Through scheduled therapeutic visits between the therapist and the recipient and at least one (1) member of the recipient's family; and

b. To address issues interfering with the relational functioning of the family and to improve interpersonal relationships within the recipient's home environment.

2. A family outpatient therapy session shall be billed as one (1) service regardless of the number of individuals (including multiple members from one (1) family) who participate in the session.

3. Family outpatient therapy shall:

a. Be provided to promote the:

(i) Health and wellbeing of the individual; or

(ii) Restoration of a recipient to the recipient's best possible functional level[Recovery] from a[substance use disorder,] mental health disorder[, or co-occurring mental health and substance use disorders]; and

b. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient[individual] unless additional time is medically necessary.

4. Family outpatient therapy shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(l)1. Collateral outpatient therapy shall:

a. Consist of a face-to-face behavioral health consultation or occur via telehealth as appropriate pursuant to 907 KAR 3:170:

(i) With a parent or caregiver of a recipient, household member of a recipient, legal representative of a recipient, school personnel, treating professional, or other person with custodial control or supervision of the recipient; and

(ii) That is provided in accordance with the recipient's plan of care; and

b. Not be reimbursable if the therapy is for a recipient who is at least twenty-one (21) years of age; and

c. Not exceed three (3) hours per day per individual unless additional time is medically necessary].

2. Written consent by a parent or custodial guardian to discuss a recipient's treatment with any person other than a parent or legal guardian shall be signed and filed in the recipient's health record.

3. Collateral outpatient therapy shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(m)1. Service planning shall:

a. Involve assisting a recipient in creating an individualized plan for services and developing measurable goals and objectives needed for maximum reduction of the effects of a mental health disorder;

b. Involve restoring a recipient's functional level to the recipient's best possible functional level;[and]

c. Be performed using a person-centered planning process; and

d. Be provided face-to-face.

2. A service plan:

a. Shall be directed and signed by the recipient;

b. Shall include practitioners of the recipient's choosing; and

c. May include:

(i) A mental health advance directive being filed with a local hospital;

(ii) A crisis plan; or

(iii) A relapse prevention strategy or plan.

3. Service planning shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(n)[4. Residential services for substance use disorders shall:

a. Be provided in a twenty-four (24) hour per day unit that is a live-in facility that offers a planned and structured regimen of care

aimed to treat individuals with addiction or co-occurring mental health and substance use disorders;

- b. Be short or long-term to provide intensive treatment and skills building in a structured and supportive environment;
- c. Assist an individual in abstaining from alcohol or substance use and in entering alcohol or drug addiction recovery;
- d. Assist a recipient in making necessary changes in the recipient's life to enable the recipient to live drug- or alcohol-free;
- e. Be provided under the medical direction of a physician;
- f. Provide continuous nursing services in which a registered nurse shall be:
 - (i) On-site during traditional first shift hours, Monday through Friday;
 - (ii) Continuously available by phone after hours; and
 - (iii) On-site as needed in follow-up to telephone consultation after hours;
- g. Be based on individual need and may include:
 - (i) A screening;
 - (ii) An assessment;
 - (iii) Service planning;
 - (iv) Individual outpatient therapy;
 - (v) Group outpatient therapy;
 - (vi) Family outpatient therapy; or
 - (vii) Peer support; and
- h. Be provided in accordance with 908 KAR 1:370.

2. a. Except as established in clause b of this subparagraph, the physical structure in which residential services for substance use disorders is provided shall:

- (i) Have between nine (9) and sixteen (16) beds; and
- (ii) Not be part of multiple units comprising one (1) facility with more than sixteen (16) beds in aggregate.

b. If every recipient receiving services in the physical structure is under the age of twenty-one (21) years or over the age of sixty-five (65) years, the limit of sixteen (16) beds established in clause a of this subparagraph shall not apply.

3. A short-term length-of-stay for residential services for substance use disorders:

- a. Shall be less than thirty (30) days in duration;
- b. Shall include planned clinical program activities constituting at least fifteen (15) hours per week of structured professionally-directed treatment activities to:
 - (i) Stabilize a recipient's substance use disorder; and
 - (ii) Help the recipient develop and apply recovery skills; and
- c. May include the services listed in subparagraph 1.g. of this paragraph.

4. A long-term length-of-stay for residential services for substance use disorders:

- a. Shall be between thirty (30) days and ninety (90) days in duration;
- b. Shall include planned clinical program activities constituting at least forty (40) hours per week of structured professionally-directed treatment activities to:
 - (i) Stabilize a recipient's substance use disorder; and
 - (ii) Help the recipient develop and apply recovery skills; and
- c. May include the services listed in subparagraph 1.g. of this paragraph.

5. Residential services for substance use disorders shall not include:

- a. Room and board;
- b. Educational services;
- c. Vocational services;
- d. Job training services;
- e. Habilitation services;
- f. Services to an inmate in a public institution pursuant to 42 C.F.R. 435.1010;
- g. Services to an individual residing in an institution for mental diseases pursuant to 42 C.F.R. 435.1010;
- h. Recreational activities;
- i. Social activities; or
- j. Services required to be covered elsewhere in the Medicaid state plan.

6. To provide residential services for substance use disorders, a behavioral health services organization shall:

- a. Have the capacity to employ staff authorized to provide services in accordance with this section and to coordinate the provision of services among team members; and
- b. Be licensed as a non-medical and non-hospital based alcohol and other drug abuse treatment program in accordance with 908 KAR 1:370.

(c) Screening, brief intervention, and referral to treatment for a substance use disorder shall:

- 1. Be an evidence-based early intervention approach for an individual with non-dependent substance use to provide an effective strategy for intervention prior to the need for more extensive or specialized treatment; and
- 2. Consist of:
 - a. Using a standardized screening tool to assess an individual for risky substance use behavior;
 - b. Engaging a recipient, who demonstrates risky substance use behavior, in a short conversation and providing feedback and advice; and
 - c. Referring a recipient to additional mental health disorder, substance use disorder, or co-occurring disorders services if the recipient is determined to need additional services to address substance use.

(p) 1. Assertive community treatment shall:

- a. Be an evidence-based psychiatric rehabilitation practice that provides a comprehensive approach to service delivery for individuals with a serious mental illness; and
- b. Include:
 - (i) Assessment;
 - (ii) Treatment planning;
 - (iii) Case management;
 - (iv) Psychiatric services;
 - (v) Medication prescribing and monitoring;
 - (vi) Individual outpatient therapy;
 - (vii) Family outpatient therapy;
 - (viii) Group outpatient therapy;
 - (ix) Mobile crisis services;
 - (x) Crisis intervention;
 - (xi) Mental health consultation; or
 - (xii) Family support and basic living skills; and
- c. Be provided face-to-face.

2. a. Mental health consultation shall involve brief, collateral interactions with other treating professionals who may have information for the purpose of treatment planning and service delivery.

- b. Family support shall involve the assertive community treatment team's working with the recipient's natural support systems to improve family relations in order to:
 - (i) Reduce conflict; and
 - (ii) Increase the recipient's autonomy and independent functioning.
- c. Basic living skills shall be rehabilitative services focused on teaching activities of daily living necessary to maintain independent functioning and community living.

3. To provide assertive community treatment services, a behavioral health services organization shall:

- a. Employ at least one (1) team of multidisciplinary professionals:
 - (i) Led by an approved behavioral health services practitioner[provider]; and
 - (ii) Comprised of at least four (4) full-time equivalents including a prescriber, a nurse, an approved behavioral health services practitioner[provider], or a case manager, or a co-occurring disorder specialist;
- b. Have adequate staffing to ensure that a team's caseload size shall not exceed ten (10) participants per team member (for example, if the team includes five (5) individuals, the caseload for the team shall not exceed fifty (50) recipients);
- c. Have the capacity to:
 - (i) Employ staff authorized to provide assertive community treatment services in accordance with this paragraph;
 - (ii) Coordinate the provision of services among team members;
 - (iii) Provide the full range of assertive community treatment services as stated in this paragraph; and

(iv) Document and maintain individual case records; and
d. Demonstrate experience in serving individuals with persistent and serious mental illness who have difficulty living independently in the community.

4. Assertive community treatment shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

5.a. A peer support specialist under the supervision of an approved behavioral health practitioner may provide support services under this paragraph.

b. A community support associate under supervision of an approved behavioral health practitioner may provide support services under this paragraph.

(o)(q)1. Comprehensive community support services shall:

a. Be activities necessary to allow an individual to live with maximum independence in the community;

b. Be intended to ensure successful community living through the utilization of skills training as identified in the recipient's plan of care;[and]

c. Consist of using a variety of psychiatric rehabilitation techniques to:

(i) Improve daily living skills;

(ii) Improve self-monitoring of symptoms and side effects;

(iii) Improve emotional regulation skills;

(iv) Improve crisis coping skills; and

(v) Develop and enhance interpersonal skills; and

d. Be provided face-to-face.

2. To provide comprehensive community support services, a behavioral health services organization shall:

a. Have the capacity to employ staff authorized pursuant to 908 KAR 2:250 to provide comprehensive community support services[in accordance with subsection (2)(k) of this section] and to coordinate the provision of services among team members; and

b. Meet the requirements for comprehensive community support services established in 908 KAR 2:250.

3. Comprehensive community support services shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

4.a. A community support associate under supervision of an approved behavioral health practitioner may provide support services under this paragraph.

b. A registered behavioral technician under the supervision of a licensed behavior analyst may provide support services under this paragraph.

(p)(r)1. Therapeutic rehabilitation program services shall be:

a. A rehabilitative service for an:

(i) Adult with a serious mental illness; or

(ii) Individual under the age of twenty-one (21) years who has a serious emotional disability; [and]

b. Designed to maximize the reduction of the effects of a mental health disorder and the restoration of the individual's functional level to the individual's best possible functional level; and

c. Provided face-to-face.

2. A recipient in a therapeutic rehabilitation program shall establish the recipient's own rehabilitation goals within the person-centered service plan.

3. A therapeutic rehabilitation program shall:

a. Provide face-to-face, on-site psychiatric rehabilitation and supports;

b. Be delivered using a variety of psychiatric rehabilitation techniques;

c.[b.] Focus on:

(i) Improving daily living skills;

(ii) Self-monitoring of symptoms and side effects;

(iii) Emotional regulation skills;

(iv) Crisis coping skill; and

(v) Interpersonal skills;[and]

d.[c.] Be delivered individually or in a group; and

e. Include:

(i) An individualized plan of care identifying measurable goals and objectives including discharge and relapse prevention planning;

(ii) Coordination of services the individual may be receiving; and

(iii) Referral to other necessary service supports as needed.

4. Therapeutic rehabilitation staffing shall include:

a. Licensed clinical supervision, consultation, and support to direct care staff; and

b. Direct care staff to provide scheduled therapeutic activities, training, and support for Medicaid recipients.

5. Therapeutic rehabilitation program services shall be provided by:

a. An approved behavioral health practitioner, except for a licensed behavior analyst; or

b. An approved behavioral health practitioner under supervision, except for a licensed assistant behavior analyst.

6. A peer support specialist working under the supervision of an approved behavioral health practitioner may provide support services under this paragraph.

(g)1. Partial hospitalization services shall be:

a. Short-term with an average of four (4) to six (6) weeks;

b. Less than twenty-four (24)-hours each day; and

c. An intensive treatment program for an individual who is experiencing significant impairment to daily functioning due to a mental health disorder.

2. Partial hospitalization may be provided to an adult or a minor.

3. Admission criteria for partial hospitalization shall be based on an inability of community-based therapies or intensive outpatient services to adequately treat the recipient.

4. A partial hospitalization program shall consist of:

a. Individual outpatient therapy;

b. Group outpatient therapy;

c. Family outpatient therapy; or

d. Medication management.

5. The department shall not reimburse for educational, vocational, or job training services provided as part of partial hospitalization.

6. An outpatient behavioral health services organization's partial hospitalization program shall have an agreement with the local educational authority to come into the program to provide all educational components and instruction that are not Medicaid billable or reimbursable.

7. Partial hospitalization shall be:

a. Provided for at least four (4) hours per day; and

b. Focused on one (1) primary presenting problem.

8. A partial hospitalization program operated by a behavioral health services organization shall:

a. Include the following personnel for the purpose of providing medical care:

(i) An advanced practice registered nurse, a physician assistant, or a physician available on site; and

(ii) A board-certified or board-eligible psychiatrist available for consultation; and

b. Have the capacity to:

(i) Provide services utilizing a recognized intervention protocol based on nationally accepted

treatment principles;

(ii) Employ required practitioners and coordinate service provision among rendering practitioners; and

(iii) Provide the full range of services included in the scope of partial hospitalization established in this paragraph.

9. Partial hospitalization services shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.[(4) The extent and type of a screening shall depend upon the problem of the individual seeking or being referred for services.

(5) A diagnosis or clinical impression shall be made using terminology established in the most current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders.

~~(6) The department shall not reimburse for a service billed by or on behalf of an entity or individual who is not a billing provider.]~~

Section 4. Additional Limits and Non-covered Services or Activities. (1)(a) Except as established in paragraph (b) of this subsection, unless a diagnosis is made and documented in the recipient's medical record within three (3) visits, the service shall not be covered.

(b) The requirement established in paragraph (a) of this subsection shall not apply to:

1. Mobile crisis services;
2. Crisis intervention;
3. A screening; or
4. An assessment.

~~(2) For a recipient who is receiving residential services for substance use disorders, the following shall not be billed or reimbursed for the same date of service for the recipient:~~

- ~~(a) A screening;~~
- ~~(b) An assessment;~~
- ~~(c) Service planning;~~
- ~~(d) A psychiatric service;~~
- ~~(e) Individual outpatient therapy;~~
- ~~(f) Group outpatient therapy;~~
- ~~(g) Family outpatient therapy; or~~
- ~~(h) Peer support services.~~

~~(3) For a recipient who is receiving assertive community treatment, the following shall not be billed or reimbursed for the same date of service for the recipient:~~

- ~~(a) An assessment;~~
- ~~(b) Case management;~~
- ~~(c) Individual outpatient therapy;~~
- ~~(d) Group outpatient therapy;~~
- ~~(e) Peer support services; or~~
- ~~(f) Mobile crisis services.~~

~~(3)(4) The department shall not reimburse for both a screening provided pursuant to this administrative regulation and a screening, brief intervention and referral to treatment (SBIRT)[an SBIRT] provided pursuant to 907 KAR 15:022 to a recipient on the same date of service.~~

~~(4)(5) The following services or activities shall not be covered under this administrative regulation:~~

- ~~(a) A service provided to:~~
 - ~~1. A resident of:~~
 - ~~a. A nursing facility; or~~
 - ~~b. An intermediate care facility for individuals with an intellectual disability;~~
 - ~~2. An inmate of a federal, local, or state:~~
 - ~~a. Jail;~~
 - ~~b. Detention center; or~~
 - ~~c. Prison; or~~
 - ~~3. An individual with an intellectual disability without documentation of an additional psychiatric diagnosis;~~
- ~~(b) Psychiatric or psychological testing for another agency, including a court or school, that does not result in the individual receiving psychiatric intervention or behavioral health therapy from the behavioral health services organization;~~
- ~~(c) A consultation or educational service provided to a recipient or to others;~~
- ~~(d) A telephone call, an email, a text message, or other electronic contact that does not meet the requirements stated in the definition of "face-to-face" established in 907 KAR 15:005, Section 1(21). Contact prohibited under subparagraph 1. of this paragraph may be permissible if it is conducted in the course of a telehealth service permitted pursuant to 907 KAR 3:170 or this administrative regulation, as applicable;(44);~~
 - ~~(e) Travel time;~~
 - ~~(f) A field trip;~~
 - ~~(g) A recreational activity;~~
 - ~~(h) A social activity; or~~
 - ~~(i) A physical exercise activity group.~~

~~(5)(6)(a) A consultation by one (1) provider or professional with another shall not be covered under this administrative regulation except as established in Section 3(6)(3)(l)1. of this~~

administrative regulation.

(b) A third party contract shall not be covered under this administrative regulation.

~~(6)(7) A billing supervisor arrangement between a billing supervisor and an approved[a] behavioral health practitioner under supervision shall not violate the supervision rules or policies of the respective professional licensure boards governing the billing supervisor and the approved behavioral health practitioner under supervision.~~

Section 5. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider, of any program in which the service is covered, during the same time period.

(2) For example, if a recipient is receiving a behavioral health service from an independent behavioral health provider, the department shall not reimburse for the same service provided to the same recipient during the same time period by a behavioral health services organization.

Section 6. Records Maintenance, Documentation, Protection, and Security. (1) A behavioral health services organization shall maintain a current health record for each recipient.

~~(2)(a) A health record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.(b) The individual who provided the service shall date and sign the health record on the date that the individual provided the service except as established in subsection (5)(a) of this section.]~~

(3) A health record shall:

(a) Include:

1. An identification and intake record including:

- a. Name;
- b. Social Security number;
- c. Date of intake;
- d. Home (legal) address;
- e. Health insurance or Medicaid information;
- f. Referral source and address of referral source;
- g. Primary care physician and address;
- h. The reason the individual is seeking help including the presenting problem and diagnosis;

i. Any physical health diagnosis, if a physical health diagnosis exists for the individual, and information regarding:

(i) Where the individual is receiving treatment for the physical health diagnosis; and

(ii) The physical health provider; and

j. The name of the informant and any other information deemed necessary by the behavioral health services organization to comply with the requirements of:

(i) This administrative regulation;

(ii) The behavioral health services organization's licensure board;

(iii) State law; or

(iv) Federal law;

2. Documentation of the:

- a. Screening;
- b. Assessment if an assessment was performed; and
- c. Disposition if a disposition was performed;

3. A complete history including mental status and previous treatment;

4. An identification sheet;

5. A consent for treatment sheet that is accurately signed and dated; and

6. The individual's stated purpose for seeking services; and

(b) Be:

1. Maintained in an organized central file;

2. Furnished to the:

a. Cabinet for Health and Family Services upon request; or

b. Managed care organization in which the recipient is enrolled upon request if the recipient is enrolled with a managed care organization;

3. Made available for inspection and copying by:

a. Cabinet for Health and Family Services' personnel; or

b. Personnel of the managed care organization in which the recipient is enrolled if the recipient is enrolled with a managed care organization;

4. Readily accessible; and

5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient if the recipient received services beyond a screening.

(4) Documentation of a screening shall include:

(a) Information relative to the individual's stated request for services; and

(b) Other stated personal or health concerns if other concerns are stated.

(5)(a) A behavioral health services organization's service note[notes] regarding a recipient shall:

1. Be made within forty-eight (48) hours of each service visit; [and]

2. Indicate if the service was provided face-to-face or via telehealth; and

3. Describe the:

a. Recipient's symptoms or behavior, reaction to treatment, and attitude;

b. Therapist's intervention;

c. Changes in the plan of care if changes are made; and

d. Need for continued treatment if continued treatment is needed.

(b)1. Any edit to notes shall:

a. Clearly display the changes; and

b. Be initiated and dated by the person who edited the notes.

2. Notes shall not be erased or illegibly marked out.

(c)1. Notes recorded by an approved[a] behavioral health practitioner [working] under supervision shall be co-signed and dated by the supervising professional within thirty (30) days.

2. If services are provided by an approved[a] behavioral health practitioner [working] under supervision, there shall be a monthly supervisory note recorded by the supervising professional reflecting consultations with the approved behavioral health practitioner[working] under supervision concerning the:

a. Case; and

b. Supervising professional's evaluation of the services being provided to the recipient.

(6) Immediately following a screening of a recipient, the practitioner shall perform a disposition related to:

(a) A provisional diagnosis;

(b) A referral for further consultation and disposition, if applicable; or

(c)1. If applicable, termination of services and referral to an outside source for further services; or

2. If applicable, termination of services without a referral to further services.

(7) Any change to a recipient's plan of care shall be documented, signed, and dated by the rendering practitioner and by the recipient or recipient's representative.

(8)(a) Notes regarding services to a recipient shall:

1. Be organized in chronological order;

2. Be dated;

3. Be titled to indicate the service rendered;

4. State a starting and ending time for the service; and

5. Be recorded and signed by the rendering practitioner and include the professional title (for example, licensed clinical social worker) of the provider.

(b) Initials, typed signatures, or stamped signatures shall not be accepted.

(c) Telephone contacts, family collateral contacts not covered under this administrative regulation, or other non-reimbursable contacts shall:

1. Be recorded in the notes; and

2. Not be reimbursable.

(9)(a) A termination summary shall:

1. Be required, upon termination of services, for each recipient who received at least three (3) service visits; and

2. Contain a summary of the significant findings and events during the course of treatment including the:

a. Final assessment regarding the progress of the individual

toward reaching goals and objectives established in the individual's plan of care;

b. Final diagnosis of clinical impression; and

c. Individual's condition upon termination and disposition.

(b) A health record relating to an individual who terminated from receiving services shall be fully completed within ten (10) days following termination.

(10) If an individual's case is reopened within ninety (90) days of terminating services for the same or related issue, a reference to the prior case history with a note regarding the interval period shall be acceptable.

(11)(a) Except as established in paragraph (b) of this subsection, if a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring behavioral health services organization shall, within ten (10) business days of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

1.a. The Health Insurance Portability and Accountability Act;

b. 42 U.S.C. 1320d-2 to 1320d-8; and

c. 45 C.F.R. Parts 160 and 164; or

2.a. 42 U.S.C. 290 ee-3; and

b. 42 C.F.R. Part 2.

(b) If a recipient is transferred or referred to a residential crisis stabilization unit, a psychiatric hospital, a psychiatric distinct part unit in an acute care hospital, or an acute care hospital for care or treatment, the transferring behavioral health services organization shall, within forty-eight (48) hours of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

1.a. The Health Insurance Portability and Accountability Act;

b. 42 U.S.C. 1320d-2 to 1320d-8; and

c. 45 C.F.R. Parts 160 and 164; or

2.a. 42 U.S.C. 290 ee-3; and

b. 42 C.F.R. Part 2.

(12)(a) If a behavioral health services organization's Medicaid Program participation status changes as a result of voluntarily terminating from the Medicaid Program, involuntarily terminating from the Medicaid Program, a licensure suspension, or death of an owner or deaths of owners, the health records of the behavioral health services organization shall:

1. Remain the property of the behavioral health services organization; and

2. Be subject to the retention requirements established in subsection (13) of this section.

(b) A behavioral health services organization shall have a written plan addressing how to maintain health records in the event of death of an owner or deaths of owners.

(13)(a) Except as established in paragraph (b) or (c) of this subsection, a behavioral health services organization shall maintain a case record regarding a recipient for at least six (6) years from the date of the service or until any audit dispute or issue is resolved beyond six (6) years.

(b) After a recipient's death or discharge from services, a provider shall maintain the recipient's record for the longest of the following periods:

1. Six (6) years unless the recipient is a minor; or

2. If the recipient is a minor, three (3) years after the recipient reaches the age of majority under state law.

(c) If the Secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this subsection[section], pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(14)(a) A behavioral health services organization shall comply with 45 C.F.R. Part 164.

(b) All information contained in a health record shall:

1. Be treated as confidential;

2. Not be disclosed to an unauthorized individual; and

3. Be disclosed to an authorized representative of:

a. The department; or

b. Federal government.

(c)1. Upon request, a behavioral health services organization

shall provide to an authorized representative of the department or federal government information requested to substantiate:

- a. Staff notes detailing a service that was rendered;
- b. The professional who rendered a service; and
- c. The type of service rendered and any other requested information necessary to determine, on an individual basis, whether the service is reimbursable by the department.

2. Failure to provide information required by subparagraph 1_ of this paragraph shall result in denial of payment for any service associated with the requested information.

Section 7. Medicaid Program Participation Compliance. (1) A behavioral health services organization shall comply with:

- (a) 907 KAR 1:671;
- (b) 907 KAR 1:672; and
- (c) All applicable state and federal laws.

(2)(a) If a behavioral health services organization receives any duplicate payment or overpayment from the department, regardless of reason, the behavioral health services organization shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection[section] may be:

1. Interpreted to be fraud or abuse; and
2. Prosecuted in accordance with applicable federal or state law.

(3)(a) When the department makes payment for a covered service and the behavioral health services organization accepts the payment:

1. The payment shall be considered payment in full;
2. A bill for the same service shall not be given to the recipient; and

3. Payment from the recipient for the same service shall not be accepted by the behavioral health services organization.

(b)1. A behavioral health services organization may bill a recipient for a service that is not covered by the Kentucky Medicaid Program if the:

- a. Recipient requests the service; and
- b. Behavioral health services organization makes the recipient aware in advance of providing the service that the:
 - (i) Recipient is liable for the payment; and
 - (ii) Department is not covering the service.

2. If a recipient makes payment for a service in accordance with subparagraph 1_ of this paragraph, the:

- a. Behavioral health services organization shall not bill the department for the service; and
- b. Department shall not:
 - (i) Be liable for any part of the payment associated with the service; and
 - (ii) Make any payment to the behavioral health services organization regarding the service.

(4)(a) A behavioral health services organization shall attest by the behavioral health services organization's staff's or representative's signature that any claim associated with a service is valid and submitted in good faith.

(b) Any claim and substantiating record associated with a service shall be subject to audit by the:

1. Department or its designee;
2. Cabinet for Health and Family Services, Office of Inspector General, or its designee;
3. Kentucky Office of Attorney General or its designee;
4. Kentucky Office of the Auditor for Public Accounts or its designee; or
5. United States General Accounting Office or its designee.

(c) If a behavioral health services organization receives a request from the department to provide a claim, related information, related documentation, or record for auditing purposes, the behavioral health services organization shall provide the requested information to the department within the timeframe requested by the department.

(d)1. All services provided shall be subject to review for recipient or provider abuse.

2. Willful abuse by a behavioral health services organization shall result in the suspension or termination of the behavioral

health services organization from Medicaid Program participation.

Section 8. Third Party Liability. A behavioral health services organization shall comply with KRS 205.622.

Section 9. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A behavioral health services organization that chooses to use electronic signatures shall:

- (a) Develop and implement a written security policy that shall:
 1. Be adhered to by each of the behavioral health services organization's employees, officers, agents, or contractors;
 2. Identify each electronic signature for which an individual has access; and
 3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;
- (b) Develop a consent form that shall:
 1. Be completed and executed by each individual using an electronic signature;
 2. Attest to the signature's authenticity; and
 3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and
- (c) Provide the department, immediately upon request, with:
 1. A copy of the behavioral health services organization's electronic signature policy;
 2. The signed consent form; and
 3. The original filed signature.

Section 10. Auditing Authority. The department shall have the authority to audit any:

- (1) Claim;
- (2) Medical record; or
- (3) Documentation associated with any claim or medical record.

Section 11. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the coverage; and
- (2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 12. Appeals. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

Section 13. Delayed Implementation Date. The provisions of this administrative regulation shall be implemented beginning July 1, 2019.

CAROL H. STECKEL, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 17, 2019

FILED WITH LRC: June 28, 2019 at 4 p.m.

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, KY 40621; phone: 502-564-6746; fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This

administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program behavioral health services provided by Tier I behavioral health services organizations (BHSO I). A BHSO I is an entity that provides treatment for mental health and is licensed and regulated by the Office of Inspector General in accordance with 902 KAR 20:430. The array of services includes a screening; an assessment; psychological testing; crisis intervention; mobile crisis services; day treatment; peer support; intensive outpatient program services; individual outpatient therapy; group outpatient therapy; family outpatient therapy; collateral outpatient therapy; service planning; partial hospitalization; assertive community treatment; comprehensive community support services; and therapeutic rehabilitation program services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 205.6311, which mandates that Kentucky's Medicaid Program "expand the behavioral health network to allow providers to provide services within their licensure category."

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by expanding "the behavioral health network to allow providers to provide services within their licensure category."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by expanding "the behavioral health network to allow providers to provide services within their licensure category."

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

(a) How the amendment will change this existing administrative regulation: The amendments include establishing the first tier, of what will be a 3-tiered division of BHSO services. The new tiers will divide BHSO services provided for non-substance use disorder (SUD) treatment services, outpatient SUD treatment services, and residential SUD treatment services. Each tier will require different licensure. The amendments to the administrative regulation require that a BHSO I only provide mental health treatment, and not SUD treatment. Accreditation is now required within one year of initial enrollment. In addition, certain types of providers and support staff are not allowed to practice within a BHSO I. The amendments also better refer to the defined terms of an "approved behavioral health practitioner" or an "approved behavioral health practitioner under supervision", and these terms now include certain additional practitioners. The amendments also require physicians and advance practice registered nurses providing behavioral health services within a BHSO I to have a psychiatric specialty. Physician assistants are now required to have a contractual relationship with a supervising physician with a psychiatric specialty in order to provide behavioral health services within a BHSO I. The amendments further clarify that face-to-face contact between the provider and recipient is not required for family therapy which involves informing family members (in the absence of the recipient) regarding the recipient's psychological testing and service planning. The amendments further clarify that the three (3) hour per day limit regarding individual outpatient therapy, group outpatient therapy, and family outpatient therapy applies to each service or any combination of the therapies in aggregate. The amendments also make organizational changes by deleting language that listed the service and appropriate provider, this information has now been consolidated and included with the subsection that addresses covered services.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to increase treatment licensure and quality standards as a part of a cabinet-wide process mandated by HB 124 of the 2018 Regular Session. Additional clarifications relating to face-to-face contact for family therapy, psychological testing, and service planning were necessary to reflect that these services may be conducted without the recipient present. Clarifying that the three (3) hour limit regarding individual outpatient therapy, group outpatient therapy, and family outpatient

therapy is an aggregate as well as individual service limit is necessary for clarity.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to the content of the authorizing statutes by enhancing and ensuring that licensure standards and SUD treatment meet a standard established by HB 124 of the 2018 Regular Session, in addition, the amendments help meet recipient demand as well as conforms to the content of KRS 205.6311(2).

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist in the effective administration of the authorizing statutes by implementing part of a tiering process of BHSOs according to the licensure and type of services provided, and by enabling additional practitioners throughout the new tiers to provide services to help meet recipient demand. In addition, the amendments will assist with conforming to the content of KRS 205.6311(2).

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are currently 134 entities licensed as behavioral health services organizations that will be affected by this administrative regulation. Medicaid recipients in need of substance use treatment, mental health treatment, or treatment for a co-occurring disorder will also be affected by the amendment. There are currently 1.4 million individuals enrolled in the Medicaid program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Providers that plan to provide non-SUD treatment will need to only attain or retain BHSO licensure. In addition, BHSOs will need to ensure that the appropriate services are provided by the appropriate provider.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Entities that only provide non-SUD treatment services will only need to attain or retain BHSO licensure.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Medicaid recipients in need of mental health treatment that does not include SUD treatment will have access to a broad range of mental health treatment. Facilities may provide many services with no need for dual licensure due to these changes. Currently there are 1.4 million Kentuckians receiving Medicaid services.

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

(a) Initially: DMS does not anticipate additional costs as a result of the amendments to this administrative regulation.

(b) On a continuing basis: DMS does not anticipate additional costs as a result of the amendments to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 1302(b)(1)(E) of the Affordable Care Act, 42 U.S.C. 1396a(a)(10)(B), and 42 U.S.C. 1396a(a)(23).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Substance use disorder services are federally mandated for Medicaid programs. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment." 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." Medicaid recipients enrolled with a managed care organization may be restricted to providers within the managed care organization's provider network. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope as available to other individuals (non-Medicaid.) Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter than federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment to this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not expected to generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment is not expected to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? DMS does not expect any additional costs in administering these amendments during the first year.

(d) How much will it cost to administer this program for subsequent years? DMS does not expect any additional costs in administering these amendments during subsequent years.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

STATEMENT OF EMERGENCY
907 KAR 15:022E

This emergency administrative regulation is being promulgated to implement state and federal enhancements to services provided by behavioral health services organizations. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)1. to meet an imminent threat to public health and pursuant to KRS 13A.190(1)(a)2. to prevent a loss of federal funds. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is not identical to this emergency administrative regulation as this emergency administrative regulation refers to the effective date of the ordinary administrative regulation in establishing a sunset date for temporary licensure for certified alcohol and drug counselors working within a narcotic treatment program (in Section 3(7)(q)6.d.(i)) and includes an additional Section 14 to establish an implementation date of July 1, 2019 for the entire administrative regulation.

MATTHEW G. BEVIN, Governor
ADAM M. MEIER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(New Emergency Administrative Regulation)

907 KAR 15:022E. Coverage provisions and requirements regarding services provided by behavioral health services organizations for substance use disorder treatment and co-occurring disorders.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 1396a(a)(23), 12101

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

EFFECTIVE: June 28, 2019

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program behavioral health services provided by tier II and III behavioral health services organizations.

Section 1. General Coverage Requirements. (1) For the department to reimburse for a service covered under this administrative regulation, the service shall be:

(a) Medically necessary; and
(b) Provided:

1. To a recipient; and

2. By a behavioral health services organization that meets the provider participation requirements established in Section 2 of this administrative regulation.

(2)(a) Direct contact between a practitioner and a recipient shall be required for each service except for:

1. Collateral outpatient therapy for a child under the age of twenty-one (21) years if the collateral outpatient therapy is in the

child's plan of care;

2. A family outpatient service in which the corresponding current procedural terminology code establishes that the recipient is not present; or

3. A psychological testing service comprised of interpreting or explaining results of an examination or data to family members or other kin if the corresponding current procedural terminology code establishes that the recipient is not present.

(b) A service that does not meet the requirement in paragraph (a) of this subsection shall not be covered.

(3) A billable unit of service shall be actual time spent delivering a service in an encounter.

(4) A service shall be:

(a) Stated in the recipient's plan of care; and

(b) Provided in accordance with the recipient's plan of care.

(5)(a) A behavioral health services organization shall establish a plan of care for each recipient receiving services from the behavioral health services organization.

(b) A plan of care shall meet the plan of care requirements established in 908 KAR 1:370, Section 19.

Section 2. Provider Participation. (1) To be eligible to provide services under this administrative regulation, a behavioral health services organization shall:

(a) Be currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

(b) ~~Except as established in subsection (2) of this section,~~ Be currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; and

(c) Have:

1. For each service it provides, the capacity to provide the full range of the service as established in this administrative regulation;

2. Documented experience in serving individuals with substance use disorders;

3. The administrative capacity to ensure quality of services;

4. A financial management system that provides documentation of services and costs; and

5. The capacity to document and maintain individual case records.

(2) A behavioral health services organization shall:

(a) Agree to provide services in compliance with federal and state laws regardless of age, sex, race, creed, religion, national origin, handicap, or disability;

(b) Comply with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments to the Act; and

(c) Provide, directly or through written agreement with another behavioral health services provider, access to face-to-face or telehealth, as appropriate pursuant to 907 KAR 3:170, emergency services twenty-four (24) hours per day, seven (7) days per week.

(3)(a) Each behavioral health services organization II (BHSO II) shall provide services in accordance with 908 KAR 1:374 and this administrative regulation for outpatient substance use disorder services and co-occurring disorders.

(b) Each behavioral health services organization III (BHSO III) shall provide services in accordance with 908 KAR 1:372 and this administrative regulation for residential substance use disorder services and co-occurring disorders.

(4) A BHSO II shall:

(a) Possess an outpatient alcohol and other drug treatment entity (AODE) license issued pursuant to 908 KAR 1:370 and 908 KAR 1:374;

(b) Possess accreditation within one (1) year of initial enrollment by one (1) of the following:

1. The Joint Commission;

2. The Commission on Accreditation of Rehabilitation Facilities;

3. The Council on Accreditation; or

4. A nationally recognized accreditation organization; and

(c) Be authorized to provide outpatient substance use disorder treatment services authorized by Section 3 of this administrative regulation to treat substance use disorders and co-occurring disorders by the appropriate provider.

(5) A BHSO III shall:

(a) Possess a residential alcohol and other drug treatment

entity (AODE) license issued pursuant to 908 KAR 1:370 and 908 KAR 1:372;

(b) Possess accreditation within one (1) year of initial enrollment by one (1) of the following:

1. The Joint Commission;

2. The Commission on Accreditation of Rehabilitation Facilities;

3. The Council on Accreditation; or

4. A nationally recognized accreditation organization; and

(c) Be authorized to provide residential substance use disorder treatment services authorized by Section 3 of this administrative regulation to treat substance use disorders and co-occurring disorders by the appropriate provider.

Section 3. Covered Services. (1)(a) A physician providing services in a BHSO II shall possess:

1. A psychiatric specialty; or

2. An addictionology specialty.

(b) An advanced practice registered nurse providing services in a BHSO II shall possess:

1. A psychiatric specialty; or

2. An addictionology specialty.

(c) A physician assistant providing behavioral health services in a BHSO II shall have a contractual relationship with a supervising physician with:

1. A psychiatric specialty; or

2. An addictionology specialty.

(2) Reimbursement shall not be available for services performed within a BHSO II by a:

(a) Licensed behavior analyst;

(b) Licensed assistant behavior analyst;

(c) Registered behavioral technician; or

(d) Community support associate.

(3) A BHSO III shall provide services on a residential basis to treat a beneficiary's substance use disorder.

(4)(a) A physician providing services in a BHSO III shall possess:

1. A psychiatric specialty; or

2. An addictionology specialty.

(b) An advanced practice registered nurse providing services in a BHSO III shall possess:

1. A psychiatric specialty; or

2. An addictionology specialty.

(c) A physician assistant providing behavioral health services in a BHSO III shall have a contractual relationship with a supervising physician with:

1. A psychiatric specialty; or

2. An addictionology specialty.

(5) Reimbursement shall not be available for services performed within a BHSO III by a:

(a) Licensed behavior analyst;

(b) Licensed assistant behavior analyst;

(c) Registered behavioral technician; or

(d) Community support associate.

(6) Except as specified in the requirements stated for a given service, the services covered may be provided for:

(a) A substance use disorder; or

(b) Co-occurring disorders if provided in accordance with Section 2 of this administrative regulation.

(7) The services established in this subsection shall be covered under this administrative regulation in accordance with the requirements established in this subsection.

(a) A screening shall:

1. Determine the likelihood that an individual has a mental health disorder, substance use disorder, or co-occurring disorders;

2. Not establish the presence or specific type of disorder;

3. Establish the need for an in-depth assessment;

4. Be face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170; and

5. In a BHSO II, be provided by:

a. An approved behavioral health practitioner, as limited by subsections (2) and (5) of this section; or

b. An approved behavioral health practitioner under supervision, as limited by subsections (2) and (5) of this section.

- (b) An assessment shall:
1. Include gathering information and engaging in a process with the individual that enables the practitioner to:
 - a. Establish the presence or absence of a substance use disorder or co-occurring disorders;
 - b. Determine the individual's readiness for change;
 - c. Identify the individual's strengths or problem areas that may affect the treatment and recovery processes; and
 - d. Engage the individual in developing an appropriate treatment relationship;
 2. Establish or rule out the existence of a clinical disorder or service need;
 3. Include working with the individual to develop a plan of care;
 4. Not include a psychological or psychiatric evaluation or assessment;
 5. If being made for the treatment of a substance use disorder, utilize a multidimensional assessment that complies with the most current edition of The ASAM Criteria to determine the most appropriate level of care;
 6. Be face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170; and
 7. Be provided by:
 - a. An approved behavioral health practitioner, as limited by subsections (2) and (5) of this section; or
 - b. An approved behavioral health practitioner under supervision, except for a certified alcohol and drug counselor, and as limited by subsections (2) and (5) of this section.
- (c) Psychological testing shall:
1. Include a psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities;
 2. Include an interpretation and a written report of testing results;
 3. Be face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170; and
 4. Be provided by:
 - a. A licensed psychologist;
 - b. A certified psychologist with autonomous functioning;
 - c. A licensed psychological practitioner;
 - d. A certified psychologist under supervision; or
 - e. A licensed psychological associate under supervision.
- (d) Crisis intervention:
1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to:
 - a. The recipient; or
 - b. Another individual;
 2. Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities for individuals;
 3. Shall be provided:
 - a. On-site at the behavioral health services organization's office;
 - b. As an immediate relief to the presenting problem or threat; and
 - c. In a face-to-face, one (1) on one (1) encounter between the provider and the recipient, including via telehealth if appropriate pursuant to 907 KAR 3:170;
 4. Shall be followed by a referral to non-crisis services if applicable;
 5. May include:
 - a. Further service prevention planning including:
 - (i) Lethal means reduction for suicide risk; or
 - (ii) Substance use disorder relapse prevention; or
 - b. Verbal de-escalation, risk assessment, or cognitive therapy; and
 6. Shall be provided by:
 - a. An approved behavioral health practitioner, as limited by subsections (2) and (5) of this section; or
 - b. An approved behavioral health practitioner under supervision, as limited by subsections (2) and (5) of this section.
- (e) Mobile crisis services shall:
1. Be available twenty-four (24) hours a day, seven (7) days a week, every day of the year;
 2. Be provided for a duration of less than twenty-four (24) hours;
 3. Not be an overnight service;
 4. Be a face-to-face or telehealth, as appropriate pursuant to 907 KAR 3:170, multi-disciplinary team based intervention in a home or community setting that ensures access to substance use disorder and co-occurring disorder services and supports to:
 - a. Reduce symptoms or harm; or
 - b. Safely transition an individual in an acute crisis to the appropriate least restrictive level of care;
 5. Involve all services and supports necessary to provide:
 - a. Integrated crisis prevention;
 - b. Assessment and disposition;
 - c. Intervention;
 - d. Continuity of care recommendations; and
 - e. Follow-up services;
 6. Include access to a board-certified or board-eligible psychiatrist twenty-four (24) hours a day, seven (7) days a week, every day of the year; and
 7. Be provided by:
 - a. An approved behavioral health practitioner, as limited by subsections (2) and (5) of this section;
 - b. An approved behavioral health practitioner under supervision, except for a certified alcohol and drug counselor, and as limited by subsections (2) and (5) of this section; or
 - c. A peer support specialist who:
 - (i) Is under the supervision of an approved behavioral health practitioner; and
 - (ii) Provides support services for a mobile crisis service.
- (f) 1. Day treatment shall be a non-residential, intensive treatment program for a child under the age of twenty-one (21) years who has:
- a. A substance use disorder or co-occurring disorders; and
 - b. A high risk of out-of-home placement due to a behavioral health issue.
2. Day treatment shall:
- a. Be face-to-face;
 - b. Consist of an organized, behavioral health program of treatment and rehabilitative services;
 - c. Include:
 - (i) Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;
 - (ii) Behavior management and social skills training;
 - (iii) Independent living skills that correlate to the age and developmental stage of the recipient; or
 - (iv) Services designed to explore and link with community resources before discharge and to assist the recipient and family with transition to community services after discharge; and
 - d. Be provided:
 - (i) In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);
 - (ii) On school days and during scheduled school breaks;
 - (iii) In coordination with the recipient's individualized education program or Section 504 plan if the recipient has an individualized education program or Section 504 plan;
 - (iv) Under the supervision of an approved behavioral health practitioner or an approved behavioral health practitioner under supervision, as limited by subsections (2) and (5) of this section; and
 - (v) With a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider.
3. To provide day treatment services, a behavioral health services organization shall have:
- a. The capacity to employ staff authorized to provide day treatment services in accordance with this section and to coordinate the provision of services among team members; and
 - b. Knowledge of substance use disorders and co-occurring disorders.
4. Day treatment shall not include a therapeutic clinical service that is included in a child's individualized education program or

Section 504 plan.

5. Day treatment shall be provided by:

- a. An approved behavioral health practitioner, as limited by subsections (2) and (5) of this section; or
- b. An approved behavioral health practitioner under supervision, except for a certified alcohol and drug counselor, and as limited by subsections (2) and (5) of this section.

6. Day treatment support services conducted by a provider working under the supervision of an approved behavioral health practitioner may be provided by:

- a. A registered alcohol and drug peer support specialist;
- b. An adult peer support specialist;
- c. A family peer support specialist; or
- d. A youth peer support specialist.

(g)1. Peer support services shall:

a. Be emotional support that is provided by:

(i) An individual who has been trained and certified in accordance with 908 KAR 2:220 and who is experiencing or has experienced a substance use disorder or co-occurring disorders to a recipient by sharing a similar substance use disorder or co-occurring disorders in order to bring about a desired social or personal change;

(ii) A parent or other family member, who has been trained and certified in accordance with 908 KAR 2:230, of a child having or who has had a substance use or co-occurring disorders to a parent or family member of a child sharing a similar substance use or co-occurring disorders in order to bring about a desired social or personal change;

(iii) An individual who has been trained and certified in accordance with 908 KAR 2:240 and identified as experiencing a substance use disorder or co-occurring disorders, as defined in the current version of the Diagnostic and Statistical Manual for Mental Disorders; or

(iv) A registered alcohol and drug peer support specialist who has been trained and certified in accordance with KRS 309.0831 and is a self-identified consumer of substance use disorder services who provides emotional support to others with substance use disorders to achieve a desired social or personal change;

b. Be an evidence-based practice;

c. Be structured and scheduled non-clinical therapeutic activities with an individual recipient or a group of recipients;

d. Be provided face-to-face;

e. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient;

f. Except for the engagement into substance use disorder treatment through an emergency department bridge clinic, be coordinated within the context of a comprehensive, individualized plan of care developed through a person-centered planning process;

g. Be identified in each recipient's plan of care; and

h. Be designed to directly contribute to the recipient's individualized goals as specified in the recipient's plan of care.

2. To provide peer support services, a behavioral health services organization shall:

a. Have demonstrated:

(i) The capacity to provide peer support services for the behavioral health population being served including the age range of the population being served; and

(ii) Experience in serving individuals with behavioral health disorders;

b. Employ peer support specialists who are qualified to provide peer support services in accordance with 908 KAR 2:220, 908 KAR 2:230, 908 KAR 2:240, or KRS 309.0831;

c. Use an approved behavioral health practitioner to supervise peer support specialists;

d. Have the capacity to coordinate the provision of services among team members;

e. Have the capacity to provide on-going continuing education and technical assistance to peer support specialists;

f. Require individuals providing peer support services to recipients provide no more than 120 units per week of direct recipient contact; and

g. Require peer support services provided to recipients in a group setting not exceed eight (8) individuals within any group at one (1) time.

(h)1. Intensive outpatient program services shall:

a. Be an alternative to or transition from a higher level of care for a substance use disorder or co-occurring disorders;

b. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is significantly more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;

c. Meet the service criteria, including the components for support systems, staffing, and therapies outlined in the most current edition of The ASAM Criteria for intensive outpatient level of care services;

d. Be provided face-to-face;

e. Be provided at least three (3) hours per day at least three (3) days per week for adults;

f. Be provided at least six (6) hours per week for adolescents; and

g. Include:

(i) Individual outpatient therapy, group outpatient therapy, or family outpatient therapy unless contraindicated;

(ii) Crisis intervention; or

(iii) Psycho-education related to identified goals in the recipient's treatment plan.

2. During psycho-education, the recipient or recipient's family member shall be:

a. Provided with knowledge regarding the recipient's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and

b. Taught how to cope with the recipient's diagnosis or condition in a successful manner.

3. An intensive outpatient program services treatment plan shall:

a. Be individualized; and

b. Focus on stabilization and transition to a lesser level of care.

4. To provide intensive outpatient program services, a behavioral health services organization shall have:

a. Access to a board-certified or board-eligible psychiatrist for consultation;

b. Access to a psychiatrist, physician, or advanced practiced registered nurse for medication prescribing and monitoring;

c. Adequate staffing to ensure a minimum recipient-to-staff ratio of ten (10) recipients to one (1) staff person;

d. The capacity to provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles; and

e. The capacity to employ staff authorized to provide intensive outpatient program services in accordance with this section and to coordinate the provision of services among team members.

5. Intensive outpatient program services shall be provided by:

a. An approved behavioral health practitioner, as limited by subsections (2) and (5) of this section; or

b. An approved behavioral health practitioner under supervision, as limited by subsections (2) and (5) of this section.

(i) Individual outpatient therapy shall:

1. Be provided to promote the:

a. Health and wellbeing of the individual; and

b. Restoration of a recipient to their best possible functional level from a substance use disorder or co-occurring disorders;

2. Consist of:

a. A face-to-face encounter or via telehealth as appropriate pursuant to 907 KAR 3:170 that is a one (1) on one (1) encounter between the provider and recipient; and

b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified plan of care;

3. Be aimed at:

a. Reducing adverse symptoms;

b. Reducing or eliminating the presenting problem of the recipient; and

c. Improving functioning;

4. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional

time is medically necessary; and

5. Be provided by:

a. An approved behavioral health practitioner, as limited by subsections (2) and (5) of this section; or

b. An approved behavioral health practitioner under supervision, except for a certified alcohol and drug counselor, and as limited by subsections (2) and (5) of this section.

(j)1. Group outpatient therapy shall:

a. Be a behavioral health therapeutic intervention provided in accordance with a recipient's identified plan of care;

b. Be provided to promote the:

(i) Health and wellbeing of the individual; and

(ii) Restoration of a recipient to their best possible functional level from a substance use disorder or co-occurring disorders;

c. Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the recipient's identified plan of care;

d. Be provided to a recipient in a group setting:

(i) Of nonrelated individuals except for multi-family group therapy; and

(ii) Not to exceed twelve (12) individuals in size;

e. Focus on the psychological needs of the recipients as evidenced in each recipient's plan of care;

f. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;

g. Not include physical exercise, a recreational activity, an educational activity, or a social activity; and

h. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary.

2. The group shall have a:

a. Deliberate focus; and

b. Defined course of treatment.

3. The subject of group outpatient therapy shall relate to each recipient participating in the group.

4. The provider shall keep individual notes regarding each recipient within the group and within each recipient's health record.

5. Group outpatient therapy shall be provided by:

a. An approved behavioral health practitioner, as limited by subsections (2) and (5) of this section; or

b. An approved behavioral health practitioner under supervision, except for a certified alcohol and drug counselor, and as limited by subsections (2) and (5) of this section.

(k)1. Family outpatient therapy shall consist of a face-to-face or appropriate telehealth, pursuant to 907 KAR 3:170, behavioral health therapeutic intervention provided:

a. Through scheduled therapeutic visits between the therapist and the recipient and at least one (1) member of the recipient's family; and

b. To address issues interfering with the relational functioning of the family and to improve interpersonal relationships within the recipient's home environment.

2. A family outpatient therapy session shall be billed as one (1) service regardless of the number of individuals (including multiple members from one (1) family) who participate in the session.

3. Family outpatient therapy shall:

a. Be provided to promote the:

(i) Health and wellbeing of the individual; or

(ii) Restoration of a recipient to their best possible functional level from a substance use disorder or co-occurring disorders; and

b. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary.

4. Family outpatient therapy shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision, except for a certified alcohol and drug counselor.

(l)1. Collateral outpatient therapy shall:

a. Consist of a face-to-face or appropriate telehealth, provided pursuant to 907 KAR 3:170, behavioral health consultation:

(i) With a parent or caregiver of a recipient, household member of a recipient, legal representative of a recipient, school personnel,

treating professional, or other person with custodial control or supervision of the recipient; and

(ii) That is provided in accordance with the recipient's plan of care; and

b. Not be reimbursable if the therapy is for a recipient who is at least twenty-one (21) years of age.

2. Written consent by a parent or custodial guardian to discuss a recipient's treatment with any person other than a parent or legal guardian shall be signed and filed in the recipient's health record.

3. Collateral outpatient therapy shall be provided by:

a. An approved behavioral health practitioner, as limited by subsections (2) and (5) of this section; or

b. An approved behavioral health practitioner under supervision, except for a certified alcohol and drug counselor, and as limited by subsections (2) and (5) of this section.

(m)1. Service planning shall:

a. Be provided face-to-face;

b. Involve assisting a recipient in creating an individualized plan for services and developing measurable goals and objectives needed for maximum reduction of the effects of a substance use disorder or co-occurring disorders;

c. Involve restoring a recipient's functional level to the recipient's best possible functional level; and

d. Be performed using a person-centered planning process.

2. A service plan:

a. Shall be directed and signed by the recipient;

b. Shall include practitioners of the recipient's choosing; and

c. May include:

(i) A mental health advance directive being filed with a local hospital;

(ii) A crisis plan; or

(iii) A relapse prevention strategy or plan.

3. Service planning shall be provided by:

a. An approved behavioral health practitioner, as limited by subsections (2) and (5) of this section; or

b. An approved behavioral health practitioner under supervision, except for a certified alcohol and drug counselor, and as limited by subsections (2) and (5) of this section.

(n)1. Residential services for substance use disorders shall:

a. Be provided in a twenty-four (24) hour per day unit that is a live-in facility that offers a planned and structured regimen of care aimed to treat individuals with addiction or co-occurring disorders;

b. Provide intensive treatment and skills building in a structured and supportive environment;

c. Assist an individual in abstaining from alcohol or substance use and in entering alcohol or drug addiction recovery;

d. Assist a recipient in making necessary changes in the recipient's life to enable the recipient to live drug- or alcohol-free;

e. Be provided under the medical direction of a physician;

f. Provide continuous nursing services in which a registered nurse shall be:

(i) On-site during traditional first shift hours, Monday through Friday;

(ii) Continuously available by phone after hours; and

(iii) On-site as needed in follow-up to telephone consultation after hours;

g. Be provided following an assessment of an individual and a determination that the individual meets the dimensional admission criteria for approval of residential level of care placement in accordance with the most current edition of The ASAM Criteria; and

h. Be based on individual need and shall include clinical activities to help the recipient develop and apply recovery skills.

2. Residential services may include:

a. A screening;

b. An assessment;

c. Service planning;

d. Individual outpatient therapy;

e. Group outpatient therapy;

f. Family outpatient therapy;

g. Peer support;

h. Withdrawal management; or

i. Medication assisted treatment.

3. For recipients in residential substance use treatment, care coordination shall include at minimum:

a. If the recipient chooses medication assisted treatment, facilitation of medication assisted treatment off-site of the BHSO III, if not offered on-site;

b. Referral to appropriate community services;

c. Facilitation of medical and behavioral health follow ups; and

d. Linking the recipient to the appropriate level of substance use treatment within the continuum to provide ongoing supports.

4. Residential services shall be provided in accordance with 908 KAR 1:370 and 908 KAR 1:372.

5. Length-of-stay for residential services for substance use disorders shall be person-centered and according to an individually designed plan of care that is consistent with this administrative regulation and the licensure of the facility and practitioner.

6.a. Except as established in clause b. of this subparagraph, the physical structure in which residential services for substance use disorders is provided shall:

(i) Have between nine (9) and sixteen (16) beds; and

(ii) Not be part of multiple units comprising one (1) facility with more than sixteen (16) beds in aggregate.

b. If every recipient receiving services in the physical structure is under the age of twenty-one (21) years or over the age of sixty-five (65) years, the limit of sixteen (16) beds established in clause a. of this subparagraph shall not apply.

7. Residential services for substance use disorders shall not include:

a. Room and board;

b. Educational services;

c. Vocational services;

d. Job training services;

e. Habilitation services;

f. Services to an inmate in a public institution pursuant to 42 C.F.R. 435.1010;

g. Services to an individual residing in an institution for mental diseases pursuant to 42 C.F.R. 435.1010;

h. Recreational activities;

i. Social activities; or

j. Services required to be covered elsewhere in the Medicaid state plan.

8. To provide residential services for substance use disorders, a behavioral health services organization shall:

a. Have the capacity to employ staff authorized to provide services in accordance with this section and to coordinate the provision of services among team members; and

b. Be licensed as a non-medical and non-hospital based alcohol and other drug abuse treatment entity in accordance with 908 KAR 1:370 and 908 KAR 1:372.

9. A BHSO III may provide residential services for substance use disorders, if provided by:

a. An approved behavioral health practitioner, as limited by subsections (2) and (5) of this section; or

b. An approved behavioral health practitioner under supervision, as limited by subsections (2) and (5) of this section.

10. Support services for residential services for substance use disorders may be provided by a peer support specialist under the supervision of an approved behavioral health practitioner.

(o)1. Screening, brief intervention, and referral to treatment for a substance use disorder shall:

a. Be provided face-to-face;

b. Be an evidence-based early intervention approach for an individual with non-dependent substance use to provide an effective strategy for intervention prior to the need for more extensive or specialized treatment; and

c. Consist of:

(i) Using a standardized screening tool to assess an individual for risky substance use behavior;

(ii) Engaging a recipient, who demonstrates risky substance use behavior, in a short conversation and providing feedback and advice; and

(iii) Referring a recipient to additional substance use disorder or co-occurring disorder services if the recipient is determined to need additional services to address substance use.

2. A screening and brief intervention that does not meet criteria for referral to treatment may be subject to coverage by the department.

3. A screening, brief intervention, and referral to treatment for a substance use disorder shall be provided by:

a. An approved behavioral health practitioner, as limited by subsections (2) and (5) of this section; or

b. An approved behavioral health practitioner under supervision, as limited by subsections (2) and (5) of this section.

(p)1. Withdrawal management services shall:

a. Be provided face-to-face for recipients with a substance use disorder or co-occurring disorders;

b. Be incorporated into a recipient's care as appropriate according to the continuum of care described in the most current version of The ASAM Criteria;

c. Be in accordance with the most current version of The ASAM Criteria for withdrawal management levels in an outpatient setting;

d. If provided in an outpatient setting, comply with 908 KAR 1:374, Section 2; and

e. If provided in a substance use disorder residential program, comply with 908 KAR 1:372, Section 2.

2. A recipient who is receiving withdrawal management services shall:

a. Meet the most current edition of diagnostic criteria for substance withdrawal management found in the Diagnostic and Statistical Manual of Mental Disorders; and

b. Meet the current dimensional admissions criteria for withdrawal management level of care as found in The ASAM Criteria.

3. Withdrawal management services shall be provided by:

a. A physician;

b. A psychiatrist;

c. A physician assistant;

d. An advanced practice registered nurse; or

e. Any other approved behavioral health practitioner with oversight by a physician, advanced practice registered nurse, or a physician assistant, as limited by subsections (2) and (5) of this section.

(q)1. Medication assisted treatment services shall be provided by an authorized prescribing provider who:

a.(i) Is a physician licensed to practice medicine under KRS Chapter 311; or

(ii) Is an advanced practice registered nurse (APRN);

b. Meets standards in accordance with 201 KAR 9:270 or 201 KAR 20:065;

c. Maintains a current waiver under 21 U.S.C. 823(g)(2) to prescribe buprenorphine products; and

d. Has experience and knowledge in addiction medicine.

2. Medication assisted treatment with behavioral health therapies shall:

a. Be co-located within the same practicing site or via telehealth as appropriate according to 907 KAR 3:170 as the practitioner with a waiver pursuant to subparagraph 1.c. of this paragraph; or

b. Be conducted with agreements in place for linkage to appropriate behavioral health treatment providers who specialize in substance use disorders and are knowledgeable in biopsychosocial dimensions of alcohol or other substance use disorder, such as:

(i) An approved behavioral health practitioner, as limited by subsections (2) and (5) of this section; or

(ii) A multi-specialty group or behavioral health provider group pursuant to 907 KAR 15:010.

3. Medication assisted treatment may be provided in:

a. An outpatient behavioral health setting, including in a narcotic treatment program for substance use disorder treatment with methadone operating in accordance with 908 KAR 1:374, Section 7; or

b. A residential treatment program for substance use disorders. If a residential treatment program for substance use disorders does not offer medication assisted treatment on-site, care coordination shall be provided to facilitate medication assisted treatment off-site

if necessary by recipient choice.

4. A medication assisted treatment program shall:

a. Assess the need for treatment including:

(i) A full patient history to determine the severity of the patient's substance use disorder; and (ii) Identifying and addressing any underlying or co-occurring diseases or conditions, as necessary;

b. Educate the patient about how the medication works, including:

(i) The associated risks and benefits; and

(ii) Overdose prevention;

c. Evaluate the need for medically managed withdrawal from substances;

d. Refer patients for higher levels of care if necessary; and

e. Obtain informed consent prior to integrating pharmacologic or nonpharmacologic therapies.

5. Medication assisted treatment shall be provided by:

a. A physician;

b. A psychiatrist; or

c. An advanced practice registered nurse.

6.a. Notwithstanding any other provision of 907 KAR Chapter 15 to the contrary, temporary licensure shall be permissible for a certified alcohol and drug counselor practicing within a narcotic treatment program.

b. A temporarily certified alcohol and drug counselor practicing within a narcotic treatment program shall be under the direct supervision of a licensed clinical alcohol and drug counselor.

c. A temporarily certified alcohol and drug counselor pursuant to this subparagraph shall provide only the following services:

(i) Individual counseling;

(ii) Group counseling; and

(iii) Targeted case management pursuant to 907 KAR 15:040 and 907 KAR 15:050.

d.(i) The provisions of this subparagraph shall no longer be operational two (2) years after the effective date of the ordinary administrative regulation filed simultaneously with this emergency administrative regulation.

(ii) After the two (2) year period has lapsed, an individual performing temporarily licensed certified alcohol and drug counselor duties as specified in clause c. of this subparagraph shall possess an appropriate license to perform those duties.

(r) 1. Partial hospitalization services shall be:

a. Short-term with an average of four (4) to six (6) weeks,

b. Less than twenty-four (24) hours each day; and

c. An intensive treatment program for an individual who is experiencing significant impairment to daily functioning due to a substance use disorder or co-occurring disorders.

2. Partial hospitalization may be provided to an adult or a minor.

3. Admission criteria for partial hospitalization shall be based on an inability of community-based therapies or intensive outpatient services to adequately treat the recipient.

4. A partial hospitalization program shall meet the service criteria, including the components for support systems, staffing, and therapies outlined in the most current edition of The ASAM Criteria for partial hospitalization level of care services.

5. A partial hospitalization program shall consist of:

a. Individual outpatient therapy;

b. Group outpatient therapy;

c. Family outpatient therapy; or

d. Medication management.

6. The department shall not reimburse for educational, vocational, or job training services provided as part of partial hospitalization.

7.a. A behavioral health services organization's partial hospitalization program shall have an agreement with the local educational authority to come into the program to provide all educational components and instruction that are not Medicaid billable or reimbursable.

b. Services in a Medicaid eligible child's individualized education program shall be coverable under Medicaid.

8. Partial hospitalization shall be:

a. Provided for at least four (4) hours per day; and

b. Focused on one (1) primary presenting problem.

9. A partial hospitalization program operated by a behavioral health services organization shall:

a. Include the following personnel for the purpose of providing medical care:

(i) An advanced practice registered nurse, a physician assistant, or a physician available on site; and

(ii) A board-certified or board-eligible psychiatrist available for consultation; and

b. Have the capacity to:

(i) Provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles;

(ii) Employ required practitioners and coordinate service provision among rendering practitioners; and

(iii) Provide the full range of services included in the scope of partial hospitalization established in this paragraph.

(8)(a) Limited laboratory services shall be reimbursable in accordance with 907 KAR 1:028 if provided by a BHSO II or a BHSO III if:

1. The BHSO II or BHSO III has the appropriate CLIA certificate to perform laboratory testing pursuant to 907 KAR 1:028; and

2. The services are prescribed by a physician, advanced practice registered nurse, or physician assistant who has a contractual relationship with the BHSO II or BHSO III.

(b) Limited laboratory services shall be administered, as appropriate, by:

1. An approved behavioral health practitioner, as limited by subsections (2) and (5) of this section; or

2. An approved behavioral health practitioner under supervision, as limited by subsections (2) and (5) of this section.

Section 4. Additional Limits and Non-covered Services or Activities. (1)(a) Except as established in paragraph (b) of this subsection, unless a diagnosis is made and documented in the recipient's medical record within three (3) visits, the service shall not be covered.

(b) The requirement established in paragraph (a) of this subsection shall not apply to:

1. Mobile crisis services;

2. Crisis intervention;

3. A screening;

4. An assessment; or

5. Peer support services for the engagement into substance use disorder treatment within an emergency department bridge clinic.

(2) For a recipient who is receiving residential services for a substance use disorder, the following shall not be billed or reimbursed for the same date of service for the recipient:

(a) A screening;

(b) An assessment;

(c) Service planning;

(d) A psychiatric service;

(e) Individual outpatient therapy;

(f) Group outpatient therapy;

(g) Family outpatient therapy; or

(h) Peer support services.

(3) For a recipient who is receiving assertive community treatment for non-substance use disorder treatment pursuant to 907 KAR 15:020, the following shall not be billed or reimbursed for the same date of service for the recipient:

(a) An assessment;

(b) Case management;

(c) Individual outpatient therapy;

(d) Group outpatient therapy;

(e) Peer support services; or

(f) Mobile crisis services.

(4) The department shall not reimburse for both a screening and a screening, brief intervention, and referral to treatment provided to a recipient on the same date of service.

(5) The following services or activities shall not be covered under this administrative regulation:

(a) A service provided to:

1. A resident of:
 - a. A nursing facility; or
 - b. An intermediate care facility for individuals with an intellectual disability;
2. An inmate of a federal, local, or state:
 - a. Jail;
 - b. Detention center; or
 - c. Prison; or
3. An individual with an intellectual disability without documentation of an additional psychiatric diagnosis;
 - (b) Psychiatric or psychological testing for another agency, including a court or school, that does not result in the individual receiving psychiatric intervention or behavioral health therapy from the behavioral health services organization;
 - (c) A consultation or educational service provided to a recipient or to others;
 - (d) A telephone call, an email, a text message, or other electronic contact that is not "face-to-face", unless permitted as a telehealth service pursuant to 907 KAR 3:170 and this administrative regulation;
 - (e) Travel time;
 - (f) A field trip;
 - (g) A recreational activity;
 - (h) A social activity; or
 - (i) A physical exercise activity group.
- (6)(a) A consultation by one (1) provider or professional with another shall not be covered under this administrative regulation except as established in Section 3(7)(l)1. of this administrative regulation.
- (b) A third party contract shall not be covered under this administrative regulation.
- (7) A billing supervisor arrangement between a billing supervisor and an approved behavioral health practitioner under supervision shall not violate the supervision rules or policies of the respective professional licensure boards governing the billing supervisor and the approved behavioral health practitioner under supervision.

Section 5. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider, of any program in which the service is covered, during the same time period.

(2) For example, if a recipient is receiving a behavioral health service from an independent behavioral health provider, the department shall not reimburse for the same service provided to the same recipient during the same time period by a behavioral health services organization.

Section 6. Records Maintenance, Documentation, Protection, and Security. (1) A behavioral health services organization shall maintain a current health record for each recipient.

(2) A health record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.

- (3) A health record shall:
 - (a) Include:
 1. An identification and intake record including:
 - a. Name;
 - b. Social Security number;
 - c. Date of intake;
 - d. Home (legal) address;
 - e. Health insurance or Medicaid information;
 - f. Referral source and address of referral source;
 - g. Primary care physician and address;
 - h. The reason the individual is seeking help including the presenting problem and diagnosis;
 - i. Any physical health diagnosis, if a physical health diagnosis exists for the individual, and information regarding:
 - (i) Where the individual is receiving treatment for the physical health diagnosis; and
 - (ii) The physical health provider; and
 - j. The name of the informant and any other information deemed necessary by the behavioral health services organization

- to comply with the requirements of:
 - (i) This administrative regulation;
 - (ii) The behavioral health services organization's licensure board;
 - (iii) State law; or
 - (iv) Federal law;
2. Documentation of the:
 - a. Screening;
 - b. Assessment if an assessment was performed; and
 - c. Disposition if a disposition was performed;
3. A complete history including mental status and previous treatment;
4. An identification sheet;
5. A consent for treatment sheet that is accurately signed and dated; and
6. The individual's stated purpose for seeking services; and
- (b) Be:
 1. Maintained in an organized central file;
 2. Furnished to the:
 - a. Cabinet for Health and Family Services upon request; or
 - b. Managed care organization in which the recipient is enrolled upon request if the recipient is enrolled with a managed care organization;
 3. Made available for inspection and copying by:
 - a. Cabinet for Health and Family Services' personnel; or
 - b. Personnel of the managed care organization in which the recipient is enrolled if the recipient is enrolled with a managed care organization;
 4. Readily accessible; and
 5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient if the recipient received services beyond a screening.
- (4) Documentation of a screening shall include:
 - (a) Information relative to the individual's stated request for services; and
 - (b) Other stated personal or health concerns if other concerns are stated.
- (5)(a) A behavioral health services organization's service notes regarding a recipient shall:
 1. Be made within forty-eight (48) hours of each service visit;
 2. Indicate if the service was provided face-to-face or via telehealth; and
 3. Describe the:
 - a. Recipient's symptoms or behavior, reaction to treatment, and attitude;
 - b. Therapist's intervention;
 - c. Changes in the plan of care if changes are made; and
 - d. Need for continued treatment if continued treatment is needed.
 - (b)1. Any edit to notes shall:
 - a. Clearly display the changes; and
 - b. Be initialed and dated by the person who edited the notes.
 2. Notes shall not be erased or illegibly marked out.
 - (c)1. Notes recorded by an approved behavioral health practitioner under supervision shall be co-signed and dated by the supervising professional within thirty (30) days.
 2. If services are provided by an approved behavioral health practitioner under supervision, there shall be a monthly supervisory note recorded by the supervising professional reflecting consultations with the approved behavioral health practitioner under supervision concerning the:
 - a. Case; and
 - b. Supervising professional's evaluation of the services being provided to the recipient.
 - (6) Immediately following a screening of a recipient, the practitioner shall perform a disposition related to:
 - (a) A provisional diagnosis;
 - (b) A referral for further consultation and disposition, if applicable; or
 - (c)1. If applicable, termination of services and referral to an outside source for further services; or
 2. If applicable, termination of services without a referral to further services.

(7) Any change to a recipient's plan of care shall be documented, signed, and dated by the rendering practitioner and by the recipient or recipient's representative.

(8)(a) Notes regarding services to a recipient shall:

1. Be organized in chronological order;
2. Be dated;
3. Be titled to indicate the service rendered;
4. State a starting and ending time for the service; and
5. Be recorded and signed by the rendering practitioner and include the professional title (for example, licensed clinical social worker) of the provider.

(b) Initials, typed signatures, or stamped signatures shall not be accepted.

(c) Telephone contacts, family collateral contacts not covered under this administrative regulation, or other non-reimbursable contacts shall:

1. Be recorded in the notes; and
2. Not be reimbursable.

(9)(a) A termination summary shall:

1. Be required, upon termination of services, for each recipient who received at least three (3) service visits; and
2. Contain a summary of the significant findings and events during the course of treatment including the:

- a. Final assessment regarding the progress of the individual toward reaching goals and objectives established in the individual's plan of care;
- b. Final diagnosis of clinical impression; and
- c. Individual's condition upon termination and disposition.

(b) A health record relating to an individual who terminated from receiving services shall be fully completed within ten (10) days following termination.

(10) If an individual's case is reopened within ninety (90) days of terminating services for the same or related issue, a reference to the prior case history with a note regarding the interval period shall be acceptable.

(11)(a) Except as established in paragraph (b) of this subsection, if a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring behavioral health services organization shall, within ten (10) business days of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

- 1.a. The Health Insurance Portability and Accountability Act;
- b. 42 U.S.C. 1320d-2 to 1320d-8; and
- c. 45 C.F.R. Parts 160 and 164; or
- 2.a. 42 U.S.C. 290 ee-3; and
- b. 42 C.F.R. Part 2.

(b) If a recipient is transferred or referred to a residential crisis stabilization unit, a psychiatric hospital, a psychiatric distinct part unit in an acute care hospital, or an acute care hospital for care or treatment, the transferring behavioral health services organization shall, within forty-eight (48) hours of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

- 1.a. The Health Insurance Portability and Accountability Act;
- b. 42 U.S.C. 1320d-2 to 1320d-8; and
- c. 45 C.F.R. Parts 160 and 164; or
- 2.a. 42 U.S.C. 290 ee-3; and
- b. 42 C.F.R. Part 2.

(12)(a) If a behavioral health services organization's Medicaid Program participation status changes as a result of voluntarily terminating from the Medicaid Program, involuntarily terminating from the Medicaid Program, a licensure suspension, or death of an owner or deaths of owners, the health records of the behavioral health services organization shall:

1. Remain the property of the behavioral health services organization; and
2. Be subject to the retention requirements established in subsection (13) of this section.

(b) A behavioral health services organization shall have a written plan addressing how to maintain health records in the event of death of an owner or deaths of owners.

(13)(a) Except as established in paragraph (b) or (c) of this

subsection, a behavioral health services organization shall maintain a case record regarding a recipient for at least six (6) years from the date of the service or until any audit dispute or issue is resolved beyond six (6) years.

(b) After a recipient's death or discharge from services, a provider shall maintain the recipient's record for the longest of the following periods:

1. Six (6) years unless the recipient is a minor; or
2. If the recipient is a minor, three (3) years after the recipient reaches the age of majority under state law.

(c) If the Secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this subsection[~~section~~], pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(14)(a) A behavioral health services organization shall comply with 45 C.F.R. Part 164.

(b) All information contained in a health record shall:

1. Be treated as confidential;
2. Not be disclosed to an unauthorized individual; and
3. Be disclosed to an authorized representative of:
 - a. The department; or
 - b. Federal government.

(c)1. Upon request, a behavioral health services organization shall provide to an authorized representative of the department or federal government information requested to substantiate:

- a. Staff notes detailing a service that was rendered;
- b. The professional who rendered a service; and
- c. The type of service rendered and any other requested information necessary to determine, on an individual basis, whether the service is reimbursable by the department.

2. Failure to provide information required by subparagraph 1. of this paragraph shall result in denial of payment for any service associated with the requested information.

Section 7. Medicaid Program Participation Compliance. (1) A behavioral health services organization shall comply with:

- (a) 907 KAR 1:671;
- (b) 907 KAR 1:672; and
- (c) All applicable state and federal laws.

(2)(a) If a behavioral health services organization receives any duplicate payment or overpayment from the department, regardless of reason, the behavioral health services organization shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and
2. Prosecuted in accordance with applicable federal or state law.

(3)(a) When the department makes payment for a covered service and the behavioral health services organization accepts the payment:

1. The payment shall be considered payment in full;
2. A bill for the same service shall not be given to the recipient; and

3. Payment from the recipient for the same service shall not be accepted by the behavioral health services organization.

(b)1. A behavioral health services organization may bill a recipient for a service that is not covered by the Kentucky Medicaid Program if the:

- a. Recipient requests the service; and
- b. Behavioral health services organization makes the recipient aware in advance of providing the service that the:
 - (i) Recipient is liable for the payment; and
 - (ii) Department is not covering the service.

2. If a recipient makes payment for a service in accordance with subparagraph 1. of this paragraph, the:

- a. Behavioral health services organization shall not bill the department for the service; and
- b. Department shall not:
 - (i) Be liable for any part of the payment associated with the service; and
 - (ii) Make any payment to the behavioral health services

organization regarding the service.

(4)(a) A behavioral health services organization shall attest by the behavioral health services organization's staff's or representative's signature that any claim associated with a service is valid and submitted in good faith.

(b) Any claim and substantiating record associated with a service shall be subject to audit by the:

1. Department or its designee;
2. Cabinet for Health and Family Services, Office of Inspector General, or its designee;
3. Kentucky Office of Attorney General or its designee;
4. Kentucky Office of the Auditor for Public Accounts or its designee; or
5. United States General Accounting Office or its designee.

(c) If a behavioral health services organization receives a request from the department to provide a claim, related information, related documentation, or record for auditing purposes, the behavioral health services organization shall provide the requested information to the department within the timeframe requested by the department.

(d)1. All services provided shall be subject to review for recipient or provider abuse.

2. Willful abuse by a behavioral health services organization shall result in the suspension or termination of the behavioral health services organization from Medicaid Program participation.

Section 8. Third Party Liability. A behavioral health services organization shall comply with KRS 205.622.

Section 9. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A behavioral health services organization that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the behavioral health services organization's employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the behavioral health services organization's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.

Section 10. Auditing Authority. The department shall have the authority to audit any:

(1) Claim;

(2) Medical record; or

(3) Documentation associated with any claim or medical record.

Section 11. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 12. Appeals. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907

KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

Section 13. Delayed Effective Date. The provisions of this administrative regulation shall be implemented beginning July 1, 2019.

CAROL H. STECKEL, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 12, 2019

FILED WITH LRC: June 28, 2019 at 4 p.m.

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, KY 40621; phone: 502-564-6746; fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program behavioral health services provided by behavioral health services organizations (BHSOs) that focus on substance use disorder treatment. The specific tiers of BHSO referenced within this administrative regulation will focus on outpatient substance use disorder services (BHSO II) and residential substance use disorder services (BHSO III). The licensure for BHSO IIs and IIIs will be determined by the AODE licensure administrative regulations pursuant to 908 KAR 3:170, 3:172, and 3:174. A BHSO is an entity that provides treatment for mental health and substance use disorders and is licensed and regulated by the Office of Inspector General in accordance with 902 KAR 20:430. The array of services includes a screening, an assessment, psychological testing, crisis intervention, mobile crisis services, medication assisted treatment, day treatment, peer support, intensive outpatient program services, individual outpatient therapy, group outpatient therapy, family outpatient therapy, collateral outpatient therapy, partial hospitalization, service planning, and residential services for substance use disorders. In addition, this administrative regulation allows for Medicaid reimbursement for SUD treatment that includes methadone.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 205.6311, which mandates that Kentucky's Medicaid Program "expand the behavioral health network to allow providers to provide services within their licensure category." In addition, this administrative regulation will assist with the implementation of an approved SUD 1115 Waiver that is part of the Kentucky HEALTH 1115 Waiver.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by expanding "the behavioral health network to allow providers to provide services within their licensure category."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation will assist in the effective administration of the authorizing statutes by tiering BHSOs according to the licensure and type of services provided. In addition, new practitioners are included throughout the tiers to provide services to help meet recipient demand. Finally, the provisions will assist with conforming to the content of KRS 205.6311(2).

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Entities licensed as alcohol or other drug treatment entities and as behavioral health services organizations will be affected by this administrative regulation as a need for dual licensure will be removed. Medicaid recipients in need of substance use treatment, mental health treatment, or treatment for co-occurring disorders will also be affected by this administrative regulation. Currently, there are 1.4 million Medicaid members. DMS anticipates that up to seven (7) percent of the Medicaid population could seek OUD treatment.

(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. Providers that plan to provide SUD or co-occurring disorder treatment services in a BHSO setting will need to attain AODE inpatient or outpatient licensure and ensure that the appropriate services are provided by the appropriate provider within each tier of facility. There are currently 11 narcotic treatment programs enrolled in Kentucky as Medicaid providers. There are currently 134 enrolled BHSOs.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Entities will need to qualify for and attain AODE inpatient or outpatient licensure as appropriate.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). This administrative regulation will allow access to a full continuum of care for substance use disorder services. Any Medicaid recipient in need of substance use disorder services will have access to SUD services that are provided by a facility with appropriate licensure. Currently there are 1.4 million Kentuckians receiving Medicaid services.

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

(a) Initially: DMS currently performs many of the functions in this administrative regulation. DMS will be expanding coverage of methadone as a part of this administrative regulation. DMS may cover as many as 4,000 Medicaid eligible members. Methadone coverage may cost as much as \$8000 per year per member, however, this will not be a hydraulic price increase because at least ninety-five (95) percent of the impacted individuals are within managed care.

(b) On a continuing basis: DMS anticipates that methadone coverage will continue for certain Medicaid members at a cost of \$8000 per year per member. DMS may cover as many as 4,000 Medicaid eligible members. Methadone coverage may cost as much as \$8000 per year per member, however, this will not be a hydraulic price increase because at least ninety-five (95) percent of the impacted individuals are within managed care.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is applied in that

established types of services are now grouped by licensure and whether the service is for substance use disorder or mental health treatment. However, the requirements within each tier of service are applied equally to all entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 18022(b)(1)(E), 42 U.S.C. 1396a(a)(10)(B), and 42 U.S.C. 1396a(a)(23).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Substance use disorder services are federally mandated for Medicaid programs. 42 U.S.C. 18022(b)(1)(E) mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment." 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." Medicaid recipients enrolled with a managed care organization may be restricted to providers within the managed care organization's provider network. The Centers for Medicare and Medicaid Services (CMS) – the federal agency that oversees and provides the federal funding for Kentucky's Medicaid Program – has expressed to the Department for Medicaid Services (DMS) the need for DMS to expand its substance use disorder provider base to comport with the freedom of choice of provider requirement. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope as available to other individuals (non-Medicaid). Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter than federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by this new administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3).

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 new administrative regulation is not expected to generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The new administrative regulation is not expected to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? DMS will be expanding coverage of methadone as a part of this administrative regulation. DMS may cover as many as 4,000 Medicaid eligible members. Methadone coverage may cost as much as \$8000 per year per member, however, this will not be a hydraulic price increase because at least ninety-five (95) percent of the impacted individuals are within managed care. Furthermore, DMS does not expect any additional costs in administering this new administrative regulation during the first year due to program enhancements and IT infrastructure upgrades.

(d) How much will it cost to administer this program for subsequent years? DMS will be expanding coverage of methadone as a part of this administrative regulation. DMS may cover as many as 4,000 Medicaid eligible members. Methadone coverage may cost as much as \$8000 per year per member, however, this will not be a hydraulic price increase because at least ninety-five (95) percent of the impacted individuals are within managed care. Furthermore, DMS does not expect any additional costs in administering this new administrative regulation during subsequent years due to program enhancements and IT infrastructure upgrades.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 907 KAR 15:025E

This emergency administrative regulation is being promulgated to implement state and federal changes to services provided by behavioral health services organizations. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)1. to meet an imminent threat to public health and pursuant to KRS 13A.190(1)(a)2. to prevent a loss of federal funds. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is not identical to this emergency administrative regulation as this emergency administrative regulation includes an additional Section 7 to establish an implementation date of July 1, 2019.

MATTHEW G. BEVIN, Governor
ADAM M. MEIER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Policy and Operations (Emergency Amendment)

907 KAR 15:025E. Reimbursement provisions and requirements regarding behavioral health services provided by behavioral health services organizations.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23), 18022(b)(1)(E)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

EFFECTIVE: June 28, 2019

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to

comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the reimbursement provisions and requirements regarding Medicaid Program behavioral health services provided by behavioral health services organizations to Medicaid recipients who are not enrolled with a managed care organization.

Section 1. General Requirements. For the department to reimburse for a service covered under this administrative regulation, the service shall:

(1) Meet the requirements established in 907 KAR 15:020 or 907 KAR 15:022; and

(2) Be covered in accordance with 907 KAR 15:020 or 907 KAR 15:022.

Section 2. Reimbursement. (1) One (1) unit of service shall be:

(a) Fifteen (15) minutes in length; or

(b) The unit amount identified in the corresponding:

1. Current procedural terminology code; or

2. Healthcare common procedure coding system code.

(2) The rates for covered services established pursuant to 907 KAR 15:020 and provided within a BHSO I [The rate per unit for a screening or for crisis intervention] shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or

2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; [or]

2. A licensed psychologist; or

3. A physician assistant;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;

2. Licensed clinical social worker;

3. Licensed psychological practitioner;

4. Licensed marriage and family therapist; [or]

5. Licensed professional art therapist; [or]

6. Certified psychologist with autonomous functioning; or

7. Licensed behavior analyst;

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a billing supervisor;

2. Licensed professional counselor associate working under the supervision of a billing supervisor;

3. Licensed psychological associate working under the supervision of a billing supervisor;

4. Certified social worker working under the supervision of a billing supervisor;

5. Certified psychologist [Physician assistant working under the supervision of a billing supervisor]; or

6. Licensed professional art therapist associate working under the supervision of a billing supervisor; [or]

7. Certified alcohol and drug counselor working under the supervision of a billing supervisor].

(3) The rates for covered services established pursuant to 907 KAR 15:022 and provided within a BHSO II [The rate per unit for an assessment] shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or

2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; [or]

2. A licensed psychologist; or

3. A physician assistant;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;
2. Licensed clinical social worker;
3. Licensed psychological practitioner;
4. Licensed marriage and family therapist; [or]
5. Licensed professional art therapist; [or]
6. Certified psychologist with autonomous functioning; or
7. Licensed clinical alcohol and drug counselor;

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a billing supervisor;
2. Licensed professional counselor associate working under the supervision of a billing supervisor;
3. Licensed psychological associate working under the supervision of a billing supervisor;
4. Certified social worker working under the supervision of a billing supervisor;
5. Certified psychologist[Physician assistant working under the supervision of a billing supervisor];
6. Licensed professional art therapist associate working under the supervision of a billing supervisor; or
7. Licensed clinical alcohol and drug counselor associate; or

(e) Thirty-seven and five-tenths (37.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a certified alcohol and drug counselor[Licensed assistant behavior analyst working under the supervision of a billing supervisor; or

8. Certified alcohol and drug counselor working under the supervision of a billing supervisor].

(4) The rates for covered services established pursuant to 907 KAR 15:022 and provided within a BHSO III shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or
2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse;
2. A licensed psychologist; or
3. A physician assistant;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;
2. Licensed clinical social worker;
3. Licensed psychological practitioner;
4. Licensed marriage and family therapist;
5. Licensed professional art therapist;
6. Certified psychologist with autonomous functioning; or
7. Licensed clinical alcohol and drug counselor;

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a billing supervisor;
2. Licensed professional counselor associate working under the supervision of a billing supervisor;
3. Licensed psychological associate working under the supervision of a billing supervisor;
4. Certified social worker working under the supervision of a billing supervisor;
5. Certified psychologist;
6. Licensed professional art therapist associate working under the supervision of a billing supervisor; or
7. Licensed clinical alcohol and drug counselor associate; or

(e) Thirty-seven and five-tenths (37.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a certified alcohol and drug counselor[The rate per unit for psychological testing shall be:

(a) 63.75 percent of the rate on the Kentucky-specific Medicare

Physician Fee Schedule for the service if provided by a licensed psychologist;

(b) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a licensed psychological practitioner; or

(c) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a licensed psychological associate working under the supervision of a licensed psychologist.

(5) The rate per unit for individual outpatient therapy, group outpatient therapy, or collateral outpatient therapy shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or
2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; or
2. A licensed psychologist;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;
2. Licensed clinical social worker;
3. Licensed psychological practitioner;
4. Licensed marriage and family therapist;
5. Licensed professional art therapist; or
6. Licensed behavior analyst; or

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a billing supervisor;
2. Licensed professional counselor associate working under the supervision of a billing supervisor;
3. Licensed psychological associate working under the supervision of a billing supervisor;
4. Certified social worker working under the supervision of a billing supervisor;
5. Physician assistant working under the supervision of a billing supervisor;
6. Licensed professional art therapist associate working under the supervision of a billing supervisor;
7. Licensed assistant behavior analyst working under the supervision of a billing supervisor; or
8. Certified alcohol and drug counselor working under the supervision of a billing supervisor.

(6) The rate per unit for family outpatient therapy shall be:
(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or
2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; or
2. A licensed psychologist;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;
2. Licensed clinical social worker;
3. Licensed psychological practitioner;
4. Licensed marriage and family therapist; or
5. Licensed professional art therapist; or

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a billing supervisor;
2. Licensed professional counselor associate working under the supervision of a billing supervisor;
3. Licensed psychological associate working under the supervision of a billing supervisor;

4. Certified social worker working under the supervision of a billing supervisor;
5. Physician assistant working under the supervision of a billing supervisor;
6. Licensed professional art therapist associate working under the supervision of a billing supervisor; or
7. Certified alcohol and drug counselor working under the supervision of a billing supervisor].

(5)(a)(7) Reimbursement for services provided by a BHSO [the following services] shall be as established on the Kentucky Medicaid Behavioral Health and Substance Abuse Services Outpatient (Non-Facility) [BHSO Non-Medicare Services] Fee Schedule and this administrative regulation for those services that are eligible to be provided within a BHSO I as established pursuant to 907 KAR 15:020.

(b) Reimbursement for services provided by a BHSO II shall be as established on the Kentucky Medicaid Behavioral Health and Substance Abuse Services Outpatient (Non-Facility) Fee Schedule and this administrative regulation for those services that are eligible to be provided within a BHSO II as established pursuant to 907 KAR 15:022.

(c) Reimbursement for services provided by a BHSO III shall be as established on the Kentucky Medicaid Behavioral Health and Substance Abuse Services Facility Fee Schedule and this administrative regulation for those services that are eligible to be provided within a BHSO III as established pursuant to 907 KAR 15:022[:

- (a) Mobile crisis services;
- (b) Day treatment;
- (c) Peer support services;
- (d) Parent or family peer support services;
- (e) Intensive outpatient program services;
- (f) Service planning;
- (g) Residential services for substance use disorders;
- (h) Screening, brief intervention, and referral to treatment;
- (i) Assertive community treatment;
- (j) Comprehensive community support services; or
- (k) Therapeutic rehabilitation services].

(6)(8)(a) The department shall use the current version of the Kentucky-specific Medicare Physician Fee Schedule for reimbursement purposes.

(b) For example, if the Kentucky-specific Medicare Physician Fee Schedule currently published and used by the Centers for Medicare and Medicaid Services for the Medicare Program is:

1. An interim version, the department shall use the interim version until the final version has been published; or
2. A final version, the department shall use the final version.

(7)(9) The department shall not reimburse for a service billed by or on behalf of an entity or individual that is not a billing provider.

Section 3. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

(2) For example, if a recipient is receiving a behavioral health service from an independent behavioral health provider, the department shall not reimburse for the same service provided to the same recipient during the same time period by a behavioral health services organization.

Section 4. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse in accordance with this administrative regulation for a service covered pursuant to:

- (1)(a) 907 KAR 15:020; or
- (b) 907 KAR 15:022; and

(2) This administrative regulation.

Section 5. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the

reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

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

(a) "Kentucky Medicaid Behavioral Health and Substance Abuse Services Outpatient (Non-Facility) Fee Schedule", July 2019; and

(b) "Kentucky Medicaid Behavioral Health and Substance Abuse Services Facility Fee Schedule", July 2019["BHSO Non-Medicare Services Fee Schedule", July 2014, is incorporated by reference].

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

(a) The Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at <https://chfs.ky.gov/agencies/dms/Pages/regsmaterials.aspx> [http://www.chfs.ky.gov/dms/incorporated.htm].

Section 7. Delayed Implementation Date. The provisions of this administrative regulation shall be implemented beginning July 1, 2019.

CAROL H. STECKEL, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 11, 2019

FILED WITH LRC: June 28, 2019 at 4 p.m.

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, KY 40621; phone: 502-564-6746; fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement provisions and requirements regarding Medicaid Program behavioral health services provided by each tier of behavioral health services organizations (BHSOs).

(b) The necessity of this administrative regulation: This administrative regulation is necessary - to comply with federal mandates. 42 U.S.C. 18022(b)(1)(E) mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment" for all recipients. 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the provider base (to include behavioral health services organizations) will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area. In addition, this administrative regulation implements the SUD 1115 Waiver, which is part of the Kentucky HEALTH 1115 waiver.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by complying with federal mandates, and enhancing and ensuring Medicaid recipients' access to behavioral health services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by complying with federal mandates, and enhancing and ensuring Medicaid recipients' access to behavioral health services.

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

(a) How the amendment will change this existing administrative regulation: The amendments to the administrative regulation incorporate changes made to 907 KAR Chapter 15. The BHSO administrative regulation has been divided into two administrative regulations to prevent entities operating as Alcohol and Other Drug Entities (AODEs) from needing to acquire dual licensure. This regulation was amended to conform to the promulgation of a new 907 KAR 15:022 which relates to enhanced SUD outpatient and residential services. The regulation is further amended to establish reimbursement between the 3 newly established tiers of BHSO. In addition, physician assistant's reimbursement has been increased to 63.75% of the Medicare Physician Fee Schedule, and licensed clinical alcohol and drug counselors and associates have been included in the array of allowed providers within a BHSO. Finally, a previous fee schedule has been removed, and two new fee schedules have been referenced to cover all services in each BHSO Tier.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to ensure that reimbursement is available for SUD and co-occurring disorders. In addition, the amendments help to implement a SUD 1115 Waiver and HB 124 from the 2018 Regular Session.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to the content of the authorizing statutes by complying with federal mandates, and enhancing and ensuring Medicaid recipients' access to behavioral health services, including SUD services and co-occurring disorders provided in an AODE. In addition, the amendments help to implement a SUD 1115 Waiver and HB 124 from the 2018 Regular Session.

(d) How the amendment will assist in the effective administration of the statutes: The amendments assist in the effective administration of the statutes by complying with federal mandates, and enhancing and ensuring Medicaid recipients' access to behavioral health services, including SUD services and co-occurring disorders provided in an AODE. In addition, the amendments help to implement a SUD 1115 Waiver and HB 124 from the 2018 Regular Session.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The following behavioral health professionals who are authorized to provide services in a behavioral health services organization will be affected: physician assistants and licensed clinical alcohol and drug counselors and associates. In addition, BHSOs that wish to operate as a BHSO II or BHSO III will be eligible for reimbursement. Finally, Medicaid recipients who qualify for behavioral health services will also be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Entities that qualify as behavioral health services organizations and who wish to provide services to Medicaid recipients will need to enroll with the Medicaid Program as prescribed in the Medicaid provider enrollment regulation (complete an application and submit it to DMS) and sign agreements with managed care organizations if the individual wishes to provide services to Medicaid recipients who are enrolled with a managed care organization.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The entities referenced in paragraph (a) could

experience administrative costs associated with enrolling with the Medicaid Program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The entities referenced in paragraph (a) will benefit by receiving Medicaid Program reimbursement. Behavioral health professionals authorized to provide services in a behavioral health services organization will benefit by having more employment opportunities in Kentucky. Medicaid recipients in need of behavioral health services will benefit from an expanded base of providers from which to receive these services.

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

(a) Initially: The department does not anticipate any additional costs on an initial basis.

(b) On a continuing basis: The department does not anticipate any additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 18022(b)(1)(E), 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23), and 42 U.S.C. 1396a(a)(30)(A).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Substance use disorder services are federally mandated for Medicaid programs. 42 U.S.C. 18022(b)(1)(E) mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment." 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." Medicaid recipients enrolled with a managed care organization may be restricted to providers within the managed care organization's provider network. The Centers for Medicare and Medicaid Services (CMS) – the federal agency which oversees and provides the federal funding for Kentucky's Medicaid Program – has expressed to the Department for Medicaid Services (DMS) the need for DMS to expand its substance use disorder provider base to comport with the freedom of choice of provider requirement. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope as available to other individuals (non-Medicaid.) Expanding the

provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area. Similarly, 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "...provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter than federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment to this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation authorizes the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not expected to generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment is not expected to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? DMS does not expect any additional costs in administering these amendments during the first year.

(d) How much will it cost to administer this program for subsequent years? DMS does not expect any additional costs in administering these amendments during subsequent years.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

STATEMENT OF EMERGENCY 922 KAR 1:320E

This emergency administrative regulation is necessary in accordance with KRS 13A.190(1)(a)3 to meet a deadline for the promulgation of an administrative regulation affording appeal rights and complaint review for families and children served under 2019 Ky. Acts ch. 073 and 033 (Regular Session 2019 House Bills 2 and 158, respectively). In addition, in accordance with KRS 13A.190(1)(a)1, the administrative regulation protects the health,

safety, and welfare of vulnerable children, adults, and families served by the department through the provision of appeals and complaint reviews. An ordinary administrative regulation would not allow the agency sufficient time to meet the deadline for promulgation of an administrative regulation that is established by state statute and to ensure adequate appeals and complaint reviews for vulnerable children, families, and adults receiving social services from the department. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
ADAM M. MEIER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (Emergency Amendment)

922 KAR 1:320E. Service appeals.

RELATES TO: KRS 2.015, Chapter 13B, 23A.010, 194A.005, 194A.030(11), 199.011(4), (9), 199.555(2), 199.557, 209.020(4), (5), 209A.020(4), (5), 600.020(9), (28), (46), 605.090(1)(b), (6), 610.110(6)(d), 620.020(1), 620.140(1)(e), 620.142, 620.157, 620.180(2)(a)1, 620.230, 620.363, 45 C.F.R. 205.10, 1355.21(b), 1355.30(p), 42 U.S.C. 601(a)(1), 621(1)-(4), 629, 670, 671(a)(23), 673, 675, 1397

STATUTORY AUTHORITY: KRS 13B.170(1), 194A.010(2), 194A.050(1)

EFFECTIVE: June 28, 2019

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) designates the Cabinet for Health and Family Services as the primary state agency responsible for leadership in protecting and promoting the well-being of Kentuckians through the delivery of quality human services. KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds, including 45 C.F.R. 205.10, made applicable to titles IV-B and IV-E programs by references in 45 C.F.R. 1355.21(b) and 1355.30(p). KRS 13B.170(1) authorizes promulgating administrative regulations necessary to carry out the provisions of KRS Chapter 13B. This administrative regulation establishes procedures related to appeals and complaints for benefits and services under 922 KAR Chapters 1 and 5.

Section 1. Definitions. (1) "Adoption assistance" means a payment under:

- (a) KRS 199.555(2) and 922 KAR 1:050; or
- (b) KRS 199.557 and 922 KAR 1:060.

(2) "Adult" is defined by KRS 209.020(4).

(3) "Caretaker relative" means a relative with whom a child is, or will be, placed by the cabinet.

(4) "Case permanency plan" is defined by KRS 620.020(1) and described in KRS 620.230 for a child placed in the custody of the cabinet by an order of commitment[outside the home].

(4) [(5)] "Case plan" means a plan described in 922 KAR 1:430 for a child who is not placed in the custody of the cabinet by an order of commitment[remains in the home].

(5) [(6)] "Case planning conference" means a meeting in which a case plan or a case permanency plan is developed or modified in accordance with KRS 620.180(2)(a)1.

(6) [(7)] "Child" means:

(a) A child defined by KRS 199.011(4) and 600.020(9);

(b) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6) or 620.140(1)(e) [(d)]; or

(c) A person under age twenty-one (21) who meets the exceptions to the age of majority in accordance with KRS 2.015.

(7) [(8)] "Child welfare services" means benefits or services on behalf of a child meeting a purpose of 42 U.S.C. 601(a)(1), 621(1)-

(4), 629, 670, or 1397.

(8)[(9)] "Commissioner" means the Commissioner of the Department for Community Based Services or designee.

(9)[(10)] "Contract agency" means a business or organization that offers child welfare, adult, or domestic violence services to the public through a contract or agreement with the cabinet.

(10)[(11)] "Fictive kin" is defined by KRS 199.011(9) and 600.020(28).

(11)[(12)] "General adult services" means a voluntary preventive[preventative] service in accordance with 922 KAR 5:090.

(12)[(13)] "Good cause" means justification for failure to carry forward with a legal obligation related to an appeal in accordance with Section 6(7) of this administrative regulation.

(13)[(14)] "Kinship caregiver" means a qualified caretaker relative of a child with whom the child is placed [by the cabinet] as an alternative to foster care in accordance with 922 KAR 1:130.

(14)[(15)] "Parent" is defined by KRS 600.020(46) and 42 U.S.C. 675(2) for child welfare benefits and services.

(15)[(16)] "Protective services" is defined by KRS 209.020(5).

(16) "Relative" means an individual related to a child by blood, marriage, or adoption.

Section 2. Right to Appeal. (1) A parent may request review of the following through an administrative hearing:

(a) Denial, reduction, modification, suspension, or termination of child welfare services provided by the cabinet;

(b) Closure of a child protective services case in accordance with:

1. 922 KAR 1:330, Section 12; or

2. 922 KAR 1:430, Section 4; [or]

(c) Failure by the cabinet to:

1. Respond with reasonable promptness to a request for child welfare services provided by the cabinet;

2. Complete a case plan or case permanency plan;

3. Provide or refer for services as specified in the case plan or case permanency plan; or

4. Meet a mandated timeframe for child protective services specified in 922 KAR 1:330; or

(d) In accordance with KRS 620.157.

(2) A foster parent approved by the department in accordance with 922 KAR 1:350 or an adoptive parent may request review of the following through an administrative hearing:

(a) Failure by the cabinet to:

1. Process reimbursement to the home with reasonable promptness;

2. Provide information required by KRS 605.090(1)(b) and (6);

3. Advise an adoptive parent of the availability of adoption assistance in accordance with 922 KAR 1:050 or 922 KAR 1:060; or

4. Provide an adoptive parent with known relevant facts regarding the:

a. Child;

b. Child's background prior to finalization of the adoption; and

c. Child's biological family;

(b) Determination of ineligibility for adoption assistance upon execution of an adoptive placement agreement under 922 KAR 1:050 or 922 KAR 1:060;

(c) Denial of a request for a change in payment level due to a change in circumstances of an adoptive parent or child when the adoption assistance agreement is renewed under 922 KAR 1:050 or 922 KAR 1:060; or

(d) Closure of a foster or adoptive home under 922 KAR 1:350 unless a provision of Section 3(1)(f), (g), (h),[or] (i), or (j) of this administrative regulation applies.

(3) An approved and available adoptive parent outside the jurisdiction with responsibility for handling the case of an adoptive child may request an administrative hearing for the cabinet's denial or delay in placement of the child for adoption pursuant to 42 U.S.C. 671(a)(23).

(4)(a) A kinship caregiver may request an administrative hearing pursuant to 922 KAR 1:130, Section 19.

(b) Pursuant to 922 KAR 1:130, Section 19(2), a kinship

caregiver who is dissatisfied with an action or inaction on the part of the cabinet relating to financial assistance under the Kinship Care Program may request an administrative hearing under the provisions of 921 KAR 2:055.

(5) An applicant determined by the cabinet to be ineligible for a tuition waiver may request an administrative hearing pursuant to 922 KAR 1:450, Section 3.

(6) An applicant determined by the cabinet to be ineligible for an educational and training voucher may request an administrative hearing pursuant to 922 KAR 1:500, Section 5.

(7) An adult may request review of the following through an administrative hearing:

(a) The cabinet's denial of general adult services or protective services to an adult identified as a victim of abuse, neglect, or exploitation; or

(b) Failure by the cabinet to respond with reasonable promptness to a request for:

1. General adult services; or

2. Protective services for an adult.

(8) A non-parent relative or fictive kin caregiver who received physical custody of a child through a child abuse, neglect, or dependency action may appeal:

(a) In accordance with 922 KAR 1:565, Section 7; or

(b) A denial, reduction, modification, suspension, or termination of child welfare services unless a provision of Section 3(1)(f), (g), (h), (i), (j), or (n) of this administrative regulation applies.

(9) An individual aggrieved by an action of the cabinet may request an administrative hearing for a matter by which a Kentucky Revised Statute or 922 KAR Chapters 1 and 5 expressly permits the appeal of a cabinet action or alleged act.

(10)[(9)] A parent or an adult aggrieved by an action of the cabinet may request review of the following through an administrative hearing:

(a) A cabinet denial, reduction, suspension, or termination of services or federally-funded benefits, payments, or financial assistance to which an individual may be entitled under 922 KAR Chapters 1 and 5; or

(b) A cabinet failure to act with reasonable promptness to a request for a federally-funded benefit, payment, or financial assistance to which an individual may be entitled under 922 KAR Chapters 1 and 5.

Section 3. Matters Not Appealable through an Administrative Hearing. (1) The following shall not be subject to review through an administrative hearing:

(a) A matter in which a court:

1. Has previously made a judicial determination or issued an order on the same issue being appealed; or

2. Is currently engaged in legal proceedings regarding the same issue being appealed;

(b) A final administrative decision made by the cabinet or cabinet's designee as a result of a previous appeal on the same issue;

(c) An appeal that has been abandoned by an appellant who failed to demonstrate good cause for failure to go forward;

(d) Failure to submit a written request for appeal within the time frame established by Section 6(4)(b) of this administrative regulation;

(e) A decision to deny:

1. Approval of an individual seeking to provide foster or adoptive services or respite care in accordance with 922 KAR 1:350 or 922 KAR 1:310; or

2. A caretaker relative approval as a kinship caregiver if the:

a. Caretaker relative fails to meet the provisions of 922 KAR 1:130, Section 5; or

b. Child is ineligible in accordance with 922 KAR 1:130, Section 9;

(f) The cabinet's fitness determination of a relative or fictive kin in accordance with 922 KAR 1:565, Section 3[3. A caretaker relative's or fictive kin's ineligibility for reimbursement in accordance with 922 KAR 1:140, Section 3(8); or

4. Approval of an individual seeking to be a relative or fictive kin placement if the individual fails to meet provisions of 922 KAR

1:140, Section 3(6)];

(g)[(f)] Removal of a foster child from a foster or adoptive home or respite care provider if the foster or adoptive home parent, respite care provider, or another individual residing in the home has been found by the cabinet to have abused, neglected, or exploited a child and the:

1. Foster or adoptive home parent, respite care provider, or other individual waived the right to appeal the substantiated incident; or

2. Substantiated incident was upheld after:

a. An administrative hearing; or

b. Judicial review;

(h)[(g)] Removal of a child from a foster home, relative caregiver, or fictive kin caregiver for the purpose of:

1. Achieving a permanency goal described by 922 KAR 1:140;

or

2. Uniting or reuniting the child with a sibling at the next placement;

(i)[(h)] Closure of a foster or adoptive home if the cabinet has not placed a child in the home within the previous two (2) years;

(j)[(i)] Closure of a relative, fictive kin, foster, or adoptive home according to the terms of the contract between the cabinet and the relative, fictive kin, foster, or adoptive home;

(k)[(j)] A situation where state or federal law requires adjustment of a payment or grant, except if a payment or grant computation is incorrect;

(l)[(k)] The per diem rate of reimbursement paid to a foster home parent; or

(m) (A) [(l)] decision to not recommend a foster home parent in accordance with 922 KAR 1:350, Section 6(9), for enrollment in specialized training as a medically complex foster parent or care plus foster parent; or

(n) A request for foster care maintenance payment on behalf of a child who was not in the cabinet's legal custody during the period of time for which the payment is requested.

(2) A complaint of discrimination may be filed with the cabinet's Office of Human Resource Management in accordance with 920 KAR 1:090.

Section 4. Service Complaints. (1) If a matter is not subject to review through an administrative hearing, a parent, [caretaker] relative or, kinship caregiver, fictive kin caregiver, foster or adoptive parent approved by the department in accordance with 922 KAR 1:350, or an adult may:

(a) Attempt to resolve the issue by submitting a written complaint to the service region administrator or designee within thirty (30) calendar days after the date of the cabinet action or alleged act; or

(b) Contact the cabinet's Office of the Ombudsman and Administrative Review if the matter was not previously reviewed:

1. By that office; or

2. Pursuant to paragraph (a) of this subsection.

(2) A child who is in the custody of the cabinet, or a child who has aged out of the cabinet's custody within the previous twelve (12) months may file a complaint through the Office of the Ombudsman and Administrative Review for any of the following:

(a) Denial, reduction, modification, suspension, or termination of child welfare services provided by the cabinet;

(b) Closure of a child protective services case in accordance with:

1. 922 KAR 1:330, Section 12; or

2. 922 KAR 1:430, Section 4; or

(c) Failure by the cabinet to:

1. Respond with reasonable promptness to a request for child welfare services provided by the cabinet;

2. Complete a case plan or case permanency plan;

3. Provide or refer for services as specified in the case plan or case permanency plan; or

4. Meet a mandated timeframe for child protective services specified in 922 KAR 1:330; or

5. Demonstrate diligence in the protection and preservation of a foster child's right in accordance with KRS 620.363.

(3) A child described in subsection (2) of this section may file a

complaint or a request for the commissioner's review in accordance with subsection (5) of this section with assistance from the child's authorized representative.

(4)(a) The service region administrator, administrator's designee, or the cabinet's Office of the Ombudsman and Administrative Review shall provide a written response to the complainant within thirty (30) calendar days of receipt of a written complaint not subject to review through an administrative hearing.

(b) The service region administrator or the ombudsman may grant an extension to the response timeframe given in paragraph (a) of this subsection if:

1. Extenuating circumstances prolong the review of the complaint; and

2. Notice of the extension is provided to the complainant.

(5)(a) A parent, [caretaker] relative or, kinship caregiver, fictive kin caregiver, foster or adoptive parent approved by the department in accordance with 922 KAR 1:350, a child described in subsection (2) of this section, or an adult dissatisfied with a written response rendered by the service region administrator, administrator's designee, or the Office of the Ombudsman and Administrative Review may request that the commissioner review the complaint and the written response.

(b) A request for review shall be submitted in writing to the commissioner within ten (10) calendar days of receipt of the written response provided in accordance with subsection (4) of this section.

(c) Upon completion of the review, the commissioner shall render a written determination regarding the complaint within thirty (30) calendar days unless:

1. Extenuating circumstances prolong the review of the complaint; and

2. The commissioner notifies the complainant of the need for an extension to the timeframe specified in this paragraph.

(d) The department shall abide by the commissioner's written determination.

(6) The department shall compile data regarding service complaints to:

(a) Fulfill federal and state reporting requirements; and

(b) Use for program development and evaluation.

Section 5. Other Appeals. (1) An individual who has been found by the cabinet to have abused or neglected a child may appeal the cabinet's finding through an administrative hearing in accordance with 922 KAR 1:480.

(2) An individual aggrieved by a cabinet action or inaction under 922 KAR Chapter 2 may appeal the action or inaction in accordance with 922 KAR 2:260.

Section 6. Request for Appeal. (1) The cabinet shall provide a copy of the DPP-154, Protection and Permanency Service Appeal Request, to an individual:

(a) At each case planning conference;

(b) Upon denial, reduction, modification, suspension, or termination by the cabinet of:

1. Child welfare services provided by the cabinet;

2. General adult services or protective services, if notification does not present a risk of harm to the victim;

3. Adoption assistance; or

4. Other federally-funded program benefit described in 922 KAR Chapter 1 or 5; or

(c) Upon determination that a student is not eligible for a tuition waiver or education and training voucher.

(2) At least ten (10) calendar days prior to the denial, reduction, modification, suspension, or termination of a benefit or services, the cabinet shall hand-deliver or mail the DPP-154A, Protection and Permanency Notice of Intended Action.

(3) The cabinet may take emergency action under KRS 13B.125.

(4) A request for appeal shall:

(a) Be written by the appellant, with the assistance of the cabinet or contract agency if the appellant is unable to comply without assistance;

(b) Be submitted to the cabinet no later than thirty (30)

calendar days from the date:

1. That the notice provided in accordance with subsection (2) of this section was issued; or

2. Of the occurrence of the disputed action;

(c) Describe the:

1. Cabinet action in dispute; or

2. Alleged act;

(d) Specify:

1. The reason the appellant disputes the cabinet's action;

2. Name of each cabinet staff person involved with the disputed action, if known; and

3. Date of the cabinet action or alleged act in dispute; and

(e) Include the notice provided in accordance with subsection (2) of this section, if available.

(5)(a) Upon receipt of a written request for appeal, the cabinet shall determine whether the matter is subject to review through an administrative hearing.

(b) If the matter is not subject to review, the cabinet shall inform the individual in writing that the:

1. Matter is not appealable; and

2. Resolution of the matter may be pursued through the service complaint process described in Section 4 or 10 of this administrative regulation.

(6) If the cabinet receives a written request for appeal within ten (10) calendar days from the date the notice provided in accordance with subsection (2) of this section was issued or the date of the disputed action and the matter is appealable, the cabinet shall continue to provide federally-funded assistance in accordance with 45 C.F.R. 205.10(a)(6) pending the out-come of the appeal.

(7) The cabinet shall not dismiss a request for appeal if an appellant demonstrates good cause. Justification may include:

(a) An appellant's inability to comprehend the cabinet's written statement describing appeal rights; or

(b) A cabinet-sanctioned determination that the appellant or the appellant's legal representative is not at fault for failure to:

1. Submit a written request for appeal; or

2. Participate in a proceeding related to an administrative hearing.

Section 7. Administrative Hearing. Each administrative hearing conducted by the cabinet or designee shall comply with KRS Chapter 13B.

Section 8. Recommended Order. (1) A copy of the recommended order shall be sent simultaneously to:

(a) Each party to the administrative hearing;

(b) The commissioner of the Department for Community Based Services; and

(c) The secretary of the Cabinet for Health and Family Services or designee.

(2) If a party to a hearing disagrees with the recommended order, the party may file a written exception as provided in KRS 13B.110(4) with the secretary, which shall:

(a) Be filed within fifteen (15) calendar days of the date the recommended order was mailed;

(b) Be based on facts and evidence presented at the hearing;

(c) Not refer to evidence that was not introduced at the hearing; and

(d) Be sent to each party involved in the hearing.

Section 9. Final Order. (1) The secretary of the Cabinet for Health and Family Services or designee shall issue a final order in accordance with KRS 13B.120.

(2)(a) Unless waived by an appellant, final administrative action shall be taken within ninety (90) calendar days from the date of the request for an administrative hearing as required by 45 C.F.R. 205.10.

(b) If the appellant waives the ninety (90) calendar day requirement specified in paragraph (a) of this subsection, the hearing officer shall notify all parties to the hearing when final administrative action will be taken.

(3) An aggrieved party may petition for judicial review in

accordance with:

(a) KRS 13B.140 to 13B.160; or

(b) KRS 23A.010.

Section 10. Contract Agencies. (1) A contract agency shall offer a complaint process consistent with:

(a) Section 4 of this administrative regulation; or

(b) Provisions of the contract or agreement between the contract agency and the cabinet, if the provisions are different from Section 4 of this administrative regulation.

(2)(a) An individual dissatisfied with a final written response rendered by a contract agency regarding a complaint may request that the commissioner review the complaint and the contract agency's written response.

(b) A request for review shall be submitted to the commissioner within ten (10) calendar days of the contract agency's written response.

(c) Upon completion of the review, the commissioner shall render a written determination regarding the complaint within thirty (30) calendar days unless:

1. Extenuating circumstances prolong the review of the complaint; and

2. The commissioner notifies the client of the need for an extension to the timeframe specified in this paragraph.

(d) The contract agency shall abide by the commissioner's written determination.

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

(a) "DPP-154, Protection and Permanency Service Appeal Request", 11/09; and

(b) "DPP-154A, Protection and Permanency Notice of Intended Action", 11/09.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ERIC T. CLARK, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 27, 2019

FILED WITH LRC: June 28, 2019 at 4 p.m.

CONTACT PERSON: Chase Coffey, 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: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Laura Begin, Phone (502) 564-3703, Email: Laura.Begin@ky.gov; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures related to appeals and complaints for benefits and services under Title 922 KAR Chapters 1 and 5.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish appeals and complaint procedures for benefits and services under Title 922 KAR Chapters 1 and 5.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing appeals and complaint procedures for benefits and services under Title 922 KAR Chapters 1 and 5.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing procedures related to appeals and complaints for services and benefits under Title 922 Chapters 1 and 5.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation aligns appeals and complaint procedures with 2019 Ky. Acts ch. 073 and 033, House Bills 2 and 158 from the 2019 Regular Session respectively, and makes other technical corrections in accordance with KRS Chapter 13A. More specifically, the amendment incorporates the new service array for relative and fictive kin caregivers, new service and notice provision to foster parents, and the foster child bill of rights.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to align appeals and complaint procedures with the implementation deadline of legislation enacted during the 2019 Regular Session, and to protect the health, safety, and welfare of vulnerable children, families, and adults served through the ability to appeal and submit complaint regarding cabinet provision of services and benefits under Title 922 KAR Chapters 1 and 5.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its alignment of appeals and complaint procedures with recently enacted state law applicable to services and benefits under Title 922 KAR Chapters 1 and 5.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its congruency with recently enacted state law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individuals receiving child welfare or adult services are entities impacted by this administrative regulation, which governs appeals and complaints for Title 922 KAR Chapters 1 and 5. In State Fiscal Year 2018, the cabinet investigated nearly 34,000 reports of suspected adult maltreatment or self-neglect, and 55,000 reports of suspected child maltreatment. As of March 3, 2019, there were 9,786 children in out-of-home care.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no new action required of regulated entities; rather, the basis for appeals and complaints have been clarified in accordance with recently enacted state laws.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no new or additional cost imposed upon regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Appeal and complaint procedures for vulnerable children, families, and adults will be congruent with recently enacted state laws, thereby better ensuring the access to quality service provision and entitlements.

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

(a) Initially: Initial implementation costs to the administrating agency will be within existing appropriations. Any fluctuation in the number of service appeals as a result of this administrative regulation cannot be projected at this time.

(b) On a continuing basis: Ongoing implementation of the administrative regulation will be within existing appropriations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Social Services Block Grant, funds through Title IV-E of the Social Security Act, and General Funds are utilized to support 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: An increase in fees or funding is not necessary at this time to implement this administrative regulation.

(8) State whether or not this administrative regulation

established any fees or directly or indirectly increased any fees: This administrative regulation does not establish or directly or indirectly increase a fee.

(9) TIERING: Is tiering applied? Tiering is not applied. 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. 205.10, 1355.21(b), 1355.30(p), 42 U.S.C. 601(a)(1), 621(1)-(4), 629, 670-675, 1397

2. State compliance standards. KRS 13B.170(1), 194A.010(2), 194A.050(1)

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 205.10, 1355.21(b), 1355.30(p), 42 U.S.C. 601(a)(1), 621(1)-(4), 629, 670-675, 1397

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by 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 is impacted by this administrative regulation. Local or quasi-governmental entities may be impacted if those entities serve as a contractor of the department.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13B.170(1), 194A.010(2), 194A.050(1), 45 C.F.R. 205.10, 1355.21(b), 1355.30(p), 42 U.S.C. 601(a)(1), 621(1)-(4), 629, 670-675, 1397

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue for state or local government; rather, it serves to conform state programming with mandates of federal funding.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation does not generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? Any new administrative function associated with this administrative regulation will be absorbed within existing appropriations.

(d) How much will it cost to administer this program for subsequent years? Any new administrative function associated with this administrative regulation will be absorbed within existing appropriations.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

FINANCE AND ADMINISTRATION CABINET
Executive Branch Ethics Commission
(As Amended at ARRS, July 10, 2019)

9 KAR 1:010. Statement of financial disclosure.

RELATES TO: KRS 11A.010(7), (9), (13), 11A.050(2), (3)
STATUTORY AUTHORITY: KRS 11A.050(2), 11A.110(3), (4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 11A.110(3) and (4) require the Executive Branch Ethics Commission to promulgate administrative regulations to implement KRS Chapter 11A and to prescribe forms for statements required by this chapter. KRS 11A.050(2) requires the commission to prescribe the form for the statement of financial disclosure. This administrative regulation prescribes the form and incorporates it by reference.

Section 1. Definitions. (1) "Address or location" means:

(a) A street address or an address assigned to a location by the U.S. postal service, 911 service, or local government; or

(b) ~~If this, if such an~~ address is not available, ~~[then "address or location" means]~~ a description of the property so as to easily identify the location, global positioning system coordinates, or the location as described on the deed for the property.

(2) Business is defined by KRS 11A.010(1).~~;~~

(3) "Candidate" is defined by KRS 11A.010(13).

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

(5) Compensation is defined by KRS 11A.010(3).

(6) "Consumer goods" means any item either tangible or intangible that can be purchased, ~~except for: "consumer goods" do not include~~ purchases of real property or real estate.

(7) "Family" is defined by KRS 11A.010(4).

(8) "Gifts of money or property" means a payment, loan, subscription, advance, deposit of money, services, or anything of value, unless consideration of equal or greater value is received, ~~except for: "gift" does not include~~ gifts from family members, campaign contributions, the waiver of a registration fee for a presenter at a conference or training described in KRS 45A.097(5), gifts received by a public servant on behalf of his or her agency pursuant to KRS 45A.097, or door prizes that are available to the public.

(9) "Home street address" means the address or location at which the officer resides on a permanent basis.~~;~~

(10) "Income" is defined by KRS 11A.010(6).

(11)~~[(3)]~~ "Officer" is defined by KRS 11A.010(7).

(12)~~[(4)]~~ "Public servant" is defined by KRS 11A.010(9).

(13) "Start date" means the first date of employment with a state agency in the executive branch of the Commonwealth.

Section 2. (1) Current officers and public servants, as defined by KRS 11A.010(9)(a) to (g), shall file the statement of financial disclosure required by KRS 11A.050(1)~~[The statement of financial disclosure required of current officers and public servants listed in KRS 11A.010(9)(a) to (g) by KRS 11A.050(1) shall be filed]~~ on the statement of financial disclosure form effective at the time of his or her start date or effective at the time that candidate filing forms are filed by a candidate~~[Statement of Financial Disclosure and submitted in person, by U.S. Mail, electronically by facsimile or electronic mail to the commission's offices, or through an online system established by the commission].~~

(2) Former officers and former public servants, as defined by KRS 11A.010(9)(a) to (g), shall file the statement of financial disclosure:

(a) In accordance with KRS 11A.050(1)(c); and

(b) On the statement of financial disclosure form

effective at the date of departure from state service.~~[The statement of financial disclosure required by former officers and former public servants listed in KRS 11A.010(9)(a) to (g) by KRS 11A.050(1) to be filed within thirty (30) days after the date the person no longer serves as an officer or public servant listed in KRS 11A.010(9)(a) to (g) shall be filed on the statement of financial disclosure form effective at the date of departure from state service.]~~

~~(3) [Until June 27, 2019, an officer, public servant listed in KRS 11A.010(9)(a) to (g), or candidate[Candidates] shall file a statement of financial disclosure on the form Statement of Financial Disclosure (Rev. 11/2016). After June 27, 2019,] The statement of financial disclosure required by KRS 11A.050(1) shall be filed on the Statement of Financial Disclosure EBEC-SFD-101[and submit it in person, by U.S. Mail, electronically by facsimile or electronic mail to the commission's offices, or through an online system established by the commission].~~

Section 3. Submission. (1) The signature on the statements required by this administrative regulation shall be:

(a) In blue or black ink; or

(b) Electronic.

(2) The statement of financial disclosure shall be filed with the commission as follows:

(a) By hard copy via hand-delivery, U.S. Mail, or other delivery service to the Commission's address;

(b) Electronically by facsimile to (502) 696-5091;

(c) Electronically by electronic mail to ethicsfiler@ky.gov; or

~~(d) [(e)]~~ Through an online system established by the commission.

(3) The statement of financial disclosure incorporated by reference may be reproduced.

Section 4~~[(3)]~~. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Statement of Financial Disclosure", rev. 11/2016~~], is incorporated by reference.~~

(b) "Statement of Financial Disclosure" EBEC-SFD-101 (Rev. 05/2019) is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Executive Branch Ethics Commission, 1025 Capital Center Drive, Suite 104~~[#3 Fountain Place]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CHRISTOPHER L. THACKER, Chair

APPROVED BY AGENCY: MAY 14, 2019

FILED WITH LRC: May 15, 2019 at 10 a.m.

CONTACT PERSON: Kathryn H. Gabhart, Executive Director, Executive Branch Ethics Commission, 1025 Capital Center Drive, Suite 104, Frankfort, Kentucky 40601, phone (502) 564-7954, fax (502) 695-5939, email Katie.Gabhart@ky.gov.

FINANCE AND ADMINISTRATION CABINET
Executive Branch Ethics Commission
(As Amended at ARRS, July 10, 2019)

9 KAR 1:040. Executive agency lobbyist, employer offer executive agency lobbyist, and real party in interest registration~~[Registration]~~ and expenditure statements; financial transactions and termination forms; and enforcement.

RELATES TO: KRS 11A.201, 11A.211, 11A.216, 11A.221, 11A.231, 11A.233(1), 11A.236, 11A.241(4), (5), (6), 11A.990
STATUTORY AUTHORITY: KRS 11A.110(3), (4), 11A.241(4),

(5) NECESSITY, FUNCTION, AND CONFORMITY: KRS 11A.110(3) requires the Executive Branch Ethics Commission to promulgate administrative regulations to implement and prescribe forms for statements required by KRS Chapter 11A. KRS 11A.241(4) and (5) require the Executive Branch Ethics Commission to prescribe the initial registration statement, the updated registration statement, and the termination notice required by KRS 11A.211, the statement of expenditures required by KRS 11A.216, and the statement of financial transactions required by KRS 11A.221. This administrative regulation establishes the initial registration, financial transactions statements, [and] expenditure statements, termination notice, and enforcement procedure.

Section 1. Definitions. (1) "Agent" means the "executive agency lobbyist" as defined by KRS 11A.201(8).

(2) "Commission" means the Executive Branch Ethics Commission.

(3)[(2)] "Employer" is defined by KRS 11A.201(3).

(4)[(3)] "Executive agency decision" is defined by KRS 11A.201(7).

(5)[(4)] "Executive agency lobbyist" is defined by KRS 11A.201(8).

(6) "Filer" means the executive agency lobbyist, employer of the executive agency lobbyist, or real party in interest. [f]

(7)[(5)] "Real party in interest" is defined by KRS 11A.201(15).

Section 2. Initial Registration Statement. (1) Until June 30, 2019, the initial registration statement [and fee] required by KRS 11A.211(1)[11A.241] shall be filed on the Initial Registration Statement [form] (Rev. 4/2016). After June 30, 2019, the initial registration statement required by KRS 11A.211(1) shall be filed on the Initial Registration Statement EBEC-EAL-201.

(2)(a) The brief description of the executive agency decision shall include the subject matter for which an executive agency lobbyist:

1. Has been engaged; or

2. Is responsible.

(b) Subject matters shall include:

1. An award of grant for social services;

2. A lease for office space or equipment;

3. A contract to provide food, clothing, or other consumable products;

4. Any decisions made concerning the matters listed in KRS 11A.201(7)(a) through (f); [f] and

5. [4.] Any other subject matter. [(3)(a) The signature on the Initial Registration Statement which is filed with the commission shall be submitted either in blue or black ink, electronically by facsimile, or electronic mail to the commission, or through an online system established by the commission.

(b) The forms incorporated by reference in this administrative regulation may be reproduced by an executive agency lobbyist or his employer.]

Section 3. (1)(a) Until July 31, 2019, if a filer submitted the initial registration statement form to the commission prior to June 30, 2019, then the updated registration statement form required by KRS 11A.211(2) shall be filed on the applicable Updated Registration Statement (Rev. 4/2016) for that filer[forms].

(b) If a filer submitted the initial registration statement form to the commission after June 30, 2019, then the updated registration form required by KRS 11A.211(2) shall be filed on the applicable Updated Registration Statement as follows:

1. For the executive agency lobbyist on:

a. The combined form EBEC-EAL-202; or

b. EBEC-EAL-203;

2. For the employer of the executive agency lobbyist on form EBEC-EAL-204; and

3. For the real party in interest on form EBEC-EAL-205.

(2) Until June 30, 2019, the notice of termination required by KRS 11A.211(4) shall be filed on the Termination Notification as Executive Agency Lobbyist (Rev. 4/2016). After June 30, 2019, the notice of termination required by KRS 11A.211(4) shall be

filed on the Termination Notification as Executive Agency Lobbyist EBEC-EAL-206[form].

Section 4. Enforcement Procedure. (1) If an executive agency lobbyist, an employer of an executive agency lobbyist, or a real party in interest has not filed an Updated Registration Statement on or before the date the statement is due, the commission shall notify the party, by certified mail, return receipt requested, that if the statement is not filed within fifteen (15) days of the date of the receipt of notice, the commission shall levy a fine, as provided by KRS 11A.990(5).

(2) If, by the 16th day after proof of service of the certified letter is received by the commission, the commission has not received the statement that was due by July 31, the commission shall prepare and issue to the executive agency lobbyist, employer, or real party in interest an order demanding payment of the appropriate fine as required by KRS 11A.990(5). The executive agency lobbyist, employer, or real party in interest shall pay the fine within ten (10) days from the date of the order. The commission shall exonerate or reduce the fine if the commission receives evidence during the ten (10) day fine payment period indicating the filer has already filed the updated registration statement, or that the delinquency is in error.

(3) The commission also may exonerate or reduce a fine for late filing of the updated registration statement if the commission feels that exoneration is warranted, based on the circumstances, such as illness or injury, bereavement, emergency, unforeseen circumstances beyond the control of the person, bona fide effort to file on time, or similar circumstance.

(4) If the commission is not in receipt of the fine from the executive agency lobbyist, employer, or real party in interest by the tenth day after issuance of the order demanding payment of the fine, the general counsel may recommend that the commission initiate an investigation of the executive agency lobbyist, employer, or real party in interest to determine if the failure to file was intentional causing the criminal penalties set forth in KRS 11A.990(6) to apply.

Section 5. Submission. (1) The signature on the statements and forms required by this administrative regulation shall be:

(a) In blue or black ink; or

(b) Electronic.

(2) The forms required by this administrative regulation, which are filed with the commission, shall be submitted as follows:

(a) By hard copy via hand-delivery or U.S. Mail to the Commission's address:

(b) Electronically by facsimile to (502) 696-5091/[696-5092];

(c) Electronically by electronic mail to ethicsfiler@ky.gov; or

(d)[(e)] Through an online system once established by the commission.

(3) The forms incorporated by reference in this administrative regulation may be reproduced by the executive agency lobbyist, the employer, or real party in interest.

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

(a) "Initial Registration Statement", rev. 04/2016;

(b) "Updated Registration Statement - Executive Agency Lobbyist", rev. 04/2016;

(c) "Updated Registration Statement - Employer of Executive Agency Lobbyist", rev. 04/2016;

(d) "Updated Registration Statement -Executive Agency Lobbyist/Employer Combined", rev. 04/2016;

(e) "Updated Registration Statement - Real Party in Interest", rev. 04/2016;

(f) "Termination Notification as Executive Agency Lobbyist", rev. 04/2016;

(g) "Commonwealth of Kentucky Registration Card Executive Agency Lobbyist", 9/93; [f]

6(h) "Initial Registration Statement" EBEC-EAL-201 (Rev. 05/2019);

(i) "Updated Registration Statement - Executive Agency Lobbyist" EBEC-EAL-202 (Rev. 05/2019);

(j) "Updated Registration Statement -Executive Agency Lobbyist/Employer Combined" EBEC-EAL-203 (Rev. 05/2019);

(k) "Updated Registration Statement - Employer of Executive Agency Lobbyist" EBEC-EAL-204 (Rev. 05/2019);

(l) "Updated Registration Statement - Real Party in Interest" EBEC-EAL-205 (Rev. 05/2019/05/2016);

(m) "Termination Notification as Executive Agency Lobbyist" EBEC-EAL-206 (Rev. 05/2019); **and**

(n) "Commonwealth of Kentucky Registration Card Executive Agency Lobbyist" (Rev. 9/93).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Executive Branch Ethics Commission, 1025 Capital Center Drive, Suite 104[#3–Fountain Place], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CHRISTOPHER L. THACKER, Chair

APPROVED BY AGENCY: MAY 14, 2019

FILED WITH LRC: May 15, 2019 at 10 a.m.

CONTACT PERSON: Kathryn H. Gabhart, Executive Director, Executive Branch Ethics Commission, 1025 Capital Center Drive, Suite 104, Frankfort, Kentucky 40601, phone (502) 564-7954, fax (502) 695-5939, Katie.Gabhart@ky.gov.

**PERSONNEL CABINET
(As Amended at ARRS, July 10, 2019)**

101 KAR 2:180. Employee performance evaluation system.

RELATES TO: KRS 18A.110

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

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

Section 1. General Provisions. (1) The provisions of this administrative regulation shall be effective until completion of 2019 performance year activities.

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

(3)[(2)] Except as provided in subsection (5)(d)[(4)(d)] of this section, performance evaluations shall be completed no later than January 31 after the end of the annual performance period.

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

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

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

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

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

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

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

position or job title change. The new performance plan shall become a part of the original performance year evaluation documentation.

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

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

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

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

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

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

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

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

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

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

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

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

(a) Job tasks.

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

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

3. Duties and expectations shall be in writing.

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

(b) Adaptability/initiative.

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

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

(c) Communication/teamwork.

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

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

(d) Self-management.

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

a. Attendance;

b. Punctuality;

c. Career development;

d. Responsibility; and

e. Dependability.

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

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

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

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

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

(4) categories as follows:

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

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

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

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

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

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

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

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

(2) A mid-year interim review and year-end interim review shall be required during a performance year.

(a) The evaluator shall document the interim reviews.

1. Interim reviews shall not contain a rating.

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

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

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

(d) The evaluator shall schedule interim reviews to discuss performance January 1 through June 30 and July 1 through December 31.

(e) The mid-year interim review shall be completed no later than July 31 after the end of the interim review period, and the year-end interim review shall be completed no later than January 31 after the end of the interim review period.

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

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

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

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

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

(a) Outstanding: 450 to 500 points;

(b) Highly effective: 350 to 449 points;

(c) Good: 250 to 349 points;

(d) Needs Improvement: 150 to 249 points; or

(e) Unacceptable: less than 150 points.

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

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

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

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

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

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

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

Section 7. Reconsideration and Appeal Process. (1) Within five (5) working days of the year-end interim review and annual performance evaluation meeting, an employee may attach pertinent comments relating to the year-end interim review and may request initial reconsideration of the annual performance evaluation by the evaluator.

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

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

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

(5) The next line supervisor shall:

(a) Obtain written statements from both the employee and the evaluator; or

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

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

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

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

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

(2) Terminate the employee.

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

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

Section 10. Incorporation by Reference. (1) The "Annual Employee Performance Evaluation", January 2017, is incorporated by reference.

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

THOMAS B. STEPHENS, Secretary

APPROVED BY AGENCY: May 10, 2019

FILED WITH LRC: May 15, 2019 at 10 a.m.

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

PERSONNEL CABINET
(As Amended at ARRS, July 10, 2019)

101 KAR 2:190. Employee performance management system.

RELATES TO: KRS 18A.005, 18A.110

STATUTORY AUTHORITY: KRS 18A.110(1)(i), (2), (7)(j)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(1)(i) and (7)(j) require the Secretary of the Personnel Cabinet to promulgate comprehensive administrative regulations for classified service employees to establish a uniform system of annual employee evaluations for classified employees. KRS 18A.110(2) requires[authorizes] the secretary to promulgate comprehensive administrative regulations for the unclassified service. This administrative regulation establishes the uniform employee performance evaluation system for performance years beginning in 2020.

Section 1. General Provisions. (1) The provisions of this administrative regulation shall be effective beginning with 2020 performance year activities.

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

(3) Except as provided in subsection (5)(d) of this section, performance evaluations shall be completed no later than January 31 after the end of the annual performance period.

(4) All agencies shall use the Annual Employee Performance Evaluation procedure established by the secretary.

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

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

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

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

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

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

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

(8) The evaluator shall present and explain all documentation relevant to an employee's performance evaluation.

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

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

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

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

Section 2. Employee Eligibility. Performance evaluations shall

be completed for all full-time classified employees with status at the beginning of the performance year who have remained in continuous merit status throughout the performance year.

Section 3. Performance Planning. (1) The performance plan shall specify job competencies, goals, and expectations for the employee in categories established by the secretary.

(2) The employee's job duties and goals shall be consistent with the position description.

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

(a) The employee and evaluator shall certify that the employee has met with the evaluator and is aware of the performance plan.

(b) The next line supervisor shall certify that he or she has reviewed the competencies and goals.

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

(2) Interim reviews shall be required during a performance year as specified by the secretary.

(a) The evaluator shall document the interim reviews.

1. Interim reviews shall not contain a rating.

2. The interim section of the evaluation shall contain comments by the evaluator for each competency and goal.

(b) The evaluator shall schedule interim reviews to discuss performance. The employee and evaluator shall certify that the interim reviews occurred.

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

(d) The mid-year interim review shall be completed no later than July 31 after the end of the interim review period, and the year-end interim review shall be completed no later than January 31 after the end of the interim review period.

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

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

(2) Eligible employees shall be evaluated on job competencies, goals, and expectations set forth in his or her performance plan.

(3) The final performance evaluation shall consist of a defined rating as established by the secretary.

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

(5) Signatures of the evaluator, employee, and next line supervisor shall be required on the final evaluation. For the purpose of evaluating or managing the performance of the evaluator, the next line supervisor's signature shall certify that he or she is aware of the evaluation and has reviewed it.

Section 6. Performance Incentives. Annual leave shall be awarded as a performance incentive as specified in KRS 18A.110(7)(j).

Section 7. Reconsideration and Appeal Process. (1) Within five (5) working days of the annual performance evaluation meeting, an employee may request reconsideration of the annual performance evaluation by the evaluator.

(2) If the employee refuses to sign the final evaluation, the evaluation shall not be eligible for reconsideration.

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

(4) The next line supervisor shall review the request for reconsideration within ten (10) working days of receipt of the request for reconsideration.

(5) The next line supervisor shall inform both the employee and evaluator of the decision.

(6) If neither the evaluator nor the next line supervisor responds to the request for reconsideration in the designated time period, the employee may submit a written request to the appointing authority for response to the request for reconsideration and compliance with this section.

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

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

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

Section 9. Exceptions. (1) Except as requested in writing by the appointing authority and authorized by the secretary, all agencies shall comply with the provisions of this administrative regulation.

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

(3) The written justification and the secretary's approval of the exception request shall be placed in the employee's agency personnel file.

Section 10. Applicability to the Unclassified Service. (1) Within an organizational unit, all unclassified employees in KRS Chapter 18A federally funded time-limited or grant funded time-limited positions may be subject to the provisions of this administrative regulation at the option of the appointing authority, except unclassified employees shall not be eligible for the performance incentive award specified in KRS 18A.110(7)(j).

(2) Evaluations performed pursuant to this section are final and shall not be appealable to the Personnel Board except as provided by KRS 18A.005(15).

THOMAS B. STEPHENS, Secretary

APPROVED BY AGENCY: May 10, 2019

FILED WITH LRC: May 15, 2019 at 10 a.m.

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

**GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(As Amended at ARRS, July 10, 2019)**

201 KAR 2:010. Schools approved by the board.

RELATES TO: KRS 315.050

STATUTORY AUTHORITY: KRS 315.050, 315.191(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS

315.191(1) authorizes the board to promulgate administrative regulations to regulate and control all matters set forth in KRS Chapter 315 relating to pharmacists. KRS 315.050(1) requires the board to approve the schools or colleges of pharmacy whose curricula or course of studies are acceptable. This administrative regulation establishes the educational standards for an applicant for licensure as a pharmacist in Kentucky and identifies the acceptable and approved colleges or schools of pharmacy from which an applicant shall graduate.

Section 1. An applicant for licensure as a pharmacist, shall

have graduated and received a degree in an accredited pharmacy degree program, which has been approved by the Board of Pharmacy. A program shall be considered approved if the program's standards are equivalent to the minimum standards for accreditation for a similar program established by:

(1) The Accreditation[American] Council on Pharmaceutical Education[in]; ~~[""]~~ Accreditation Standards and Key Elements for the Professional Program in Pharmacy Leading to the Doctor of Pharmacy Degree; ~~[""]~~ or (a) "Accreditation Manual for Professional Programs"; or

(b) "Accreditation Standards and Guidelines for the Professional Program in Pharmacy Leading to the Doctor of Pharmacy Degree"; or

(2) The Canadian Council for Accreditation of Pharmacy Programs ~~in~~ ~~[""]~~ Accreditation Standards [and Guidelines] for Canadian First [Pharmacy] Professional Degree in Pharmacy Programs [in Canada] ~~[""]~~.

Section 2. An applicant for licensure as a pharmacist who shall have graduated and received a degree in a foreign pharmacy degree program, other than from a college or school accredited by the Canadian Council for Accreditation of Pharmacy Programs shall be deemed to be a graduate of a pharmacy degree program, which has been approved by the Board of Pharmacy if the applicant has obtained a Foreign Pharmacy Graduate Examination Committee Certificate through the Foreign Pharmacy Graduate Examination Committee Certification Program, which is administered by the National Association of Boards of Pharmacy [Foundation].

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

(a) "Accreditation Standards and Key Elements for the Professional Program in Pharmacy Leading to the Doctor of Pharmacy Degree" ~~[""]~~ January 25, 2015, Accreditation Council on Pharmaceutical Education; and ~~[""]~~ Accreditation Manual for Professional Programs", 8th Edition (3rd Printing) January 1995, American Council on Pharmaceutical Education;]

(b) "Accreditation Standards for Canadian First Professional Degree in Pharmacy Programs", January 2018, Canadian Council for Accreditation of Pharmacy Programs, ["Accreditation Standards and Guidelines for the Professional Program in Pharmacy Leading to the Doctor of Pharmacy Degree," June 14, 1997, American Council on Pharmaceutical Education; and

(c) "Accreditation Standards and Guidelines for Pharmacy Professional Degree Programs in Canada", Revised January 1998, Canadian Council for Accreditation of Pharmacy Programs.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, [1024 Capital Center Drive, Suite 240,] Frankfort, Kentucky 40601-8204, Monday through Friday 8 a.m. to 4:30 p.m.

LARRY HADLEY, R.Ph., Executive Director

APPROVED BY AGENCY: May 14, 2019

FILED WITH LRC: May 15, 2019 at 10 a.m.

CONTACT PERSON: Larry Hadley, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Larry.Hadley@ky.gov.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(As Amended at ARRS, July 10, 2019)**

201 KAR 2:090. Reference material and prescription equipment.

RELATES TO: KRS Chapter 315

STATUTORY AUTHORITY: KRS 315.035(6), 315.191 ~~[315.19(1)]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS

VOLUME 46, NUMBER 2– AUGUST 1, 2019

315.035(6) authorizes the Board of Pharmacy to promulgate administrative regulations regarding reference material and equipment suitable for pharmaceutical practice. This administrative regulation establishes the [minimum] reference material and equipment required for pharmaceutical practice.

Section 1.(1) The pharmacy shall have appropriate reference material and equipment as dictated by experience to meet the needs of the particular pharmacy, and necessary to practice pharmacy in a safe manner.

(a) Appropriate reference material includes references such as those from the following categories:

1. Category I – Pharmacology;

2. Category II – Drug Interactions;

3. Category III – Drug Product Composition; and

4. Category IV – State and Federal Laws and Regulations.

(b) Appropriate equipment as determined by the pharmacist in charge includes items such as the following:

1. A prescription balance with sensitivity not less than that of a Class 3 balance;

2. Weights-metric or apothecary-complete set;

3. Graduates capable of accurately measuring from 1 ml to 250 ml;

4. Mortars and pestles-glass, porcelain, or Wedgewood;

5. Spatulas-steel and nonmetallic;

6. Filtration funnel with filter papers;

7. A heating unit;

8. Suitable refrigeration unit for proper storage of drugs;

and

9. Ointment slab or ointment papers.

(2) Electronic references shall be acceptable. [A pharmacy located within the Commonwealth that receives a pharmacy permit shall be required to maintain at least one (1) current reference from each of the following categories:

(a) Category I – Pharmacology;

(b) Category II – Drug Interactions;

(c) Category III – Drug Product Composition; and

(d) Category IV – State and Federal Laws and Regulations.

(2) References shall be relevant to the professional practice of pharmacy at the permitted pharmacy.

(3) Electronic references shall be acceptable if the information is readily retrievable such that the pharmacist is not required to exit the dispensing program to obtain information from the electronic references. The existence of drug information on the Internet and the mere ability of the pharmacist to connect to the Internet shall not be sufficient to meet the requirements of this administrative regulation.

Section 2. (1) The following shall be deemed as minimum equipment required of a pharmacy:

(a) A prescription balance with a sensitivity not less than that of a Class 3 balance;

(b) Weights – metric or apothecary – complete set;

(c) Graduates capable of accurately measuring from 1 ml to 250 ml;

(d) Mortars and pestles – glass, porcelain, or Wedgewood;

(e) Spatulas – steel and nonmetallic;

(f) Filtration funnel with filter papers;

(g) A heating unit;

(h) Suitable refrigeration unit for proper storage of drugs; and

(i) Ointment slab or ointment papers.

(2) All equipment shall be maintained in a clean condition.

Section 3. The pharmacy shall have other reference material and equipment as dictated by experience to meet the needs of the particular pharmacy and necessary to compound and dispense in a safe manner.

Section 4. A pharmacy may be granted an exemption to required reference material and prescription equipment upon written petition to the board.

Section 5. The prescription counter upon which prescriptions

are dispensed shall be used for the prime purpose of dispensing prescriptions. All pharmacies shall comply with all sanitation laws and administrative regulations.]

LARRY HADLEY, Executive Director

APPROVED BY AGENCY: May 14, 2019

FILED WITH LRC: May 15, 2019 at 10 a.m.

CONTACT PERSON: Larry Hadley, Executive Director,
Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State
Office Building Annex, Frankfort, Kentucky 40601, phone (502)
564-910, fax (502) 696-3806, email Larry.Hadley@ky.gov.

GENERAL GOVERNMENT CABINET Kentucky Board of Pharmacy (As Amended at ARRS, July 10, 2019)

201 KAR 2:100. Security and control of drugs and prescriptions.

RELATES TO: KRS Chapter 315

STATUTORY AUTHORITY: KRS 315.035, 315.191(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1) authorizes the Kentucky Board of Pharmacy [is authorized by KRS 315.191(1)] to promulgate [adopt rules and] administrative regulations necessary to regulate and control pharmacists and pharmacies. This administrative regulation establishes requirements for [is to assure] adequate security and control of drugs and prescriptions.

Section 1. (1) A pharmacy shall [must]

(a) Provide adequate security and control of its controlled substances and prescription legend drugs; [;] and

(b) Be closed [and] in the absence of a pharmacist [the pharmacy must be closed].

(2) If a pharmacy is located within a larger establishment, which is open to the public for business at times when a pharmacist is not present, then the pharmacy shall [must] be fully enclosed by [“a”] [floor to ceiling] partitions [partition] which shall [may] be either solid, [or] solid transparent, or chain linked secured by lock from other departments of the store. In the absence of a pharmacist [such] pharmacies shall [must] be locked and secured. A [No] person shall [Employees of the establishment cannot] not [be authorized to] enter the closed pharmacy during those hours when a pharmacist is not present. [Owners of prescription departments, which are to be closed at times the merchandise area of the same establishment remains open, must request permission from the Kentucky Board of Pharmacy, submit a detailed plan of the prescription department barrier and obtain written approval before enclosing the prescription department.]

Section 2. All prescription files, all legend drugs, and other items which are restricted to sale either by or under the [personal] supervision of a pharmacist shall [must] be kept in the pharmacy area.

Section 3. Written prescription orders and refill requests may [can] be delivered to a pharmacy at any time. But if no pharmacist is present, then the prescription [order(s)] orders shall [must] be deposited, by the patient or the patient's [his] agent delivering the prescription order or refill request to the establishment, into a "mail slot" or "drug box" such that the prescription order is stored in the pharmacy area.

Section 4. Prepared prescription medications shall be stored in the pharmacy and shall not [cannot] be removed from the pharmacy unless the pharmacist is present and the removal is for the immediate delivery to the patient, person picking up the prescription for the patient, or person delivering the prescription to the patient at the patient's [his] residence or similar place. [Emergency drugs shall be available throughout a hospital as deemed necessary by the pharmacist and under the overall control of the pharmacist. A night drug cabinet shall be maintained for the

provision of emergency drugs in the absence of a pharmacist.

Section 5. It shall be regarded as unprofessional conduct under KRS 315.121(1)(f) for any pharmacist or employer of pharmacists to refrain from reporting to the board a pharmacist who:

- (1) Has been convicted of a misdemeanor or felony which involved acts that bear directly on the qualifications or ability of the applicant or licensee to practice pharmacy; or
- (2) Commits fraud or deceit in procuring or attempting to procure a license to practice pharmacy; or
- (3) Negligently or willfully acts in a manner inconsistent with the practice of pharmacy or willfully repeatedly violates any provisions of this chapter; or
- (4) Has a license to practice as a pharmacist denied, limited, suspended, probated or revoked in another jurisdiction on grounds sufficient to cause a license to be denied, limited, suspended, probated or revoked in this Commonwealth; or
- (5) Is practicing pharmacy without a current active license issued by the board.]

LARRY A. HADLEY, R.Ph., Executive Director

APPROVED BY AGENCY: May 14, 2019

FILED WITH LRC: May 15, 2019 at 10 a.m.

CONTACT PERSON: Larry Hadley, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Larry.Hadley@ky.gov.

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(As Amended at ARRS, July 10, 2019)

201 KAR 2:116. Substitution of drugs, biologics and biosimilar products.~~[Drug products with therapeutic problems.]~~

RELATES TO: KRS 217.819

STATUTORY AUTHORITY: KRS 217.814(5), (6), (7), (8), 217.819(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.819(1) ~~requires~~**[directs]** the Kentucky Board of Pharmacy to prepare ~~by administrative regulation~~ a drug product formulary of drugs which should not be interchanged by pharmacists. This administrative regulation ~~references~~**[lists]** drug products with active ingredients or dosage forms ~~that are~~**[deemed]** interchangeable. All ~~other products not referenced as interchangeable are~~**[deemed]** non-interchangeable~~[with potential bioequivalence problems, drugs characteristically possessing a narrow therapeutic index, or categories of agents for which there is either documented evidence of inequivalent therapeutic effect or a potential for it based on differences in bioavailability].~~

Section 1. The following have been determined by the board to be ~~interchangeable~~**[noninterchangeable]**:

(1) Drugs, drug products, or dosage formulations considered by the United States Food and Drug Administration~~[not]~~ to be therapeutically equivalent as published in the ~~[""]~~**[Approved Drug Products with Therapeutic Equivalence Evaluations[""]]** (Orange Book); **and**

(2)~~./~~ **[Biologics drugs, biologics drug products, or biologics dosage formulations considered by the United States Food and Drug Administration to be therapeutically equivalent as published in the [""]**Lists of Licensed Biological Products with Reference Product Exclusivity and Biosimilarity or Interchangeability Evaluations~~[""]~~ (Purple Book).**]**Section 2. The following have been determined by the board to be noninterchangeable unless the United States Food and Drug Administration considers them therapeutically equivalent as published in the "Approved Drug Products with Therapeutic Equivalence Evaluations":

- (1) Digitalis glycosides;
- (2) Antiepileptic drugs;

- (3) Antiarrhythmic agents;
- (4) Conjugated estrogens;
- (5) Esterified estrogens;
- (6) Warfarin anticoagulants;
- (7) Theophylline products; and
- (8) Thyroid preparations.]

Section 2~~[3]~~. **Incorporation by Reference. (1) The following material is incorporated by reference:**

(a) "Approved Drug Products with Therapeutic Equivalence Evaluations," (Orange Book)[14th Edition, 1994], U.S. Food and Drug Administration, **39th Edition, 2019; and**

(b) "Lists of Licensed Biological Products with Reference Product Exclusivity and Biosimilarity or Interchangeability Evaluations" (Purple Book), United States Food and Drug Administration, **June 2019**~~[are]~~**[is]**~~[incorporated by reference].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, Frankfort, KY 40601-8204, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://www.fda.gov>.

LARRY A. HADLEY, R.Ph., Executive Director

APPROVED BY AGENCY: May 14, 2019

FILED WITH LRC: May 15, 2019 at 10 a.m.

CONTACT PERSON: Larry Hadley, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Larry.Hadley@ky.gov.

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(As Amended at ARRS, July 10, 2019)

201 KAR 2:225. Special limited pharmacy permit – medical gases.

RELATES TO: KRS 217.015(5)(a), 315.010(9), 315.020, 315.035, 315.191(1)(a)

STATUTORY AUTHORITY: KRS 315.020, 315.035, 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations to regulate and control all matters set forth in KRS Chapter 315 relating to pharmacists and pharmacies.** This administrative regulation establishes, consistent with the requirements of KRS 315.191(1)(a), minimum requirements for the permitting of those entities that distribute medical ~~gases~~**[gasses]**.

Section 1. Definitions.

(1) "Medical gases" means gases (including liquefied gases) classified by FDA as drugs or devices that are used for medical applications and which may be stored and administered through the use of medical gas related equipment, which may or may not be required under federal or state law for the immediate container to bear the label, "Rx only" or "Caution: Federal or State law prohibits dispensing without a prescription."

(2) "Special limited pharmacy permit**[permits]**" means a permit issued to a pharmacy that provides miscellaneous specialized pharmacy service and functions.**[(2) "Medical gases" means oxygen-United States Pharmacopoeia and nitrous oxide.]**

Section 2. General Requirements. (1)(a) An applicant for a special limited pharmacy permit for medical ~~gases~~**[gasses]** shall comply with the requirements of 201 KAR 2:180, except Section 5 and 201 KAR 2:205, except that the pharmacist-in-charge designated on the special permit shall be exempt from the requirements of 201 KAR 2:205, Section 2(2).

(b)~~[Effective January 1, 2010]~~ The pharmacist-in-charge shall review the records and do an onsite visit of the special limited

pharmacy permit applicant for medical gases [gases] not less than once each quarter.

(2) ~~Effective January 1, 2010~~ An applicant for a special limited pharmacy permit for medical gases [gases] shall prepare and adopt a policy and procedures manual that sets forth a detailed description of how the:

(a) Operation will comply with applicable federal, state, or local laws or administrative regulations; and

(b) Licensee will maintain the premises so that the medical gas [gases] remains [remain] secure and complies [comply] with applicable compendial monographs of official pharmacopoeias [specified by KRS 217.015(5)(a)].

(3) An applicant for a special limited pharmacy permit for medical gases [gases] shall be inspected by the board prior to the issuance of the license.

Section 3. Qualifications for License. (1) The board shall consider the following in reviewing the qualifications of an applicant for a special limited pharmacy permit for medical gases [gas] [medicinal gases]:

(a) The applicant's experience in the sale or distribution of prescription drugs, including controlled substances;

(b) A felony conviction of the applicant under federal, state, or local laws;

(c) The furnishing by the applicant of false or fraudulent material in a previous application for:

1. A special limited pharmacy permit for medical gases [gases]; or

2. A federal or state medical assistance program;

(d) Suspension or revocation of an applicant's license or permit by federal, state, or local government; and

(e) Compliance with requirements under a previously granted license or permit.

(2) The board shall deny an application for a special limited pharmacy permit for medical gases [gases], if an applicant has:

(a) Been convicted for a violation of federal, state, or local laws relating to:

1. The practice of pharmacy;

2. Drugs; or

3. Federal or state medical assistance programs.

(b) Furnished false or fraudulent material in the application for a special limited pharmacy permit for medical gases [gases];

(c) Failed to maintain or make available required records to the:

1. Board; or

2. Federal, state, or local law enforcement officials;

(d) Failed to comply with applicable federal, state, and local laws and regulations relating to medical gas [gases]; or

(e) Failed to provide appropriate land, buildings, and security necessary to properly carry on the business described in his application.

Section 4. License Fees; Renewals. An applicant shall submit:

(1) ~~Effective January 1, 2020~~ An initial or renewal application for a special limited pharmacy permit ~~for~~ medical gases [for medicinal gases] on either the ~~["Application for Special Limited Pharmacy Permit to Operate A Pharmacy In Kentucky"]~~ Medical Gas or the ~~["Application for Special Limited Pharmacy Permit – Medical Gas Renewal"]~~; and

(2) As appropriate, the:

(a) Initial application fee established by ~~[Section 1(10)]~~ 201 KAR 2:050, Section 1(9); or

(b) Renewal fee established by ~~[Section 1(11)]~~ 201 KAR 2:050, Section 1(10).

Section 5. Incorporation by Reference. (1) ~~The following material ["Application for Permit to Operate A Pharmacy In Kentucky (11/92)"] is incorporated by reference: [-]~~

(a) ~~"Application for Special Limited Pharmacy Permit – Medical Gas"~~, ~~[dated] May 2019; [-]~~ and

(b) ~~"Application for Special Limited Pharmacy Permit – Medical Gas Renewal"~~, ~~[dated] May 2019.~~

(2) This form may be obtained, inspected, or copied, subject to applicable copyright [copy right] law, at the Kentucky Board of Pharmacy, 125 Holmes Street ~~[1024 Capital Center Drive]~~, Suite 300 ~~[240]~~, Frankfort, Kentucky 40601-8204, 8 a.m. to 4:30 p.m., Monday through Friday.

LARRY A. HADLEY, R.Ph., Executive Director

APPROVED BY AGENCY: May 14, 2019

FILED WITH LRC: May 15, 2019 at 10 a.m.

CONTACT PERSON: Larry Hadley, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Larry.Hadley@ky.gov.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(As Amended at ARRS, July 10, 2019)**

201 KAR 2:240. Special limited pharmacy permit - charitable [pharmacy].

RELATES TO: KRS 315.035

STATUTORY AUTHORITY: KRS 315.020, 315.030, 315.035, 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS ~~[315.020, 315.030, and]~~ 315.191(1)(a) authorizes [requires] the board to promulgate administrative regulations to prescribe the criteria for obtaining a pharmacy permit to dispense legend drugs and the procedures for the safe dispensing of legend drugs to citizens of the Commonwealth. This administrative regulation identifies the manner and procedure by which a charitable organization may [can be permitted to] obtain a pharmacy permit and dispense legend drugs in the Commonwealth.

Section 1. Definitions. (1) "Charitable organization" means an organization qualified as a charitable organization pursuant to Section 501(c)(3) of the Internal Revenue Code.

(2) "Legend drug sample" means an unopened package of a manufacturer's legend drug product that has been distributed to either a practitioner or the charitable pharmacy in accordance with the provisions of the Prescription Drug Marketing Act of 1987.

(3) "Qualified indigent patient" means a patient of the charitable pharmacy that has been screened and approved by the charitable organization as meeting the organization's mission of providing pharmaceutical care to those who are without sufficient funds to obtain needed legend drugs.

(4) "Special limited pharmacy permit" means a permit issued to a pharmacy that provides miscellaneous specialized pharmacy service and functions.

Section 2. (1) A charitable pharmacy:

~~(a)~~ [a] Shall comply with all pharmacy permit requirements except those specifically exempted by the board pursuant to paragraph (b) of this subsection; and

~~(b)~~ [b] May petition the board in writing to be exempted from those pharmacy permit requirements that do not pertain to the operation of that charitable pharmacy.

(2) The charitable pharmacy only shall dispense prescription legend drug samples or prescription legend drugs to qualified indigent patients of the pharmacy.

(3) The charitable pharmacy shall not charge any fee for the dispensing of prescription legend drug samples or prescription legend drugs to qualified indigent patients of the pharmacy.

(4) A charitable pharmacy may accept prescription legend drugs in their unbroken original packaging from pharmacies, wholesalers, or manufacturers, provided appropriate records of receipt and dispensing are maintained.

(5) A charitable pharmacy shall not:

~~(a)~~ [6] (a) Accept controlled substances from pharmacies, wholesalers, or manufacturers; or

~~(b)~~ [7] (b) Dispense controlled substances.

VOLUME 46, NUMBER 2– AUGUST 1, 2019

~~(6) [(8)] (6)~~ A pharmacy that requests a special limited pharmacy permit - charitable~~[pharmacy permit]~~ shall submit to the board for prior approval, a plan describing the method by which the charitable pharmacy and the pharmacy will maintain a separate and distinct prescription drug stock. The failure of either pharmacy to follow the plan shall result in revocation of the special limited pharmacy permit – charitable and the pharmacy permit.

Section 3. License Fees: Renewals. An applicant shall submit:

(1) An initial or renewal application for a special limited pharmacy permit - Charitable Pharmacy on either the ~~[""]~~Application for Special Limited Pharmacy Permit - Charitable Pharmacy or the [""]Application for Special Limited Pharmacy Permit - Charitable Pharmacy Renewal~~[""]~~; and

(2) As appropriate, the:

(a) Initial application fee established by 201 KAR 2:250, Section 1(9)~~["", 201 KAR 2:050]~~; or

(b) Renewal fee established by 201 KAR 2:250, Section 1(10) and (11)~~[(10-11), 201 KAR 2:050]~~.

Section 4. Incorporation By Reference. (1) The following material is incorporated by reference:

(a) Effective January 1, 2020 "Application for Special Limited Pharmacy Permit - Charitable Pharmacy", May 2019; and

(b) Effective January 1, 2020 "Application for Special Limited Pharmacy Permit - Charitable Pharmacy Renewal", May 2019.

(2) This form may be obtained, inspected, or copied subject to applicable copyright law at the Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

LARRY A. HADLEY, R.Ph., Executive Director

APPROVED BY AGENCY: May 14, 2019

FILED WITH LRC: May 15, 2019 at 10 a.m.

CONTACT PERSON: Larry Hadley, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Larry.Hadley@ky.gov.

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(As Amended at ARRS, July 10, 2019)

201 KAR 2:270. Expungement.

RELATES TO: KRS 315.121(6), 315.191(1)(a)

STATUTORY AUTHORITY: KRS 315.121(6), 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations relating to pharmacists. KRS 315.121(6) requires the board to promulgate administrative regulations to establish violations that are considered minor and subject to expungement. This administrative regulation establishes the violations considered minor and the criteria and procedure for expungement.

Section 1. Definition. "Expungement" means that:

(1) The affected records shall be sealed;

(2) The proceedings to which they refer shall be deemed not to have occurred; and

(3) The affected party may properly represent that no record exists regarding the matter expunged.

Section 2. Minor Violations and Expungement Procedure. (1) The following violations are to be considered minor in nature:

(a) Any unlicensed, unregistered, or unpermitted practice occurring no more than seven (7) days after the expiration of the license, registration, or permit due to failure to timely renew a license, registration, or permit~~Failure to timely renew a license or permit~~;]

(b) Failure to timely obtain required continuing education; and

(c) Failure to comply with any provisions of 201 KAR 2:106 for pharmacy, manufacturer, or distributor closures~~timely obtain~~

~~required HIV/AIDS continuing education.~~]

(2) Effective January 1, 2020, A licensee, registrant, or permit holder~~[pharmacist]~~ seeking expungement of a record of a disciplinary action resulting from a violation designated in subsection (1) of this section shall, in accordance with KRS 315.121(6):

(a) Not have been the subject of a subsequent violation of the same nature for a period of three (3) years after the date of completion of disciplinary sanctions imposed for the violation sought to be expunged; and

(b) Submit a written request to the board.

(3) The board shall consider each request and shall, if the conditions of subsection (2) of this section are satisfied, expunge every record under its custody relating to the subject disciplinary order.

LARRY A. HADLEY, R.Ph., Executive Director

APPROVED BY AGENCY: May 14, 2019

FILED WITH LRC: May 15, 2019 at 10 a.m.

CONTACT PERSON: Larry Hadley, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Larry.Hadley@ky.gov.

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(As Amended at ARRS, July 10, 2019)

201 KAR 2:340. Special limited pharmacy permit - ~~[for]~~ clinical practice.

RELATES TO KRS 315.010(9), 315.020, 315.035, 315.191(1)(a)

STATUTORY AUTHORITY: KRS 315.035, 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.035 authorizes the Board of Pharmacy issue a permit to a pharmacy. KRS 315.191(1)(a) authorizes the Board of Pharmacy to promulgate administrative regulations with minimum requirements for the permitting of those entities that provide non-dispensing pharmacy services. This administrative regulation establishes the requirements for the Special limited pharmacy permit - ~~[for]~~ Clinical practice.

Section 1. Definitions. (1) Definition. "Special limited pharmacy permit~~[permits]~~~~[permit for clinical practice]~~" means~~[]~~ a permit issued to a pharmacy that provides miscellaneous specialized pharmacy service and functions~~maintains patient records and other information for the purpose of engaging in the practice of pharmacy and does not dispense prescription drug orders~~.

(2) "Special limited pharmacy permit - clinical practice" means a permit issued to a pharmacy that maintains patient records and other information for the purpose of engaging in the practice of pharmacy and does not dispense prescription drug orders.

Section 2. General Requirements. (1) An applicant for a special limited pharmacy permit - ~~[for]~~ clinical practice shall:

(a) Prepare and adopt a policy and procedure manual that is updated annually;

(b) Maintain pharmacy references as outlined in 201 KAR 2:090;

(c) Maintain a physical pharmacy address;

(d) Designate a Pharmacist-in-Charge (PIC) without a required minimum number of hours of physical presence;

(e) Maintain patient records for five (5) years in a manner that shall provide adequate safeguard against improper manipulation or alteration of the records; a computer malfunction or data processing services' negligence is not a defense against the charges of improper recordkeeping; and

(f) Maintain patient records by establishing:

1. A patient record system to be maintained for patients for whom non-dispensing pharmacy services and functions are being performed;

2. A procedure for obtaining, recording, and maintaining information required for a patient record by a pharmacist, pharmacist intern, or pharmacy technician; and

3. A procedure for a patient record to be readily retrievable by manual or electronic means.

(2) An applicant for a special limited pharmacy permit - [for] clinical practice shall be exempt from the following:

(a) Prescription equipment requirements of 201 KAR 2:090, Section ~~1~~~~(2)~~;

(b) Pharmacy sanitation requirements of 201 KAR 2:180; and

(c) Security and control of drugs and prescriptions requirements of 201 KAR 2:100, Sections 1, 2, 3, and 4.

Section 3. Pharmacy Closure. The permit holder shall provide notification to the board ~~fifteen (15)~~~~[thirty–30]~~ days prior to permanent pharmacy closure.

Section 4. License Fees; Renewals. An applicant shall submit:

(1) An initial or renewal application for a special limited pharmacy permit - [for] clinical practice on either the Application for Special Limited Pharmacy Permit - [for] Clinical Practice or the Application for Special Limited Pharmacy Permit - [for] Clinical Practice Renewal; and

(2) As appropriate, the:

(a) Initial application fee established by 201 KAR 2:050, Section 1(9); or

(b) Renewal application fee established by 201 KAR 2:050, Section 1(10).

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

(a) ~~[Effective January 1, 2020]~~ "Application for Special Limited Pharmacy Permit - [for] Clinical Practice", May 2019, ~~Form 1, 5/2012~~; and

(b) ~~[Effective January 1, 2020]~~ "Application for Special Limited Pharmacy Permit - [for] Clinical Practice Renewal", May 2019, ~~Form 2, 5/2012~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

LARRY A. HADLEY, R.Ph., Executive Director

APPROVED BY AGENCY: May 14, 2019

FILED WITH LRC: May 15, 2019 at 10 a.m.

CONTACT PERSON: Larry Hadley, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Larry.Hadley@ky.gov.

BOARDS AND COMMISSIONS

Board of Licensure for Long-Term Care Administrators (As Amended at ARRS, July 10, 2019)

201 KAR 6:030. Temporary permits.

RELATES TO: KRS 12.357, f 216A.070(4)

STATUTORY AUTHORITY: KRS 12.357, f 216A.070(3), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216A.070(3) authorizes the Board of Licensure for Long-term Care Administrators to promulgate administrative regulations necessary for the proper performance of its duties. KRS 216A.070(4) authorizes the board to promulgate administrative regulations concerning the issuance of a temporary permit to an individual to practice the art of long-term care administration. KRS 12.357 requires administrative bodies who issue licenses to issue temporary licenses or certificates to the spouses of active duty military members of the Armed Services of the United States within thirty (30) days if the spouse meets the statutory requirements and applies in a format promulgated in administrative regulation. This administrative regulation establishes the requirements for issuance

of a temporary permit for Long-term Care Administrators.

Section 1. Temporary Permits Issued to Fill Emergency Vacancies. (1) The Department of Professional Licensing may, following consultation with a board member, issue a temporary permit to practice as a long-term care[nursing–home] administrator[shall be granted by the Office of Occupations and Professions] to an applicant if:

(a) The applicant has submitted an Application for Licensure, form KBLTCA-1, incorporated by reference in 201 KAR 6:040[applied for licensure under the provisions of KRS Chapter 216A];

(b) The applicant has completed all of the requirements established in 201 KAR 6:020 except the examination required pursuant to 201 KAR 6:020, Section ~~2~~~~(1)~~(2), and the management experience required by 201 KAR 6:020, Section ~~2~~~~(1)~~(3);

(c) The facility where the applicant is to be employed as the administrator is without a licensed administrator; and

(d) The facility owner, or a duly authorized representative of the facility, provides a written request and supporting information to the board indicating that an emergency situation exists.

(2) An emergency situation shall exist if:

(a)[4–] The facility is without a licensed long-term care administrator; and

(b)[2–] A licensed long-term care administrator is not available to fill the position.

(3)[(2)] The request for temporary permit shall include payment of the temporary permit fee [as] established in 201 KAR 6:060, Section 3.[(3) A temporary permit shall be subject to review by the board at the meeting immediately following issuance of the temporary permit. The board shall revoke the temporary permit if it does not comply with KRS 216.070(4) or this administrative regulation.]

Section 2. Temporary Permits Issued to Spouses of Active Military Members. (1) The spouse of an active ~~duty~~ military[duty] member of the Armed Forces of the United States may apply for a temporary permit at any time.

(2) The Department of Professional Licensing shall, following consultation with a board member, issue a temporary permit to practice as a long-term care administrator to the spouse of an active ~~duty~~ military member within thirty (30) days of receipt of the Application for Licensure, form KBLTCA-1, incorporated by reference in 201 KAR 6:040, requesting a temporary permit if:

(a) The applicant has completed all of the requirements established in 201 KAR 6:020 except the examination required pursuant to 201 KAR 6:020, Section ~~2~~~~(1)~~(2), and the management experience required by 201 KAR 6:020, Section ~~2~~~~(1)~~(3);

(b) The applicant has provided proof they are married to an active duty member of the Armed Services of the United States;

(c) The applicant has provided proof that the applicant holds a valid license or certificate for the profession issued by another state, the District of Columbia, or any possession or territory of the United States;

(d) The applicant has provided proof that the applicant's spouse is assigned to a duty station in this Commonwealth pursuant to the spouse's official active duty military orders; and

(e) The applicant has paid the temporary permit fee established in 201 KAR 6:060, Section 3.

Section 3. Restrictions on Temporary Permits. (1) A temporary permit shall not be transferred to another individual.

(2) A temporary permit shall, in accordance with KRS 216A.070(4) or KRS 12.357:

(a) Be effective for no longer than six (6) months from the date it was granted; and

(b) Not be renewed by the permit holder.

(3) The holder of a temporary permit issued pursuant to Section 1 of this administrative regulation[holder] may be relocated to another location if an emergency exists at that location during the period in which the permit is effective and a separate request for a declaration of emergency is filed and approved by the board pursuant to Section 1(1)(d) of this administrative regulation.

(4) An individual shall not be granted a temporary permit more than once during a five (5) year period.

(5) A temporary permit shall not authorize the individual to whom the permit was issued to manage more than one (1) facility at the same time.

(6) All temporary permits shall be subject to review by the board at the meeting immediately following issuance of the permit. The board shall revoke a temporary permit that does not satisfy the requirements of KRS 216A.070(4), KRS 12.357, or this administrative regulation.

GREG WELLS, Chairman

APPROVED BY AGENCY: May 14, 2019

FILED WITH LRC: May 15, 2019 at 11 a.m.

CONTACT PERSON: Elizabeth Wells, Board Administrator, 911 Leawood Drive, Frankfort, Kentucky 40601, phone 502-782-8818, fax 502-564-4818, email LTCA@ky.gov.

BOARDS AND COMMISSIONS

Board of Licensure for Long-Term Care Administrators (As Amended at ARRS, July 10, 2019)

201 KAR 6:040. Renewal, reinstatement, and reactivation of license.

RELATES TO: KRS 36.450, 216A.080, 216A.090, 42 U.S.C. 1396(g)

STATUTORY AUTHORITY: KRS 216A.070(3), 216A.090

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216A.070(3) authorizes the Board of Licensure for Long-term Care Administrators to promulgate administrative regulations necessary for the proper performance of its duties. KRS 216A.090 requires the holder of a license to renew that license biennially and authorizes the board to refuse renewal for failure to comply with KRS Chapter 216A or the administrative regulations promulgated thereunder. This administrative regulation establishes the requirements and procedures for renewal, late renewal, inactive licensure, and reinstatement~~[of a license]~~.

Section 1. License Renewal. (1) A license shall be renewed every two (2) years from date of issue or from date of last renewal. To apply for renewal, a licensee shall:

(a) Submit a completed Renewal Form~~[to the board]~~; and

(b) Pay~~[to the board]~~ the appropriate renewal fee established in 201 KAR 6:060; and

(c) Provide proof he or she has completed the continuing education requirements established in 201 KAR 6:070, Section 10~~[for the renewal of a license]~~.

(2) A licensee may renew the license within sixty (60) days of the renewal date by submitting a completed Renewal Form to the board and ~~A sixty (60) day grace period shall be allowed after the renewal date, during which time a licensee may continue to practice and may renew the license upon~~ payment of the late renewal fee established in 201 KAR 6:060. During this sixty (60) day grace period, a licensee may continue to practice as a long-term care administrator.

~~(3)(a)~~ Except as provided by KRS 36.450, a license not renewed by the end of the sixty (60) day grace period shall expire and the licensee shall not practice in the Commonwealth~~terminate based on the failure of the licensee to renew in a timely manner.~~

(b) Upon termination, the licensee shall not practice in the Commonwealth.

(3) A license shall be inactive if:

(a) The board receives a written request seeking inactive status from the licensee;

(b) A licensee pays to the board the inactive licensee fee established in 201 KAR 6:060 for an inactive license;

(c) The grace period established in subsection (2) of this section has not expired; and

(d) The license is in good standing when the inactive status request is received.

(4)(a) After the sixty (60) day grace period, in order to apply for

reinstatement, an individual with a terminated license shall submit a completed Application for licensure and pay the reinstatement fee established in 201 KAR 6:060.

(b) A person who applies for reinstatement after expiration of a license shall not be required to meet current licensure requirements, except those established in 201 KAR 6:070, Section 10, if reinstatement application is made within two (2) years from the date of expiration.

(5)(a) In order to apply for reactivation, an individual with an inactive license shall submit a completed Application for Licensure accompanied by the reactivation fee established in 201 KAR 6:060.

(b) An individual who has continuously maintained inactive status and who makes application to return to active status shall not be required to meet current licensure requirements except those established by 201 KAR 6:070, Section 10.

(6) A licensee who fails to reinstate a license within two (2) years after its termination shall not have it renewed, restored, reissued, or reinstated. A person may apply for and obtain a new license by meeting the current requirements for licensure established in KRS 216A.080 and 201 KAR Chapter 6.

(7) A suspended license shall be subject to expiration and termination and shall be renewed as provided in this administrative regulation. Renewal shall not entitle the licensee to engage in the practice until the suspension has ended, or is otherwise removed by the board and the right to practice is restored by the board.

(8) A revoked license shall be subject to expiration or termination and shall not be renewed. If it is reinstated, the licensee shall pay the reinstatement fee established in subsection (4)(a) of this section and the renewal fee established in subsection (1) of this section.

(9) A licensee applying for renewal, late renewal, or reinstatement of licensure shall show evidence of completion of continuing education as established by 201 KAR 6:070.

(10) An inactive licensee shall renew his or her inactive license biennially by submitting an application on the Renewal Form and submitting payment of the fee established in 201 KAR 6:060].

Section 2. Voluntary Inactivation of License. (1) To voluntarily request a license in good standing be placed in inactive status, a licensee shall:

(a) Request inactive status, in writing or through the e-services licensee portal; and

(b) Pay the inactive licensee fee established in 201 KAR 6:060.~~;~~

(2) A license in inactive status shall expire two (2) years following the date it became inactive unless the licensee renews his or her inactive license biennially by submitting the Renewal Form and submitting payment of the appropriate fee established in 201 KAR 6:060.

Section 3. Expiration Pending Disciplinary Action. (1) A licensee that allows his or her license to expire pursuant to Section 1(3) of this administrative regulation while the licensee is the subject of a complaint as defined in 201 KAR 6:090 shall result in the license expiring in bad standing.

(2) A license that has expired in bad standing shall not be reinstated unless the licensee agrees to submit to the complaints procedure established in 201 KAR 6:090 and responds to the complainant's allegations of misconduct that occurred prior to the license expiring in bad standing. Following the complaints procedure established in 201 KAR 6:090, the board may deny reinstatement of the license on the basis that the complainant's allegations have been sustained, the acts constitute a violation of KRS Chapter 216A or the administrative regulations promulgated thereunder, and that refusal to reinstate the license is an appropriate penalty.

(3)(a) Any person whose license has expired in bad standing may submit a written and signed petition to the board requesting that their licensing file be amended to reflect the person's license expired in good standing and voluntarily submit to the complaint procedure established in 201 KAR 6:090.

(b) Upon receiving a written petition from a person whose license expired in bad standing, and following the complaints

VOLUME 46, NUMBER 2– AUGUST 1, 2019

procedure established in 201 KAR 6:090, the board shall issue a final order that:

1. Dismisses the underlying complaint and amends the person's licensing file to reflect the license expired in good standing; or

2. Makes findings that the underlying complaint has been substantiated by a preponderance of the evidence and imposes discipline as authorized by KRS 216A.070(1)(f).

(4) The board may, upon the request from a professional licensing board of another state pursuant to the requesting state's laws permitting the transfer or endorsement of a Kentucky long-term care administrator's license, provide the requesting professional licensing board a copy of the full investigative file of the complaint and a statement that the licensee allowed his or her license to expire in bad standing prior to the board fully adjudicating the complaint. The board shall not provide its opinion regarding the merits of the complaint unless the person has voluntarily submitted to the complaints process established in 201 KAR 6:090.

Section 4. Reinstatement of License. (1) To apply for reinstatement of a license expired in good standing, a licensee shall, within two (2) years from the date of expiration:

(a) Submit a completed Application for Licensure;

(b) Pay the reinstatement fee established in 201 KAR 6:060; and

(c) Provide proof he or she has completed the continuing education requirements established in 201 KAR 6:070, Section 10.

(2) A license shall not be reinstated if the board does not receive the application for reinstatement within two (2) years of the date the license expired. A licensee whose license has been expired for more than two (2) years may apply for a new license pursuant to 201 KAR 6:020.

Section 5. Reactivation of License. (1) To apply for reactivation of a license voluntarily placed in inactive status pursuant to Section 2 of this administrative regulation, a licensee shall, within two (2) years from the date of inactive status:

(a) Submit a completed Application for Licensure;

(b) Pay the reactivation fee established in 201 KAR 6:060; and

(c) Provide proof he or she has met the continuing education requirements pursuant to 201 KAR 6:070, Section 10.

(2) A license shall not be reactivated if the board does not receive the Application for Licensure within two (2) years of the date the license was either placed in inactive status or renewed in inactive status pursuant to Section 2 subsection (2) of this administrative regulation.

Section 6. Renewal of a Suspended License. (1) To apply for renewal of a license suspended following the complaints procedure established in 201 KAR 6:090, a licensee shall renew his or her license in accordance with Section 1 of this administrative regulation, notwithstanding the fact that the suspension period has not been fully served at the time of renewal.

(2) Renewal shall not entitle the licensee to engage in the practice until the suspension has ended, or is otherwise removed by the board or a court of competent jurisdiction and the right to practice is restored by the board.

Section 7. Renewal or Reinstatement of a Revoked License Prohibited. (1) A license that has been revoked by the board following the complaints procedure established in 201 KAR 6:090 shall not be renewed or reinstated.

(2) Two (2) years after the date a person's license has been revoked by the board the person may apply for licensure as a new applicant pursuant to 201 KAR 6:020.

(3) The board may deny a new application by a person whose license has been revoked pursuant to KRS 216A.080(1)(c).

(4) If the board denies an application by a person whose license has been revoked pursuant to this section of this administrative regulation, the applicant may appeal the board's decision and request a hearing pursuant to KRS Chapter 13B to provide proof that he or she is of good moral character and is

otherwise suitable to practice as a long-term care administrator notwithstanding his or her previously revoked license.

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

(a) "Renewal Form", March 2014; and

(b) "Application for Licensure", May 2019[January 2014].

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

GREG WELLS, Chairman

APPROVED BY AGENCY: May 14, 2019

FILED WITH LRC: May 15, 2019 at 11 a.m.

CONTACT PERSON: Elizabeth Wells, Board Administrator, 911 Leawood Drive, Frankfort, Kentucky 40601, phone 502-782-8818, fax 502-564-4818, email LTCA@ky.gov.

Board of Ophthalmic Dispensers (As Amended at ARRS, July 10, 2019)

201 KAR 13:040. Licensing[; application, examination; experience; renewal; and inactive status].

RELATES TO: KRS 326.020, 326.035, 326.040, 326.080

STATUTORY AUTHORITY: KRS 326.020(3), 326.035, 326.040, 326.080

NECESSITY, FUNCTION, AND CONFORMITY: KRS 326.020(3) authorizes the board to promulgate administrative regulations to carry out the purposes and provisions of KRS Chapter 326. KRS 326.040 establishes the requirements for the issuance of a license including experience and passage of an examination. KRS 326.080 requires the annual renewal of licensure. This administrative regulation prescribes the forms, required examinations, experience, renewal requirements, and provisions for inactive status required for licensees.

Section 1. Application for License.[(4)] A person wishing to obtain a license to practice as an ophthalmic dispenser or apprentice[; pursuant to KRS Chapter 326;] shall make application to the Kentucky Board of Ophthalmic Dispensers on the Application for Ophthalmic Dispenser or Apprentice License[appropriate form][; Application for Ophthalmic Dispenser License.

(2) An applicant for licensure as an apprentice shall complete the form, Application for Apprentice License.

(3) The board shall admit to the practical examination a candidate who pays the required examination fee of seventy-five (75) dollars and who meets the requirements of KRS 326.040, under oath, that he or she qualifies pursuant to KRS 326.040 and 201 KAR Chapter 13.]

Section 2. Required Examinations. (1)[The examination required pursuant to KRS 326.040(4) shall consist of] Passage of[each of] the following examinations shall satisfy the requirement established in KRS 326.040(4):

(a) Passage of both:

1. The American Board of Opticians (ABO) Basic Examination; and

2. [(b)] The National Contact Lens Examiners (NCLE) Basic Examination;[and] and

(b) Passage of either:

1. [(c)] The National Commission of State Opticianry Regulatory Boards (NCSORB) National Practical Examination; or

2. [(d)] Both the ABO Practical Examination and the NCLE Practical Examination.

(2)(a) For an applicant who holds an apprentice ophthalmic dispenser license issued by the board, the ABO Basic Examination and the NCLE Basic Examination shall be:

1. Taken before the expiration of thirty (30) months from the date of the original receipt of the apprentice license; and

2. Passed within thirty-six (36) months of the date of the original receipt of the apprentice license.

(b) An apprentice ophthalmic dispenser licensed by the board shall not take an approved~~[the NCSORB–National]~~ practical examination until all other licensure requirements have been completed.

(3) For an applicant who is applying for licensure based on credentials and experience, the candidate shall have the following:

(a) An active license as a dispensing optician issued by any state or territory of the United States or the District of Columbia that has standards at least as stringent as those required by KRS 326.040; or

(b) An active certification as a dispensing optician under the ABO and the NCLE, and at least two (2) years of experience as a dispensing optician, as verified under oath by both the applicant and by a sponsor with personal knowledge of the applicant's work history.

1. The verifying sponsor shall be licensed either as an ophthalmologist, an optometrist, or an optician.

2. An applicant for licensure based on credentials and experience under this paragraph shall have passed an approved~~[the NCSORB–National Optician's]~~ practical examination before application.

Section 3. Experience. The following events are~~In addition to the experience requirement established in KRS 326.035, the board shall also count as~~ qualifying experience for an applicant for licensure as an ophthalmic dispenser apprentice~~[any time spent]~~:

(1) Attending a recognized school for ophthalmic dispensing; or

(2) Working in an optical laboratory as an ophthalmic technician.

Section 4. Licensure Renewal. (1) Each license shall be renewed each year on or before December 31.

(2) Each licensee shall complete and submit one (1) of the following:

(a) Application for Renewal for a licensed ophthalmic dispenser;

(b) Application for Apprentice Renewal for a licensed apprentice ophthalmic dispenser; or

(c) The online version of each form maintained by the Department of Professional Licensing.

(3) For a renewal postmarked on or before December 31, or completed and submitted online before that date, the renewal fee shall be:

(a) Seventy-five (75) dollars for a licensed ophthalmic dispenser; or

(b) Fifty (50) dollars for an apprentice ophthalmic dispenser.

(4) For~~In addition to the renewal fee, a thirty-five (35) dollar administrative late fee shall be paid on~~ a renewal postmarked or submitted on the Department of Professional Licensing website after December 31, there shall be an additional a thirty-five (35) dollar late fee.

(5) A license that has not been renewed by close of business on March 1 shall expire. Applicants may request an extension of time to renew of up to sixty (60) days for reasons related to medical issues, military service, or family emergencies. The applicant shall submit the request for an extension of time in writing, and send the request to the board by certified mail on or before the March 1 expiration date.

(6)~~(5)~~ In order to qualify for reinstatement of a license that has expired by operation of subsection (4) of this section, either an Application for Reinstatement or an Application for Apprentice Reinstatement shall be submitted to the board. In addition, a reinstatement fee shall be submitted with the application. The reinstatement requirements shall be:

(a) \$300 reinstatement fee and twelve (12) additional hours of continuing education to be completed before the end of the current licensure year for reinstatement as an active status or inactive status ophthalmic dispenser; or

(b) Sixty (60) dollars for reinstatement as an apprentice ophthalmic dispenser.~~[(6) In order to qualify for licensure renewal, a licensee shall comply with the continuing education requirements~~

~~of KRS 326.020(3)(b) and 201 KAR 13:055.]~~

(7) A~~All~~ revoked and expired license shall~~licenses must~~~~[shall]~~ be reinstated before~~[in order for]~~~~[by]~~ the licensee may~~to have the legal authority to~~ resume the practice of ophthalmic dispensing.

Section 5. Temporary Permit Application. (1) The board shall, if requested by the applicant, issue a temporary permit to a qualified ophthalmic dispenser, who otherwise would qualify for a license, but is in the state on a temporary basis or who has not yet had an opportunity to take an examination to procure a license and whose immediate employment depends upon being licensed by the board.

(2) The permit shall be valid only until the next regular examination date and in no case shall exceed six (6) months following date of issuance.

(3) The fee for a temporary permit shall be fifty (50) dollars, which amount shall accompany the application.

Section 6. Board Action, Notification. (1) The board shall act only upon those applications that are complete.

(2) Each applicant shall pay the license application and renewal fees required by KRS

326.040 and 326.080 upon submission of the application.

(3) Each applicant shall be notified of the action of the board; and, if favorable, when and where the examination will be held.

(4) If the board considers denying or resolves to deny an application based solely on an applicant's prior conviction of a crime, the board shall follow the notification and procedure requirements in KRS 335B.030(2).

(5) The applicant shall participate in an interview with the application committee upon written request of the board. The application committee shall conduct the interview to determine if the conviction directly relates to the occupation for which the license is sought pursuant to the criteria established in KRS 335B.020(2)(a) through (b) and 335B.030(2)(b).

Section 7. Inactive Status. (1) Upon application, the board shall grant inactive status to a qualified licensee. While on inactive status, the licensee shall not engage in the practice of ophthalmic dispensing.

(2) The fee for licensure on inactive status shall be thirty-five (35) dollars per year.

(3)(a) Continuing education requirements shall be waived for a licensee on inactive status during the inactive period.

(b) If the inactive licensee applies to the board to return to active status, the licensee shall submit proof that he or she has completed six (6) hours of continuing education for ophthalmic dispenser licensees and four (4) hours of continuing education for apprentice ophthalmic dispenser licensees within the last twelve (12) month period immediately preceding the date on which the application is submitted.

(c) The licensee may request that he or she be allowed to return to active status immediately, with the provision that the licensee shall receive the appropriate number of continuing education hours within six (6) months of the date on which the licensee returns to active status.

(d) Additionally, the licensee shall be responsible for meeting the requirements established in 201 KAR 13:055 in order to qualify for renewal of the license.

(4) To change from inactive status to active status, the ophthalmic dispenser licensee shall:

(a) Pay a reactivation fee of forty (40) dollars; and

(b) Complete six (6) additional hours of continuing education before the end of the current licensure year.

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

(a) "Application for Ophthalmic Dispenser or Apprentice License", July~~April~~ 2019; ~~[Application for Ophthalmic Dispenser License", February 2016;]~~

(b) "Application for Apprentice License", August 2017;

(c) "Application for Renewal", February 2016;

~~(c)[(d)]~~ "Application for Apprentice Renewal", February 2016;
~~(d)[(e)]~~ "Application for Reinstatement", February 2016; and
~~(e)[(f)]~~ "Application for Apprentice Reinstatement", February 2016.

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

CINDY CASTLE, Chair

APPROVED BY AGENCY: April 8, 2019

FILED WITH LRC: April 12, 2019 at 1 p.m.

CONTACT PERSON: Carson Kerr, Legal Counsel, 656 Chamberlin Avenue, Suite B, Frankfort, Kentucky 40601; phone (502) 782-0760, fax (502) 564-3969, email carson.kerr@ky.gov.

**Board of Ophthalmic Dispensers
 (As Amended at ARRS, July 10, 2019)**

201 KAR 13:055. Continuing education requirements.

RELATES TO: KRS 326.020, 326.035, 326.080

STATUTORY AUTHORITY: KRS 326.020(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS

326.020(3)(a) authorizes the board to promulgate administrative regulations to carry out the purposes and provisions of KRS Chapter 326, including the adoption of a program of continuing education for all licensees. KRS 326.020(3)(b) requires licensees of the board to complete continuing education as a condition of license renewal. This administrative regulation establishes a continuing education program for ophthalmic dispenser licensees and apprentice ophthalmic dispenser licensees and the basic requirements, methods of accreditation, and manner of reporting.

Section 1. "Continuing education hour" means fifty (50)~~contact~~ minutes of participating in continuing education experiences in person before a live presenter. One (1) semester credit hour is equivalent to six (6) continuing education hours.

Section 2.~~(1)~~ Each ophthalmic dispenser licensee shall be required to complete a minimum of six (6) continuing education hours in order to renew his license each year.

(2) Each apprentice ophthalmic dispenser licensee shall be required to complete a minimum of four (4) continuing education hours in order to renew his license each year.

(3) Continuing education hours in excess of the number required at the time of renewal of license shall not be applied to future requirements.

Section 3. (1) A minimum of three (3) of the required six (6) continuing education hours for renewal of ophthalmic dispenser licensure and a minimum of two (2) of the required four (4) continuing education hours for renewal of apprentice ophthalmic dispenser licensure shall be obtained through programs sponsored by entities listed in Section 4(1) of this administrative regulation.

(2)~~The remaining continuing education hours may be obtained through any of the sources listed in Section 4 of this administrative regulation.~~

(3) Repetitious completion of a program shall not entitle the participant to additional continuing education credit.

(3)~~(4)~~ Licenses issued after August 1 shall be exempt from the continuing education requirement for renewal by December 31 of the same year.

Section 4. Continuing education hours applicable to renewal of licensure shall be directly related to the professional growth and development of ophthalmic dispensers. They may be earned by completing any of the following educational activities:

(1)~~Programs not requiring board review and approval.~~ An educational program from any of the following providers shall be deemed~~to be~~ relevant to ophthalmic dispensing and shall be

approved without further review by the board~~if it is provided by~~:

- (a) The Society of Dispensing Opticians of Kentucky;
- (b) The Opticians Association of America, or any of its affiliated state chapters;
- (c) The Contact Lens Society of America, or any of its affiliated state chapters;
- (d) The National Academy of Opticianary, or any of its affiliated state chapters;
- (e) The American Optometric Association, or any of its affiliated state chapters;
- (f) The American Academy of Ophthalmology, or any of its affiliated state chapters; or
- (g) The~~Southeastern Conference; or~~
- ~~(h) The~~ National Association of Optometrists and Opticians.

(2) An educational program from any other source shall be reviewed for relevancy to ophthalmic dispensing and subsequent approval. ~~Programs requiring board review and approval. A program from any of the following sources shall be reviewed and determined if it is relevant and therefore subsequently approved]~~ by the board:

- (a) Accredited schools' continuing education programs; or
- (b) Any other provider's continuing education programs.
- ~~(3) Related areas not specifically a part of the field of ophthalmic dispensing may be approved for up to two (2) continuing education hours, if the board believes that the related areas may serve to enhance the licensee's ability to practice.~~

~~Section 5. Sponsors of continuing education programs shall be responsible for obtaining from the board accreditation for their respective continuing education programs.~~

~~(a)[(4)]~~ Programs shall be submitted to the board for review and approval at least thirty (30) days prior to planned participation so the participants can know the value of the experience prior to actual participation.

~~(b)[(2)]~~ Requests for program changes shall be made to and accredited by the board or the evaluation and accreditation of the program becomes null and void.

~~(c)[(3)]~~ Sponsors shall maintain for three (3) years records of the names of those participants who complete a program.

(3) Related areas not specifically a part of the field of ophthalmic dispensing may be approved for up to two (2) continuing education hours, if the board believes that the related areas may serve to enhance the licensee's ability to practice.

Section 5.6. Sponsors and licensees requesting approval of continuing education for ophthalmic dispensers shall submit any relevant information reasonably requested by the board~~(the board may require)~~.

Section 6.7. Submission of fraudulent statements or certificates concerning continuing education shall subject the licensee to revocation or suspension of his or her license as provided in KRS Chapter 326.

Section 7.8. Each licensee shall submit, with the annual renewal application, on forms provided by the board, a list of accredited continuing education hours completed by the licensee during the previous license year.

Section 8.9. (1)~~(a)~~ Each person registered with the board shall retain proof of attendance and completion of all continuing education requirements~~[-~~

~~(b) These documents shall be retained] for a period of three (3) years from the end of the calendar year in which the continuing education was acquired. [(c) This documentation shall be produced for inspection and verification, if requested in writing by the board during its verification process.~~

~~(d) The board shall not maintain continuing education files.]~~

(2)~~(a)~~ The board shall annually conduct a randomly selected audit of individual records to assure that the continuing education requirements have been met. Audited individuals shall submit~~(b) An individual's record may be audited during consecutive renewal periods.~~

~~(3) If audited, the individual shall provide evidence of continuing education activities. The evidence shall be [either]:~~

(a) Certificates verifying the individual's attendance at the continuing education programs described above; or

~~(b) An official transcript verifying credit hours earned. [One (1) semester credit hour is equivalent to six (6) continuing education hours for the purpose of licensure renewal.]~~

Section ~~9. [10.]~~ Upon proper application to the board, a licensee may be granted a deferral from continuing education requirements on a year-to-year basis at the discretion of the board for reasons of illness, incapacity, or other similar extenuating circumstances.

Section ~~10. [11.]~~ Each licensee shall keep the board informed of his or her correct address and place of employment. The board shall be informed in writing of any changes to the licensee's address or place of employment.

CINDY CASTLE, Chair

APPROVED BY AGENCY: April 8, 2019

FILED WITH LRC: April 12, 2019 at 1 p.m.

CONTACT PERSON: Carson Kerr, Legal Counsel, 656 Chamberlin Avenue, Suite B, Frankfort, Kentucky 40601; phone 502-782-0760, fax 502-564-3969, email carson.kerr@ky.gov.

**Board of Ophthalmic Dispensers
(As Amended at ARRS, July 10, 2019)**

201 KAR 13:060. Military service; reciprocity; endorsement.

RELATES TO: KRS 326.020, 326.040

STATUTORY AUTHORITY: KRS 326.020(3), 326.040

NECESSITY, FUNCTION, AND CONFORMITY: KRS 326.020 authorizes the board to promulgate administrative regulations to carry out the purposes[purpose] and provisions of KRS Chapter 326. This administrative regulation exempts ~~from licensure renewal licenses for~~ active members of the military service from licensure renewal, provides reciprocity between the states, and establishes a process for licensure[provides licensure] by endorsement.

Section 1. Military Service. A licensee who is in the military service is exempt from licensure renewal until he or she is honorably discharged from the service.

Section 2. Reciprocity. (1) A person may be licensed by reciprocity as an ophthalmic dispenser ~~[without complying with the provisions of KRS 326.040]~~ if that person:

(a) Holds a valid license as an ophthalmic dispenser in another state whose qualifications at the time of licensure were equal to or higher than those requirements established in KRS 326.040 and 201 KAR 13:040; and

(b) Has been actively engaged in the practice of ophthalmic dispensing for a period of two (2) years immediately preceding the date of application.

(2) An applicant for licensure by reciprocity shall submit:

(a) The application[Apply for licensure on the] form required in 201 KAR 13:040, Section 1(1);

(b)[Pay] The application fee established in KRS 326.040;

(c)[Provide] A copy of the current license from the other jurisdiction; and

(d)~~1. [1. Provide]~~ Documents proving passage of an approved[the National Commission of State Opticianry Regulatory Boards (NCSORB National)] Practical Examination; or

2. A statement of intent to sit for[2. Take and pass] an approved[the NCSORB National] Practical Examination within twelve (12) months of application for licensure. ~~[The board shall not issue a license until provided documents proving the applicant has passed the NCSORB National Practical Examination.]~~

Section 3. Endorsement. (1) A person may be licensed by endorsement as an ophthalmic dispenser ~~[without complying with the provisions of KRS 326.040]~~ if that person:

(a) Holds[Hold] an active and current certification as a dispensing optician under the American Board of Opticians (ABO) and the National Contact Lens Examiners (NCLE); and

(b) Has been actively engaged in practice as a dispensing optician for at least two (2) years under the sponsorship of a licensed ophthalmologist, licensed optometrist, or optician certified by the ABO and NCLE.

(2) An applicant for licensure by endorsement shall submit:

(a) The application[Apply for licensure on the] form required in 201 KAR 13:040, Section 1(1);

(b)[Pay] The application fee established in KRS 326.040;

(c)[Provide] Documents verifying that the applicant holds active and current certification as a dispensing optician;

(d)[Provide] Documents verifying the applicant has engaged in at least two (2) years of practice as a dispensing optician sponsored by a licensed ophthalmologist, licensed optometrist, or optician certified by the ABO and NCLE; and~~[either]~~

~~(e) 1. [1. Provide]~~ Documents proving passage of an approved[the NCSORB National] Practical Examination; or

2. A statement of intent to sit for[2. Take and pass] an approved[the NCSORB National] Practical Examination within twelve (12) months of application for licensure. ~~[The board shall not issue a license until provided documents proving the applicant has passed the NCSORB National Practical Examination.]~~

CINDY CASTLE, Chair

APPROVED BY AGENCY: April 8, 2019

FILED WITH LRC: April 12, 2019 at 1 p.m.

CONTACT PERSON: Carson Kerr, Legal Counsel, 656 Chamberlin Avenue, Suite B, Frankfort, Kentucky 40601; phone (502) 782- 0760, fax (502) 564-3969, email carson.kerr@ky.gov.

**GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, July 10, 2019)**

201 KAR 20:370. Applications for licensure.

RELATES TO: KRS 314.041, 314.042, 314.051, 314.071, 314.091, 314.103, 314.475

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 [truthfully and accurately] 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;

VOLUME 46, NUMBER 2– AUGUST 1, 2019

(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);

(h) For APRN renewal with a Kentucky RN License, Annual Licensure Renewal Application, APRN with Kentucky RN License;
or

(i) [(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, 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, 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)", 5/2018, Kentucky Board of Nursing;

(h) "Annual Licensure Renewal Application, APRN with Kentucky RN License", 5/2019; and

(i) [(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.

KELLY JENKINS, President

APPROVED BY AGENCY: April 11, 2019

FILED WITH LRC: May 10, 2019 at 4 p.m.

CONTACT PERSON: Megan LaFollette, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-7192, fax (502) 429-1248, email Megan.LaFollette@ky.gov.

Board of Podiatry (As Amended at ARRS, July 10, 2019)

201 KAR 25:090. Prescribing and dispensing controlled substances.

RELATES TO: KRS 218A.172, 218A.202, 218A.205, 218A.172

STATUTORY AUTHORITY: KRS 218A.205(3)(a), 311.410(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.410 establishes the Kentucky Board of Podiatry and authorizes it to make all rules and regulations, not inconsistent with KRS 311.390 to 311.510, as may be necessary to carry out KRS 311.390 to 311.510. KRS 218A.205(3)(a) requires the board to establish standards for prescribing and dispensing controlled substances. KRS 218A.172 requires the board to promulgate administrative regulations governing the prescribing or dispensing of any Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone. This administrative regulation establishes the standards for board licensees prescribing or dispensing controlled substances.

Section 1. Prescribing or Dispensing Authority[~~a controlled substance~~]. (1) A podiatrist licensed by the board may prescribe and dispense controlled substances necessary for the treatment of a patient that comes within the practice of podiatry as defined by KRS 311.380(2) if the licensee:

(a) Has obtained a registration number from the Drug Enforcement Administration;

(b) Registers with and uses the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER) as required by KRS 218A.202 and related administrative regulations promulgated by the Cabinet for Health and Family Services; and

(c) Follows the requirements of this administrative regulation.

(2) A podiatrist licensed by the board shall not prescribe or dispense:

(a) With the intent or knowledge that a medication will be used or is likely to be used for any purpose other than one that is necessary for medical treatment or therapeutic use;

(b) With the intent to evade any law governing the sale, use, or disposition of the medication;

(c) When the licensee knows or has reason to know that the abuse of the controlled substance is occurring or may result therefrom; or

(d) In amounts the licensee knows or has reason to know is excessive, under the circumstances.

Section 2. Prescribing or Dispensing Process. (1) This administrative regulation governs the prescribing and dispensing of controlled substances listed in Schedule II through V as classified

in 902 KAR 55:015[KRS 218A.060, 218A.070, 218A.080, 218A.090, 218A.100, 218A.110, 218A.120, and 218A.130].

(2) All prescribing or dispensing pursuant to this section shall be documented in the patient's file as required by Section 4 of this administrative regulation.

(3) If initially prescribing or dispensing a controlled substance, a licensee shall:

(a) Obtain a complete medical history and conduct a physical examination of the patient;

(b) Complete a written treatment plan which states the objectives of the treatment and [underlying the prescription of the controlled substance and which] includes an outline of any further diagnostic examinations, therapeutic, and laboratory results that may be required;

(c) Discuss the risks and benefits of the use of controlled substances with the patient or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence;

(d) Educate the patient or the patient's legal guardian or health care surrogate regarding proper use and disposal of any unused controlled substances;

(e) Verify that the patient is the person that he or she has identified himself or herself as being by requiring the person to produce proper government issued identification;

(f) [(e)] Query [the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER)] for all data [information] available on the patient for the twelve (12) month period immediately preceding the patient encounter and appropriately use that data in the evaluation and treatment of the patient; and

(g) Obtain consent for the treatment from the patient in writing.

(4) If continuing a [if prescribing controlled substances that are included in:

1. Schedule II;
2. Schedule III; and
3. The following from Schedule IV:

- a. Ambien;
- b. Anorexics;
- c. Ativan;
- d. Klonopin;
- e. Librium;
- f. Nubain;
- g. Oxazepam;
- h. Phentermine;
- i. Soma;
- j. Stadol;
- k. Stadol NS;
- l. Tramadol;
- m. Valium;
- n. Versed; and
- o. Xanax;

(f) Obtain consent for the treatment from the patient in writing; and

(g) Document the patient's file as required by Section 2 of this administrative regulation.

(3) If it is necessary to continue the [prescription or dispensing [dispensation of] a controlled substance for the same medical complaint and related symptoms following completion of [after] the initial supply, a podiatrist licensed by the board shall:

(a) Review the patient's plan of care at reasonable intervals applying [is completed, a licensee shall:

(a) Conduct, at reasonable intervals under the circumstances presented, all clinically indicated protocols, based on the patient's individual circumstances;

(b) Provide any new information about the treatment to the patient; and

(c) Modify or terminate the treatment as appropriate;

(5) If the course of a patient's treatment with a controlled substance extends beyond three (3) months, the podiatrist licensed by the board shall, in addition to the requirements of subsection (3) of this section [2(3)]:

(a) Obtain and review a [steps;

(b) Review the course of treatment that he initially prepared to determine if any changes are required;

(c) Provide any new information about the course of treatment or any changes made to the patient;

(d) Query KASPER report for [for all information available on] the patient no less than once every three (3) months for all available data on the patient for the twelve (12) month period immediately preceding the query; and

(b) Modify or terminate the treatment as appropriate.

Section 3. Limitations for Schedule II or Schedule III controlled substances containing hydrocodone. (1) A podiatrist licensed by the board shall not issue a prescription for a Schedule II or Schedule III controlled substance containing hydrocodone for more than a three (3) day supply if the prescription is intended to treat pain as an acute medical condition, except as provided in KRS 218A.205(3)(b).

(2) A podiatrist licensed by the board shall not directly dispense ~~more [more]~~ than a forty-eight (48) hour supply of a Schedule II or Schedule III controlled substance containing hydrocodone.

(3) If a patient continues to present with pain after the initial supply has been completed and the podiatrist licensed by the board believes that an additional amount of a Schedule II or Schedule III controlled substance containing hydrocodone is medically appropriate, the licensee shall follow the process established in [to review that data before issuing any new prescription or refill for the patient for controlled substance specified in subsection (2)(e) of this section; and

(e) Document the patient's file as required by] Section 2 of this administrative regulation.

Section 4. Records [2]. Podiatric medical records for patients being prescribed or dispensed controlled substances [substance] shall include, at a minimum:

- (1) The patient's name;
- (2) The patient's date of birth;
- (3) The information concerning the patient's medical history and physical examination required by [Section 4 of] this administrative regulation;
- (4) The [podiatrist's] diagnosis of the patient's condition;
- (5) The procedures and treatments to be undertaken and their objectives;
- (6) The date of the procedures or treatments;
- (7) [(Whether local or general anesthetics were used, including the type and the amount administered;
- (8) Diagnostic, therapeutic, and laboratory results;
- (9) The findings and recommendations of any other evaluations or consultations;
- (10) All medications prescribed or dispensed by the podiatrist licensed by the board [administered or prescribed by the podiatrist], including the date, type, dosage, and quantity [administered or prescribed];
- (11) Any post-treatment instructions from the podiatrist licensed by the board; and
- (12) Documentation that the KASPER query required by [Section 3 of] this administrative regulation was completed.

Section 5. Exceptions. The professional standards established in this administrative regulation shall not apply to a podiatrist licensed by the board prescribing or dispensing a [3. If a prescription for a controlled substance is written, a podiatrist shall:

(1) Obtain and document in the patient's podiatric medical record the information concerning the patient's medical history and physical examination required by Section 1 of this administrative regulation;

(2) Query the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER) for all available data on the patient if the controlled substance to a patient:

- (1) In an emergency situation;
- (2) As part of the patient's hospice or end of life treatment;
- (3) As part of the patient's treatment of cancer or pain associated with cancer;
- (4) Admitted to a licensed hospital as an inpatient, outpatient, or observation patient, during and as part of a normal and

expected part of the patient's course of care at that hospital:

(5) Admitted to a long-term care facility licensed under KRS Chapter 216B;

(6) For a single dose to relieve anxiety, pain, or discomfort related to a diagnostic test or procedure; or

(7) [(6)] Qualifying under exemptions set forth in KRS 218A.172 [or 218A.205].

Section 6. Violations. Any violation of the professional standards established in this administrative regulation shall constitute a violation of KRS 311.480, which may result in the imposition of disciplinary sanctions including suspension, revocation, or fines by the board, pursuant to KRS 311.490 and 201 KAR 25:051[is one specified in Section 1(2)(e) of this administrative regulation and record the results of the query in the patient's record;

(3) Discuss the risks and benefits of the use of controlled substances with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence; and

(4) Obtain consent for the treatment from the patient in writing.

Section 4. Dispensing Schedule II or Schedule III controlled substances containing hydrocodone. (1) A licensee shall not dispense more than a forty-eight (48) hour supply of Schedule II or Schedule III controlled substances containing hydrocodone:

(2) If a patient continues to present with pain after the initial supply has been completed and the podiatrist believes that an additional prescription for a controlled substance is medically appropriate, the podiatrist shall at a minimum:

(a) Follow the requirements of Section 1 of this administrative regulation; and

(b) Prescribe only that amount of the controlled substance that is appropriate under accepted and prevailing practice standards.

Section 5. Authority to prescribe controlled substances. (1) A podiatrist licensed by the board may prescribe any medicine necessary for the treatment of a patient that comes within the practice of podiatry as defined by KRS 311.380(2), including Schedule II and Schedule III controlled substances containing hydrocodone, if the licensee:

(a) Has obtained a license number from the Drug Enforcement Administration;

(b) Registers with and utilizes the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER) as required by KRS 218A.202;

(c) Follows the requirements of this administrative regulation; and

(d) Meets all the requirements for utilizing KASPER promulgated by the Cabinet as well as the requirements set forth in KRS 218A.202.

(2) A licensed podiatrist shall not prescribe or dispense:

(a) With the intent or knowledge that a medication will be used or is likely to be used for any purpose other than one that is necessary for medical treatment or therapeutic use;

(b) With the intent to evade any law governing the sale, use, or disposition of the medication;

(c) When the licensee knows or has reason to know that the abuse of the controlled substance is occurring or may result therefrom; and

(d) In amounts that the licensee knows or has reason to know, under the circumstance, that the amount prescribed is excessive under accepted and prevailing practice standards.

(3) After a hearing conducted under KRS Chapter 13B and 201 KAR 25:051, the board shall fine a licensee who otherwise has the authority to prescribe controlled substances, but who has failed to register for an account with KASPER, an amount not less than \$250 per prescription for each prescription that individual has written while not properly registered].

ANN FARRER, DPM, Chair

APPROVED BY AGENCY: May 1, 2019

FILED WITH LRC: May 2, 2019 at 9 a.m.

CONTACT PERSON: David Trimble, Board Counsel, 911 Leawood Dr., Frankfort, Kentucky 40601, phone (502)782-8223, fax (502) 564-4818, email davidc.trimble@ky.gov.

BOARDS AND COMMISSIONS
Board of Private Investigators
(As Amended at ARRS, July 10, 2019)

201 KAR 41:030. Examination.

RELATES TO: KRS 329A.025(2)(c), 329A.035(3)(m)

STATUTORY AUTHORITY: KRS 329A.025(2)(c), 329A.035(3)(m)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 329A.025(2)(c) requires the board to promulgate administrative regulations creating an examination for private investigator applicants. This administrative regulation establishes the examination for private investigator applicants.

Section 1. Examination structure[Definitions]. (1) The written examination shall be called the "Kentucky Private Investigator Examination".

(2) The exam shall be developed and administered by a board-approved examination service pursuant to a contractual agreement.

(3) The exam shall be administered by computer and provided at locations within the Commonwealth of Kentucky, to be determined by the contractor[at least twice annually].

(4) The examination shall be structured and designed to measure the subject areas[outlined] in KRS 329A.025(2)(c).

(5) The examination passing score shall be determined and set by the board in consultation with the examination contractor.

Section 2. General Requirements. (1) An applicant for examination shall:

(a) Submit a completed application for licensure as required by 201 KAR 41:020;

(b) Pay the applicable application fee established in 201 KAR 41:040(1)(a); and

(c) Pay the examination fee directly to the examination service.

(2) The board administrator shall review each application received for completeness. If the board administrator determines that the application is complete, the board administrator shall notify the applicant that he or she is authorized to sit for the examination. [Once the application has been approved by the board,] The applicant shall sit for the examination within sixty (60) days of the date the board administrator notifies the applicant of his or her eligibility. Notification that an applicant is qualified to sit for the examination shall not mean the application for licensure has been approved by [on the authorization-to-test letter, sent from] the board.

(3) An applicant may sit for the examination at any approved examination contractor testing center or via any contractor and board-approved electronic testing method.

(4) Failure to take the examination within sixty (60) days of the board administrator's notification shall result in automatic denial of the application and forfeiture of all application and examination fees paid. An applicant whose application has been denied pursuant to this Section may reapply for licensure by submitting a new application and payment of a new application fee[authorization-to-test date shall lead to a forfeit of application fees and necessitate a reapplication to the board].

(5) An applicant shall have six (6) months from the board administrator's notification[application approval date by the board] to tender a passing exam score to the board. An applicant may sit for the examination a second time during this six (6) month period if the applicant did not achieve a passing score the first time the applicant sat for the examination. Failure to pass the examination within the six (6) month period shall result in automatic denial of the application and forfeiture of all application

~~and examination fees paid[requires a new application to the board].~~

~~(6) No applicant shall be permitted to sit for the examination within twelve (12) months of their second failed examination attempt.~~

RICK HESSIG, Board Chair

APPROVED BY AGENCY: May 14, 2019

FILED WITH LRC: May 15, 2019 at 11 a.m.

CONTACT PERSON: Jamar Carter, Board Administrator, 911 Leawood Drive, Frankfort, Kentucky 40601, phone 502-564-3296, fax 502-564-4818, email jamar.carter@ky.gov.

BOARDS AND COMMISSIONS
Board of Private Investigators
(As Amended at ARRS, July 10, 2019)

201 KAR 41:040. Fees.

RELATES TO: KRS 329A.025, 329A.040(1)(b), 329A.045(4), 329A.070(9)

STATUTORY AUTHORITY: KRS 329A.025(2)(b), 329A.040(1)(b), 329A.045(4), 329A.070(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 329A.025(2)(b) requires the board to establish fees associated with the licensure of private investigators and private investigating companies. 329A.040(1)(b) requires the board to establish an application fee for licensure and for state criminal history background checks. KRS 329A.045(4) requires the board to establish a license renewal fee. This administrative regulation establishes the application and related fees, the licensure renewal fees, and the fee procedure for the licensure examination.

~~Section 1.[Application Fees for Licensure as a] Private Investigator Application Fees. An applicant for licensure as a private investigator shall submit the following fees[to the board]:~~

~~(1)(a) The initial application fee for licensure as a private investigator shall be \$400.~~

~~(b) The fee shall be submitted to the board as follows:~~

~~1. \$100 shall be due within thirty (30) days of submission of the application. This fee shall be non-refundable[at the time of application]; and~~

~~2. \$300 shall be due at the time the applicant submits proof of a passing examination score. This fee shall be refunded if the applicant is denied a license.[after the application has been reviewed and approved by the board; and]~~

~~(2)(a) The fee for the criminal history, background check, and fingerprinting shall be remitted to the Kentucky State Treasurer in an amount pursuant to 502 KAR 30:060 and 28 C.F.R. 16.33.~~

~~(b) Contact the Department of Professional Licensing for the current fee amount or check the board's Web site at <http://kpi.ky.gov/Pages/default.aspx>[Web site][Division of Occupations and Professions for fee amount or check the board's Web site at <http://finance.ky.gov/ourcabinet/caboff/OAS/op/priveinve>].~~

~~Section 2.[Application Fees for Licensure as a] Private Investigator Company Application Fees. (1) The initial application fee for licensure as a private investigator company shall be:~~

~~(a) \$100 for a sole proprietorship; or~~

~~(b) \$400 for a firm, association, partnership, corporation, nonprofit organization, or institution.~~

~~(2) The initial application fee shall be submitted within thirty (30) days of the[at the time of] application.~~

~~Section 3. Examination Fee. (1) The examination fee shall be the actual amount charged by the examination service for the examination pursuant to a contractual agreement with the board.~~

~~(2) The examination fee shall be paid directly to the examination service.~~

~~Section 4. Biennial Renewal License Fee. (1) The fee for renewal of a private investigator license shall be \$250.~~

~~(2) The fee for renewal of a private investigating company license shall be \$250.~~

~~Section 5. Late Renewal Fee. (1) Late renewal fees shall be in addition to license renewal fees established in Section 4 of this administrative regulation.~~

~~(2)[(a)] The fee for late renewal of a private investigator license, submitted for renewal between July 1 and August 31, shall be \$250.~~

~~(3)[(b)] The late renewal fee shall be in addition to the license renewal fee established in Section 4(1) of this administrative regulation, for a total of \$500.~~

~~(2)(a)] The fee for late renewal of a private investigating company license, submitted for renewal between July 1 and August 31, shall be \$250[(b) The late renewal fee shall be in addition to the license renewal fee established in Section 4(2) of this administrative regulation for a total of \$500].~~

~~Section 6. Reinstatement Fee. (1) Reinstatement fees shall be in addition to license renewal fees established in Section 4 of this administrative regulation and late renewal fees established in Section 5 of this administrative regulation.~~

~~(2)[(a)] The fee for reinstatement of a private investigator's license terminated pursuant to KRS 329A.045(8) shall be \$100.~~

~~(3)[(b)] The reinstatement fee shall be in addition to the license renewal fee established in Section 4(1) of this administrative regulation and the late renewal fee established in Section 5(1) of this administrative regulation for a total of \$600.~~

~~(2)(a)] The fee for reinstatement of a private investigating company license terminated pursuant to KRS 329A.045(8) shall be \$100.[(b) The reinstatement fee shall be in addition to the license renewal fee established in Section 4(2) of this administrative regulation and the late renewal fee established in Section 5(2) of this administrative regulation for a total of \$600.]~~

~~Section 7. Inactive Status Fee. (1) The fee for placing a license in inactive status shall be \$100.~~

~~(2) The fee for renewal of a license in inactive status shall be \$100.~~

~~(3) The fee to reactivate an inactive license pursuant to 201 KAR 41:065 shall be \$250.~~

~~Section 8. Duplicate License Fee. The fee for a duplicate license or certificate shall be twenty-five (25) dollars.~~

~~Section 9. Continuing Education Program Application Fee. (1) The annual fee for an application for approval of a continuing education program shall be fifty (50) dollars.~~

~~(2) The fee shall be applicable to all continuing education providers except those who do not require board approval pursuant to 201 KAR 41:070, Section 3[(1)].~~

~~Section 10. Temporary Employee Registration Fee. [(1)] A private investigator or private investigating[investigation] firm employing a person for less than 240 hours per year pursuant to 201 KAR 41:100 shall pay a fee of twenty (20) dollars per temporary employee at the time of registration.~~

RICK HESSIG, Board Chair

APPROVED BY AGENCY: May 14, 2019

FILED WITH LRC: May 15, 2019 at 11 a.m.

CONTACT PERSON: Jamar Carter, Board Administrator, 911 Leawood Drive, Frankfort, Kentucky 40601, phone 502-564-3296, fax 502-564-4818, email jamar.carter@ky.gov.

VOLUME 46, NUMBER 2– AUGUST 1, 2019

BOARDS AND COMMISSIONS
Board of Private Investigators
(As Amended at ARRS, July 10, 2019)

201 KAR 41:065. Inactive status.

RELATES TO: KRS 329A.010(4), 329A.015, 329A.025, 329A.080

STATUTORY AUTHORITY: KRS 329A.025(3)(e), 329A.045(12)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 329A.025(3)(e) authorizes the board to renew licenses and consider requiring continuing education as a condition for renewal. KRS 329A.045(12) authorizes that a valid license may be put on inactive status by the licensee at the time of renewal at a cost to be determined by the board. This administrative regulation establishes the requirements for inactive licensure status, fee payment, and continuing education.

Section 1. Inactive Status. (1) Inactive licensure status shall be granted~~[to a licensee]~~ upon:

(a) Written request to the board ~~prior to~~~~at~~ the time of renewal; ~~and~~~~[in accordance with KRS 329A.045(12) and upon completion of the Renewal Application Form as referenced in 201 KAR 41:060]~~

(b) Payment of the inactive license fee established in 201 KAR 41:040, Section 7.

(2)~~[(4)]~~ A licensee ~~with an~~~~[who is placed on]~~ inactive license ~~[status]~~ shall not:

(a) Advertise or perform any of the duties established in KRS 329A.010(4);

(b) Hold~~[, or hold]~~ himself or herself out as a private investigator in violation of KRS 329A.015; ~~or~~

(c) Display~~[. (2) An inactive licensee shall not display]~~ the license during the period of inactive licensure.

(3) The identification card shall be returned to the board office within ten (10) days of acknowledgement of inactive status by the board.

(4) ~~Violations committed while a license is inactive may~~~~[(a) Violation of the inactive status shall]~~ subject the licensee to:

(a) Penalties~~[the penalties]~~ associated with KRS 329A.080; and

(b) Action~~[The licensee could be subject to action]~~ pursuant to KRS 329A.025(3)(g).

(5) ~~The licensee shall pay the fee for placing the license in inactive status established in 201 KAR 41:040, Section 7.~~

(6) ~~The licensee shall be required to meet the requirements for continuing education as established in 201 KAR 41:070, Section 10.~~

(7) The inactive licensee shall be required to either affirm the inactive status or request a return to active licensure each renewal cycle.

Section 2. The licensee may return to active status upon:

(1) Written notification to the board;

(2) Payment of the fee established in 201 KAR 41:040, Section 7; and

(3) Providing proof of compliance with all continuing education requirements as established in 201 KAR 41:070, Section 11~~[40]~~.

RICK HESSIG, Board Chair

APPROVED BY AGENCY: May 14, 2019

FILED WITH LRC: May 15, 2019 at 11 a.m.

CONTACT PERSON: Jamar Carter, Board Administrator, 911 Leewood Drive, Frankfort, Kentucky 40601, phone 502-564-3296, fax 502-564-4818, email jamar.carter@ky.gov.

BOARDS AND COMMISSIONS
Board of Private Investigators
(As Amended at ARRS, July 10, 2019)

201 KAR 41:070. Continuing professional education requirements.

RELATES TO: KRS 329A.025, 329A.045(11)

STATUTORY AUTHORITY: KRS 329A.025(2)(a), (3)(e), 329A.045(11)

NECESSITY, FUNCTION AND CONFORMITY: KRS 329A.025(3)(e) authorizes the board to renew licenses and require continuing professional education as a condition for renewal. KRS 329A.025(2)(a) ~~requires~~~~[authorizes]~~ the board to implement the provisions of KRS 329A.010 to 329A.090 through the promulgation of administrative regulations. This administrative regulation establishes the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Definitions. (1) "Approved" means recognized and accepted by the Kentucky Board of Licensure for Private Investigators.

(2) "Continuing education hour" means fifty (50) clock minutes of participating in a continuing professional education experience.

(3) "Preapproved" means a program approved pursuant to Section 3 or Section 5 of this administrative regulation.

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

(a) Planned and evaluated to meet behavioral objectives; and
(b) Presented in one (1) session or in a series.

(5)~~[(4)]~~ "Provider" means an organization approved by the Kentucky Board of Licensure for Private Investigators for providing continuing professional education programs.

Section 2. Accrual of Continuing Education Hours; Computation of Accrual. (1) A minimum of twelve (12) continuing education hours shall be accrued by each person holding licensure during the two (2) year licensure period~~[for renewal]~~.

(2) All hours shall be directly~~[in or]~~ related to the field of private investigation and promote the professional growth and development of a licensed private investigator.

Section 3. ~~Methods of Acquiring Continuing Education Hours.~~

(1) ~~Continuing education hours applicable to the renewal of the license shall be directly related to the professional growth and development of a licensed private investigator.~~

(2) ~~They shall be earned by completing any of the following educational activities:~~

(a) Programs Not Requiring Board Review and Approval. A program provided, officially~~[or]~~ approved, or sponsored by any of the following providers~~[,]~~ shall be ~~[deemed]~~ preapproved and~~[to be]~~ relevant to the practice of private investigation and shall be approved without further review by the board:

~~(1)[4.]~~ Kentucky Professional Investigators Association (KPIA);

~~(2)[2.]~~ Kentucky Society of Professional Investigators (KSPI);

~~(3)[3.]~~ Association of Certified Fraud Examiners;

~~(4)[4.]~~ Association One;

~~(5)[5.]~~ National Fire or Arson Certification Associations;

~~(6)[6.]~~ State and local bar associations;

~~(7)[and]~~

~~7.]~~ Continuing education programs approved by other state licensure boards;

~~(8)~~ Institute of Police Technology and Management (IPTM);

~~(9)~~ Northwestern University Center for Public Safety;

~~(10)~~ United States Department of Transportation Federal Motor Carrier Safety Administration (FMCSA);

~~(11)~~ Michigan State University Department of Civil and Environmental Engineering;

~~(12)~~ University of Kentucky Transportation Cabinet;

~~(13)~~ University of Tulsa Continuing Education for Science and Engineering;

~~(14)~~ Texas A&M Transportation Institute;

- (15) Crash Data Group Event Data Recording Summit;
- (16) Society of Automotive Engineers (SAE);
- (17) National Society of Professional Insurance Investigators (NSPII);
- (18) International Association of Special Investigation Units (IASIU); and
- (19) National Association of Legal Investigators (NALI).

Section 4. Programs Requiring Board Review and Approval. The board shall[may] review the following programs to determine whether these[they] satisfy the requirements of this administrative regulation:

(1)[(b)4.-] A general education course, or elective designated to meet undergraduate or postgraduate degree requirements, shall equal twelve (12)[be acceptable for] continuing education hours per one (1) hour of academic credit if the board determines it to be relevant to the field of private investigation;

(2)[- 2.-] Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equaling twelve (12) continuing education hours; and

(c) Programs requiring board review and approval. A program from any of the following sources shall be reviewed by the board and determined whether it complies with the requirements of Section 4(2) of this administrative regulation:

4.-] A program, including a home study course and in-service training provided by an organization or education institution not listed in Section 3 of this administrative regulation[subsection (1) of this section]; or

(3)[(a)]2.-a.] A program or academic course presented by the licensee.

(a) The presenting licensee[b.-] A presenter of a relevant program or academic course shall earn two (2) continuing education hours for each contact hour of instruction.

(b)[c.-] Credit shall not be issued for repeated instruction of the same course[-]; or

3.-a.-] A relevant publication in a professionally recognized or juried publication.

b.-] Continuing education hours shall be granted for relevant publications subject to review and approval by the board[.]

Section 5[4]. Procedures for Preapproval of Continuing Education Programs. (1)(a) A continuing education provider seeking preapproval[to obtain approval] of a continuing education program[prior to its offering] shall apply to the board at least sixty (60) days in advance of the commencement of the program by submitting a completed Application for Approval for Providers to Offer Continuing Education and shall provide the information required in Section 6[5] of this administrative regulation.

(b) An approved program fee shall be paid as established in 201 KAR 41:040[34:040], Section 9.

(2) A continuing education program[activity] shall be preapproved[qualified for approval] if the board determines the program[activity]:

- (a) Is an organized program of learning;
- (b) Pertains to subject matter relating to private investigation;
- (c) Enhances the professional competence of the licensee by:
 - 1. Refreshing the licensee's knowledge and skills; or
 - 2. Educating on a new topic or subject; and

(d) Is conducted by a competent instructor, as documented by academic training, professional licensures or certifications[certification], or professionally recognized experience.

(3) A licensee shall not be required to request approval for a continuing education program preapproved pursuant to[this] Section 3 of this administrative regulation.

Section 6[5]. Procedures for a Licensee to Request Approval of Continuing Education Programs. (1) A licensee shall[may] request board approval for continuing education hours for a program described in Section 4 of this administrative regulation by submitting the[course that has not been preapproved by the board may be used for continuing education if approval is secured from the board by the continuing education provider.

(2) ~~The~~ following information for the[shall be submitted for] board to review[of a program]:

- (a) A published course or seminar description;
- (b) The name and qualifications of the instructor;
- (c) A copy of the program agenda indicating hours of education, coffee, and lunch breaks;
- (d) Number of continuing education hours requested;
- (e) Official certificate of completion or college transcript from the sponsoring agency or college; and
- (f) A completed Licensee Application for Approval of Continuing Education Hours[application][credits approval; and
- (g) Approval will be for one (1) year from date of approval].

(2) The licensee shall redeem continuing education hours approved by the board pursuant to subsection (1) of this section at the time of the licensee's[their] next license renewal, reinstatement, or reactivation application following the date of approval. The licensee shall submit[by submitting] a copy of the board's decision approving the continuing education hours.

Section 7[6]. Responsibilities and Reporting Requirements of Licensees. (1) Each licensee shall submit proof he or she completed the appropriate number of continuing education hours at the time the licensee submits his or her application for renewal, reinstatement, or reactivation of licensure[(a) During the licensure renewal period, the board shall require up to fifteen (15) percent of all licensees to furnish documentation of the completion of the appropriate number of continuing education hours.

(b) All copies of documentation submitted to the board shall be returned to the licensee upon completion of the audit process via regular U.S. mail, first class, postage prepaid.

(c) ~~Verification of continuing education hours shall not otherwise be reported to the board~~].

(2) A licensee shall:

- (a) Be responsible for obtaining required continuing education hours;
- (b) Identify continuing education needs and seek activities that meets those needs;
- (c) Seek ways to integrate new knowledge, skills, and activities;
- (d) Select preapproved programs[approved activities by which] to earn continuing education hours;
- (e) Submit to the board, if applicable, a request for approval for continuing education hours that have not been preapproved pursuant to activities not approved as required in Section 5[6]3(2)(b) of this administrative regulation;

(f) Document attendance, participation in, and successful completion of continuing education programs; and[activity;]

(g) Maintain records of continuing education hours for two [(2)]~~five (5)~~ years from the date of the offering of the continuing education program[activity; and

(h) ~~If applicable, submit information from a continuing education course that has not been preapproved by providing to the board for review the information specified in Section 5(2) of this administrative regulation~~].

(3) The following items may be used to document attendance at continuing education programs[activity]:

- (a) Transcript;
- (b) Certificate;
- (c) Affidavit signed by the instructor or provider; or[;]
- (d) Receipt for the fee paid to the provider[sponsor; or
- (e) ~~Written summary of experiences that are not formally or officially documented otherwise~~].

(4) Failure to comply with the provisions of this administrative regulation shall constitute a violation of KRS Chapter 329A and may[shall] result in:

- (a) Refusal to renew, reinstate, or reactivate licensure;
- (b) Suspension of licensure; or
- (c) Revocation of licensure.

Section 8[7]. Carry-over of Continuing Education Hours Prohibited. Continuing education hours earned in excess of those required under Section 2 of this administrative regulation shall not be carried over into any subsequent[the immediately following]

licensure renewal period.

Section 9[8]. Appeal of Denial of Continuing Education Hours. (1) If an application for approval of continuing education hours submitted pursuant to Section 6 of this administrative regulation is denied, the licensee ~~may~~[shall have the right to] appeal the board's decision.

- (2) ~~A notice to~~[An] appeal shall be:
 - (a) Submitted in writing and signed by the appellant;
 - (b) Received by the board within thirty (30) days~~after the date~~ of the decision denying approval of continuing education hours; and
 - (c) Conducted in accordance with KRS Chapter 13B.

Section 10[9]. Waiver or Extensions of Time for Completion of Continuing Education. (1)~~[On application,]~~ The board may grant a licensee a waiver or an extension of time to complete the continuing education requirements~~[or an extension of time within which to fulfill the requirements]~~ in the following cases:

- (a) ~~Serious injury~~ or medical disability of the licensee;
- (b) Illness of the licensee or an immediate family member;
- (c) Death or serious injury of an immediate family member;~~[or]~~
- (d) Active military duty;
- (e) Undue hardship; or
- (f) Similar extenuating circumstance that precludes the licensee's completion of the requirements.

(2) ~~To~~[A written] request ~~a~~[for] waiver or extension of time to complete the continuing education requirements pursuant to this section~~[of this administrative regulation]~~, a licensee shall~~[involving medical disability or illness shall be]~~:

- (a) Submit the request in writing, signed by the requesting~~[Submitted by the]~~ licensee; and
- (b) 1. Provide~~[Accompanied by]~~ a verifying document signed by a licensed physician, or proper military personnel, if applicable; or

2. Documentation to support the waiver.

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

(4) If the medical disability,~~[or]~~ illness, active military duty, or circumstance upon which a waiver or extension of time has been granted continues beyond the period of the waiver or extension of time, the licensee shall reapply for the waiver or extension of time.

Section 11[40]. Continuing Education Requirements for Reinstatement or Reactivation of Licensure.~~[(4)]~~ A person requesting reinstatement or reactivation of licensure shall submit evidence of receiving twelve (12) hours of continuing education within the two (2) year period immediately preceding the date that reinstatement or reactivation is requested~~[(2) The continuing education hours received in compliance with this section shall be in addition to the continuing education requirements established in Section 2 of this administrative regulation and shall not be used to comply with the requirements of that section].~~

Section 12[41]. Effective Date for the Submission of Continuing Education Hours. Licensees shall submit proof of continuing education hours obtained in the previous two (2) years at the time of their first license renewal, reinstatement, or reactivation on or after January 1, 2021, and each subsequent renewal period thereafter~~[shall be required for all licensure cycles beginning in 2008].~~

Section 13. Incorporation by Reference. (1) The following forms are incorporated by reference:

- (a) "Application for Approval for Providers to Offer Continuing Education," May, 2019; and
 - (b) "Licensee Application for Approval of Continuing Education Hours," May, 2019.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Private Investigators, 911 Leewood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RICK HESSIG, Board Chair

APPROVED BY AGENCY: May 14, 2019

FILED WITH LRC: May 15, 2019 at 11 a.m.

CONTACT PERSON: Jamar Carter, Board Administrator, 911 Leewood Drive, Frankfort, Kentucky 40601, phone 502-564-3296, fax 502-564-4818, email jamar.carter@ky.gov.

BOARDS AND COMMISSIONS
Board of Private Investigators
(As Amended at ARRS, July 10, 2019)

201 KAR 41:080. Complaint procedure.

RELATES TO: KRS 329A.025(3)(g), (i)-(k), 329A.040(2)(a), 329A.060(2), (3)

STATUTORY AUTHORITY: KRS 329A.060(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 329A.060(1) states that the board shall promulgate administrative regulations regarding the receiving and investigating of complaints. This administrative regulation establishes procedures for the filing, evaluation, and disposition of administrative complaints.

Section 1. Definitions. (1) "Chair" means the chairman or vice-chairman of the board.

(2) "Charge" means a specific allegation contained in a formal complaint, as established in subsection (5) of this section, issued by the board alleging a violation of a specified provision of KRS Chapter 329A, the administrative regulations promulgated thereunder, or any other state or federal statute or regulation.

(3) "Complaint" means any written allegation of misconduct by a licensed individual or other person which might constitute a violation of KRS Chapter 329A, the administrative regulations promulgated thereunder, or any other state or federal statute or regulation.

(4) "Complaint screening committee" means a committee consisting of up to two (2) members of the board appointed by the chair to review complaints and~~[.]~~ investigative reports, and to participate in informal proceedings to resolve a~~[formal]~~ complaint. In addition to board members, legal counsel for the board and one (1) other~~[the Executive Director of the Division of Occupations and Professions or another]~~ staff member may be appointed to assist the committee, but shall not have voting privileges.

(5) "Formal complaint" means a formal administrative pleading authorized by the board which sets forth charges against a licensed individual or other person and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B or requests a~~[the]~~ court of competent jurisdiction to take criminal or civil action.

(6) "Informal proceedings" means the proceedings instituted at any stage of the disciplinary process with the intent of resolving any matter with the consent of the board and the respondent in lieu of ~~[reaching a dispensation of any matter without further recourse to]~~ formal disciplinary procedures under KRS Chapter 13B.

(7) "Investigator" means an individual designated by the board to assist the board in the investigation of a complaint or an investigator employed by the attorney general or the board.

(8) "Respondent" means the licensee or an unlicensed person who is the subject of a complaint.

Section 2. Receipt of Complaints. (1) A complaint~~[:]~~

~~(a)]~~ may be submitted by an~~[:]~~

~~1. Individual]~~ individual, a legal entity, or the board on its own initiative.

~~(2) If the complaint is offered by an individual or a legal entity, it shall be:~~

~~(a) Submitted;~~

~~2. Organization;~~ or

~~3. Entity.~~

~~(b) Shall be:~~

~~4.]~~ in writing~~[:]~~ using the Complaint Form and Instructions; and

(b)[be]~~2.]~~ Signed by the individual or a representative of the

legal entity [person]-offering the complaint.[(c) May be filed by the board based upon information in its possession.]

(3)[(2)] Upon receipt of a complaint:

(a) A copy of the complaint shall be sent to the respondent[individual named in the complaint along] with a request for the respondent's answer[that individual's response] to the complaint. The respondent[individual] shall be allowed a period of twenty (20) days from the date of receipt of the complaint. Failure to answer within twenty (20) days of receipt may be considered an admission to the complaint[to submit a written response].

(b) Upon receipt of the respondent's written answer[response of the individual named in the complaint], a copy of the answer[response] shall be sent to the complainant. The complainant may reply in writing within[shall have] seven (7) days from receipt of the respondent's answer[to submit a written reply to the response].

Section 3. Initial Review. (1) After the receipt of a complaint and the expiration of the period for the respondent's answer[individual's response], the complaint screening committee shall consider the respondent's answer[individual's response], complainant's reply to the answer[response], and any other relevant material available and make a recommendation to the board. The board shall determine whether there is enough evidence to warrant a formal investigation of the complaint.

(2) If the board determines~~[before formal investigation]~~ that a complaint is without merit, it shall:

(a) Dismiss the complaint; and

(b) Notify the complainant and respondent of the board's decision.

(3) If the board determines that a complaint warrants a formal investigation, it may[shall]:

~~(a)] authorize an investigation into the matter [; and~~

~~(b) Order a report to be made to the complaint screening committee at the earliest opportunity].~~

(4) If the board determines it possesses sufficient evidence to issue a formal complaint without the need for a formal investigation, it may issue a formal complaint without a formal investigation.

Section 4. Results of Formal Investigation; Board Decision on Hearing. (1) Upon completion of the formal investigation, the investigator shall submit a report to the complaint screening committee of the facts regarding the complaint. The complaint screening committee shall review the investigative report and make a recommendation to the board. The board shall determine whether there has been a prima facie violation of KRS Chapter 329A or the administrative regulations promulgated thereunder and whether a formal complaint should be filed.

(2) Following the investigation, if the board determines that a complaint does not warrant the issuance of a formal complaint, it shall:

(a) Dismiss the complaint; and

(b) Notify the complainant and respondent of the board's decision.

~~(3)[In the case of a nonserious violation, the board shall follow the procedure established in KRS 329A.060(3).]~~

(4) If the board determines that a complaint warrants the issuance of a formal complaint against the respondent, counsel for the board, in conjunction with the complaint screening committee, shall prepare a formal complaint which states clearly the charge or charges to be considered at the hearing. The formal complaint shall be reviewed by the board and, if approved, signed by the chair and served upon the respondent[individual] as required by KRS Chapter 13B.~~[The formal complaint shall be processed in accordance with KRS Chapter 13B.]~~

(4)[(5)] Following an investigation, if the board determines that an unlicensed[a] person may be in violation of KRS 329A.015, it may[shall]:

~~(a) Order the individual to cease and desist from further violations of KRS 329A.015; or~~

~~(b)] initiate action in circuit court pursuant to KRS 329A.025(3)(l) for injunctive relief to stop the violation of KRS~~

329A.015.

Section 5. Settlement by Informal Proceedings. (1) The board through counsel and the complaint screening committee may~~[;]~~ at any time during this process~~[;]~~ enter into informal proceedings with the respondent for the purpose of resolving[individual who is the subject of the complaint for the purpose of appropriately dispensing with] the matter.

(2) A ~~proposed~~~~[An]~~ agreed order or settlement reached through this process shall be approved by the board and signed by the respondent[individual who is the subject of the complaint] and the chair.

(3) The board may employ mediation as a method of resolving the matter informally.

Section 6. Notice of Service of Process. A notice required by ~~[KRS Chapter 309 or]~~ this administrative regulation shall be issued pursuant to KRS Chapter 13B.

Section 7. Incorporation by Reference. (1) "Complaint Form and Instructions", (2006 Edition), is incorporated by reference.

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

RICK HESSIG, Board Chair

APPROVED BY AGENCY: May 14, 2019

FILED WITH LRC: May 15, 2019 at 11 a.m.

CONTACT PERSON: Jamar Carter, Board Administrator, 911 Leawood Drive, Frankfort, Kentucky 40601, phone 502-564-3296, fax 502-564-4818, email jamar.carter@ky.gov.

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM

Kentucky Board of Emergency Medical Services (As Amended at ARRS, July 10, 2019)

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 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 by board staff 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;

2. Advanced practice registered nurse;

3. Respiratory therapist;

4. Physician assistant;

5. Physician; or

6. Additional paramedic.

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

~~1. ~~(a)~~ A driver certified as an emergency medical technician (EMT);~~ and

~~2. ~~(b)~~ A primary attendant licensed as a registered nurse~~ and certified as a CCRN that is obtained within one (1) year of hire; and

~~3. ~~(c)~~ One (1) additional attendant licensed as a:~~

~~a. ~~1.~~ Registered nurse;~~

~~b. ~~2.~~ Advanced practice registered nurse;~~

~~c. ~~3.~~ Respiratory therapist;~~

~~d. ~~4.~~ Physician assistant;~~

~~e. ~~5.~~ Physician; or~~

~~f. ~~6.~~ Paramedic.~~

~~(b) ~~(d)~~ Any attendant hired after January 1, 2020 shall acquire and maintain within one (1) year of hire, a specialty certification in Pediatric Critical Care or Neonatal Critical Care acquired through successful completion of a validated examination administered by an independent entity not associated with a specific course or program of education.~~

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

~~1. ~~(a)~~ A driver certified as an emergency medical technician (EMT);~~

~~2. ~~(b)~~ A primary attendant licensed as a registered nurse~~ with a current certification as a CCRN or RNC-NIC that is obtained within one (1) year of hire; and

~~3. ~~(c)~~ One (1) additional attendant licensed as:~~

~~a. ~~1.~~ An advanced practice registered nurse;~~

~~b. ~~2.~~ A respiratory therapist;~~

~~c. ~~3.~~ A physician assistant;~~ ~~or~~

~~d. ~~4.~~ A physician;~~ ~~or~~

~~e. ~~5.~~ A registered nurse;~~ ~~or~~ ~~-~~

~~f. ~~6.~~ Paramedic.~~

~~(b) ~~(d)~~ Any attendant hired after January 1, 2020 shall acquire and maintain within one (1) year of hire, a specialty certification in Pediatric Critical Care or Neonatal Critical Care acquired through successful completion of a validated examination administered by an independent entity not associated with a specific course or program of education.~~

(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 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.

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.

VOLUME 46, NUMBER 2– AUGUST 1, 2019

PHILIP DIETZ, Chairman of the Board

APPROVED BY AGENCY: May 10, 2019

FILED WITH LRC: May 10, 2019 at 1 p.m.

CONTACT PERSON: Jeffrey S. Walther, Legal Counsel,
Kentucky Board of Emergency Medical Services, Walther, Gay &
Mack, PLC, 163 East Main Street, Suite 200, Lexington, Kentucky
40588, phone (859) 225-4714, fax (859) 225-1493, email
jwalther@wgmfirm.com.

DEPARTMENT OF AGRICULTURE Division of Regulation and Inspection (As Amended at ARRS, July 10, 2019)

302 KAR 16:010. Business identification number for amusement rides or attractions[required].

RELATES TO: KRS 247.234

STATUTORY AUTHORITY: KRS 247.234

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.234(2) and (3)(a) require[requires] the Commissioner of the Department of Agriculture to promulgate administrative regulations for the process of application for a business identification number. This administrative regulation establishes the criteria for obtaining a business identification number to operate an amusement ride or attraction.

Section 1. Definition. "Business identification number" means a number identifying the individual or business entity owner of an amusement ride or amusement attraction and the specific ride or attraction to which it is assigned. ~~[Each amusement ride or amusement attraction shall require a Business Identification Number that is unique to that amusement ride or amusement attraction.]~~

Section 2. (a) A unique[A] business identification number shall be required to operate each applicable[an] amusement ride or amusement attraction in this state, and shall be valid for one (1) year from the date of issuance, in accordance with KRS 247.234(3)(a)(2). A business identification number shall not be transferred or assigned.

Section 3. Procedure for Obtaining a Business Identification Number. (1) Every owner of an amusement ride or amusement attraction seeking to operate in Kentucky shall submit a Business Identification Number Application for Rides and Attractions[an application for a business identification number] along with the fee for each required initial safety inspection required by 302 KAR 16:020.

(2)(a) The owner of the amusement ride or amusement attraction shall provide a written itinerary indicating:

1. The location of the first setup;
2. All future operating dates and locations, including addresses;
3. The operating period at each location;
4. The names of all rides requiring initial safety inspections pursuant to KRS 247.234(3)(b)[247.234(2)(d)]; and
5. All rides or attractions being operated at each location.

(b) The itinerary shall be delivered to the department at least fourteen (14) days prior to the first scheduled setup and shall be updated in writing immediately if cancellations are made or additional locations added.

(c) The itinerary shall be submitted in writing including by facsimile or electronic mail.

(3) Except as established[provided] in subsection (4) of this section, the applicant shall provide proof of liability insurance in the amount of at least \$500,000 per occurrence for bodily injury or death, for each amusement ride or amusement attraction.

(a) The proof of insurance shall include a statement that the insurer shall not cancel the policy without at least thirty (30) days written notice to the commissioner.

(b) Proof of insurance shall be either the policy or a certified statement issued by the insurer and shall include:

1. A listing of all amusement rides and amusement attractions insured; or

2. A statement that all amusement rides and amusement attractions operated under the supervision of the insured are covered in the policy.

(4) If the applicant's amusement rides or amusement attractions are permanently located or erected, the applicant[he] may, instead of providing proof of liability insurance, provide proof of financial responsibility in at least the amount of \$500,000 on or before the date of the initial safety inspection. Proof of financial responsibility shall be shown by ~~[one (1) of the following methods]:~~

(a) Proof of liability insurance of at least \$500,000 per occurrence for bodily injury or death;

(b) A financial statement, certified by a licensed certified public accountant, dated no more than thirty (30) days prior to the application date, indicating a net worth of at least \$500,000 or more in assets located in the state; or

(c) An irrevocable letter of credit to the department in the amount of at least \$500,000.

Section 4. Upon receipt of a complete application, applicable fees, proof of liability insurance or financial responsibility, and a complete itinerary, [shall] a business identification number shall be issued in the name of the applicant.

(1) If all items required by this section are not physically available to the inspector when the initial safety inspection takes place, the inspector shall not perform the initial safety inspection and a business identification number shall not be issued.

(2) The business identification number certificate shall be available for inspection at all times.

(3) If the business identification number holder is operating in multiple locations, a clear and legible copy of the business identification number shall be displayed.

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

(a) "Business Identification Number Application for Rides and Attractions", 08/08;

(b) "Itinerary~~[of]~~ Mobile Operators", 03/03; and

(c) "Itinerary~~[of]~~ Permanent Fixed Locations", 03/03.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Agriculture, Division of Regulation and Inspection, 107[444] Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: May 1, 2019

FILED WITH LRC: May 7, 2019 at 1 p.m.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

GENERAL GOVERNMENT CABINET Department of Agriculture Division of Regulation and Inspection (As Amended at ARRS, July 10, 2019)

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

VOLUME 46, NUMBER 2– AUGUST 1, 2019

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) "Dark ride" means an amusement ride or amusement attraction enclosed and with the lights turned off during the duration of the ride, and is a nonmechanized self-propelled amusement.

(3) "Go-cart facility" means an amusement ride or amusement attraction that carries a rider on a fixed path and includes the vehicle that travels the fixed path.

(4) "Inspection fee" means a fee required to be paid to operate any amusement ride or amusement attraction in Kentucky.

(5) "Kiddie ride" means an amusement ride or amusement attraction that has a height requirement of forty-two (42) inches or less to ride.

(6) "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.

(7) "Play port" means an object designed for use by children on which a child can swing, walk, climb, or slide, and that follows a fixed path.

(8) "Steel roller coaster" means roller coaster of which the track portion is constructed of steel or other metal material.

(9) "Walk through" means a fun house ~~or~~ glass house ~~or laser tag~~ that is nonmechanized and self-propelled.

(10) "Water ride" means an amusement ride or amusement attraction that uses water as a means of propulsion and includes bumper boats and water park slides that are in excess of fifteen (15) feet at the highest point of the slide.

(11) "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 and passing 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, and any required re-inspection fees, shall be levied for each amusement ride and amusement attraction. The initial safety inspection fees shall be assessed as established in subsections (1) through (12) of this section. (1) Air inflatable devices shall be fifty (50) dollars.

(2) Kiddie rides shall be seventy-five (75) dollars.

(3) Play port shall be seventy-five (75) dollars.

(4) Water rides shall be seventy-five (75) dollars.

(5) Dark rides shall be seventy-five (75) dollars.

(6) Walk throughs and glass houses shall be seventy-five (75) dollars.

(7) Tracked~~or trackless~~ trains shall be \$100.

(8) Go-cart~~Go-cart~~ facility shall be \$125.

(9) Major rides shall be \$150.

(10) Steel roller coaster shall be \$200.

(11) Wooden roller coaster shall be \$300.

(12) Any amusement ride or amusement attraction not listed in this section shall be \$150.

(13) Re-inspection as established in KRS 247.234(4)(a).

(a) Re-inspection fees shall be assessed as established in paragraph (b)1. through 12. of this subsection.

(b)1. Air inflatable devices shall be \$100.

2. Kiddie rides shall be \$150.

3. Play port shall be \$150.

4. Water rides shall be \$150.

5. Dark rides shall be \$150.

6. Walk throughs and glass houses shall be \$150.

7. Tracked trains shall be \$200.

8. Go-cart facility shall be \$250.

9. Major rides shall be \$300.

10. Steel roller coaster shall be \$400.

11. Wooden roller coaster shall be \$500.

12. Any amusement ride or amusement attraction not listed in this paragraph shall be \$300. ~~Any necessary re-inspection as provided in KRS 247.234(4)(a) shall be for twice the amount listed above.~~

Section 4. All new permanent amusement rides and amusement attractions shall have all required state and local permits before the initial safety inspection.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: May 1, 2019

FILED WITH LRC: May 7, 2019 at 1 p.m.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

GENERAL GOVERNMENT CABINET Department of Agriculture Division of Regulation and Inspection (As Amended at ARRS, July 10, 2019)

302 KAR 16:040. Correction of safety violations and right to re-inspection~~reinspection~~.

RELATES TO: KRS 247.232, 247.234, 247.236

STATUTORY AUTHORITY: KRS 247.234, 247.236

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.234 authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations for safety inspections for amusement rides or attractions. This administrative regulation establishes procedures for the correction of safety violations by amusement rides or attractions.

Section 1. If a department safety inspector finds an amusement ride or attraction does not comply with KRS 247.232 to 247.236, 302 KAR 16:010 through 302 KAR 16:140, or manufacturer standard, the inspector shall issue a stop operation order prohibiting the operation of the amusement ride or attraction, or any part thereof, found to be in violation. (1) The stop operation order shall be removed from the amusement ride, amusement attraction, or structure only if/when the violation has been corrected and then only by a department safety inspector.

(2) A stop operation order shall not be issued for any violation found to be correctable as established~~defined~~ in 302 KAR 16:030.

(3) Any amusement ride that that requires a re-inspection~~reinspection~~ shall be subject to the applicable fee established in 302 KAR 16:020. ~~Section 2. If, upon reinspection of an amusement ride or attraction under a stop operation order, it is found that the safety violation has been corrected within twenty-four (24) hours, the owner shall not be charged a reinspection fee as authorized by KRS 247.234.]~~

Section 2~~[3]~~. If a safety inspector determines an amusement ride or attraction present an imminent danger, the inspector shall issue and attach a stop operation order against the use of the amusement ride or attraction. The order shall not be removed until the device is made safe, and then only by a safety inspector.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: May 1, 2019

FILED WITH LRC: May 7, 2019 at 1 p.m.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Regulation and Inspection
(As Amended at ARRS, July 10, 2019)

302 KAR 16:111. Violations, civil penalties, revocations, and suspensions of business identification number for amusement rides or attractions.

RELATES TO: KRS 247.233

STATUTORY AUTHORITY: KRS 247.233

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.233 requires the department to promulgate administrative regulations establishing a comprehensive list of violations and civil penalties not to exceed \$10,000 and the procedure for suspension and revocation of a business identification number. This administrative regulation establishes ~~[those]~~ requirements for violations, civil penalties, revocations, and suspensions of business identification number for amusement rides or attractions.

Section 1. (1) The following ~~[acts shall be]~~ violations of KRS 247.232 through 247.236 and 302 KAR Chapter 16 ~~shall result in the assessment of~~. Violators of these requirements shall be ~~accessed a~~ civil penalty of not less than \$1,000 and not more than \$10,000:

- (a) Operating without a current business identification number;
- (b) Operating without current insurance in the required coverage amount;
- (c) Operating a ride or attraction while it is under a stop operation order;
- (d) Operating a ride or attraction while the operator is not present;
- (e) Using blocking in foot switch breaker;
- (f) Using improper material for electrical fuse;
- (g) Moving equipment after a reportable incident or tampering with evidence;
- (h) Operating a ride or attraction at an unsafe distance too close to high voltage;
- (i) Positioning a ride or attraction underneath utility lines;
- (j) Operating a ride or attraction while the operator is impaired;
- (k) Grounding the generator incorrectly;
- (l) Failing to maintain the ride or attraction in good mechanical condition;
- (m) Failing to repair ride or attraction according to manufacturer specifications or recommendations;
- (n) Failing to properly shield power units; and
- (o) Failing to use appropriate replacement parts.

(2) The following ~~[acts shall be]~~ violations of KRS 247.232 through 247.236 and 302 KAR Chapter 16 ~~Violators of these requirements shall result in~~ be assessed the assessment of a civil penalty of not less than \$100 and not more than \$5,000:

- (a) Failing to follow manufacturer safety guidelines and manufacturer specifications;
- (b) Failing to notify the department of an incident requiring a report within twelve (12) hours;
- (c) Failing to submit a required incident report;
- (d) Admitting an intoxicated patron on an amusement ride or attraction;
- (e) Admitting a patron with inappropriate footwear; and
- (f) Failing to completely fill out incident report form.

(3) The following ~~[acts shall be]~~ violations of KRS 247.232 through 247.236 and 302 KAR Chapter 16 ~~Violators of these requirements shall result in~~ be assessed the assessment of a civil penalty of not less than \$100 and not more than \$1,000:

- (a) Failing to have operational manuals on site;
- (b) Failing to have maintenance manuals on site;
- (c) Failing to have maintenance records on site;
- (d) Fueling ride or attraction in an undesignated area;
- (e) Exceeding manufacturer's speed of ride or attraction;
- (f) Failing to properly secure the ride or attraction;
- (g) Failing to have electrical disconnect within six (6) feet of operator;
- (h) Operating a ride or attraction by an operator under sixteen

~~(16)~~ eighteen ~~(18)~~ years of age;

- (i) Failing to use correct START/STOP switch;
- (j) Operating the ride or attraction in inclement weather;
- (k) Failing to comply with proper operating procedures noted during inspection;
- (l) Failing to properly anchor inflatable device;
- (m) Failing to perform or document pre-operation inspections;
- (n) Operating without an itinerary; and
- (o) Operating without the required number of operators as required by manufacturer.

(4) The following acts shall be violations of KRS 247.232 through 247.236 and 302 KAR Chapter 16. Violators of these requirements shall be assessed a civil penalty of not less than \$100 and not more than \$500:

- (a) Failing to have Ground Fault Circuit Interrupter (GFCI) protection if required;
 - (b) Failing to properly place fencing barrier;
 - (c) Failing to have fire extinguishers in correct locations;
 - (d) Failing to have first aid kit on location; and
 - (e) Failing to have inspection sticker in appropriate location.
- (5) Failure to have required ride or attraction signage or use of incorrect signage shall be a violation of KRS 247.232 through 247.236 and 302 KAR Chapter 16. Violators of these requirements shall be assessed a civil penalty of not less than \$100 and not more than \$200.

Section 2. (1) Persons who commit the same violation within thirty (30) days of being cited for the first violation shall be assessed up to double the civil penalty assessed in Section 1 of this administrative regulation, not to exceed \$10,000.

(2) Persons who commit a third same violation within sixty (60) days of being cited for the first violation shall be assessed up to triple the civil penalty assessed in Section 1 of this administrative regulation, not to exceed \$10,000.

(3) This section shall not prohibit the commissioner from suspending or revoking a license, permit, registration, or certification at any time pursuant to KRS 247.233.

Section 3. Business Identification Number Suspension or Revocation. (1) The business owner shall have ten (10) days upon the receipt of the notification of a proposed suspension, revocation, or modification of a business identification number to request a hearing. The hearing shall be conducted in accordance with KRS Chapter 13B.

(2) If a hearing is not requested ~~[as provided for in subsection (1) of this section]~~, the department may suspend, revoke, or modify the business identification number once the ten (10) day hearing request filing period has passed.

(3) (a) The department may suspend a business identification number and place stop operation orders on all rides or attractions belonging to the owner for a period of time that[which] shall not exceed seven (7) days, pending inquiry.

(b) After opportunity for a hearing, the department may deny, suspend, revoke, or modify the provision of any business identification number issued under KRS 247.234 if the department[it] finds that the owner or his employee has committed any of the following acts, each of which is declared to be a violation of KRS 247.232 through 247.236:

- (a) Making a false or fraudulent statement to inspectors;
- (b) Knowingly violating any provision of KRS 247.232 through 247.236 or 302 KAR Chapter 16; or
- (c) Failing to pay an administrative penalty or fee assessed by this chapter.

(4) Any owner whose business identification number is revoked under the provisions of this section shall not be eligible to apply for a new license until the time has elapsed from the date of the order revoking the business identification number as established by the department, not to exceed two (2) years, or if an appeal is taken from the order or revocation, not to exceed two (2) years from the date of the order or final judgment sustaining the revocation.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: May 1, 2019

FILED WITH LRC: May 7, 2019 at 1 p.m.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

**GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Regulation and Inspection
(As Amended at ARRS, July 10, 2019)**

302 KAR 16:121. Inflatable amusement rides or attractions.

RELATES TO: KRS 247.236(1)

STATUTORY AUTHORITY: KRS 247.236

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.236(1) requires the department of Agriculture to promulgate administrative regulations establishing safety requirements in the absence of factory specification. This administrative regulation establishes requirements for operation of inflatable rides or attractions if[when] manufacturer specifications are not available.

Section 1. Inflatable rides and attractions shall not require an operator, unless required by the manual.

Section 2. Only inflatable devices manufactured specifically for commercial use shall be used for commercial or rental purposes.

Section 3. Inflatable devices shall be anchored to the ground as required in its manual. In absence of instructions in the manual, inflatable devices shall be anchored to the ground with rods or pins with at least one half (1/2) inch diameter, at a minimum depth of eighteen (18) inches, and at a forty-five (45) degree angle to the ground. If pins or rods are impracticable, seventy-five (75) pounds of sandbags shall be used at each anchor point.

Section 4. Safety signage shall be required if not printed by the manufacturer on the inflatable. If the following information is not printed on an inflatable, the owner shall provide a sign to display near the entrance of the inflatable while it is in operation [with] the following information, in its entirety:

- (1) Remove shoes, eyeglasses, and sharp objects before entering;
- (2) No flips;
- (3) No piling on or wrestling;
- (4) Do not bounce closer than five (5) feet from another person; and]
- (5) Do not bounce against the sides or near the doorway; and[-]
- (6) Patron warnings as required by [the] KRS 247.2353.

Section 5. All inflatable devices shall use ground fault circuit interrupters for electrical components, if any.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: May 1, 2019

FILED WITH LRC: May 7, 2019 at 1 p.m.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

**GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Regulation and Inspection
(As Amended at ARRS, July 10, 2019)**

302 KAR 16:131. Maintenance and repair of amusement rides[ride] or attractions.

RELATES TO: KRS 247.2351

STATUTORY AUTHORITY: KRS 247.2351

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.2351 requires the Department of Agriculture to promulgate administrative regulations establishing replacement part requirements[guidelines] for amusement rides and attractions. This administrative regulation establishes requirements pertaining to replacement parts for amusement rides or attractions[those guidelines].

Section 1. All amusement rides and attractions shall be maintained in good electrical condition as established in KRS 247.2351(1)(b) and good[and] mechanical condition. The owner of an amusement ride or attraction shall follow the manufacturer's guidelines and recommendations for all maintenance procedures.

Section 2. Replacement Parts. (1) Amusement rides and attractions shall use manufacturer replacement parts, or replacement parts approved by the manufacturer, if available.

(2) If an amusement ride or attraction manufacturer is no longer in business or the manufacturer's parts are no longer available, replacement parts shall meet the manufacturers original equipment specifications. If original ride manufacturer's specifications are not available, the owner shall be deemed the manufacturer for purposes of these requirements.

(3) If an amusement ride or attraction is unique or handmade, the owner shall be deemed the manufacturer for purposes of these requirements.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: May 1, 2019

FILED WITH LRC: May 7, 2019 at 1 p.m.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

**GENERAL GOVERNMENT
Department of Agriculture
Office of the State Veterinarian
(New Administrative Regulation)**

302 KAR 101:010. Training requirement for Kentucky animal control officers.

RELATES TO: KRS Chapter 258

STATUTORY AUTHORITY: KRS 258.117, 258.119

NECESSITY, FUNCTION, AND CONFORMITY: KRS 258.117(1) requires an[creates the] Animal Control Advisory Board~~[,]~~ and establishes ["]creating training programs["] as one of the board's purposes. KRS 258.119 requires that county applicants for grants from the board have an ["]animal care control and care program["]. This program requires that the county employ an Animal Control Officer who has at least a high school degree and has completed the training requirements set forth by the board. This administrative regulation establishes [those] training requirements for animal control officers.

Section 1. Training Requirement for Kentucky Animal Control Officers. (1) The required training shall be Kentucky Animal Care & Control Association's Basic Animal Control Officer online training program.

(2) Persons seeking this certification shall do so online by following the links at www.kyagr.com or www.kyspaynueter.com.

(3) This training shall be offered at no cost to the counties. Access to the course may be limited based on capacity of the online system.

(4) Counties employing the Animal Control Officer shall maintain records of certification completion for a minimum period of five (5) years. Upon completion, counties shall forward proof of certification to the Kentucky Department of Agriculture.

(5) All new Animal Control Officers shall complete this training as part of their hiring or orientation program beginning January 1,

2020.

(6) All Animal Control Officers shall complete this training by June 30, 2020.

RYAN QUARLES, Commissioner

APPROVED BY AGENCY: April 16, 2019

FILED WITH LRC: May 7, 2019 at 1 p.m.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, fax (502) 564-2133, email clint.quarles@ky.gov.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Safety
(As Amended at ARRS, July 10, 2019)

805 KAR 3:110. Employees' personal protection.

RELATES TO: KRS 351.070

STATUTORY AUTHORITY: KRS 351.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.070(13) authorizes the cabinet to promulgate administrative regulations for the administration of KRS Chapter 351. This administrative regulation establishes [is to establish] safety standards for [controlling] equipment used for personal protection of employees in the operation of the Commonwealth's surface type coal and clay mines that[which] include strip and auger mining operations.

Section 1. Personal Protection. (1) Adequate first aid materials, including stretchers and blankets, shall be provided at places convenient to all working areas. Water or neutralizing agents shall be available where corrosive chemicals or other harmful substances are stored, handled, or used.

(2) All persons shall wear suitable hard hats when in or around mine plants or active workings of the mine.

(3) All persons shall wear suitable protective footwear when in or around mine plants or active workings of the mine.

(4) All persons shall wear safety glasses, goggles, or face shields when doing work hazardous to the eyes.

(5) Safety belts and lines shall be worn when men work if[where] there is danger of falling. [;] A second person shall tend the life line when bins, tanks or other dangerous areas are entered.

(6) Life jackets or belts shall be worn if[where] there is danger of falling into deep water.

(7) Protective clothing, rubber gloves, goggles, or face shields shall be worn by a person handling substances that are corrosive, toxic, or injurious to the skin.

(8) Protective clothing or equipment and face shields or goggles shall be worn when welding, cutting, or working with molten metal.

(9) Snug-fitting clothing shall be worn by persons working around moving equipment and machinery.

(10) Protective gloves shall be worn by employees handling materials that[which] could[may] cause injury.

(11) Gloves shall not be worn if[where] they could create a hazard by becoming entwined or caught in moving parts of machinery.

(12) Effective hearing protection shall be worn if[where] noise levels could[may] cause permanent ear damage or hearing loss, or noise shall be reduced to safe levels, unless the wearing of the protective devices would create a greater danger to the employee.

(13)(a) All miners shall wear clothing with at least 100 square inches of reflective material while in an underground mine and clothing with at least fifty (50) square inches of reflective material while on a surface mine site.

(b) The reflective material shall be prominently worn and visible in all directions.

(14) All underground miners who are on foot and are on an active working section shall be equipped with an operating, flashing personal safety light that is recognized by MSHA as

intrinsically safe. The light shall be readily visible and securely attached to the miner, at or above the shoulders, while on the working section.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: May 9, 2019

FILED WITH LRC: May 10, 2019 at 10 a.m.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone: (502) 782-6720, fax: (502) 564-4245, email: michael.mullins@ky.gov.

PUBLIC PROTECTION CABINET
Department of Insurance
(As Amended at ARRS, July 10, 2019)

806 KAR 47:010. Fraud prevention[Designation of a contact person].

RELATES TO: KRS 304.2-140, 304.47-010, 304.47-020, 304.47-040, 304.47-050, 304.47-080

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate 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]. This administrative regulation establishes insurer requirements and a comprehensive process for reporting and investigating fraudulent insurance acts [for the designation of primary contact persons to communicate with the Division of Insurance Fraud Investigation].

Section 1. Definitions.

(1) "Division" is defined by KRS 304.47-010(6). [;]

(2) "Special investigative unit" or "SIU" means a unit to investigate fraudulent insurance acts as required by KRS 304.47-080.

Section 2. Scope. This administrative regulation shall apply to all insurers admitted to do business in the Commonwealth that are not otherwise exempted by KRS 304.47-080(1).

Section 3. Primary Anti-fraud Contacts. To facilitate communication with the division, an [Every] insurer shall designate [at least] two (2) primary contact persons, one (1) of whom shall be the head of the SIU, [but not more than four (4) primary contact persons] who shall communicate with the division [of Insurance Fraud Investigation] on matters relating to the reporting, investigation, and prosecution of suspected fraudulent insurance acts, as defined in KRS 304.47-020.

Section 4[2]. Special Investigative Units and Anti-fraud Plans. [Every insurer shall notify the Division of Insurance Fraud Investigation in writing of the names, addresses, and telephone numbers of:]

(1) An insurer shall maintain an SIU to fulfill the requirements of KRS 304.47-080.[The insurer's primary contact persons; and]

(2) In conjunction with its SIU, an insurer shall:[The primary person responsible for the insurer's investigative unit.]

(a) Implement systematic and effective methods to detect and investigate suspected fraudulent insurance claims;

(b) Educate and train all claims handlers to identify possible insurance fraud;

(c) Develop policies for the SIU to cooperate, coordinate, and communicate with;

1. The insurer's claims handlers, legal personnel, technical support personnel, and database support personnel; and

2. The division and other relevant law enforcement agencies; and[;]

(d) Develop and submit to the division a written anti-fraud plan, which shall include:

1. Acknowledgment of duty to report to the division, including mandatory reporting of the determination that a suspected

fraudulent act has been committed[suspected fraud] within fourteen (14) days:

2. SIU contact information;
3. SIU investigative ethics;
4. Procedures to detect and deter fraud; and
5. Continuing education plans for SIU staff.

Section 5. Compliance Report.

(1) Within ninety (90) days of admission, and at least once every two (2) years, an insurer shall submit to the division a written report setting forth the manner in which the insurer is complying with Section 4 of this administrative regulation. The report shall also include:

(a) The total number of SIU investigative staff responsible for cases in Kentucky, and whether any[such] staff member also investigate cases in other jurisdictions; and[either]

(b) 1. If the insurer formed the SIU in house and solely governs it, the year that the SIU was formed; or

2.[(c)] If the insurer has contracted SIU services through another company, the identity of the company providing SIU services and the initial year of the contract between the insurer and the company.

(2) Within thirty (30) days of a material change of the information provided in the compliance report, the insurer shall amend the compliance report and resubmit it to the division.

Section 6. Reporting Fraudulent Insurance Acts.

(1) All persons identified in KRS 304.47-050(2) shall report suspected fraudulent insurance acts to the division within fourteen (14) days of determination that a suspected fraudulent act has been committed. Reports submitted to a person or entity other than the division shall not satisfy the reporting duty of KRS 304.47-050(2). Reports shall be submitted by:

(a) Completing a report on the department's electronic services portal at <https://insurance.ky.gov/eservices/default.aspx>; or

(b) Submitting a completed Uniform Suspected Insurance Fraud Reporting Form.

(2) All persons identified in KRS 304.47-050(1) may report suspected fraudulent insurance acts to the division by:

(a) Completing a report on the department's electronic services portal at <https://insurance.ky.gov/eservices/default.aspx>; or

(b) Submitting a completed Uniform Suspected Insurance Fraud Reporting Form.

Section 7. Incorporation by Reference.

(1) The "Uniform Suspected Insurance Fraud Reporting Form," 7/2019[03/2019], is incorporated by reference.

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

K. GAIL RUSSELL, Acting Secretary

NANCY G. ATKINS, Commissioner

APPROVED BY AGENCY: June 14, 2019

FILED WITH LRC: June 14, 2019, at 11 a.m.

CONTACT PERSON: Patrick O'Connor II, Deputy Commissioner, Policy, P.O. Box 517, 215 West Main Street, Frankfort, Kentucky 40602, phone (502) 564-6026, fax (502) 564-1453, email patrick.oconnor@ky.gov.

ENERGY AND ENVIRONMENT CABINET Public Service Commission (As Amended at ARRS, July 10, 2019)

807 KAR 5:056. Fuel adjustment clause.

RELATES TO: KRS **61.870 - 61.884, 143.020**, Chapter 278

STATUTORY AUTHORITY: KRS **278.030(1), (2), 278.040(3)** [278.030(4)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes[provides—that] the Public Service

Commission to[may] promulgate administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.030(1) authorizes utilities to demand, collect, and receive[provides that all rates received by an electric utility subject to the jurisdiction of the Public Service Commission shall be] fair, just, and reasonable rates. KRS 278.030(2) requires[provides that] every utility to[shall] furnish adequate, efficient, and reasonable service. This administrative regulation establishes[prescribes] the requirements with respect to the implementation of automatic fuel adjustment clauses by which electric utilities may immediately recover increases in fuel costs subjected[subject] to later scrutiny by the Public Service Commission

Section 1. Fuel Adjustment Clause. Fuel adjustment clauses that[which] are not in conformity with the requirements established in subsections (1) through (6) of this section[principles set out below] are not in the public interest and may result in suspension of those parts of the[such] rate schedules based on severity of the nonconformity and any history of nonconformity.

(1) The fuel adjustment clause shall provide for periodic adjustment per Kilowatt Hour (KWH)[KWH] of sales equal to the difference between the fuel costs per KWH sale in the base period and in the current period according to the following formula:

$$\text{Adjustment Factor} = \frac{F(m) F(b)}{S(m) S(b)}$$

Where F(b) is the cost[expense] of[fossil] fuel in the base period, F(m) is the cost of fuel in the current period, S(b) is sales in the base period, and S(m) is sales in the current period[(b) and Current (m) periods; and S is sales in the base (b) and current (m) periods], all as defined below.

(2) F(b)[B]/S(b)[B] shall be[so] determined so that on the effective date of the commission's approval of the utility's application of the formula, the resultant adjustment shall[will] be equal to zero.

(3) Fuel costs (F) shall be the most recent actual monthly cost, based on weighted average inventory costing, of:

(a) Fossil fuel consumed in the utility's own plants, and the utility's share of fossil and nuclear fuel consumed in jointly owned or leased plants, plus the cost of fuel that[which] would have been used in plants suffering forced generation or transmission outages, but less the cost of fuel related to substitute generation; plus

(b) The actual identifiable fossil and nuclear fuel costs associated with energy purchased for reasons other than as established[identified] in paragraph (c) of this subsection, but excluding the cost of fuel related to purchases to substitute for the forced outages; plus

(c) The net energy cost of energy purchases, [irrespective of the designation assigned to such transaction and] exclusive of capacity or demand charges irrespective of the designation assigned to the[such] transaction, [(irrespective of the designation assigned to such transaction)] if [when—such] energy is purchased on an economic dispatch basis. [Included therein may be such] Costs, such as the charges for economy energy purchases, [and] the charges as a result of scheduled outage, and other charges for all such kinds of] energy being purchased by the buyer to substitute for the buyer's own[its own] higher cost energy, may be included; and less

(d) The cost of fossil fuel recovered through intersystem sales, including the fuel costs related to economy energy sales and other energy sold on an economic dispatch basis. [(e) All fuel costs shall be based on weighted average inventory costing.]

(4) Forced outages are all nonscheduled losses of generation or transmission that[which] require substitute power for a continuous period in excess of six (6) hours. [If[Where]] forced outages are not[as] the[a] result of faulty equipment, faulty manufacture, faulty design, faulty installations, faulty operation, or faulty maintenance, but are Acts of God, riot, insurrection, or acts of the public enemy, then the utility may, upon proper showing, with the approval of the commission, include the fuel cost of substitute energy in the adjustment. [Until such approval is]

obtained.] In making the calculations of fuel cost (F) in subsection (3)(a) and (b) of this section, the forced outage costs to be subtracted shall be no less than the fuel cost related to the lost generation until [such] approval is obtained.

(5) Sales (S) shall be all KWH's sold, excluding intersystem sales. Utility used energy shall not be excluded in the determination of sales (S). If [Where], for any reason, billed system sales cannot be coordinated with fuel costs for the billing period, sales may be equated to [the sum of]:

(a) Generation; plus

(b) Purchases; plus

(c) Interchange-in; less

(d) Energy associated with pumped storage operations; less

(e) Intersystem sales referred to in subsection (3)(d) of this section [above]; less

(f) Total system losses. [Utility used energy shall not be excluded in the determination of sales (S).]

(6) The cost of fossil fuel shall only include the cost of the fuel itself and necessary charges for transportation of the fuel from the point of acquisition to the unloading point, as listed in Account 151 of FERC Uniform System of Accounts for Public Utilities and Licensees. [include no items other than the invoice price of fuel] less any cash or other discounts. [The invoice price of fuel includes the cost of the fuel itself and necessary charges for transportation of the fuel from the point of acquisition to the unloading point, as listed in Account 151 of FERC Uniform System of Accounts for Public Utilities and Licensees.]

Section 2. Filing Requirements. (1)[(7) At the time the fuel clause is initially filed,] If a utility initially proposes a fuel adjustment clause [or proposes to reset the base period fuel costs used in a fuel adjustment clause], the utility shall submit copies of each fossil fuel purchase contract not otherwise on file with the commission and all other agreements, options, amendments, modifications, and [or] similar [such] documents, and all amendments and modifications thereof related to the procurement of fuel supply [and] or purchased power [in addition to any other documents and information required by 807 KAR 5:001 and 807 KAR 5:011]. [Incorporation by reference is permissible.]

(2) Any changes in the contracts or other documents filed pursuant to subsection (1) of this section, including price escalations, and [or] any new agreements entered into after the initial submission, shall be submitted at the time they are entered into.

(3) If [Where] fuel is purchased from utility-owned or controlled sources, or the contract contains a price escalation clause, those facts shall be noted, and the utility shall explain and justify them in writing. [Fuel charges which are unreasonable shall be disallowed and may result in the suspension of the fuel adjustment clause. The commission on its own motion may investigate any aspect of fuel purchasing activities covered by this administrative regulation.]

(8) Any tariff filing which contains a fuel clause shall conform that clause with this administrative regulation within three (3) months of the effective date of this administrative regulation. The tariff filing shall contain a description of the fuel clause with detailed cost support.

(4)[(9)] The monthly fuel adjustment shall be filed with the commission no later than ten (10) days before it is scheduled to go into effect, along with all the necessary supporting data to justify the amount of the adjustment [which shall include data and information as may be required by the commission].

(5)[(40)] Copies of all documents required to be filed with the commission under this administrative regulation shall be open and made available for public inspection at the office of the Public Service Commission pursuant to the provisions of KRS 61.870 to 61.884.

Section 3. Review of Fuel Adjustment Clauses (1) Fuel charges that [which] are unreasonable shall be disallowed and may result in the suspension of the fuel adjustment clause based on the severity of the utility's unreasonable fuel charges and any history of unreasonable fuel charges.

(2) The commission on its own motion may investigate any aspect of fuel purchasing activities covered by this administrative regulation.

(3)[(44)](a) At six (6) month intervals, the commission shall [will] conduct a formal review and may conduct public hearings on a utility's past fuel adjustments.

(b) The commission shall [will] order a utility to charge off and amortize, by means of a temporary decrease of rates, any adjustments the commission [it] finds unjustified due to improper calculation or application of the charge or improper fuel procurement practices.

(4)[(42)](a) Every two (2) years following the initial effective date of each utility's fuel clause, the commission shall [will] conduct a formal [in a public hearing will] review and evaluate past operations of the clause, disallow improper expenses and, to the extent appropriate, reestablish the fuel clause charge in accordance with Section 1 [subsection] (2) of this administrative regulation [section].

(b) The commission may conduct a public hearing if the commission [it] finds that a hearing is necessary for the protection of a substantial interest or is in the public interest.

(5) For any contracts entered into [Beginning] on or after December 1, 2019 [three (3) months or more after the effective date of this regulation], the commission shall, in determining the reasonableness of fuel costs in procurement contracts and fuel procurement practices, evaluate the reasonableness of fuel costs in contracts and competing bids based on the cost of the fuel less any coal severance tax imposed by any jurisdiction [upon coal physically removed from the earth] [any tax collected under KRS 143.020].

This is to certify that the Public Service Commission approved promulgation of this administrative regulation, as amended after comment, pursuant to KRS 278.040(3), on June 14, 2019.

GWEN R. PINSON, Executive Director

MICHAEL J. SCHMITT, Chairman

APPROVED BY AGENCY: June 14, 2019

FILED WITH LRC: June 14, 2019 at noon

CONTACT PERSON: John E.B. Pinney, Acting General Counsel, Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3940, fax (502) 564-7279, email Jeb.Pinney@ky.gov.

**PUBLIC PROTECTION CABINET
Real Estate Authority
Kentucky Board of Auctioneers
(As Amended at ARRS, July 10, 2019)**

831 KAR 1:010. Licensing fees and applications.

RELATES TO: KRS 330.050(6), 330.060, 330.070, 330.095, 330.192

STATUTORY AUTHORITY: KRS 330.050(8), 330.060(3)(b), 330.070, 330.192

NECESSITY, FUNCTION, AND CONFORMITY: KRS 330.050(8) authorizes the Board of Auctioneers to promulgate administrative regulations with the approval of the executive director of the Kentucky Real Estate Authority in accordance with KRS Chapter 13A as required to fulfill the duties and functions assigned to the board by KRS Chapter 330. KRS 330.060(3)(b) requires the board to establish an examination fee by administrative regulation. KRS 330.070 requires the board to promulgate administrative regulations concerning license fees and replacement fees and authorizes the board to establish fees for deferral of continuing education or a change of address. KRS 330.192 authorizes the board to promulgate administrative regulations concerning the auctioneer's education, research, and recovery fund. This administrative regulation establishes fees associated with acquiring and maintaining auctioneer licenses.

VOLUME 46, NUMBER 2– AUGUST 1, 2019

Section 1. Licensure Fees. (1)(a) The initial license fee for each new applicant with the Kentucky Board of Auctioneers shall be \$125. Payment of the fee shall accompany the Auctioneer License Application, KBA-1.

(b) An applicant for an initial license shall submit with his or her Auctioneer License Application, KBA-1, a national background check that was completed by the Federal Bureau of Investigation within the sixty (60) days preceding submission of the application.

(2)(a) The license renewal fee shall be \$125. A late fee of \$125 shall be added to the renewal fee during the six (6) month grace period following the expiration date of the license.

(b) A licensee shall use the online License Renewal System offered by the board at <https://auctioneers.ky.gov/Pages/default.aspx>.

(c) If a licensee is unable to use the online procedure, he or she shall submit a completed paper copy of the License Renewal Form, KBA-7 to the Kentucky Board of Auctioneers.

(3)(a) The examination fee for each applicant shall be \$125. Payment of the fee shall accompany the Auctioneer License Examination Application, KBA-2.

(b) An applicant for an initial license shall also attach a current two (2) inch by two (2) inch passport quality photo to the completed Auctioneer License Examination Application, KBA-2.

(4)(a) The licensing fee for a reciprocal applicant shall be determined pursuant to KRS 330.095(1)(c). Payment of the fee shall accompany the Auctioneer Reciprocal License Application, KBA-1.

(b) An applicant for a reciprocal license shall submit with his or her Auctioneer License Application, KBA-1 a national background check that was completed by the Federal Bureau of Investigation within the sixty (60) days preceding submission of the application.

(c) An applicant for a reciprocal license shall:

1. Attach a current two (2) inch by two (2) inch passport quality photo to the completed Auctioneer License Application, KBA-1; and

2. Submit a letter of good standing from at least one (1) jurisdiction where the applicant holds a license subject to a present reciprocal agreement between that jurisdiction and the board.

Section 2. Late Continuing Education Completion Fee. (1) A licensee who has failed to complete the required continuing education credits on or before May 31 of each [during the] license year shall [may] remit a fee of \$300 to remain active, and the continuing education reporting requirement shall be deferred to the next annual renewal.

(2) A licensee who remits the fee prescribed in subsection (1) of this section shall be prevented from renewing his or her license in the following license year unless he or she completes the delinquent education prior to the renewal period.

(3) Nothing in this Section shall alleviate a licensee's obligation to complete the continuing education required for each license year.

Section 3. Replacement Fee. The fee for replacement of a license or a pocket license shall be fifteen (15) dollars.

Section 4. Reactivation Fees. (1) To reactivate a license that has previously been placed in escrow status, a licensee shall pay:

(a) [(4)] A reactivation fee of \$125; and

(b) [(2)] The [annual renewal] recovery fee of thirty (30) dollars.

(c) [(3)] The reactivation fee shall not apply to any individual seeking to reactivate a license within ninety (90) days following a period of active duty military service, who shall request reinstatement of licensure within sixty (60) days of the individual's honorable discharge from the service or return from military duty, and the board shall grant the request. If [in the event] the individual has been discharged from military service, this exception shall only apply if the individual was honorably discharged.

(2) The licensee shall complete the board's core course within six (6) months prior to requesting to reactivate/reactive a license that is currently in escrow and submit proof of the same with the completed License Status and Information Update Form, KBA-3.

(3) A licensee seeking to reactivate his or her license shall submit a national background check that was completed by the Federal Bureau of Investigation within the sixty (60) days preceding submission of the application with the completed License Status and Information Update Form, KBA-3.

Section 5. Change of Address and License Verification Fees.

(1) The fee for a change of address shall be fifteen (15) dollars.

(2) The fee for a change of principal shall be fifteen (15) dollars.

(3) There shall be no fee for the following changes:

(a) Placing license into escrow; and

(b) Change of name.

(4) The fee for a duplicate license shall be fifteen (15) dollars.

(5) The fee for a letter of good standing shall be five (5) dollars. Upon request, the board shall provide documentation directly to the auctioneer licensing authority in another jurisdiction.

(6) Change and license verification requests shall be submitted on the License Status and Information Update [and License Documentation] Form, KBA-3.

Section 6. Recovery Fees. The following fees shall be assessed for the auctioneer's education, research, and recovery fund established by KRS 330.192:

(1) [(a)] The [initial] recovery fee for each license application [new applicant] shall be thirty (30) dollars, which shall be waived for a principal auctioneer if the licensee has already paid the recovery fee for another license in the current license year; and

(2) [(b)] The [renewal] recovery fee for each license [licensee] shall be thirty (30) dollars per year.

Section 7. Non-refundable Fees [Complaints]. All fees established by this administrative regulation shall be non-refundable [Complaints against a licensee shall be filed on the Complaint Form, and shall not require a fee].

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

(a) "Auctioneer License Application", KBA-1[""], May 2019[2018];

(b) "Auctioneer License Examination Application", KBA-2[""], May 2019[2018]; and

(c) "License Status and Information Update Form", KBA-3 [Auctioneer Reciprocal License Application"], May 2019[2018];

(d) "Information Update and License Documentation Form", May 2018; and; and

(d) "License Renewal Form", KBA-7, May 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Auctioneers, 656 Chamberlin Avenue, Suite B, Frankfort, Kentucky 40601 Monday through Friday, 8 a.m. to 4:30 p.m.

JOSEPH GRIBBINS, Chair

H.E. CORDER, Executive Director

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: May 14, 2019

FILED WITH LRC: May 15, 2019 at 11 a.m.

CONTACT PERSON: Heather L. Becker, General Counsel, Kentucky Real Estate Authority, 656 Chamberlin Avenue, Suite B Frankfort, Kentucky 40601, phone 502-564-7760, fax 502-564-1538, email heather.becker@ky.gov.

**PUBLIC PROTECTION CABINET
Real Estate Authority
Kentucky Board of Auctioneers
(As Amended at ARRS, July 10, 2019)**

831 KAR 1:030. Education requirements.

RELATES TO: KRS 330.050, 330.060, 330.070, 330.095
STATUTORY AUTHORITY: KRS 330.050(8), 330.060(1),

330.070(7), 330.095

NECESSITY, FUNCTION, AND CONFORMITY: KRS 330.050(8) authorizes the Board of Auctioneers to promulgate administrative regulations with the approval of the executive director of the Kentucky Real Estate Authority in accordance with KRS Chapter 13A as required to fulfill the duties and functions assigned to the board by KRS Chapter 330. KRS 330.060(1) requires applicants for an apprentice auctioneer or auction house operator's license to successfully complete instruction as prescribed by the board from a board-approved auction education provider. KRS 330.070(7) authorizes the board to require, as a condition precedent to the renewal of any license, that each licensee complete continuing education up to ten (10) hours per license year. This administrative regulation establishes prelicensing and continuing education requirements for all board of auctioneer licensees.

Section 1. Education Providers. (1) All required education shall be obtained from a board-approved provider.

(2) A request to become an approved provider shall be made on the Continuing Education: Approved Provider Application form, KBA-4 provided by the board.

(3) A prospective or approved provider shall notify the board in writing within thirty (30) days of any material change in information submitted on the application or attachments. Notification shall be made on the License Status and Information Update form, KBA-3, incorporated by reference in 831 KAR 1:010[Information Update and License Documentation form].

(4) An approved provider shall submit to the board advance notification of each course offering on the Continuing Education: Course Notification form, KBA-5.

(5) An approved provider shall submit to the board a roster of attendees completing a course within ten (10) days of completion. The roster shall include each attendee's name, address, license number, and e-mail address.

(6) An approved provider shall disclose to all potential students prior to enrollment:

(a) The full cost of each course, including tuition, books, and required materials; and

(b) The number of continuing education hours to be earned by attending and completing each course.

(7) An approved provider shall maintain clear and correct written or electronic records for a minimum of five (5) years, including:

- (a) Course handouts;
- (b) Attendance records; and
- (c) Course evaluations.

(8) A provider's approval shall be subject to withdrawal for a violation of KRS Chapter 330 or 831 KAR Chapter 1.

(9) A complaint against an approved provider shall be notarized and filed on the Complaint Form, KBA-6, which is incorporated by reference in 831 KAR 1:020.

Section 2. Instructors. (1) An instructor for a course provided pursuant to this administrative regulation shall hold or have previously held:

- (a) Current and comprehensive knowledge of the subject matter they will be teaching;
- (b) The ability to effectively teach, interact, and communicate with the attendees; and
- (c) The ability to provide a controlled and positive learning classroom environment.

(2) An instructor for a course provided pursuant to this administrative regulation shall not have:

- (a) Had a professional license revoked or suspended;
- (b) Been convicted of any crime involving auction, real estate, or any abuse of fiduciary responsibilities; or
- (c) Been disciplined in any jurisdiction for falsifying student attendance records or completion of course requirements or other improper educational actions related to licensure.

(3) An instructor who is also a licensee shall receive continuing education credit for teaching a course approved pursuant to this administrative regulation once per educational year for the same

course.

Section 3. Auctioneer Education and Licensing Requirements[Prelicensing Education Requirements]. (1) To be licensed as an apprentice auctioneer, an applicant shall show proof of a high school diploma or equivalent, unless waived by the board pursuant to KRS 330.060(1)(b).

(2) An applicant for a license shall obtain the required education from an approved provider or combination of approved providers.

(3)[(2)] An applicant for a principal[an] auctioneer license shall have successfully completed at least eighty (80) hours of approved classroom instruction.

(a) Up to eight (8) hours may include approved outside activities and field instruction, such as attendance at auctions; and

(b) Up to forty (40) hours may include approved distance learning.

(4)[(3)] The board may[shall] waive the approved classroom instruction requirement if requested in writing by[and—if] an applicant who demonstrates sufficient previous auction experience and competency.

(5) Reciprocity with any state that does not require an apprenticeship shall be granted after a licensee, who is a nonresident of Kentucky, has held his or her license for a minimum of one (1) year in the reciprocating state.

Section 4. Licensee Continuing Education Requirements. (1) A licensee shall attend a minimum of six (6) course hours of continuing education from any approved provider or combination of approved providers on or before May 31 of each[per] license year.

(2) A licensee shall attend the Kentucky Auction Core Course at least once every four (4) years based on the board's schedule according to the licensee's birth month.

(a) A licensee seeking to reactivate a license from escrow shall complete the Kentucky Auction Core Course.

(b) A licensee with at least twenty-five (25) years of continuous licensure shall be exempt from the Kentucky Auction Core Course requirement.

(3) A licensee licensed prior to January 1, 1980 shall be exempt from this section[of this administrative regulation].

Section 5. Continuing Education Courses. (1) A licensee may attend a live course or participate in a distance learning course in which the instructor and attendee are not physically present at the same location.

(2) A continuing education course shall focus on auctions or auction law.

(a) An approved provider shall keep all course material current with KRS Chapter 330 and 831 KAR Chapter 1.

(b) The Kentucky Auction Core Course shall include instruction in the core subjects of KRS Chapter 330, 831 KAR Chapter 1, ethics, and any other applicable subject matter.

(c) Real estate education classes shall not qualify for continuing education.

(3) Courses sponsored by the National Auctioneers Association and the Certified Auctioneer's Institute shall qualify for continuing education.

(4) General business meetings and noneducational portions of auctioneer conventions shall not qualify for continuing education.

(5) Live courses shall be subject to monitoring visits from board personnel.

(6) Distance learning shall be subject to periodic review by board personnel. For internet based courses, approved providers shall include "test" login information with the course notification to the board, which shall authorize the board to review the material.

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

(a) "Continuing Education: Approved Provider Application," KBA-4[?], May 2019[2018]; and

(b)["Information Update and License Documentation", May 2018; and

(c)] "Continuing Education: Course Notification," KBA-5[?],

May 2019[2018].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Auctioneers, 656 Chamberlin Avenue, Suite B, Frankfort, Kentucky 40601 Monday through Friday, 8 a.m. to 4:30 p.m.

JOSEPH GRIBBINS, Chair
H. E. CORDER, Executive Director
K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: May 14, 2019

FILED WITH LRC: May 15, 2019 at 11 a.m.

CONTACT PERSON: Heather L. Becker, General Counsel,
Kentucky Real Estate Authority, 656 Chamberlin Ave., Suite B,
Frankfort, Kentucky 40601, phone 502-564-7760, fax 502-564-
1538, email heather.becker@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(As Amended at ARRS, July 10, 2019)

902 KAR 9:010. Environmental health.

RELATES TO: KRS 211.920, 211.925, 211.935, 217.015(20)[-
211.945]

STATUTORY AUTHORITY: KRS 194A.050(1)[Chapter 13B,
194.050, 211.090], 211.925[-EQ 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1)[211.920 to 211.945] requires[authorizes] the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.925 authorizes the cabinet to promulgate[adopt rules;] administrative regulations[;] and standards relating to the public health or health aspects of the operation of state confinement facilities.[The intent of] This administrative regulation establishes[is to establish] uniform standards of institutional sanitation to safeguard the health of persons confined in state confinement facilities, by providing for the opportunity to pursue adequate personal hygiene for health maintenance, control of the incidence and spread of disease, and maintenance of sanitary living conditions.[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:] (1) "Cabinet" is defined by KRS 211.920(1).[means the Cabinet for Health Services and its designated agents;]

(2) "Cell" means a room designated to provide sleeping and personal storage facilities for no more than two (2) inmates[;]

(3) "Confinement housing unit" means a residential structure that:

(a) Is intended for occupancy by inmates of a state confinement facility; and

(b) May include:

1.[, which may be subdivided into] Wings, levels, or sections containing inmate living areas; and

2.[, It may also include] Facilities for:¹

a. Food preparation, service, and dining;

b. Medical treatment;

c. Physical exercise;

d. Education;

e. Visitation;

f. Storage; or

g. Other functions necessary for the operation and maintenance of the unit.

(4) ["Dayroom" means a common area, room or other place of assembly within a confinement housing unit, or a wing, level, or section of that unit, which is provided for inmate leisure time

activities;

(5) "Dormitory" means a room designated to provide sleeping and personal storage facilities for three (3) or more inmates.

(5)[- (6)] "Inmate" means any person confined or assigned to residence in a state confinement facility.

(6)[- (7)] "Inmate space" means the living area, as measured in gross square feet of floor space, required for each inmate within a confinement housing unit.

(7)[- (8)] "Living area" means the cell or dormitory to which an inmate is assigned for housing, and includes common areas[dayrooms], personal hygiene facilities, and other areas within a confinement housing unit that[which] are normally accessible to an inmate on a daily basis.

(8)[An area is considered normally accessible when an inmate can enter or use it and includes areas accessible for specified hours or by permission only;]

(9) "Personal hygiene facility" means a room or rooms that[which] contain sanitary fixtures such as lavatories, water closets, showers or bathtubs, and other necessary appurtenances for maintaining inmate personal hygiene.

(9) "Tempered water" means a water temperature of at least ninety (90) degrees Fahrenheit to a maximum temperature of 110 degrees Fahrenheit.

Section 2. Sanitary Facilities and Controls. (1)(a) The water supply shall be potable, adequate, and from an approved public supply of a municipality or water district, if available.

(b) If not available, the supply[source and] shall be developed and approved pursuant to applicable requirements of 401 KAR Chapter 8.

(c) If a public water supply subsequently becomes available, connections shall be made to this supply,[thereto] and the state confinement facility's supply shall be discontinued[the Natural Resources and Environmental Protection Cabinet].

(2)(a) All sewage and liquid waste matter shall be disposed of into a public sewer system, if available.

(b) If[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 902 KAR 10:085.

(c)[the requirements of the cabinet;] If an adequate public sewer system subsequently becomes available, connections shall be made to this system,[thereto] and the state confinement facility's sewage disposal system shall be discontinued.

(3) A drinking fountain or a potable water service fixture with individual single service drinking cups shall be accessible to inmates in their living area pursuant to the requirements of 815 KAR Chapter 20[the State Plumbing Code]. The use of a common drinking vessel shall be[is] prohibited.

(4) Each confinement housing unit shall include personal hygiene facilities within the unit that[which] contain sanitary fixtures meeting the requirements of 815 KAR Chapter 20[the State Plumbing Code] as to design, fixture type, and numbers of fixtures.

(5) All personal hygiene facilities shall be designed and constructed pursuant to the requirements of 815 KAR 7:120[the State Building Code]. All walls, floors, ceilings, partitions, sanitary fixtures, and appurtenances shall be maintained in a sanitary condition and in good repair.

(6) An adequate supply of clean washcloths, towels, and clothing, and toilet tissue, soap, and similar personal hygiene articles shall be issued to each inmate as necessary to maintain hygiene.

(7) Hot and cold or tempered water shall be supplied to all lavatories, showers, and bathtubs, and all hot or tempered water supply lines to the[such] fixtures shall be protected by temperature and pressure control devices approved for use by 815 KAR Chapter 20[the State Plumbing Code] to prevent scalding.

(8) All plumbing shall comply with 815 KAR Chapter 20[the State Plumbing Code].

(9) All refuse[garbage and rubbish] shall[, prior to disposal,] be:

(a) Kept in containers that are:

1. Leak-proof;

2. Non-absorbent;

3. Flame-retardant; and
4. Routinely cleaned; and

~~(b) Removed from confinement housing units on a daily basis and be disposed of at least weekly or more often if necessary in accordance with 401 KAR Chapter 30[leak-proof, nonabsorbent containers and the containers shall be kept covered with tight-fitting lids when stored. Containers shall be flame-retardant. Adequate cleaning facilities shall be provided and containers shall be kept clean. All garbage and rubbish shall be removed from confinement housing units on a daily basis and shall be disposed of at least weekly or more often if necessary, and in a manner approved by the Natural Resources and Environmental Protection Cabinet].~~

Section 3. Facilities and Equipment. (1) Each confinement housing unit shall provide a minimum inmate space of sixty (60) square feet for each inmate housed within that unit.

(2) Each cell and dormitory shall:

- (a) Have at least eight (8) foot ceilings;
- (b) Contain a bed for each inmate; and

(c) Provide facilities for storage of inmates' personal belongings, including clothing and towels.

(3) All floors, walls, ceilings, and equipment of confinement housing units shall be constructed pursuant to 815 KAR 7:120[the State Building Code]. All parts of the confinement housing unit and its premises shall be kept in good repair, clean, neat, and free of ~~refuse~~[litter and rubbish].

Section 4. Lighting. Each confinement housing unit shall be provided with natural or artificial light sufficient to provide twenty (20) foot candles of light for reading purposes, to permit observation, and for proper cleaning and maintenance. All light fixtures shall be kept in good repair and clean.

Section 5. Heating, Cooling and Ventilation. (1) All confinement housing units shall be provided with heating, cooling, and ventilation equipment as required by 815 KAR 7:120[the State Building Code. The equipment shall be capable of meeting the requirements of the State Fire Marshal for safety, maintenance and operation].

(2) Ventilation, through natural or mechanical means, shall be sufficient to provide fresh air and remove disagreeable odors.

Section 6. Vermin Control. (1) Effective measures to control the presence of rodents, flies, roaches, and other vermin on the premises shall be utilized. The premises shall be kept in a[such] condition as to prevent the harborage or breeding of vermin.

(2) Openings to the outside shall be protected against the entrance of rodents, insects, and other vermin by tight-fitting, self-closing doors, closed windows, screening, or controlled air currents[, or other acceptable means]. Screening material shall not be less than sixteen (16) mesh to one (1) inch.

Section 7. Bedding. (1) As a minimum, each inmate in a state confinement facility shall be provided with:

- (a) An approved flame-retardant and water-repellent mattress and pillow;
- (b) A pillowcase;
- (c) A sheet or cloth mattress cover; and
- (d) A blanket.

(2) If, in the sound discretion of the appropriate person in charge of the state confinement facility, any items listed in this section would constitute a danger or hazard to the inmate confined due to a behavior or mental condition, the[such] items may be withheld.

(3) Mattresses, pillows, blankets, sheets, pillowcases, and mattress covers shall be kept in good repair and clean.

(4) Sheets, pillow cases, and mattress covers, if used without sheets, shall be changed and laundered at least weekly and before being issued to another inmate.

Section 8. Exercise. Adequate space shall be provided within the state confinement facility to allow all inmates an opportunity to

obtain physical exercise.

Section 9. Medical Examination Room. Adequate space shall be provided within the state confinement facility to allow for medical examination of inmates.

Section 10. Food Service. All state confinement facilities shall comply with the food service provisions of 902 KAR 45:005[KRS 219.011 to 219.081 and 219.991 and the State Food Service Code]. If food for inmates is not prepared by the state confinement facility, food shall be obtained from a commercial food service establishment holding a valid permit from the cabinet.

Section 11.[40.] Food Manufacturing. All food manufacturing and processing conducted at state confinement facilities shall be operated pursuant to 902 KAR 45:160[applicable public health laws and administrative regulations of the cabinet].

Section 12.[44.] Existing Facilities and Equipment. ~~[Notwithstanding the other provisions of this administrative regulation,]~~ Facilities and equipment being used by existing state confinement facilities, which do not fully meet the design and construction requirements of this administrative regulation, may be continued in use, if the facility or equipment:

(1) Is in good repair;

(2) Is[-] capable of being maintained in a sanitary condition;[-] and

(3) Does not create a[creates no] health hazard.

Section 13.[42.] Plan Review of Construction. Plans for alteration or new construction of state confinement facilities shall be submitted to the appropriate agencies for approval.

Section 14.[43.] Inspection of State Confinement Facilities. (1) At least once each six (6) months, the cabinet shall inspect each state confinement facility and shall make as many additional inspections and reinspections as are necessary for carrying out the provisions of this administrative regulation.

(2) When an agent of the cabinet makes an inspection of a state confinement facility, the findings shall be recorded on the DFS-316, Confinement Facility Inspection Report[Correctional Facilities Inspection Form], and a copy shall be provided to the warden or superintendent[he shall record his findings on an official cabinet inspection report form and provide the supervising and maintaining authorities with a copy of the report]. If a deficiency is found, the inspection report shall:

(a) Set forth the specific deficiencies found;

(b) Identify any variances previously granted;

(c) Establish a specific and reasonable period of time for the correction of the deficiency found; and

(d) State that failure to comply with any notice issued pursuant to the provisions of this administrative regulation may result in the initiation of legal action.

Section 15.[44.] Enforcement Hearings. For purposes of enforcement, ~~if[whenever] the warden or superintendent has[supervising and maintaining authorities have] failed to comply with any written notice or order issued under the provisions of this administrative regulation, they shall be notified in writing that legal action may be instituted against the state confinement facility in accordance with KRS 211.935[-], and the supervising and maintaining authorities, at the end of ten (10) working days following service of the notice, unless a written request for a hearing is filed with the cabinet, by the supervising and maintaining authorities, within the ten (10) working day period. All administrative hearings shall be conducted in accordance with 902 KAR 1:400].~~

Section 16.[45.] Variance Hearings. (1) A warden or superintendent[Any supervising and maintaining authority] of a state confinement facility may request in writing that the cabinet consider granting a variance to any provision of this administrative regulation.

(2) A written request[requests] for a variance shall include all pertinent information about the facility, the specific provision[provision(s)] of the administrative regulation affected, the specific reason[reason(s)] for the request, and evidence in support of the request.

(3) Upon receipt of a request for a variance, the cabinet shall review the request and establish a date, time, and location for the convening of an administrative hearing.

(4)[All administrative hearings shall be conducted in accordance with 902 KAR 1:400.] The requesting authority shall be notified of the date, time, and location of the hearing within ten (10) working days of the receipt of the request, and at least five (5) working days prior to the date of the hearing.

(5)[(4)] The hearing officer shall[may] recommend that the[a] variance be granted or denied, and may recommend that legal action be pursued.

(6)[(5)] A variance shall[may] only be granted upon written determination that the variance[granting thereof] will not endanger the health of those confined in the facility or the public health. Any variance so granted may be with or without stipulations or restrictions.

Section 17. Incorporation by Reference. (1) DFS-316, **Confinement Facility Inspection Report["Correctional Facilities Inspection Form"]**, 10/18, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Environmental Management Branch, Division of Public Health Protection and Safety, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JEFFREY D. HOWARD, JR., M.D., Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: May 9, 2019

FILED WITH LRC: May 14, 2019 at 4 p.m.

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky, email CHFSregs@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Behavioral Health, Developmental
and Intellectual Disabilities
Division of Behavioral Health
(As Amended at ARRS, July 10, 2019)

908 KAR 1:370. Licensing procedures, fees, and general requirements for nonhospital-based alcohol and other drug treatment entities.[Licensing procedures and standards for persons and agencies operating nonmedical and nonhospital-based alcohol and other drug abuse treatment programs.]

RELATES TO: KRS 13B.050, 13B.125, 17.500, 209.030, 214.181, 214.625, 216B.020(2), 222.003, 222.005, 222.231, 222.271, 222.441, 222.462, 222.990, 309.080, 309.0831, 309.130, 311.571, **311.840(3)**, 314.011, 319.050, 319.056, 319.064, 335.080, 335.100, 335.300, 335.500, 422.317, 439.3401, 620.030, 42 C.F.R. Part 2, 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320d-2-1320d-8, 42 U.S.C. 290ee-3[222.003(1), 222.005, 222.231, 222.990]

STATUTORY AUTHORITY: KRS 222.231(2)[194A.050, 222.231, EO 2004-726]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 222.231(2) requires the cabinet to promulgate administrative regulations to establish requirements and standards for treatment programs, including licensing fees, application, procedures for renewal and revocation, procedures for program evaluation, and minimum operating, training, and maintenance of patient records standards. This administrative regulation establishes licensing procedures, fees, responsibilities of the governing authority, quality assurance and utilization review, policies and procedures, staff qualifications and training, client rights, client records, assessment,

treatment planning, and adverse action procedures for outpatient and residential alcohol and other drug treatment entities.[EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and Family and placed the Department for Behavioral Health, Developmental and Intellectual Disabilities within the cabinet. KRS 194A.050 and 222.231 require the cabinet to establish requirements and standards for licensing a person or an agency and approving nonmedical and nonhospital-based alcohol and other drug abuse treatment programs. KRS 194A.050 places the Behavioral Health, Developmental and Intellectual Disabilities Services and its programs under the Cabinet for Health and Family Services. This administrative regulation establishes licensure requirements which establish minimum standards for a person or an agency operating a nonmedical or nonhospital-based alcohol and other drug abuse detoxification, residential, residential transitional living, outpatient, or intensive outpatient program.]

Section 1. Definitions. (1) "Agency" is defined by KRS 222.005(2).

(2) "Adverse action" means action taken by the cabinet to deny, suspend, or revoke an alcohol and other drug treatment entity's license to operate.

(3) "Alcohol and other drug treatment entity" or "AODE" means a nonhospital-based agency owned by an individual or entity that provides one (1) or more of the following services or operates one (1) or more of the following programs:

(a) Outpatient treatment services;

(b) Intensive outpatient services;

(c) Partial hospitalization;

(d) Withdrawal management services, including medication-assisted treatment;

(e) A non-physician owned facility that employs or has an affiliation with a physician or advanced practice registered nurse who provides office-based opiate treatment services to fifty (50) percent or more of the facility's patients;

(f) A narcotic treatment program (NTP) utilizing methadone, ~~or~~ buprenorphine, **or other FDA-approved drug formulations;**

(g) A residential treatment program;

(h) A family residential program;

(i) A residential transitional living program; or

(j) An adolescent residential program.

(4) "Cabinet" is defined by KRS 222.005(4).

(5) "Case management" means a collaborative process of assessment, planning, facilitation, care coordination, evaluation, and advocacy for options and services to meet a client's and his or her family's needs through communication and available resources to promote quality, cost-effective outcomes.

(6) "Co-occurring disorder" means concurrent substance use disorder and mental health disorder and shall not carry implication as to:

(a) Which disorder is primary and which secondary;

(b) Which disorder occurred first; or

(c) Whether one disorder caused the other.

(7) "Outpatient service" means an organized nonresidential service in which addiction and mental health treatment personnel provide professionally directed evaluation and treatment for substance-related, addictive, and mental disorders.

(8) "Residential" means a setting that provides twenty-four (24) hour structure and support in which addiction and mental health treatment personnel provide organized and intensive individual and group therapeutic activities to strengthen a client's recovery skills.

(9) "Significant financial interest" means lawful ownership of an AODE, whether by share, contribution, or otherwise in an amount equal to or greater than twenty-five (25) percent of total ownership of the AODE.

Section 2. Licensure Application and Fees. (1) Unless exempt in accordance with subsection (2) of this section, any person, organization, corporation, community mental health center, or driving under the influence program planning to operate an outpatient or residential AODE shall submit the following to the cabinet:

(a) A completed Application for License to Operate a

Nonhospital-based Alcohol and Other Drug Treatment Entity (AODE) and any required documentation:

(b) A licensure fee of \$500; and
(c) A fee of eighty (80) dollars per outpatient AODE extension site that is:

1. Separate from the outpatient parent facility; and
2. Not located in a school or other community-based setting that is not operated by the outpatient AODE.

(2) The following settings shall be exempt from licensure as an AODE:

(a) A program or activity of a voluntary self-help organization or community group exempt in accordance with KRS 222.003(1) or (2);

(b) A licensed chemical dependency treatment service exempt in accordance with KRS 222.231(1);

(c) A department, agency, or institution of the federal government exempt in accordance with KRS 222.231(1);

(d) A federally certified rural health clinic or a federally qualified health center that provides services to patients with behavioral health or psychiatric conditions, including substance use disorder;

(e) The private office or clinic of a practitioner in accordance with KRS 216B.020(2);

(f) A licensed psychiatric residential treatment facility that provides outpatient behavioral health services to individuals who are age twenty-one (21) or younger and have been diagnosed with substance use disorder; or

(g) A residential crisis stabilization unit licensed in accordance with 902 KAR 20:440.

(3) An outpatient or residential AODE program shall not admit clients until the program has obtained a license from the cabinet to operate the specific modality or modalities of treatment referenced on its application.

(4) An entity shall be subject to penalties in accordance with KRS 222.990(2) if the program operates a private facility without obtaining licensure as required by KRS 222.231(1).

(5) Once licensed, an outpatient or residential AODE shall submit a completed Application for License to Operate a Nonhospital-based Alcohol and Other Drug Treatment Entity (AODE) accompanied by the same licensure fee identified in subsection (1)(b) and (c) of this section to the cabinet annually for license renewal.

(6) Extension site locations shall not be allowed for the following levels of care:

(a) A residential AODE program that operates in accordance with this administrative regulation and 902 KAR 1:372;

(b) A non-physician owned facility that provides office-based opiate treatment services in accordance with this administrative regulation and 902 KAR 1:374, Section 6; or

(c) An NTP that operates in accordance with this administrative regulation and 902 KAR 1:374, Section 7.

Section 3. Licenses and Authority to Enter Upon Premises. (1) A license shall be conspicuously posted in a public area of the outpatient or residential AODE at all times.

(2) If more than one (1) AODE operates at the same location, each AODE shall maintain a separate organizational identity by:

(a) Conspicuously posting a sign in a public area showing the name of the AODE;

(b) Using a separate logo or letterhead on written materials;

(c) Maintaining client records in a separate and secure cabinet; and

(d) Providing treatment services separate from another AODE located at the same location.

(3) A survey visit or complaint investigation by cabinet staff shall be unannounced.

(4) ~~An [A non-accredited]~~ outpatient or residential AODE shall be subject to an annual survey visit.

~~(5) [An outpatient or residential AODE that provides the cabinet with documentation that the AODE is fully accredited by the Joint Commission, Commission on Accreditation of Rehabilitation Facilities, Council on Accreditation, or other nationally recognized accrediting organization with comparable standards shall be subject to an on-site survey~~

visit at least once every two (2) years.

(6) Nothing in this administrative regulation shall prevent the cabinet from:

(a) Conducting an investigation related to a complaint; or

(b) Making an on-site survey of ~~an [a fully accredited]~~ AODE more often ~~[than once every two (2) years]~~ if the cabinet deems necessary.

(6) ~~(7)~~ For an outpatient AODE ~~program [programs]~~ operating an NTP, unannounced monitoring visits may ~~be~~:

~~(a) Be conducted more frequently; and~~

~~(b) occur in conjunction with the Center for Substance Abuse Treatment (CSAT) and the Drug Enforcement Administration (DEA).~~

(7) ~~(8)~~ (a) A representative of the cabinet shall have access to the AODE during business hours.

(b) An applicant for licensure or a current licensee shall not deny access to a representative of the cabinet, after proper identification, to make an inspection for determining compliance with the licensure requirements under:

1. 908 KAR 1:370;

2. 908 KAR 1:372; or

3. 908 KAR 1:374.

(c) 1. Denial of access, including any effort to delay, interfere with, or obstruct an effort by a representative of the cabinet to enter the AODE, or deny access to records relevant to the inspection shall result in disciplinary action, including denial, revocation, modification, or suspension of the AODE's license.

2. Denial, revocation, modification, or suspension of an AODE's license shall be subject to appeal in accordance with KRS 222.231(6).

(d) An inspection of an AODE shall be conducted as follows:

1. The inspection shall be made at any time during the licensee's hours of operation;

2. The inspection shall be limited to ensure compliance with the standards set forth in 908 KAR 1:370, 908 KAR 1:372 or 908 KAR 1:374, and KRS Chapter 222; and

3. The inspection, if based on a complaint or a follow-up visit, shall not be limited in scope to the basis of the complaint or the implementation of a plan of correction.

Section 4. Change of Status. (1) Name change.

(a) An outpatient or residential AODE shall:

1. Notify the cabinet in writing within ten (10) calendar days of the effective date of a change in the facility's name; and

2. Submit a processing fee of twenty-five (25) dollars.

(b) The cabinet shall issue a new license for the remainder of the licensure period unless the AODE is under investigation that may result in a negative licensure action in accordance with Section 20 of this administrative regulation.

(2) Change of location. An AODE shall not change the location where a program is operated, including a change in an outpatient extension site's location, until an Application for Licensure to Operate an Alcohol or Drug Treatment (AODE) accompanied by a processing fee of eighty (80) dollars is filed with the cabinet.

(3) Change of ownership.

(a) The new owner of an AODE shall submit to the cabinet an Application for License to Operate a Nonhospital-based Alcohol and Other Drug Treatment Entity (AODE) accompanied by a fee of \$500 within ten (10) calendar days of the effective date of the ownership change.

(b) A change of ownership shall be deemed to occur if more than twenty-five (25) percent of an existing AODE or capital stock or voting rights of a corporation is purchased, leased, or otherwise acquired by one (1) person from another.

(c) An individual, shareholder, or legal entity shall not acquire a significant financial interest in an AODE if that individual, shareholder, or legal entity previously held a significant financial interest in a licensed facility that had its license or certificate to operate denied, suspended, revoked, or voluntarily relinquished as the result of an investigation or adverse action that placed patients, residents, or clients at risk of death or serious harm within the preceding seven (7) years.

(4) Voluntary closure. If an outpatient or residential AODE

voluntarily ceases to operate, the AODE shall notify the cabinet in writing within ten (10) calendar days of closure.

Section 5. Violations. (1) The cabinet shall notify an outpatient or residential AODE in writing of a regulatory violation identified during an inspection.

(2) The outpatient or residential AODE shall submit to the cabinet, within ten (10) calendar days of the notice, a written plan for the correction of the regulatory violation.

(3) The plan of correction shall be signed by the AODE's administrator, the licensee, or a person designated by the licensee and shall specify:

(a) The date by which the violation shall be corrected;

(b) The specific measures utilized to correct the violation; and

(c) The specific measures utilized to ensure the violation will not recur.

(4) The cabinet shall review the plan of correction and notify the AODE in writing of the decision to:

(a) Accept the plan;

(b) Not accept the plan; or

(c) Deny, suspend, or revoke the license for a substantial regulatory violation in accordance with KRS 222.231(6).

(5) The notice specified in subsection (4)(b) of this section shall:

(a) State the specific reasons the plan is unacceptable; and

(b) Require an amended plan of correction within ten (10) calendar days of receipt of the notice by the AODE.

(6) The cabinet shall review the amended plan of correction and notify the AODE in writing of the decision to:

(a) Accept the plan;

(b) Deny, suspend, or revoke the license for a substantial regulatory violation in accordance with KRS 222.231(6); or

(c) Require the AODE to submit an acceptable plan of correction.

(7) An AODE that fails to submit an acceptable amended plan of correction may be notified that the license will be denied, suspended, or revoked in accordance with KRS 222.231(6).

Section 6. Governing Authority. (1) An outpatient or residential AODE shall have a governing authority that shall be legally responsible for the management, operation, and financial viability of the AODE.

(2) The governing authority shall:

(a) Establish the AODE's mission and purpose;

(b) Ensure that the AODE is operating in accordance with its mission and in the case of a non-profit, the purpose for which it was granted tax-exemption;

(c) Appoint an administrator who shall:

1. Be principally responsible for the day-to-day operation of the AODE; and

2. Ensure that information is provided in response to a request by the cabinet for data collected in accordance with KRS 222.462(2)(b);

(d) Establish a client fee schedule;

(e) Ensure that the client fee schedule is posted in a public area of the outpatient or residential AODE;

(f) Maintain financial records regarding the assessment and payment of client fees;

(g) Oversee the implementation of policies and procedures, and ensure that they are available to all personnel and maintained **electronically or in hard copy** at the AODE's administrative office; and

(f) Ensure that an AODE's policies and procedures are reviewed every two (2) years and revised as needed.

Section 7. Quality Assurance and Utilization Review. (1) An outpatient or residential AODE shall have a quality assurance and utilization review program designed to:

(a) Enhance treatment and care through the ongoing objective assessment of services provided, including the correction of identified problems; and

(b) Provide an effective mechanism for review and evaluation of the service needs of clients.

(2) An outpatient or residential AODE shall have a utilization review team that shall:

(a) Be made up of a representative sample of the AODE's clinical staff responsible for providing services;

(b) Assess the appropriateness and clinical necessity of client admissions;

(c) Evaluate the need for continuing services immediately upon a change in a client's service needs or a change in the client's condition to ensure that proper arrangements have been made for:

1. Discharge;

2. Transfer; or

3. Referral to another service provider, if appropriate; and

(d) Submit a written record of findings related to inappropriate patterns of service accompanied by recommended action for correcting a problem to the administrator or other individual with overall responsibility for the program's treatment services.

Section 8. Co-occurring Services. (1) An outpatient or residential AODE shall:

(a) Screen for co-occurring disorders; and

(b) Treat or refer a client in need of co-occurring services.

(2) An outpatient or residential AODE that provides substance use disorder treatment to clients diagnosed with a co-occurring disorder shall have clearly written policies and procedures that:

(a) Govern the integrated treatment of substance use and mental health treatment, which shall include screening, assessment, diagnosis, and service provision;

(b) Allow for the use of psychiatric medication when indicated;

(c) Include developing and maintaining affiliation agreements, case consultation, and a referral mechanism to mental health treatment services in order to facilitate the provision of integrated treatment services; and

(d) Include the qualifications of clinical staff responsible for screening, assessing, diagnosing, and treating clients with co-occurring disorders as follows:

1. Only licensed individuals whose scope of practice allows them to render a diagnosis for both mental health disorder and substance use disorder may assess and diagnose clients with co-occurring disorders; and

2. The AODE shall ensure that clinical supervision is provided by staff possessing clinical credentials necessary to provide clinical supervision to any staff person who renders treatment and services to clients diagnosed with co-occurring disorders.

Section 9. Implementation of Policies and Procedures. (1) An outpatient or residential AODE shall have written policies and procedures to:

(a) Establish a system for responding to an:

1. Accident or injury that requires hospitalization or results in death; or

2. Incident that involves fire damage, a natural disaster, or threat to security that substantially interrupts the delivery of services;

(b) Document the accident, injury, or incident in an incident file maintained **electronically or in hard copy** at the AODE's administrative office; and

(c) Report an incident, injury, or accident to the:

1. AODE's administrator;

2. Parent or guardian of a client under the age of eighteen (18); and

3. Cabinet for Health and Family Services if the report is required by:

a. KRS 620.030 in the case of suspected child dependency, abuse, or neglect; or

b. KRS 209.030 in the case of suspected adult abuse, neglect, or exploitation.

(2) An outpatient or residential AODE shall have a written emergency plan for responding to a disaster at the facility, including safety procedures in the event of a fire, severe weather, or other threatening situation as follows:

(a) The emergency plan shall be conspicuously posted in a public area of each AODE;

(b) A copy of the emergency plan shall be provided to all

personnel:

(c) The AODE shall provide training for all personnel on how to:

1. Report a fire;
2. Extinguish a small fire; and
3. Evacuate a building; and

(d) The AODE shall maintain a written record of practiced fire drills.

(3)(a) An outpatient or residential AODE shall have written policies and procedures that:

1. Establish a system to effectively respond to problems associated with domestic violence among clients served in the AODE; and

2. Include the requirements established in paragraphs (b), (c), and (d) of this section.

(b) The AODE shall provide training for clinical staff on the dynamics of domestic violence, including:

1. The effect of domestic violence on adult and child victims;
2. Legal remedies for protection;
3. Safety and risk issues;
4. Available community services;
5. Victim services; and
6. Applicable reporting requirements.

(c) The AODE shall assess a client with a history of domestic violence for current safety risks.

(d) The AODE shall implement measures to reduce safety risks to:

1. A client with a history of domestic violence;
2. Other clients; and
3. Staff.

(4) An outpatient or residential AODE shall have written policies and procedures that include:

(a) A written description of each program, including philosophy, mission statement, goals, objectives, and staffing;

(b) Admission, readmission, discharge, and transfer criteria; and

(c) Procedures for making a referral within the AODE or to another service provider, if appropriate.

(5) An outpatient or residential AODE shall have written policies and procedures for implementation of a language access plan to:

(a) Address reasonable accommodation for communication access services for a client who:

1. Has a visual impairment;
2. Is deaf or hard of hearing;
3. Is unable to comprehend or communicate due to a language barrier; or
4. Has a different linguistic background;

(b) Provide for appropriate auxiliary aids and services, including assistive listening devices, realtime captioning, or sign language interpreters, if needed;

(c) Ensure that programs and activities provided through electronic and information technology are accessible to a client with a disability; and

(d) Allow for language assistance services, including oral language assistance or written translation for a client with a different linguistic background.

(6) An outpatient or residential AODE shall have a written personnel policy that includes a:

(a) Job description and qualifications for each personnel category, including duties and reporting supervisor;

(b) Description of the duties and supervision of volunteers and student interns; and

(c) Written plan that describes a coordinated program for staff education, including:

1. Orientation of personnel to the policies and objectives of the organization;

2. On-the-job training, if necessary; and

3. Orientation and basic education about the prevalence of

trauma, including training that:

a. Covers the dynamics of retraumatization;

b. Helps create a trauma-informed environment to ensure that all staff are knowledgeable in evidence-based practices that avoid

institutional processes that may retraumatize a client with a history of trauma; and

c. Assists in the implementation of trauma-informed practices across domains and standards, which may include:

- (i) Admissions;
- (ii) Environmental standards;
- (iii) Screening and assessment processes;
- (iv) Referrals to other services;
- (v) Treatment planning;
- (vi) Confidentiality;
- (vii) Ethics;
- (viii) Overdose prevention; and
- (ix) Discharge.

(7) An outpatient or residential AODE shall have written policies and procedures governing client grievances, including:

(a) Identification of an AODE ombudsman;

(b) A process for filing a written client grievance;

(c) An appeals process with time frames for filing and responding to a grievance in writing;

(d) Protection of a client from interference, coercion, discrimination, or reprisal; and

(e) Conspicuous posting of the grievance procedures in a public area to inform a client of:

1. His or her right to file a grievance;
2. The process for filing a grievance; and
3. The address and telephone number of the AODE's and

cabinet's ombudsman.

(8) If alcohol or drug testing is conducted as part of assessment, treatment, or discharge, an outpatient or residential AODE shall have written policies and procedures that outline the screening process and the indications for testing positive.

(9)(a) An AODE shall have a written policy to address the:

1. Use and misuse of alcohol or illegal drugs; and
2. Misuse of prescription drugs.

(b) The policy shall apply to all clients and their visitors while on the campus of the program.

(10) An AODE that provides services to clients under age eighteen (18) shall have written policies and procedures to ensure that:

(a) Services and educational materials are developmentally appropriate; and

(b) The client's family is involved in his or her treatment to the extent possible and appropriate with the written consent of a client.

Section 10. Qualifications and Responsibilities of the Clinical Services Supervisor.

(1) A clinical services supervisor hired by an AODE shall complete:

(a) Twelve (12) hours of specialized training in clinical supervision within six (6) months from the date of assuming the position of supervisor;

(b) At least three (3) hours of training in clinical supervision annually; and

(c) At least ten (10) hours of training in alcohol and other drug abuse counseling annually.

(2) The clinical services supervisor:

(a) May provide supervision at more than one (1) AODE facility;

(b) Shall not supervise a spouse, child, stepchild, sibling, parent, stepparent, grandparent, grandchild, aunt, uncle, niece, nephew, or in-law;

(c) Shall be responsible for all treatment services provided by the AODE;

(d) Shall ensure that the client treatment plan required by Section 19 of this administrative regulation addresses both of the client's co-occurring disorders, if applicable; and

(e) Shall maintain documentation of each clinical supervisory session with each clinician under supervision, including the:

1. Date;
2. Length of the session; and
3. Content of the supervision.

(3) The clinical services supervisor shall be:

(a) A certified alcohol and drug counselor (CADC) as defined

by KRS 309.080(2) with 4,000 hours of clinical work experience post certification;

(b) A licensed clinical alcohol and drug counselor (LCADC) as defined by KRS 309.080(4); or

(c) An individual who meets the training requirements of subsection (4) of this section and is licensed or certified as one (1) of the following:

1. Physician licensed in Kentucky to practice medicine or osteopathy in accordance with KRS 311.571, or a medical officer of the government of the United States while engaged in the performance of official duties;

2. Psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;

3. Psychologist licensed and practicing in accordance with KRS 319.050;

4. Certified psychologist with autonomous functioning or a licensed psychological practitioner practicing in accordance with KRS 319.056;

5. Person currently authorized to use the title of "certified psychologist" under KRS 319.056(3) and has 6,000 hours of postcertification practice certified by the Kentucky Board of Examiners of Psychology;

6. Psychological associate practicing in accordance with KRS 319.064 and has 6,000 hours of postcertification practice certified by the Kentucky Board of Examiners of Psychology;

7. Clinical social worker licensed and practicing in accordance with KRS 335.100;

8. Social worker certified and practicing in accordance with KRS 335.080 and has 6,000 hours of postcertification clinical practice in psychiatric social work;

9. Registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314 with a masters degree in psychiatric nursing from an accredited college or university and 6,000 hours of clinical experience in psychiatric nursing;

10. Registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314 with a bachelor's degree in nursing from an accredited college or university, who is certified as a psychiatric and mental health nurse by the American Nurses Association, and who has 6,000 hours of clinical experience in psychiatric nursing;

11. Marriage and family therapist licensed and practicing in accordance with KRS 335.300;

12. Professional clinical counselor licensed and practicing in accordance with KRS 335.500; or

13. Licensed professional art therapist as defined by KRS 309.130(2).

(4) A clinical services supervisor who is a licensed or certified health care professional as described by subsection (3)(c) of this section shall:

1. Complete eighty (80) hours of training in alcohol and other drug abuse counseling within:

a. Four (4) years immediately prior to the date of assuming responsibility as a clinical services supervisor in the AODE; or

b. Two (2) years immediately after assuming responsibility as a clinical services supervisor in the AODE; and

2. Have 4,000 hours of work experience in the alcohol and other drug treatment field post degree.

Section 11. Qualifications and Responsibilities of Clinicians. (1) An outpatient or residential AODE shall hire clinicians who:

(a) Shall be responsible for conducting assessments and treatment planning;

(b) Shall be responsible for leading counseling sessions; and

(c) May be responsible for providing case management.

(2) A clinician shall complete a minimum of ten (10) hours of training in alcohol and other drug abuse counseling annually.

(3) In addition to the annual training required by subsection (2) of this section, a clinician who provides case management shall complete twelve (12) hours of specialized training in case management within six (6) months from the date of assuming

responsibility for case management services.

(4) A clinician shall be:

(a) An LCADC as defined by KRS 309.080(4);

(b) A CADC as defined by KRS 309.080(2);

(c) An individual who meets the training requirements of subsection (5) of this section and is licensed or certified as one (1) of the following:

1. Physician licensed in Kentucky to practice medicine or osteopathy in accordance with KRS 311.571, or a medical officer of the government of the United States while engaged in the performance of official duties;

2. Psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;

3. Psychologist licensed and practicing in accordance with KRS 319.050;

4. Certified psychologist with autonomous functioning or a licensed psychological practitioner practicing in accordance with KRS 319.056;

5. Person currently authorized to use the title of certified psychologist in accordance with KRS 319.056(3);

6. Psychological associate practicing in accordance with KRS 319.064;

7. Clinical social worker licensed and practicing in accordance with KRS 335.100;

8. Social worker certified and practicing in accordance with KRS 335.080;

9. Registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314 with a masters degree in psychiatric nursing from an accredited college or university;

10. Registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314 with one (1) of the following combinations of education and work experience:

a. Bachelor of science in nursing from a four (4) year program from an accredited college or university and 2,000 hours of clinical work experience in the substance abuse or mental health field;

b. Diploma graduate in nursing from a three (3) year program and 4,000 hours of clinical work experience in the substance abuse or mental health field; or

c. Associate degree in nursing from a two (2) year program from an accredited college or university and 6,000 hours of clinical work experience in the substance abuse or mental health field;

11. Advanced practice registered nurse as defined by KRS 314.011(7);

12. Marriage and family therapist licensed and practicing in accordance with KRS 335.300;

13. Professional clinical counselor licensed and practicing in accordance with KRS 335.500; **or**

14. Licensed professional art therapist as defined by KRS 309.130(2); or

15. Physician assistant as defined by KRS 311.840(3); or

(d) An individual who has a bachelor's degree in any field from an accredited college or university and meets the following requirements:

1. Works under the supervision of a clinical services supervisor;

2. Receives at least four (4) hours of face-to-face clinical supervision monthly during at least two (2) supervisory meetings;

3. Meets the training requirements of subsection (5) of this section;

4. Has all treatment plans cosigned by the clinical services supervisor within ten (10) business days; and

5.a. Obtains temporary certification as an alcohol and drug counselor (TCADC) from the Kentucky Board of Alcohol and Drug Counselors within two (2) months of the date of employment as a clinician, if the clinician's bachelor's degree is in an area other than the field of human services; or

b. Was employed as a clinician by an AODE prior to the effective date of this administrative regulation and has maintained continuous employment as a clinician.

(5) A clinician as described by subsection (4)(c) or (d) of this

subsection shall complete eighty (80) hours of training in alcohol and other drug abuse counseling within:

(a) Four (4) years immediately prior to the date of assuming responsibility as a clinician in the AODE; or

(b) Two (2) years immediately after assuming responsibility as a clinician in the AODE.

Section 12. Qualifications and Responsibilities of Case Managers. (1) A case manager employed by an outpatient or residential AODE shall:

(a) 1. Have a bachelor's degree from an accredited college or university; or

2. Be a CADC as defined by KRS 309.080(2);

(b) Successfully complete a department-approved case management training within six (6) months of employment as a case manager; and

(c) Successfully complete **ten (10)[twenty (20)]** hours of continuing education in alcohol and other drug-relevant training annually.

(2) Case management services shall be based on the:

(a) Goals established in the client's clinical assessment; and

(b) Development of an individualized person-centered treatment plan that identifies the case management activities that support implementation of the plan.

(3) A case manager shall not exceed a case load size of thirty (30) unique clients.

Section 13. Peer Support Specialists. A peer support specialist employed by an outpatient or residential AODE shall:

(1) Complete six (6) hours of training in the area of substance use disorder annually;

(2) Attest in writing to at least one (1) year of recovery; and

(3)(a) Be a registered alcohol and drug peer support specialist in accordance with KRS 309.0831; or

(b) Meet the requirements of:

1. 908 KAR 2:220;

2. 908 KAR 2:230; or

3. 908 KAR 2:240.

Section 14. Personnel records. A personnel record shall be kept at the outpatient or residential AODE's administrative office on each staff member and contain the following information:

(1) Name and address;

(2) Verification of all training and experience, including licensure, certification, registration, or renewals;

(3) Verification of submission to the background check requirements of Section 15 of this administrative regulation;

(4) Annual performance appraisals; and

(5) Employee incident reports.

Section 15. Background checks. (1) All staff of an outpatient or residential AODE who have job duties that involve providing services to a client, or who may have one-on-one contact with a client shall:

(a) Have a criminal record check performed upon initial hire through the Administrative Office of the Courts or the Kentucky State Police; and

(b) Not have a criminal conviction, or plea of guilty, to a:

1. Sex crime as specified in KRS 17.500;

2. Criminal offense against a minor as specified in KRS 17.500; or

3. Felony offense related to neglect, physical abuse, sexual abuse, or exploitation of a child.

(2) An outpatient or residential AODE that provides services to clients under age eighteen (18) shall not employ as clinical personnel anyone listed on the central registry established by 922 KAR 1:470.

(a) If a central registry check has been submitted for an individual and is pending, the individual:

1. May be hired pending the results of the registry check; and

2. Shall not be left unsupervised with a client under eighteen (18) years of age.

(b) An employee shall be dismissed immediately if the results of the check show the individual is listed on the central registry.

(3) An outpatient or residential AODE shall perform annual criminal record checks as described in paragraph (a) of this subsection on a random sample of at least twenty-five (25) percent of all personnel.

Section 16. Client Rights. (1) An outpatient or residential AODE shall establish, implement, and conspicuously post written policies and procedures regarding the rights of clients.

(2) The notice of client rights shall include the address and telephone number of the:

(a) Cabinet's ombudsman; and

(b) AODE's ombudsman or personnel responsible for handling client grievances.

(3) A client shall not be unlawfully discriminated against in determining eligibility for a treatment program.

(4) During an outpatient or residential AODE's intake procedures, a client shall sign a statement that specifies that the client has the right to:

(a) Give informed consent to receive a service, in which case:

1. An adult shall sign an informed consent to receive a service; or

2. A client under age eighteen (18) who suffers from substance use disorder or a parent, caregiver, or person who has custodial control of a client under age eighteen (18) shall sign an informed consent for the client to receive a service in accordance with KRS 222.441;

(b) Have input into his or her treatment plan and be informed of the plan's content;

(c) Receive individualized treatment;

(d) File a grievance, recommendation, or opinion regarding the services the client receives;

(e) Give informed written consent regarding participation in a research study, with the exception of a client under age eighteen (18) whose parent or guardian shall give informed written consent;

(f) Confidentiality of information in accordance with the following:

1. A federally-assisted AODE in accordance with 908 KAR 1:320; or

2. A nonfederally-assisted AODE in accordance with KRS 222.271(1);

(g) Request a written statement of charges for services and be informed of the policy for the assessment and payment of client fees;

(h) Be informed of the rules of client conduct, including the consequences for using alcohol or other drugs, or other infractions that may result in:

1. Further assessment;

2. Modification of the treatment approach;

3. Transfer to a higher intensity level of treatment; or

4. Disciplinary action or discharge, after review and consideration of alternative interventions, which shall be documented in the client's record with an explanation for any decision involving disciplinary action or discharge;

(i) Be treated with consideration, respect, and personal dignity;

(j) Review his or her client record in accordance with the AODE's policy; and

(k) Receive one (1) free copy of his or her client record in accordance with KRS 422.317.

(5) The statement of client rights shall be:

(a) Provided to the client;

(b) Provided to the client's parent, guardian, or other legal representative, in addition to the client, and upon consent of the client, if the client is under the age of eighteen (18) or incapacitated; and

(c) Read to the client or upon consent of the client, read to the client's parent, guardian, or other legal representative, if requested.

(6) A residential AODE providing twenty-four (24) hour care shall specify on the client rights statement that a client has the right to:

(a) Vote in a political election, if age eighteen (18) or over;

(b) Reasonable accommodations to afford privacy in bathing and toileting; and

(c) Privileges in accordance with KRS 222.271(2).

(7) An outpatient AODE that operates an NTP shall specify on the client rights statement that a client has the right to:

(a) Request a hearing, if the client is involuntarily discharged, so long as the hearing is requested within forty-eight (48) hours of receipt of written notice of discharge;

(b) Continued treatment pending the outcome of the hearing; and

(c) Representation at the hearing by an attorney or other person chosen by the client.

(8) If a client is restricted from exercising a client right because it is contraindicated by the client's physical or mental condition, there shall be documentation in the client record stating the reason for the restriction and the explanation given to the client.

Section 17. Client Records. (1) A client record shall be maintained for each individual receiving services.

(2) Each entry shall be signed and include the date the service was provided.

(3) All information regarding a client's human immunodeficiency virus status shall be kept confidential in accordance with KRS 214.181 and 214.625.

(4) Each client record shall contain:

(a) An identification sheet, including:

1. Client's name, address, age, gender, and marital status;

2. Expected source of payment; and

3. Referral source;

(b) Consent of appropriate family members or guardians for admission, evaluation, and treatment, if applicable;

(c) Application for admission, including intake information;

(d) A biopsychosocial assessment;

(e) Health status questionnaire or a copy of the record of a physical health examination;

(f) Consent form, fee agreement, and statement of client rights, each signed by the client;

(g) Client's treatment plan;

(h) Progress notes;

(i) Aftercare plan;

(j) Authorization for release of information, signed by the client; and

(k) Discharge summary.

(5) Ownership.

(a) Client records shall be the property of the AODE.

(b) The original client record shall not be removed from the AODE except by court order or subpoena.

(c) Copies of a client record or portions of the record may be used and disclosed in accordance with subsection (7) of this section.

(6) Retention of records. After a client's death or discharge, the completed client record shall be placed in an inactive file and:

(a) Retained for six (6) years; or

(b) Three (3) years after the client reaches the age of majority under state law, if a minor, whichever is the longer.

(7) Confidentiality and Security: Use and Disclosure.

(a) The AODE shall maintain the confidentiality and security of client records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 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, including 42 U.S.C. 290 ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

(b) The AODE may use and disclose client records in accordance with:

1. HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164; or

2. 42 U.S.C. 290 ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

(c) An AODE 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, or 42 U.S.C. 290 ee-3, and the

Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

Section 18. Client Assessment. (1) Except in a residential transitional living program where counseling services are not provided on-site, a [licensed] clinician operating within the clinician's professional scope of practice in an AODE shall complete a comprehensive biopsychosocial assessment of each client at the time of admission and document the following:

(a) Medical status;

(b) History of alcohol, tobacco, or other drug use, including any interventions;

(c) Acute intoxication and withdrawal potential;

(d) Pregnancy status and test results if completed [testing, if medically indicated or requested];

(e) Current or history of psychological problems or psychiatric disorders and treatment received, including:

1. Previous psychiatric admissions;

2. History of suicidal or homicidal ideation and attempts;

3. Outpatient psychiatric treatment; and

4. Psychotropic medications;

(f) Any legal proceedings involving the client;

(g) The client's family and relationships;

(h) The client's current living situation and any housing needs;
(i) Behavioral risk factors for human immunodeficiency virus (HIV) and Hepatitis, including the provision of information on HIV and AIDS to each client who shall also be offered testing for HIV infection;

(j) Readiness to change;

(k) Recreational interests;

(l) Cultural, ethnic, and spiritual beliefs or practices; and

(m) Employment and support, including assessment of the client's:

1. Employment status, current work or vocational skills, and potential for improving those skills or developing new ones;

2. Educational status and skills;

3. Aptitudes, interests, and motivation;

4. Physical abilities, impairments, or disabilities;

5. Relationships with co-workers and supervisors; and

6. Current and prior work or school related problems, including problems related to substance use disorder.

(2) To ensure that a client is placed in the appropriate treatment facility, the client shall be assessed for a level of care determination based upon the most recent version of The American Society of Addiction Medicine (ASAM) Criteria.

(3) Each biopsychosocial assessment shall be documented by the outpatient or residential AODE in the client record and include the following:

(a) The client's diagnosis as made by a clinician operating within the clinician's professional scope of practice [appropriately licensed treatment staff], in accordance with the most recent version of the Diagnostic and Statistical Manual of Mental Disorders (DSM) for alcohol, tobacco, and other drug use;

(b) Screening for other co-occurring disorders;

(c) The ASAM level of care determination; and

(d) Referral for a full diagnostic evaluation and treatment planning, if appropriate.

(4) If the biopsychosocial assessment indicates that a client should be referred to another treatment program or level of care, the outpatient or residential AODE shall coordinate the client's referral to another program.

(5) If transfer to another facility or level of care is indicated, the outpatient or residential AODE shall provide [interim] services that are responsive at the client's current level of care until the transfer is made.

(6) A residential AODE shall ensure that a full physical examination is completed within seventy-two (72) hours of admission and includes:

(a) Certification by the examining physician or appropriate health care practitioner that the level of care needed by the client is available through the facility; and

(b) The results of the following laboratory tests and evaluations, subject to the client's written consent:

1. Blood work for chronic, incurable, or communicable diseases or conditions as indicated by the client's medical history and the health care practitioner's evaluation;

2. Serologic tests for syphilis, smears, and cultures for gonorrhea and other sexually transmitted diseases, as medically indicated;

3. Routine urinalysis, including pregnancy testing **if medically indicated or requested**;

4. HIV antibody testing, as medically indicated, for which the residential AODE shall obtain a separate written consent and ensure that:

a. Each client receives HIV pre-test counseling and post-test counseling if the client elects to be tested; and

b. If HIV testing is performed, the residential AODE shall:

(i) Report positive results and maintain client confidentiality in accordance with KRS 214.645; and

(ii) Meet the registration and testing requirements of KRS 214.625(7);

5. Testing for Hepatitis A, Hepatitis B, and Hepatitis C, as medically indicated; and

6. Tuberculosis screening, testing, and treatment, as medically indicated.

Section 19. Client Treatment Planning. (1) An outpatient or residential AODE shall establish a treatment plan for each client that:

(a) Is specific, measurable, and outcomes-focused;

(b) Is based on the biopsychosocial assessment made of the client in accordance with Section 18 of this administrative regulation;

(c) Is initiated upon the client's admission;

(d) If applicable, includes pharmacological treatment modalities to manage opioid use disorder;

(e) Is entered into the client's record within:

1. Seventy-two (72) hours following the client's admission to a residential AODE program; and

2. Thirty (30) days following the client's admission to an outpatient AODE program;

(f) Is reviewed at least:

1. Every two (2) weeks in a residential AODE program;

2. Quarterly in an outpatient AODE program providing intensive outpatient services or partial hospitalization; and

3. Every **thirty (30) days[six (6) months]** for:

a. Outpatient treatment services;

b. Ambulatory withdrawal management services;

c. Office-based opiate treatment services; or

d. A narcotic treatment program;**[and]**

(g) **Is rewritten every six (6) months; and**

(h) **Is revised as necessary based on a change in treatment needs.**

(2) Each client shall be continually assessed by the outpatient or residential AODE using the most recent version of the ASAM criteria to assess level of care and needs.

(3) Problems, strengths, and needs identified in the placement, assessment, and treatment planning shall be addressed:

(a) Directly by the outpatient or residential AODE; or

(b) Through referral to appropriate services.

(4) An outpatient or residential AODE shall provide the following services in accordance with a client's treatment plan:

(a) Orders for medication, medical treatment, and other services, including the type and frequency of contact, if applicable;

(b) Treatment for substance use disorder, including a plan to:

1. Reduce symptoms and severity; and

2. Improve treatment outcomes;

(c) Integrated treatment of co-occurring disorders, either on-site or through the coordination of treatment services with an appropriate mental health facility, if applicable;

(d) Vocational and educational services if needed, either on-site or by referral to community resources;

(e) Opportunities for the client to voluntarily participate in support group meetings during treatment; and

(f) Family supports, recovery supports, spiritual, housing, and social support services as needed.

(5) An outpatient or residential AODE shall document in the client's record:

(a) Evidence of client participation in the development and implementation of the treatment plan;

(b) The staff responsible for implementation of the treatment plan;

(c) Dated signatures of the client and participating multidisciplinary team members;

(d) Long-term and short-term goals with timeframes for achievement;

(e) The assessment measures for determining the effectiveness of, and client satisfaction with, treatment or services including assessments of client adherence to and engagement with treatment and recovery support services;

(f) The time intervals for review of the client's response to treatment or services;

(g) Discharge plans; and

(h) Transfer plans, if applicable.

(6) Practitioners in each of the services providing care to a client shall participate in the development of the treatment plan relative to the services the practitioner shall provide.

(7) The client and the client's family, **with consent from the client, if[~~indicated and~~]** considered appropriate, shall participate in the development of the client treatment plan, which shall include an aftercare plan to prepare the client for life after leaving rehabilitation.

(8) If a physician or other**[licensed]** clinician documents in the client's clinical record that the client's participation in the development of the client treatment plan is medically contraindicated, a member of the multidisciplinary team providing services to the client shall:

(a) Review the client's treatment plan with the client prior to implementation; and

(b) Inform the client's family or legal guardian of the treatment plan **with consent of the client**.

(9) If the family or legal guardian of a client does not agree to participate in the treatment planning, the outpatient or residential AODE shall document the:

(a) Attempt to engage the family or legal guardian, **with the client's consent**, in the treatment planning process; and

(b) Refusal to participate.

(10) The multidisciplinary team shall review the treatment plan and client treatment progress at least every thirty (30) days with the review and any revisions documented in the client's clinical record.

(11) Any revision of the treatment plan shall be based upon:

(a) The client's response to the care provided;

(b) The client's abilities and disabilities; and

(c) Each team member's continuing reassessment of services rendered.

(12) Results of random drug and alcohol screening shall be incorporated into therapeutic interventions and the treatment planning process.

Section 20. Denial, Emergency Suspension, and Revocation.

(1) The cabinet

shall deny or revoke a license if it finds that:

(a) There has been substantial failure in accordance with KRS 222.231(6) by the AODE to comply with the provisions of:

1. KRS Chapter 222; or

2. AODE licensure administrative regulations under 908 KAR Chapter 1;

(b) The AODE fails to submit an acceptable plan of correction or fails to submit an acceptable amended plan of correction within the timeframes required by Section 5(2) or (5)(b) of this administrative regulation;

(c) The AODE fails to comply with the annual renewal process;

(d) The AODE denies access to the cabinet in accordance with Section 3(7) of this administrative regulation;

(e) The AODE's certification as a driving under the influence program is denied, revoked, or voluntarily relinquished as the result of an investigation or adverse action that placed clients at risk of death or serious harm;

(f) An individual having a significant financial interest in the AODE has, within the seven (7) year period prior to the application date, had significant financial interest in a facility or service that was licensed or certified by the cabinet, and the license or certificate to operate was denied, suspended, revoked, or voluntarily relinquished as the result of an investigation or adverse action that placed patients, residents, or clients at risk of death or serious harm;

(g) An individual having significant financial interest in the AODE has been:

1. Previously discontinued or disqualified from participation in any governmental assistance program due to fraud or abuse of the program; or

2. The subject of disciplinary action taken against the individual by a professional licensing board for misconduct related to endangering a patient or client; or

(h) The cabinet finds that the applicant misrepresented or submitted false information on the application.

(2) For an outpatient AODE that operates an NTP, the cabinet shall deny or revoke a license in accordance with subsection (1) of this section or if it finds that:

(a) Take-home doses inconsistent with the dosage allowed by 908 KAR 1:374 Section 7 were issued without specific CSAT, DEA, or State Narcotic Authority (SNA) approval prior to issuance of the take-home doses;

(b) Take-home doses were outside the allowable difference between the labeled dosage of the approved controlled substance and the actual dosage as determined by the United States Pharmacopeia error rate;

(c) More than five (5) percent of the medical and dosing records reviewed are out of compliance with the requirements of 908 KAR 1:374 Section 7;

(d) There are discrepancies in the inventory reconciliation greater than five (5) percent;

(e) Clients were issued doses prior to completion of the intake procedures, including physical exam, except under SNA-approved circumstances;

(f) There is evidence in the client's record that the physician is not in control of the client's treatment;

(g) There is a pattern of issuing doses to clients before obtaining a signed consent to treatment with controlled substances; or

(h) There is a pattern of failing to perform the drug screening required by 908 KAR 1:374, Section 7.

(3) The denial or revocation of an AODE's license shall be issued in accordance with KRS 222.231(6).

(4) In accordance with KRS 222.231(6), the denial or revocation shall become final and conclusive thirty (30) days after notice is given, unless the applicant or licensee submits a written request for a hearing within the thirty (30) day period.

(5) If an AODE requests a hearing in accordance with the timeframe established by KRS 222.231(6) and subsection (4) of this section, the cabinet shall:

(a) Appoint a hearing officer; and

(b) Proceed in accordance with KRS 13B.050 and KRS 222.231(7).

(6) Emergency action to suspend a license.

(a) The cabinet shall take emergency action in accordance with KRS 13B.125 to suspend an AODE's license if the cabinet has probable cause to believe that the continued operation of the AODE would constitute an immediate danger to the health, welfare, or safety of its clients.

(b) Notice of an emergency suspension shall identify the particular reasons for the action.

(c) If requested, an emergency hearing shall take place in accordance with the requirements of KRS 13B.125(3).

(d) The sole issue of the hearing shall be whether there is immediate danger.

(e) The decision shall be rendered in accordance with KRS 13B.125(4).

Section 21. Incorporation by Reference. (1) "Application for License to Operate a Nonhospital-based Alcohol and Other Drug

Treatment Entity (AODE)", 12/2018 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Behavioral Health, Developmental and Intellectual Disabilities, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.[Section 1. Definitions. (1) "Accredited college or university" means an institution listed in the most recent college handbook published by the College Board.

(2) "Agency" is defined in KRS 222.005(2).

(3) "Alcohol and other drug abuse" is defined in KRS 222.005(12).

(4) "AODE" means a nonmedical and nonhospital based alcohol and other drug abuse treatment entity owned by an individual or agency which operates one (1) or more of the following programs: detoxification, residential, family residential, residential transitional living, outpatient, or intensive outpatient.

(5) "Cabinet" is defined in KRS 222.005(3) and means the Office of Inspector General, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621.

(6) "Case management" means an activity which brings services, agencies, resources, or people together to take actions toward the achievement of a client's goals.

(7) "Client" means an individual who receives treatment services in a licensed AODE.

(8) "Client record" means a file containing documentation of client services and other client data.

(9) "Clinical services supervisor" means an individual responsible for monitoring and directing assessment and treatment services and providing consultation and instruction to clinical staff.

(10) "Clinician" means an individual who conducts clinical assessments, is responsible for developing a client's treatment plan, leads counseling sessions and provides case management.

(11) "Counseling" means a relationship where a clinical staff person helps a client mobilize resources to resolve problems and modify attitudes and behavior.

(12) "Daily living skills" means budgeting, meal planning, shopping, personal hygiene, housekeeping and using public transportation.

(13) "Detoxification program" means a supervised nonmedical withdrawal from an alcohol or other drug induced intoxication and an assessment of a client's need for further care resulting in referrals to appropriate resources.

(14) "Facility" means the physical area where a treatment program is operated by an AODE.

(15) "Family residential program" means an organized intensive set of therapeutic activities provided in an environment where the client resides twenty-four (24) hours a day with the client's children.

(16) "Federally-assisted" means a program that meets the requirements established in 42 C.F.R. 2.12(b).

(17) "Governing authority" means the person or agency in which the ultimate responsibility and authority for the operation of the AODE is vested.

(18) "Immediate danger" means a condition in the program which could or has caused death or serious physical injury.

(19) "Intake" means an administrative and initial assessment procedure completed at the time of a client's admission to a program.

(20) "Intensive outpatient program" means a structured comprehensive program of individual and group therapeutic activities delivered in a nonresidential setting, where a client is assisted in recovery from alcohol or other drug abuse on a scheduled and intense basis.

(21) "Mental status screening" means a screening of a client's current mental condition including the identification of an abnormality in behavior, affect, thought, memory, orientation, and contact with reality.

(22) "Outpatient program" means individual and group therapeutic activities, assisting a client in recovery from alcohol or other drug abuse, provided in a nonresidential setting on a scheduled and unscheduled basis.

(23) "Program" is defined in KRS 222.005(10).

(24) "Recovery" means rehabilitation from alcohol or other drug abuse.

(25) "Registered dietitian" means an individual registered with the American Dietetic Association.

(26) "Residential transitional living program" means a therapeutic group setting, where counseling is provided either on site by staff or off site, and where a client resides twenty-four (24) hours a day, and makes a social and vocational adjustment prior to returning to family or independent living in the community.

(27) "Residential treatment program" means a set of organized and intensive individual and group therapeutic activities, provided in a twenty-four (24) hour setting, which assists a client in recovering from alcohol or other drug abuse.

(28) "Self-help group" means activities provided in a self-directed peer group setting, for a person recovering from alcohol or other drug abuse or the effects of another person's alcohol or other drug abuse, where support and direction in achieving or maintaining an alcohol and drug free life style or in learning to cope with a problem related to another person's alcohol or other drug abuse is provided.

(29) "Service" means a therapeutic activity provided in a program to meet a client's rehabilitation needs as they relate to the use of alcohol or other drugs.

(30) "Treatment" is defined in KRS 222.005(13).

(31) "Withdrawal" means the physiological readjustment of the body after an individual stops using alcohol or other drugs.

Section 2. Licensing Requirements. (1)(a) An AODE shall obtain a license from the cabinet before operating a program unless exempted under KRS 222.003(1) or 222.231(1).

(b) An AODE shall be issued:

1. One (1) license which shall apply to all facilities operated by the AODE where an outpatient or an intensive outpatient program is provided; and

2. A separate license for each facility where a twenty-four (24) hour program is operated.

(c) An AODE operating without a license, unless otherwise exempted, shall be subject to the penalties established in KRS 222.990(2).

(d) For a period of one (1) year following the effective date of this administrative regulation, an entity operating a nonmedical alcohol or other drug abuse treatment program under the authority of 908 KAR 1:010 through 908 KAR 1:260 or 902 KAR 20:091 may continue to operate the program until licensing as an AODE can be attained.

(2) If more than one (1) AODE operates at the same location, each AODE shall maintain a separate organizational identity by:

(a) Conspicuously posting a sign in a public area showing the name of the AODE;

(b) Utilizing a separate logo or letterhead on written materials;

(c) Maintaining client records in a separate and secure cabinet; and

(d) Conducting treatment services separate from another AODE located at the same location.

(3) The license shall:

(a) Be conspicuously posted in:

1. A public area of the AODE's administrative office; and

2. Each facility where a twenty-four (24) hour program is operated; and

(b) Specify the date the license expires.

(4) The cabinet shall make available to the public upon request a list of licensed AODEs, showing the location of each facility and the type of program operated at each facility.

(5) Application for licensure or relicensure. An Application for Licensure to Operate an Alcohol or Drug Treatment Entity (AODE) shall be obtained from and submitted to the cabinet and shall include:

(a) The AODE name, owner and mailing address;

(b) Facility address, phone number, hours of operation for each facility where a program is operated and the location where client records are kept; and

(c) Type of programs to be operated at each facility.

(6) An application for licensure shall be accompanied by a fee of \$155 for each facility.

(7) An application for relicensure shall be accompanied by a fee of eighty (80) dollars for each facility.

(8) An application for licensure or relicensure shall be processed according to the following:

(a) The cabinet may conduct an unannounced on-site inspection of a facility;

(b) An AODE shall provide the cabinet access to each facility and to documents needed to complete an inspection during normal business hours;

(c) The cabinet shall notify an AODE in writing of the violation of a licensure standard identified during an inspection on Form L&R 18, Statement of Deficiencies and Plan of Correction; and

(d) An AODE shall, within ten (10) calendar days from receipt of the Form L&R 18, submit to the cabinet a written plan of correction on the Form L&R 18 specifying the corrective action to be taken and the date when each violation shall be corrected.

(9) The cabinet shall issue a license for a period of one (1) year to the owner of the AODE named in the application. The license shall be effective on the date approval is granted by the cabinet.

(10) Change in AODE status.

(a) Name change.

1. An AODE shall notify the cabinet in writing within ten (10) calendar days of the effective date of change.

2. An AODE shall submit a processing fee of twenty-five (25) dollars to the cabinet.

3. The cabinet shall issue a new license for the remainder of the licensure period unless the AODE is under investigation that may result in a negative licensure action pursuant to subsection (12) of this section.

(b) Change of location. An AODE shall not change the location where a program is operated until an Application for Licensure to Operate an Alcohol or Drug Treatment Entity (AODE) accompanied by a fee of eighty (80) dollars is filed with the cabinet.

(c) Change of ownership. The new owner of an AODE shall submit to the cabinet an Application for Licensure to Operate an Alcohol or Drug Treatment Entity (AODE) accompanied by a fee of \$155 for each facility within ten (10) calendar days of the effective date of change.

(d) Discontinuing a program. An AODE shall notify the cabinet in writing within ten (10) calendar days of the effective date of change.

(11) Denial of a license. If an AODE fails to meet the requirements of this administrative regulation, the cabinet may deny the application for licensure or relicensure.

(12) Negative licensure actions.

(a) Complaints. If a complaint is received by the cabinet, the cabinet may conduct an unannounced on-site inspection to determine if a violation of a licensure standard has occurred. An inspection shall be conducted in accordance with subsection (8)(b), (c) and (d) of this section.

(b) Revocation of a license. If an AODE fails to meet the requirements of this administrative regulation, the cabinet may revoke a license.

(c) Immediate revocation of a license. The cabinet shall immediately revoke a license in the case of immediate danger.

Section 3. Appeals. (1) If the cabinet takes action to deny, revoke or immediately revoke an AODE license, the cabinet shall notify an AODE in writing stating a reason for the adverse action and the AODE's right to appeal in accordance with KRS 222.231(6) and (7).

(2) An AODE may appeal a negative action by the cabinet in writing to the Secretary, Cabinet for Health and Family Services, 4th Floor, 275 East Main Street, Frankfort, Kentucky 40621, within thirty (30) calendar days from the date of the notice of action from the cabinet.

(3) Upon receipt of an appeal, the secretary, or designee, shall notify the AODE in writing within fifteen (15) calendar days of the time and place of the hearing. The secretary, or designee, shall appoint a hearing officer to conduct the hearing in accordance with

KRS Chapter 13B.

(4) Based upon the record and upon the information obtained at the hearing, a hearing officer shall make a recommendation to the secretary to affirm or overturn the initial decision of a negative action. The final decision shall be issued by the secretary in accordance with KRS 222.231(7).

(5) Immediate revocation. If an AODE's license is immediately revoked pursuant to Section 2(12)(c) of this administrative regulation, and the AODE requests a hearing, the cabinet shall conduct a hearing within five (5) working days of the cabinet's receipt of a request from the AODE. A hearing shall be continued at the request of an AODE.

(a) The sole issue of the hearing shall be whether there is immediate danger.

(b) The cabinet shall render a decision within five (5) working days of the hearing. If the decision overturns the negative action, an AODE shall have its license returned and be allowed to operate and continue the appeals process in accordance with subsections (1), (2), (3), and (4) of this section.

(c) If the cabinet determines there was immediate danger, the action by the cabinet to immediately revoke the AODE's license shall be upheld pending action by the cabinet to accept a plan of correction or to permanently revoke the license.

(6) An AODE that continues to operate after a closing date established by the secretary, or designee, shall be subject to legal action by the cabinet pursuant to KRS 222.990(2).

Section 4. Physical Plant. (1) An AODE shall ensure that a facility is in compliance with building, fire, safety, and health standards specified by federal, state and local laws and regulations.

(2) An AODE shall have a policy to ensure the following requirements are met in a non-twenty-four (24) hour program:

(a) A facility, including the equipment, shall be kept in good repair, neat, clean, free from all accumulations of dirt and rubbish and free from foul, stale and musty odors;

(b) A facility shall be kept free from insects and rodents with their harborages eliminated;

(c) A counseling session shall be conducted in an area where a client is ensured privacy and confidentiality; and

(d) State Fire Marshal approval of a facility shall be obtained at the time of application for initial licensure or if a program changes location. If a program is located in a public building, which receives a regular inspection from the State Fire Marshal, the AODE may submit a copy of the most recent inspection by the State Fire Marshal at the time of application for initial licensure or if a program changes location.

(3) In addition to the standards in subsection (1) of this section, an AODE operating a treatment program which provides twenty-four (24) hour care shall meet the following additional requirements:

(a) Including the square feet available within the entire facility, there shall be at least 120 square feet of space for each client residing in the facility;

(b) There shall be at least one (1) toilet and one (1) sink per eight (8) clients, and at least one (1) shower or tub per fifteen (15) clients;

(c) There shall be a bed with clean bedding which includes sheets, pillowcase, blanket, and a pillow for each client;

(d) There shall be adequate lighting, heating, heated water and ventilation;

(e) There shall be space for a client to store personal belongings, including a receptacle where personal property may be stored and locked;

(f) There shall be an area provided for the following:

1. Sleeping;
2. Dining;
3. Bathing and toileting;
4. Lounge;
5. Laundry;
6. Visiting;
7. Private consultation; and

8. Telephone;

(g) State Fire Marshal approval of a facility shall be obtained at the time of application for licensure, relicensure or if a program changes location;

(h) A facility, including the equipment, shall be kept in good repair, neat, clean, free from all accumulations of dirt and rubbish and free from foul, stale and musty odors;

(i) A facility shall be kept free from insects and rodents with their harborages eliminated; and

(j) A counseling session shall be conducted in an area where a client is ensured privacy and confidentiality.

Section 5. Organization and Administration. (1) There shall be a governing authority with overall responsibility for the management and operation of an AODE.

(2) A governing authority shall:

(a) Be responsible for the direction of an AODE by establishing written policies and procedures for the operation of the AODE;

(b) Develop a mission statement outlining an AODE's purpose;

(c) Identify an administrator who shall be principally responsible for the day-to-day operation of an AODE;

(d) 1. Develop a policy to establish a fee schedule;

2. Conspicuously post the fee schedule in a public area of each facility;

3. Abide by the fee schedule;

4. Maintain financial records regarding the assessment and payment of client fees; and

5. Provide a receipt for all client services delivered;

(e) Ensure that an AODE's policies and procedures are available to all personnel and a copy is maintained at the AODE's administrative office; and

(f) Document that an AODE's policies and procedures are reviewed every two (2) years and revised as needed.

Section 6. Personnel Policies. (1) An AODE shall develop written policies and procedures governing personnel and employment practices.

(2) There shall be a written job description for each position stating qualifications, duties, and reporting supervisor.

(3) There shall be evidence that all personnel are qualified for their position through documentation of education, work experience, and professional licensure, certification or registration.

(4) An individual who has had a criminal conviction for the neglect, physical abuse, sexual abuse or sexual exploitation of a child or for endangering the welfare of a child shall not be allowed to work with a juvenile client.

(5) A separate personnel record shall be maintained at the AODE's administrative office for each individual working in the AODE and shall contain:

(a) Job description;

(b) Documentation of education, work experience, and any professional licensure, certification or registration required for performance of the assigned job duties;

(c) Documentation of each training completed by the individual, to include the topic, length, and date of the training; and

(d) Documentation of the annual performance evaluation.

(6) There shall be written policies and procedures governing the duties and supervision of volunteers and student interns in the AODE.

Section 7. Quality Assurance. (1) An AODE shall have written policies and procedures to ensure that quality services are delivered and that the health and safety of the client population is protected while receiving a service.

(2) The policies and procedures shall establish a system of utilization review which includes:

(a) The quality of services shall be evaluated by a utilization review team composed of a representative sample of the clinical staff responsible for providing services;

(b) The utilization review shall assess the appropriateness and clinical necessity of client admissions as well as the accuracy, completeness and appropriateness of treatment plans and discharge;

(c) The utilization review shall evaluate a sample of client cases at regularly scheduled intervals; and

(d) A written record of the utilization review identifying inappropriate patterns of service and the recommended action for correcting a problem shall be submitted to the individual in the AODE with overall responsibility for the program's treatment services.

(3) The policies and procedures shall establish a system for responding to an accident or injury at a facility that requires hospitalization or results in death, or an incident at a facility involving fire damage, natural disaster or a threat to security that substantially interrupts the delivery of services, which includes:

(a) Documenting an incident or accident in an incident file which shall be maintained at an AODE's administrative office; and

(b) Reporting an incident or accident to the individual who is responsible for the day-to-day operation of an AODE and to the Cabinet for Health and Family Services according to the following:

1. An incident of child abuse or neglect in accordance with KRS 620.030; and

2. An incident of adult abuse or neglect in accordance with KRS 209.030.

(4) The policies and procedures for a twenty-four (24) hour program shall establish an infection control system which includes orientation for all new personnel and annual in-service training for all personnel on proper hygiene related to infections prevalent among alcohol and other drug abusers.

(5) The policies and procedures shall establish an emergency plan for responding to a disaster at the facility, including fire and severe weather, which includes:

(a) An emergency plan shall be conspicuously posted in a public area of each facility;

(b) A copy of the emergency plan shall be provided to all personnel;

(c) An AODE shall provide training for all personnel on how to report a fire, extinguish a small fire, and evacuate a building; and

(d) An AODE shall conduct a fire drill in accordance with 815 KAR 10:060.

(6) The policies and procedures shall establish a system to effectively respond to the problems associated with domestic violence among clients served in the AODE to include the following:

(a) Training for clinical staff on the dynamics of domestic violence, its effect on adult and child victims, legal remedies for protection, safety and risk issues, available community services and victim services, and applicable reporting requirements;

(b) A client with a history of domestic violence shall be assessed as to their current safety risks; and

(c) Mechanisms for reducing safety risks to the client with a history of domestic violence, staff and other clients.

Section 8. Clinical Staff Requirements. (1) An AODE shall ensure that all personnel receive ongoing training and supervision which enables them to carry out their job duties. The training and supervision shall be documented:

(a) A clinician shall complete a minimum of twenty (20) hours of training in alcohol and other drug abuse counseling annually.

(b) A clinical services supervisor shall complete twelve (12) hours of specialized training in clinical supervision, and a clinician who provides case management shall complete twelve (12) hours of specialized training in case management, within one (1) year from the effective date of this administrative regulation or within six (6) months from the date of assuming responsibility for that function, whichever is later.

(2) An AODE shall designate a clinical services supervisor, who shall provide supervision at one (1) or more facilities and who has overall responsibility for treatment services in a detoxification, residential, residential transitional living pursuant to Section 13(1) and (2) of this administrative regulation, outpatient or intensive outpatient program.

(a) Except as provided in paragraph (c) of this subsection, the clinical services supervisor shall be:

1. A certified alcohol and drug counselor certified pursuant to KRS 309.080 to 309.089, who has 4000 hours of clinical work

experience post certification; or

2. An individual who is licensed or certified as one (1) of the following and who meets the requirements of paragraph (b) of this subsection:

a. Physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;

b. Psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;

c. Licensed psychologist licensed to practice psychology by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.050;

d. Certified psychologist with autonomous functioning certified to function without supervision, in an area specified by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.056;

e. Certified psychologist with 6000 hours of postcertification practice certified by the Kentucky Board of Examiners of Psychology in accordance with the requirements and limitations established in KRS 319.056;

f. Psychological associate with 6000 hours of postcertification practice certified by the Kentucky Board of Examiners of Psychology in accordance with the requirements and limitations established in KRS 319.064;

g. Licensed clinical social worker licensed for the independent practice of clinical social work by the Kentucky Board of Social Work in accordance with KRS 335.100;

h. Certified social worker with 6000 hours of postcertification clinical practice in psychiatric social work licensed by the Kentucky Board of Social Work in accordance with KRS 335.080;

i. Registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314 with a masters degree in psychiatric nursing from an accredited college or university and 6000 hours of clinical experience in psychiatric nursing;

j. Registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314 with a bachelor's degree in nursing from an accredited college or university who is certified as a psychiatric and mental health nurse by the American Nurses Association and who has 6000 hours of clinical experience in psychiatric nursing;

k. Licensed marriage and family therapist licensed by the Kentucky Board of Licensure of Marriage and Family Therapists in accordance with the provisions of KRS Chapter 335;

l. Certified professional counselor certified by the Kentucky Board of Certification for Professional Counselors in accordance with the provisions of KRS Chapter 335; or

m. Certified professional art therapist certified by the Kentucky Board of Certification for Professional Art Therapists in accordance with the provisions of KRS 309.130.

(b) A certified or licensed professional meeting the requirements established in paragraph (a)2 of this subsection shall have:

1. Completed eighty (80) hours of training in alcohol and other drug abuse counseling, within four (4) years immediately prior to the date of assuming responsibility as a clinician in the AODE or within two (2) years immediately after assuming responsibility as a clinician in the AODE; and

2. 4000 hours of work experience in the alcohol and other drug treatment field post degree.

(c) A person shall qualify as a clinical services supervisor under this administrative regulation if, on the effective date of this administrative regulation, the person:

1. Met the requirements for clinical services supervisor as established in 908-KAR 1:050 and 908-KAR 1:190;

2. Had been a clinical services supervisor for at least five (5) years; and

3. Was employed as a clinical services supervisor in a licensed nonmedical alcohol treatment and education (NATE) center program or drug abuse treatment and education (DATE) center

program:

(3) An AODE shall establish a policy prohibiting a clinical services supervisor from supervising a spouse, child, stepchild, sibling, parent, stepparent, grandparent, grandchild, aunt, uncle, niece, nephew, or in-law of the clinical services supervisor.

(4) Clinicians:

(a) A clinician shall be:

1. A certified alcohol and drug counselor certified pursuant to KRS 309.080 to 309.089;

2. An individual who is licensed or certified as one (1) of the following and who meets the requirements of paragraph (b) of this subsection:

a. Physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;

b. Psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;

c. Licensed psychologist licensed to practice psychology by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.050;

d. Certified psychologist with autonomous functioning certified by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.056;

e. Certified psychologist certified by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.056;

f. Psychological associate certified by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.064;

g. Licensed clinical social worker licensed for the independent practice of clinical social work by the Kentucky Board of Social Work in accordance with KRS 335.100;

h. Certified social worker certified by the Kentucky Board of Social Work in accordance with KRS 335.080;

i. Registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314 with a masters degree in nursing from an accredited college or university;

j. Registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314 with one (1) of the following combinations of education and work experience:

(i) Bachelor of science in nursing from a four (4) year program from an accredited college or university and 2000 hours of clinical work experience in the substance abuse or mental health field;

(ii) Diploma graduate in nursing from a three (3) year program and 4000 hours of clinical work experience in the substance abuse or mental health field; or

(iii) Associate degree in nursing from a two (2) year program from an accredited college or university and 6000 hours of clinical work experience in the substance abuse or mental health field;

k. Advanced registered nurse practitioner licensed by the Kentucky Board of Nursing in accordance with KRS 314.042;

l. Licensed marriage and family therapist licensed by the Kentucky Board of Licensure of Marriage and Family Therapists in accordance with the provisions of KRS Chapter 335;

m. Certified professional counselor certified by the Kentucky Board of Certification for Professional Counselors in accordance with the provisions of KRS Chapter 335; or

n. Certified professional art therapist certified by the Kentucky Board of Certification for Professional Art Therapists in accordance with the provisions of KRS 309.130; or

3. An individual with a bachelors degree or greater in any field from an accredited college or university, working under the supervision of a clinical services supervisor in accordance with subsection (2) of this section, and who, under supervision:

a. Receives at least four (4) hours of face-to-face supervision monthly; and

b. Has all treatment plans cosigned by the clinical services supervisor.

(b) A certified or licensed professional meeting the requirements established in paragraph (a)2 of this subsection shall have completed eighty (80) hours of training in alcohol and other

drug abuse counseling, within four (4) years immediately prior to the date of assuming responsibility as a clinician in the AODE, or within two (2) years immediately after assuming responsibility as a clinician in the AODE.

(5) A clinical services supervisor shall maintain documentation of each supervisory session for each clinician supervised which includes the date, length of the session and content of the supervision.

(6) Staff working in a residential transitional living program, where counseling services are not provided on site, shall meet the credentialing and training requirements established in Section 13(3)(g) of this administrative regulation.

Section 9. Client Rights. (1) An AODE shall have written policies and procedures to ensure that the rights of a client are protected while participating in a treatment program.

(2) An AODE shall have a policy requiring that a notice of client rights is conspicuously posted in a public area of each facility and shall include the address and telephone number of the AODE's and the cabinet's ombudsman. If there is only one (1) individual working in the AODE, a notice of client rights shall include the address and telephone number of the cabinet's ombudsman.

(3) A client shall not be unlawfully discriminated against in determining eligibility for a treatment program.

(4) During a program's intake procedures, a client shall sign a statement which specifies a client has the right to:

(a) Give informed consent to receive a service.

1. An adult shall sign an informed consent to receive a service.

2. A juvenile, or the parent or guardian of a juvenile, shall sign an informed consent for a juvenile to receive a service in accordance with KRS 222.441;

(b) Have input into treatment and case management plans and be informed of their content;

(c) Receive individualized treatment;

(d) File a grievance, recommendation or opinion regarding the services a client receives;

(e) Give informed written consent regarding participation in a research study with the exception of a juvenile whose parent or guardian shall give informed written consent;

(f) Confidentiality according to the following:

1. A federally-assisted AODE in accordance with 908 KAR 1:320; or

2. A nonfederally-assisted AODE in accordance with KRS 222.271(1);

(g) Request a written statement of the charge for a service and be informed of the policy for the assessment and payment of fees;

(h) Be informed of the rules of client conduct, including the consequences for the use of alcohol and other drugs or other infractions that may result in disciplinary action or discharge;

(i) Be treated with consideration, respect, and personal dignity;

(j) Review client record in accordance with AODE policy; and

(k) Receive one (1) free copy of client record in accordance with KRS 422.317.

(5) A program providing twenty-four (24) hour care shall also specify on the client rights statement that a client has the right to:

(a) Vote in a political election;

(b) Reasonable accommodations to afford privacy in bathing and toileting; and

(c) Privileges in accordance with KRS 222.271(2).

(6) If the client is restricted from exercising a client right because it is contraindicated by the client's physical or mental condition, there shall be documentation in the client record of the reason for the restriction and of the explanation given to the client.

Section 10. Program Operations. (1) AODE's policies and procedures shall include:

(a) A written description for each program including philosophy, mission statement, goals, objectives and staffing;

(b) Admission, readmission, discharge, and transfer criteria including the categories of individuals accepted and not accepted into a program; and

(c) Procedures for making a referral within or outside an AODE.

(2) An AODE which provides services to juveniles shall have written policies and procedures to ensure the following:

(a) Services and educational materials shall be age appropriate; and

(b) With the written consent of a juvenile, the family shall be involved in a juvenile's treatment to the extent possible and appropriate.

(3) An AODE shall have a uniform client record system for each program which shall include the following requirements:

(a) A separate legible written or electronic record shall be established for each client and shall be:

1. Retained for five (5) years from the last date of service for an adult client age eighteen (18) and over;

2. Retained until age twenty-one (21) for a client who received a service under age eighteen (18), or for five (5) years from the last date of a service, whichever is longer;

3. Kept in a locked container accessible only to authorized personnel and maintained in a licensed AODE facility unless being transported to another licensed AODE facility; and

4. Kept confidential;

(b) A client record shall include the:

1. Application for admission including intake information;

2. Psychosocial, except in a detoxification program, or a residential transitional living program where counseling services are not provided on site;

3. Health status questionnaire or a copy of the record of a physical health examination;

4. Consent form, fee agreement, and client rights statement, each signed by the client;

5. Treatment plan, or in a detoxification program, a treatment plan or a standard treatment protocol;

6. Aftercare plan;

7. Progress notes;

8. Authorization for release of information signed by a client; and

9. Discharge summary;

(c) An entry in a client record shall include a signature and credential of the individual who delivered a service and the date the service was provided; and

(d) All information regarding a client's human immunodeficiency virus status shall be kept confidential in accordance with KRS 214.181 and 214.625.

(4) An AODE shall have written policies and procedures governing client grievances to include the following requirements:

(a) Identification of an AODE ombudsman;

(b) A process for filing a written client grievance;

(c) An appeals process with time frames for filing and responding to a grievance in writing;

(d) Protection for a client from interference, coercion, discrimination, or reprisal; and

(e) Conspicuously posting in a public area of each facility grievance procedures informing a client of:

1. A right to file a grievance;

2. A process for filing a grievance; and

3. The address and telephone number of the AODE's and cabinet's ombudsman. In an AODE where only one (1) individual is working, the notice shall contain the address and telephone number of the cabinet's ombudsman.

(5) If alcohol or drug testing is conducted as part of assessment, treatment, or discharge, there shall be written policies and procedures outlining the screening process and the consequences for testing positive.

(6) An AODE shall have a written policy prohibiting the use of alcohol and illegal drugs by a client or visitors while in the program.

Section 11. Detoxification Program. In addition to the requirements established in Sections 1 through 10 of this administrative regulation, the following requirements shall be met in a detoxification program.

(1) At admission, a client shall receive an assessment to determine if the client is intoxicated or in withdrawal, the severity of the client's physical and mental condition, and a need for emergency medical care. The assessment shall be in accordance

with an assessment protocol developed in consultation with a physician and documented in the client's record.

(2) Within twenty-four (24) hours of admission, the following information shall be obtained from a client and documented in the client record:

(a) Client identifying and demographic information;

(b) Emergency contact person;

(c) Presenting problem;

(d) History of alcohol and other drug use including problems and previous treatment related to the abuse of alcohol or other drugs;

(e) History and previous treatment for a physical problem including delirium tremens, seizures, heart disease, liver disease, and infectious disease including tuberculosis, hepatitis, and human immunodeficiency virus;

(f) History and previous treatment for a behavioral health problem, developmental and intellectual disability;

(g) Assessment of pregnancy based on a client's self-report; and

(h) Signed consent to treatment.

(3) A written treatment plan based on the assessment shall be completed for the client within forty-eight (48) hours of admission, revised as new information is received, and include:

(a) Presenting problem;

(b) Identification of a client problem;

(c) Type of service to be provided including referrals;

(d) Criteria for discharge;

(e) Staff person primarily responsible for coordinating the client's care; and

(f) Client's signature.

(4) A treatment plan protocol may be used in place of an individualized treatment plan. An exception to the protocol shall be documented in the client record.

(5) A progress note shall be recorded following the delivery of a professional service and include the service provided, an observation of the client's behavior and response to the service, and the client's progress toward meeting the goals and objectives of the treatment plan.

(6) An aftercare plan shall be developed with a client's participation and include a referral to alcohol and other drug abuse treatment or a community service which may include a self-help group, housing, medical, and social services needed by the client.

(7) A discharge summary shall be completed within thirty (30) calendar days of discharge and include:

(a) Date of admission and discharge;

(b) Presenting problem;

(c) Summary of treatment and response to treatment; and

(d) Referrals made to another organization or provider.

(8) The pulse and blood pressure of a client shall be monitored three (3) times daily and documented in the client record.

(9) A client shall receive counseling, education, and orientation to self-help groups specific to addiction recovery, as soon as the client is physically and mentally capable, with a primary focus on motivating a client to continue in treatment after discharge.

(10) A client shall be provided an opportunity to meet with a self-help group and other outside service providers as soon as the client is physically and mentally capable.

(11) There shall be written policies and procedures on the use of medication by a client which shall include:

(a) Prescription and over-the-counter medication brought with a client shall be recorded in the client's record upon admission;

(b) A policy on self-administration of an over-the-counter medication to include the identification of medication which requires physician approval prior to use by a client;

(c) A program without a physician on staff shall obtain written consent from a client, to verify with a physician that a prescription or an over-the-counter medication described in paragraph (b) of this subsection is not contraindicated with the treatment plan, and the verification shall be documented in the client record;

(d) Prescription and over-the-counter medication shall be stored in a locked, secure location inaccessible to a client;

(e) Medication shall be available to a client only at the time it is scheduled to be taken according to a prescription or as directed on

the label; and

(f) Self-administration of prescription and over-the-counter medication shall be documented in the client record and include:

1. Name of the medication;
2. Date and time of self-administration;
3. Dosage and amount of medication; and
4. Name of the staff person who monitored the self-administration of the medication.

(12) Food services shall be provided according to the following:

(a) In accordance with 902 KAR 45:005. A copy of the food service permit shall be maintained on site; and

(b) There shall be documentation that meal planning is approved by a registered dietician.

(13) A program shall be staffed twenty-four (24) hours a day, seven (7) days a week, and staff shall include:

(a) A program manager, supervisor or coordinator;

(b) At least two (2) staff per shift with one (1) trained in crisis intervention, cardiopulmonary resuscitation and standard first aid; and

(c) Sufficient staff to meet client needs twenty-four (24) hours a day based on the number of clients, the need for assistance by clients, and the type of services delivered. If there are multiple twenty-four (24) hour programs operated in the same facility, the staff of all programs may be used to meet the staffing requirements.

(14) Before working alone, a staff person shall be trained in:

- (a) Monitoring the vital signs of pulse and blood pressure;
- (b) Crisis intervention;
- (c) Cardiopulmonary resuscitation and standard first aid conducted by a certified instructor;
- (d) The recognition of problems associated with alcohol and other drug use, symptoms requiring referral for emergency care, degree of intoxication, stages of withdrawal, and the physical or mental complications that may occur at each stage;
- (e) Techniques for motivating a client to continue in treatment after discharge;
- (f) Local and state resources including the procedure for making a client referral; and
- (g) Effects of alcohol and other drug use on a pregnant woman and her fetus including special detoxification needs during pregnancy, and recognition of when to refer a pregnant client for medical detoxification.

Section 12. Residential Treatment Programs. In addition to the requirements established in Sections 1 through 10 of this administrative regulation, the following requirements shall be met in residential programs.

(1) General residential.

(a) At intake, client identifying and demographic information, emergency contact person, and presenting problem shall be obtained from the client.

(b) An assessment shall be completed on each client and include:

1. A psychosocial which shall include:
 - a. Presenting problem;
 - b. History and treatment of alcohol and other drug abuse;
 - c. Current living arrangement;
 - d. Family relationships;
 - e. Legal, employment, military, educational and vocational history;
 - f. Peer group relationships;
 - g. Religious background and practices;
 - h. History and treatment of behavioral health problem, developmental disability, or intellectual disability including emotional, physical and sexual abuse;
 - i. Ethnic and cultural background;
 - j. Leisure and recreational activities;
 - k. Client strengths and limitations; and
 - l. An evaluation of the client's alcohol and other drug abuse or dependency;
2. A mental status screening;
3. Completion of a physical health status questionnaire, which has been developed in consultation with a physician or a copy of

the record of a physical health examination, which includes at least:

- a. History of medical problems;
- b. Client's self-report on current status of pregnancy, tuberculosis, hepatitis and human immunodeficiency virus;
- c. Use of prescription and over-the-counter medication;
- d. Allergies; and
- e. Identification of a medical condition that may affect the client's participation in treatment; and

4. A summary of the client's needs based on an analysis of all information from the client's assessment and which includes a recommended course of treatment.

(c) A written individualized treatment plan based on the assessment shall be developed for each client with the client's participation within six (6) calendar days of admission and include:

1. An evaluation of the client's alcohol and other drug abuse or dependency;
2. The client's problem;
3. Goals, measurable objectives and criteria for discharge;
4. Duration, frequency and type of service to be provided;
5. Referrals;
6. Staff person primarily responsible for developing the treatment plan; and
7. The client's signature.

(d) A treatment plan and a client's progress shall be reviewed by a clinical staff person and the client every two (2) weeks and be documented in the client's record.

(e) Alcohol and other drug abuse counseling, including a focus on relapse prevention, shall be provided to each client. If provided in a group, there shall be a maximum of fifteen (15) clients per clinician.

(f) Education shall be provided to each client on the effects of alcohol and other drug abuse, the disease and recovery from alcoholism and other drug dependency, consistent with the client's treatment plan.

(g) Orientation to self-help groups specific to addiction recovery shall be provided to each client.

(h) Organized recreational activities shall be:

1. Provided to each client under the direction of staff; and
2. Part of the client's schedule.

(i) A written aftercare plan shall:

1. Be developed for each client with the client's participation;
2. Be based on the client's needs at discharge; and
3. Include activities and referrals supporting recovery from alcohol and other drug abuse.

(j) A client shall have access to films, printed materials, and audio and video tapes related to the treatment of alcohol and other drug abuse.

(k) Information or education about alcohol and other drug dependency and recovery shall be made available to a client's family or significant other. If a service is requested, it shall be provided either directly or through referral to a qualified outside provider.

(l) A client shall receive forty (40) hours of structured activities weekly including alcohol and other drug abuse education; individual, group or family counseling; self-help group meetings and recreation. Ten (10) of the forty (40) hours of structured weekly activities shall be counseling services.

(m) A progress note which includes the service provided, an observation of a client's behavior and response to the service and a client's progress toward meeting the goals and objectives of the treatment plan shall be recorded after an individual counseling session, and weekly in a summary note if a client receives multiple services.

(n) A discharge summary shall be completed within thirty (30) calendar days of discharge and include the date of admission and discharge, presenting problem, an evaluation of the client's alcohol and other drug abuse or dependency, summary of treatment and response to treatment and referrals made to another organization or provider.

(o) A client shall be provided an opportunity to meet with a self-help group and other outside service providers.

(p) If a client performs work in a program, other than a personal care or housekeeping task, which is part of a therapeutic activity, the work shall be voluntary and consistent with the treatment plan.

(q) There shall be written policies and procedures on the use of medication by a client which shall include:

1. Prescription and over-the-counter medication brought with a client shall be recorded in the client's record upon admission;

2. A policy on self-administration of over-the-counter medication to include the identification of medication which requires physician approval prior to use by a client while in the program;

3. A program without a physician on staff shall obtain written consent from a client, to verify with a physician that a prescription or an over-the-counter medication described in subparagraph 2 of this paragraph is not contraindicated with the client's treatment plan, and the verification shall be documented in the client's record;

4. Prescription and over-the-counter medication shall be stored in a locked and secure location inaccessible to clients;

5. Medication shall be available to a client only at the time it is scheduled to be taken according to a prescription or as directed on the label; and

6. Self-administration of prescription and over-the-counter medication shall be documented in the client's record and include:

a. Name of the medication;

b. Date and time of self-administration;

c. Dosage and amount of medication; and

d. Name of the staff person who monitored the self-administration of the medication.

(r) Food services shall be provided according to the following:

1. In accordance with 902 KAR 45:005. A copy of the food service permit shall be maintained on-site; and

2. There shall be documentation that meal planning is approved by a registered dietitian.

(s) A program shall be staffed twenty-four (24) hours a day, seven (7) days a week, and staff shall include:

1. A program manager, supervisor or coordinator;

2. Staffing capability to ensure that an appropriate staff person is responsible for managing a program in the absence of a program manager, supervisor or coordinator; and

3. Sufficient staff to meet client needs twenty-four (24) hours a day based on the number of clients, the need for assistance by clients, and the type of services delivered. If there are multiple twenty-four (24) hour programs operated in the same facility, the staff of all programs may be used to meet staffing requirements.

(t) There shall be at least one (1) staff person on duty at all times who has completed training in crisis intervention and standard first aid, which includes cardiopulmonary resuscitation and is conducted by a certified instructor.

(2) Family residential program. In addition to the requirements established in subsection (1) of this section, the following requirements shall be met for a family residential program:

(a) A client with a need identified in a treatment plan shall receive training on parenting.

(b) There shall be written policies on children to include:

1. Maximum number of children permitted to reside in the facility at one (1) time;

2. Age of children permitted to reside in the facility;

3. A client shall sign a statement outlining a client's responsibility for the client's children while in the facility to include:

a. A client shall have primary responsibility for ensuring that a child's needs are met regarding food, clothing, hygiene, safety, discipline, supervision and follow-up on a referral to a community resource for the children who reside with him in the facility;

b. A client shall make prior arrangements for the care of the client's children if leaving the facility without the client's children; and

c. A client shall identify, in writing, an emergency contact person, who will be responsible for the care of the client's children if leaving the facility;

4. Identification of community resources including education and child care;

5. Education about the effect on a family and children when a parent or a parent's partner abuses alcohol or other drugs; and

6. Organized recreational activities shall be provided under the direction of staff and posted on a schedule.

Section 13. Residential Transitional Living Program. In addition to the requirements established in Sections 1, 2, 3, 4, 5, 6, 7, 9 and 10 of this administrative regulation, the following requirements shall be met in a residential transitional living program:

(1) General requirements.

(a) At intake, client identifying and demographic information, emergency contact person, and presenting problem shall be obtained from the client.

(b) A physical health status questionnaire, which has been developed in consultation with a physician, or a copy of the record of a physical health examination, shall be completed for each client and include at least:

1. History of medical problems;

2. Client's self-report on current status of pregnancy, tuberculosis, hepatitis and human immunodeficiency virus;

3. Use of prescription and over-the-counter medication;

4. Allergies; and

5. Identification of a medical condition that may affect a client's participation in treatment.

(c) A written aftercare plan shall:

1. Be developed for each client with the client's participation;

2. Be based on the client's needs at discharge; and

3. Include activities and referrals supporting recovery from alcohol and other drug abuse.

(d) Orientation to self-help groups specific to addiction recovery shall be provided to each client.

(e) A client shall be provided an opportunity to meet with a self-help group and other outside service providers.

(f) An AODE shall have a policy requiring that if a client performs work in the program, other than a personal care or housekeeping task, which is part of a therapeutic activity, the work shall be voluntary and consistent with the treatment plan.

(g) There shall be written policies and procedures on the use of medication by a client which shall include:

1. Prescription and over-the-counter medication brought with a client shall be recorded in the client's record upon admission;

2. A policy on self-administration of over-the-counter medication to include the identification of medication which requires physician approval prior to use by a client while in the program;

3. A program without a physician on staff shall obtain written consent from a client, to verify with a physician that a prescription or an over-the-counter medication described in subparagraph 2 of this paragraph is not contraindicated with the client's treatment plan and the verification shall be documented in the client's record;

4. Prescription and over-the-counter medication shall be stored in a locked and secure location inaccessible to clients;

5. Medication shall be available to a client only at the time it is scheduled to be taken according to a prescription or as directed on the label; and

6. Self-administration of prescription and over-the-counter medication shall be documented in the client's record and include:

a. Name of the medication;

b. Date and time of self-administration;

c. Dosage and amount of medication; and

d. Name of the staff person who monitored the self-administration of the medication.

(h) Food services shall be provided according to the following:

1. In accordance with 902 KAR 45:005;

2. A copy of the food service permit shall be maintained on-site; and

3. There shall be documentation that meal planning is approved by a registered dietitian.

(2) Residential transitional living program where counseling services are provided on-site. In addition to the requirements established in subsection (1) of this section, the following requirements shall be met:

(a) An assessment shall be completed on each client and include:

1. A psychosocial which shall include:
 - a. Presenting problem;
 - b. History and treatment of alcohol and other drug abuse;
 - c. Current living arrangement;
 - d. Family relationships;
 - e. Legal, employment, military, educational, and vocational history;
 - f. Peer group relationships;
 - g. Religious background and practices;
 - h. History and treatment of mental retardation, a developmental disability or a mental health problem including emotional, physical and sexual abuse;
 - i. Ethnic and cultural background;
 - j. Leisure and recreational activities;
 - k. Client strengths and limitations; and
 - l. An evaluation of the client's alcohol and other drug abuse or dependency;
2. A mental status screening; and
3. A summary of a client's needs based on an analysis of all information from the client's assessment and which includes a recommended course of treatment.

(b) A written individualized treatment plan based on the assessment shall be developed for each client with the client's participation within seven (7) calendar days of admission and include:

1. An evaluation of the client's alcohol and other drug abuse or dependency;
2. The client's problem;
3. Goals, measurable objectives and criteria for discharge;
4. Duration, frequency and type of service to be provided;
5. Referrals;
6. Staff person primarily responsible for developing the treatment plan; and
7. The client's signature.

(c) A treatment plan and a client's progress shall be reviewed by a clinical staff person and the client monthly and be documented in the client's record.

(d) Alcohol and other drug abuse counseling, including a focus on relapse prevention, shall be provided to each client. If provided in a group there shall be a maximum of fifteen (15) clients per clinician.

(e) A progress note which includes the service provided, an observation of a client's behavior and response to the service, and a client's progress toward meeting the goals and objectives of the treatment plan shall be recorded after an individual counseling session, and weekly in a summary note if a client receives multiple services.

(f) There shall be documentation in a client's record that the client is:

1. Employed;
2. Pursuing employment;
3. Participating in vocational education, training or rehabilitation; or
4. Receiving a disability benefit.

(g) A discharge summary shall be completed within thirty (30) calendar days of discharge and include:

1. The date of admission and discharge;
2. Presenting problem;
3. An evaluation of the client's alcohol and other drug abuse or dependency;
4. Summary of the client's progress in relation to the treatment plan; and
5. Referrals made to another organization or provider.

(h) A program shall meet the staffing requirements established in Section 8 of this administrative regulation, be staffed twenty-four (24) hours a day, seven (7) days a week, and include:

1. A program manager, supervisor or coordinator;
2. Staffing capability to ensure that an appropriate staff person is responsible for managing a program in the absence of a program manager, supervisor or coordinator; and

3. Sufficient staff to meet client needs twenty-four (24) hours a day based on the number of clients, the need for assistance by clients, and the type of services delivered. If there are multiple twenty-four (24) hour programs operated in the same facility, the staff of all programs may be used to meet staffing requirements.

(i) There shall be at least one (1) staff person on duty at all times who has completed training in crisis intervention and standard first aid, which includes cardiopulmonary resuscitation conducted by a certified instructor.

(3) Residential transitional living program where counseling services are not provided on-site. In addition to the requirements established in subsection (1) of this section, the following requirements shall be met.

(a) At admission, an evaluation of the need for each of the following shall be completed for each client:

1. Alcohol and other drug abuse services;
2. Employment services;
3. Vocational education, training or rehabilitation services;
4. Disability services;
5. Other health and human services; and
6. Assistance in developing daily living skills.

(b) A written individualized treatment plan based on the evaluation of a client's needs shall be developed for each client with the client's participation within seven (7) calendar days of admission, documented in the client's record and include the following:

1. A client's problem;
2. Goals, measurable objectives and criteria for discharge;
3. Duration, frequency and type of service to be provided;
4. Referrals;
5. Staff person primarily responsible for developing the treatment plan; and
6. The client's signature.

(c) A treatment plan and a client's progress shall be reviewed by a caseworker and the client monthly and be documented in the client's record.

(d) Training in daily living and relapse prevention skills shall be provided to each client.

(e) A progress note shall be recorded weekly in a summary note documenting the client's progress in:

1. Employment;
2. Pursuing employment;
3. Participation in vocational education, training or rehabilitation;
4. Participation in self-help groups;
5. Training in daily living and relapse prevention skills; and
6. Following through on referrals to needed services.

(f) A discharge summary shall be completed within thirty (30) calendar days of discharge and include:

1. Date of admission and discharge;
2. Presenting problem;
3. Summary of the client's progress in relation to the treatment plan; and
4. Referrals made to another organization or provider.

(g) A program shall meet the following staffing requirements:

1. A program manager shall be responsible for the day-to-day management of the program, supervising and documenting supervision of caseworkers and for the implementation and monitoring of program policies and procedures.

2. A program manager may be responsible for more than one (1) facility.

3. A program manager shall:

- a. Meet the requirements of a clinical services supervisor in accordance with Section 8(2)(a)1 or 2 of this administrative regulation; or
- b. Have a bachelors degree from an accredited college or university, plus 4000 hours of work experience in social services and eighty (80) hours of alcohol and other drug abuse training, within four (4) years immediately prior to the date of assuming responsibility as a program manager or within two (2) years immediately after assuming responsibility as a program manager.

4. A caseworker shall be responsible for:

- a. Developing a client's treatment plan;
- b. Monitoring a client's progress in relation to the treatment plan;
- c. Conducting a client's training on daily living skills and relapse prevention skills; and
- d. Making referrals.
- 5. A caseworker shall:
 - a. Be a certified alcohol and drug counselor certified pursuant to KRS 309.080 to 309.089;
 - b. Have a bachelors degree from an accredited college or university and forty (40) hours of alcohol and other drug abuse training within four (4) years immediately prior to the date of assuming responsibility as a caseworker or within one (1) year of employment in this position or within one (1) year from the effective date of this administrative regulation whichever is later; or
 - c. Have an associate degree from an accredited college or university, or be an individual without a degree with at least three (3) years of recovery from alcohol or other drug abuse, plus have the following:
 - (i) Forty (40) hours of alcohol and other drug abuse training within four (4) years immediately prior to the date of assuming responsibility as a caseworker or within one (1) year of employment in this position or within one (1) year from the effective date of this administrative regulation whichever is later;
 - (ii) Four (4) hours of face-to-face supervision per month; and
 - (iii) Treatment plans cosigned by the program manager.
- 6. There shall be sufficient staff to ensure that an appropriate staff person is responsible for managing a program in the absence of the program manager.
- 7. There shall be sufficient staff to meet client needs based on the number of clients and the need for assistance by clients. If there are multiple twenty-four (24) hour programs operated in the same facility, the staff of all programs may be used to meet staffing requirements.
- 8. At least one (1) staff person on duty shall have completed training in crisis intervention and standard first aid, which includes cardiopulmonary resuscitation conducted by a certified instructor.
- 9. Staff training requirements shall include:
 - a. A program manager shall complete a minimum of twenty (20) hours of alcohol and other drug abuse related training annually; and
 - b. A caseworker shall complete a minimum of ten (10) hours of alcohol and other drug abuse related training annually.

Section 14. Outpatient Program. In addition to the requirements established in Sections 1 through 10 of this administrative regulation, the following requirements shall be met in an outpatient program.

- (1) At intake, client identifying and demographic information, emergency contact person, and presenting problem shall be obtained from a client.
- (2) An assessment shall be completed on each client and include:
 - (a) A psychosocial which shall include:
 - 1. Presenting problem;
 - 2. History and treatment of alcohol and other drug abuse;
 - 3. Current living arrangement;
 - 4. Family relationships;
 - 5. Legal, employment, military, educational and vocational history;
 - 6. Peer group relationships;
 - 7. Religious background and practices;
 - 8. History and treatment of behavioral health problem, developmental disability, or a mental health problem or a mental health problem including emotional, physical and sexual abuse;
 - 9. Ethnic and cultural background;
 - 10. Leisure and recreational activities;
 - 11. Client strengths and limitations; and
 - 12. An evaluation of the client's alcohol and other drug abuse or dependency;
 - (b) A mental status screening;
 - (c) Completion of a physical health status questionnaire, which has been developed in consultation with a physician or a copy of

- the record of a physical health examination which includes at least:
 - 1. History of medical problems;
 - 2. Client's self report on current status of pregnancy, tuberculosis, hepatitis and human immunodeficiency virus;
 - 3. Use of prescription and over-the-counter medication;
 - 4. Allergies; and
 - 5. Identification of a medical condition that may affect a client's participation in treatment; and
- (d) A summary of a client's needs based on an analysis of all information from the client's assessment and which includes a recommended course of treatment.
- (3) A written individualized treatment plan based on the assessment shall be developed for each client with the client's participation before the fourth client session and include:
 - (a) An evaluation of the client's alcohol and other drug abuse or dependency;
 - (b) The client's problem;
 - (c) Goals, measurable objectives and criteria for discharge;
 - (d) Duration, frequency and type of service to be provided;
 - (e) Referrals;
 - (f) Staff person primarily responsible for developing the treatment plan; and
 - (g) The client's signature.
- (4) A treatment plan and a client's progress shall be reviewed by a clinical staff person and the client every six (6) months and be documented in the client's record.
- (5) Alcohol and other drug abuse counseling, including a focus on relapse prevention, shall be provided to each client. If provided in a group there shall be a maximum of fifteen (15) clients per clinician.
- (6) Education shall be provided to each client on the effects of alcohol and other drug abuse, the disease and recovery from alcohol and other drug dependency, consistent with the client's treatment plan.
- (7) A referral to self-help groups specific to addiction recovery shall be provided to each client.
- (8) A written aftercare plan shall:
 - (a) Be developed for each client with the client's participation;
 - (b) Be based on a client's needs at discharge; and
 - (c) Include activities and referrals supporting recovery from alcohol and other drug abuse.
- (9) A progress note shall be recorded following each client contact. If the contact is the delivery of a professional service, an observation of the client's behavior and response to the service and the client's progress toward meeting the goals and objectives of the treatment plan shall be recorded.
- (10) A discharge summary shall be completed within thirty (30) calendar days of discharge and include:
 - (a) The date of admission and discharge;
 - (b) Presenting problem;
 - (c) An evaluation of the client's alcohol and other drug abuse or dependency;
 - (d) Summary of treatment and response to treatment; and
 - (e) Referrals made to another organization or provider.
- (11) A program shall have a procedure for informing clients of the availability of emergency services after a program's normal hours of operation.
- (12) Staff shall include:
 - (a) A program manager, supervisor or coordinator; and
 - (b) Sufficient staff to meet client needs based on the number of clients, the need for assistance by clients, and the type of services delivered.
- (13) If narcotic maintenance is provided, it shall be provided in accordance with 908 KAR 1:340.

Section 15. Intensive Outpatient Program. In addition to the requirements established in Sections 1 through 10 and 14(1), (2), (5), (6), (7), (8), (10), (11), and (12) of this administrative regulation, the following requirements shall be met for an intensive outpatient program.

- (1) A client shall receive a variety of structured comprehensive individual and group therapeutic activities for a minimum of six (6) hours over a period of two (2) or more days weekly.

~~(2) A written individualized treatment plan based on the assessment shall be developed for each client with the client's participation before the client's fourth session and include:~~

~~(a) An evaluation of the client's alcohol and other drug abuse or dependency;~~

~~(b) The client's problem;~~

~~(c) Goals, measurable objectives and criteria for discharge;~~

~~(d) Duration, frequency and type of service to be provided;~~

~~(e) Referrals;~~

~~(f) Staff person primarily responsible for developing the treatment plan; and~~

~~(g) The client's signature.~~

~~(3) A treatment plan and a client's progress shall be reviewed by a clinical staff person and the client monthly and be documented in the client's record.~~

~~(4) Information or education about alcohol and other drug dependency and recovery shall be made available to a client's family or significant other. If a service is requested, it shall be provided either directly or through referral to a qualified outside provider.~~

~~(5) An AODE shall have a policy requiring that a schedule of all planned therapeutic activities shall be given to each client or conspicuously posted in the facility.~~

~~(6) A progress note which includes the service provided, the length of the session, an observation of the client's behavior and response to the service, and the client's progress toward meeting the goals and objectives of the client's treatment plan shall be recorded after an individual counseling session, and weekly in a summary note if the client receives multiple services.~~

~~(7) If a client receives services for at least five (5) consecutive hours daily, food services shall be provided either:~~

~~(a) Directly by the program according to the following:~~

~~1. In accordance with 902 KAR 45:005. A copy of the food service permit shall be maintained on-site; and~~

~~2. There shall be documentation that meal planning is approved by a registered dietician; or~~

~~(b) By allowing the client adequate time to eat food obtained outside the facility.~~

~~Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) Application for Licensure to Operate an Alcohol or Drug Treatment Entity (AODE), 11-99; and~~

~~(b) Form L&R 18, Statement of Deficiencies and Plan of Correction, 11-99.~~

~~(2) This material may be inspected, copied, or obtained at the Office of Inspector General, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

WENDY MORRIS, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: April 15, 2019

FILED WITH LRC: April 15, 2019 at 11 a.m.

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Behavioral Health, Developmental
and Intellectual Disabilities
Division of Behavioral Health
(As Amended at ARRS, July 10, 2019)**

908 KAR 1:372. Licensure of residential alcohol and other drug treatment entities.

RELATES TO: KRS 222.231, 309.080(2)

STATUTORY AUTHORITY: KRS 222.231(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 222.231(2) requires the cabinet to promulgate administrative

regulations to establish requirements and standards for treatment programs, including health and safety standards, patient care standards, and classification of alcohol and other drug programs according to type, range of services, and level of care provided. This administrative regulation establishes standards for residential alcohol and other drug treatment entities (AODE) that provide services to adult men, adult women, women with dependent children, or adolescents. Residential AODE programs include twenty-four (24) hour clinically managed residential withdrawal management, general residential treatment, family residential, residential transitional living, and adolescent residential treatment programs.

Section 1. General Requirements. Each type of residential AODE program as described in Section 2 through Section 6 of this administrative regulation shall implement written policies for separate housing of adult and adolescent clients, and male and female clients in accordance with the following:

(1) Adult and adolescent clients shall be physically separated by floor, wing, or other physical barriers; and

(2) Male and female sleeping quarters shall be physically separated by floor, wing, or other adequate physical barriers, ensuring the clients' rights to privacy and dignity in treatment.

Section 2. Clinically Managed Residential Withdrawal Management. (1) In addition to the licensing requirements of 908 KAR 1:370, a program offering clinically managed residential withdrawal management shall accept and provide services only to clients meeting the:

(a) Diagnostic criteria for substance-related disorder as established by the most recent version of the Diagnostic and Statistical Manual of Mental Disorders (DSM) for alcohol, tobacco, and other drug use; and

(b) Dimensional criteria for clinically managed residential withdrawal management as established in the most recent version of The American Society of Addiction Medicine (ASAM) Criteria.

(2) Clinically managed residential withdrawal management services shall:

(a) Be delivered by staff who:

1. Are qualified to meet the needs of clients; and

2. Provide twenty-four (24) hour supervision, observation, and support for clients who are intoxicated or experiencing withdrawal;

(b) Include care for clients whose intoxication and withdrawal signs and symptoms require twenty-four (24) hour structure and support without the need for medically monitored inpatient withdrawal management services; and

(c) Include:

1. Use of established clinical protocols to identify clients who are in need of:

a. Medical services beyond the capacity of the facility; and

b. Transfer to an appropriate level of care;

2. Availability of specialized clinical consultation and supervision for biomedical, emotional, behavioral, and cognitive problems;

3. Protocols that shall be developed and supported by a physician knowledgeable in addiction medicine for use in determining the nature of any medical or nursing interventions required if a client's condition deteriorates and the client appears to need the care of a physician or nurse;

4. Availability of medical evaluation and consultation twenty-four (24) hours per day;

5. Affiliation with other levels of care; and

6. Ability to arrange for appropriate laboratory and toxicology tests.

(3) Staff shall include clinical staff trained and competent to implement physician-approved protocols for:

(a) Patient observation and supervision;

(b) Determination of appropriate level of care; and

(c) Facilitation of the client's transition to continuing care.

(4) Each clinician who is responsible for assessing and treating clients shall be able to obtain and interpret information regarding the needs of the clients, including:

(a) The signs and symptoms of alcohol and other drug

intoxication and withdrawal;

(b) Appropriate treatment and monitoring of intoxication and withdrawal; and

(c) How to facilitate entry into ongoing care.

(5) A program providing clinically managed residential withdrawal management that supervises self-administration of medication shall have written policies and procedures on the steps involved for self-administration, including:

(a) Identification in the client record of medication that requires physician approval prior to use; and

(b) The name of the staff person who monitored the self-administration of the medication.

(6) Therapies offered by a program providing clinically managed residential withdrawal management shall include:

(a) Daily clinical services to assess and address the needs of each client, including the following if needed:

1. Medical services, including:

a. Medically assisted withdrawal; or

b. Medication assisted treatment, provided onsite or through referral;

2. Individual counseling;

3. Group counseling; or

4. Withdrawal support;

(b) A range of cognitive, behavioral, medical, mental health, and other therapies as needed to enhance a client's understanding of:

1. Addiction;

2. Co-occurring disorders;

3. Completion of the withdrawal management process; and

4. Referral to an appropriate level of care for continuing treatment;

(c) Withdrawal rating scale tables and flow sheets that include tabulation of vital signs if needed;

(d) Interdisciplinary individualized assessment and treatment;

(e) Health education services; and

(f) Services to families and significant others.

(7) Elements of the assessment and treatment planning shall include:

(a) An individualized treatment plan established in accordance with 908 KAR 1:370, Section 19, including:

1. Problem identification in dimensions two (2) through six (6) of the most recent version of the ASAM criteria;

2. Development of treatment goals and measurable treatment objectives; and

3. Activities designed to meet the treatment objectives and management of withdrawal symptoms;

(b) Daily assessment of:

1. Progress during withdrawal management; and

2. Any treatment changes;

(c) Transfer and discharge planning, beginning at the point of admission; and

(d) Referral and linkage arrangements for:

1. Counseling;

2. Medical care, including medication assisted treatment if not provided onsite;

3. Psychiatric care; and

4. Continuing care.

(8) Progress notes shall:

(a) Be maintained in the client record in accordance with 908 KAR 1:370, Section 17(4)(h);

(b) Reflect implementation of the treatment plan;

(c) Document the client's response to treatment; and

(d) Include each amendment of the treatment plan.

(9) A client shall continue with clinically managed residential withdrawal management until:

(a) Withdrawal signs and symptoms are sufficiently resolved so that the client can be safely managed at a less intensive level of care;

(b) The client's signs and symptoms of withdrawal have:

1. Failed to respond to treatment; or

2. Intensified so that transfer to a more intensive level of withdrawal management is indicated; or

(c) The client is unable to complete clinically managed

residential withdrawal management despite an adequate trial, due to increasing depression, suicidal impulses, or other severe complication.

Section 3. General Residential Treatment Programs. (1) In addition to the licensing requirements in 908 KAR 1:370, a residential treatment program:

(a) Shall evaluate the client's need for each of the following at admission:

1. Alcohol and other drug abuse services;

2. Employment services;

3. Vocational education, training, or rehabilitation services;

4. Disability services;

5. Other health and human services; and

6. Assistance in developing daily living skills;

(b) Shall establish and implement a policy for off-site supervision and transportation of clients to services provided outside of the facility, which shall:

1. Indicate the method of transportation;

2. Address the security and accountability for each client and his or her personal possessions;

3. Address the transfer of client information to and from the provider of services;

4. Ensure that a copy of current registration and current insurance information is maintained on file for each vehicle used to transport clients;

5. Ensure that the name of each driver responsible for transporting clients is maintained on file;

6. Identify the employee who accompanies the client, if appropriate; and

7. Identify the destination for each client; and

(g) May provide clinically managed residential withdrawal management as established in Section 2 of this administrative regulation.

(2) A residential treatment program shall provide each client with education regarding:

(a) The disease of addiction;

(b) The client's diagnosis;

(c) The effects of alcohol and other drug abuse;

(d) The risks of exposure to human immunodeficiency virus (HIV), hepatitis, and other health consequences of substance use disorder;

(e) Family issues related to substance use disorder;

(f) Recovery support groups specific to addiction recovery;

(g) Medication assisted treatment; and

(h) Understanding the interactions between mental health and addiction, including the most common types of co-occurring disorders.

(3) Information or education about alcohol and other drug abuse, including recovery shall be made available to a client's family or significant other.

(4) A client shall have access to printed materials, appropriate to the client's literacy level, and audio and video materials that are:

(a) Presented multi-lingually on the basis of client composition of the facility; and

(b) Related to the treatment of alcohol and other drug abuse.

(5) A residential treatment program client shall ~~receive[ensure that each client spends]~~ at least six (6)~~(seven (7))~~ hours each day in structured activities, including participation in any of the following activities:

(a) Alcohol and other drug abuse education;

(b) Individual, group, or family counseling in which the client shall participate a minimum of ten (10) hours each week;

(c) On-site or off-site recovery support meetings;

(d) Life skills training;

(e) Vocational training or an educational activity; or

(f) Recreation.

(6) If counseling is provided in a group, there shall be a maximum of twelve (12) clients per clinician.

(7)(a) A residential treatment program shall provide a planned, diversified program of organized recreational activities that allow clients to participate on an individual or group basis as specified in the client treatment plan and coordinated with other client care

services.

(b) Recreational activities shall be provided under the direction of staff as part of the client's schedule.

(8)(a) Progress notes shall be recorded in the client's **record[treatment plan]** following the delivery of a clinical service or individual counseling session and shall include:

1. The type of service provided, including the:

a. Date of the service; and

b. Length of the service;

2. A description of the client's response to the service; and

3. Clinical impressions including the clinician's assessment of the client's progress or lack of progress toward achieving the objectives established in the treatment plan.

(b) In addition to paragraph (a) of this subsection, a progress note shall be made each week to document the client's progress in:

1. Employment;

2. Pursuing employment;

3. Participation in vocational education, training, or rehabilitation activities;

4. Participation in recovery support groups;

5. Training in daily living and recovery supports; and

6. Following through on referrals to services, if needed.

(9) A written recovery plan shall be:

(a) Developed by the client and the treatment team to identify and promote aspects of continuing care for substance use disorder that are associated with success in recovery;

(b) Provided to the client after he or she has achieved the initial stabilization goals of treatment; and

(c) Based on the client's needs at discharge, including activities and any referrals to support recovery.

(10) A discharge summary shall be completed within thirty (30) calendar days of discharge, including the client's:

(a) Date of admission;

(b) Date of discharge;

(c) Presenting problem;

(d) Evaluation of alcohol and other drug abuse or dependency;

(e) Summary of treatment;

(f) Response to treatment;

(g) Referrals made to other organizations or providers; and

(h) Reason for discharge.

(11) Other than a personal care or housekeeping task, if a client performs work in the residential treatment program that is part of a therapeutic activity, the work shall be voluntary and consistent with the treatment plan.

(12) A residential treatment program shall have written policies and procedures on the use of medication, including:

(a) Documentation in the client record of any medications the client is currently prescribed and taking;

(b) Documentation in the client record of any over-the-counter medication the client is taking;

(c) Steps involved for self-administration of over-the-counter medication, including identification in the client record of medication that requires physician approval prior to use;

(d) **Documentation that any medications brought into the facility by a resident are not administered or allowed to be self-administered unless the medication has been identified and a written order to administer or allow for self-administration of the specific drug is given by the responsible prescribing practitioner[Written consent from the client, for physician verification, that the prescription or over-the-counter medication is not contraindicated with the client's treatment plan if the residential treatment program does not have a physician on staff];**

(e) Documentation of the physician's verification in the client's record;

(f) Storage of all medications to ensure that all medications be kept in a locked, secure location inaccessible to clients;

(g) Administration of medication, including establishment of the times for administration of medication;

(h) Documentation in the client's record of self-administration of prescription or over-the-counter medication, including the:

1. Name of the medication;

2. Date and time of self-administration;

3. Dosage and amount of medication; and

4. Name of the staff person who monitored the self-administration of the medication.

(13) A residential treatment program shall have a first-aid kit with supplies necessary for use in responding to minor injury or illness.

(14)(a) **If the program prepares meals on-site for a client,** food services shall be provided in accordance with 902 KAR 45:005.

(b) A copy of the food service permit shall be maintained on site.

(c) There shall be documentation that meal planning is approved by a registered dietician.

(d) **If clients prepare their own meals on-site or are otherwise responsible for their meals, a food service permit shall not be required.**

(e) Drinking water shall be freely available throughout the day, including mealtime.

(15) A residential treatment program shall be staffed twenty-four (24) hours per day, seven (7) days per week and have:

(a) A program manager, supervisor, or coordinator, including a designated staff person responsible for managing a program in the absence of the manager, supervisor, or coordinator;

(b) A sufficient number of personnel to meet client needs based on the:

1. Number of clients;

2. Need for assistance; and

3. Services delivered; and

(c) At least one (1) staff person on duty and awake at all times who is trained in:

1. Crisis intervention;

2. Cardiopulmonary resuscitation; and

3. Standard first aid.

(16) A residential treatment program shall ensure that in addition to the clients' rights established by 908 KAR 1:370, Section 16, the following clients' rights shall be fully protected:

(a) The right to visitation with family and friends, subject to written visiting rules and hours established by the program, except as provided in subsections (17) and (18) of this section;

(b) The right to conduct private telephone conversations, subject to written rules and hours established by the program, except as provided in subsections (17) and (18) of this section;

(c) The right to send and receive uncensored and unopened mail;

(d) The right to wear his or her own clothing subject to written program rules;

(e) The right to bring personal belongings, subject to limitation or supervision by the program;

(f) The right to communicate with his or her personal physician; and

(g) The right to practice his or her personal religion or attend religious services, within the program's policies and written policies for attendance at outside religious services.

(17) The administrator, program manager, or designee may impose limitations on any of the visitation or phone call procedures if limitations are:

(a) Therapeutically necessary; and

(b) Recorded in the client's record.

(18) The residential treatment program may require the client to open mail or packages in the presence of program staff for inspection.

(19) If more than one (1) type of residential AODE program operates in the same facility, staff may provide services in each program.

Section 4. Family Residential Program. (1) In addition to the requirements of 908 KAR 1:370 and Section 3 of this administrative regulation, a family residential program in which a client's children reside with the client:

(a) Shall provide parenting education to the client if identified in the client's treatment plan;

- (b) Shall ensure and document that the children:
 - 1. Are immunized at admission;
 - 2. Show no signs of illness; and
 - 3. Continue to receive primary medical care as needed during their stay at the facility;
- (c) Shall develop and implement written policies to:
 - 1. Include the maximum number of children permitted to reside in the facility at one (1) time;
 - 2. Include the age of children permitted to reside in the facility;
 - 3. Ensure that the needs of the children are assessed and met during treatment;
 - 4. Ensure that the health, safety, and well-being of the children is protected; and
 - 5. Require the client to sign a statement that outlines the client's responsibility for care of the client's child, including that:
 - a. The client shall have primary responsibility for ensuring the child's needs are met regarding:
 - (i) Food;
 - (ii) Clothing;
 - (iii) Hygiene;
 - (iv) Safety;
 - (v) Discipline;
 - (vi) Supervision; and
 - (vii) Obtaining services in response to a referral made on behalf of the child; and
 - b. The client shall make prior arrangements for the care of the child before leaving the facility without the child; and
 - (d) May provide clinically managed residential withdrawal management as established by Section 2 of this administrative regulation.
 - (2) A family residential program shall:
 - (a) Identify and provide information to the client regarding community resources, including education and child care;
 - (b) Provide education about the effect on families and children regarding abuse of alcohol or other drugs; and
 - (c) Provide organized recreational activities:
 - 1. Under the direction of staff; and
 - 2. Posted on a schedule.

Section 5. Residential Transitional Living Program. (1) In addition to the licensing requirements of 908 KAR 1:370, a residential transitional living program that provides counseling services on-site shall:

- (a) Comply with the requirements established for general residential treatment programs in Section 3(1), (6), and (8) to (17) of this administrative regulation;
- (b) Ensure that each client participates in counseling and planned clinical program activities a minimum of five (5) hours per week. Client participation in any combination of individual, group, or family counseling shall be scheduled for no less than two (2) of the five (5) hours of weekly program activities; and
- (c) Enable each client to attend recovery support meetings.
- (2) A residential transitional living program that does not provide counseling services on-site shall:
 - (a) Comply with the requirements established for general residential treatment programs in Section 3(1)(a) and (b) and (d) through (f), and (8) through (17) of this administrative regulation;
 - (b) Ensure that a comprehensive biopsychosocial assessment is obtained on behalf of the client;
 - (c) Ensure that each client participates in counseling and planned clinical program activities a minimum of five (5) hours per week. Client participation in any combination of individual, group, or family counseling shall be scheduled for no less than two (2) of the five (5) hours of weekly program activities;
 - (d) Enable each client to attend recovery support meetings;
 - (e) Have a program manager who may be responsible for more than one (1) facility and shall:
 - 1. Be responsible for the day-to-day management of the program, including:
 - a. Supervising caseworkers; and
 - b. Monitoring the implementation of program policies and procedures;

- 2. Complete training in accordance with 908 KAR 1:370, Section 10(1); and
- 3. Meet the education and experience requirements of a clinical services supervisor in accordance with 908 KAR 1:370, Section 10(3), or have at least a bachelor's degree from an accredited college or university, in addition to:
 - a. 4,000 hours of work experience in the alcohol and other drug treatment field post degree; and
 - b. Eighty (80) hours of alcohol and other drug abuse training within four (4) years immediately prior to the date of assuming responsibility as a program manager or no longer than two (2) years immediately after assuming responsibility as a program manager;
- (f) Have sufficient staff to ensure that a staff person that meets the minimum requirements of a program manager[an appropriate staff person] is responsible for managing a program in the absence of the program manager; and
- (g) Have caseworkers who:
 - 1. Shall be responsible for:
 - a. Coordinating clinical services in accordance with a client's treatment plan;
 - b. Monitoring a client's progress in relation to the treatment plan;
 - c. Conducting training on daily living and recovery supports; and
 - d. Making referrals; and
 - 2. Meet the training, education, and experience requirements of 908 KAR 1:370, Section 11(2) to (5).

Section 6. Adolescent Residential Treatment Program. (1) An adolescent residential treatment program shall be a freestanding residential facility or a distinct part of a facility in which care is provided to two (2) or more adolescent clients who are:

- (a) Under eighteen (18) years of age; or
- (b) Eighteen (18) to twenty-one (21) years of age, if placement in an adolescent program is determined to be the appropriate level of care upon completion of the assessment described by 908 KAR 1:370, Section 18(1) and (2).
- (2) In addition to the requirements of 908 KAR 1:370 and Section 3 of this administrative regulation, an adolescent residential treatment program:
 - (a) Shall admit adolescents only to areas within the facility approved by the cabinet for adolescent occupancy;
 - (b) Shall ensure that areas for adolescents are physically separated from any part of a facility occupied by or accessible to adult clients;
 - (c) Shall ensure that adolescent clients in the facility be separated if the age range is more than five (5) years;
 - (d) Shall have no fewer than two (2) staff members present and on site at all times;
 - (e) Shall have at least one (1) staff member within sight and sound and responsible for the supervision of no more than:
 - 1. Ten (10) adolescent clients during waking hours; and
 - 2. Twenty (20) adolescent clients during sleeping hours;
 - (f) Shall provide or coordinate the provision of educational services; and
 - (g) May provide clinically managed residential withdrawal management as established in Section 2 of this administrative regulation.
- (3) An adolescent residential treatment program shall:
 - (a) Make every effort to identify the resident's family dynamics, including family structure and patterns of relating, or interactions between family members;
 - (b) Engage and include the family in the resident's treatment as early as possible in accordance with 908 KAR 1:370, Section 9(9);
 - (c) Provide single family therapy, multi-family group therapy, and parental education sessions as clinically appropriate and as specified in the client's treatment plan;
 - (d) Assist the resident in developing a support system to help reinforce behavioral gains made during treatment; and
 - (e) Provide ongoing support with an emphasis on recovery supports.

(4) Educational services shall be provided by:

- (a) The local school district in which the facility is located;
- (b) An accredited private educational institution in the community; or

(c) An on-site school that:

- 1. Is operated by the facility and approved by the Kentucky Department of Education;
- 2. Is designed to maintain the educational and intellectual development of the adolescent;
- 3. If indicated, provides opportunities to remedy deficits in the educational level of an adolescent who has fallen behind as a result of involvement with substance use; and
- 4. Includes at least three (3) hours of instruction on days that education services are provided.

(5) Regardless of the method by which the educational services are delivered to clients, staff of the adolescent residential treatment program shall:

(a) Confer with teachers or their principals on the progress of each client; and

(b) If appropriate, encourage clients to become active in extracurricular school activities and make arrangements necessary to enable the client to participate.

(6) The adolescent residential treatment program shall ensure that any adolescent who legally is not attending school participates in a training program that provides:

- (a) Necessary life skills;
- (b) Vocational training; and
- (c) Training on methods of job acquisition.

(7) Each resident shall be limited to no more than two (2) hours of entertainment-based screen time per day.

(8) Structured activities shall be developmentally appropriate to the resident.

(9) Food shall be served to residents in a common eating area and shall:

- 1. Include at least three (3) meals per day, served with not more than a fifteen (15) hour span between the substantial evening meal and breakfast;
- 2. Include between-meal and unscheduled snacks;
- 3. Not be withheld as punishment and shall not be used as a reward;

4. Take into account the special dietary needs and tastes of residents, such as diabetes and allergies;

5. Be served in an amount appropriate to the age of the resident and include second servings, if requested; and

6. Not be served while viewing television or using electronics.

(10) The following practices shall be expressly forbidden:

- (a) Corporal punishment;
- (b) Use of restraints of any sort;
- (c) Use of a behavior management room; and
- (d) Sanctions that include verbal, mental, or physical abuse.

(11)(a) Computer and internet usage shall be monitored.

(b) Blocking software or other controls shall be used to restrict access to inappropriate web sites.

(12) A resident shall receive assistance with personal care and hygiene based upon his or her developmental skills.

Section 7. Infection Control. Each type of residential AODE program shall implement written policies and procedures for an infection control system, including orientation for all new personnel and annual in-service training for all personnel on proper hygiene related to infections prevalent among persons who use drugs.

Section 8. Physical Environment. (1) Each type of residential AODE program shall:

(a) Comply with building codes, ordinances, and administrative regulations that are enforced by city, county, or state jurisdictions;

(b) Be approved by the State Fire Marshal's office:

- 1. Prior to initial licensure; or
- 2. If the AODE changes locations;

(c) Within the program's total square footage, have at least 120 square feet of space for each client residing in the facility;

(d) **Have at least one (1) toilet and one (1) sink per eight (8) clients;**

~~(e) [If licensed as a residential AODE program prior to the effective date of this administrative regulation,]~~ Have at least[:

- 1. ~~One (1) toilet and one (1) sink per eight (8) clients; and~~
- 2.] one (1) shower or tub per fifteen (15) clients;

~~(f) (e) [If licensed as a residential AODE program after the effective date of this administrative regulation, have at least]:~~

- 1. ~~Two (2) toilets and two (2) sinks per eight (8) clients;~~

~~and~~

~~2.] [one (1) shower or tub per (8) clients;~~

~~(g) (f)]~~ Provide space for a client to store clothing, linens, and personal belongings, including a receptacle that may be locked for the storage of personal property; and

~~(g) (h) (g)]~~ Have separate rooms for the following:

- 1. Sleeping;
- 2. Dining;
- 3. Bathing and toileting;
- 4. Living and recreation;
- 5. Laundry;
- 6. Visiting; and
- 7. Private consultation and counseling, which shall be conducted in an area where a client is assured privacy and confidentiality.

(2) A client's bed shall have:

- (a) A clean mattress; and
- (b) Two (2) sheets, a pillow, and bed covering of sufficient quality to maintain resident comfort.

(3) The premises shall be well kept and in good repair and meet the following requirements:

(a) The facility shall ensure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps, and fences are in good repair;

(b) The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing, and electrical fixtures shall be in good repair; and

(c) Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly.

Section 9. Client Care Environment. (1) Each type of residential AODE program shall meet the following housekeeping and sanitation conditions and implement policies that reflect the following:

(a) The facility and its contents shall be clean to sight and touch and free of dirt and debris;

(b) All rooms shall be free of condensation, mold growth, and noxious odors;

(c) All equipment and materials necessary for cleaning, disinfecting, and sterilizing shall be available in the facility at all times, except as provided in subsection (3)(b) of this section;

(d) Thermometers, which are accurate to within three (3) degrees Fahrenheit shall be kept in a visible location in refrigerators, freezers, and storerooms used for perishable and other items subject to deterioration;

(e) Articles in storage shall be elevated from the floor and away from walls, ceilings, and air vents;

(f) Aisles in storage areas shall be kept unobstructed;

(g) Pest control methods that are safe for clients and staff shall be used to:

1. Minimize and eliminate the presence of rodents, flies, roaches, and other vermin in the facility; and

2. Prevent the breeding, harborage, or feeding of vermin;

(h) All openings to the outer air shall be effectively protected against the entrance of insects and other vermin;

(i) Toilet tissue, soap, and disposable towels or air driers shall be provided in each bathroom at all times, with soap and disposable towels or air driers provided at each hand washing sink;

(j) Bathrooms with multiple hand washing sinks shall provide at least one (1) soap dispenser and one (1) disposable towel dispenser or air drier for every two hand washing sinks;

(k) Except as provided in paragraph (j) of this subsection, a soap dispenser and towel dispenser shall be provided by each hand washing sink and utility sink throughout the facility;

- (l) Mattresses, pillows, blankets, draperies, upholstery, and other fabrics or decorations shall be fire-resistant and flameproof;
- (m) Latex foam pillows shall be prohibited;
- (n) Equipment requiring drainage shall be drained to a sanitary connection;
- (o) The temperature within client areas of the facility shall:
 1. Be maintained at a minimum of seventy-two (72) degrees Fahrenheit; and
 2. Not exceed eighty-two (82) degrees Fahrenheit;
- (p) The facility shall maintain adequate ventilation in all areas used by clients; and
- (q) The facility shall establish a written heat emergency action plan to be implemented if the indoor air temperature is eighty-two (82) degrees Fahrenheit or higher for four (4) consecutive hours.
- (2) Each type of residential AODE program shall meet the following safety conditions and implement policies that reflect the following:
 - (a) Non-skid wax shall be used on all waxed floors;
 - (b) Throw rugs or scatter rugs shall not be used;
 - (c) All equipment shall be located in an unobstructed space that has been provided for operation;
 - (d) All household and cleaning products in the facility shall be identified, labeled, and securely stored in a cabinet, closet, or room that is inaccessible to clients;
 - (e) All furnishings shall be clean and in good repair, and mechanical equipment shall be in good working order; and
 - (f) All smoke detectors shall be fully operational.
- (3) Each family residential program shall meet the following safety conditions in addition to the provisions set forth in subsections (1) and (2) of this section:
 - (a) Children shall not be exposed to lead-based paint hazards;
 - (b) Toxic chemicals, including cleaning agents shall be stored in locked cabinets or enclosed in areas not accessible to the children;
 - (c) All electrical outlets shall have protective covers;
 - (d) All fluorescent and incandescent light bulbs shall have protective covers or shields;
 - (e) All windows and other glass surfaces that are not made of safety glass and that are located three (3) feet above the floor or lower shall have protective guards;
 - (f) Non-permanent safety barriers shall be installed if the facility has stairs, ramps, balconies, porches, or elevated play areas;
 - (g) Materials and furniture for indoor and outdoor use shall be of sturdy and safe construction, be easy to clean and free of hazards;
 - (h) Children shall be kept away from hot stoves, irons and ironing boards, knives, glassware and other equipment within the facility that may cause injury;
 - (i) Poisons, insect traps, rodent traps, and similar products shall be kept out of reach of children; and
 - (j) All indoor and outdoor areas are maintained in a safe and sanitary manner.

WENDY MORRIS, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: April 15, 2019

FILED WITH LRC: April 15, 2019 at 11 a.m.

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746, fax 502-564-7091, CHFSregs@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Behavioral Health, Developmental
and Intellectual Disabilities
Division of Behavioral Health
(As Amended at ARRS, July 10, 2019)

908 KAR 1:374. Licensure of nonhospital-based outpatient alcohol and other drug treatment entities.

RELATES TO: KRS 198B.260, 218A.180, 218A.202, 222.231,

222.462, 21 C.F.R. 1301.72, 1301.74, 1301.75, 1301.91, 1301.92, 42 C.F.R. Part 8, 15 U.S.C. 1471

STATUTORY AUTHORITY: KRS 222.231(2), ~~and~~ (12), 222.462

NECESSITY, FUNCTION, AND CONFORMITY: KRS 222.231(2) requires the cabinet to promulgate administrative regulations to establish requirements and standards for treatment programs, including health and safety standards, patient care standards, and classification of alcohol and other drug abuse programs according to type, range of services, and level of care provided. KRS 222.231(12) requires the cabinet to promulgate administrative regulations to establish standards of operation for narcotic treatment programs. KRS 222.462 requires the cabinet to develop enhanced licensure and quality standards for substance use disorder treatment and recovery. This administrative regulation establishes standards for nonhospital-based alcohol and other drug treatment entities (AODE) that provide ambulatory withdrawal management, outpatient treatment services, intensive outpatient services, partial hospitalization, or office-based opiate treatment services. This administrative regulation further establishes standards for the operation of narcotic treatment programs in accordance with KRS 222.231(12) and 42 C.F.R. Part 8.

Section 1. Definitions. (1) "Approved controlled substance" means the drugs methadone, buprenorphine, or other FDA-approved drug used in the treatment of narcotic addiction in a Narcotic Treatment Program.

(2) "CHFS" or "cabinet" means the Cabinet for Health and Family Services.

(3) "CSAT" means the Center for Substance Abuse Treatment.

(4) "DEA" means the Drug Enforcement Administration.

(5) "Dose" means a one (1) day quantity of an approved controlled substance, administered on site at a narcotic treatment program, in not less than one (1) fluid ounce of an oral solution, formulated to minimize misuse by injection.

(6) "Drug screening" means the process by which a program determines the presence or the absence of drugs in the body fluids.

(7) "Main program" means the location where all administrative and medical information related to a narcotic treatment program is retained for the purpose of on-site reviews by federal agencies or the state narcotic authority.

(8) "Medication station" means any dosing location that obtains its drug supply from the main program site and retains all records (except dosing, drug screens) at the main location. Medication stations are not extension sites as established~~described~~ in 908 KAR 1:370 Section 2(1)(c).

(9) ~~["Proposed program" means an individual or entity in the process of seeking a narcotic treatment license.~~

~~(10)~~ "SNA" means the state narcotic authority. The Department for Behavioral Health, Developmental and Intellectual Disabilities is the SNA for Kentucky.

~~(10)(14)~~ "Take-home dose" means a quantity of an approved controlled substance, which the client is eligible to take off the premises of a narcotic treatment program.

~~(11)(12)~~ "Treatment phase" means a stage in the client's progress through a narcotic treatment program's sequential treatment system.

~~(12)(13)~~ "Voluntary withdrawal management" means a medically supervised withdrawal from the approved controlled substance requested by a client of a narcotic treatment program.

Section 2. Ambulatory Withdrawal Management. (1) In addition to the licensing requirements of 908 KAR 1:370, an outpatient AODE that provides ambulatory withdrawal management or maintenance services shall accept and provide services only to clients meeting the:

(a) Diagnostic criteria for a substance-related disorder for alcohol, tobacco, and other drug use as established by the most recent version of the Diagnostic and Statistical Manual of Mental Disorders (DSM); and

(b) Dimensional criteria for outpatient services as established in the most recent version of The American Society of Addiction

Medicine (ASAM) Criteria.

- (2) Ambulatory withdrawal management services shall:
 - (a) Be provided in regularly scheduled sessions;
 - (b) Be delivered in accordance with:
 1. Clinical protocols established for ambulatory withdrawal management in the most recent version of The ASAM Criteria; or
 2. Nationally recognized, evidence-based clinical protocols approved by the cabinet; and
 - (c) Include the following features:
 1. Specialized psychological and psychiatric consultation and supervision for biomedical, emotional, behavioral, and cognitive problems as indicated;
 2. Completion of a comprehensive medical history and physical examination of the client at admission;
 3. Affiliation with other levels of care, including other levels of specialty addiction treatment for additional problems identified through the comprehensive biopsychosocial assessment required by 908 KAR 1:370, Section 18;
 4. Appropriate laboratory and drug **screening[testing]**; and
 5. Twenty-four (24) hour access to emergency medical consultation services if needed.
- (3) Staff shall include:
 - (a) Physicians and licensed health practitioners acting within their scope of practice who, if not present on-site at the time of admission, shall be readily available to evaluate and confirm that ambulatory withdrawal management is safe for the client; and
 - (b) Clinical staff who shall be knowledgeable about the biopsychosocial dimensions of alcohol, tobacco, and other substance use disorders, including the signs and symptoms of alcohol and other drug intoxication and withdrawal.
- (4) Therapies offered by ambulatory withdrawal management services shall include:
 - (a) Individual assessment;
 - (b) Medication or non-medication methods of withdrawal management;
 - (c) Monitoring, assessment, and management of signs and symptoms of intoxication and withdrawal by a physician or licensed health practitioner acting within his or her scope of practice;
 - (d) Patient education;
 - (e) Non-pharmacological clinical support;
 - (f) Involvement of family members or significant others in the withdrawal management process; and
 - (g) Discharge or transfer planning, including referral for counseling and involvement in community recovery support groups.
- (5) A program shall establish an individualized treatment plan in accordance with 908 KAR 1:370, Section 19 that includes:
 - (a) ~~An individualized treatment plan established in accordance with 908 KAR 1:370, Section 19, including:~~
 - 4.] Problem identification in dimensions two (2) through six (6) of the most recent version of The ASAM Criteria;
 - (b)[2.]** Development of treatment goals and measurable treatment objectives;**[and]**
 - (c)[3.]** Activities designed to meet the treatment objectives and management of withdrawal syndrome;
 - (d)[(b)]** Daily assessment of:
 1. Progress during withdrawal management; and
 2. Any treatment changes;
 - (e)[(c)]** Transfer and discharge planning, beginning at the point of admission; and
 - (f)[(d)]** Referral and linkage arrangements for:
 1. Counseling;
 2. Medical care;
 3. Psychiatric care; and
 4. Continuing care.
 - (6) Progress notes shall:
 - (a) Be maintained in the client record in accordance with 908 KAR 1:370, Section 17(4)(h);
 - (b) Reflect implementation of the treatment plan;
 - (c) Document the client's response to treatment; and
 - (d) Include each amendment of the treatment plan.
 - (7) Withdrawal rating scale tables and flow sheets that include tabulation of vital signs shall be used as needed.

- (8) Treatment of a client shall continue until:
 - (a) Withdrawal signs and symptoms are sufficiently resolved so that the client can participate in:
 1. Self-directed recovery; or
 2. Ongoing treatment without the need for further medical or nursing withdrawal management monitoring;
 - (b) The client's signs and symptoms of withdrawal have:
 1. Failed to respond to treatment; and
 2. Intensified so that transfer to a more intensive level of withdrawal management is indicated; or
 - (c) The client is unable to complete ambulatory withdrawal management despite an adequate trial, **meaning[e.g.]** the client is experiencing intense craving and **evidencing[evidences]** insufficient coping skills to prevent continued alcohol or other drug use concurrent with the withdrawal management medication, indicating a need for more intensive services.

Section 3. Outpatient Treatment Services. (1) In addition to the licensing requirements of 908 KAR 1:370, an outpatient AODE that offers outpatient treatment services:

- (a) Shall provide alcohol and other drug abuse counseling to each client, with counseling provided to no more than twelve (12) clients per clinician if provided in a group;
- (b) Shall provide each client with education regarding:
 1. The disease of addiction;
 2. The client's diagnosis;
 3. The effects of alcohol and other drug abuse;
 4. The risks of exposure to human immunodeficiency virus (HIV), hepatitis, and other health consequences of substance use disorder;
 5. Family issues related to substance use disorder; and
 6. Relapse prevention;
- (c) Shall refer each client to recovery support services specific to addiction recovery, which may include:
 1. Support groups;
 2. Peer support;
 3. Recovery housing;
 4. Community supports;
 5. Supported employment;
 6. Co-occurring disorders; and
 7. Medication assisted treatment;
- (d) Shall have a direct affiliation with, or close coordination through referral to more intensive levels of care and medication management**[if indicated]**;
- (e) Shall have a procedure to inform clients of the availability of emergency services available twenty-four (24) hours a day, seven (7) days a week; and
- (f) May provide additional therapies including:
 1. Motivational enhancement;
 2. Occupational and recreational therapy;
 3. Psychotherapy; or
 4. Medication assisted therapy.
- (2) Staff who provide outpatient treatment services:
 - (a) Shall be able to obtain and interpret information regarding the client's biopsychosocial needs;
 - (b) Shall be knowledgeable about the biopsychosocial dimensions of alcohol, tobacco, and other substance use disorders, including assessment of the client's stage of readiness to change;
 - (c) Shall be capable of monitoring stabilized mental health problems and recognizing any instability in a client with co-occurring disorders; and
 - (d) May include physicians and other licensed health care practitioners acting within their scope of practice on staff if medication assisted therapy is provided.
- (3) Progress notes shall:
 - (a) Be maintained in the client record in accordance with 908 KAR 1:370, Section 17(4)(h);
 - (b) Reflect implementation of the treatment plan;
 - (c) Document the client's response to therapeutic interventions for all disorders treated; and
 - (d) Include each amendment of the treatment plan.

(4) The client's discharge summary shall be completed within thirty (30) calendar days of discharge.

Section 4. Intensive Outpatient Program. (1) In addition to the licensing requirements of 908 KAR 1:370 and Section 3 of this administrative regulation, an outpatient AODE that offers intensive outpatient services shall ensure that the program provides a multi-modal, multi-disciplinary structured approach to services that **are**:

- (a) **Are** more intensive than outpatient treatment services; and
- (b) **Provide[Provided]** a minimum of **services**:

1. For adults:

- a. Nine (9) hours per week; and
- b. Given on no less than three (3) days **per week**; or

2. For adolescents:

- a. Six (6) hours per week; and
- b. Given on no less than two (2) days **per week**.

(2) Services shall include:

- (a) Individual outpatient therapy;
- (b) Group outpatient therapy;
- (c) Family outpatient therapy, unless contraindicated;
- (d) Crisis intervention; and
- (e) Psycho-education during which the client or client's family member shall be provided with information regarding:

1. The client's diagnosis;

2. Reasons why a particular treatment might be effective for reducing symptoms; and

3. How to cope with the client's diagnosis or condition in a successful manner.

(3) A program shall:

(a) Maintain a client-to-staff ratio of no more than ten (10) clients to one (1) **staff[clinician]**;

(b) Establish an individualized treatment plan for each client in accordance with 908 KAR 1:370, Section 19 that focuses on stabilization and transition to a lower level of care;

(c) Provide access to a:

1. Board-certified or board-eligible psychiatrist for consultation, which may be delivered through the use of telehealth technology; and

2. Psychiatrist, other physician, or advanced practice registered nurse for medication prescribing and monitoring; and

(d) Provide each client with a schedule of all planned therapeutic activities or otherwise ensure that the schedule is conspicuously posted in a public area of the facility.

(4) **(a)** If the program prepares meals on-site for a client who receives services for **at least[up to]** five (5) or more consecutive hours, the program shall be subject to inspection in accordance with 902 KAR 45:005.

(b) If clients prepare their own meals on-site or are otherwise responsible for their meals, a food service permit shall not be required.

Section 5. Partial Hospitalization. (1) In addition to the licensing requirements of 908 KAR 1:370, an outpatient AODE that offers partial hospitalization services shall be fully accredited by at least one (1) of the following:

- (a) Joint Commission;
- (b) Commission on Accreditation of Rehabilitation Facilities;
- (c) Council on Accreditation; or
- (d) Other nationally recognized accrediting organization with comparable standards.

(2) Partial hospitalization services shall:

(a) Be short-term, four (4) to six (6) weeks on average;

(b) Meet the same standards required for intensive outpatient services, except for Section 4(1)(b) **of this administrative regulation**;

(c) Be provided at least five (5) hours a day and at least four (4) days per week; and

(d) Provide access to educational services for adolescent clients.

(3) An AODE program that provides partial hospitalization shall comply with 902 KAR 45:005 if the program provides meals directly to its clients.

Section 6. Office-based Opiate Treatment Services. (1) Excluding methadone-based treatment, a facility shall be licensed as an outpatient AODE that provides office-based opiate treatment (OBOT) services if:

(a) Any individual with ownership interest in the facility is not a Kentucky-licensed physician; and

(b) The facility employs or has an affiliation with a physician or advanced practice registered nurse who prescribes products containing buprenorphine or other FDA-approved drugs for the treatment of opioid use disorder to fifty (50) percent or more of the facility's patients.

(2) In addition to the licensing requirements of 908 KAR 1:370, an OBOT shall:

(a) Designate a medical director who shall:

1. Be responsible for the supervision of all medical staff and the administration of all medical services at the facility, including compliance with all federal, state, and local laws and administrative regulations regarding the medical treatment of opioid use disorder;

2. Be physically present at the facility at least twenty-five (25) percent of the time the facility is open to the public each week;

3. Conduct a monthly review of ten (10) percent of the medical charts for patients currently admitted at the facility and document each chart review; and

4. Not serve as medical director of more than three (3) OBOT facilities;

(b) Have sufficient medical staff on-site to provide the medical treatment and oversight necessary to serve patient needs, including a practitioner authorized to prescribe products containing buprenorphine or other FDA-approved drugs for the treatment of opioid use disorder on-site during all hours of operation;

(c) Ensure that each physician or advanced practice registered nurse complies with the prescribing and dispensing standards in accordance with 201 KAR 9:270 or 201 KAR 20:065 respectively for FDA-approved drugs used for the treatment of opioid addiction;

(d) Ensure that **a[each]** physician or advanced practice registered nurse documents in the patient's record whether **or not** the patient is compliant with prescribed dosing as evidenced by the results of:

1. A KASPER report released in accordance with KRS 218A.202(7)(e); and

2. Drug **screening[testing]**;

(e) Offer individual and group outpatient therapy;

(f) Monitor compliance with recommended non-medication therapies;

(g) Provide case management or care coordination services; and

(h) Implement pre-employment and ongoing random drug screening of all facility employees.

(3) Admission and discharge.

(a) Prior to admission to the OBOT facility, each prospective patient shall be evaluated to determine and document whether **or not** the patient meets the diagnostic criteria for an opioid use disorder as defined in the most recent version of the DSM. A prospective patient shall not be admitted unless he or she meets those criteria.

(b) The OBOT facility shall use evidence-based assessment and evaluation tools that have been peer reviewed and validated, including the most recent edition of:

1. ASAM placement criteria;

2. Addiction Severity Index;

3. Substance Abuse and Mental Health Services Administration (SAMHSA) Treatment Improvement Protocol **(TIP) 40**; or

4. Any other equivalent assessment and evaluation tool.

(c) Prior to receiving treatment at the facility, the patient shall acknowledge in writing having received education on:

1. Treatment options, including withdrawal management, and the benefits and risks associated with each treatment option;

2. The risk of neonatal abstinence syndrome and use of voluntary long-acting reversible contraception for all female patients of child-bearing age and potential;

3. Prevention and treatment of chronic viral illnesses, **such as[e.g.]** HIV and hepatitis;

4. Expected therapeutic benefits and adverse effects of treatment medication;

5. Risks for overdose, including drug interactions with central nervous system depressants, and relapse after a period of abstinence from opioids; and

6. Overdose prevention and reversal agents.

(d) An OBOT facility shall not provide any type of reward to a third party for referral of potential patients to the clinic.

(4) Comprehensive assessment. The facility shall complete a comprehensive assessment in accordance with 908 KAR 1:370, Section 18 and in accordance with ~~peer-reviewed~~peer-reviewed medication assisted treatment guidelines developed by nationally recognized organizations, ~~such as for example,~~ SAMHSA and the American Society of Addiction Medicine.

(5) Treatment planning. An OBOT facility shall complete an individualized treatment plan for each patient in accordance with 908 KAR 1:370, Section 19, featuring a plan for aftercare that includes the development of a ~~list~~menu of appropriate treatment resources available to the patient in his or her community.

(6) Discharge.

(a) A discharge plan shall be completed at the time of the patient's discharge by the staff person who has primary responsibility for coordinating or providing for the care of the patient, including a final assessment of the patient's status at the time of discharge.

(b) If applicable, a parent, ~~or~~ guardian, or responsible person may participate in aftercare and discharge planning.

(c) The reason for any patient not participating in aftercare and discharge planning shall be documented in the patient's record.

(d) The OBOT facility shall document if a patient discontinues services.

(e) Determination of the events that constitute a patient's discontinuation of services at an OBOT shall be at the discretion of the facility.

Section 7. Narcotic Treatment Programs. (1) In addition to the licensing requirements of 908 KAR 1:370, an outpatient AODE that operates a narcotic treatment program (NTP) using methadone to treat individuals with substance use disorder shall comply with:

(a) 42 C.F.R. Part 8; and

(b) The requirements of this section.

(2) An NTP requesting a change of location shall:

(a) Comply with 908 KAR 1:370, Section 4; and

(b) Provide ~~the following~~ information regarding any:

1. ~~Any~~ Dosing procedural changes; and

2. ~~Any~~ Drug distribution problems that could~~may~~ occur due to the relocation.

(3) Organization and operation.

(a) In addition to meeting the requirements of 908 KAR 1:370, Section 9, an NTP shall develop and comply with policies and procedures that include:

1. Waiting list criteria;

2. Data collection for participation in the program in accordance with 908 KAR 1:300;

3. A protocol that ensures the integrity of the chain of custody for all drug ~~screens~~tests;

4. A protocol for voluntary and involuntary termination of a client's participation in the program, including reasons for termination for cause;

5. Requirements for the preparation and labeling of client doses in accordance with the requirements of subsection (10) of this section;

6. Quality assurance and utilization review;

7. A client identification system;

8. A system to prevent multiple program registrations;

9. Inventory maintenance;

10. A protocol for daily dosing schedules; and

11. Drug ~~screening~~testing procedures that utilize random selection or unannounced collection.

(b) An NTP shall order approved controlled substances from the manufacturer or approved wholesalers in accordance with 42 C.F.R. Part 8.

(c) Policies for voluntary withdrawal management and

involuntary termination from NTP treatment shall be in accordance with 42 C.F.R. Part 8.12.

(d) An NTP shall have and follow policies that prohibit recruitment of new clients into the program by offering:

1. A bounty;

2. Monetary, equipment, or merchandise rewards; or

3. Free services for individuals.

(e) An NTP shall implement the system of treatment phases ~~established~~outlined in subsection (12) of this ~~section~~ administrative regulation.

(f) An NTP shall be open for dosing services seven (7) days a week with the optional exception of ~~the following holidays~~:

1. New Year's Day, January 1;

2. Presidents Day;

3. Martin Luther King Day;

4. Easter Sunday;

5. Memorial Day, last Monday in May;

6. Independence Day, July 4;

7. Labor Day, first Monday in September;

8. Thanksgiving Day, fourth Thursday in November; and

9. Christmas Day, December 25.

(g) An NTP shall have dosing times sufficient to meet the needs of its clients.

(h) An NTP shall have a written emergency plan that complies with 908 KAR 1:370, Section 9, ~~establishing~~outlining the course of action in the event of a natural or manmade disaster or any sudden closing. The plan shall also include:

1. Alternate providers for each payment type that the NTP accepts; and

2. A communication plan to reach each client and provide information and instructions.

(i) The initial drug ~~screens~~tests and confirmatory tests for drugs tested on behalf of the NTP shall meet the following standards:

1. Marijuana metabolites:

a. Initial screen 50ng/ml; and

b. Confirmation test 15ng/ml;

2. Cocaine metabolites:

a. Initial screen 300ng/ml; and

b. Confirmation test 150ng/ml;

3. Opiates metabolites:

a. Initial screen 300ng/ml; and

b. Confirmation test 300ng/ml;

4. Amphetamines:

a. Initial screen 1000ng/ml; and

b. Confirmation test of amphetamine 500ng/ml and methamphetamine confirmation test 500ng/ml;

5. Barbiturates:

a. Initial screen 300ng/ml; and

b. Confirmation test 300ng/ml; and

6. Benzodiazepines:

a. Initial screen 300ng/ml; and

b. Confirmation test 300ng/ml.

(4) Medication stations.

(a) Medication stations shall not require a separate license.

(b) To establish a medication station, the NTP shall submit to the SNA, an Application for License to Operate a Nonhospital-based Alcohol and Other Drug Treatment Entity (AODE) form incorporated by reference in 908 KAR 1:370.

(c) A medication station shall be located between forty-five (45) miles and ninety (90) miles from the main NTP.

(d) The medication station shall obtain its supply of approved controlled ~~substances~~substance from the stocks of the main NTP.

(e) The medication station shall provide the following services:

1. Dosing; and

2. Drug screen collection.

(f) The program director shall develop a system to prevent clients from dosing at both the main NTP and the medication station.

(g) Other services shall not be provided at the medication station without prior approval of the CSAT and SNA.

(5) Personnel.

(a) An NTP shall have a program director who shall:

1. Have at least two (2)[two] years of experience in the treatment of addiction; and

2.a. Be certified by the Board of Certification of Alcohol and Drug Counselors;

b. Hold at least a master's degree in the field of addiction or a related field; or

c. Be a physician, registered nurse, physician[physician's] assistant, pharmacist, or nurse practitioner certified by the licensing subspecialty.

(b) The program director may be the program sponsor as required by 42 C.F.R., Part 8.

(c) The program director shall:

1. Be responsible for ensuring compliance with federal, state, and local laws and administrative regulations pertaining to the operation of the facility;

2. Provide onsite supervision of employees;

3. Ensure the laboratory performing the testing required under this administrative regulation is approved by the SNA and is certified by the Centers for Medicare and Medicaid Services as a Clinical Laboratory Improvement Amendments (CLIA) certified laboratory; and

4. Ensure that initial drug screens[tests] and confirmatory tests for drugs tested on behalf of the program meet the standards in subsection (3)(i) of this section.

(d) An NTP shall have a medical director who shall be:

1. Licensed by the Commonwealth of Kentucky to practice medicine within the Commonwealth; and

2.a. A board eligible psychiatrist with at least three (3) years of experience in the provision of services to persons who have a substance use disorder; or

b. Board-certified as an addiction medicine specialist.

(e) The medical director shall function autonomously within an NTP free from any protocol imposed by an NTP, director, or any other entity except under the guidelines established in/imposed by 42 C.F.R. Part 8 and this administrative regulation.

(f) The medical director shall be responsible for the NTP's adherence to federal, state, and local laws and administrative regulations pertaining to the operation of the facility.

(g) An NTP may have a program physician. If an NTP has a program physician, the program physician[who] shall be:

1. Licensed by the Commonwealth of Kentucky to practice medicine within the Commonwealth; and

2.a. [A board eligible psychiatrist with three (3) years of experience in the provision of services to persons who have a substance use disorder;

b.] Board-certified as an addiction medicine specialist; or

b. A person who has at least one (1) year[c. Have three (3) years] of experience in providing service to individuals with a substance use disorder, including one (1) year of experience in the treatment of opioid addiction].

(h) A program physician shall be under the supervision of the medical director

and shall function autonomously within the NTP free from any protocol imposed by any NTP, director, or any other entity except under the guidelines imposed by 42 C.F.R. Part 8 and this administrative regulation.

(i) A program physician shall be responsible for the NTP's compliance with federal, state, and local laws and administrative regulations pertaining to the operation of the facility.

(j) The medical director may be the program physician.

(k) There shall be a minimum of one (1) medical director or program physician on staff for every 300 clients, or fraction thereof, enrolled in an NTP.

(l) The medical director or program physician shall:

1. Ensure there is evidence of physiologic dependence on narcotics for all clients admitted to the NTP;

2. Ensure there is a history of addiction, or that any exceptions to admissions criteria are approved by the SNA and documented in the client's record before the first dose is administered;

3. Ensure that appropriate medical histories and physical examinations have been performed before the first dose shall be

administered;

4. Ensure that appropriate laboratory studies have been performed;

5. Review all laboratory testing results and documents;

6. Document, sign, or cosign all medical orders, within forty-eight (48) hours, including the first dose of an approved controlled substance[narcotic drug or other approved medications];

7. Document, sign, or cosign all subsequent medication orders within forty-eight (48) hours, including dose increases and decreases, changes in frequency of take-home doses, emergency situations, or special circumstances;[and]

8. Ensure that a review and cosignature of all telephone or other verbal orders are documented within forty-eight (48) hours of the order;[.]

9. Supervise~~[clinical]~~ staff responsible for preparation and administration of the approved controlled substances;

10. Ensure compliance with program procedures and administrative regulations; and

11. Order through the licensed NTP all:

a. Initial doses; and

b. Increases or decreases.

(m) An NTP shall hire dosing personnel who shall:

1. Hold a license as a registered nurse, licensed practical nurse, or pharmacist; and

2. Not be dually assigned as clinicians.

(n) An NTP shall provide dosing personnel in sufficient numbers to meet the needs of the clients during dosing hours.

(o) Dosing physicians and pharmacists shall comply with KRS 218A.180 related to labeling if preparing doses to be taken outside the program site.

(p) An NTP shall hire clinicians who meet the requirements of 908 KAR 1:370, Section 11.

(q) There shall be at least one (1) clinician for every forty (40) clients in the program.

(6) Security and control.

(a) The program director and dosing nurse supervisor or pharmacist shall conduct quarterly reviews to ensure compliance with this subsection and 42 C.F.R. Part 8.12.

(b) Security of the narcotic safe and the building perimeter shall be checked at least quarterly with the contracted security company.

(c) The safe shall be locked at all times while staff are not obtaining [or] restocking, or inventorying controlled substances.

(d)1. Inventory reconciliation shall be conducted at least quarterly;

2. All reconciliation documents shall be retained by the program for at least five (5) years; and

3. Five (5) percent or more of any inventory discrepancies shall be reported to the SNA and the DEA offices within forty-eight (48) hours of reconciliation.

(e) Dosing personnel shall count all new bottles of narcotic tablets before removing any for client doses.

(f) Any discrepancies in narcotic tablet count shall be reported to the SNA, DEA, CSAT, and the cabinet[Office of the Inspector General] within forty-eight (48) hours of the event.

(g) A system shall be in place to assure the NTP completes the DEA biennial inventory of narcotic drugs on hand.

(h) Order forms for controlled substances, the dosing records, and inventory reconciliation records shall conform with 42 C.F.R. Part 8.12 and shall be maintained in a locked, secured area separate from the storage site of the controlled substances.

(i) Quarterly, the program director or designee shall review a ten (10) percent random sample of client records for [the following]:

1. A consent to treatment form signed by the client; and

2. A release of information form signed by the client that includes:

a. A description of the specific type of confidential information to be obtained or released; and

b. The specific dates that the release is to cover.

(j) If the program director serves as a clinician, the medical director shall review a ten (10) percent random sample of the

program director's client records for inclusion of the documents listed in paragraph (i) of this subsection~~subsection 6(i)~~.

(k) An NTP shall retain on file documentation that quarterly reviews were conducted, which shall be available for review by regulatory agencies for at least five (5) years.

(7) Admission policies.

(a) The admitting physician for the NTP shall comply with the admission requirements of 42 C.F.R. Part 8.12.

(b) When a client applies for admission to an NTP, the client shall be required to sign a release of information that authorizes a program to release or solicit information regarding the client's status in any other substance abuse program.

(c) In addition to complying with the requirements of 908 KAR 1:370, Section 16, an NTP shall:

1. Provide each client written information describing all facets of the program in a manner that the client understands; and

2. Explain the contents of all required federal forms to the client before he or she is asked to sign it.

(d) At admission, readmission, and at six (6) month intervals for the first two (2) years of treatment, and as indicated clinically after two (2) years, an NTP shall give the client information on communicable diseases including:

1. Tuberculosis;
2. Hepatitis;
3. Sexually transmitted diseases; and
4. HIV/AIDS.

(e) A client shall have access to voluntary HIV testing at admission and if/when clinically indicated thereafter and shall receive HIV/AIDS pre-test and post-test counseling if the client elects to be tested.

(f) In order for an NTP to admit or continue to treat a client who is pregnant, the medical director or program physician shall determine and document in the client's record that the client is medically able to participate in the program.

(g) Pregnant individuals with an opiate use disorder shall be given priority for admission and services if the NTP has a waiting list.

(8) Client transfers.

(a) An NTP may accept clients transferring from another NTP if the client meets the criteria for admission in subsection (7) of this section and in accordance with this subsection.

(b) The program physician or medical director at the receiving NTP shall review the client's records on an individual basis to determine the client's placement on the receiving program's client listing. Reviews for proposed transfers shall determine the client's:

1. Need;
2. Program placement availability; and
3. Circumstances for the transfer request.

(c) If a client from an out-of-state, medication-assisted treatment program transfers to an NTP located in Kentucky, the NTP shall designate the client as a new admission or "entry phase" as established/described in subsection (12) of this section~~administrative regulation~~ unless other phase levels are approved by the SNA.

(d) The sending NTP shall:

1. Forward all relevant client records to the receiving NTP within seventy-two (72) hours of receipt of a request to transfer; and

2. Continue dosing until the client is enrolled at the receiving NTP.

(e) The receiving NTP shall:

1. Contact the sending NTP to confirm the client's enrollment~~at least twenty-four (24) hours~~ prior to administering the client's initial dose at the receiving NTP; and

2. Include documentation in the client's medical record of the following:

a. Date of receipt of the client's records from the sending NTP, including reason for transfer; and

b. Verification that the client meets the admission criteria in subsection (7) of this section.

(9) Drug screens.

(a) Drug screen sample collection policies intended to prevent falsification shall be developed and followed.

(b) Drug screens shall be analyzed for the following drugs:

1. Approved controlled substance;
2. Cocaine;
3. Opiates;
4. Amphetamines;
5. Barbiturates;
6. Tetrahydrocannabinol;
7. Benzodiazepines;
8. Any other drug or drugs~~drug(s)~~ that has been determined by the NTP or the SNA to be abused in that program's locality; and
9. Any other drugs that could/may have been abused by the client.

(c) Drug screens shall be reviewed by the treatment team monthly to determine the client's reduction in the use of unauthorized medications.

(d) Controlled substance medications shall be considered unapproved usage if they are being used by the client without a valid prescription.

(e) A drug screen that is negative for the approved controlled substances allowed to be used in the NTP shall be considered positive for unauthorized drug use.

(f) An NTP shall not use drug screens as the sole criteria for involuntarily terminating a client's participation in the program.

(g) When drug screening~~testing~~ results are used, presumptive laboratory results shall be distinguished in the client record from results that are definitive.

(h) Samples used for drug screening purposes shall be handled in a manner that ensures client confidentiality.

(10) Dosing requirements.

(a) The dose prepared for a client shall be the quantity of approved controlled substances that is indicated on the client's narcotic sheet within the medical record.

(b) The dose shall be labeled with the exact quantity of narcotic drug ordered.

(c) Take-home doses shall be formulated in a manner that reduces the likelihood of injecting the dose.

(d) Take-home doses of the approved controlled substances shall be packaged in containers in accordance with 15 U.S.C. 1471.

(e) The label of take-home doses shall include the:

1. Name of the program;
2. Address and telephone number of the program;
3. Name of the controlled substance;
4. Name of the client;
5. Name of the physician ordering the substance;
6. Quantity of the controlled substance, unless the client has requested in writing that the quantity of the substance not be revealed to him or her;
7. Date of filling order; and
8. Instructions for medicating, including dosage amount and dates medication is to be taken.

(f) Dosing personnel shall not alter client doses without the medical director or program physician's order.

(g) Verbal dosing orders shall be reduced to writing and signed by the medical director or program physician within forty-eight (48) hours of the order's receipt.

(h) The medical record shall indicate any reason for dose changes and shall be signed by the medical director or program physician within forty-eight (48) hours of the order's receipt.

(11) Clients who are pregnant.

(a) If the medical director or program physician does not accept the responsibility for providing prenatal care for the term of the client's pregnancy, then the medical director or program physician shall refer the client to:

1. A primary care physician who practices obstetrics; or
2. An obstetrician.

(b) The medical director or program physician shall inform the physician accepting the referral of the client's participation in the NTP.

(c) The medical director or program physician shall ensure that appropriate arrangements have been made for the medical care of both the client and the child following the birth of the child.

(d) The medical director or program physician shall notify the pregnant client's primary care physician of any changes in the client's treatment.

(e) The program shall ensure that the following services are available for pregnant individuals and are a part of the treatment plan:

1. Nutritional counseling; and
2. Parenting training that includes information about:
 - a. Newborn care;
 - b. Handling a newborn;
 - c. Newborn health; and
 - d. Newborn safety.

(12) Treatment protocol phases.

(a) NTPs shall comply with the treatment phase system in paragraphs (e) through (j) of this subsection to achieve the goals of:

1. Reduced health problems;
2. Reduced criminal activity;
3. Increased productivity;
4. Stabilization of family life; and
5. Eventual drug-free living.

(b) Program infractions shall include:

- a. Failed drug screens;
- b. Disruptive behavior at the clinic site;
- c. Threats to staff or other clients; or
- d. Failure to attend scheduled dosing or counseling appointments.

(c) Client treatment plans shall be established, reviewed, and updated in accordance with 908 KAR 1:370, Section 19.

(d) The medical director or program physician shall sign the treatment plan within thirty (30) days.

(e) Entry phase. During the first ninety (90) days of treatment, all clients shall:

1. Attend clinic seven (7) times each week for observed ingestion of an approved controlled substance[methadone] at the clinic site;
2. Be provided weekly counseling sessions to support the implementation of their treatment plan;
3. Be informed about appropriate support groups; and
4. Provide an observed drug screen sample one (1) time per week on a random basis.

(f) Phase one (1).

1. In order for a client to enter phase one (1), the client shall:

- a. [Client shall] Have participated in the "entry phase" for at least [Entry Phase for] ninety (90) consecutive days; and
- b. [Client shall] Not have committed any program infractions for at least ninety (90) consecutive days.

2. Once the client enters phase one (1) the client shall:

- a. Attend clinic six (6) times each week for observed ingestion of an approved controlled substance[methadone];
- b. Be eligible to receive a one (1) day take-home dose of an approved controlled substance[methadone];
- c. Be provided weekly counseling sessions to support the implementation of their treatment plan;
- d. Provide an observed drug screen sample on a random basis at least every other week; and
- e. Be encouraged to attend an appropriate support group.

(g) Phase two (2).

1. In order for a client to enter phase two (2), the client shall:

- a. Have participated in phase one (1) for at least ninety (90)[180] consecutive days;
- b. Not have committed any program infractions for at least ninety (90) consecutive days;
- c. Be:
 - (i) Pursuing or engaged in gainful employment;
 - (ii) Pursuing vocational training;
 - (iii) Attending school;
 - (iv) Engaged in volunteer work;
 - (v) Attending parenting classes if they are a parent at home with children; or

(vi) A client with disabilities or other circumstances that[which] might make compliance with this clause unattainable, if the client[prohibit this requirement and have] submitted a written

waiver request to the SNA justifying specific reasons for the request that was not denied; and

d. Have a treatment plan to meet any special needs, including disabilities.

2. Clients in phase two (2) shall:

- a. Attend clinic five (5) times each week for observed ingestion of an approved controlled substance[methadone];
- b. Be eligible to receive up to two (2) days of take-home doses of an approved controlled substance[methadone];
- c. Provide an observed drug screen sample randomly on a monthly basis, or more frequently if their treatment plan requires;
- d. Be provided monthly counseling sessions, or more frequently if their treatment plan requires; and
- e. Be encouraged to attend appropriate support groups outside the clinic.

(h) Phase three (3).

1. In order for the client to enter phase three (3), the client shall:

- a. Have participated in phase two (2) for at least ninety (90)[270] consecutive days;
- b. Not have committed any program infractions for at least ninety (90)[180] consecutive days; and
- c. Have met the same entry criteria requirements as established[noted] in phase two (2).

2. Clients in phase three (3) shall:

- a. Attend clinic three (3) times each week for observed ingestion of an approved controlled substance[methadone];
- b. Be eligible to receive up to two (2) days of take-home doses of an approved controlled substance[methadone];
- c. Provide an observed drug screen sample randomly on a monthly[random] basis, [every other month,] or more frequently if their treatment plan requires;
- d. Be provided monthly counseling sessions, or more frequently if their treatment plan requires; and
- e. Be encouraged to attend appropriate support groups outside the clinic.

(i) Phase four (4).

1. In order for the client to enter phase four (4), the client shall have:

- a. Successfully completed phase three (3); and
- b. Adhered to the requirements of the maintenance treatment program for at least twelve (12)[eighteen–(18)] consecutive months.

2. Clients in phase four (4) shall:

- a. Be dosed at the clinic site two (2) days per week for observed ingestion of an approved controlled substance[methadone];
- b. Be eligible for up to three (3) days of take-home doses of an approved controlled substance[methadone];
- c. Be provided an appropriate number of counseling sessions, which shall be:
 - (i) Based on the clinical judgement of the program physician and program staff; and
 - (ii) No less than one (1) per month; and
- d. Provide an observed drug screen sample randomly on a monthly basis[on a random basis, quarterly], or more frequently if their treatment plan requires.

3. Prior to successful completion of phase four (4), a plan shall be developed that[which] shall assist the client toward a drug free treatment regimen for continued support.

(j) Phase five (5).

1. In order for the client to enter phase five (5), the client shall have:

- a. Successfully completed phase four (4); and
- b. Adhered to the requirements of the maintenance treatment program for at least two (2) consecutive years.

2. Clients in phase five (5) shall:

- a. Be dosed at the clinic site one (1) day per week for observed ingestion of an approved controlled substance[methadone];
- b. Be eligible for up to six (6) days of take-home doses of an approved controlled substance[methadone];
- c. Be provided an appropriate number of counseling sessions, which shall be:

(i) Based on the clinical judgement of the program physician and program staff; and

(ii) No less than one (1) per month; and

d. Provide an observed drug screen sample on a random basis, no less than eight (8) times per year[every 180 days], or more frequently if their treatment plan requires.

(13) Take home dose restrictions and terminations.

(a) In determining the client's take-home medications, the medical director or program physician shall act in accordance with 42 C.F.R. Part 8.12 and subsections (7) through (12) off(13)] this section.

(b) An NTP shall restrict a client's take-home dosage privileges by moving the client back at least one (1) phase[step] level on the schedule for take-home dosages if the client's drug screening results disclose the unauthorized presence any substance established[described] in subsection (9)(b) of this section.

(c) An NTP shall restrict a client's take-home dosage by moving the client back on the take-home dosage schedule if the medical director or program physician concludes that the client is no longer a suitable candidate for take-home privileges as presently scheduled.

(d) An NTP shall revoke a client's take-home privileges for not less than thirty (30) days and shall require the client to ingest each dosage at the facility for any of the following reasons:

1. The client's drug screening discloses an absence of the controlled substance prescribed by the program;

2. The client is discovered to be misusing medication, as established[defined] in subparagraph 5. of this paragraph;

3. The client attempts to enroll in another NTP;

4. The client alters or attempts to alter a drug screen; or

5. The client is not satisfactorily adhering to the requirements of the NTP by the following:

a. The client has not complied with the rules of the NTP;

b. There is indication that the client has repeatedly used drugs improperly;

c. The client is sharing, giving away, selling, or trading his or her approved controlled substance[methadone] dosage;

d. The client is not ingesting his or her approved controlled substance[methadone] dose in accordance with treatment program rules;

e. There is indication that the client is selling, distributing, or otherwise involved with illicit drugs and their use; or

f. The client is not participating in an educational, vocational, or home-making activity.

(e) A client whose daily dosage is twenty-five (25) milligrams or less shall be exempt from paragraph (d)1.[subparagraph (e)1.] of this subsection.

(f) A client whose take-home privileges were revoked or restricted may regain take-home privileges according to the following schedule:

1. Phase one (1) – satisfactory adherence for at least thirty (30) days;

2. Phase two (2) – satisfactory adherence for at least thirty (30) days after regaining phase one (1) privileges;

3. Phase three (3) – satisfactory adherence for at least thirty (30) days after regaining phase two (2) privileges;

4. Phase four (4) – satisfactory adherence for at least thirty (30) days after regaining phase three (3) privileges; and

5. Phase five (5) – satisfactory adherence for at least thirty (30) days after regaining phase four (4) privileges.

(g) This subsection shall not be used to circumvent the requirements of this administrative regulation. A client shall not be advanced to a phase level pursuant to this subsection unless the client[he] has previously been at that phase level after having satisfied the requirements of each phase.

(h) Treatment shall be continued as long as it is medically necessary based upon the clinical judgment of the medical director or program physician and staff.

(i) Scheduled withdrawal shall be under the immediate direction of the medical director or program physician and shall be individualized.

(j) A client may voluntarily terminate participation in an NTP even if[though] termination is[may-be] against the advice of the

NTP.

(k) Except as established[noted] in subsection (15)(e) of this section, either voluntary or involuntary termination shall take place over a period of time not less than fifteen (15) days, unless:

1. The medical director or program physician deems it clinically necessary to terminate participation sooner and documents the reason in the client's record; or

2. The client requests in writing a shorter termination period.

(14) Exceptions.

(a) The medical director or program physician may grant an exception to the criteria for take-home dosages for any of the following reasons:

1. The client has a serious physical disability that[which] would prevent frequent visits to the program facility; or

2.a. The client is subject to an exceptional circumstance such as acute illness, family crisis, or necessary travel; and

b. Hardship would result from requiring exact compliance with the phase[step] level schedule established[set-out] in subsection (12) of this section~~[of this administrative regulation]~~.

(b) Exception to the criteria for take-home dosages shall:

1. Be subject to the limitations in this administrative regulation; and

2. Have written approval from the SNA that[which] shall be filed in the client record.

(c) If a client is required to[must] travel out of the program area, the medical director or program physician shall attempt to arrange for the client's daily dosage to be received at another program in lieu of increasing take-home dosages.

(d) The medical director or program physician shall document in the client's record the granting of any exception and the facts justifying the exception.

(e) Each program shall maintain a separate record for all exceptions granted.

(f) The SNA shall not grant additional exceptions, except in cases of medical emergency or natural disaster, such as fire, flood, or earthquake.

(g) Patient take home exceptions shall be entered into the Substance Abuse and Mental Health Services Administration's system in accordance with the system's[its] requirements.

(h) Emergency Dosing.

1. Under emergency conditions a program may issue take-home doses in accordance with this subsection.

2. Within forty-eight (48) hours after administration of the first emergency dose, an NTP shall:

a. Notify the SNA in writing;

b. Submit justification of the emergency dose or doses; and

c. Request permission for any subsequent dose after the first two (2) doses.

3. Subsequent emergency doses shall not be given unless permission is received by the SNA.

4. This request shall include the:

a. Number of take-home doses requested;

b. Reason for the request;

c. Client's standing in program phases;

d. Client's adherence to program policies; and

e. Total length of time the client has been enrolled at the NTP.

(15) Client program compliance.

(a) If a client commits a program infraction, the counseling staff shall review and modify the treatment plan to assist the client in complying with program policies.

(b) If a client continues to commit infractions and the medical director or program physician determines additional intervention is warranted, the director or physician may:

1. Move the client back to an earlier treatment phase; or

2. Limit or revoke the client's take-home privileges.

(c) If the client continues to commit program infractions, the client may be involuntarily terminated from the program based on the recommendation of the medical director or program physician.

(d) A client's participation in an NTP may be involuntarily terminated for cause, Cause shall, which may] include:

1. Polydrug abuse;

2. Diversion of an approved controlled substance [methadone];

3. Violence or threat of violence to program staff or other clients in the program; or

4. Dual enrollment in another NTP.

(e) If the medical director or program physician determines that the client's continued participation in the program creates a physically threatening situation for the staff or other clients, the client's participation may be terminated immediately.

(f) A client shall be given written notice of a decision to terminate his or her participation in the program, which shall include the reasons for the termination.

(16) Program monitoring. If an NTP fails to comply with the requirements in this administrative regulation, the SNA may take action in accordance with 908 KAR 1:370, Sections 5 and 20. In addition to the authority to deny, suspend, or revoke a license in accordance with 908 KAR 1:370, the SNA may:

(a) Order the NTP to discontinue all or part of the take-home doses of any approved controlled substance used in the NTP;

(b) Restrict the NTP's take-home procedures to the provision of emergency take-home doses in accordance with subsection (14) of this section; or

(c) Order the NTP to discontinue the utilization of any drug approved for use in narcotic treatment programs.

(17) Waivers. An NTP may request a waiver from the SNA from any requirement of this administrative regulation.

(a) This application for a waiver shall:

1. Be in the form of a letter to the SNA;

2. Identify the specific sections of this administrative regulation for which a waiver is being sought; and

3. Give the rationale for the request.

(b) If a waiver pertains to a client, a copy of the waiver request and response shall become part of the client's permanent record.

(c) An application for a waiver request shall be mailed to: Kentucky State Narcotic Authority Department for Behavioral Health, Developmental and Intellectual Disabilities, 275 East Main Street, Frankfort, Kentucky 40621.

(d) Approval or denial of a waiver shall be based upon a review of the merits of the request, taking into consideration:

1. Public safety;

2. Practicality; and

3. The purpose of the requirement for which the waiver is requested.

(e) A waiver shall expire twelve (12) months from the date the waiver is granted unless the SNA gives an earlier expiration date.

(f)(e) A waiver given prior to January 1, 2020 [the effective date of this administrative regulation] shall expire on January 1, 2020 [the effective date of this administrative regulation].

Section 8. Physical Environment. (1) Accessibility. An outpatient AODE shall meet requirements for making buildings and facilities accessible to and usable by individuals with physical disabilities in accordance with KRS 198B.260 and 815 KAR 7:120.

(2) Fire safety. An outpatient AODE shall be approved by the State Fire Marshal's office prior to initial licensure or if the AODE changes location.

(3) Physical location and overall environment.

(a) An outpatient AODE shall:

1. Comply with building codes, ordinances, and administrative regulations that are enforced by city, county, or state jurisdictions;

2. Display a sign that can be viewed by the public that contains the facility name, hours of operation, and a street address;

3. Have a publicly listed telephone number;

4. Have a dedicated phone number to send and receive faxes with a fax machine that shall be operational twenty-four (24) hours per day or use encrypted electronic messaging technology;

5. Have a reception and waiting area;

6. Provide a restroom for client use; and

7. Have an administrative area.

(b) The condition of the physical location and the overall environment shall be maintained in such a manner that the safety and well-being of clients, personnel, and visitors shall be/are assured.

(4) Additional requirements for NTPs.

(a) The building used for the NTP shall meet the requirements of 21 C.F.R. 1301.74(j).

(b) The waiting area shall be separated from the dosing area to permit each client privacy and confidentiality at the time of dosing.

(c) The dosing area shall be clean and sanitary and shall contain:

1. A sink;

2. Hot and cold running water; and

3. Pill-counting trays if tablets are being used.

(d) The security and floor plan of the dosing area shall be in accordance with 21 C.F.R. 1301.72.

(e) The facility shall have two (2) restrooms, which shall be accessible to clients with disabilities.

(f) Restrooms available to clients to provide urine specimens shall be:

1. Secure;

2. ~~Private;~~

3. Clean; and

3. Sanitary.

(g) The building shall be secured by a local security company approved by the DEA and the SNA.

(h) There shall be a minimum of two (2) panic buttons or similar devices for each NTP with:

1. One (1) in the reception area; and

2. One (1) in the dosing area.

(i) There shall be a telephone with an outside line accessible in the dosing area.

(j) Internal security shall meet the requirements of 21 C.F.R. 1301.74(b), (h), (i), (j), (k); 1301.91; 1301.92 and shall be installed only after consultation with the DEA and the SNA.

(k) Parking spaces at the clinic site shall be adequate to accommodate the maximum number of clients expected to be at the clinic site at one (1) time.

WENDY MORRIS, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: April 12, 2019

FILED WITH LRC: April 15, 2019 at 11 a.m.

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746, fax 502-564-7091, CHFSregs@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Income Support

Division of Child Support Enforcement

(As Amended at ARRS, July 10, 2019)

921 KAR 1:380. Child Support Enforcement Program application and intergovernmental process.

RELATES TO: KRS 205.705, 205.710-205.800, 205.992, 213.046(4), 403.211, 405.430(5), 405.467, 405.520, ~~405.467~~, 406.021, 406.025, 407.5101-407.5903, 610.170, 45 C.F.R. 301.1, 302.30, 302.31, 302.33-302.36, 302.50, 302.65, 302.80, 303.2, 303.3-303.8, 303.15, 303.30-303.31, 303.69, 303.70, 42 U.S.C. 651-654, 657, 663, 666

STATUTORY AUTHORITY: KRS 194A.050(1), 205.795, 405.520

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050[-](1), 205.795, and 405.520 authorize the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations to operate the Child Support Enforcement Program (CSEP) in accordance with federal law and regulations. 45 C.F.R. 303.2 requires the child support application process to be accessible to the public. This administrative regulation specifies the process by which an individual may apply for child support services, the scope of services available, and the process for an intergovernmental case.

Section 1. Child Support Enforcement Case Types. (1)

Kentucky Transitional Assistance Program (K-TAP) or Kinship Care.

(a)1. An applicant for, or recipient of, K-TAP or Kinship Care shall make an assignment of rights to the state for support that the applicant or recipient may have from any other person in accordance with KRS 205.720(1) and 921 KAR 2:006.

2. The assignment shall:

a. Include members of the case for whom support rights apply; and

b. Be completed when applying for K-TAP or Kinship Care benefits using the application form incorporated by reference in 921 KAR 2:040.

(b) An applicant or recipient shall cooperate in all phases of child support activity that shall, if known, include:

1. The name of the noncustodial parent or obligor;

2. The Social Security number of the noncustodial parent or obligor;

3. Information to assist in the:

a. Location of the noncustodial parent or obligor;

b. Enforcement of a child support order; or

c. Review or modification of a child support order;

4. Establishment of:

a. Paternity, if paternity has not been established; and

b. An assigned support obligation;

5. Enforcement of:

a. An assigned support obligation; and

b. A spousal support order if the cabinet is collecting for a child who resides with the spouse or former spouse; and

6. Forwarding any child support payment received to the cabinet's centralized collection unit.

(2) Foster Care.

(a) The CSEP shall collect and disburse child support on behalf of a child for whom:

1. The state is making a foster care maintenance payment as required by 42 U.S.C. 657 and an assignment of rights has been made; or

2. The cabinet has custody, and there is an order for the child's parent or parents to pay child support to the cabinet pursuant to KRS 610.170.

(b) The child's benefit worker with responsibility for the foster care child shall:

1. Cooperate with the CSEP;

2. Review and approve a foster care child support referral;

3. Complete a change of status if a change occurs that relates to the child support process; and

4. Forward to the CSEP a copy of the child support court documents.

(c) If a child with special needs is adopted in accordance with 922 KAR 1:100 and reenters the custody of the cabinet, the cabinet shall:

1. Determine that good cause exists in accordance with Section 2(3) of this administrative regulation; or

2. Establish a child support obligation if:

a. A child with special needs adopted in accordance with 922 KAR 1:100 has reentered the custody of the cabinet due to the child's maltreatment or abandonment; and

b. The commissioner or designee recommends the establishment of child support.

(3) Medicaid only.

(a) If a Medicaid-only referral is made, the CSEP shall obtain the following information, if available:

1. Medicaid case number;

2. Name of the noncustodial parent or obligor;

3. Social Security number of the noncustodial parent or obligor;

4. Name and Social Security number of the child;

5. Home address of the noncustodial parent or obligor;

6. Name and address of the noncustodial parent or obligor's place of employment; and

7. Whether the noncustodial parent has a health insurance policy and, if so, the policy name, policy number, and name of any person covered.

(b) An application for Medicaid shall include an assignment of rights for medical support, pursuant to 907 KAR 20:005.

(c) Except for a custodial parent who is pregnant or in her postpartum period, pursuant to 907 KAR 20:005, a custodial parent shall cooperate in all phases of medical support activity.

(d) A Medicaid-only recipient desiring full child support services, in addition to the medical support services, shall complete and submit to the CSEP the CS-140, Assignment of Rights and Authorization to Collect Support.

(4) Nonpublic Assistance.

(a) In accordance with KRS 205.721, the CSEP shall make child support services available to any individual who:

1. Assigns rights for medical support only;

2. Applies for services pursuant to paragraph (c) of this subsection; or

3. Has been receiving child support services as a public assistance recipient and is no longer eligible for public assistance.

(b) The CSEP shall notify the family no longer eligible for public assistance, within five (5) working days, that child support services shall continue unless the CSEP is notified to the contrary by the family.

(c) Application Process for a Nonpublic Assistance Individual.

1. Upon the request of a nonpublic assistance applicant, the CSEP shall give an application packet to the applicant.

2. If the request is:

a. Made in person, the packet shall be provided the same day; or

b. Not made in person, the packet shall be sent to the applicant within five (5) working days of the request.

3. The application packet shall include the:

a. CS-33, Application for Child Support Services;

b. CS-202, Authorization for Electronic Deposit of Child Support Payments; and

c. CS-11, Authorization and Acknowledgement of No Legal Representation.

4. In order to receive child support services, the applicant shall complete and return the:

a. CS-33, Application for Child Support Services; and

b. CS-11, Authorization and Acknowledgement of No Legal Representation.

(d) Except for a location-only case, services provided to a nonpublic assistance client through the CSEP shall be those services listed in Section 2 of this administrative regulation.

(e) If a case involves a putative father, services provided shall be those identified in Section 2(1) of this administrative regulation.

(f) The CSEP shall obtain the following information from a nonpublic assistance applicant, if available:

1. Name, date of birth, and Social Security number of the child;

2. Name of the custodial and noncustodial parent or obligor;

3. Social Security number of the custodial and noncustodial parent or obligor;

4. Date of birth of the custodial and noncustodial parent or obligor;

5. Home address or last known address of the custodial and noncustodial parent or obligor; and

6. Name and address of the custodial and noncustodial parent's or obligor's employer or last known employer.

Section 2. General Services and Good Cause for All Case Types. (1) The CSEP shall provide child support services for a case type described in this administrative regulation in accordance with 42 U.S.C. 654. The services shall include:

(a) Location of the noncustodial parent or obligor;

(b) Location of the custodial parent for establishment of paternity;

(c) Establishment of paternity based upon the receipt of either:

1. A court order; or

2. An affidavit from the Office of Vital Statistics that a signed, notarized voluntary acknowledgement of paternity has been registered;

(d) Establishment of a child support or medical support obligation by:

1. Petitioning the court or administrative authority to establish child support pursuant to the Kentucky Child Support Guidelines; and

2. a. Petitioning the court or administrative authority to include health care coverage pursuant to 45 C.F.R. 303.31(b)(1) in new or modified court or administrative orders for support; or

b./[3.] Petitioning the court or administrative authority to include cash medical support in new or modified orders until health care coverage that is accessible and reasonable in cost, as defined by KRS 403.211(8)(a) and (b), becomes available;

(e) Enforcement of a:

1. Child support or medical support obligation; and

2. Spousal support obligation if the:

a. Custodial parent is the spouse or ex-spouse;

b. Child lives with the spouse or ex-spouse; and

c. Cabinet is collecting support on behalf of the child;

(f) Review and modification of an assigned support obligation in accordance with 921 KAR 1:400;

(g) Collection and disbursement of current and past-due support payments resulting from an assigned support obligation, less an annual ~~twenty-five (25) dollar~~ fee assessed against a custodial parent who has never received assistance, as defined by 42 U.S.C. 654(6) ~~(B)(b)(i)~~ and KRS 205.721(4), during each Federal fiscal year in which ~~\$550~~ ~~(\$500)~~ has been disbursed for the case; and

(h) Submission of an application to the health plan administrator to enroll the child if the parent ordered to provide health care coverage is enrolled through the insurer and has failed to enroll the child.

(2) The CSEP shall open a case and determine needed action and services within twenty (20) calendar days of receipt of a:

(a) Referral from the public assistance agency;

(b) Foster care referral; or

(c) Nonpublic assistance application in accordance with Section 1(4)(c) of this administrative regulation.

(3) Good cause.

(a)1. If an applicant or client states that good cause for noncooperation exists, the applicant or client shall have the opportunity to establish a claim pursuant to 921 KAR 2:006.

2. Evidence for determination of good cause shall be pursuant to 921 KAR 2:006.

3. For a foster care child, good cause for nonenforcement of child support shall be determined to exist if evidence and criteria are met pursuant to 921 KAR 2:006 or 922 KAR 1:530.

(b) If the CSEP has reason to believe an allegation of child maltreatment or domestic violence pursuant to KRS 205.730(1), the CSEP shall not attempt location, establishment, modification, or enforcement of an assigned support obligation.

Section 3. Parent Locator Service and Associated Fee for Service. (1) Unless the cabinet has reason to believe an allegation of child maltreatment or domestic violence pursuant to KRS 205.730(1) or 921 KAR 2:006, Section 25, location shall be attempted for a:

(a) Public assistance case referred to the CSEP; or

(b) Nonpublic assistance case for which child support services are being provided.

(2) The CSEP shall attempt to locate a noncustodial parent or obligor and the noncustodial parent's or obligor's employer, sources of income, assets, property, and debt, if necessary, for a public assistance case or nonpublic assistance case assigned to the CSEP pursuant to KRS 205.712, 205.730(5), and 45 C.F.R. 303.69 or 303.70.

(3) In accordance with KRS 205.730(4), location services shall be provided in a parental kidnapping case.

(4) The CSEP shall provide location services to a putative father in accordance with KRS 205.730(2) and (4).

Section 4. Intergovernmental Process for Child Support Enforcement Services. In accordance with KRS 205.712, 407.5101-407.5903, and 45 C.F.R. 303.70, the CSEP shall:

(1) Extend to an intergovernmental IV-D child support case the same services available to an intrastate case; and

(2) Provide a responding state with sufficient and accurate information and documentation on the appropriate intergovernmental transmittal forms, the:

(a) CS-98, General Testimony;

(b) CS-99, Declaration in Support of Establishing Parentage;

(c) CS-100, Uniform Support Petition;

(d) CS-103, Child Support Enforcement Transmittal #1 – Initial Request;

(e) CS-138, Child Support Locate Request;

(f) CS-153, Child Support Enforcement Transmittal #2 – Subsequent Actions;

(g) CS-154, Child Support Enforcement Transmittal #3 – Request for Assistance/Discovery;

(h) CS-155, Notice of Determination of Controlling Order;

(i) CS-157, Letter of Transmittal Requesting Registration;

(j) CS-210, Child Support Agency Confidential Information Form;

(k) CS-211, Personal Information Form for UIFSA § 311;

(l) CS-212, Child Support Agency Request for Change of Support Payment Location Pursuant to UIFSA §319; and

(m) CS-213, Child Support Enforcement Transmittal #1 – Initial Request Acknowledgment.

Section 5. Public Awareness. The effort, pursuant to KRS 205.712(2)(g), to publicize the availability of the CSEP's services and encourage their use may include:

(1) Public service announcements;

(2) Posters;

(3) Press releases;

(4) Videos;

(5) Annual reports;

(6) Newsletters;

(7) Mail inserts;

(8) Pamphlets;

(9) Letters; and

(10) Internet.

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

(a) "CS-11, Authorization and Acknowledgement of No Legal Representation", 10/12;

(b) "CS-33, Application for Child Support Services", 8/19[4/18];

(c) "CS-98, General Testimony", 1/18;

(d) "CS-99, Declaration in Support of Establishing Parentage", 1/18;

(e) "CS-100, Uniform Support Petition", 1/18;

(f) "CS-103, Child Support Enforcement Transmittal #1 - Initial Request", 1/18;

(g) "CS-138, Child Support Locate Request", 1/18;

(h) "CS-140, Assignment of Rights and Authorization to Collect Support", 10/12;

(i) "CS-153, Child Support Enforcement Transmittal #2 - Subsequent Actions", 1/18;

(j) "CS-154, Child Support Enforcement Transmittal #3 - Request for Assistance/Discovery", 1/18;

(k) "CS-155, Notice of Determination of Controlling Order", 1/18;

(l) "CS-157, Letter of Transmittal Requesting Registration", 1/18;

(m) "CS-202, Authorization for Electronic Deposit of Child Support Payments", 2/17;

(n) "CS-210, Child Support Agency Confidential Information Form", 1/18;

(o) "CS-211, Personal Information Form for UIFSA § 311", 1/18;

(p) "CS-212, Child Support Agency Request for Change of Support Payment Location Pursuant to UIFSA §319", 1/18; and

(q) "CS-213, Child Support Enforcement Transmittal #1 - Initial Request Acknowledgment", 1/18.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Income Support, Child Support Enforcement, 730 Schenkel Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

W. BRYAN HUBBARD, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: May 6, 2019

FILED WITH LRC: May 14, 2019 at 4 p.m.

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; Phone: 502-564-6746; Fax: 502-564-7091; CHFSregs@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(As Amended at ARRS, July 10, 2019)

922 KAR 1:510. Authorization for disclosure of protection and permanency records.

RELATES TO: KRS 61.870-61.884, 194A.050(1), 45 C.F.R. 160.103, 164.501, 164.502, 164.508, 164.512, 164.524

STATUTORY AUTHORITY: KRS 61.876(1), 194A.050(1); 194B.060(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 61.876(1) requires[authorizes] the cabinet to adopt administrative regulations regarding the protection and disclosure of public records in conformity with KRS 61.870 to 61.884. [KRS 194B.060(1) authorizes the secretary to promulgate administrative regulations for protection and disclosure of confidential records and reports of the cabinet's clients or former clients.] This administrative regulation establishes the authorization requirements for disclosure of protection and permanency records.

Section 1. Definitions. (1) "Disclosure" is defined by 45 C.F.R. 160.103.

(2) ["Health information" is defined by 45 C.F.R. 160.103.

(3) ["Official custodian" is defined by KRS 61.870(5).

(3)(4) "Protected health information" or "PHI" is defined by 45 C.F.R. 160.103.

(5) "Protection and permanency records" means a public record as defined in KRS 61.870(2)[and] that is prepared, owned, used, in the possession of, or retained by departmental staff providing protection and permanency services.

Section 2. [General. The cabinet shall comply with KRS 61.870 to 61.884 and 45 C.F.R. Parts 160 and 164 in processing requests for disclosure of protection and permanency records.

Section 3. Authorization for Disclosure of Protection and Permanency Records. (1) If a person submits a request for disclosure of protection and permanency records[that include health information or protected health information], the official custodian shall require the person to authorize the[such a] disclosure.[:

(a) By completing and signing a "DPP-010, Open Records Request" in accordance with KRS 61.872(2), if the written request is insufficient to locate and retrieve the records requested;

(b) in accordance with 45 C.F.R. 164.508(c), by completing and signing a[:

4. "CHFS-305, Authorization for Disclosure of Protected [Health] Information.

(2) ["if requesting health information other than psychotherapy records; or

2. "CHFS-305A, Authorization for Disclosure of Psychotherapy Information", where applicable; and

(c) By returning] The CHFS-305 shall be submitted with a copy of a photo ID[appropriate forms in paragraphs (a) and (b) of this subsection] to the official custodian of protection and permanency records:

(a)[1-] Between the hours of 8 a.m. and 4:30 p.m. to the Cabinet for Health and Family Services, Department for[or] Community Based Services, Records Management Section, 275

East Main Street, Section 3E-G, Frankfort, Kentucky 40621;

(b)[or 2-] By mail[: to the address specified in paragraph (a) [subparagraph 1] of this subsection;

(c) By electronic mail to CHFSDCBS.RMS@ky.gov; or

(d) By fax to 502-564-9554 [paragraph]. (2) If a person submits a request for protection and permanency records that does not include health information or protected health information, the official custodian shall require the person to:

(a) Complete and sign an "Open Records Request" as specified in subsection (1)(a) of this section; and

(b) Submit the request to the official custodian of protection and permanency records as specified in subsection (1)(c) of this section.

(3) The official custodian of protection and permanency records shall:

(a) Respond to the request for disclosure of protection and permanency records in accordance with KRS 61.880(1); and

(b) Allow the disclosure of protection and permanency records in accordance with 45 C.F.R. 164.524(b) and KRS 61.872, unless denied in accordance with 45 C.F.R. 164.524(d) or KRS 61.878(1).]

Section 3.4. Appeals. A person denied access to records shall have appeal rights in accordance with 45 C.F.R. 164.524(d)(4), or KRS 61.880 and 61.882.

Section 4.5. Incorporation by Reference. (1)[The following material is incorporated by reference:

(a) "DPP-010, Open Records Request, edition 6/04";

(b) "CHFS-305, Authorization for Disclosure of Protected [Health] Information[edition 6/04]", 8/2019/5/2019, is incorporated by reference]; and

(c) "CHFS-305A, Authorization for Disclosure of Psychotherapy Information, edition 6/04".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday 8 a.m. to 4:30 p.m.

ERIC T. CLARK, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: May 6, 2019

FILED WITH LRC: May 14, 2019 at 4 p.m.

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; CHFSregs@ky.gov.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Epidemiology and Health Planning
(Amended After Comments)

902 KAR 2:070. Rabies control.

RELATES TO: KRS 258.005, 258.015, 258.035, 258.043, [258.085, 258.990(1), (2)]

STATUTORY AUTHORITY: KRS 194A.050(1), 211.180 [194.050(1)], 258.015, 258.043[211.090, 258.035], 258.075[EO 2004-726]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires 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 258.075 authorizes the secretary to administer the provisions of KRS 258.005 to 258.087 through the local health departments and to promulgate administrative regulations necessary to effectuate[EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Public Health under the Cabinet for Health and Family Services. KRS 258.005 to 258.085 and 258.990(1) and (2) authorize the cabinet to administer] a statewide rabies control program. KRS 258.015 requires the cabinet to approve a vaccination certificate form. KRS 258.043 authorizes a local health department to sponsor a mass rabies immunization clinic and to establish a reasonable fee to be charged to the owner of each dog, cat, or ferret vaccinated to help defray the cost of the clinic. This administrative regulation establishes uniform procedures for the diagnosis, prevention, and control of rabies, and for operating a mass rabies clinic.

Section 1. Brands and Types of Approved Vaccine.[The Cabinet for Health and Family Services hereby approves] All brands and types of antirabies vaccine approved by the United States Department of Agriculture and administered in accordance with the manufacturers' instructions shall be approved vaccines for the purpose of this administrative regulation[- except only vaccines certified to induce at least three (3) year immunity shall be used in mass immunization clinics sponsored by local health departments].

Section 2. Vaccination Schedule. The vaccination schedule for all dogs, cats, and ferrets shall be as established in this section.[follows:] (1)(a) Except as provided by paragraph (b) of this subsection, all dogs, cats, and ferrets shall be vaccinated against rabies by a veterinarian holding a valid Kentucky license.

(b) An individual permitted under Section 7 of this administrative regulation may vaccinate a dog[dogs] owned by that individual[four (4) months of age and older shall be vaccinated against rabies].

(2) A dog, cat, or ferret[Dogs, cats, and ferrets] initially vaccinated shall be revaccinated one (1) year after the initial vaccination regardless of the type of vaccine used or age of the animal at the time of vaccination.

(3) After the vaccination required by subsection (2) of this section.[Thereafter] the period of time required for revaccination shall be dependent upon the type of vaccine administered and the next vaccination due by[expiration] date as documented on the vaccination certificate.

(4)[The date of expiration shall be indicated on the vaccination certificate.] The current revaccination recommendations of the National Association of State Public Health Veterinarians, Inc. may be utilized in determining expiration dates of vaccines.

Section 3. Vaccination Certificates. A vaccination certificate[certificates] shall provide the information found on the National Association of State Public Health Veterinarians NASPHV Form [#]51, Rabies Vaccination Certificate. Certificate information

shall either[may] be:

(1) Handwritten on a reproduction of the NASPHV Form[#]51; or

(2)[it may be] Computer generated.

Section 4. Dogs, Cats, and Ferrets Brought into State. (1) Each dog, cat, or ferret[All dogs, cats, and ferrets] brought into Kentucky shall be vaccinated in accordance with KRS 258.035.

(2)[against rabies and have a currently valid rabies vaccination certificate.] Reciprocity with other states shall be[is] granted if the vaccine is approved by the U.S. Department of Agriculture [approved] and administered by a veterinarian licensed in that state.

Section 5. Animals Suspected of Being Infected by Rabies. (1) An animal suspected of being infected by rabies shall be quarantined in accordance with KRS 258.085.

(2)[Except as provided by subsection (3) of this section,] An animal ordered for quarantine in accordance with KRS 258.085(1)(a) shall be quarantined in a manner that limits the animal's exposure to humans or other animals.

(3)[The owner of an animal ordered for quarantine in accordance with KRS 258.085(1)(a)1. or 2. may choose to isolate the animal in his or her home unless it is not feasible to do so.

(4) An owner refusing to submit an animal suspected of being rabid for quarantine or agreeing to isolate the animal in his or her home shall be notified of the liability for any rabies post exposure treatment that may be necessary.

(6)[Destroying an Animal Exhibiting Positive Signs of Rabies.] If a dog, cat, or ferret is ordered to be destroyed and tested for rabies pursuant to KRS 258.085(1)(b), it shall be killed in a manner as to preserve the brain intact. The animal shall not be shot or clubbed in the head. A wild animal[animals] suspected of rabies shall be sacrificed and its head[their heads] submitted to the laboratory immediately.

Section 6. Sending Heads of Ownerless Animals to the Laboratory. If the ownership of a rabies suspect animal is unknown, the expense of forwarding the head of the animal to the laboratory shall be borne by the local health department.

Section 7. Rabies Vaccination Permits for Owners of Dogs,Cats, or Ferrets]. (1) The Cabinet for Health and Family Services shall issue a permit to an owner of a dog[permits to owners of dogs] to vaccinate a dog[dogs] owned by that individual[them] upon satisfactory passage of an examination prescribed by the cabinet.

(2) An individual seeking an initial permit to vaccinate a dog owned by that individual shall:

(a) Register with the state public health veterinarian by September 30;

(b) Attend the instructional course on rabies, epidemiology, laws, and vaccine administration; and

(c) Pass the written examination with a score of seventy (70) percent or higher.[Current permit holders may renew their permit annually if initially renewed by December 31, 2004.]

(3) The course required by subsection (2)(b) of this section shall~~[New permit holders shall pass a written examination that shall be administered immediately following an instructional course on rabies laws and vaccine administration. This course and examination will]~~ be provided annually in Frankfort at no charge to the participant.

(4) The Cabinet for Health and Family Services shall [forthwith] revoke any permit issued under this administrative regulation upon finding that the permittee had vaccinated a dog[dogs] not owned by the permittee[him].

(5)(a) A permit holder shall renew the permit between January 1 and February 28[Permits issued under this administrative regulation may be renewed] each year unless the permit has been

suspended, revoked, or cancelled.

(b) A permit shall be renewed by:

1. Returning the Renew Qualified Person Form provided with the certificate of approval to administer a rabies vaccination; or

2. Contacting the state public health veterinarian by phone or email to request renewal.

(c) Failure to renew between January 1 and February 28 of each year shall result in permit cancellation.

(6) Upon transfer of ownership, a dog vaccinated for rabies by a qualified person shall be revaccinated by:

(a) A licensed veterinarian; or

(b) The new owner if that individual is also a qualified person.

Section 8. Local Health Department Operating a Mass Rabies Vaccination Clinic.

(1) A local health department may sponsor a countywide rabies vaccination clinic per year for the purpose of vaccinating dogs, cats, and ferrets.

(2) At least one (1) Kentucky licensed veterinarian shall be available on-site during the rabies clinic to:

(a) Provide the initial vaccine to a dog, cat, or ferret in accordance with Section 2 of this administrative regulation;

(b) 1. Provide a three (3) year vaccine booster to a dog or cat[an animal] with proof of previous rabies vaccination; and

2. Provide a one (1) year vaccine booster to a ferret with proof of previous rabies vaccination; and

(c) Be available to provide medical care if an adverse vaccine event occurs.

(3) Only vaccines certified to induce at least three (3) year immunity shall be used in a mass immunization clinic sponsored by a local health department.

(4) An owner shall not be charged more than ten (10) dollars for each vaccination given.

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

(a) ["National Association of State Public Health Veterinarians, NASPHV Form #51, "Rabies Vaccination Certificate," 2007; and

(b) "Renew Qualified Person Form" 3/2019; (2004)" is incorporated by reference].

(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, 8:00 a.m. to 4:30 p.m., and is available from the Centers for Disease Control and Prevention at <https://www.cdc.gov/rabies/resources/publications/>.

JEFFREY D. HOWARD, Jr., M.D., Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: July 12, 2019

FILED WITH LRC: July 15, 2019 at 10 a.m.

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746, fax 502-564-7091, CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Julie Brooks, (502) 564-3970, julie.brooks@ky.gov, or Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a statewide rabies control program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the prevention and control of the spread of rabies throughout the state.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 258.015 requires every owner of a dog, cat, or ferret to have the animal vaccinated against rabies and to receive a certificate of the vaccination. KRS 258.043 allows local health departments (LHD) to sponsor mass rabies immunization

clinics and to charge the owner of the animal being vaccinated a reasonable fee to help defray the cost of the clinic.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation helps to ensure all domestic animals are properly vaccinated against rabies, and helps to ensure the safe handling of an animal carcass when the animal is suspected of being infected with rabies.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes the operating procedures for an LHD to operate a countywide mass rabies vaccination program, and sets a reasonable fee to be charged each owner of a dog, cat, or ferret for each vaccination provided. This amendment clarifies the quarantine procedures when a dog, cat, or ferret is suspected of having rabies and updates the vaccination certificate incorporated by reference to the current version of the certificate form being used by all veterinarians at this time. The Amended After Comments version of this administrative regulation corrects the statutory authority, adds the authority requiring the cabinet to approve the vaccination certificate form, clarifies which rabies vaccinations are approved for use and for reciprocity, clarifies the expiration date to be used in determining when the next rabies vaccination is due, ensures the quarantine of an animal suspected of being rabid is done in a safe manner that limits the animals exposure to humans and other animals, adds the provision for revaccination when there is a change in ownership of a dog vaccinated by a qualified person, and makes additional formatting changes to comply with KRS Chapter 13A drafting rules.

(b) The necessity of the amendment to this administrative regulation: House Bill 327, enacted during the 2018 legislative session, amended KRS 258.043 to remove the fee associated with a rabies vaccination given during an LHD sponsored immunization clinic. This amendment is necessary to set a standard fee to be charged an owner who chooses to have their dog, cat, or ferret vaccinated through an LHD sponsored mass immunization clinic. The National Association of State Public Health Veterinarians, NASPHV Form #51, is the most current certification form used by veterinarians and this amendment is necessary to update the material incorporated by reference.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment assists in administering a state rabies law as authorized by KRS 258.075.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in preventing and controlling the spread of rabies throughout the state by: allowing an LHD to offer a low cost rabies vaccination clinic; ensuring the proper quarantine of an animal suspected of having rabies; clarifying the procedures to be followed for submitting the brain of an animal who is suspected of having rabies upon the death of the animal; and allowing an individual to be permitted to administer a rabies vaccination to animals they own.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment has the potential to impact sixty-one (61) district health departments, 120 local health departments, as well as all dog, cat, and ferret owners in the Commonwealth.

(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: Local or district health departments not currently offering or participating in a mass rabies vaccination clinic would need to secure the services of a licensed veterinarian in their area to provide oversight of the vaccination process. Veterinarians participating in the mass immunization clinic will need to establish if the animal has previously been vaccinated and provide an appropriate vaccination according to recommendations by the National

Association of State Public Health Veterinarians. Individuals assuming ownership of a dog that has been vaccinated by a qualified person will need to be aware of the requirement for revaccination upon the change ownership.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The estimated cost to a local health department would be fifty-nine (59) dollars per hour. This cost was established by considering the average salary rate for a veterinarian at forty-four (44) dollars per hour, the cost of fifteen (15) dollars for ten (10) vials of vaccination, and the cost of eighty-three (83) dollars for 100 rabies tags. The fifty-nine (59) dollar per hour costs will be offset by the maximum ten (10) dollar fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Expanding the availability of low cost rabies vaccination can help to reduce the prevalence of rabies occurring in dogs, cats, and ferrets throughout the Commonwealth.

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

(a) Initially: An average rabies clinic is six (6) hours in length. At the rate of fifty-nine (59) dollars an hour, a local health department would spend \$354 per clinic. If each local health department sponsored one (1) clinic per year, the total costs would be approximately \$42,480 per year.

(b) On a continuing basis: The continuing costs would be approximately \$42,480.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds as well as funds generated from the nominal fee associated with the rabies vaccination will be used to implement this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: The fee associated with this administrative regulation is being raised from not exceeding five (5) dollars to not exceeding ten (10) dollars. The actual amount of the fee for the rabies vaccination will be set by the local health department. Some local health departments may choose to not increase the fee amount.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation establishes the maximum fee to be charged to each owner of a dog, cat, or ferret receiving a vaccination through a local health department sponsored mass rabies vaccination clinic. The cost shall not exceed ten (10) dollars per vaccination given. By contrast, a rabies vaccination costs nineteen (19) dollars through Petco® and can cost between fifteen (15) and twenty-eight (28) dollars through a private veterinarian. In addition to the cost of the vaccine, a private veterinarian will likely also charge between thirty (30) to fifty (50) dollars per examination.

(9) TIERING: Is tiering applied? Tiering is applied. A local health department can charge up to the maximum fee of ten (10) dollars. Some local health departments may choose to offer the rabies vaccination for a lower fee amount.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Division of Epidemiology and Health Planning within the 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), 211.180, 258.015, 258.043, 258.075.

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? While this administrative regulation does increase the maximum fee associated with an LHD sponsored mass vaccination clinic, the total amount of revenue generated by this increase cannot be determined. Not all LHDs will sponsor a mass rabies vaccination clinic and those that do sponsor a clinic may elect to charge a fee that is lower than the maximum of ten (10) dollars. In addition, there is no way of knowing how many individuals will have their animal vaccinated through an LHD sponsored clinic.

(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 total amount of revenue generated cannot be determined.

(c) How much will it cost to administer this program for the first year? The costs for all LHDs to sponsor one (1) mass rabies vaccination clinic is approximately \$42,480 per year.

(d) How much will it cost to administer this program for subsequent years? It will cost approximately \$42,480 in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Public Health Protection and Safety (Amended After Comments)

902 KAR 15:010. Manufactured and mobile home communities[homes].

RELATES TO: KRS[Chapter 13B, 151.100(7);] 219.310-219.410, 219.991(2), 227.570(2)

STATUTORY AUTHORITY: KRS 194A.050(1), 219.340, 219.360[,-219.370]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires[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 219.340(1) requires the cabinet to establish a schedule of fees that shall be paid for a permit to operate a manufactured or mobile home community. KRS 219.360 authorizes the cabinet to issue a permit for the new construction or alteration of a manufactured or mobile home community.[KRS 219.370 requires the Secretary of the Cabinet for Health Services to regulate and enforce the Kentucky Manufactured Home, Mobile Home, and Recreational Vehicle Community Act of 2002, KRS 219.340 to 219.410.] This administrative regulation establishes standards for community construction and layout, sanitary standards for operation, the permitting and inspection fee schedule, and other matters necessary to insure a safe and sanitary manufactured or mobile home community operation.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 219.320(2).

(2) "Community street" means the paved portion of a roadway between curbs or, if not paved, the surfaced area separating lots.

(3) "Flood plain" means the area in a watershed that is subject to flooding at least one (1) time every 100 years.

(4)[(2)] "Footer" means that part of a manufactured or mobile home lot that[which] supports the foundation for the placement of a manufactured or mobile home and appurtenant structures or additions.

(5)[(3)] "Foundation" means the substructure placed on a footer for supporting a manufactured home or mobile home.[(4) "Community driveway" means a private driveway which affords principal means of access between the community street and

individual manufactured home or mobile home lots.

(5) "Community street" means the paved portion of a roadway between curbs or, if not paved, the surfaced area separating lots.

(6) "Sewer connection" means the connection consisting of all pipes, fittings and appurtenances from the drain outlet of the mobile home to the inlet of the corresponding sewer riser pipe of the sewer system serving the mobile home park.

(7) "Water connection" means the connection consisting of all pipes, fittings and appurtenances from the water riser pipe to the water inlet pipe of the distribution system within the manufactured home or mobile home.

Section 2. Application for a Permit. (1) A person desiring to operate a manufactured or mobile home community shall complete and submit Form DFS-200, Application for a Permit, incorporated by reference in 902 KAR 10:040, to the local or district health department serving the county in which the community is located.

(2)(a) Upon receipt of an initial Application for a Permit, the cabinet shall inspect the manufactured or mobile home community to determine compliance with the provisions of this administrative regulation and KRS 219.310 through [to] 219.410.

(b) If the inspection reveals **compliance with [the applicable requirements of]** this administrative regulation **[have been met]**, a permit shall be issued to the applicant by the cabinet.

(3) The Application for a Permit to operate a manufactured or mobile home community shall be accompanied by:

(a) An application fee of \$150; and

(b) The inspection fee required by subsection (6) of this section.

(4) A permit to operate a manufactured or mobile home community shall be:

(a) Nontransferable from one (1) person to another; and

(b) Renewed annually by June 30 each year.

(5) A late **renewal [penalty]** fee of seventy-five (75) dollars shall be assessed on all permit renewal applications not received or postmarked on or before July 31 each year.

(6) The fee assessed for the inspection of a manufactured or mobile home community shall be assessed according to the total number of spaces in the community:

(a) **Two (2) [One (1)]** to ten (10) spaces - \$150;

(b) Eleven (11) to fifty (50) spaces - \$225;

(c) Fifty-one (51) to 100 spaces - \$300;

(d) 101 to 200 spaces - \$375; **[or]**

(e) 201 to **300 [or more]** spaces - \$450;

(f) **301 to 400 spaces - \$525;**

(g) **401 to 500 spaces - \$600; or**

(h) **501 or more spaces - \$675.**

Section 3. Submission of Construction Plan. (1) A person desiring to construct or alter a manufactured or mobile home community shall complete and submit a **notarized** Form DFS-317, Application for a Permit to Construct or Alter a Mobile Home Park or Recreational Vehicle Park, to the local or district health department serving the county in which the community is located.

(2) [In accordance with KRS 219.350,] Each application for a permit to construct or alter a manufactured or mobile home community shall be accompanied by:

(a) A complete plan, drawn to scale, submitted in triplicate, of the proposed community or alteration; and

(b) **An application for [A]** plan review fee of seventy (70) dollars.

(3) If the community is located within a **flood plain [floodplain]**, the plan shall be submitted in quadruplicate.

(4) The plan shall show existing and proposed facilities including:

(a) **[(4)]** The area and dimensions of the tract of land being developed;

(b) **[(2)]** The number, location, and size of all manufactured or mobile home lots;

(c) **[(3)]** The area within each manufactured or mobile home lot intended for location of a manufactured or mobile home and setback distances;

(d) **[(4)]** A detailed drawing of the manufactured or mobile home

footer for the placement of the manufactured or mobile home stand within the mobile home lot;

(5) The location and width of roadways, driveways, and walkways;

(e) **[(6)]** The number, location, and size of all off-street automobile parking spaces;

(f) **[(7)]** The location of each community street lighting and electrical system;

(g) **[(8)]** A detailed drawing of the water supply, if the source is other than public;

(h) **[(9)]** A detailed drawing of the sewage disposal facilities, including specifications;

(i) **[(40)]** A detailed drawing of the refuse storage facilities;

(j) **[(44)]** The location and size of water and sewer lines, and riser pipes;

(k) **[(42)]** The size and location of playground areas within the community, if provided; and

(l) **[(43)]** A separate floor plan of each building and other improvement constructed or to be constructed within the manufactured or mobile home community, including a plumbing riser diagram.

Section 4. [3.] Location and General Layout Standards. (1) Every manufactured or mobile home and manufactured or mobile home community shall be located on a well-drained area, ~~not in a flood plain~~. Each site shall be graded to prevent the accumulation of storm or other waters.

(2) If the location is in an area at high risk for flooding **as determined by the National Flood Insurance Program**, the applicant shall:

(a) Submit an engineering study to the cabinet; and

(b) Maintain flood insurance for the site.

(3) Each manufactured or mobile home or lot shall be numbered and displayed in a systematic order.

(4) Each manufactured or mobile home lot shall:

(a) Contain at least 4,000 square feet; and

(b) Be sized to ensure that spacing and setback requirements are met for any manufactured or mobile home placed on that lot.

(5) Manufactured or mobile homes shall be separated from each other and from other permanent buildings by at least fifteen (15) feet.

(6) A manufactured or mobile home shall be located at least twenty-five (25) feet from a community property boundary line abutting upon a public street or highway, and at least ten (10) feet from other community property boundary lines.

(7) There shall be at least twenty (20) feet between an individual manufactured or mobile home and the adjoining surface of a community street, or common parking area or other common areas.

(8) If a community provides a playground area, the area shall be easily accessible to all community residents and shall be fenced or otherwise rendered free of traffic hazards.

(9) Each lot shall abut a community street.

(a) The minimum width for a two (2) way community street with no parking shall be eighteen (18) feet; [;]

(b) The minimum width for a two (2) way community street with one (1) side parking shall be twenty-seven (27) feet; [;]

(c) The minimum width for a two (2) way community street with both sides parking shall be thirty-six (36) feet; [;]

(d) The minimum width for a one (1) way community street with no parking shall be fourteen (14) feet; [;]

(e) The minimum width for a one (1) way community street with one (1) side parking shall be twenty-three (23) feet; [;]

(f) The minimum width for a one (1) way community street with both sides parking shall be thirty-two (32) feet.

(10) Each community street, driveway, and walkway shall be:

(a) Of **gravel, [or] asphalt, or concrete** ~~"all-weather"~~ construction;

(b) Maintained in good condition;

(c) Drained **so as not to allow water to pond or accumulate [naturally]**;

(d) Relatively free of dust; and

(e) Free of holes.

(11)(a) The installation area of the manufactured or mobile home ~~footer~~ shall be suitable for placement of a manufactured or mobile home foundation, in compliance with site preparation and installation requirements of 815 KAR Chapter 25. ~~(12) The area intended for manufactured or mobile home placement shall be inspected by agents of the cabinet prior to placement to ensure all applicable setbacks are maintained. The cabinet shall be notified at least three (3) working days in advance of placement of the home)~~[:090.

(b) The manufactured or mobile home footer shall not heave, shift, or settle unevenly under the weight of the manufactured or mobile home, due to forces acting on the superstructure, such as:

1. Frost action;
2. Inadequate drainage;
3. Vibration; or
4. Other forces].

Section 5.[4.] Lighting within Community. A minimum equivalent to a 100 watt high pressure sodium light or light emitting diode equivalent~~[475 watt mercury vapor type light]~~, shall be provided at the community entrances, intersections, and at intervals of 200 feet within the community.

Section 6.[5.] Community Water Supply. (1)(a) The water supply shall be potable, adequate for the size of the community, and, if available, from a[from an approved] public supply of a municipality or water district in compliance with 401 KAR Chapter 8[, if available].

(b) If a public water supply of a municipality or a water district is not available, the supply for the community shall be developed and approved in accordance with the applicable requirements of 401 KAR Chapter 8[pursuant to the requirements of the Natural Resources and Environmental Protection Cabinet].

(c) If a public water supply of a municipality or water district subsequently becomes available, connections shall be made to it and the community supply shall be discontinued.

(2) The water supply shall be capable of supplying at least 150 gallons per day per manufactured or mobile home lot.

(3) A physical connection shall not be made between an approved public water supply and unapproved water supply.

(4) Water distribution lines and connections shall comply with 815 KAR Chapter 20~~[the state plumbing code]~~.

Section 7.[6.] Community Sewage and Waste Disposal. (1)(a) Sewage and waste matter shall be disposed of into a municipal[public] sewer system, if available.

(b) If a municipal[public] sewer system is not available, disposal shall be made into a private sewage disposal system designed, constructed, and operated in accordance with the requirements of 815 KAR Chapter 20 and 902 KAR Chapter 10~~[the cabinet or the Natural Resources and Environmental Protection Cabinet]~~.

(c) If a municipal[public] sewer system subsequently becomes available, connections shall be made to it and the private[community] sewer system shall be discontinued.

~~(2)[The sewer service connection between the manufactured or mobile home and the sewer riser opening shall have an inside diameter of at least three (3) inches and a slope of at least one-fourth (1/4) inch per foot. All joints shall be watertight.~~

~~(3) The sewer outlet shall be capped while[when] not in use.~~

~~(3)[(4)] Manufactured or mobile home community sewer system[systems] connections shall comply with 815 KAR Chapter 20[the state plumbing code].~~

Section 8.[7.] Storage, Collection, and Disposal of Community Refuse. (1) The permit holder shall be responsible for storage and disposal of refuse in common containers.

(2) The storage, collection, and disposal of refuse in the community area shall not create:

- (a) A health, safety, or fire hazard;
- (b) Rodent harborage;
- (c) Insect breeding area;
- (d) Air pollution; or
- (e) Other public or private nuisance.

(3) Refuse shall be stored in insect-proof, watertight, rodent-proof common containers, which shall be located near each manufactured or mobile home lot. Common containers shall be provided in sufficient number and capacity to properly store all refuse deposited by community residents.

(4) A common container storage location shall be provided, designed, and maintained so as not to create a nuisance.

(5) Refuse ~~[containing garbage]~~ shall be collected at least once a week or more often, if necessary.

(a) If suitable collection service is not available from municipal or private agencies, the owner or operator of the community shall provide this service.

(b) All refuse shall be collected and transported in covered, leak-proof containers or vehicles.

(6) Refuse ~~[and waste]~~ collected at a community shall be disposed in a safe and sanitary manner approved~~[by the Natural Resources and Environmental Protection Cabinet]~~ in accordance with 401 KAR Chapter 47.

(7) Open burning shall be prohibited in a manufactured or mobile home community.

Section 9.[8.] Insect, Rodent, and Vegetative Nuisance~~[and Rodent]~~ Control within the Community. (1) Grounds, buildings, and structures shall be maintained free of insect and rodent harborage and infestation. Approved extermination methods and other measures to control insects and rodents shall be used.

(2) Communities shall be maintained free of accumulations of debris that could[which][may] provide rodent harborage or breeding places for flies, mosquitoes, and 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.

(4) Within forty-five (45) days of placement, each manufactured or mobile home shall have underpinning[underskirting] of vinyl, metal, masonry, or pressure-treated lumber.

(5)(a) A community shall be maintained to prevent the growth of ragweed, poison ivy, poison oak, poison sumac, and other noxious weeds considered detrimental to health.

(b) A community shall be free of heavy vegetative growth of any description.

(c) Pesticide application for the control of vegetative growth shall be in accordance with 302 KAR Chapter 28.

Section 10.[9.] Community Electrical Distribution Systems. Every community shall contain an electrical system consisting of wiring, fixtures, equipment, and appurtenances installed and maintained pursuant to the requirements of 815 KAR Chapter 7~~[35:020][the Public Protection and Regulation Cabinet]~~.

Section 11.[10.] Community Fire Protection. Each community shall comply with fire safety codes applicable to manufactured or mobile home~~[and recreational vehicle]~~ communities, including:

(1) Spacing and setback requirements for attached or unattached accessory buildings or structures;

(2) State Fire Marshal requirements established in 815 KAR Chapter 10; and

(3) Local fire codes regarding fuel supply storage and fuel connections.

Section 12.[14.] Community Maintenance and Registration of Occupants. The person to whom a permit to operate a community is issued shall:

(1) Maintain the community, the community's[its] facilities, and equipment in good repair and in a clean and sanitary condition;

(2) Notify community occupants of relevant provisions of this administrative regulation, including occupants' duties and responsibilities;

(3)(a) Assign proper orientation and location of each community home; and

(b) Assure proper installation and set up of each manufactured or mobile home, in compliance with the provisions established ~~[by the Public Protection and Regulation Cabinet, as embodied]~~ in

KRS 227.570(2)(3) and 815 KAR Chapter 25[040]; and

(4) Maintain a register containing the names of community occupants, to be made available to a person authorized to inspect the community.

Section 13[42]. Communities Holding a Valid Operation Permit and Constructed Prior to December 18, 2002[the Adoption of this Administrative Regulation]. (1) A community with a valid operating permit issued between January 12, 1973 and December 18, 2002[the date of adoption of this administrative regulation] shall be eligible for a permit to continue operation if it meets:

- (a) The requirements of the 1973 administrative regulations; or
- (b) The site plan approved by the cabinet at the time of permit issuance.

(2) A manufactured or mobile home community with a valid operating permit, constructed on or before January 12, 1973, shall be eligible for a permit to continue operation if:

(a) The community does not meet the design and construction requirements of this administrative regulation; but

(b) 1. Community facilities are capable of being maintained in a safe and sanitary manner, in compliance with this administrative regulation; and

2.(c) The community does not present a public health nuisance.

(3) A manufactured or mobile home community with a valid operating permit, constructed on or before January 1, 1956, shall be eligible for a permit to continue operation if:

(a) The community does not meet the design and construction requirements of this administrative regulation; but

(b) 1. Community facilities are capable of being maintained in a safe and sanitary manner, in compliance with this administrative regulation; and

2. The community does not present a public health nuisance.

(4) A manufactured or mobile home community with a valid operating permit, constructed on or before January 1, 1956, shall be eligible for a permit to continue operation if:

(a) The community does not meet the design and construction requirements of this administrative regulation; but

(b) Community facilities are capable of being maintained in a safe and sanitary manner, in compliance with this administrative regulation; and

(c) The community does not present a public health nuisance.

(4) A manufactured or mobile home community currently in place at a community shall be allowed to continue to be situated on that lot. If the home is removed, it shall be replaced only by a home:

- (a) The same size as the home being removed; or
- (b) That preserves the set back and spacing requirements in effect at the time the community was constructed. A setback from an interior street shall be the maximum achievable for the replacement home.

Section 14.[43:] Inspection of Communities. (1) At least once every twelve (12) months, the cabinet shall inspect each community and shall make as many additional inspections and reinspections as are necessary for the enforcement of this administrative regulation.

(2)(a) A cabinet inspector shall record the inspection findings on the DFS-318, Mobile Home and Recreational Vehicle Park Inspection Report; and

(b)[in writing. The inspector shall] Provide a copy of the report to the permit holder or the permit holder's[his] designee.

(3) The findings shall:

- (a) State[Set forth] the specific violations if found;
- (b) Establish a specific and reasonable period of time for the correction of[the] violations if found; and
- (c) State that failure to comply with any notice issued pursuant to the provisions of this administrative regulation may result in suspension or revocation of the permit.

Section 15.[14:] Suspension, Reinstatement, and Revocation of Permits. In addition to penalties established in KRS 219.991(2),

the cabinet may suspend or revoke a permit, in accordance with KRS 219.380(2).

(1) The cabinet shall, upon notice to the permit holder, immediately suspend the permit if:

(a) There is reason to believe that an imminent public health hazard exists; or

(b) The holder or an employee has interfered with the cabinet in the performance of the cabinet's[its] duties.

(2) In all other instances of violation of the provisions of this administrative regulation the cabinet shall:

(a) Serve on the permit holder or the permit holder's[his or her] designee, a written notice stating[specifying] the violation; and

(b) Afford the holder a reasonable opportunity for correction.

(3) The cabinet shall notify, in writing, a permit holder [or operator] who fails to comply with a written notice issued under the provisions of this section[.] that the permit shall be suspended at the end of ten (10) days following service of the notice.

(4)[Section 15. Reinstatement of Suspended Permits.] A person whose permit has been suspended may, at any time, submit Form DFS-215, Application for Reinstatement, incorporated by reference in 902 KAR 45:005,[make application for a reinspection] for the purpose of reinstatement of the permit.

(5)[Within ten (10) days following receipt of a written request, including a statement signed by the applicant that the conditions causing suspension of the permit have been corrected, the cabinet shall make a reinspection. If the applicant is found to comply with the requirements of this administrative regulation, the permit shall be reinstated.

Section 16. Revocation of Permits.] A permit shall be permanently revoked for:

(a)[(4)] Serious or repeated violations of a requirement of this administrative regulation; or

(b)[(2)] Interference with an agent of the cabinet in the performance of his or her duties.

(6) Prior to the action, the cabinet shall notify the permit holder or the permit holder's[his] designee, 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) days following service of the notice.

(7)[Section 17. Permit Renewal. (1) A permit to operate a manufactured or mobile home community shall be renewed annually, in the month of July. A permit fee shall be assessed pursuant to 902 KAR 45:120, Section 2(2).

(2) If the cabinet or the cabinet's[its] agent is on notice that a manufactured or mobile home community is in violation of another agency's lawful requirement, the permit shall not be renewed until the permit holder or the permit holder's[his] designee demonstrates to the cabinet or its agent that the violation has been corrected.

Section 16.[18:] Appeals. [(1)] A permit holder, a permit holder's[his] designee, or an applicant aggrieved by a decision of the cabinet may request an appeal pursuant to 902 KAR 1:400.[a conference or administrative hearing. The request shall be submitted within ten (10) days of receipt of a written notice of:

- (a) A violation;
- (b) Suspension or revocation of a permit;
- (c) Denial to renew a permit; or
- (d) Denial of an initial application.

(2) Conference hearings:

(a) A conference hearing shall be conducted in accordance with 902 KAR 1:400, Administrative hearings, with the following exceptions:

1. The hearing shall be less formal than an administrative hearing;

2. The matter at issue shall be discussed before a representative of the Department for Public Health; and

3. Participants in the discussion shall be:

- a. An agent of the cabinet; and
- b. The permit holder, his designee, or the applicant.

- (b) A request for a conference hearing shall be:
1. In writing;
 2. Submitted or addressed to the cabinet's agent at the local health department that issued or gave notice of the violation, suspension, or revocation.
- (c) A permit holder, his designee, or an applicant who does not agree with the conference report issued after the conference hearing may appeal by requesting an administrative hearing.
- (3) Administrative hearing.
- (a) A request for an administrative hearing waives the right to request a conference hearing.
- (b) The administrative hearing shall be conducted in accordance with 902 KAR 1:400, Administrative hearings.
- (c) A request for an administrative hearing shall be:
1. In writing;
 2. Submitted or addressed to the Commissioner, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621; and
 3. Accompanied by a copy of the notice of violation, notice to suspend or revoke, letter denying an application, or the conference hearing report.]

Section 17.[49.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) ["DFS-317, "Application for a Permit to Construct or Alter a Mobile Home Park or Recreational Vehicle Park," Rev 10-18; and

(b) DFS-318, "Mobile Home and Recreational Vehicle Park Inspection Report," 10-18(Rev. 5-91)" is incorporated by reference].

(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 40602, Monday through Friday, 8 a.m. to 4:30 p.m.

JEFFREY D. HOWARD, JR., M.D., Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: July 12, 2019

FILED WITH LRC: July 15, 2019 at 10 a.m.

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746, fax 502-564-7091, CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Julie Brooks, (502) 564-3970, julied.brooks@ky.gov, or Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for manufactured or mobile home community construction and layout, sanitary standards for operation, and other matters necessary to ensure a safe and sanitary manufactured or mobile home community operation.

(b) The necessity of this administrative regulation: This administrative regulation allows the cabinet to assess a fee for permitting and inspecting manufactured or mobile home communities to help offset the cost to the cabinet.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 219.340 authorizes the cabinet to promulgate administrative regulations to establish the requirements for issuing a permit to operate a manufactured or mobile home community and to establish a schedule of fees not to exceed the administrative costs to the cabinet for the issuance of a permit to operate a manufactured or mobile home community.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes a uniform standard for all manufactured or mobile home communities and assist the cabinet in recouping costs associated with permitting and inspecting manufactured or mobile home communities.

(2) If this is an amendment to an existing administrative

regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment adds the permit application process to operate a manufactured or mobile home community; adds the permitting and inspection fee structure for a manufactured or mobile home community; adds the requirement for an inspection of the placement of a manufactured or mobile home before placement; updates the community lighting requirements; adds the prohibition of open burning within the community; updates references to application administrative regulation and revised statutes for the design and construction of the community, and the water and sewage systems; and clarifies the appeals process when an application has been denied, suspended, or revoked. The Amended After Comments version of this administrative regulation removes the requirement for a cabinet inspection prior to placement of a new manufactured or mobile home. Through the public comment process, it was determined that requiring this type of inspection would place an undue burden on community owners and local health department inspectors. Additional changes in this administrative regulation include updating the title of this administrative regulation to differentiate between other mobile home related administrative regulations, reinstating the grandfather clause for communities constructed prior to 1956, adjusting the schedule of fees to cover larger communities, clarifying that two (2) or more residential lots constitute a manufactured or mobile home community, clarifying the process for requesting a reinstatement of a suspended or revoked permit, correcting citations to other administrative regulations, and making additional drafting and formatting changes to comply with KRS Chapter 13A drafting rules.

(b) The necessity of the amendment to this administrative regulation: House Bill 327, enacted during the 2018 legislative session, removed the permitting and inspection fee structure for manufactured and mobile home communities from KRS 219.340. This amendment is necessary to add the required permitting and inspection fees to this administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 219.340 authorizes the secretary to promulgate administrative regulations to establish the fee structure for a permit to operate a manufactured or mobile home community. This amendment establishes that fee structure. KRS 219.370 authorizes the secretary to promulgate administrative regulations for the standards for community construction and layout, sanitation, water supply, sewage disposal, lighting, inspections, issuance, suspension and revocation of permits, and other matters as may be necessary to insure a safe and sanitary community operation. This amendment ensures those standards are up to date.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will incorporate all information related to operating a manufactured and mobile home community into one (1) administrative regulation. This will help to avoid conflicting information between the statute and program regulations. The change in the fee structure for manufactured and mobile home communities will help to offset cabinet cost associated with implementing the provisions of KRS 219.340.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact 1,782 manufactured and mobile home communities in the Commonwealth. In addition, this administrative regulation will impact 120 local health departments and sixty-one (61) district health departments.

(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: Manufactured and mobile home community owners will need to be aware of the application process and the changes in the fee structure. Local

VOLUME 46, NUMBER 2– AUGUST 1, 2019

and district health departments will need to be aware of the changes in the fee structure to ensure they are collecting the correct amounts. By including the reference to the DFS-215 form, community owners who have had a permit suspended or revoked will know how to submit an Application for Reinstatement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The annual inspection fee for a manufactured or mobile home community will cost each community owner an additional seventy-five (75) dollars each year. The annual permit to operate a manufactured or mobile home community will increase between \$100 and \$270 for communities with two (2) to 200 spaces. The larger communities will have increased costs, up to an additional \$425, as those communities require much longer inspection time due to the size of the community. The change in the schedule of fees is consistent with surrounding states. The fee amount for submitting construction plans for review will increase ten (10) dollars. There is no anticipated costs for the local or district health departments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with this administrative regulation owners of a manufactured or mobile home community, or those interested in developing a new community, can ensure the community is operating in a safe and sanitary manner.

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

(a) Initially: This is an ongoing program, there will be no additional costs for implementation.

(b) On a continuing basis: This is an ongoing program, there will no additional ongoing costs associated with implementation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds and revenue received from permitting and inspecting manufactured or mobile home communities are the sources of funding for 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: This amendment increases the fees for permitting and inspecting a manufactured or mobile home community.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation does increase the fee structure for permitting and inspecting a manufactured or mobile home community. The administrative cost to the cabinet is approximately \$150 per hour for environmental management inspectors. This cost includes the salary of the inspector, fiscal year 2018 Kentucky Employee Retirement System (KERS) and Federal Insurance Contributions Act (FICA) contributions, and health and life insurance cost.

The number of spaces in the manufactured or mobile home community has an impact on the length of time required to conduct an inspection. The table below outlines the proposed changes in the fee structure for manufactured or mobile home communities.

Inspection fee	10 or less spaces	11 to 50 spaces	51 to 100 spaces	101 to 200 spaces	201-300 spaces	301-400 spaces	401- 500 spaces	501 or more spaces
Avg. Hourly Rate (including FY-18 KERS, FICA, health & life, indirect)	\$150	\$150	\$150	\$150	\$150	\$150	\$150	\$150
Number of hours/inspection including travel	2	3	4	5	6	7	8	9
Minimum number of routine inspections/year	1	1	1	1	1	1	1	1
Current Permit Fee	\$75	\$75	\$75	\$75	\$75	\$75	\$75	\$75
Current Inspection Fee	\$50	\$150	\$160	\$170	\$180	\$180	\$180	\$180
Current total from permitting and inspection fee	\$125	\$225	\$235	\$245	\$255	\$255	\$255	\$255
Proposed Permit Fee	\$150	\$150	\$150	\$150	\$150	\$150	\$150	\$150
Proposed Inspection Fee	\$150	\$225	\$300	\$375	\$450	\$525	\$600	\$675
Number of permitted facilities	901	651	118	66	30	10	5	1
Proposed fee total	\$270,300	\$244,125	\$53,100	\$34,650	\$18,000	\$6,750	\$3,750	\$825
Actual expenditure	\$270,300	\$292,950	\$70,800	\$49,500	\$27,000	\$10,500	\$6,000	\$1,350

The hours required for inspection does not include travel time to and from the manufactured or mobile home community. The inspection fee is based on routine inspection only. It does not include the costs associated with doing follow-up inspections for the correction of identified noncompliance or for complaint investigations. On average one (1) re-inspection is required for every twenty (20) inspections due to identified noncompliance

issues.

(9) TIERING: Is tiering applied? Tiering is applied. The permit fee structure for a manufactured or mobile home community is dependent on the number of spaces in the community.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Environmental Management Branch within the Department for Public Health as well as local, district, and independent health departments throughout the Commonwealth.

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), 219.340(1), 219.360.

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 changes in permitting and inspection fees will generate approximately \$631,500 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 changes in permitting and inspection fees will continue to generate approximately \$631,500 in subsequent years.

(c) How much will it cost to administer this program for the first year? The current costs to permit and inspect mobile and manufactured home communities is approximately \$710,550. There is no anticipated increase in costs in the first year.

(d) How much will it cost to administer this program for subsequent years? There is not anticipated increase in costs to administer in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Health Care

(Amended After Comments)

902 KAR 20:036. Operation and services; personal care homes.

RELATES TO: KRS 194A.700(1), (9), (11), 202A.011(12), 209.030, 209.032, 216.510 – 216.525, 216.532, 216.765, 216.785-216.793, 216A.080, 216B.010-216B.130, 216B.990, 310.021, 310.031, 21 C.F.R. Part 1317

STATUTORY AUTHORITY: KRS 216B.042[, 216B.105, 314.011(8), 314.042(8), 320.210(2), 1998 Ky. Acts ch. 228, sec. 2, ch. 424, sec. 1]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient [and 216B.105 require that the Cabinet for Health Services regulate] health facilities and health services. This administrative regulation establishes minimum licensure requirements for the operation of and [the] services [to be] provided by personal care homes.

Section 1. Definitions. (1) "Activities of daily living" or "ADL" is defined by KRS 194A.700(1) [means activities of self-help (example: being able to feed, bathe and/or dress oneself), communication (example: being able to place phone calls, write letters and understanding instructions), and socialization (example:

being able to shop, being considerate of others, working with others and participating in activities)].

(2) [~~"Activities services"~~] means social and recreation opportunities to stimulate physical and mental abilities, encourage and develop a sense of usefulness and self respect and encourage participation in a variety of activities.

(3) "Administrator" means an individual [a person] who:

(a) Has a license to practice long-term care administration pursuant to KRS 216A.080; or

(b) Has [sufficient education to: maintain adequate records; submit reports requested by the board; and interpret any written material related to all phases of facility operation and resident's care. The administrator shall: be literate; be] a high school diploma, a general equivalency diploma (GED), or qualifying documentation from a comparable educational entity; and

(c) Is age [graduate or have passed the general Education Development Test; be] twenty-one (21) [years of age] or older; or

(b) Is licensed as a nursing home administrator as provided by KRS 216A.080].

(3) [(4)] "Ambulatory" means able to walk without assistance.

(4) "Certified nutritionist" means a health care professional who is certified pursuant to KRS 310.031.

(5) "Instrumental activities of daily living" or "IADL" is defined by KRS 194A.700(9).

(6) "Licensed dietician" means a health care professional who is licensed pursuant to KRS 310.021 [(5) "License" means an authorization issued by the Certificate of Need and Licensure Board for the purpose of operating a personal care home and offering personal care services].

(7) [(6)] "Mobile nonambulatory" is defined by KRS 194A.700(11) [means unable to walk without assistance, but able to move from place to place; and includes the ability to:

(a) Self exit the building; and

(b) Transfer independently or with minimal assistance from bed-to-chair [, with the use of a device such as a walker, crutches, or a wheelchair and capable of independent bed-to-chair transfer or bed-to-chair transfer with minimal assistance].

(8) [(7)] "Nonambulatory" means unable to walk without assistance.

(9) [(8)] "Nonmobile" means unable to move from place to place.

(10) "Personal care home" or "PCH" means an establishment located in a permanent building that has resident beds and provides:

(a) Supervision of residents;

(b) Basic health and health-related services;

(c) Personal care services;

(d) Residential care services; and

(e) Social and recreational activities.

(11) "Qualified mental health professional" or "QMHP" is defined by KRS 202A.011(12) [(9) "Personal care" means services to help residents to achieve and maintain good personal hygiene including but not limited to: assistance with bathing, shaving, cleaning and trimming of fingernails and toenails, cleaning of the mouth and teeth, washing, grooming and cutting of hair.

(10) "Qualified dietician or nutritionist" means a person who:

(a) Has a bachelor of science degree in foods and nutrition, food service management, institutional management, or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or

(b) Has a masters degree in nutrition and is a member of ADA or is eligible for registration by ADA; or

(c) Has a bachelor of science degree in home economics and three (3) years of work experience with a registered dietician.

(11) "Residential care" means services which include but are not limited to: room accommodations, housekeeping and maintenance services, dietary services and laundering of resident's clothing and bed linens;]

(12) "Restraint" means any pharmaceutical agent or [,] [or] physical [device,] or mechanical device used to restrict the [resident's freedom of] movement of a portion of a patient's

body [temporarily to manage a resident's behavior in a way that reduces the safety risk to the resident or others] [of a patient or the movement of a portion of a patient's body].

(13) "Serious mental illness" or "SMI" means a mental illness or disorder (but not a primary diagnosis of Alzheimer's disease or dementia), that is described in the Diagnostic and Statistical Manual of Mental Disorders (DSM), 5th Edition, or the DSM currently in use, that impairs or impedes functioning in one (1) or more major areas of living and is unlikely to improve without treatment, services, or supports.

(14) "Specialized personal care home" or "SPCH" means a personal care home that:

(a) Participates in the mental illness or intellectual disability supplement program pursuant to 921 KAR 2:015, Section 13; or

(b) Serves residents with thirty-five (35) percent or more having an SMI.

Section 2. Scope of Operations and Services. (1) [A personal care home is an establishment with permanent facilities including resident beds. Services provided include continuous supervision of residents, basic health and health-related services, personal care services, residential care services, and social and recreational activities.] A resident in a PCH or SPCH [personal care] home shall:

(a) Be admitted in accordance with KRS 216.765;

(b) Be [sixteen (16) years of age or older and be] ambulatory or mobile nonambulatory;

(c) Be [and] able to manage most of the activities of daily living; and

(d) Have care needs that do not exceed the capability of the PCH or SPCH.

(2) An individual [Persons] who is [are] nonambulatory or nonmobile shall not be eligible for residence in a PCH or SPCH [personal care home].

Section 3. Administration and Operation. (1) Licensee. [(a)] The licensee shall be legally responsible for:

(a) The operation of the PCH or SPCH;

(b) [personal care home and for] Compliance with federal, state, and local laws and administrative regulations pertaining to the operation of the facility;

(c) The development and implementation of [home. (b) The licensee shall establish] policies related to [for the] administration and operation of the facility; and

(d) If the licensee is an SPCH, the development and implementation of written transition procedures to ensure cooperation with an individual or entity that assists with transitioning residents with an SMI to community living arrangements [service].

(2) Administrator.

(a) The [All personal care facilities shall have an] administrator [who] shall:

1. Be responsible for the day-to-day operation of the PCH or SPCH; and

2. Designate one (1) or more staff to act on behalf of, or to perform the administrator's responsibilities in the administrator's [facility and shall delegate such responsibility in his or her] absence.

(b) Each SPCH shall ensure that the administrator completes the mental illness or intellectual disability training workshop established by 921 KAR 2:015, Section 14, within six (6) months from the effective date of this administrative regulation and every two (2) years thereafter.

(3) Admission.

(a) [Personal care homes shall admit only persons who are sixteen (16) years of age or older and who are ambulatory or mobile nonambulatory and whose care needs do not exceed the capability of the home. Persons who are nonambulatory or nonmobile shall not be eligible for admission to a personal care home.

(b) A PCH or SPCH [personal care home] shall not care or be responsible for the care of more residents than the capacity indicated on the license[, regardless of where housed].

(b) [(e)] Upon admission, a PCH or SPCH shall provide the

resident and a responsible member of the resident's [his] family or other designated representative with written information regarding the facility's policies, including:

1. Services offered and charges;

2. The right to visitation with family and friends, subject to visiting rules and hours established by the facility; and

3. Meal services [committee shall be informed in writing of the established policies of the home to include but not be limited to fees, reimbursement, visitation rights during serious illness, visiting hours, type of diets offered and services rendered].

(c) Prior to [(d) Upon] admission, each resident shall have a complete medical examination in accordance with KRS 216.765 [evaluation including medical history, physical examination and diagnosis (may be copy of discharge summary or health and physical report from physician, hospital or other health care facility if done within fourteen (14) days prior to admission)].

(d) No later than three (3) months from the effective date of this administrative regulation, a PCH or SPCH shall complete the SMI Screening Form for each current resident. Upon admission, a PCH or SPCH shall complete the SMI Screening Form for each new or returning resident.

(4) Patient rights. Patient rights shall be provided for pursuant to KRS 216.510 to 216.525.

(5) Adult [and child] protection. PCHs and SPCHs [Personal care homes] shall have written policies that [which] assure the reporting of allegations [cases] of abuse, neglect, or exploitation of adults [and children] pursuant to KRS 209.030, including evidence that all allegations of abuse, neglect, or exploitation are thoroughly investigated internally to prevent further potential abuse while the investigation is in progress [Chapters 209 and 620].

(6) Transfer and discharge. (a) PCHs and SPCHs [personal care homes] shall:

1. Comply with the requirements of 900 KAR 2:050 upon [when] transferring or discharging a resident; and

2. [residents. (a) Personal care homes shall] Have written transfer procedures and agreements for the transfer of residents to a higher intensity level of care, if indicated [other health care facilities which can provide a level of inpatient care not provided by the personal care home].

(b) A PCH or SPCH that [Any facility which] does not have a transfer agreement in effect, but has attempted in good faith to enter into [such] an agreement shall be considered to be in compliance with the requirements of paragraph (a)2. of this subsection.

(c) [license requirement.] The transfer procedures and agreements shall:

1. Specify the responsibilities each party [institution] assumes in the transfer of residents;

2. [patients and] Establish responsibility for notifying the other party [institution promptly] of an [the] impending transfer; and

3. [of a patient and] Arrange for [appropriate and] safe transportation and transfer of files.

(d) [(b)] The administrator shall initiate a transfer through the resident's physician or appropriate agencies if [when] the resident's condition is not within the scope of services of the PCH or SPCH [a personal care home].

(e) PCH or SPCH resident records.

1. If a resident transfers [(c) In the event of transfer] to another health care facility, a current summary of the resident's medical record shall accompany the resident.

2. If a resident transfers [When a transfer is] to another level of care within the same facility, a copy of the resident's record or current summary of the resident's medical record [thereof] shall accompany the resident.

3. If a resident transitions into a community living setting, a current summary of, or a copy of the resident's records shall be provided to the resident and the resident's guardian.

(7) Tuberculosis Testing. (a) All employees of a PCH or SPCH [and residents] shall be screened and tested for tuberculosis in accordance with 902 KAR 20:205.

(b) Residents of a PCH or SPCH shall be screened and tested in accordance with [the provisions of] 902 KAR 20:200[, Tuberculosis testing in long term care facilities].

(8) Personnel.

(a) In accordance with KRS 216.532, a PCH or SPCH shall not employ or be operated by an individual who is listed on the nurse aide and home health aide abuse registry established by 906 KAR 1:100.

(b) In accordance with KRS 209.032, a PCH or SPCH shall not employ or be operated by an individual who is listed on the caregiver misconduct registry established by 922 KAR 5:120.

(c) A PCH or SPCH shall obtain a criminal record check on each applicant for initial employment in accordance with KRS 216.789 and 216.793.

~~(d) Operators and employees of personal care homes shall comply with 1998 Ky. Acts ch. 424, sec. 4.~~

(b) Current employee records shall be maintained on each staff member and contain the following items:

1. Name and address;

2. Verification of all ~~and shall include a record of each employee's~~ training and experience, including evidence of current licensure, registration, or certification, if applicable;

3. Employee ~~where required by law,~~ health records;

4. Annual performance evaluations; and

5. Documentation of compliance with the background check requirements of paragraph (a) through (c) of this subsection ~~and evaluation of performance, along with employee's name, address and Social Security number.~~

(e) Each employee ~~(c) All employees~~ shall be of an age in conformity with state laws.

(f) ~~An (d) Any~~ employee who contracts a communicable or [contracting] an infectious disease shall:

1. Be immediately excluded from work; and

2. Remain off work until cleared as noninfectious by a health care practitioner acting within the practitioner's scope of practice.

(g) Each ~~not appear at work until the infectious disease can no longer be transmitted. (e) All~~ dietary staff member [employees] shall wear a hair ~~net [nets]~~.

(h) ~~(f) In-service training.~~

1. Each PCH and SPCH employee ~~All personal care home employees~~ shall receive orientation and annual in-service training that ~~corresponds [to correspond]~~ with the staff member's job duties [of their respective jobs].

2. Documentation of orientation and in-service training shall be maintained in the employee's record and shall include the following:

a. Name of the individual or individuals who provided [gave] the training;

b. Date and number of hours the [period of time] training was given; and

c. A summary of ~~what~~ the training program's content [consisted of].

3. In-service training shall include ~~but not be limited to~~ the following:

a. Policies regarding the responsibilities of specific job [of the facility in regard to the performance of their] duties;

b. Services provided by the facility;

c. Recordkeeping procedures;

d. Procedures for the reporting of cases of adult [and child] abuse, neglect, or exploitation pursuant to KRS 209.030 [Chapters 209 and 620];

e. Resident ~~[5. Patient]~~ rights established by [as provided for in] KRS 216.510 to 216.525;

f. Adult learning principles, and [6.] methods for [ef] assisting residents [patients] to achieve maximum abilities in ADLs and IADLs [activities of daily living];

g. Procedures for the proper application of emergency manual [physical] restraints;

h. Procedures for maintaining a clean, healthful, and pleasant environment;

i. The aging process;

j. The emotional problems of illness;

k. Use of medication; and

l. Therapeutic diets.

4. Each SPCH shall ensure that at least one (1) direct care staff member in addition to the administrator completes the mental

illness or intellectual disability training workshop established by 921 KAR 2:015, Section 14, within six (6) months from the effective date of this administrative regulation and every two (2) years thereafter. An SPCH shall employ at least one (1) direct care staff member who has received the training.

(i) ~~(g) Staffing requirements.~~

1. The number of personnel required shall be based on:

a. The number of patients; and

b. Amount and kind of personal care, health care, and ~~supervision [and program]~~ needed to meet the needs of the residents ~~[as determined by the definitions of care and services required in this administrative regulation].~~

2. ~~If the staff to resident ratio does not meet the needs of the residents, the Division for Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification and shall give the basis for this determination.~~

3. ~~The administrator shall designate one (1) or more staff members to be [a person for each of the following areas who will be primarily] responsible for the following services [coordination and provisions of services (personnel may be required to perform combined duties)]:~~

a. Recordkeeping;

b. Basic health and health related services; and

c. Activity services.

3. ~~4.] Each PCH or SPCH [facility] shall have a full-time staff member who shall be:~~

a. ~~[person designated by the administrator,]~~ Responsible for the total food service operation of the facility; and

b. ~~[who shall be]~~ On duty a minimum of thirty-five (35) hours each week.

5. A PCH or SPCH shall ensure that sufficient staff, but no less than one (1) staff member ~~[attendant]~~ shall be awake and on duty on each floor in the facility at all times.

(9) Medical records.

(a) The PCH or SPCH administrator or staff member ~~[person]~~ in charge of medical records shall assure that a complete medical record ~~is [shall be]~~ kept for each resident with all entries current, dated, and signed.

(b) ~~[Entries should be made in ink, ballpoint, or typed.] Each record shall include the following:~~

1. ~~(a) Identification information, including:~~

a. ~~[1.] Resident's name;~~

b. ~~[2.] Social Security, Medicare and Medical Assistance identification number (if appropriate);~~

c. ~~[3.] Marital status;~~

d. ~~[4.] Birthdate;~~

e. ~~[5.] Age;~~

f. ~~[6.] Sex;~~

g. ~~[7.] Home address;~~

h. ~~[8.] Religion and personal clergyman, if any (with consent of the resident);~~

i. ~~[9.] Attending physician, health care practitioner acting within the practitioner's scope of practice, QMHP, dentist, and podiatrist, if any, and [:] address and phone number for each [one];~~

j. ~~[10.] Next of kin or responsible person, address, and telephone number;~~

k. ~~[11.] Date of admission and discharge;~~

l. If the resident is discharged, transferred, or transitioned to a community living arrangement [12. In the event of transfer], a copy of the summary of resident's records; and

m. [13.] Monthly recording of the resident's weight;

2. ~~(b) If admitted from another facility, a discharge summary or transfer summary;~~

3. ~~(c) Admitting medical evaluation;~~

4. ~~(d) Physician's Report by the physician or health care practitioner acting within the practitioner's scope of practice, documenting completion of an [one] annual medical evaluation of each [the] resident;~~

5. ~~(e) Physician, health care practitioner, or QMHP progress notes indicating any changes in the resident's condition, documented at the time of each visit by the physician, health care practitioner, QMHP, or [and] consultant;~~

6. ~~[-(f)]~~ Orders for medication or therapeutic services;
 7. ~~[-(g)]~~ Nurses' or staff notes indicating any changes in a resident's condition as changes~~[they]~~ occur;

8. Documentation of any accident, injury, illness, medication error, or drug reaction;

9. Documentation~~[-(h)]~~ Reports of accidents or acute illnesses of any resident. ~~(i)~~ Reports of social services, dental, laboratory, x-ray, or ~~and special~~ reports ~~from~~~~[of]~~ consultants or therapists ~~if~~~~[when]~~ the resident receives any of these services;

10. ~~[-(j)]~~

~~(j)]~~ Medication and treatment sheets, including all medications, treatments, and special procedures performed, with the~~[indicating]~~ date and time of each service documented and~~[-Entries shall be]~~ initialed by the individual~~[personnel]~~ rendering treatment or administering medication;

11. Documentation~~[-(k)]~~ Reports of the use of an emergency manual restraint~~[physical restraints]~~, including justification for why the procedure was~~[procedures]~~ used;

12. Documentation~~[-(l)]~~ and the checks and releases of physical restraints. ~~(l)~~ A record of the resident's discharge, transfer, or transition destination, if applicable; and

13. Monthly documentation of ADL and IADL skills instruction provided to, or made available and refused by SPCH residents who are transitioning to living independently in the community pursuant to 908 KAR 2:065.

(10) Retention of records. After death or discharge the completed medical record shall be placed in an inactive file and retained for six (6)~~[five (5)]~~ years~~[-or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest]~~.

Section 4. Provision of Services. (1) Basic health and health related services.

(a) A PCH or SPCH~~[All personal care homes]~~ shall provide basic health and health related services, including:

1. ~~[Continuous]~~ Supervision and monitoring of the resident to assure that the resident's health care needs ~~are~~~~[being]~~ met;

2. ~~[-]~~ Supervision of self-administration of medications;

3. ~~[-]~~ Storage and control of medications; and

4. Arranging~~[- when necessary, and making arrangements]~~ for~~[obtaining]~~ therapeutic services ordered by the resident's health care practitioner, if the services~~[physician which]~~ are not available in the facility.

(b) A PCH or SPCH~~[All personal care homes]~~ shall meet the following requirements relating to the provision of basic health and health related services:

1. The administrator or staff person designated by the administrator~~[(a) The person in charge of the facility]~~ shall:

a. Be responsible for obtaining medical care~~[by a licensed physician]~~ promptly in response to~~[in cases of]~~ accident, injury, or acute illness of any resident; and

b. Document any accident, injury, illness, incident, medication error, or drug reaction~~[-Such instances shall be recorded]~~ in the resident's medical record.

~~(c)~~~~[(b)]~~ Medications or therapeutic services shall not be administered or provided to any resident, except on the order of a licensed physician or other health care practitioner as authorized under the practitioner's~~[ordering personnel acting within the limits of their statutory] scope of practice~~.

(d) Administration of all medications and delivery~~[provisions]~~ of therapeutic services shall be recorded in the resident's medical record.

~~(e)~~~~[(e)]~~ If an order is~~[orders are]~~ received by telephone, the order shall be:

1. Recorded in the resident's~~[on the individual's]~~ medical record; and

2. Signed by the physician or other health care practitioner as authorized under the practitioner's~~[ordering personnel acting within the limits of their statutory] scope of practice~~ within fourteen (14) days.

~~(f)~~1. The administrator or staff person designated by the administrator shall make~~[(d)]~~ a written report of any incident or accident involving a:

a. Resident~~[(f)]~~ including a medication error~~[errors]~~ or drug reaction;

b. ~~[reactions]~~; Visitor; or

c. Staff member.

2. The report shall:

a. Identify~~[be made and signed by the administrator, and]~~ any staff member who may have been witness to the incident; and

b. ~~The report shall]~~ Be filed in an incident file.

~~(g)~~1. ~~[(e)]~~ Controlled substances. A PCH or SPCH ~~[home]~~ shall not keep any controlled substances or other habit forming drugs, hypodermic needles, or syringes except under the specific direction of a prescribing practitioner~~[physician]~~.

2. Controlled substances shall be kept under double lock, e.g. stored~~[(i.e.,)]~~ in a locked box in a locked cabinet~~[(j)]~~.

3. There shall be a controlled substances bound record book with numbered pages that includes the following:

a. ~~[-in which is recorded the]~~ Name of the resident;

b. ~~[the]~~ Date, time, kind, dosage, and method of administration of each~~[all]~~ controlled substance~~[substances]~~;

c. ~~[the]~~ Name of the practitioner~~[physician]~~ who prescribed the medications; and

d. ~~[the]~~ Name of the:

(i) Nurse who administered the controlled substance~~[(it,)]~~ or

(ii) Staff member who supervised~~[the]~~ self-administration by a resident whose medical record includes a written determination from a health care practitioner that the resident is able to safely self-administer a controlled substance under supervision.

4. A staff member with access to controlled substances shall be responsible for maintaining~~[In addition, there shall be]~~ a recorded and signed:

a. Schedule II controlled substances count daily~~[-]~~; and

b. Schedule III, IV, and V controlled substances count at least one (1) time~~[once]~~ per week ~~[by those persons who have access to controlled substances]~~.

5. All expired or unused controlled substances~~[which are left over after the discharge or death of the resident]~~ shall be disposed of, or destroyed in accordance with 21 C.F.R. Part 1317 no later than thirty (30) days:

a. After expiration of the medication; or

b. From the date the medication was discontinued~~[C.F.R. 1307.21]~~.

6. If controlled substances are destroyed on-site:

a. The method of destruction shall render the drug unavailable and unusable;

b. The administrator or staff person designated by the administrator shall be responsible for destroying the controlled substances with at least one (1) witness present; and

c. A readily retrievable record of the destroyed controlled substances shall be maintained for a minimum of eighteen (18) months from the date of destruction and contain the following:

(i) Date of destruction;

(ii) Resident name;

(iii) Drug name;

(iv) Drug strength;

(v) Quantity;

(vi) Method of destruction;

(vii) Name of the person responsible for the destruction; and

(viii) Name of the witness.

7. A PCH or SPCH that stores and administers controlled substances in an emergency medication kit (EMK) shall comply with the:

a. Requirement for licensed personnel established by 201 KAR 2:370, Section 2(4)(i);

b. Requirements for storage and administration established by 902 KAR 55:070, Section 2(2), (5), (7), (8), and (9); and

c. Limitation on the number and quantity of medications established by 902 KAR 55:070, Section 2(6).

~~(h)~~~~[(f)]~~ All resident medications~~[medicines]~~ shall be plainly labeled with the following:

1. Resident's name;

2. ~~[-the]~~ Name of the drug;

3. ~~[-]~~ Strength;

4. Name of the pharmacy;
 5. Prescription number;
 6. Date;
 7. Prescriber's [Physician] name;
 8. Caution statements and directions for use, unless a [except where accepted] modified unit dose drug distribution system is [systems conforming to federal and state laws are] used.

(i) 1. All medicines kept by the PCH or SPCH [home] shall be kept in a locked place.

2. The administrator or staff person designated by the administrator [and the persons in charge] shall:

a. Be responsible for administering or supervising the self-administration of medication;

b. Ensure that all [giving the medicines and keeping them under lock and key.] medications requiring refrigeration are [shall be] kept in a separate locked box [of adequate size] in the refrigerator in the medication area; and

c. Ensure that [drugs for external use are [shall be] stored separately from those administered by mouth and injection]. Provisions shall also be made for the locked separate storage of medications of deceased and discharged patients until such medication is surrendered or destroyed in accordance with existing federal and state laws and regulations].

(j) 1. A PCH or SPCH that stores and administers non-controlled substances in an EMK shall comply with the:

a. Requirement for licensed personnel established by 201 KAR 2:370, Section 2(4)(i); and

b. Limitation on the number and quantity of medications established by 201 KAR 2:370, Section 2(4)(b).

2. A PCH or SPCH that stores and administers non-controlled substances from a long-term care facility (LTCF) drug stock shall comply with the limitation on the number and quantity of medications established by 201 KAR 2:370, Section 2(5)(b).

(k) 1. (g) If a resident manifests persistent behavior that may require psychiatric treatment, the PCH or SPCH shall notify the resident's physician or health care practitioner acting within the practitioner's scope of practice [shall be notified in order] to evaluate and direct the resident's care.

2. If the resident's condition does not improve [enough] for [his] continued stay in a PCH or SPCH [personal care facility], the physician or health care practitioner shall initiate transfer of the resident to an appropriate facility as soon as possible.

(l) (4) (h) Use of restraints.

1. Chemical and physical [No] restraints shall not be used, except as permitted by KRS 216.515(6).

2. Restraints that require a lock and key shall not be used.

3. Emergency use of a manual restraint [Restraints] shall be applied only by appropriately trained personnel if:

a. A resident poses an imminent risk of physical harm to self or others; and

b. The emergency manual restraint is the least restrictive intervention to achieve safety.

4. Restraints shall not be used as:

a. [A] Punishment;

b. [as] Discipline;

c. [as a] Convenience for [the] staff; [and]

d. Retaliation [as a mechanism to produce regression].

(m) (4) (i) Each resident shall have an annual medical evaluation by a physician or health care practitioner acting within the practitioner's scope of practice. [The results of this evaluation shall be recorded in the resident's medical record].

(n) (m) (j) Communicable diseases. If a resident or prospective resident is suspected or confirmed as having [known to have] a communicable disease for which a reasonable probability of disease transmission exists in the PCH or SPCH [personal care home], the administrator or staff person designated by the administrator shall:

1. Contact [assure that] a physician; and

2. Ensure [is contacted and] that appropriate measures are taken to treat [on behalf of] the resident with the communicable disease and prevent the disease from spreading [other residents].

(2) Residential care services. A PCH or SPCH [personal care

home] shall provide residential care services to all residents, including:

(a) Room accommodations;

(b) [Housekeeping and maintenance services; [and]

(c) Dietary services.

(3) A PCH or SPCH [personal care home] shall meet the following requirements relating to the provisions of residential care services:

(a) Room accommodations.

1. A PCH or SPCH shall provide each resident with:

a. [shall be provided] A bed that is at least thirty-six (36) inches wide;

b. [equipped with substantial spring;] A clean comfortable mattress with a support mechanism;

c. [A] A mattress cover;

d. [Two (2) sheets and a pillow; [and]

e. [such] Bed covering [as is required] to keep the resident [residents] comfortable.

2. Each bed [Rubber or other impervious sheets shall be placed over the mattress cover whenever necessary. Beds occupied by residents] shall be placed so that a [no] resident does not [may] experience discomfort because of proximity to a radiator, heat outlet, or exposure to a draft [radiators, heat outlets, or by exposure to drafts].

3. Except for married couples or domestic partners, there shall be separate sleeping quarters for males and females.

4. A PCH or SPCH [2. The home] shall provide:

a. Window coverings;

b. [Bedside tables with reading lamps; [if appropriate;

c. [Comfortable chairs;

d. A [chest or dresser with a mirror for each resident; [dressers with mirrors] and

e. A night light.

5. A resident shall not be housed in a room, detached building, or other enclosure that has not previously been inspected and approved for residential use by the Office of Inspector General and the Department of Housing, Buildings and Construction [3. Residents shall not be housed in unapproved rooms or unapproved detached buildings].

6. [4.] Basement rooms shall not be used for sleeping rooms for residents.

7. [5.] Residents may have personal items and furniture, if [when it is physically] feasible.

(b) Housekeeping and maintenance services.

1. A PCH or SPCH [The home] shall:

a. Maintain a clean and safe facility free of unpleasant odors; and

b. Ensure that [odors are [shall be] eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans, and other [obvious] sources.

2. A PCH or SPCH shall:

a. Have available at all times a quantity [An adequate supply] of clean linen essential to the proper care and comfort of residents;

b. Ensure that [should be on hand at all times;] soiled clothing and linens [shall] receive immediate attention and [should] not be allowed to accumulate;

c. Ensure that [clothing or bedding used by one (1) resident shall not be used by another resident unless [until it has been] laundered or dry cleaned;

d. Ensure that each [3. Laundering of resident's normal personal clothing and bed linens;] resident's personal clothing and bed linens are [shall be] laundered [by the home] as often as is necessary;

e. Maintain responsibility for laundering each [resident's] personal clothing [shall be laundered by the home] unless the resident or the resident's family accepts this responsibility;

f. Provide laundry equipment for each resident who is [Residents] capable of, and chooses to launder his or her [laundrying their own] personal clothing; and

g. Labels or marks each [and wishing to do so may, instead, be provided the facilities to do so;] resident's personal clothing if laundered by the facility for return [shall be marked to identify the resident-owner and returned] to the correct resident.

3.[4.] Safety. The condition of the overall environment~~[home]~~ shall be maintained in such a manner that the~~[take appropriate precautions to insure]~~ safety and well-being of residents, personnel, and visitors is assured~~[and employees]~~.

4.[5.] Maintenance. The premises shall be well kept and in good repair as follows. Requirements shall include but not be limited to:

a. The facility shall insure that the grounds are well kept and the exterior of the building, ~~[and]~~ including the sidewalk, steps, porches, ramps and fences are in good repair.

b. The interior of the building, including walls, ceilings, floors, windows, window coverings, doors, plumbing, and electrical fixtures shall be in good repair. Windows and doors shall be screened.

c. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

d. A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. Care shall be taken to use the least toxic and least flammable~~[effective]~~ insecticides and rodenticides. The compounds shall be stored under lock.

(c) Dietary services.

1. Dining area. A dining area shall be available for the residents.

2. Therapeutic diets. If the facility provides therapeutic diets~~[.]~~ and the staff member~~[designated person]~~ responsible for food services is not a license~~[qualified]~~ dietician or certified nutritionist, the responsible staff person shall consult with a licensed~~[consultation by a qualified]~~ dietician or certified~~[qualified]~~ nutritionist~~[shall be provided]~~.

3. Menu planning.

a. Menus shall be planned in writing and rotated to avoid repetition.

b. A PCH or SPCH shall meet the nutrition needs of residents ~~[shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity and]~~ in accordance with physician's orders.

c.~~[b.]~~ Meals shall correspond with the posted menu.

d. Menus shall be planned and posted one (1) week in advance.

e. If ~~[When]~~ changes in the menu are necessary:

(i)~~[.]~~ Substitutions shall provide equal nutritive value;

(ii) ~~[and]~~ The changes shall be recorded on the menu; and

(iii) Menus shall be kept on file for thirty (30) days.

4. Food preparation and storage.

a. There shall be at least a three (3) day supply of food to prepare well-balanced, palatable meals.

b. Food shall be prepared with consideration for any individual dietary requirement.

c. Modified diets, nutrient concentrates, and supplements shall be given only on the written order~~[orders]~~ of a physician.

d.~~[c.]~~ At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the evening meal and breakfast.

e. Between-meal snacks, including~~[to include]~~ an evening snack before bedtime shall be offered to all residents.

f. Adjustments shall be made if~~[when]~~ medically contraindicated.

g.~~[d.]~~ Food shall be:

(i) Prepared by methods that conserve nutritive value, flavor, and appearance~~[.]~~ and

(ii)~~[shall be attractively]~~ Served at the proper temperature~~[temperatures]~~ and in a form to meet individual needs.

h. A file of tested recipes, adjusted to appropriate yield, shall be maintained.

i. Food shall be cut, chopped, or ground to meet individual needs.

j. If a resident refuses food served, substitutes shall be offered.

k.~~[e.]~~ All opened containers or leftover food items shall be

covered and dated when refrigerated.

l.~~[f.]~~ Ice water shall be readily available to the residents at all times.

m. Food services shall be provided in accordance with~~[5.]~~ Sanitation. Personal care homes shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005.

(4)~~[(3)]~~ Personal care services. All PCHs and SPCHs~~[personal care homes]~~ shall provide services to assist residents with activities of daily living to achieve and maintain good personal hygiene, including~~[the level of]~~ assistance as needed~~[necessary]~~ with:

(a) Bathing~~[Washing and bathing of the body to maintain clean skin and freedom from offensive odors.]~~ ~~[In addition to assistance with washing and bathing,]~~ The facility shall provide soap, clean towels, and wash cloths for each resident and ensure that~~[.]~~ toilet articles such as towels, brushes, and combs are~~[shall]~~ not~~[be]~~ used in common~~[.]~~

(b) Shaving~~[.]~~

(c) Cleaning and trimming of fingernails and toenails~~[.]~~

(d) Cleaning of the mouth and teeth to maintain good oral hygiene, and~~[as well as]~~ care of the lips to prevent dryness and cracking. The facility shall provide all residents~~[shall be provided]~~ with tooth brushes, a dentifrice, and denture containers, if~~[when]~~ applicable; and~~[.]~~

(e) Washing, grooming, and cutting of hair.

(5)~~[(4)]~~ Activity services.

(a) All PCHs and SPCHs~~[A personal care home]~~ shall provide social and recreational activities to:

1. Stimulate physical and mental abilities to the fullest extent;

2. Encourage and develop a sense of usefulness and self-respect;

3. Prevent, inhibit, or correct the development of symptoms of physical and mental regression; and

4. Provide~~[due to illness or old age, be of]~~ sufficient variety to ~~[that they]~~ meet the needs of each resident~~[the various types of residents in the home]~~.

(b) All PCHs and SPCHs~~[A personal care home]~~ shall meet the following requirements relating to the provision of activity services:

1. Staff, ~~[A person designated by]~~ The administrator shall:

a. Designate a staff member to be responsible for the activity program; and

b. May accept services from a~~[.]~~ volunteer group~~[groups may be enlisted]~~ to assist with carrying out the activity~~[activities]~~ program.~~[.]~~

2. There shall be a planned activity period each day.

3. The schedule shall be current and posted.

4.~~[(3)]~~ The activity program shall be planned for group and individual activities, both within and outside of the facility.

5.~~[(4)]~~ The staff member~~[person]~~ responsible for the activity program~~[activities]~~ shall maintain a current list of residents in~~[on]~~ which precautions are documented~~[noted]~~ regarding whether a resident's condition may~~[that might]~~ restrict or modify the resident's~~[his]~~ participation in the program.

6.~~[(5)]~~ A living or recreation room and outdoor recreational space shall be provided for residents and their guests.

7.~~[(6)]~~ The facility shall provide supplies and equipment for the activity~~[activities]~~ program.

8.~~[(7)]~~ Reading materials, radios, games, and TV sets shall be provided for the residents.

(c) An SPCH shall collaborate with the agency or team that is working with residents transitioning to community living pursuant to 908 KAR 2:065 to offer basic instruction in ADLs and IADLs to each resident who is identified as working to transition to independent community living pursuant to 908 KAR 2:065. ADL and IADL skills training shall include instruction that is integrated into the normal rhythms of life.

(6) For purposes of subsection (5)(c) of this section, the following shall apply:

(a) "Basic instruction" in ADLs and IADLs shall have the same meaning as "assistance with" ADLs and IADLs;

(b) An SPCH shall not be responsible for selecting which residents receive basic instruction in ADLs and IADLs; and

(c) An SPCH shall not be responsible for ensuring that a

resident has mastered each task defined as an ADL or IADL.

Section 5. Material Incorporated by Reference. (1) The form, "SMI Screening Form", April 15, 2019 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN D. DAVIS, Inspector General

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: July 12, 2019

FILED WITH LRC: July 15, 2019 at 10 a.m.

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746, fax 502-564-7091, CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephanie Brammer-Barnes, email: stephanie.brammer@ky.gov, Phone: 502-564-2888; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes minimum licensure requirements for the operation of and services provided by personal care homes.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.042, which requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, including licensure standards and procedures to ensure safe, adequate, and efficient health services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 by establishing standards for licensed personal care homes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing standards for licensed personal care homes.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the definitions section, notably by moving language from Section 2 describing a personal care home into Section 1, as well as defining "specialized personal care home (SPCH)" as a personal care home that participates in the mental illness or intellectual disability (MI/ID) supplement program pursuant to 921 KAR 2:015, or otherwise serves residents in which thirty-five (35) percent or more of the resident population has a serious mental illness (SMI); adds a definition of "qualified mental health professional", "serious mental illness", and updates other definitions for clarity; deletes obsolete language related to the age of admission to a PCH and inserts a cross-reference to KRS 216.765(2) which states that "no person under the age of eighteen (18) shall be admitted to a personal care home"; requires each SPCH to develop and implement written transition procedures to ensure cooperation with an individual or entity that assists with transitioning residents with an SMI to a community living arrangement; requires the administrator of an SPCH and at least one (1) direct care staff member to complete the MI/ID training workshop established by 921 KAR 2:015, Section 14, within six (6) months from the effective date of this administrative regulation and every two (2) years thereafter; requires a PCH or SPCH to complete the SMI Screening Form for each resident at the time of admission; adds a cross-reference to 902 KAR 20:205 which establishes the tuberculosis screening requirements for employees of health facilities; requires a summary of, or a copy of the

resident's records to be provided to the resident and the resident's guardian if the resident transitions to a community living setting; clarifies requirements related to the destruction of expired or unused controlled substances that are destroyed on-site; requires an SPCH to collaborate with the agency or team that is working with residents transitioning to community living pursuant to 908 KAR 2:065 to offer basic instruction in activities of daily living (ADL) and instrumental activities of daily living (IADL) to each resident who is identified as working to transition to independent community living pursuant to 908 KAR 2:065; requires SPCHs to maintain monthly documentation of ADL and IADL skills instruction provided to, or made available to and refused by, residents who are transitioning to living independently in the community; and makes technical changes for compliance with KRS Chapter 13A to improve clarity and flow.

Based upon written comments received during the public comment period, the Cabinet has made the following substantive revisions in the proposed "Amended After Comments" administrative regulation:

Restored the definition of "restraint";

Requires a PCH or SPCH that stores and administers controlled substances in an emergency medication kit (EMK) to comply with the requirements of 201 KAR 2:370, Section 2(4)(i) and 902 KAR 55:070, Section 2(2) and (5) – (9);

Requires a PCH or SPCH that stores and administers non-controlled substances in an EMK to comply with 201 KAR 2:370, Section 2(4)(b) and (j);

Requires a PCH or SPCH that stores and administers non-controlled substances from a long-term care facility (LTCF) drug stock to comply with 201 KAR 2:370, Section 2(5)(b);

Clarifies that "basic instruction" in ADLs and IADLs shall have the same meaning as "assistance with" ADLs and IADLs;

Clarifies that an SPCH shall not be responsible for selecting which residents receive basic instruction in ADLs and IADLs; and

Clarifies that an SPCH shall not be responsible for ensuring that a resident has mastered each task defined as an ADL or IADL.

(b) The necessity of the amendment to this administrative regulation: In October 2018, the Cabinet entered into a Second Amended Settlement Agreement (SASA) with Kentucky Protection and Advocacy as it relates to services provided to individuals with SMI. One of the provisions of the SASA requires that the Cabinet promulgate administrative regulations within 180 days regarding personal care homes. Specifically, the regulation must require:

"... instruction in community transition skills, including Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs) at all PCHs that participate in the Mental Illness or Intellectual Disability Supplement Program pursuant to 921 KAR 2:015, Section 13 and all PCHs that have more than thirty-five percent (35%) residents with SMI as shown in the Annual Long-Term Care Utilization and Service Report data."

This amendment therefore adds a definition of "specialized personal care home (SPCH)" and requires SPCHs to collaborate with the agency or team that is working with residents transitioning to community living pursuant to 908 KAR 2:065 to offer basic instruction in ADLs and IADLs to each resident who is identified as working to transition to independent community living. Other changes to the administrative regulation as described above were necessary to establish requirements for SPCHs, delete obsolete language, and make technical changes for compliance with KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216B.042 by establishing standards for licensed personal care homes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by establishing standards for licensed personal care homes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts licensed personal care homes. Currently, there are 97 freestanding personal care homes and 64 long-term care facilities with personal

care home beds.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To comply with this amendment, SPCHs will be required to: Develop and implement written transition procedures to ensure cooperation with an individual or entity that assists with transitioning residents with an SMI to a community living arrangement;

Ensure that the facility's administrator and at least one (1) direct care staff member complete the mental illness or intellectual disability training workshop established by 921 KAR 2:015, Section 14, within six (6) months from the effective date of this administrative regulation and every two (2) years thereafter;

Complete the SMI Screening Form for each new or returning resident at the time of admission and complete the SMI Screening form for each current resident no later than three (3) months from the effective date of this administrative regulation (this requirement will apply to PCHs in addition to SPCHs);

Provide a summary of, or a copy of the resident's records to the resident and the resident's guardian if the resident transitions to a community living setting;

Collaborate with the agency or team that is working with residents transitioning to community living pursuant to 908 KAR 2:065 to offer basic instruction in ADLs and IADLs to each resident who is identified as working to transition to independent community living pursuant to 908 KAR 2:065. ADL and IADL skills training will include instruction that is integrated into the normal rhythms of life; and

Maintain monthly documentation of ADL and IADL skills instruction provided to, or made available to and refused by, residents who are transitioning to living independently in the community.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The actions identified under (4)(a) are in addition to existing requirements. However, the one (1) day MI/ID training workshop provided through the Department for Behavioral Health, Developmental and Intellectual Disabilities (DBHDID) is free of charge to each SPCH administrator and the facility's direct care staff. Moreover, DBHDID is required to pay, based on the availability of funds, twenty-five (25) dollars for each staff member, not to exceed five (5) staff per year, to SPCHs that participate in the MI/ID Supplement Program pursuant to 921 KAR 2:015.

It is important to note that PCHs are currently required by this administrative regulation to provide in-service training to their staff in a number of areas, including "methods of assisting patients to achieve maximum abilities in activities of daily living". This amendment seeks to expand upon the current ADL requirement in an effort to align with the SASA by requiring SPCHs to collaborate with an agency, such as a community mental health center, to offer basic instruction in both ADLs and IADLs to certain residents. Basic instruction in ADLs and IADLs does not require training by an occupational therapist or other licensed practitioner as this type of instruction may be provided to residents by unlicensed SPCH direct care staff. In addition, as a resource that supports SPCHs, the MI/ID training workshop will include a curriculum that covers ADL and IADL training for SPCH staff. (NOTE: KRS 194A.700 defines ADL as "normal daily activities, including bathing, dressing, grooming, transferring, toileting, and eating" and IADL as "activities to support independent living including but not limited to housekeeping, shopping, laundry, chores, transportation, and clerical assistance".)

Although the cabinet is not able to determine with accuracy how much it will cost SPCHs to comply with the actions identified under (4)(a), the cabinet does not require nor does it anticipate that SPCHs will need to hire additional staff in order to demonstrate compliance with the proposed changes.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment is primarily

intended to address the interest of Kentuckians with SMI who currently reside in SPCHs and who are not opposed to transitioning into community placements. This amendment benefits SPCHs by establishing reasonable standards for licensure.

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

(a) Initially: There are no additional costs to the cabinet related to implementation of this amendment.

(b) On a continuing basis: There are no additional costs to the cabinet related to implementation of this amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds and agency monies will be used to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all PCHs and SPCHs regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Cabinet for Health and Family Services, Office of Inspector General, and licensed personal care homes.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any additional 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 amendment will not generate any additional revenue.

(c) How much will it cost to administer this program for the first year? This amendment imposes no additional costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This amendment imposes no additional costs on the administrative body.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 21 C.F.R. Part 1317

(2) State compliance standards. KRS 216B.042

(3) Minimum or uniform standards contained in the federal mandate. 21 C.F.R. Part 1317 sets forth the Drug Enforcement Administration's rules for the safe disposal and destruction of damaged, expired, returned, recalled, unused, or otherwise unwanted controlled substances.

(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 requirements that are more strict than federal laws or regulations.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amended After Comments)

902 KAR 45:065. Tattooing.

RELATES TO: KRS 194A.050[Chapter 13B], 211.005, 211.015, 211.025, 211.760, 383.085, 387.010, 28 C.F.R. 36.104, 29 C.F.R. 1910.1030

STATUTORY AUTHORITY: KRS 194A.050(1), 211.760(3)

NECESSITY, FUNCTION AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill[fulfil] the responsibilities vested in the cabinet. KRS 211.760(2) requires nonmedical persons who engage in or carry on any business of tattooing to register with a local health department. KRS 211.760(3) requires the cabinet[for Health Services] to promulgate administrative regulations relating to: (a) health and cleanliness of places of business; (b) sterilization of tattooing instruments and equipment; (c) procedures to prevent the spread of disease; (d) procedures to prevent tattooing of minors without the written notarized consent of a custodial parent or legal guardian; and (e) other administrative regulations as may be necessary to protect public health. This administrative regulation establishes the standards for tattooing[required by KRS 211.760(3)].

Section 1. Definitions. (1) "Antiseptic" means a substance applied to the skin that reduces the number of microorganisms.

(2) "Autoclave" means a device intended to sterilize products by means of pressurized steam[equipment sold as sterilizing equipment for medical instruments and employs steam under pressure to sterilize].

(3) "Blood" is defined by 29 C.F.R. 1910.1030[means human blood or any human body fluid or tissue that is visibly contaminated with blood].

(4) "Bloodborne pathogen training" means training that meets the requirements established in[pathogens] is defined by 29 C.F.R. 1910.1030[pathogen(s)] means the pathogenic microorganisms that are present in human blood that can cause disease in humans such as Hepatitis B (HBV), Hepatitis C (HCV), and human immunodeficiency virus (HIV)].

(5) "Contaminated" is defined by 29 C.F.R. 1910.1030[means the presence of or reasonably expected presence of blood or other potentially-infectious material in or on the surface of an item].

(6) "Contaminated sharps" is defined by 29 C.F.R. 1910.1030[means any contaminated object that can penetrate the skin such as tattoo needles and razors].

(7) "Contaminated waste" means any material to be disposed of that has been soiled by blood or other potentially-infectious material in the process of tattooing.

(8) "Disinfectant" means a product that is tuberculocidal and registered with the federal Environmental Protection Agency as indicated on the label for use in disinfection[chemical agent that destroys disease-causing pathogens or other harmful microorganisms but does not ordinarily kill bacterial spores. Approved disinfectants are:

(a) List D: the EPA's Registered Antimicrobial Products Effective Against Human HIV-1 and Hepatitis B Virus; and

(b) List E: the EPA's Registered Antimicrobial Products Effective Against Mycobacterium tuberculosis, Human HIV-1 and Hepatitis B Virus].

(9) "Hand washing" means the act of cleaning the hands for

the purpose of removing dirt, soil, or microorganisms through the use of soap, warm water, and friction[following process:

(a) Wetting hands and forearms with warm running water between[(101 degrees Fahrenheit and)]120 degrees Fahrenheit[(° F)];

(b) Applying liquid[antibacterial or antimicrobial]soap and thoroughly distributing over hands and forearms;

(c) Rubbing hands vigorously for twenty (20) seconds, covering all surfaces of the hands, forearms and fingers, paying special attention to the thumbs, backs of fingers, backs of the hands, and between the fingers;

(d) Rinsing hands and forearms thoroughly to remove residual soap; and

(e) Drying hands and forearms with paper towels dispensed from sanitary dispensers].

(10)[(9)] "Health care professional" means a physician, physician assistant, nurse, doctor of chiropractic, mental health professional, optometrist, dentist, or allied health professional who is licensed in Kentucky.

(10) "High-level disinfection" means the elimination of pathogenic microorganisms except for bacterial spores from inanimate objects, rendering them safe to handle.

(11)[(14)] "Instrument" means any tattooing implement that comes into contact with blood or nonintact skin to be tattooed such as needles, needle bars, needle tubes, or other implements used to insert pigment.

(11)[(42)] "Minor" is defined by[at] KRS 387.010(1).

(12)[(43)] "Mobile studio" means a tattooing studio that is designed to be readily movable.

(13)[(44)] "Nonintact skin" means human skin that has an open wound from a cut, burn, rash, infection, or any other condition that has altered the skin.

(14)[(15)] "Purchased presterilized" means procedure set-ups that are sold individually packaged, processed, and marked with a sterilization lot number, and expiration date, to render them free of all microorganisms.

(14)[(15)][(16)] "Registrant" means the individual duly authorized to engage in the business of tattooing.

(17)[(47)] "Registration" means the issuance of a document by the local health department to a tattoo artist authorizing the tattoo artist to engage in the business of tattooing.

(15)[(16)] "Service animal" is defined by 28 C.F.R. 36.104.

(16)[(17)][(18)] "Regulated waste" means waste as defined by the Department of Labor, OSHA, Bloodborne Pathogens Regulation, 29 C.F.R. 1910.1030 and incorporated by reference in 803 KAR 2:320.

(19) "Sanitize" means a bactericidal treatment to clean surfaces of equipment, approved by the local health department for being effective in destroying microorganisms, including pathogens, to a safe level.

(20)[(20)] "Sterilization" means a validated process used to render a product free from viable microorganisms[the use of an autoclave to kill microbial life by holding instruments and equipment under steam pressure for a minimum of fifteen (15) minutes, at fifteen (15) pounds of pressure per square inch (PSI), at a temperature of 250 degrees Fahrenheit](° F)[or 121 degrees Celsius](° C).

(17)[(18)][(24)] "Studio" means[is] a facility as defined by KRS 211.760(1)(b).

(18)[(49)][(22)] "Studio certification" means the issuance of a document by the local health department to a studio owner certifying that studio, after inspection, was in compliance with the applicable provisions of this administrative regulation.

(19)[(20)][(23)] "Studio owner" means:

- (a) An owner of a facility where tattooing is conducted;[or]
- (b) A sole proprietor who performs tattooing; or
- (c) A person who employs tattoo artists.

(20)[(21)][(24)] "Tattoo artist" means a person registered by the local health department to engage in tattooing.

(21)[(22)] "Tattooing" is defined by KRS 211.760(1)(c).

(22)[(23)][(25)] "Temporary permit[studio]" means a permit to operate at a fixed location for[facility setup that operates] no more than seven (7) calendar days, and that:

(a) Is nontransferable;[.] and
(b) Cannot be renewed for[in-a] ninety (90) days after the
expiration[day period].

(23) "Ultrasonic cleaner" means a device that transmits high-energy, high-frequency sound waves into a fluid-filled container, used to remove deposits from instruments and appliances.

Section 2. Registration of Tattoo Artist. (1)[An applicant shall be at least eighteen (18) years of age at the time of application.

(2) Pursuant to KRS 211.760(2), A person shall not **advertise or solicit business with the intent to perform tattooing, or use or assume the title of tattooist, act as or engage in the business of tattooing** unless registered with the local health department in the district or county where the person is to tattoo.

(2) All tattooing shall be under the auspices of a Kentucky certified studio.

(3) A[No] tattoo artist shall **not** engage in the act of tattooing unless that person has proof of completion of[a] bloodborne pathogen training[**program compliant with 29 C.F.R. 1910.1030**].

(4) The artist shall maintain documentation of completion of bloodborne pathogen training at the studio.

(5) An applicant for registration as a tattoo artist shall be at least eighteen (18) years of age at the time of application.

(6)[(3)] An applicant for registration [for tattoo artists] shall submit [a completed Application Form, DFS-303, incorporated by reference,] to the local [or district] health department in the district or county where the applicant intends to perform tattooing:

(a) A completed DFS-303, Application for Certification **or**[/]
Registration[, **incorporated by reference**];

(b) Payment of \$100 registration fee; and

(c) Proof of completion of approved bloodborne pathogen training as required by subsection (3) of this section.

(7)[(4) Pursuant to KRS 211.760(2), payment of the registration fee shall be made to the local or district health department where the applicant intends to tattoo.

(5)] The tattoo artist registration shall be:

(a) Mailed to the owner of the Kentucky[-] certified studio listed on the application for registration;

(b) Prominently displayed to the public in the workstation; and[.]

(c) Nontransferable from one (1) person to another, or from one (1) district or county to another.

(8) **Each registration**[(6) All tattooing shall be under the auspices of a Kentucky-certified studio.

(7) A registrant shall post his registration document prominently at his workstation.

(8) A registration is nontransferable from one (1) person to another, or from one (1) district or county to another.

(9) Applicants for registration must be eighteen (18) years of age or older at the time of registration.

(10) Pursuant to KRS 211.760(2),[**Registrations**] shall be valid for[expire] one (1) calendar year and expire on December 31st of each year.

(9) A late **renewal[penalty]** fee of fifty (50) dollars shall be assessed on **each[all]** tattoo artist certification renewal **application[applications]** not received by[**January 30th**] or postmarked **on[after]** January 31st each year[from the date of issuance].

Section 3. Studio Certification. (1) A person shall not engage in the business of tattooing unless the owner of the facility holds a studio certification issued by the local health department in the district or county where the person is to tattoo.

(2) A holder of a studio certification issued under this administrative regulation shall not allow **a person[persons]** to tattoo unless the individual is registered in accordance with Section 2 of this administrative regulation.

(3) **An application[Applications]** for studio certification shall be:

(a) On DFS-200, Application for Permit **or**[/] License[, **incorporated by reference in 902 KAR 10:040**];

(b) Submitted to the local health department in the district or

county where the studio is located; and

(c) Accompanied by an annual inspection fee of:

1. \$400 for the studio with one (1) to four (4) work stations; and

2. An additional fifty (50) dollars for each additional work station over four (4).

(4) A studio certification shall not be issued or renewed unless the studio has been inspected and found to be in compliance with the provisions of this administrative regulation.

(5) The studio certification shall be:

(a)[(3) A studio certification shall be required for each district or county in which a registrant performs any activity regulated by this administrative regulation.

(4) The studio certification shall be] Prominently displayed to the public in the studio; and

(b)[.]

(5) A studio certification is] Nontransferable from one (1) person to another, or from one (1) location to another.

(6) [A holder of a studio certification issued under this administrative regulation shall not allow persons to tattoo unless registered in accordance with Section 2 of this administrative regulation.

(7) Payment of an annual inspection fee of \$100 shall be made to the local health department in the district or county where the person is to tattoo.

(8) Applications for studio certification shall be submitted to the local health department on application form DFS-200, incorporated by reference.

(9) The studio certification shall expire December 31st each year.

(7) A late **renewal[penalty]** fee of \$100 shall be assessed on **each[all]** studio registration renewal **application[applications]** not received by[**January 30th**] or postmarked **on[after]** January 31st each year[one (1) year from the date of issuance].

Section 4. Studio[Facility] Requirements. (1) A studio[facility] shall:

(a) Be kept clean and in good repair;

(b) Be free of insect and rodent infestation;

(c) Store only items necessary to its operation and maintenance;

(d) Provide artificial light of at least twenty (20) foot-candles[, measured at a height of thirty-six (36) inches from the floor];

(e) Be well ventilated;

(f) Not permit the presence of a pet or other animal in the studio, except for a service animal[.]

1. A trained guide or assistance animal for the disabled; and

2. Fish in an aquarium in the waiting area];

(g) Not use a room otherwise used as living or sleeping quarters;

(h) Use a solid, self-closing door to separate living or sleeping quarters from the business operation;

(i) [Have an entrance allowing direct entry into the facility, except for a facility existing on the effective date of this administrative regulation which is exempt from this requirement;

(j)] Have convenient, clean, and sanitary toilet and hand-washing facilities for the use of clientele with liquid soap, single-use paper towels from a sanitary dispenser or air dryer, covered waste receptacle, and self-closing door;

(j)[(k)] Be organized to keep clean areas separate from contaminated areas;

(k) Have[(t) Use only] a utility sink that shall only be used to[:]

1.] wash[Clean] contaminated instruments;[and

2. **Empty mop water, without placing the mop bucket into the sink;**

(l)[(m)] Use, clean, and maintain equipment according to manufacturers' recommendations;

(m)[(n)] Use an approved[a hard surface high-level EPA registered] disinfectant;

(n)[or]

1. A solution of five and one-fourth (5.25) percent chlorine bleach, fifty (50) parts per million to 100 parts per million; and

2. A chlorine test kit to test concentration;

(o)] Have plumbing sized, installed, and maintained in

accordance with ~~the~~ [Kentucky State Plumbing Code,] 815 KAR Chapter 20;

~~(o)(p)~~ Have sufficient[an adequate] potable water supply for the needs of the studio provided from a source constructed, maintained, and operated pursuant to the applicable requirements established in 401 KAR Chapter 8[from:

1. A public or municipal water district, if available; or

2. A private water source approved by the Cabinet for Natural Resources and Environmental Protection, until a public water supply becomes available; and

~~(p)(q)~~ Dispose of sewage, including liquid waste, by connection to:

1. A public sewer system, if available; or

2. A private sewer system designed, constructed, and operated pursuant to the requirements of 401 KAR Chapter 5 and 902 KAR Chapter 10[the Cabinet for Health Services or the Cabinet for Natural Resources, until a public sewer system becomes available].

(2) A workstation shall:

(a) Have nonporous[light-colored], smooth, easy-to-clean floors, walls, and ceilings;

(b) Have surfaces, including counters, cabinets, chairs, and dispensers, composed of [light-colored,] smooth, nonporous material able to withstand repeated cleaning and disinfecting, except for a facility existing on the effective date of this administrative regulation which is exempt from the color requirement];

(c) Be kept clean, organized, and in good repair;

~~(d) 1. Have all product containers clearly labeled with common product name in English; and~~

2. If filling a product container from a larger bulk container, retain the original container[shall be retained] on the studio premises;

(e) Have at least sixty (60) square feet of floor space with permanent walls a minimum of four (4) feet high[one-half (1/2) walls] between workstations;

~~(f)(e)~~ Have 100 foot-candles of light at the procedure level;

~~(g)(e)~~ Have unimpeded access to a hand sink[, without opening a door];

~~(h)(f)~~ Have a sink for each artist with hot[water between 101 and][at least][120 degrees Fahrenheit][°F] and cold water[less than 101 degrees Fahrenheit][°F], delivered by a[mixing] faucet, operated by wrist, knee, or foot action, or other hands-free method;

1. Each sink shall be supplied with:

a. Liquid soap; and

b. Single-use paper towels dispensed from a sanitary dispenser; and

2. A hand sink shall not be used for any other purpose;

~~(i)(g)~~ Be designated as a tattoo workstation, and shall not be used for any other purpose;

~~(j)(h)~~ Have[double bagged][lined] plastic or metal waste receptacles;

1. With or without a lid; and

2. If the waste receptacle has a lid, the lid[it] shall be foot operated; and

~~(k)(i)~~ Have a container for disposable sharps that:

1. Is rigid, puncture proof, and leak proof on sides and bottom;

2. Is closeable and sealable; and

3. If sealed, is leak resistant and incapable of being opened without great difficulty.

Section 5. Cleaning and Sterilization. (1) A studio using any reusable instruments, materials, or supplies[facility] may have a one (1) room or two (2) room cleaning and sterilization arrangement.

(a) A two (2) room arrangement shall have:

1. One (1) room for contaminated items, equipped with:

a. A utility sink with minimum dimensions of 18 in. x 18 in. x 12 in.;

b. A hand sink;

c. A presoak container;

d. An[.] ultrasonic cleaner[cleaning unit]; and

e. Autoclaving packaging materials; and

2. A second room for autoclave sterilization of instruments and equipment.

(b) A one (1) room cleaning and sterilization process shall be arranged to provide two (2) distinct areas.

1. Nonporous barriers may be utilized to delineate the two (2) distinct areas.

2.[The ultrasonic unit shall be as far away as possible from the autoclave to prevent contamination of sterile instruments, equipment, or other items.] The cleaning area shall be equipped in accordance with paragraph (a)1.[subparagraph 1] of this subsection[section].

3. The ultrasonic cleaner[unit] shall be as far away as possible from the autoclave to prevent contamination of sterile instruments, equipment, or other items[with a utility sink with minimum dimensions of 18 in. x 18 in. x 12 in., a presoak container, ultrasonic cleaning unit, and autoclaving packaging materials. Nonporous barriers may be utilized to delineate the two (2) distinct areas].

(2) A studio that uses only pre-sterilized disposable instruments, materials, and supplies shall not be required to have a separate room or area for autoclave, ultrasonic cleaner, and sterilization.

(3) All instruments shall be disposable or be made of surgical implant stainless steel and shall have only rubber gripping that can be removed and sanitized[not have rubber gripping] on the handles.

(4)[(3)] Instruments shall be processed as follows:

(a) Soak contaminated reusable[used] instruments in a covered container of cool water with[or without] detergent until ready to be cleaned and sterilized;

(b) Wash hands and forearms[in accordance with Section 1(9) of this administrative regulation];

(c) Use disposable, single-use gloves, such as examination or surgical gloves;

~~(d)(e)~~ Prepare the ultrasonic cleaner according to manufacturer's instructions;

~~(e)(d)~~ Take instruments apart and rinse in warm water;

~~(f)(e)~~ Load the ultrasonic cleaner and process according to manufacturer's recommendations, disposing of the ultrasonic cleaner liquid after each use;

(g) Wash hands and forearms[in accordance with Section 1(9) of this administrative regulation];

~~(h)(f)~~ Wearing examination gloves, remove instruments from the ultrasonic cleaner, rinse with clean water, [and dry with a clean, lint-free towel, or] allow to air dry; and

~~(i)(g)~~ Store cleaned instruments in a labeled, covered, nonporous container until packaged for sterilization.

(5)[(4)] Autoclave[Sterilization] equipment. Equipment used to sterilize instruments shall meet the following requirements:

(a) The equipment was sold as sterilizing equipment for medical instruments; and

(b) The equipment is used, cleaned, and maintained to manufacturer's instructions; and

(c) The equipment meets the minimum requirements for sterilization[in the definition of "sterilization"].

(6)[(5)](a)[Needles or other] Reusable instruments placed in contact with skin that is tattooed shall be cleaned and sterilized[.];

(b) Disinfection shall not be used in place of cleaning and sterilization; and[.]

(c) Liquid sterilants shall not be used for sterilization of reusable instruments.

(7)[(6)] Instrument sterilization. Instruments that touch[nonintact] skin to be tattooed[.] shall be sterilized as follows:

(a) Wash hands and forearms[in accordance with Section 1(9) of this administrative regulation];

(b) Use clean disposable, single-use surgical or examination gloves;

(c)[(b)] Package cleaned instruments individually in:

1. [paper or plastic, or] Paper and plastic peel-pack with color change indicator[, peel-pack(s) with color (heat) change indicator(s)]; or

2. Package as set-ups with color change indicator;
- (d)(e) Label with content, date, lot number, and preparer's initials;
- (e)(d) Load the sterilizer and process according to the manufacturer's directions;
- (f)(e) Remove the items from autoclave only when completely~~cool and~~ dry and cool;
- (g)(f) Store the items in a nonporous, clean, dry, labeled container, cabinet, or other place that is protected from dust and contamination; and
- (h) 1.~~(g)~~ Sterilized instruments shall be resterilized at intervals of no more than six (6) months from the date of the last sterilization; and
2. New packaging shall be used when instruments are resterilized.
- (8)(7) Sterilization equipment monitoring.
 - (a) Sterilization equipment shall be tested;
 1. During the initial installation;
 - 2.~~(1)~~ After any major repair;~~(1)~~ and
 3. At least monthly by using a commercial biological monitoring system;~~(and)~~
 - (b) Biological indicator test results for each sterilization unit used in the studio shall be kept on site, and made available for inspection at time of inspection; and
 - (c) Sterilization monitoring shall be noted on sterilizer log.
- (9)(8) Sterilizer recordkeeping. A sterilizer log system shall be maintained for each sterilizer in the studio. For each sterilization cycle the following information shall be documented:
 - (a) Date of load;
 - (b) Lot number;
 - (c) Preparer's~~(Practitioner's)~~ name;
 - (d) The general contents of the load;
 - (e) The exposure time and temperature or the sterilizer recording chart or tape; and
 - (f) The results of the chemical indicator.

Section 6. Studio Owner Responsibilities. The owner of a certified studio shall:

- (1) Exclude~~(, and report to the local or district health department,~~ any tattoo artist who is:
 - (a) ~~(while)~~ Infected with a disease in a communicable form that can be transmitted by blood;
 - (b)~~(or who is)~~ A carrier of organisms that cause disease;
 - (c)~~(or while)~~ Infected with a boil or~~(,)~~ an infected wound;~~(,)~~ or
 - (d) Diagnosed with an acute respiratory infection;
- (2) Report any accident involving exposure to body fluids to the local or district health department;
- (3) Receive, review, and distribute tattoo artist registrations issued for employees of the certified studio. If the artist is no longer employed by the certified studio, the registration shall be returned to the district or local health department where the certified studio is located;
- (4)~~(3)~~ Continuously Maintain a record of all persons performing any activity within the studio that is regulated by the cabinet. The record shall include at a minimum the following information:
 - (a) Full name;
 - (b) Date of birth;
 - (c) Home address;
 - (d) ~~(Home)~~ Phone number;
 - (e) Email address if available;
 - (f) Photograph of tattoo artist; and
 - (g) Complete description of all tattooing procedures performed by the tattoo artist;
- (5)~~(4)~~ Maintain a current copy of this administrative regulation at the studio for use by tattoo artists;
- (6)~~(5)~~ Maintain an adequate supply~~(a minimum of twenty-four (24) sets)~~ of sterilized needles and tubes for each artist;
- (7)~~(6)~~ Not resterilize or reuse single-use, disposable components; and
- (8)~~(7)~~ If presterilized, disposable instruments are utilized, the following records shall be maintained ~~(in accordance with Section 8(6) of this administrative regulation)~~ and ~~(shall be)~~ made available

at all times to the local health department:

- (a) An accurate inventory of all purchased presterilized instruments by name with the date purchased and the quantity on hand; and
- (b) Invoices for the purchase of all purchased presterilized instruments.

Section 7. Tattooing of Minors~~(Client Restrictions)~~. (1) ~~A~~No person shall not perform any tattoo procedure on a minor without parental consent.

(2) A minor~~(Minors)~~ shall be at least sixteen (16)~~(16)~~ years old with custodial parent or legal guardian consent prior to tattooing.

(3) Consent shall be provided by:

~~(a)(1.)~~ A written notarized statement that contains~~(consent,~~ with) an official seal or assigned identification of the notary; or

~~(b)(2.)~~ The custodial parent or legal guardian present during the tattoo procedure.

(4) The notarized statement shall contain:

(a) The printed name of the custodial parent or legal guardian;

(b) The government issued photo identification number of the custodial parent or legal guardian;

(c) The address and phone number of the custodial parent or legal guardian;

(d) The printed name of the minor child;

(e) The date of birth of the minor child;

(f) The government issued photo identification number of the minor child, if applicable;

(g) A statement that the custodial parent or legal guardian is fully aware of the tattoo procedure and gives their consent for the procedure to be performed;

(h) The signature of the custodial parent or legal guardian; and

(i) The date of the signature of the custodial parent or legal guardian.

(5) The custodial parent or legal guardian present during the tattoo procedure shall provide a government issued photo identification.

(6) The custodial parent or legal guardian, and minor client shall complete the attestation requirements of Section ~~8(3)(g)~~8(3)(h) of this administrative regulation~~(and with the signature of a custodial parent or legal guardian, shall be obtained for all minors prior to application of a tattoo.~~

(2) Tattooing shall not be applied on skin which has a rash, pimples, evidence of infection, open lesions, mole, sunburn, or manifests any evidence of unhealthy conditions without written clearance by a medical physician licensed by the Kentucky Board of Medical Licensure].

Section 8. Client Information and Records. (1) Before receiving a tattoo, the client shall be provided written information that tattooing poses a risk of infection, that tattooing is permanent, and that removal of a tattoo may leave scars.

(2) Before the application of a tattoo, the client shall be provided written, ~~(written and)~~ verbal, or electronic aftercare instructions that includes the following information:

(a) Information on the care of the site of the tattoo;

(b) Instructions on possible side effects;

(c) Information on any restrictions;

(d) Information on signs and symptoms of infection; and

(e) Instructions to consult a physician if signs and symptoms of infection such as fever, excessive swelling, excessive redness, or drainage occur.

(3) A record of all clients who have received any tattoos shall be kept by the studio owner. The record shall include the following information:

(a) Studio name and registration number;

(b) The date the procedure was performed;

(c) Client's name, date of birth, address, and phone~~(telephone)~~ number;

~~(d)1.~~ Copy of client's government issued photo ID, if applicable; or

2. Copy of custodial parent or legal guardian's government issued photo ID;

(e) Name of the tattoo artist who performed the procedure[procedure(s)];

(f) The type, location, and description of the procedure; ~~and~~[and]

(g) ~~The lot number of instruments and inks used; and~~

(h) Client's ~~attestation~~[attestation] to the fact that the client is:

1. Not intoxicated or under the influence of drugs or alcohol;

2. Not pregnant; and

3. Not currently taking medications such as anticoagulants that thin the blood or interfere with blood clotting[with signature].

(4) Records of each client shall be ~~typed or printed in ink prior to any procedure being performed.~~

(5) ~~(a) All records shall be~~ maintained [in a bound log] for two (2)[five (5)] years. ~~(5)(b) The current calendar year~~ Client records ~~and~~[.] consent and other required records shall be ~~kept at the certified studio and shall be~~ made readily available to inspectors. [All records for the previous four (4) years may be maintained off site and shall be made readily available upon request of the cabinet, district or local health department.]

Section 9. Disposal of Contaminated Wastes. All wastes produced during the process of tattooing shall be separated for disposal into two (2)[three (3)] classifications as established in this section[follows:]

(1) Contaminated sharps shall be disposed of by using a licensed medical waste disposal company.

(2) [Regulated waste, as defined by the Department of Labor, Occupational Safety and Health Administration, shall be disposed of in accordance with the bloodborne pathogens regulation 19 C.F.R. 1910.1030 as adopted in Kentucky by 803 KAR 2:320.

(3) Contaminated waste[, other than contaminated sharps and regulated waste,] shall be ~~sprayed with an approved disinfectant~~[a dilution of five and one-fourth (5.25) chlorine bleach, with a range of fifty (50) parts per million to 100 parts per million][, double] bagged, securely tied, and disposed of daily in a trash container that prevents unauthorized access. This material shall be disposed of in an approved site by a general trash hauler.

Section 10. Standard Operating Procedures for Tattooing. (1) Tattooing shall not be applied on skin ~~that~~[which] has a rash, pimples, evidence of infection, open lesions, ~~mole,~~ sunburn, or manifests any evidence of ~~an unhealthy condition~~[conditions] without written clearance by a ~~licensed medical provider~~[medical physician licensed by the Kentucky Board of Medical Licensure].

(2) ~~Tattooing of scarred skin is prohibited.~~

(3) The tattoo artist shall follow the procedures listed in this section in preparation for tattooing[.:]

(a)[(4)] The tattoo artist and the client shall not eat, drink, ~~or use tobacco products, an electronic cigarette, or other vapor producing product~~[smoke] in the workstation.

(b)[(2)] The tattoo artist shall wash hands and forearms ~~according to Section 1(9)(8) of this administrative regulation~~ prior to and after every procedure.

(c)[(3)] The tattoo artist shall wear new clean disposable examination gloves for every client. If a glove is pierced, torn, ~~or~~ contaminated in any way, or if there is an interruption in the application of the tattoo:

1.[.] Both gloves shall be removed immediately ~~and~~[.] [and] discarded;

2. ~~The~~[.] hands and forearms shall be washed ~~in accordance with Section 1(9) of this administrative regulation~~ and

3. New, clean examination gloves shall be used.

(d)[(4)] The tattoo artist shall use a new [or] disposable lap cloth, drape, or apron for each client. All lap cloths, drapes, and aprons shall be stored in a closed cabinet or container until used.

(e)[(5)] The tattoo artist shall wear clean clothing. [Shirts shall have short sleeves, pants shall be to the ankle in length, and feet shall be completely enclosed in shoes.]

(3)[(4)][(6)] All instruments, equipment, and items to be used in the procedure shall be placed on a disposable, plastic backed towel.

~~(4)(5)(7)~~ All inks, dyes, and pigments used in a procedure shall be:

(a) Nontoxic;

(b) Dispensed from containers in a manner to prevent contamination of the unused portion in the supply bottle; and

(c) ~~then~~ Discarded;

1. After the procedure; or

2. When the original container label becomes unreadable.

~~(5)(6)~~ Inks, dyes, and pigments transferred from bulk containers ~~shall~~**(must)** be labeled with:

(a) Manufacturer name;

(b) Lot number; and

(c) A statement of nontoxicity.

~~(6)(7)~~ All devices used to apply inks, dyes, or pigments shall be designed to prevent backflow of inks or pigments into the machine.

~~(7)(8)~~ If a workstation rinse cup is used, ~~alone or in an ultrasonic cleaner,~~ a fresh cup shall be used for each client[, and discarded immediately upon completion of the procedure.

~~(8)(9)~~ All single-use ointment tubes, applicators, and supplies placed on the plastic backed towel shall be discarded immediately after use.

~~(9)(10)~~ [Inks, dyes or pigments that are prepared by the tattoo artist shall be nontoxic.

(11) Tattoo needles shall be used once and discarded. [If the needlebar is reused, the needlebar shall be cleaned and sterilized before the needles are removed.]

~~(10)(11)(12)~~ If the tattoo artist uses any reusable components, autoclave[sterilization] equipment[meeting the requirements in the definition of "sterilization"] shall be required.

~~(11)(12)(13)~~ All devices used to apply pigments shall be designed to prevent backflow of pigments into the machine.

(14) Position The sharps container and waste receptacle shall be positioned to be within easy reach and in a manner to prevent contamination.

Section 11. Application of the Tattoo. The tattoo artist shall use the procedure in this section when applying a tattoo[.:] (1) Disinfect the chair or table and tray[procedure area and lay out plastic film or a clean, disposable plastic backed towel].

(2)[Wash hands and forearms in accordance with Section 1(9)(8) of this administrative regulation.

(3) Position the client [comfortably].

(3)[(4)] Arrange all instruments and supplies to be used in the procedure on plastic film or on a clean, disposable plastic backed towel within easy reach.

~~(4)(5)~~ Wash hands and forearms ~~in accordance with Section 1(9)(8) of this administrative regulation~~, and use new, clean examination gloves.

(5)[(6)] Gently clean the client's skin with soap and water and apply an antiseptic that is appropriate for the area where the tattoo is to be applied. If shaving is necessary, use a new[anew], single-use disposable razor.

(6)[(7)] Acetate or other reusable stencils shall not be used. Place the design on the skin by one (1) of the following methods:

(a) Free-hand drawing using a new disposable marker; or

(b) Apply a single-use hectographic or tissue stencil using ~~an~~[antimicrobial soap or other] approved product dispensed from a container in a manner that does not contaminate the unused portion.

(7)[(8)] Remove gloves, wash hands ~~in accordance with Section 1(9)(8) of this administrative regulation~~, and use new clean examination gloves.

(8)[(9)] Open sterile needles in front of the client and place them into the tattoo machine without touching the end of the needles.

(9)[(10)] Apply the tattoo.

(10)[(11)] Apply a thin layer of suitable[antibiotic] cream ~~using a swab or cotton ball~~ and if appropriate, cover the area with a suitable nonstick dressing ~~that is held in place with suitable skin tape~~. Plastic film intended for household use shall not be used.

(11)[(12)] When the tattooing is complete, the tattoo artist shall answer any questions and provide the client with[written]

instructions regarding the tattoo and aftercare.

(12)(13) Immediately after the client leaves the workstation, the tattoo artist shall break down the workstation, properly dispose of any sharps, soak any reusable instruments for later cleaning, and clean and disinfect any surface that may have become contaminated.

Section 12. Standard Operating Procedures for a Mobile Studio. (1) An application[Applications] for mobile studio certification shall be:

(a) On DFS-200, Application for Permit or [License], incorporated by reference in 902 KAR 10:040;

(b) Submitted to the local health department in the district or county where the mobile studio is located; and

(c) Accompanied by a fee of:

1. \$400 for the studio with one (1) to four (4) work stations; and

2. An additional fifty (50) dollars for each additional work station over four (4) [The mobile studio shall be registered with the local health department in each district or county in which the studio is operated, and pay the appropriate fees].

(2) If not currently registered in accordance with Section 2(6) of this administrative regulation, the tattoo artist shall be registered with the local health department in each district or county where the mobile studio is operated, and pay the appropriate fees.

(3) The mobile studio shall be used exclusively for performing tattooing. Habitation, cooking, [pets] and animals except service animals shall not be allowed in the mobile studio.

(4) The mobile studio shall:

(a) Meet the sterilization, operating, and clientele requirements, and tattoo performance procedures[same requirements] as a stationary studio; and

(b) Be inspected by the local health department prior to operation. [(3) All sewage shall be stored in a storage tank with a capacity at least 100 percent greater than the capacity of the on-board potable water, and shall be discharged into a public sewage system.]

(5) [(4)] Any on-board restroom shall be supplied with hot running water[at least 120 degrees Fahrenheit][° F] and cold running water[less than 101 degrees Fahrenheit][° F as in subsection (6) of this section] and shall be supplied with toilet paper, liquid[antibacterial or antimicrobial] soap, [and] single-use paper towels from a sanitary dispenser, a covered waste receptacle, and a self-closing door.

(6) [(5)] If the vehicle lacks an on-board restroom, the owner shall not operate the studio unless it is within 200 feet of a public restroom with hand-washing facilities.

(7) [(6)] All plumbing shall comply with the requirements of [the] [State Plumbing Code,] 815 KAR Chapter 20.

(8)(a) [(7)] Each mobile studio shall have a potable water system under pressure.

(b) The system shall be of sufficient capability to furnish enough hot and cold water for hand washing, instrument cleaning, and sanitization pursuant to the requirements of this administrative regulation.

(c) The water inlet shall be:

1. Located in a position that it will not be contaminated by waste discharge, road dust, oil, or grease; and

2. [and it shall be] Provided with a transition connection of a size [of] or type that will prevent its use for any other service.

(d) All water distribution pipes or tubing shall be constructed and installed in accordance with [the State Plumbing Code,] 815 KAR Chapter 20.

(e) Hoses, if used, shall bear the National Sanitation Foundation potable water (NSF-pw) mark and be fitted[be food grade,] with a backflow prevention device.

(9)(a) [(8)] Each mobile studio shall have a permanently[-] installed retention tank that is at least fifty (50)[100] percent larger than the potable water supply tank.

(b) Wastewater shall be discharged into a public sewage system.

(c) Liquid wastewater shall not be discharged from the retention tank if the mobile studio is in motion.

(d) All connections on the vehicle for servicing the mobile

studio waste disposal shall be of a different size or type than those used for supplying potable water to the mobile studio.

(e) The wastewater connection shall be located below the water connection to preclude contamination of the potable water system. [(9) The vehicle shall be used exclusively for performing tattooing. Habitation, cooking, pets and animals shall not be allowed in the mobile studio.]

Section 13. Standard Operating Procedures for a Temporary Permit[Studio]. (1) The event organizer or studio owner for the event shall submit to the local health department in the district or county where the temporary studio is to be located:

(a) A DFS-200, Application for Permit or [License,] incorporated by reference in 902 KAR 10:040, accompanied by a \$100[\$250] registration fee for each workstation;

(b) A layout of the event floor showing where the tattoo artists will be tattooing;

(c) A list of all tattoo artists participating in the event that includes:

1. Name of tattoo artist;

2. Artist date of birth;

3. Home address;

4. Phone[Telephone] number;

5. Email address;

6. Proof of artist completion of bloodborne[blood-borne] pathogen training;

7. Studio name;

8. Studio address;

9. Studio owner name; and

10. Description of procedures to be performed at the event; and

(d) A copy of the client consent form to be used during the event.

(2) The event organizer or studio owner for the event shall:

(a) Be responsible for ensuring that the event is run in a manner that is safe for the tattoo artists and the general public;

(b) Provide a separate cleaning and sterilization room as a backup, unless only pre-sterilized disposables are used for the event;

(c) Provide an approved autoclave that has certification of a negative spore test within thirty (30) days prior to the event;

(d) Arrange for pick-up and disposal of contaminated waste in accordance with Section 9 of this administrative regulation; and

(e) Ensure the cleaning and sterilization room, if used, is disinfected at the close of the event.

(3) Prior to the event, [The event organizer or studio owner shall provide a list of all tattoo artists participating in the event to the local health department in the district or county where the event is being held that includes the following information for each participating tattoo artist:

(a) Name of exhibitor/tattoo artist;

(b) Date of birth;

(c) Home address;

(d) Business name;

(e) Business address;

(f) Home and work telephone numbers;

(g) Email address if available;

(h) Description of procedures to be performed at the event; and

(i) Copy of current tattoo artist's registration.

(2) The event coordinator or studio owner shall provide a layout of the event floor to the local health department in the district or county where the event is being held showing where the tattoo artists will be tattooing.

(3) Each participant who performs tattooing shall bring enough presterilized instruments and supplies to last for the whole event.

(4) The event coordinator or studio owner shall provide a separate cleaning and sterilization room as a back up for use by participants who have used all of the presterilized instruments and supplies that were brought to the event. If used, the cleaning and sterilization room shall be disinfected at the close of the event. Presterilized disposable instruments and equipment shall not be reused.

(5) ~~The event coordinator or studio owner shall provide an approved autoclave that has certification of a negative spore test within thirty (30) days prior to the event.~~

(6) ~~The event coordinator or studio owner shall provide for pick-up and disposal of contaminated waste in accordance with Section 9 of this administrative regulation.~~

(7) ~~Temporary studios located at locations such as fairs, festivals, or flea markets, shall comply with all requirements for a certified studio in accordance with Sections 1 through 11 of this administrative regulation in their entirety.~~

(8) ~~the tattoo artist participating in the event[and the studio] shall:~~

(a) ~~Be registered in accordance with[of] Section 2 of this administrative regulation with the local health department in the[each] district or county where[in which] the temporary studio is operated;~~

(b) ~~Submit a \$100 registration fee; and~~

(c) ~~1. Ensure an adequate supply of presterilized instruments and supplies are available to last the length of the event; or~~

~~2. Provide certification of an autoclave negative spore test completed within thirty (30) days prior to the event if tattooing with reusable instruments.~~

(4) ~~and pay the appropriate fees.~~

(9) ~~The temporary workstation shall meet the following minimum conditions:~~

(a) ~~Be at least 5[6][40] ft. x 10 ft., and be constructed in a manner to separate the tattoo artist from the public in such a way as to protect the procedure area from contamination, and to prevent accidental exposure of the public to potentially-infectious materials created during tattooing;~~

(b) ~~[4.] Have a floor and sides that are:~~

~~1. Smooth, nonporous, and easy to clean; or~~

~~2. [Be] Covered in plastic if the floor and sides are not smooth, nonporous, and easy to clean;[.]~~

(c) ~~Have at least 100 foot-candles of light available at the procedure level [where the tattoo, body-piercing or the application of permanent makeup is conducted]; and~~

(d) ~~Be equipped with a hand-wash facility that[–A hand-wash facility at the minimum] shall be:~~

~~1. a. A portable handwashing station; or~~

~~b. [2.] A minimum of a one (1) gallon container with a lever-type spigot, filled with warm potable water that:~~

~~(i) [.]~~

~~a. [.] Is placed at least thirty (30) inches off the floor to allow for easy use;~~

~~(ii) [b.] supplied with a bucket to catch the wastewater; and~~

~~(iii) [c.] Has a minimum reserve of five (5) gallons warm potable water available; and[.]~~

~~2. [3.] Supplied with:~~

~~a. [consist of] Liquid [antibacterial or antimicrobial] soap; and~~

~~b. [4.] Single-use paper towels from a sanitary dispenser; and an insulated five (5) gallon container with a lever-type spigot, filled with warm potable water 101-120°F, and a bucket to catch the wastewater. The water container shall be placed at least thirty (30) inches off the floor to allow for easy use, and shall be filled regularly to ensure an adequate supply of warm water for hand washing;]~~

(5) ~~(e) Wastewater shall be disposed of into a public sewerage system, if available. If a public sewerage system is not available, disposal shall be made into a private system designed, constructed, and operated pursuant to the requirements of [the] [Cabinet for Natural Resources and Environmental Protection administrative regulations] 401 KAR Chapter 5 and [the Cabinet for Health Services administrative regulations] 902 KAR Chapter 10; and~~

(f) ~~Shall be supplied with an adequate supply of paper or plastic barrier film to protect equipment, pigment supply bottles, and any other item that must be protected to prevent cross-contamination].~~

Section 14. Inspection of Studios. (1) At least twice per year, the cabinet or the [or the] local or district health department shall inspect each studio and shall make as many additional inspections

and re-inspections as are necessary for the enforcement of this administrative regulation.

(2) ~~(a) The cabinet or the [or the] local or district health department inspector shall record the inspection findings[in writing] on an inspection report form DFS-342[–incorporated by reference][and which shall constitute a written notice].~~

~~(b) The inspection report form shall:~~

~~1. Summarize the requirements of this administrative regulation; and [shall]~~

~~2. Set forth a weighted point value for each requirement.~~

~~(3) The rating score of the studio shall be the total of the weighted point value for all violations, subtracted from 100.~~

~~(4) The inspector shall provide the original[of the] inspection report to the certificate holder or the holder's [his] designee. The findings shall:~~

~~(a) Set forth the specific violations if found;~~

~~(b) Establish a [specific and reasonable] period of time for the correction of the violations specified, pursuant to the [following] provisions established in this paragraph.[.]~~

~~1. If the rating score of the studio is eighty-five (85) or more, all violations of one (1) and two (2) point weighted items shall be corrected[as soon as possible and] before the next routine inspection.~~

~~2. If the rating score of the studio is at least seventy (70) but not more than eighty-four (84), all violations of one (1) and two (2) point weighted items shall be corrected[as soon as possible and] within a period not to exceed thirty (30) days.~~

~~3. Regardless of the rating score of the studio, all violations of three (3) or four (4) point weighted items shall be corrected within[a time specified by the cabinet and within] ten (10) days.~~

~~4. If the rating score of the studio is less than seventy (70), the studio shall be issued a notice of intent to suspend the studio certification. The certification shall be suspended within ten (10) days after receipt of the notice unless a written request to an administrative conference is filed with the local or district health department within the ten (10) day period.~~

~~(5) [(3)] Notices provided for under this administrative regulation shall be deemed to have been properly served if the original of the inspection report form or other notice has been delivered personally to the certificate holder or person in charge, or the notice has been sent by registered or certified mail, return receipt requested, to the last known address of the certificate holder.~~

~~(6) [(4)] Failure to comply with any notice issued pursuant to the provisions of this administrative regulation may result in suspension or revocation of the certificate or the individual's registration.~~

~~(7) [(5)] Temporary and mobile studios shall correct any violative conditions within twenty-four (24) hours.~~

Section 15. Suspension of Studio Certificates or Individual's Registration. (1) The studio certificate or the individual's registration shall be suspended immediately upon notice to the holder if:

(a) The cabinet or the [or the] local or district health department has reason to believe that an imminent public health hazard exists;

(b) [–if] The studio certificate holder or registered individual has interfered with the cabinet or the [or the] local or district health department in the performance of its duties; or

(c) [if] An inspection of a studio reveals a rating score of less than sixty (60).

(2) [–the certificate or the individual's registration shall be suspended immediately upon notice to the holder. If this occurs,] The studio certificate holder or individual registration holder whose certificate or registration has been suspended may request an administrative conference in accordance with 902 KAR 1:400 [Section 19(2) of this administrative regulation. The conference shall be granted as soon as practical and before ten (10) days.

(2) In all other instances of a violation of the provisions of this administrative regulation, the cabinet or the local or district health department shall serve on the certificate holder or registered individual a written notice specifying the violation and shall afford

the certificate holder or registered individual a reasonable opportunity for correction].

(3) The cabinet or the [or the] local or district health department shall notify, in writing, the studio certificate holder or registered individual who fails to comply with a written notice issued under the provisions of this section, that the studio certificate or individual's registration shall be suspended at the end of ten (10) days following service of this notice unless a request for an administrative conference is requested.

(4)[Section 16. Reinstatement of Suspended Certificates or an Individual's Registration.] A person whose studio certificate or individual registration has been suspended may, at any time, make application for [a reinspection for the purpose of] reinstatement of the certification or registration in accordance with 902 KAR 1:400, Section 2[The application for reinstatement shall be submitted on Form DFS-215, provided by the cabinet. Within ten (10) days following receipt of an Application for Reinstatement, the cabinet or the local or district health department shall make a reinspection. If the applicant is found to comply with the requirements of this administrative regulation, the certificate or individual's registration shall be reinstated].

Section 16.[47.] Revocation of a Studio Certificate or an Individual's Registration. (1) For serious or repeated violations of any of the requirements of this administrative regulation, or for interference with agents of the cabinet or the [or the] local or district health department in the performance of its duties, a studio certificate or an individual's registration may be permanently revoked.

(2) Prior to this action, the cabinet or the [or the] local or district health department shall notify the studio certificate holder or registered individual, in writing, stating the reasons for which the studio certification or individual registration is subject to revocation and advising that the studio certification or individual registration shall be permanently revoked at the end of ten (10) days following service of the notice, unless a request for an administrative conference is filed with the cabinet by the certification or registration holder within the ten (10) day period.

(3) A studio certification or individual registration may be suspended for cause pending its revocation or an administrative conference relative to the revocation.

Section 17.[48.] Appeals. [(4)] A studio certificate or individual registration holder or an applicant aggrieved by a decision of the cabinet or the [or] local or district health department may request [either] an administrative hearing in accordance with 902 KAR 1:400[conference or an administrative hearing. The request shall be submitted within ten (10) days of receipt of a written notice of:

- (a) A violation;
- (b) Suspension or revocation of a certificate or individual's registration;
- (c) Denial to renew a certificate or individual's registration; or
- (d) Denial of an initial application for a certificate or individual's registration.

(2) Administrative conference. An administrative conference shall be conducted in accordance with 902 KAR 1:400, Administrative hearings, with the following exceptions:

- (a) The administrative conference shall be less formal than an administrative hearing;
- (b) The matter at issue shall be discussed before a representative of the Department for Public Health or the local or district health department; and
- (c) Participants in the discussion shall be:
 - 1. An agent of the cabinet or the local or district health department; and
 - 2. The certificate holder, individual registered, or the applicant;
- (d) A request for a conference shall be:
 - 1. In writing; and
 - 2. Submitted or addressed to the local or district health department that issued or gave notice of the violation, suspension, or revocation; and
- (e) A certificate or registration holder or an applicant who does not agree with final ruling of the conference report issued by the

local or district health department may appeal by requesting an administrative hearing.

(3) Administrative hearing:

(a) Conduct of the administrative hearing shall be pursuant to 902 KAR 1:400, Administrative hearings and KRS Chapter 13B; and

(b) A request for an administrative hearing shall be:

- 1. In writing;
- 2. Submitted or addressed to the Commissioner, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621; and
- 3. Accompanied by a copy of the notice of violation, notice to suspend or revoke, letter denying an application, or the conference hearing report].

Section 18.[49.] Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) DFS-200, "Application for Permit or License", 07/19;
- (b) DFS-200, Application for Studio Certification (Rev. 7-01);
- (b) DFS-303, "Application for Certification or [Registration], To: (Rev. 2/19[7-03])]; and
- (c) (b) [(e)] DFS-342, "Tattoo and Body Piercing [Studio Inspection Report" , (Rev. 2/19[6-03])];
- (d) DFS-214, Enforcement [Notice (Rev. 8-96);
- (e) DFS-212, Request for Conference (Rev. 10-96);
- (f) DFS-213, Notice of Conference (Rev. 8-96); and
- (g) DFS-215, Application for Reinstatement (Rev. 2-95)].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Public Health, Division of Public Health Protection and Safety, Food Safety Branch, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

JEFFREY D. HOWARD, JR., M.D., Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: July 12, 2019

FILED WITH LRC: July 15, 2019 at 10 a.m.

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746, fax 502-564-7091, CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Julie Brooks, (502) 564-3970, julied.brooks@ky.gov; or Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for the: registration and certification process for a tattoo studio; registration process for an individual performing tattooing; studio owners responsibilities; studio and workstation design, and plumbing requirements for the studio; sanitation of the studio and sterilization of tattooing equipment; tattooing procedures, including the requirements for tattooing a minor; registration and operating procedures for a mobile or temporary tattoo studio; studio inspection process; and opportunity for an administrative hearing should a studio certificate or individual registration be subject to suspension or revocation.

(b) The necessity of this administrative regulation: The cabinet is authorized to promulgate administrative regulations regarding the health and cleanliness of places of business for tattooing and body piercing; the sterilization of equipment for tattooing and body piercing; procedures that will prevent the spread of disease or infection during a tattoo or body piercing procedure; procedures for performing tattooing or body piercing on minors with parental consent; and any other regulation that may be necessary to protect the public and properly administer the program requirements. This administrative regulation establishes the requirements required by KRS 211.760.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.760 requires the registration of nonmedical personnel who engage in the business of tattooing

or body piercing, or both. This administrative regulation outlines the registration process for tattoo studios and for individuals who engage in the act of tattooing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements for operating a tattoo studio.

(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 amends several defined terms for clarity, and removes terms not used in the body of the regulation; adds the requirement that an individual registering as a tattoo artist complete bloodborne pathogen training; outlines the studio registration process for a permanent studio, a mobile studio and a temporary studio; updates the disinfection and equipment sterilization process; and further clarifies requirements for a notarized statement when a minor is seeking a tattoo without a parent or legal guardian present. The fees associated with operating a tattoo studio, and the individual registration have been added to this administrative regulation. The local health department will need to be notified should there be an incident or accident that results in exposure to blood or body fluid.

The Amended After Comments version of this administrative regulation updates the definitions for autoclave, disinfectant, handwashing, and sterilization; specifies that a studio that uses all disposable products is exempt from the clean room and autoclave requirements; updates the record keeping procedures to allow for more modern procedures; removes the prohibition against tattooing over scarred skin; and revises the requirements for a temporary event license and workstation size.

(b) The necessity of the amendment to this administrative regulation: House Bill 327, enacted during the 2018 legislative session, amended KRS 211.760 by removing the registration fee. This amendment is necessary to add the fee structure for tattoo studio and tattoo artist registration to this administrative regulation. This amendment also includes a late payment penalty fee for both the studio and individual registration should the registration not be renewed by the expiration date or postmarked beyond thirty (30) days after the expiration date. Completion of a bloodborne pathogen training is an industry standard for any individual who is employed in an occupation where contact with blood or body fluids is likely. Because the act of tattooing poses a risk of contact to blood or body fluids this training is necessary to protect the individual performing the tattooing and the public. Providing further details to be contained in the notarized statement of parental consent allowed by statute helps to ensure the parent or legal guardian is fully aware of, and gives consent for, the procedure. In addition, requiring additional information regarding the parent or legal guardians identification helps protect the tattoo artist and studio owner should someone attempt to falsify their authority to provide consent for the procedure.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment helps to prevent the spread of disease or infection that could result during a tattooing procedure, and protect the public health, as authorized by KRS 211.760.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in protecting the health of individuals seeking a tattoo as authorized by KRS 211.760 by updating the disinfecting and sterilization processes, ensuring all tattoo artists are properly registered and have completed bloodborne pathogen training, and requiring health department notification should there be an incident or accident where exposure to blood or body fluids is likely.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact 432 tattoo studios, 1337 tattoo artists, and 120 local or sixty-one (61) district health departments.

(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: Individuals currently registered as a tattoo artist will need to obtain a bloodborne pathogen training that meets the required standard prior to the renewal of their registration. Studio owners will need to ensure each individual working in the studio completes the required training in a timely manner. Studio owners will need to be familiar with the changes to the studio and workstation design, the sanitation and plumbing requirements, as well as the disinfection and sterilization requirements in order to remain in compliance with this regulation. Event organizers who want to offer tattooing during the event will need to be familiar with the applicable sections of this regulation to ensure compliance. Local and district health department staff will need to ensure receipt of the bloodborne pathogen training documentation from the tattoo artist who is renewing their registration, and any new artist applying for registration. Local and district health departments may elect to offer the required bloodborne pathogen training. A health department offering training will need to ensure the training is in compliance with 29 C.F.R. 1910.1030. Local and district health department inspectors will need to be familiar with the changes in this administrative regulation and the inspection form.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The current fee for registration for both the individual and the studio is twenty (20) dollars. The proposed fee for a studio is being raised to \$400 for a studio with one (1) to four (4) workstations and an additional fifty (50) dollars for each additional workstation. This will result in an increased cost of \$380 or more for the studio. The current fee for registration for the individual tattoo artist is also twenty (20) dollars. This fee is being increased to \$100, which will result in an eighty (80) dollar increase for each individual. The fee for a mobile studio is \$400 for one (1) to (4) workstations and an additional fifty (50) dollars for each additional workstation. This is consistent with the fee for a brick and mortar establishment. The fee for a temporary studio is \$250 per each workstation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All tattoo artists and studio owners will be operating under a uniform standard for tattooing. Artists will be trained in the proper procedures necessary to limit their exposure to bloodborne pathogens. Local health departments will also have a uniform standard available for conducting onsite inspections.

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

(a) Initially: There will be no additional costs to implement this administrative regulation initially.

(b) On a continuing basis: There will be no additional costs to implement this administrative regulation on an ongoing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds and revenue received from permitting and inspection fees continue to be used to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: An increase in funding is not necessary to implement this administrative regulation. The fees associated with this administrative regulation are being increased. The current registration fee of twenty (20) dollars is inadequate to offset the costs associated with operating a program for the registration and inspection of tattoo artist and tattoo studios.

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

This amendment increases the fees associated with operating a tattoo studio and the individual registration of a tattoo artist. The administrative cost to the cabinet is approximately \$150 per hour for environmental health inspectors for tattoo studios. This cost includes the salary of the inspector, fiscal year 2018 Kentucky

VOLUME 46, NUMBER 2– AUGUST 1, 2019

Employee Retirement System (KERS) and Federal Insurance Contributions Act (FICA) contributions, and health and life insurance cost.

The number of workstations has an impact on the length of time required to conduct an inspection. The table below outlines the proposed change in the fee structure for tattoo studios.

	1 - 4 workstations	More than 4 workstations	Mobile studio	Temporary studio with 1 - 4 workstations	Temporary studio with more than 4 workstations
Avg. Hourly Rate (including FY-18 KERS, FICA, health & life, indirect)	\$150	\$150	\$150	\$150	\$150
Number of hours for inspection (not including travel time)	2	Increase by 0.5 hour for each additional workstation	1.5	2	Increase by 0.5 hour for each additional workstation
Minimum number of routine inspections	2	2	1	1	1
Current Fee Established in KRS 211.760	\$20	\$20	\$20	\$20	\$20
Proposed Revised Fees (based on no reinspection or enforcement action follow-up)	\$400	\$50 for each additional workstation over four (4)	\$225	\$250	\$50 for each additional workstation over four (4)
Actual expenditure	\$600	\$600+	\$225	\$300	\$300+

The inspection fee is based on a routine inspection only. It does not include the costs associated with doing follow-up inspections for the correction of identified noncompliance or for complaint investigations.

In addition to the time required for inspection, there is staff time dedicated to processing the applications for registration and following up on registrations that were not renewed timely and expired. The addition of the late payment penalty fee will help to offset some of the staff time costs associated with these follow-up activities.

(9) TIERING: Is tiering applied? Tiering is applied. The inspection of a tattoo studio that has one (1) to four (4) workstations takes approximately two (2) hours. A studio that has more than four (4) workstations will take longer to inspect. This results in a higher fee structure when the studio has more than four (4) workstations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact local and district health departments as well as the Food Safety Branch in the 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, 211.760, 28 C.F.R. 36.104, 29 C.F.R. 1910.1030.

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? It is estimated the changes to the fee structure will generate \$172,800 from tattoo studios and \$133,700 from tattoo artists 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? There is no anticipated change in revenue in subsequent years should the current number of registered studios and

individuals remain steady.

(c) How much will it cost to administer this program for the first year? The current cost to administer all programs under the Food Safety Branch within the Division of Public Health Protection and Safety is \$5,524,622. There is no anticipated increase in costs to administer the tattoo inspection program this first year.

(d) How much will it cost to administer this program for subsequent years? There is no anticipated increase in costs to administer the tattoo inspection program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 28 C.F.R. Part 36 – Nondiscrimination on the basis of disability by public accommodations and in commercial facilities under the Americans with Disabilities Act (ADA); and 29 C.F.R. 1910.1030 Occupation Safety and Health Standards.

(2) State compliance standards. KRS 211.760 authorizes the cabinet to promulgate administrative regulations relating to the health and cleanliness of places of business in which tattooing, body piercing or both are performed, procedures to prevent the spread of disease or infection during or relating to tattooing and body piercing procedures, and such other administrative regulations as may be necessary to protect public health.

(3) Minimum or uniform standards contained in the federal mandate. The ADA requires a public accommodation to take the steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently. The federal regulations regarding bloodborne pathogens applies to all occupational exposure to blood or other potentially infectious materials.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This

administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements than those required by 28 C.F.R. Part 36 and 29 C.F.R. 1910.1030.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amended After Comments)

902 KAR 45:070. Body piercing and ear piercing.

RELATES TO: KRS 194A.050[Chapter 13B], 211.005, 211.015, 211.025, 383.085, 387.010, 28 C.F.R. 36.104[244.760], 29 C.F.R. 1910.1030

STATUTORY AUTHORITY: KRS 194A.050(1), 211.760(3), EO 2004-444]

NECESSITY, FUNCTION AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet.[EO 2004-444, effective May 11, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Public Health under the Cabinet for Health and Family Services.] KRS 211.760(2) requires nonmedical persons who engage in or carry on any business of body piercing to register with a local health department. KRS 211.760(3) requires the cabinet to promulgate administrative regulations relating to: (a) health and cleanliness of places of business; (b) sterilization of body piercing instruments and equipment; (c) procedures to prevent the spread of disease; (d) procedures to prevent body piercing of minors without the written notarized consent of a custodial parent or legal guardian; and (e) other administrative regulations as may be necessary to protect public health. This administrative regulation establishes the standards required by KRS 211.760(3).

Section 1. Definitions. (1) "Antiseptic" means a substance applied to the skin that reduces the number of microorganisms.

(2) "Autoclave" means a device intended to sterilize products by means of pressurized steam[~~equipment sold as sterilizing equipment for medical instruments and employs steam under pressure to sterilize~~].

(3) "Blood" ~~is defined by 29 C.F.R. 1910.1030~~[means human blood or any human body fluid or tissue that is visibly contaminated with blood].

(4) "Bloodborne pathogen training" ~~means training that meets the requirements established in~~[~~pathogens~~ ~~is defined by~~] 29 C.F.R. 1910.1030[~~pathogen(s)~~] means the pathogenic microorganisms that are present in human blood that can cause disease in humans such as Hepatitis B (HBV), Hepatitis C (HCV), and human immunodeficiency virus (HIV)].

(5) "Body piercer" means a person registered by the local health department.

(6) "Body piercing" is defined by KRS 211.760(1)(a).

(7) "Contaminated" means the presence of or reasonably-expected presence of blood or other potentially-infectious material in or on the surface of an item.

(8) "Contaminated sharps" ~~is defined by 29 C.F.R. 1910.1030~~[means any contaminated object that can penetrate the skin such as piercing needles and razors:].

(9) "Contaminated waste" means any material to be disposed of that has been soiled by blood or other potentially-infectious material in the process of body piercing.

(10) "Disinfectant" means a product that is tuberculocidal and registered with the federal Environmental Protection Agency as indicated on the label for use in disinfection[~~chemical agent that destroys disease-causing pathogens or other harmful microorganisms but does not ordinarily kill bacterial spores. Approved disinfectants are:~~

(a) List D: the EPA's Registered Antimicrobial Products Effective Against Human HIV-1 and Hepatitis B Virus; and

(b) List E: the EPA's Registered Antimicrobial Products

Effective Against Mycobacterium tuberculosis, Human HIV-1 and Hepatitis B Virus].

(11)[(40)] "Ear piercing" means a process by which the lobe or outer perimeter of the ear is pierced by use of a hand-pressured instrument utilizing presterilized earrings.

(12)[(44)] "Ear piercing instrument" or "piercing instrument" means a hand-pressured instrument, which[~~that~~] does not make contact with the client, utilizing encapsulated presterilized earrings used exclusively for piercing the lobe[and outer perimeter] of the ear. [~~This may sometimes be referred to as a "piercing gun".~~]

(13)[(42)] "Handwashing" means the act of cleaning the hands for the purpose of removing dirt, soil, or microorganisms through the use of soap, warm water, and friction[~~following process:~~

(a) ~~Wetting hands and forearms with warm running water between~~[~~101 degrees Fahrenheit and~~][~~120 degrees Fahrenheit~~][~~2 F~~];

(b) ~~Applying liquid~~[antibacterial or antimicrobial][~~soap and thoroughly distributing over hands and forearms;~~

(c) ~~Rubbing hands vigorously for twenty (20) seconds, covering all surfaces of the hands, forearms and fingers, paying special attention to the thumbs, backs of fingers, backs of the hands, and between the fingers;~~

(d) ~~Rinsing hands and forearms thoroughly to remove residual soap; and~~

(e) ~~Drying hands and forearms with one of the following: individual, disposable towels; a continuous towel system that supplies the user with a clean towel; a heated-air hand drying device; or a hand drying device that employs an air-knife system that delivers high velocity, pressurized air at ambient temperatures~~][~~paper towels dispensed from sanitary dispensers~~].

(14)[(43)] "Health care professional" means a physician, physician assistant, nurse, doctor of chiropractic, mental health professional, optometrist, dentist, or allied health professional who is licensed in Kentucky.

(14) "High-level disinfection" means the elimination of pathogenic microorganisms except for bacterial spores from inanimate objects, rendering them safe to handle.

(15) "Instrument" means any body-piercing implement that comes into contact with blood or [nonintact] skin to be pierced such as needles, needle tubes, forceps, hemostats, tweezers, or other implements used to puncture or pierce the human body.

(15)[(46)] "Jewelry" means any personal ornament or decoration inserted into a newly-pierced area.

(16)[(47)] "Minor" is defined by[at] KRS 387.010(1).

(17)[(48)] "Mobile studio" means a body-piercing studio that is designed to be readily movable.

(18)[(49)] "Nonintact skin" ~~means human skin that has an open wound from a cut, burn, rash, infection, or any other condition that has altered the skin.~~

(19)[(20)] "Piercing gun" means a handheld tool that is used exclusively for piercing the lobe and outer perimeter of the ear.

(24) "Purchased presterilized" means procedure set-ups that are sold individually packaged, processed, and marked with a sterilization lot number, and expiration date to render them free of all microorganisms.

(19)[(20)][(22)] "Registrant" means the individual duly authorized to engage in the business of body piercing or ear piercing.

(23) "Registration" means the issuance of a document by the local health department to a body piercer or ear piercer authorizing the person named in the document to engage in the business of body piercing or ear piercing.

(20)[(24)] "Service animal" is defined by 28 C.F.R. 36.104.

(21)[(22)][(24)] "Regulated waste" means waste as defined by the Department of Labor, OSHA, Bloodborne Pathogens Regulation, 29 C.F.R. 1910.1030 and incorporated by reference in 803 KAR 2:320.

(25) "Sanitize" means a bactericidal treatment to clean surfaces of equipment, approved by the local health department for being effective in destroying microorganisms, including

pathogens, to a safe level.

(26) "Sterilization" means a validated process used to render a product free from viable microorganisms[the use of an autoclave to kill microbial life by holding instruments and equipment under steam pressure for a minimum of fifteen (15) minutes, at fifteen (15) pounds of pressure, at a temperature of 250 degrees Fahrenheit or 121 degrees Celsius].

(22)(23)(27) "Studio" means[is] a facility as defined by KRS 211.760(1)(b).

(23)(24)(28) "Studio certification" means the issuance of a document by the local health department to a studio owner certifying that the studio, after inspection, was in compliance with the applicable provisions of this administrative regulation.

(24)(25)(29) "Studio owner" means:

(a) An owner of a facility where body piercing or ear piercing is conducted; ~~or~~

(b) A sole proprietor who performs body piercing or ear piercing; or

(c) A person who employs body piercers or ear piercers.

(25)(26)(30) "Temporary permit[studio]" means a permit to operate at a fixed location ~~for[facility setup that operates]~~ no more than seven (7) calendar days, and that:

(a) Is nontransferable; ~~and~~

(b) Cannot be renewed ~~for[in a]~~ ninety (90) days after the expiration ~~[day period]~~.

(26) "Ultrasonic cleaner" means a device that transmits high-energy, high-frequency sound waves into a fluid-filled container, used to remove deposits from instruments and appliances.

Section 2. Registration. (1) ~~[Except as otherwise provided in Section 12 of this administrative regulation, an applicant shall be at least eighteen (18) years of age at the time of application.]~~

(2) Pursuant to KRS 211.760(2), A person shall not act as or engage in the business of body piercing or ear piercing unless registered with the local health department in the district or county where the person is to body pierce or perform ear piercing.

(2) All body piercing or ear piercing shall be under the auspices of a Kentucky certified studio.

(3) ~~A[No]~~ body piercer or ear piercer shall not engage in the act of piercing unless that person has proof of completion of ~~a]~~ bloodborne pathogen training[that is in compliance with 29 C.F.R. 1910.1030].

(4) The body piercer or ear piercer shall maintain documentation of completion of bloodborne pathogen training at the studio.

(5) An applicant for registration shall be at least eighteen (18) years of age at the time of application.

(6) An applicant for registration ~~for body piercer or ear piercer]~~ shall submit ~~a completed Application Form DFS-303, incorporated by reference,~~ to the local ~~or district]~~ health department in the district or county where the applicant intends to perform body piercing or ear piercing;

(a) A completed DFS-303, Application for Certification or[] Registration, incorporated by reference in 902 KAR 45:065;

(b) Payment of \$100 registration fee; and

(c) Proof of completion of approved bloodborne pathogen training as required by subsection (3)(2) of this section.

(7)(4) Pursuant to KRS 211.760(2), payment of the registration fee shall be made to the local or district health department where the applicant intends to body pierce or perform ear piercing.

(5)] The body piercer or ear piercer registration shall be:

(a) Mailed to the owner of the Kentucky certified studio listed on the application for registration;

(b) Prominently displayed to the public in the workstation; and

(c) Nontransferable from one (1) person to another, or from one (1) district or county to another.

(8) A registration(6) All body piercing or ear piercing shall be under the auspices of a Kentucky certified studio.

(7) A registrant shall post his registration document prominently at their workstation.

(8) A registration shall not be transferable from one (1) person to another, or from one (1) district or county to another.

(9) Pursuant to KRS 211.760(2), ~~[Registrations]~~ shall be valid ~~for[expire]~~ one (1) calendar year and expire on December 31st of each year ~~[from the date of issuance]~~.

(9) A late renewal[penalty] fee of fifty (50) dollars shall be assessed on each[all] body piercer or[and] ear piercer certification renewal application[applications] not received by[January 30th] or postmarked on[after] January 31st each year.

Section 3. Studio Certification. (1) A person shall not engage in the business of body piercing or ear piercing unless the owner of the facility holds a studio certification issued by the local health department in the district or county where the person is to body pierce or perform ear piercing.

(2) A holder of a studio certification issued under this administrative regulation shall not allow a person[persons] to engage in body piercing or ear piercing unless the individual is registered in accordance with Section 2 of this administrative regulation.

(3) An application [Applications] for studio certification shall be:

(a) On DFS-200, Application for Permit or[] License, incorporated by reference in 902 KAR 45:065 ~~[10:040]~~;

(b) Submitted to the local health department in the district or county where the studio is located; and

(c) Accompanied by an annual inspection fee of:

1. \$400 for a body piercing studio with one (1) to four (4) work stations;

2. \$200 for an ear piercing studio with one (1) to four (4) work stations; and

3. An additional fifty dollars (\$50) for each additional work station over four (4).

(4) A studio certification shall not be issued or renewed unless the studio has been inspected and found to be in compliance with the provisions of this administrative regulation.

(5)(3) A studio certification shall be:

(a) ~~[required for each district or county in which a registrant performs any activity regulated by this administrative regulation.]~~

(4) The studio certification shall be prominently displayed to the public in the studio; and

(b) ~~[-~~

(5) A studio certification ~~is]~~ Nontransferable from one (1) person to another, or from one (1) location to another.

(6) ~~[A holder of a studio certification issued under this administrative regulation shall not allow persons to body pierce or perform ear piercing unless registered in accordance with Section 2 of this administrative regulation.]~~

(7) Payment of an annual inspection fee of \$100 shall be made to the local health department in the district or county where the person is to body pierce or perform ear piercing. Payment of an annual inspection fee of twenty-five (25) dollars shall be made in the district or county where the person is to perform ear piercing only.

(8) Applications for studio certification shall be submitted to the local health department on Application Form DFS-200, incorporated by reference.

(9) The studio certification shall be valid for one (1) calendar year and expire December 31st each year.

(7) A late renewal[penalty] fee of one-half (1/2) the annual inspection fee shall be assessed on each[all] studio registration renewal application[applications] not received by[January 30th] or postmarked on[after] January 31st each year ~~[one (1) year from the date of issuance]~~.

Section 4. Studio [Facility] Requirements. (1) A studio[facility] shall:

(a) Be kept clean and in good repair;

(b) Be free of insect and rodent infestation;

(c) Store only items necessary to its operation and

maintenance;

(d) Provide artificial light of at least twenty (20) foot-candles[, measured at a height of thirty-six (36) inches from the floor];

(e) Be well ventilated;

(f) Not permit the presence of ~~an[a pet or other]~~ animal in the studio, except for a service animal;

1. ~~A trained guide or assistance animal for the disabled; or~~

2. ~~Fish in an aquarium in the waiting area~~;

(g) Not use a room otherwise used as living or sleeping quarters;[-]

(h) Use a solid, self-closing door to separate living or sleeping quarters from the business operation;[-]

(i) ~~[Have an entrance allowing direct entry into the facility, except for a facility existing on the effective date of this administrative regulation which is exempt from this requirement;~~

(j) Have convenient, clean, and sanitary toilet and handwashing facilities for the use of clientele with liquid soap, single-use paper towels from a sanitary dispenser or air dryer, a covered waste receptacle, and a self-closing door;

(k) ~~Be organized to keep clean areas separate from contaminated areas;~~

(l) ~~Have only a utility sink that shall only be used to:~~

1. ~~wash clean contaminated instruments; and~~

2. ~~empty mop water, without placing the mop bucket into the sink;~~

(m) Use, clean, and maintain equipment according to manufacturers' recommendations;

(n) ~~Use an approved[a hard surface high-level EPA registered] disinfectant;~~

(o) ~~or~~

1. ~~A solution of five and one-quarter (5.25) percent chlorine bleach, fifty (50) parts per million to 100 parts per million; and~~

2. ~~A chlorine test kit to test concentration;~~

(p) Have plumbing sized, installed, and maintained in accordance with [the] [Kentucky State Plumbing Code:] 815 KAR Chapter 20;

(q) ~~Have sufficient[an adequate] potable water supply for the needs of the studio provided from a source constructed, maintained, and operated pursuant to the applicable requirements established in 401 KAR Chapter 8[from:~~

1. ~~A public or municipal water district, if available; or~~

2. ~~A private water source approved by the Cabinet for Natural Resources and Environmental Protection, until a public water supply becomes available]; and~~

(r) ~~Dispose of sewage by connection to:~~

1. ~~A public sewer system, if available; or~~

2. ~~A private sewer system designed, constructed, and operated pursuant to the requirements of 401 KAR Chapter 5 and 902 KAR Chapter 10[the Cabinet for Health and Family Services or the Cabinet for Natural Resources, until a public sewer system becomes available].~~

(s) ~~A workstation shall:~~

(a) Have nonporous[light-colored], smooth, easy-to-clean floors, walls, and ceilings;

(b) Have surfaces, including counters, cabinets, chairs, and dispensers, composed of light-colored, smooth, nonporous material able to withstand repeated cleaning and disinfecting[, except for a facility existing on the effective date of this administrative regulation which is exempt from the color requirement];

(c) Be kept clean, organized, and in good repair;

(d) 1. Have all product containers clearly labeled with common product name in English; and

2. If filling a product container from a larger bulk container, retain the original container[shall be retained] on the premises;

(e) Have at least sixty (60) square feet of floor space with permanent walls a minimum of four (4) feet[feet] high [one-half (1/2) walls] between workstations;

(f) ~~(4) Have 100 foot-candles of light at the procedure level;~~

(g) ~~(e) Have unimpeded access to a hand sink[without opening a door];~~

(h) ~~(f) Have a sink for each body piercer with hot[water between 101 and] [at least] [120 degrees Fahrenheit] and cold~~

water~~[less than 101 degrees Fahrenheit]~~, delivered by a [mixing] faucet, operated by wrist, knee, or foot action, or other hands-free method;

1. Each sink shall be supplied with:

a. Liquid soap; and

b. Single use paper towels dispensed from a sanitary dispenser; and

2. A hand sink shall not be used for any other purpose;

(i) ~~(g) Be designated as a body piercing workstation, and shall not be used for any other purpose;~~

(j) ~~(h) Have double bagged lined plastic or metal waste receptacles;~~

1. ~~With or without a lid; and~~

2. If the waste receptacle has a lid, the lid[it] shall be foot[food] operated; and

(k) ~~(i) Have a container for disposable sharps that:~~

1. Is rigid, puncture proof, and leak proof on sides and bottom;

2. Is closeable and sealable; and

3. If sealed, is leak resistant and incapable of being opened without great difficulty.

Section 5. Cleaning and Sterilization. (1) A studio using any reusable instruments, materials, or supplies[facility] may have a one (1) room or two (2) room cleaning and sterilization arrangement.

(a) A two (2) room arrangement shall have:

1. One (1) room for contaminated items, equipped with:

a. A utility sink with minimum dimensions of 18 in. x 18 in. x 12 in.;

b. A hand sink;

c. A presoak container;

d. An ultrasonic cleaner[cleaning unit]; and

e. Autoclaving packaging materials; and

2. A second room for autoclave sterilization of instruments, equipment, and body jewelry or decorations.

(b) A one (1) room cleaning and sterilization process shall be arranged to provide two (2) distinct areas.

1. The ultrasonic cleaner[unit] shall be as far away as possible from the autoclave to prevent contamination of sterile instruments, equipment, jewelry, or other items.

2. The cleaning area shall be equipped in accordance with paragraph (a)[subparagraph] 1. of this subsection[section][with a utility sink with minimum dimensions of 18 in. x 18 in. x 12 in., a presoak container, ultrasonic cleaning unit and autoclaving packaging materials].

3. Nonporous barriers may be utilized to delineate the two (2) distinct areas.

(2) A body piercer[piercers] that shares[which][share] a certified studio with a tattoo artist[artists] shall have a dedicated ultrasonic cleaner[unit] for cleaning body piercing instruments or equipment.

(3) A studio that uses only pre-sterilized disposable instruments, materials, and supplies shall not be required to have a separate room or area for autoclave, ultrasonic cleaner, and sterilization.

(4) All instruments shall be disposable or be made of surgical implant stainless steel and shall have only rubber gripping that can be removed and sanitized[not have rubber gripping] on the handles.

(5) ~~(4) Instruments shall be processed as follows:~~

(a) Soak contaminated reusable[used] instruments in a covered container of cool water with [or without] detergent until ready to be cleaned and sterilized;

(b) Wash hands and forearms [in accordance with Section 1(13) of this administrative regulation];

(c) Use disposable, single-use gloves such as examination or surgical gloves;

(d) ~~(e) Prepare the ultrasonic cleaner according to manufacturer's instructions;~~

(e) ~~(f) Take instruments apart and rinse in warm water;~~

(f) ~~(e) Load the ultrasonic cleaner and process according to manufacturer's recommendations, disposing of the ultrasonic~~

cleaner liquid after each use;

(g) Wash hands and forearms ~~[in accordance with Section 1(13) of this administrative regulation]~~;

(h) ~~[(f)]~~ Wearing examination gloves, remove instruments from the ultrasonic cleaner, rinse with clean water, and ~~[dry with a clean lint-free towel, or]~~ allow to air dry; and

~~[(i)]~~ (g) Store cleaned instruments in a labeled, covered, nonporous container until packaged for sterilization.

~~[(6)]~~ (5) Sterilization equipment. Equipment used to sterilize instruments shall meet the following requirements:

(a) The equipment was sold as sterilizing equipment for medical instruments;

(b) The equipment is used, cleaned, and maintained to manufacturer's instructions; and

(c) The equipment meets the minimum requirements for sterilization ~~[in the definition of "sterilization"]~~.

~~[(7)]~~ (6) Reusable instruments.

(a) Reusable instruments placed in contact with skin that is body pierced shall be cleaned and sterilized;

(b) ~~[-]~~ Disinfection shall not be used in place of cleaning and sterilization; and

(c) ~~[-]~~ Liquid sterilants shall not be used for sterilization of reusable instruments.

~~[(8)]~~ (7) Instrument sterilization. Instruments that pierce the skin ~~[- or touch nonintact skin,]~~ shall be sterilized as follows:

(a) Wash hands and forearms ~~[in accordance with Section 1(13) of this administrative regulation]~~;

(b) Use clean disposable, single-use surgical or examination gloves;

(c) ~~[(b)]~~ Package cleaned instruments individually in:

1. ~~[paper or plastic, or]~~ Paper and plastic peel-packs with color change indicator; ~~peel-pack(s) with color (heat) change indicator(s);]~~ or

2. Package as set-ups with color change indicator;

(d) ~~[(e)]~~ Label with content, date, lot number, and preparer's initials;

(e) ~~[(d)]~~ Load the sterilizer and process according to manufacturer's directions;

(f) ~~[(e)]~~ Remove the items from autoclave only when completely dry and cool ~~[and dry]~~;

(g) ~~[(f)]~~ Store the items in a nonporous, clean, dry, labeled container, cabinet, or other place that is protected from dust and contamination; and

~~[(h)]~~ (g) Sterilized instruments shall be resterilized at intervals of no more than six (6) months from the date of the last sterilization; and

2. New packaging shall be used when instruments are resterilized.

~~[(9)]~~ (8) Sterilization equipment monitoring.

(a) Sterilization equipment shall be tested: ~~[-]~~

1. During the initial installation;

2. ~~[-]~~ After any major repair; ~~[-]~~ and

3. At least monthly by using a commercial biological monitoring system; and

(b) Biological indicator test results for each sterilization unit used in the studio shall be kept on site, and made available for inspection at time of inspection; and

(c) Sterilization monitoring shall be noted on the sterilizer log.

~~[(10)]~~ (9) Sterilizer recordkeeping. A sterilizer log system shall be maintained for each sterilizer in the studio. For each sterilization cycle the following information shall be documented:

(a) Date of load;

(b) Lot number;

(c) Preparer's ~~[Practitioner's]~~ name;

(d) The general contents of the load;

(e) The exposure time and temperature or the sterilizer recording chart or tape; and

(f) The results of the chemical indicator.

Section 6. Studio Owner Responsibilities. The owner of a certified studio shall:

(1) Exclude and report to the local or district health department, a ~~[any]~~ body piercer or ear piercer who is:

(a) ~~[while]~~ Infected with a disease in a communicable form

that can be transmitted by blood;

(b) ~~[or who is]~~ A carrier of organisms that cause disease;

(c) ~~[or while]~~ Infected with a boil or, an infected wound; ~~[-]~~ or

(d) Diagnosed with an acute respiratory infection; ~~[-]~~;

(2) Report any accident involving exposure to body fluids to the local or district health department;

(3) Receive, review, and distribute body piercer or ear piercer registrations issued for employees of the certified studio. If the body piercer or ear piercer is no longer employed by the certified studio, the registration shall be returned to the district or local health department where the certified studio is located;

~~[(4)]~~ (3) ~~Continuously~~ Maintain a record of all persons performing any activity within the studio that is regulated by the cabinet. The record shall include at a minimum the following information:

(a) Full name;

(b) Date of birth;

(c) Home address;

(d) ~~[Home]~~ Phone number;

(e) Email address ~~[if available]~~;

(f) Photograph of body piercer or ear piercer; and

(g) Complete description of all body piercing or ear piercing procedures performed by the body piercer or ear piercer;

(5) ~~[(4)]~~ Maintain a current copy of this administrative regulation at the studio for use by body piercers or ear piercers;

(6) ~~[(5)]~~ Maintain an adequate supply ~~[a minimum of twenty-four (24) sets]~~ of sterilized needles, instruments, jewelry, and other decorations for each piercer;

~~[(7)]~~ (6) Not resterilize or reuse single-use, disposable components; and

~~[(8)]~~ (7) Maintain records in accordance with Section ~~8(3)]~~ (8) ~~[(5)]~~ of this administrative regulation ~~[if presterilized, disposable instruments and jewelry are utilized]~~;

~~[(9)]~~ (8) Maintain an accurate inventory of all purchased presterilized instruments and jewelry by name with the date purchased and the quantity on hand; and

~~[(10)]~~ (9) Maintain invoices for the purchase of all purchased presterilized instruments and jewelry.

Section 7. Piercing of Minors. (1) A ~~[No]~~ person shall not perform any body piercing or ear piercing procedure on a minor without parental consent.

(2) A minor ~~[Minors]~~ shall be at least sixteen (16) ~~[16]~~ years old with custodial parent or legal guardian consent prior to body piercing.

(3) Consent shall be provided by:

~~[(a)]~~ (4) A written notarized statement that contains ~~[consent, with]~~ an official seal or assigned identification of notary; or

~~[(b)]~~ (2) The custodial parent or legal guardian present during the body piercing procedure.

(4) The notarized statement shall contain:

(a) The printed name of the custodial parent or legal guardian;

(b) The government issued photo identification number of the custodial parent or legal guardian;

(c) The address and phone number of the custodial parent or legal guardian;

(d) The printed name of the minor child;

(e) The date of birth of the minor child;

(f) The government issued photo identification number of the minor child, if applicable ~~[available]~~;

(g) A statement that the custodial parent or legal guardian is fully aware of the body piercing procedure and gives their consent for the procedure to be performed;

(h) The signature of the custodial parent or legal guardian; and

(i) The date of the signature of the custodial parent or legal guardian.

(5) The custodial parent or legal guardian present during the body piercing procedure shall provide a government issued photo identification.

(6) The custodial parent or legal guardian, and minor client shall complete the attestation requirements of Section

~~8(3)(g)~~~~8(3)(h)~~ of this administrative regulation~~and with the signature of a custodial parent or legal guardian, shall be obtained for all minors prior to body piercing or ear piercing.~~

Section 8. Client Information and Records. (1) Before receiving a body piercing or ear piercing, the client shall be provided written information that the piercing poses a risk of infection.

(2) Before the body piercing or ear piercing, the client shall be provided written,~~written and~~ verbal, or electronic aftercare instructions that include the following information:

- (a) Information on the care of the site of the piercing;
- (b) Instructions on possible side effects;
- (c) Information on any restrictions;
- (d) Information on signs and symptoms of infection; and

(e) Instructions to consult a physician if signs and symptoms of infection such as fever, excessive swelling, excessive redness, or drainage occur.

(3) A record of all clients who have received any body piercings or ear piercings shall be kept by the studio owner. The record shall include the following information:

- (a) Studio name and registration number;
- (b) The date the procedure was performed;
- (c) Client's name, date of birth, address, and phone~~telephone~~ number;

(d) 1. Copy of client's government issued photo ID, if applicable; or

2. Copy of custodial parent or legal guardian's~~guardians~~ government issued photo identification~~or recorded identification number from government issued documentation~~;

(e) Name of the body piercer or ear piercer who performed each procedure~~the procedure(s)~~;

(f) The type, location, and description of the procedure; and~~and~~

(g) Lot number of items used; and

(h) Client's attestation~~attestment~~ to the fact that the client is:

1. Not intoxicated or under the influence of drugs or alcohol;

and
2. Not currently taking medications, such as anticoagulants, that thin the blood or interfere with blood clotting~~with signature~~.

(4) Records of each client shall be typed or printed in ink prior to any procedure being performed.

(5) (a) All records shall be maintained ~~in a bound log~~ for two (2)~~five (5)~~ years. ~~(5)(b) [The current calendar year] Client records and~~, consent and other required records shall be kept at the certified studio and shall be made readily available to inspectors. ~~[All records for the previous four (4) years may be maintained off site and shall be made readily available upon request of the cabinet, district or local health department.]~~

Section 9. Disposal of Contaminated Wastes. All wastes produced during the process of body piercing or ear piercing shall be separated for disposal into two (2)~~three (3)~~ classifications as follows:

(1) Contaminated sharps shall be disposed of by using a licensed medical waste disposal company; and

(2) [Regulated waste, as defined by the Department of Labor, Occupational Safety and Health Administration, shall be disposed of in accordance with the bloodborne pathogens regulation 29 C.F.R. 1910.1030 as adopted in Kentucky by 803 KAR 2:320.

(3) Contaminated waste, other than contaminated sharps and regulated waste, shall be~~sprayed with an approved disinfectant~~[a dilution of five and one-quarter (5.25) chlorine bleach, with a range of fifty (50) parts per million to 100 parts per million], double bagged, securely tied, and disposed of daily in a trash container that prevents unauthorized access. This material shall be disposed of in an approved site by a general trash hauler.

Section 10. Standard Operating Procedures for Body Piercing. (1) Body piercing shall not be performed on skin that~~which~~ has a rash, pimples, evidence of infection, open

lesions, or~~mole,~~ sunburn, or manifests any evidence of an unhealthy condition~~conditions~~ without written clearance by a licensed medical provider~~medical physician licensed by the Kentucky Board of Medical Licensure~~.

(2) The body piercer shall follow the procedures listed in this section in preparation for body piercing;:-]

(a) The body piercer and the client shall not eat, drink, or use tobacco products, an electronic cigarette, or other vapor producing product~~smoke~~ in the workstation;

(b) The body piercer shall wash hands and forearms [in accordance with Section 1(13)]~~(10)~~[of this administrative regulation] prior to and after every procedure;

(c) The body piercer shall wear new clean disposable examination gloves for every client. If a glove is pierced, torn, or contaminated in any way, or if there is an interruption in the body piercing, both gloves shall be removed immediately, and discarded, hands and forearms washed,[in accordance with Section 1(13) of this administrative regulation] and new, clean examination gloves used;

(d) The body piercer shall wear clean clothing;

(e) All instruments, needles, jewelry, and items to be used in the procedure shall be placed on plastic film or on a plastic-backed towel;

(f) Only hollow needles shall be used for body piercing;

(g) Only presterilized jewelry shall be installed in a fresh piercing;

(h) Only sterile jewelry made of [surgical steel] implant stainless steel, solid 14K or 18K white or yellow gold, niobium, titanium, or platinum and that is free of scratches, nicks, or irregular surfaces, and internally threaded or threadless, shall be placed in newly pierced skin;and

(i) All single-use disposable items shall be placed on the plastic backed towel and shall be discarded after each client including:

1. Corks;
2. Rubber bands;
3. Skin prepping materials;
4. Marking devices;
5. Dental bibs;
6. Tray covers;
7. Gauze; and
8. Applicators; and

(j) The sharps container and waste receptacle shall be positioned within easy reach and in a manner to prevent contamination.

Section 11. Performance of Body Piercing. The body piercer shall use the procedure in this section when performing a body piercing:

(1) Disinfect the chair or table, and~~procedure~~ tray ~~or area~~;

(2) Wash hands and forearms[in accordance with Section 1(13)]~~(10)~~[of this administrative regulation];

(3) Use new disposable gloves and arrange all instruments and supplies to be used in the procedure on plastic film or on a clean, disposable plastic-backed towel within easy reach;

(4) Position the client~~comfortably~~;

(5) Clean the skin,[and then apply an antiseptic to the area to be pierced and] mark the location of the piercing with a new, disposable marking device, and apply an antiseptic to the area to be pierced;

(6) Remove and discard all materials used to prep the client, including gloves;

(7) Wash hands and forearms[in accordance with Section 1(13)]~~(10)~~[of this administrative regulation] and use new, clean examination gloves;

(8) Hold or stabilize the tissue with sterile instruments only. Pierce the skin using a sterile, single-use piercing needle [that is the same gauge or that is only slightly larger gauge than the jewelry or ornament to be inserted];

(9) Immediately after use, place all needles, snip wires, or any other sharps into a sharps container;:-]

(10) When the body piercing is complete, [the body piercer shall] answer any questions regarding the piercing and provide

[written] aftercare instructions to the client; and

(11) Immediately after the client leaves the workstation, ~~the body piercer shall~~ place contaminated instruments into a covered container that is labeled "contaminated instruments" and disinfect all surfaces that have come into contact with the client or the client's tissues, including the piercing tray, chair, or table.

Section 12. Standard Operating Procedures for Ear Piercing.

(1) An ear piercing studio shall be exempt from Sections [4-] 5, [6(5), 8(3)(d)-] 9(1) [and (2)], 10, and 11 of this administrative regulation.

(2) Ear piercing studs and clasps shall not be used under any circumstances anywhere on the body other than the lobe of the ear.

(3) An ear piercer ~~[piercing studio]~~ shall ~~[follow the procedures listed in this section of this administrative regulation when preparing for and performing ear piercing]~~:

(a) ~~[A piercer shall]~~ Be registered in accordance with Section 2 of this administrative regulation ~~[at least sixteen (16) years of age at the time of the application]~~;

(b) ~~[The piercer and the client shall]~~ Not allow any eating, drinking, or use of tobacco products, an electronic cigarette, or other vapor producing product ~~[eat, drink or smoke]~~ in the area where ear piercing is conducted;

(c) Obtain consent for the procedure in accordance with Section 7 of this administrative regulation;

(d) Obtain client information in accordance with Section 8 of this administrative regulation;

(e) Wash their hands and forearms ~~[in accordance with Section 1(13) of this administrative regulation]~~ before and after each piercing is performed;

(f) ~~[cleanse the hands prior to each procedure by utilizing an antibacterial gel to cleanse the hands or a handwash facility. A handwash facility at the minimum consists of liquid antibacterial or antimicrobial soap, single-use paper towels, and an insulated five (5) gallon container with a liner type spigot, filled with warm water, and a bucket to catch the wastewater. The container shall be placed thirty (30) inches off the floor to allow easy use, and shall be filled regularly to ensure an adequate supply of warm water;~~

(d) ~~The piercer shall]~~ Wear new, clean disposable gloves for every client. If a glove is pierced, torn, or contaminated in any way, or if there is an interruption in the ear piercing, both gloves shall be removed immediately ~~[and]~~ discarded, hands and forearms washed, [in accordance with Section 1(13) of this administrative regulation] and new, clean examination gloves used;

(g) ~~[(e) The piercer shall]~~ Wear clean clothing;

(h) Load presterilized, encapsulated cartridges for earrings into the ear piercing instrument without touching the cartridge, stud, or clasp;

(i) ~~[The piercer shall record the client or parent/guardian's government issued identification number, such as a driver's license number, on the client record;~~

(g) ~~The piercer shall verbally review with the client all aftercare instructions and]~~ Answer any questions prior to performing an ear piercing;

(i) ~~[(h) The piercer shall]~~ Clean the ear with an antiseptic towelette before the procedure and mark the location of the piercing with a single use disposable marking pen or a surgical marking pen sanitized by design such as an iodine-based or alcohol;

(k) ~~[(i) All ear piercers shall conform to the manufacturer's directions on use and applicable U.S. Food and Drug Administration requirements;~~

(j) ~~When the piercing is complete, the piercer shall answer any questions and]~~ Provide the client with [written] instructions regarding aftercare; and

(l) ~~[(k) If a piercing gun is used,]~~ Immediately after the client leaves the ear piercing area, ~~[the piercer shall]~~ thoroughly disinfect the piercing instrument ~~[gun]~~ with an approved [a high-level] disinfectant.

(4) When not in use, the piercing instrument ~~[gun]~~ shall be

stored in a cabinet or other place that is protected from dust and contamination; and

~~(l) Ear piercing studs and clasps shall not be used under any circumstances anywhere on the body other than the outer perimeter and lobe of the ear.]~~

Section 13. Standard Operating Procedures for a Mobile Studio. (1) An application [Applications] for mobile studio certification shall be:

(a) On DFS-200, Application for Permit or [a] License, incorporated by reference in 902 KAR 45:065 ~~[10:040]~~;

(b) Submitted to the local health department in the district or county where the mobile studio is located; and

(c) Accompanied by a fee of:

1. \$400 for the studio with one (1) to four (4) work stations; and

2. An additional fifty dollars (\$50) for each additional work station over four (4) ~~[Ear piercers shall not operate a mobile studio].~~

(2) If not currently registered in accordance with Section 2(6) of this administrative regulation, each [the] body piercer and ear piercer [the mobile studio] shall be registered with the local health department in each district or county in which the studio is operated, and pay the appropriate fees.

(3) The mobile studio shall be used exclusively for performing body or ear piercing. Habitation, cooking, ~~[pets]~~ and animals except service animals shall not be allowed in the mobile studio.

(4) The mobile studio shall ~~[meet the same requirements as a stationary studio and]~~ be inspected by the local health department prior to operation. ~~[(4) All sewage shall be stored in a storage tank with a capacity at least 100 percent greater than the capacity of the on-board potable water, and shall be discharged into a public sewage system.]~~

(5) Any on-board restroom shall be supplied with hot ~~[running water at least 120 degrees Fahrenheit]~~ and cold running water ~~[less than 101 degrees Fahrenheit]~~ ~~[as in subsection (6) of this section]~~ and shall be supplied with toilet paper, liquid ~~[antibacterial or antimicrobial]~~ soap and single-use paper towels from a sanitary dispenser, a covered waste receptacle, and a self-closing door.

(6) If the vehicle lacks an on-board restroom, the owner shall not operate the studio unless it is within 200 feet of a public restroom with handwashing facilities.

(7) All plumbing shall comply with the requirements of ~~[the]~~ [State Plumbing Code,] 815 KAR Chapter 20.

(8) (a) Each mobile studio shall have a potable water system under pressure.

(b) The system shall be of sufficient capability to furnish enough hot and cold water for handwashing, instrument cleaning, and sanitization pursuant to the requirements of this administrative regulation.

(c) The water inlet shall be:

1. Located in a position that it will not be contaminated by waste discharge, road dust, oil, or grease; ~~and [it shall be]~~

2. Provided with a transition connection of a size or type that will prevent its use for any other service.

(d) All water distribution pipes or tubing shall be constructed and installed in accordance with ~~[the]~~ [State Plumbing Code,] 815 KAR Chapter 20.

(e) Hoses, if used, shall bear the National Sanitation Foundation potable water (NSF-pw) mark and be fitted [be food grade,] with a backflow prevention device.

(9) (a) Each mobile studio shall have a permanently installed retention tank that is at least fifty (50) [400] percent larger than the potable water supply tank.

(b) Wastewater shall be discharged into a public sewage system.

(c) Liquid wastewater shall not be discharged from the retention tank if the mobile studio is in motion.

(d) All connections on the vehicle for servicing the mobile studio waste disposal shall be of a different size or type than those used for supplying potable water to the mobile studio.

(e) The wastewater connection shall be located below the

water connection to preclude contamination of the potable water system. ~~[(10) The vehicle shall be used exclusively for body piercing. Habitation, cooking, pets and animals shall not be allowed in the mobile studio.]~~

Section 14. Standard Operating Procedures for a Temporary Permit[Studio]. (1) At least thirty (30) days prior to the event date, the event organizer or studio owner for the event shall submit to the local health department in the district or county where the temporary studio is to be located:

(a) A DFS-200, Application for Permit ~~or~~[License, incorporated by reference in 902 KAR 45:065[10:040], accompanied by a \$100[\$250] registration fee for each workstation;

(b) A layout of the event floor showing where body piercing and ear piercing will be performed;

(c) A list of all body piercers and ear piercers participating in the event that includes:

1. Name of body piercer or ear piercer;

2. Piercer's date of birth;

3. Home address;

4. Phone[Telephone] number;

5. Email address;

6. Proof of piercer completion of **bloodborne[bleed-borne]** pathogen training;

7. Studio name;

8. Studio address;

9. Studio owner name; and

10. Description of body piercing and ear piercing procedures to be performed at the event; and

(d) A copy of the client consent form to be used during the event[Ear piercers shall not operate a temporary studio].

(2) The event organizer or studio owner for the event shall be responsible for ensuring that the event is run in a manner that is safe for the body piercers, ear piercers, and the general public.~~[The event organizer or studio owner shall provide a list of all body piercers participating in the event to the local health department in the district or county where the event is being held that includes the following information for each participating body piercer:~~

~~(a) Name;~~

~~(b) Date of birth;~~

~~(c) Home address;~~

~~(d) Business name;~~

~~(e) Business address;~~

~~(f) Home and work telephone numbers;~~

~~(g) Email address if available;~~

~~(h) Description of procedures to be performed at the event; and~~

~~(i) Copy of current body piercer registration.]~~

~~(3)[The event coordinator or studio owner shall provide a layout of the event floor to the local health department in the district or county where the event is being held showing where the body piercer will be piercing.~~

~~(4)] Each participant who performs body or ear piercing shall bring enough presterilized instruments and supplies to last for the whole event.~~

~~(4)](5)] The event coordinator or studio owner shall:~~

~~(a) Provide a separate cleaning and sterilization room as a backup, unless only pre-sterilized disposables are used for the event;~~

~~(b) Provide an approved autoclave that has certification of a negative spore test within thirty (30) days prior to the event;~~

~~(c) Arrange for pick-up and disposal of contaminated waste in accordance with Section 9 of this administrative regulation; and~~

~~(d) Ensure the cleaning and sterilization room, if used, is disinfected at the close of the event.[provide a separate cleaning and sterilization room as a back up for use by participants who have used all of the presterilized instruments and supplies that were brought to the event. If used, the cleaning and sterilization room shall be disinfected at the close of the event. Presterilized disposable instruments and equipment shall not be reused.]~~

~~(5)](6) The event coordinator or studio owner shall provide an~~

approved autoclave that has certification of a negative spore test within thirty (30) days prior to the event.

(7) The event coordinator or studio owner shall provide for pick-up and disposal of contaminated waste in accordance with Section 9 of this administrative regulation.

(8) Temporary studios located at locations such as fairs, festivals, or flea markets, shall comply with all requirements for a certified studio in accordance with Section 1 through 11 of this administrative regulation in their entirety.

(9) The body piercer and the temporary studio shall be registered with the local health department in each district or county in which the studio is operated, and pay the appropriate fees.

(10)] The temporary workstation shall meet the following minimum conditions:

(a) Be at least 5[6][10] ft. x 10 ft., and be constructed in a manner to separate the body and ear piercer from the public in such a way as to protect the procedure area from contamination, and to prevent accidental exposure of the public to potentially-infectious materials created during ~~[body]~~ piercing.

(b) Have a floor and sides that are smooth, nonporous, and easy to clean;

(c) Have at least 100 foot-candles of light available at the level where the ~~[body]~~ piercing is conducted;

(d) Be supplied with an adequate supply of paper or plastic barrier film to protect equipment and any other item that **needs to[must]** be protected to prevent cross-contamination; **and**

(e) Be equipped with a hand-wash facility ~~that~~[-A hand-wash facility at the minimum] shall be:

1.a. A portable handwashing station; or

b.[2.] A minimum of a one (1) gallon container with a lever-type spigot, filled with warm potable water that:

(i)[a.] Is placed at least thirty (30) inches off the floor to allow for easy use;

(ii) Is[b.] supplied with a bucket to catch the wastewater; and

(iii)[c.] Has a minimum reserve of five (5) gallons of warm potable water available; and[d.]

2. Is[3.] supplied with:

a.[Consist of] Liquid [antibacterial or antimicrobial] soap; and

b.[Single use paper towels from a sanitary dispenser.

~~(6)](f)]~~, and an insulated five (5) gallon container with a lever-type spigot, filled with warm potable water 101-120 °F, and a bucket to catch the wastewater. The water container shall be placed at least thirty (30) inches off the floor to allow for easy use, and shall be filled regularly to ensure an adequate supply of warm water for hand washing;

(e)] Waste water shall be disposed of into a public sewerage system, if available. If a public sewerage system is not available, disposal shall be made into a private system designed, constructed, and operated pursuant to the requirements of ~~[the]~~ 401 KAR Chapter 5 and 902 KAR Chapter 10]; and

(f) Shall be supplied with an adequate supply of paper or plastic barrier film to protect equipment and any other item that must be protected to prevent cross-contamination].

Section 15. Inspection of Studios. (1) The cabinet or the[.] ~~[or-the]~~ local or district health department shall inspect each body piercing studio at least twice per year and each ear piercing studio once per year and shall make as many additional inspections and reinspections as are necessary for the enforcement of this administrative regulation.

(2)(a) The cabinet or the[.] ~~[or-the]~~ local or district health department inspector shall record the inspection findings[in writing] for body piercing studios on an inspection report form DFS-342, incorporated by reference in 902 KAR 45:065.

(b)[- provided for that purpose and which shall constitute a written notice.]

The inspection report form shall:

1. Summarize the requirements of this administrative regulation; and [shall]

2. Set forth a weighted point value for each requirement.

(3) The rating score of the studio shall be the total of the weighted point value for all violations, subtracted from 100.

(4) The inspector shall provide the original [of the] inspection report to the certificate holder or [his] designee. The findings shall:

(a) Set forth the specific violations if found; and

(b) Establish a [specific and reasonable] period of time for the correction of the violations specified, pursuant to the [following] provisions established in this paragraph.[-]

1. If the rating score of the studio is eighty-five (85) or more, all violations of one (1) and two (2) point weighted items shall be corrected[as soon as possible and] before the next routine inspection.

2. If the rating score of the studio is at least seventy (70) and not more than eighty-four (84), all violations of one (1) and two (2) point weighted items shall be corrected [as soon as possible and] within a period not to exceed thirty (30) days.

3. Regardless of the rating score of the studio, all violations of three (3) or four (4) point weighted items shall be corrected within[a time specified by the cabinet and within] ten (10) days.

4. If the rating score of the studio is less than seventy (70), the studio shall be issued a notice of intent to suspend the studio certification. The certification shall be suspended within ten (10) days after receipt of the notice unless a written request to an administrative conference is filed with the local or district health department within the ten (10) day period.

(5)(a)(3) The cabinet or local health department inspector shall record the findings[in writing] for ear piercing studios on inspection report form DFS-253[-, provided for that purpose and shall constitute a written notice].

(b) The inspection report form shall summarize the requirements of this administrative regulation.

(c) The inspector shall provide the original of the inspection report to the certificate holder or[his] designee.

(d) The findings shall set forth the specific violations if found.

(e) All violations shall be corrected within twenty-four (24) hours.

(6)(4) Notices provided for under this administrative regulation shall be deemed to have been properly served if the original[of the] inspection report form or other notice has been delivered personally to the certificate holder or person in charge, or the notice has been sent by registered or certified mail, return receipt requested, to the last known address of the certificate holder.

(7)(5) Failure to comply with any notice issued pursuant to the provisions of this administrative regulation may result in suspension or revocation of the studio certificate or the individual's registration.

(8) A(6) temporary or[and] mobile studio[studios] shall correct any violative conditions within twenty-four (24) hours.

Section 16. Suspension of Studio Certificates or Individual's Registration. (1) The studio certificate or the individual's registration shall be suspended immediately upon notice to the holder if:

(a)[if] The cabinet or the[,][or the] local or district health department has reason to believe that an imminent public health hazard exists;

(b)[- if] The studio certificate holder or registered individual has interfered with the cabinet or the local or district health department in the performance of its duties; or

(c)[if] An inspection of a studio reveals a rating score of less than sixty (60).

(2)[- the certificate or the individual's registration shall be suspended immediately upon notice to the holder.

If this occurs,] The studio certificate holder or individual registration holder whose certificate or registration has been suspended may request an administrative hearing[conference] in accordance with 902 KAR 1:400[Section 19(2) of this administrative regulation. The conference shall be granted as soon as practical and before ten (10) days.

(2) In all other instances of a violation of the provisions of this administrative regulation, the cabinet or the local or district health department shall serve on the certificate holder or registered individual a written notice specifying the violation and shall afford

the certificate holder or registered individual a reasonable opportunity for correction].

(3) The cabinet or the[,][or the] local or district health department shall notify, in writing, the studio certificate holder or registered individual who fails to comply with a written notice issued under the provisions of this section, that the studio certificate or individual's registration shall be suspended at the end of ten (10) days following service of this notice unless a request for an administrative hearing[conference] is requested.

(4)[Section 17. Reinstatement of Suspended Certificates or an Individual's Registration.] A person whose studio certificate or individual registration has been suspended may, at any time, make application for a reinspection for the purpose of reinstatement of the certification or registration.[The application for reinstatement shall be submitted on form DFS-215, provided by the cabinet. Within ten (10) days following receipt of an Application for Reinstatement, the cabinet or the local or district health department shall make a reinspection. If the applicant is found to comply with the requirements of this administrative regulation, the certificate or individual's registration shall be reinstated].[-]

Section 17.[18.] Revocation of a Studio Certificate or an Individual's Registration. (1) For serious or repeated violations of any of the requirements of this administrative regulation, or for interference with agents of the cabinet or the[,] [or the] local or district health department in the performance of its duties, a studio certificate or an individual's registration may be permanently revoked.

(2) Prior to this action, the cabinet or the[,][or the] local or district health department shall notify the studio certificate holder or registered individual, in writing, stating the reasons for which the studio certification or registration is subject to revocation and advising that the studio certification or registration shall be permanently revoked at the end of ten (10) days following service of the notice, unless a request for an administrative hearing[conference] is filed with the cabinet by the certification or registration holder within the ten (10) day period.

(3) A studio certification or individual registration may be suspended for cause pending its revocation or an administrative hearing[conference] relative to the revocation.

Section 18.[19.] Appeals. (1) A certificate or registration holder or an applicant aggrieved by a decision of the cabinet or the[,][or] local or district health department may request[either] an administrative hearing in accordance with 902 KAR 1:400[conference or an administrative hearing. The request shall be submitted within ten (10) days of receipt of a written notice of:

(a) A violation;

(b) Suspension or revocation of a certificate or individual's registration;

(c) Denial to renew a certificate or individual's registration; or

(d) Denial of an initial application for a certificate or individual's registration.

(2) Administrative conference. An administrative conference shall be conducted in accordance with 902 KAR 1:400, Administrative hearings, with the following exceptions:

(a) The conference shall be less formal than an administrative hearing;

(b) The matter at issue shall be discussed before a representative of the Department of Public Health or the local or district health department; and

(c) Participants in the discussion shall be:

1. An agent of the cabinet or the local or district health department and;

2. The certificate holder, individual registered, or the applicant;

(d) A request for a conference shall be:

1. In writing; and

2. Submitted or addressed to the local or district health department that issued or gave notice of the violation, suspension, or revocation; and

(e) A certificate or registration holder or an applicant who

does not agree with final ruling of the conference report issued by the local or district health department may appeal by requesting an administrative hearing.

(3) Administrative hearing.

(a) Conduct of the administrative hearing shall be pursuant to 902 KAR 1:400, Administrative hearings and KRS Chapter 13B; and

(b) A request for an administrative hearing shall be:

1. In writing;

2. Submitted or addressed to the Commissioner, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621; and

3. Accompanied by a copy of the notice of violation, notice to suspend or revoke, letter denying an application, or the conference hearing report].

Section 19.[20.] Incorporation by Reference. (1) ["DFS-253, "Ear Piercing Studio Inspection Report", (f)Rev. 2/19.0] is incorporated by reference The following material is incorporated by reference:

(a) DFS-200, Application for Studio Certification (Rev. 7-01);

(b) DFS-303, Application for Registration (Rev. 7-03);

(c) ~~DFS-342, Tattoo and Body Piercing Studio Inspection Report (Rev. 6-03);~~

(d) DFS-214, Enforcement Notice (Rev. 8-96);

(e) DFS-212, Request for Conference (Rev. 10-96);

(f) DFS-213, Notice of Conference (Rev. 8-96);

(g) DFS-215, Application for Reinstatement (Rev. 2-95); and

(h) DFS-253, Ear Piercing Studio Inspection Report (Rev. 05-04)].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Public Health, Division of Public Health Protection and Safety, Food Safety Branch, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

JEFFREY D. HOWARD, JR., M.D., Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: July 12, 2019

FILED WITH LRC: July 15, 2019 at 10 a.m.

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746, fax 502-564-7091, CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Julie Brooks: (502) 564-3970; julied.brooks@ky.gov or Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for the: registration and certification process for a body piercing or ear piercing studio; registration process for an individual performing body piercing or ear piercing; studio owners responsibilities; studio and workstation design, and plumbing requirements for the studio; sanitation of the studio and sterilization of piercing equipment; body piercing and ear piercing procedures, including the requirements for body piercing or ear piercing a minor; registration and operating procedures for a mobile or temporary piercing studio; studio inspection process; and opportunity for an administrative hearing should a studio certificate or individual registration be subject to suspension or revocation.

(b) The necessity of this administrative regulation: The cabinet is authorized to promulgate administrative regulations regarding the health and cleanliness of places of business for tattooing and body piercing; the sterilization of equipment for tattooing and body piercing; procedures that will prevent the spread of disease or infection during a tattoo or body piercing procedure; procedures for performing tattooing or body piercing on minors with parental consent; and any other regulation that may be necessary to protect the public and properly administer the program requirements. This administrative regulation

establishes the requirements required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.760 requires the registration of nonmedical personnel who engage in the business of tattooing or body piercing, or both. This administrative regulation outlines the registration process for body piercing and ear piercing studios and for individuals who engage in the act of body piercing and ear piercing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements for operating a body piercing or ear piercing studio.

(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 amends several defined terms for clarity, and removes terms not used in the body of the regulation; adds the requirement that an individual registering as a body piercer or ear piercer complete bloodborne pathogen training; outlines the studio registration process for a permanent studio, a mobile studio and a temporary studio; updates the disinfection and equipment sterilization process; and further clarifies requirements for a notarized statement when a minor is seeking body piercing without a parent or legal guardian present. The fees associated with operating a body piercing or ear piercing studio, and the individual registration have been added to this administrative regulation. The local health department will need to be notified should there be an incident or accident that results in exposure to blood or body fluid.

The Amended After Comments version of this administrative regulation updates the definitions for autoclave, disinfectant, handwashing, and sterilization; specifies that a studio that uses all disposable products is exempt from the clean room and autoclave requirements; updates the record keeping procedures to allow for more modern procedures; updates the standard for jewelry; and revises the requirements for a temporary event license and workstation size. Additional changes to comply with the drafting and formatting requirements of KRS Chapter 13A and to provide clarity were made throughout the administrative regulation.

(b) The necessity of the amendment to this administrative regulation: House Bill 327, enacted during the 2018 legislative session, amended KRS 211.760 by removing the registration fee. This amendment is necessary to add the fee structure for body piercing and ear piercing studio, and body piercer and ear piercer registration to this administrative regulation. This amendment also includes a late payment penalty fee for both the studio and the individual registration should the registration not be renewed timely and is postmarked beyond thirty (30) days after the expiration date. Completion of a bloodborne pathogen training is an industry standard for any individual who is employed in an occupation where contact with blood or body fluids is likely. Because body piercing and ear piercing pose a risk of contact to blood or body fluids this training is necessary to protect the individual performing the piercing and the public. Providing further details to be contained in the notarized statement allowed by statute helps to ensure the parent or legal guardian is fully aware of, and gives consent for, the procedure.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment helps to prevent the spread of disease or infection that could result during a body piercing or ear piercing procedure, and protect the public health, as authorized by KRS 211.760.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in protecting the health of individuals seeking a body piercing or ear piercing as authorized by KRS 211.760 by updating the disinfecting and sterilization processes, ensuring all body and ear piercers are properly registered and have completed bloodborne pathogen training, and requiring health department notification should there be an incident or accident that results in exposure to blood or body fluids.

(3) List the type and number of individuals, businesses,

organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact 112 body piercing studios, 302 body piercers, 125 ear piercing studios, 650 ear piercers, and 120 local health departments and sixty-one (61) district health departments. In addition, this administrative regulation will impact all individuals seeking body piercing or ear piercing.

(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: Individuals currently registered as a body piercer or ear piercer will need to obtain a bloodborne pathogen training that meets the required standard prior to the renewal of their registration. Studio owners will need to ensure each individual working in the studio completes the required training in a timely manner. Studio owners will need to be familiar with the changes to the studio and workstation design, the sanitation and plumbing requirements, as well as the disinfection and sterilization requirements in order to remain in compliance with this regulation. Event organizers who want to offer body or ear piercing during an event will need to be familiar with the applicable sections of this regulation to ensure compliance. Local and district health department staff will need to ensure receipt of the bloodborne pathogen training documentation from the piercer who is renewing their registration, and any new body or ear piercer applying for registration. Local and district health departments may elect to offer the required bloodborne pathogen training and will need to ensure the training is in compliance with 29 C.F.R. 1910.1030. Local and district health department inspectors will need to be familiar with the changes in this administrative regulation and the inspection form.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The current fee for registration for a body piercing or ear piercing studio is twenty (20) dollars. The proposed fee for a studio offering body piercing is being raised to \$400 for a studio with one (1) to four (4) workstations and an additional fifty (50) dollars for each additional workstation. This will result in an increased cost of \$380 or more for the studio. A studio that offers ear piercing only will be assessed a registration fee of \$200 for a studio with one (1) to four (4) workstations and an additional fifty (50) dollars for each additional workstation. This will result in an increased cost of \$180 or more for the studio. A studio owner who does not submit the annual registration timely will be assessed a late payment penalty fee of \$100. The current fee for registration for the individual body piercer or ear piercer is also twenty (20) dollars. This fee is being increased to \$100 which will

result in an eighty (80) dollar increase for each individual. An individual who does not renew their registration timely will be assessed a late payment penalty fee of fifty (50) dollars.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with this administrative regulation studio owners and individuals performing body piercing or ear piercing will be operating under a uniform code and inspection process. In addition, requiring additional information regarding the parent or legal guardians identification helps protect the body piercer and studio owner should someone attempt to falsify their authority to provide consent for the procedure. Studio's and body piercers and ear piercers who are in compliance with this administrative regulation will be offering individuals seeking a piercing a safe and sanitary environment for the procedure.

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

(a) Initially: There will be no additional costs to implement this administrative regulation initially.

(b) On a continuing basis: There will be no additional costs to implement this administrative regulation on an ongoing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds and revenue received from permitting and inspection fees continue to be used to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: An increase in state funding is not necessary to implement this administrative regulation. The fees associated with this administrative regulation are being increased. The current registration fee of twenty (20) dollars is inadequate to offset the costs associated with operating a program for the registration of body and ear piercers, piercing studios, and inspection of piercing studios.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This amendment increases the fees associated with operating a body piercing or ear piercing studio and the individual registration of a body piercer or ear piercer. The administrative cost to the cabinet is approximately \$150 per hour for inspectors of body piercing or ear piercing studios. This cost includes the salary of the inspector, fiscal year 2018 Kentucky Employee Retirement System (KERS) and Federal Insurance Contributions Act (FICA) contributions, and health and life insurance cost, and other indirect costs. The number of workstations has an impact on the length of time required to conduct an inspection. The table below outlines the proposed change in the fee structure for body piercing and ear piercing studios.

	Body piercing studio with one (1) to four (4) workstations	Body piercing studio with more than four (4) workstations	Ear piercing studio with one (1) to four (4) workstations	Ear piercing studio with more than four (4) workstations	Mobile studio	Temporary studio with one (1) to four (4) workstations	Temporary studio with more than four (4) workstations
Avg. Hourly Rate	\$150	\$150	\$150	\$150	\$150	\$150	\$150
Number of hours for inspection	2	Increase by 0.5 hour for each additional workstation	1.5	Increase by 0.5 hour for each additional workstation	1.5	2	Increase by 0.5 hour for each additional workstation
Minimum number of routine inspections	2	2	1	1	1	1	1

VOLUME 46, NUMBER 2– AUGUST 1, 2019

Current Fee Established in KRS 211.760	\$20	\$20	\$20	\$20	\$20	\$20	\$20
Proposed Revised Fees	\$400	\$50 for each additional workstation over four (4)	\$200	\$50 for each additional workstation over four (4)	\$225	\$250	\$50 for each additional workstation over four (4)
Actual expenditure	\$600	\$600+	\$225	\$225+	\$225	\$300	\$300+

The hours required for inspection does not include travel time to and from the establishment. The inspection fee is based on a routine inspection only. It does not include the costs associated with doing follow-up inspections for the correction of identified noncompliance or for complaint investigations. In addition to the time required for inspection, there is staff time dedicated to processing the applications for registration and following up on registrations that were not renewed timely and expired. The addition of the late payment penalty fee will help to offset some of the staff time costs associated with these follow-up activities.

(9) TIERING: Is tiering applied? Tiering is applied. The inspection of a body piercing studio that has one (1) to four (4) workstations takes approximately two (2) hours. A studio that has more than four (4) workstations will take longer to inspect. This results in a higher fee structure when the studio has more than four (4) workstations. In addition, the inspection of an ear piercing studio is not as time consuming as the inspection of a body piercing studio. This results in a lower fee for a studio that performs only ear piercing. A mobile studio will be assessed the higher fee as the inspection frequency and length is equal to a permanent studio.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact local and district health departments as well as the Food Safety Branch in the 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, 211.760, 28 C.F.R. 36.104, 29 C.F.R. 1910.1030.

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? It is estimated that the changes to the fee structure will generate \$75,000 in fees from body piercing studios and body piercers, and \$115,000 from ear piercing studios and ear piercers 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? There is no anticipated change in revenue in subsequent years should the current number of registered studios and individuals remain steady.

(c) How much will it cost to administer this program for the first year? The current cost to administer all programs under the Food Safety Branch within the Division of Public Health Protection and Safety is \$5,524,622. There is no anticipated increase in costs to administer the body piercing and ear piercing inspection program this first year.

(d) How much will it cost to administer this program for subsequent years? There is no anticipated increase in costs to administer the body piercing and ear piercing inspection program in subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative

regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 28 C.F.R. Part 36 – Nondiscrimination on the basis of disability by public accommodations and in commercial facilities under the Americans with Disabilities Act (ADA); and 29 C.F.R. 1910.1030 Occupation Safety and Health Standards.

(2) State compliance standards. KRS 211.760 authorizes the cabinet to promulgate administrative regulations relating to the health and cleanliness of places of business in which tattooing, body piercing or both are performed, procedures to prevent the spread of disease or infection during or relating to tattooing and body piercing procedures, and such other administrative regulations as may be necessary to protect public health.

(3) Minimum or uniform standards contained in the federal mandate. The ADA requires a public accommodation to take the steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently. The federal regulations regarding bloodborne pathogens applies to all occupational exposure to blood or other potentially infectious materials.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements than those required by 28 C.F.R. Part 36 and 29 C.F.R. 1910.1030.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Policy and Operations (Amended After Comments)

907 KAR 1:604. Recipient cost-sharing.

RELATES TO: KRS 205.560, 205.6312, 205.6485, 205.8451, 319A.010, 327.010, 334A.020, 42 C.F.R. 430.10, 431.51, 447.15, 447.20, 447.21, 447.50, 447.52, [447.53,] 447.54, 447.55, 447.56, 447.57[447.59], 457.224, 457.310, 457.505, 457.510, 457.515, 457.520, 457.530, 457.535, 457.570, 42 U.S.C. 1396a, 1396b, 1396c, 1396d, 1396o, 1396r-6, 1396r-8, 1396u-1, 1397aa -1397jj[, 2014 Ky. Acts ch. 117, Part I.G.3.b.(10)]

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6312(5), 205.6485(1), 42 C.F.R. 431.51, 447.15, 447.50-447.90[447.82], 457.535, 457.560, 42 U.S.C. 1396r-6(b)(5)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. KRS 205.6312(5) requires the cabinet to promulgate administrative regulations that implement copayments for Medicaid recipients. This administrative regulation establishes the provisions relating to

Medicaid Program copayments.

Section 1. Definitions. (1) "Community spouse" means the individual who is married to an in-stitutionalized spouse and who:

- (a) Remains at home in the community; and
- (b) Is not:

1. Living in a medical institution;
2. Living in a nursing facility; or

3. Participating in a 1915(c) home and community based services waiver program.

(2) "Copayment" means a dollar amount representing the portion of the cost of a Medicaid benefit that a recipient is required to pay.

(3) "Department" means the Department for Medicaid Services or its designee.

(4) "Dependent child" means a [couple's] child, including a child gained through adoption, who:

- (a) Lives with the community spouse; and

(b) Is claimed as a dependent by either spouse under the Internal Revenue Service Code.

(5) "DMEPOS" means durable medical equipment, prosthetics, orthotics, and supplies.

(6) "Drug" means a covered drug provided in accordance with 907 KAR 23:010 for which the Department for Medicaid Services provides reimbursement.

(7) "Enrollee" means a Medicaid recipient who is enrolled with a managed care organization.

(8) "Federal Poverty Level" or "FPL" means guidelines that are updated annually in the Federal Register by the United States Department of Health and Human Services under authority of 42 U.S.C. 9902(2).

(9) "KCHIP" means the Kentucky Children's Health Insurance Program.

(10) "KCHIP - Separate Program" means a health benefit program for individuals with eligibility determined in accordance with 907 KAR 4:030, Section 2.

(11) "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 by[~~in~~] 42 C.F.R. 438.2.

(12) "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 supplemental security income;

(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.

(13) "Nonemergency" means a condition that[which] does not require an emergency service pursuant to 42 C.F.R. 447.54[447-53].

(14) "Nonpreferred brand name drug" means a brand name drug that is not on the department's preferred drug list.

(15) **"Office visit for behavioral health care" means a visit to a clinician or prescriber in which a:**

(a) Diagnosis of a behavioral health condition is made;

(b) Treatment decision related to the diagnosis of a behavioral health condition is continued; or

(c) Prescription for a behavioral health condition is:

1. Initially issued; or

2. Renewed.

(16) "Preferred brand name drug" means a brand name drug:

(a) For which no generic equivalent exists which has a more favorable cost to the department; and

(b) Which prescribers are encouraged to prescribe, if medically appropriate.

~~(17)~~~~(16)~~ "Preventive service" means:

(a)1. All of the preventive services assigned a grade of A or B by the United States Preventive Services Task Force (USPSTF); or

2. All approved adult vaccines, including their administration, recommended by the Advisory Committee on Immunization Practices;

(b) Preventive care and screening for infants, children, and adults recommended by the Health Resources and Services Administration Bright Futures Program Project; or

(c) Preventive services for women recommended by the Institute of Medicine.

~~(18)~~~~(17)~~ "Recipient" is defined in KRS 205.8451(9).

~~(19)~~~~(18)~~ "Transitional medical assistance" or "TMA" means an extension of Medicaid benefits in accordance with 907 KAR 20:005, Section 5(5).

(20) "Visit" means:

(a)1. An encounter; or

2. A series of encounters that are performed on the same date of service at the same physical location;

(b) Between a recipient or enrollee and a health care provider during which time a covered service is delivered; and

(c) A service that occurs:

1. In person; or

2. Via telehealth if authorized by 907 KAR 3:170.

Section 2. Copayments. (1) The following table shall establish the:

(a) Copayment amounts that a recipient shall pay, unless the recipient is exempt from cost sharing pursuant to Section 3(1) of this administrative regulation; and

(b) Corresponding provider reimbursement deductions.

Benefit	Copayment Amount
Acute inpatient hospital admission	\$50
Outpatient hospital or ambulatory surgical center visit	\$4
[Generic prescription drug]	[\$1]
[Preferred brand name drug]	[\$4]
[Nonpreferred brand name drug]	[\$8]
Emergency room for a nonemergency visit	\$8
DMEPOS	\$4
Podiatry office visit	\$3
Chiropractic office visit	\$3
Dental office visit	\$3
Optometry office visit	\$3
General ophthalmological office visit	\$3
Physician office visit	\$3
Office visit for care by a physician assistant, an advanced practice registered nurse, a certified pediatric and family nurse practitioner, or a nurse midwife	\$3
Office visit for behavioral health care	\$3
Office visit to a rural health clinic	\$3
Office visit to a federally qualified health center or a federally qualified health center look-alike	\$3
Office visit to a primary care center	\$3
Physical therapy office visit	\$3
Occupational therapy office visit	\$3
Speech-language pathology services office visit	\$3
Laboratory, diagnostic, or radiological service	\$3
<u>A Medicaid or KCHIP beneficiary who is younger than nineteen (19) years of age[.]</u>	<u>\$0</u>
Brand name drug	\$4
Generic drug	\$1

VOLUME 46, NUMBER 2– AUGUST 1, 2019

Brand name drug preferred over generic drug	\$1
Pharmacy product class: certain antipsychotic drug	\$1
Pharmacy product class: contraceptives for family planning	\$0
Pharmacy product class: tobacco cessation	\$0
Pharmacy product class: diabetes supplies, blood glucose meters	\$0
Pharmacy product class: Diabetes supplies, all other covered diabetic supplies	\$4 for first fill, \$0 for second fill and beyond, per day
Pharmacy patient attribute: pregnant	\$0
Pharmacy patient attribute: long-term care resident	\$0
Pharmacy patient attribute: under eighteen (18) years of age[.]	\$0
KI-HIPP participant	\$0
Kentucky HEALTH: Medically Frail	\$0
Kentucky HEALTH: Former Foster Care Youth up to 26 years of age	\$0
Kentucky HEALTH: enrollee current on premiums	\$0

(2) The full amount of the copayment established in the table in subsection (1) of this section shall be deducted from the provider reimbursement.

(3) The maximum amount of cost-sharing shall not exceed five (5) percent of a family's income for a quarter.

Section 3. Copayment General Provisions and Exemptions.

(1) A Medicaid or KCHIP beneficiary who is younger than nineteen (19) years of age shall be exempt from the copayment or cost-sharing requirements established pursuant to this administrative regulation.

(2)(a)[(a) Except for a foster care child, a recipient shall not be exempt from paying the eight (8) dollar copayment for a nonpreferred brand-name drug prescription.

(b) A copayment shall not be imposed for a service, prescription, item, supply, equipment, or any type of Medicaid benefit provided to a foster care child.

(b)[(c) Except for the mandatory copayment referenced in paragraph (a) of this subsection,] The department shall impose no cost sharing for an individual or recipient who is exempt pursuant to 42 C.F.R. 447.56.

(c) A provider shall not deny services to a recipient who:
1. Makes less than or equal to 100 percent of the federal poverty level even if the recipient cannot pay any required cost-sharing; or

2. Makes more than 100 percent of the federal poverty level if:

a. The recipient cannot pay any required cost sharing; and

b. The provider does not have a policy that applies to all patients that allows for denial of services upon nonpayment of a cost sharing obligation.[the following:

1. A service furnished to an individual who has reached his or her 18th birthday, but has not turned nineteen (19), and who is required to be provided medical assistance under 42 U.S.C. 1396a(a)(10)(A)(i)(I), including services furnished to an individual with respect to whom aid or assistance is made available under Title IV, Part B (42 U.S.C. 620 to 629i) to children in foster care and individuals with respect to whom adoption or foster care assistance is made available under Title IV, Part E (42 U.S.C. 670 to 679b), without regard to age;

2. A preventive service;

3. A service furnished to a pregnant woman;

4. A service furnished to a terminally ill individual who is receiving hospice care as defined in 42 U.S.C. 1396d(o);

5. A service furnished to an individual who is an inpatient in a hospital, nursing facility, intermediate care facility for individuals

with an intellectual disability, or other medical institution, if the individual is required, as a condition of receiving services in the institution under Kentucky's Medicaid Program, to spend for costs of medical care all but a minimal amount of the individual's income required for personal needs;

6. An emergency service as defined by 42 C.F.R. 447.53;

7. A family planning service or supply as described in 42 U.S.C. 1396d (a)(4)(C); or

8. A service furnished to a woman who is receiving medical assistance via the application of 42 U.S.C. 1396a(a)(10)(A)(ii)(XVIII) and 1396a(aa).

(2) The department has determined that any individual liable for a copayment shall:

(a) Be able to pay a required copayment; and

(b) Be responsible for a required copayment.]

(3) A pharmacy provider or supplier, including a pharmaceutical manufacturer as defined in 42 U.S.C. 1396-8(k)(5), or a representative, employee, independent contractor, or agent of a pharmaceutical manufacturer, shall not make a copayment for a recipient.

(4) A parent or guardian shall be responsible for a copayment imposed on a dependent child under the age of twenty-one (21).

(5)(a) Any amount of uncollected copayment by a provider from a recipient **with income above 100 percent of the Federal Poverty Level at the time of service provision** shall be considered a debt to the provider **if that is the current business practice for all patients.**

(b) Any amount of uncollected copayment by a provider from a recipient with income at or below 100 percent of the Federal Poverty Level at the time of service provision shall not be considered a debt to the provider.

(6)[(a)] A provider shall:

[a][+.] Collect from a recipient the copayment as imposed by the department for a recipient in accordance with this administrative regulation or have a written process for attempting to collect the copayment;

[b][2.] Not waive a copayment obligation as imposed by the department for a recipient; and

(c) Document each attempt to collect the copayment or[3.] collect a copayment at the time a benefit is provided or at a later date not to exceed six (6) months from the date of provision of the service. [(b) Regarding a service or item for an enrollee in which the managed care organization in which the enrollee is enrolled does not impose a copayment, the provider shall not collect a copayment from the enrollee.]

(7) Cumulative cost sharing for copayments for a family with children who receive benefits under Title XXI, 42 U.S.C. 1397aa to 1397jj, shall be limited to five (5) percent of the annual family income.

(8) In accordance with 42 C.F.R. 447.15 and 447.20[447.82], the department shall not increase its reimbursement to a provider to offset an uncollected copayment from a recipient.

Section 4. Premiums for Medicaid Works Individuals. (1)(a) A Medicaid Works individual shall pay a monthly premium that is:

1. Based on income used to determine eligibility for the program; and

2. Established in subsection (2) of this section.

(b) The monthly premium shall be:

1. Thirty-five (35) dollars for an individual whose income is greater than 100 percent but no more than 150 percent of the FPL;

2. Forty-five (45) dollars for an individual whose income is greater than 150 percent but no more than 200 percent of the FPL; and

3. Fifty-five (55) dollars for an individual whose income is greater than 200 percent but no more than 250 percent of the FPL.

(2) An individual whose family income is equal to or below 100 percent of the FPL shall not be required to pay a monthly premium.

(3) A Medicaid Works individual shall begin paying a premium with the first full month of benefits after the month of

application.

(4) Benefits shall be effective with the date of application if the premium specified in subsection (1) of this section has been paid.

(5) Retroactive eligibility pursuant to 907 KAR 20:010, Section 1(3), shall not apply to a Medicaid Works individual.

(6) If a recipient fails to make two (2) consecutive premium payments, benefits shall be discontinued at the end of the first benefit month for which the premium has not been paid.

(7) A Medicaid Works individual shall be eligible for reenrollment upon payment of the missed premium providing all other technical eligibility, income, and resource standards continue to be met.

(8) If twelve (12) months have elapsed since a missed premium, a Medicaid Works individual shall not be required to pay the missed premium before reenrolling.

Section 5. Provisions for Enrollees. A managed care organization ~~shall~~:

~~(1) Shall~~ not impose a copayment on an enrollee that exceeds a copayment established in this administrative regulation; ~~and~~

~~(2) May impose on an enrollee:~~

~~(a) A lower copayment than established in this administrative regulation; or~~

~~(b) No copayment.~~

Section 6. Freedom of Choice. (1) In accordance with 42 C.F.R. 431.51, a recipient who is not an enrollee may obtain services from any qualified provider who is willing to provide services to that particular recipient.

(2) A managed care organization may restrict an enrollee's choice of providers to the providers in the provider network of the managed care organization in which the enrollee is enrolled except as established in:

(a) 42 C.F.R. 438.52; or

(b) 42 C.F.R. 438.114(c).

Section 7. Appeal Rights. An appeal of a department decision regarding the Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

Section 8. Applicability of Title 895 KAR. If eligible for Kentucky HEALTH, an individual subject to this administrative regulation shall also comply with any applicable requirements established pursuant to Title 895 KAR, including 895 KAR 1:010 ~~Effective Date. The cost sharing provisions and requirements established in this administrative regulation shall be effective beginning January 1, 2014.~~

Section 9. Federal Approval and Federal Financial Participation. The department's copayment provisions and any coverage of services established in this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation; and

(2) Centers for Medicare and Medicaid Services' approval.

Section 10. This administrative regulation was found deficient by the Administrative Regulation Review Subcommittee on May 13, 2014.

CAROL H. STECKEL, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: July 8, 2019

FILED WITH LRC: July 11, 2019 at 2 p.m.

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone: 502-564-6746; fax: 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the cost sharing requirements and provisions for the Kentucky Medicaid program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the cost sharing requirements and provisions for the Kentucky Medicaid program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the cost sharing requirements and provisions for the Kentucky Medicaid program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the cost sharing requirements and provisions for the Kentucky Medicaid program.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation synchronize co-pay exemptions with federal regulations, include additional co-pays and categories of co-pays, and prohibit MCOs from waiving or reducing Medicaid copays. The amendments also exempt Medicaid and KCHIP beneficiaries from paying copayments, and update the amount and types of copayments required for beneficiaries to pay. The amendments exempt various types of Kentucky HEALTH beneficiaries, including the medically frail, pregnant women, former foster youth, and individuals who are current on Kentucky HEALTH premiums.

The Amended After Comments version of this administrative regulation defines two new terms "Visit" and "Office visit for behavioral health care". The amendment also clarifies under what circumstances an individual over 100% of the FPL can be denied services for failure to pay a copay, how copay debts can exist and for how long, allows a provider to either collect a copay or have a written process in place for attempting to collect a copay, and requires collection of the copay or documentation of an attempt to collect the copay.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to clarify Medicaid policy relating to copayments and to clarify how certain co-pays should be charged for certain types of visits at certain types of providers.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by implementing a copayment requirement, synchronizing co-payment exemptions with the federal regulations, and updating certain copayments.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by instituting a clear policy on the use of copayments and updating certain copayments.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All Medicaid recipients who are not exempt from cost sharing will be affected by the amendment as well as Medicaid providers for whose services cost sharing is applied. The department estimates that up to 800,000 Medicaid members may be impacted by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Enrollees and recipients

will be required to remit a copayment when accessing a Medicaid service and that requirement cannot be waived or reduced by an MCO. Providers of services for which cost sharing is imposed will be required to impose cost sharing when providing the given service and recipients are responsible for paying cost sharing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Enrollees and recipients will have to pay copayments as listed in this administrative regulation. Providers may experience administrative costs resulting from a Medicaid recipient refusing to pay a copayment obligation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Enrollees and recipients will be able to fully access Medicaid benefits, and providers will be able to charge for services provided.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates no additional costs as a result of the amendments to this administrative regulation.

(b) On a continuing basis: The Department for Medicaid Services (DMS) anticipates no additional costs as a result of the amendments to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching funds from general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding will be necessary to implement the amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is applied in that some Medicaid recipients are exempt (by federal regulation or law) from most cost sharing obligations.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(14), 42 U.S.C. 1396o, 42 C.F.R. 447.50 through 447.90, 42 C.F.R. 447.15 and 447.20, and 42 C.F.R. 438.108

2. State compliance standards. KRS 205.520(3) and KRS 194A.050(1).

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(14) authorizes a state's Medicaid program to impose cost sharing only as allowed by 42 U.S.C. 1396o. 42 U.S.C. 1396o establishes categories of individuals for whom a state's Medicaid program may not impose cost sharing as well as cost sharing and premium limits.

42 C.F.R. 447.50 through 447.60 also establishes limits on cost sharing (based on income of the given Medicaid eligibility group); Medicaid populations exempt from cost sharing (children, pregnant women, institutionalized individuals for example); services exempt from cost sharing (emergency services, family planning services to child-bearing age individuals); prohibition against multiple cost sharing for one (1) service; a requirement that state Medicaid programs do not increase a provider's reimbursement by the amount of cost sharing; and a requirement that managed care organizations' cost sharing must comply with the aforementioned federal regulations.

42 C.F.R. 438.108 establishes that a managed care organization's cost sharing must comply with the federal cost sharing requirements for Medicaid established in 42 C.F.R. 447.50 through 42 C.F.R. 447.90.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or

requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) will be affected by the amendment to this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. Federal regulations 42 C.F.R. 447.50 through 42 C.F.R. 447.90, 42 C.F.R. 447.15 and 447.20, and this administrative regulation authorize the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates no additional costs as a result of the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? The Department for Medicaid Services (DMS) anticipates no additional costs as a result of the amendments to this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Aging and Independent Living Division of Guardianship (Amended After Comments)

910 KAR 2:020. Referral process for adult guardianship.

RELATES TO: KRS 209.020(5), 210.290(3), (4), 387.500-387.990, Chapter 389A

STATUTORY AUTHORITY: KRS 387.600(1), 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 387.600(1) authorizes the Cabinet for Health and Family Services to be appointed as limited guardian, guardian, limited conservator, or conservator to conduct an active guardianship or conservatorship program. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth. This administrative regulation establishes referral requirements for adult guardianship.

Section 1. Definitions. (1) "Adult" is defined by KRS 209.020(4).

(2) "Conservator" is defined by KRS 387.510(1).
 (3) "Court" means a court of competent jurisdiction.
 (4) "Disabled" is defined by KRS 387.510(8).
 (5) "Division" means the Division of Guardianship.
 (6) ~~"Fiduciary Services" means a central office branch under the Division of Guardianship.~~
 (7) ~~"Field Services Branch" means a central office branch under the Division of Guardianship.~~
 (8) "Informal network of support" means:
 (a) A family member;
 (b) A friend;
 (c) A neighbor in the life of the individual needing assistance;
 or
 (d) Another interested person or entity.
 (7)(9) "Inquiry" means an individual or entity requesting information regarding guardianship services.
 (8)(10) "Least restrictive alternatives" means an alternative to guardianship that has been[shall be]~~[have been]~~ exhausted prior to being eligible for state appointment, including ~~[such as]~~:
 (a) Power of attorney;
 (b) Living wills;
 (c) ~~Advance~~Advanced directives;
 (d) Case management;
 (e) Representative payee;
 (f) Curator;
 (g) Trustee;
 (h) Health care surrogate;
 (i) Ex-parte order;
 (j) Emergency protective services;
 (k) Adult protective ongoing services;~~[or]~~
 (l) Informal network of support;or
 (m) Supported decision making.
 (9)(11) "Limited conservator" is defined by KRS 387.510(2).
 (10)(12) "Limited guardian" is defined by KRS 387.510(4).
 (11)(13) ~~"Personal needs" means an individual's need to purchase varied goods such as:~~
 (a) ~~Clothing;~~
 (b) ~~Personal care items; or~~
 (c) ~~Social support items such as:~~
 1. ~~Telephone;~~
 2. ~~Stationery;~~
 3. ~~Books;~~
 4. ~~Snacks; or~~
 5. ~~Occasional outings.~~
 (14) "Protective services" is defined by KRS 209.020(5).
 (12)(15) ~~"Provider" means a facility or entity providing services for a ward such as:~~
 (a) ~~Self;~~
 (b) ~~Caretaker;~~
 (c) ~~Family;~~
 (d) ~~Group home placement;~~
 (e) ~~Hospital;~~
 (f) ~~Psychiatric hospital;~~
 (g) ~~Personal care home; or~~
 (h) ~~Supports for Community Living facility.~~
 (16) "Referral source" means an entity that makes an inquiry of the Division ~~of~~for Guardianship Services such as:
 (a) A member of the general public;
 (b) Adult Protective Services;
 (c) Child Protective Services;
 (d) A family member;
 (e) A medical hospital;
 (f) A jail;
 (g) A psychiatric hospital; ~~[or]~~
 (h) Another interested person or entity;or
 (i) A long-term care facility.
 (13)(17) "Successor guardian" means an individual, agency, or corporation who is appointed to succeed a current guardian removed by a court.
 (14)(18) "Supported decision making" means a model for supporting people with disabilities to make significant decisions and exercise their legal capacity.
 (15) "Ward" is defined by KRS 387.510(15).

Section 2. Referral Process for Individuals Who Are Not Adjudicated.~~[Eligibility.]~~The cabinet shall accept an individual for guardianship if the individual: (1) If a referral source wishes the cabinet to be guardian, conservator, limited guardian, limited conservator, or any combination thereof, the referral source shall first contact the division by phone or in writing.~~[Is an adult;]~~

(2) ~~If~~When the referral source wants to proceed with the referral process the division shall provide, to the referral source, the GF-01 Guardianship Information Form and a cover letter providing instructions on how to submit the completed GF-01.~~[Has a disability or partial disability as determined by a hearing pursuant to KRS 387.580 and 387.740(1);]~~

(3) Upon receipt of the completed GF-01 the division shall review and determine if the referral meets the acceptance criteria as follows:

(a) The individual being referred for guardianship is an adult;

(b) [Has a disability or partial disability as determined by a hearing pursuant to KRS 387.580 and 387.740(1);]

(c) Is a legal resident of the Commonwealth, pursuant to KRS 210.290(2)(a);

(d) Has no capable[available] informal network of support;

(e) Has exhausted all other least restrictive alternatives; [and]

(f) Has no other suitable person or entity available or able [willing] to be the individual's guardian[pursuant to KRS 387.600(1)];

(g) Does not have a history of violent or sexual criminal behavior; and

(h) Upon accepting the referral, the division shall:

1. Complete the AOC-745; and

2. Return the original AOC-745 to the referral source for filing with the District Court in the county of residence.~~(h) Is appointed by a court to be a ward of the cabinet.~~~~[Section 3. Referral, Petition, and Application for Individuals Who Are Not Adjudicated.]~~

(1) ~~If a referral source wishes the cabinet to be guardian, conservator, limited guardian, limited conservator, or any combination thereof, the referral source shall first contact the division by phone or in writing.~~

(2)(a) ~~For individuals who have not been adjudicated disabled, the division shall [refer an inquiry requesting public guardianship to the Division of Protection and Permanency, Adult Protective Services (APS) to determine if there is a protective need.~~

(b) ~~The division shall determine if an inquiry meets acceptance criteria for guardianship through consideration of the following:~~

~~1. Least restrictive alternatives to guardianship have been exhausted;~~

~~2. All options for informal network of support have been explored;~~

~~3. There is a substantiated protective need;~~

~~4. There is a need for protective services;~~

~~5. The individual appears to lack sufficient understanding or capacity to make or communicate an informed choice to:~~

~~a. Manage Personal affairs;~~

~~b. Manage Financial affairs; or~~

~~c. Activities of daily living;~~

~~6. If another individual or entity may be willing and able to serve as guardian or why the individual or entity is unable to serve;~~

~~7. The degree of guardianship that is appropriate to meet the substantiated ongoing protective needs of the individual; or~~

~~8. The positive benefit to the individual that the appointment of a guardian would provide.~~

(3) ~~If the division determines that there is a case for guardianship, the division shall, except for an emergency case, send to the referral source the following within ten (10) working days of the determination:~~

~~(a) A current blank version of an AOC-740, Petition to Determine If Disabled, issued by the Administrative Office of the~~

Courts and available at www.courts.ky.gov;

(b) A current blank version of a GFS-1, Guardianship Information Referral Form; and

(c) A cover letter instructing the referral source to complete and return the forms specified in paragraphs (a) and (b) of this subsection to the division.

(4) If the referral source completes the forms specified in subsection (3)(a) and (b) of this section, the division shall complete, sign, and notarize:

(a) An AOC-745, Application for Appointment for Fiduciary issued by the Administrative Office of the Courts and available at www.courts.ky.gov; and

(b) The AOC-740, Petition to Determine If Disabled specified in subsection (3)(a) of this section.

(5) The division shall return the completed forms specified in subsections (3)(a), (b) and (4) of this section with a cover letter to the referral source instructing the referral source to file the documents with the court.

(6) If the division is notified of a hearing from the court, division staff shall attend the hearing to meet the respondent and gather information concerning the case.]

Section (3)[4]. Guardianship Referral for Individuals Who Have Been Adjudicated Disabled. (1) Within ten (10) working days of a referral, the division shall send to the referral source:

(a) A blank AOC-795, Petition for Relief Modification or Termination, issued by the Administrative Office of the Courts and available at <https://courts.ky.gov/resources/legalforms/LegalForms/795.pdf> <https://courts.ky.gov/resources/legalforms/LegalForms/795.pdf> [www.courts.ky.gov];

(b) The GF-01[GFS-4], Guardianship Information[Referral] Form; and

(c) A cover letter instructing the referral source to:

1. Complete the forms specified in paragraphs (a) and (b) of this subsection, in their entirety; and

2. Submit the completed forms to the division. Incomplete forms shall be returned without action.

(2) The referral source shall complete the forms listed in subsection (1)(a) and (b) of this section and return the forms to the division.

(3) The division shall review the documentation from the referral source[and request any additional information needed for the division] to complete the application process.

(4) If the division accepts the referral, the division shall:

(a) Complete, sign, and notarize an AOC-745, Application for Appointment for Fiduciary, issued by the Administrative Office of the Courts[and available at www.courts.ky.gov], requesting that the cabinet be appointed to serve as successor guardian, conservator, limited guardian, limited conservator, or any combination thereof; and

(b) Return the original, signed AOC-745 to the referral source for filing with the District Court in the county of residence.

(5) The division shall return the forms specified in subsections (1)(a), (b), and (4) of this section with a cover letter instructing the referral source to file the forms with the court.

(6) If the division is notified of a hearing by the court, division staff may attend the hearing to meet the respondent and gather information concerning the case.

(7) If the court requests, division staff attending court shall be sworn in as successor guardian, conservator, limited guardian or limited conservator.

Section (4)[5]. Nonacceptance for a Guardianship Referral.[(4)] If the referral does not meet the[eligibility] requirements of Section 2 and [acceptance criteria in] Section 3[(2)(b)] of this administrative regulation, the division shall notify the referral source in writing within thirty (30) calendar days of receipt of the referral. The referral source[petitioner] may consult with the division for explanation and referral to other services.

[(2) Guardians for disabled adults are appointed pursuant to KRS 387.500 to 387.990.]

Section (5)[(6)].[Opening a Case.

(1)(a) Upon notification of guardianship appointment, the division shall review the Administrative Office of the Court's, AOC-785, Disability Judgment, and AOC-775, Order of Appointment of Fiduciary, or any other legal document issued by the court to ensure the cabinet's authority is clear and concise.

(b) If the information is not clear and concise, the division shall ask the court for clarification following the process established by the individual jurisdiction;

(2)(a) If it is an emergency appointment, the division shall immediately assign the case to guardianship field staff.

(b) If the cabinet has no current involvement with the ward, a cabinet employee such as a nurse consultant, doctor, ombudsman, social worker, or guardianship services staff shall:

1. Contact the ward or provider; and

2. Assess the ward's need within two (2) working days of an emergency guardianship appointment.

(3)(a) If it is not an emergency appointment, the division shall assign the case to guardianship staff within ten (10) working days of notification from the court.

(b) If cabinet has current involvement, the Field Services Branch shall meet the ward and assess his or her needs within:

1. Five (5) working days of case assignment for a ward in a supervised setting; or

2. Thirty (30) working days of case assignment for a ward in a supervised setting by:

a. Visiting the ward to assess current physical condition and needs;

b. Reviewing the ward's records at his or her place of residence; and

c. Consulting with a care provider concerning the ward's care.

(4) Within thirty (30) working days of appointment, the division shall:

(a) Collect and verify names, addresses, and telephone numbers of the ward's relatives and other pertinent contacts;

(b) Determine if the ward has:

1. A will;

2. A burial policy;

3. An end-of-life decision document;

4. Durable power of attorney; or

5. Another power of attorney;

(c) Obtain an original or copy of the ward's wishes if the family has knowledge of the ward's wishes;

(d) Inform the Fiduciary Services Branch of any additional financial information obtained during the assessment;

(e) Secure and provide services as necessary for the protection and well being of the ward and his or her estate;

(f) Make a decision, in consultation with the Fiduciary Services Branch, regarding benefits and financial services; and

(g) Document a face-to-face visit with the ward.

(5) The division shall:

(a) Obtain information regarding assets and liabilities, including an inventory of:

1. Personal property;

2. Real property, including a copy of the deed;

3. A mortgage;

4. A note;

5. A lien and encumbrance;

6. Tax documentation including income tax information;

7. A bank statement;

8. A picture of personal belongings; and

9. A copy of a facility personal needs statement; and

(b) Forward all financial information, including blank checks from the ward's checking account, to the Fiduciary Services Branch.

(6) The division and one (1) additional cabinet employee, if available, shall complete a physical inventory of all personal and real property.

(7) At the direction of the court, the division shall determine if it is in the best interest of the ward to liquidate or surrender a life insurance policy owned by the ward.

(8) Within thirty (30) working days of court notification of the cabinet's appointment authorizing the management or disposal of the ward's assets, the division shall:

(a) Obtain a copy of the deed for any real property owned or co-owned by the ward;

(b) Obtain a copy of a mortgage or lien on the property;

(c) Determine if the ward's real property is inhabited by someone other than the ward; and

(d) Determine if there is a tenant and:

1. Contact the tenant about the cabinet's appointment;

2. Determine if there is a written lease and, if so, request a copy from the tenant;

3. Advise the tenant that a rent payment shall be made payable to CHFS and the name of the ward and mailed to the Fiduciary Services Branch at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621;

4. Advise the tenant of the cabinet's need to make a walk through inspection of the property; and

5. Complete the walk through inspection with the Field Services Branch and one (1) additional cabinet employee, if available.

(9) If the property is vacant, guardianship staff shall visit the ward's property with one (1) additional cabinet employee, if available, to secure the ward's personal and real property.

(10)(a) Unless there is lack of a ward's financial resources, the division shall secure and maintain insurance coverage on any real property.

(b) The division shall notify the court if it is not possible to maintain insurance coverage on any real property.

(11) The division shall contact the Property Valuation Administrator in the county where the real estate is located to determine the property evaluation and to see if taxes are owed and change the address for the ward's tax statement to the appropriate Field Services Branch's office address.

(12) The division shall attach a copy of the inventory of personal property to an event in the electronic case record and file the original inventory in the ward's hard copy case record.

(13) Upon receipt of the following items, the Field Services Branch shall forward the items to the Fiduciary Services Branch by certified mail insuring any negotiable items or items of value for the estimated value as follows:

(a) Any small items of value such as jewelry or coins; and

(b) Original documents related to finances or personal assets such as:

1. A will;

2. A burial policy;

3. Stocks;

4. Bonds;

5. Insurance policy; or

6. Mineral rights ownership.

(14) The Field Services Branch shall document in the ward's case record an item to be transferred to the Fiduciary Services Branch and the disposition of each item.

(15) If a ward is not residing in the ward's home, or a tenant is not residing in the ward's home, the Field Services Branch shall contact a utility company providing services to:

(a) Change the billing address to an appropriate Field Services Branch's office address; and

(b) Request that the utility be disconnected, if appropriate.

(16) The Field Services Branch and Fiduciary Services Branch shall determine whether the property is to be maintained as rental property or to be sold and, if sold, shall follow the provisions of KRS Chapter 389A.

(17) If the ward does not have sufficient liquid assets to meet the ward's needs, the Field Services Branch shall consult with the Fiduciary Services Branch and request the ward's assets be liquidated and deposited into the ward's account.

(18) If the ward has a safety deposit box, the Field Services Branch shall:

(a) Contact the financial institution where the safety deposit box is located;

(b) Review the ward's financial resources and determine if funds are available to drill the safety deposit box if the cabinet

does not have a key;

(c) Relay this information to the Fiduciary Services Branch;

(d) Attend the opening of the safety deposit box with one (1) additional cabinet employee, if available; and

(e) Inventory the box's content.

(19) If the ward does not have funds available to drill the safety box and the cabinet does not have a key, the Field Services Branch shall not pursue opening the safety deposit box.

Section 7. Confidentiality.

(1) The cabinet shall ensure the confidentiality of all records and reports that directly or indirectly identify current or former wards.

(2) Prior to release of information, the cabinet shall use discretion in considering whether:

(a) Disclosure of the information is permissible under federal and state statutes, including the federal Health Insurance Portability and Accountability Act privacy rule as promulgated by the U.S. Department of Health and Human Services at 45 C.F.R. 160 to 164;

(b) The person requesting the information is an authorized representative of a federal, state, or local government agency with a legitimate interest in the ward;

(c) The person requesting the information is a representative of an agency with which the cabinet has an agreement assuring the confidentiality of all shared information and the agency has a legitimate interest in the ward;

(d) Disclosure of the information is necessary and relevant to the issue being addressed such as:

1. Application for benefits;

2. Insurance information;

3. Sale of property;

4. Taxes; or

5. Services;

(e) Disclosure of the information is approved by the ward if the case involves partial guardianship;

(f) Disclosure of the information is beneficial for the ward such as release of information to concerned family members or to a person applying to be appointed as successor guardian;

(g) There is a court order authorizing the release of information; or

(h) There is a subpoena requesting the records.

(3) If the cabinet decides that the request for information does not meet the criteria for disclosing information and the request is specific to the ward's:

(a) Guardianship file, the cabinet shall refer the person requesting information to an open records process; or

(b) Court record, the cabinet shall refer the person requesting information to the District Court having jurisdiction.

(4) General media and publication requests for wards may be made to the cabinet.

(5) The cabinet may grant permission for publication of the ward's name, photograph, or image if:

(a) The ward grants permission;

(b) There is no harm or detrimental effect to the ward; and

(c) The ward is not identified as a ward of the cabinet.

(6)(a) In order to document abuse, neglect, injury, treatment, or for identification purposes, a provider shall seek permission of the cabinet to photograph the ward.

(b) To meet these requirements, the cabinet:

1. May give consent for the photo requests; and

2. Shall ensure the requesting service provider uses photographs only at the discretion of the division.

(7)(a) Requests for a ward's participation in research projects may be made to the cabinet.

(b) The cabinet:

1. Shall not give permission for the ward's participation in any research that is experimental, is a blind study, or involves invasive or intrusive procedures;

2. Shall seek the ward's permission to participate;

3. May give permission for participation in research that consists of a ward interview if the:

a. Cabinet's internal review board has reviewed and

~~approved the research project in accordance with 920 KAR 1:060; and~~

~~b. Ward agrees to participate; and~~

~~4. Shall ensure that any interview of a ward related to a research request terminates immediately if the ward expresses a desire not to continue participation.~~

Section 8.] Incorporation by Reference. (1) "GF-01[GFS-1], Guardianship Information[Referral] Form", edition 09/2018[3/09], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

SHANNON GADD, Commissioner

ADAM MEIER, Secretary

APPROVED BY AGENCY: June 25, 2019

FILED WITH LRC: July 11, 2019 at 2 p.m.

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone: 502-564-6746; fax: 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Phyllis W. Sosa, email: Phyllis.sosa@ky.gov, Phone: (502) 564-6930; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the referral process for adult guardianship/conservatorship.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the referral process for the determination of an acceptable referral and appropriate appointment to the Cabinet for guardianship/conservatorship.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The court is authorized to appoint the Cabinet for Health and Family Services as guardian or conservator to individuals who have been determined to have a disability and are unable to make their own decisions when the provisions of KRS 210.290(2)(a)-(d) have been met. KRS 387.530 provides for the application of a person or entity desiring appointment to file a petition for a determination of disability and appointment. The petition is supposed to be filed by the entity desiring appointment and should not be filed by anyone other than the Department for Aging and Independent Living when the state is to be considered for appointment making the referral process a necessary requirement.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the referral process for those individuals or entities wanting to petition the court for the state to be appointed as guardian or conservator for an individual. This regulation sets out the statutory requirements for least restrictive alternatives to be exhausted, that the individual meets the criteria for state guardianship/conservatorship and assists with the filing of a petition for those that are appropriate for appointment to the state.

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

(a) How the amendment will change this existing administrative regulation: The amendment to 910 KAR 2:020 updates definitions, the website for required court forms, clarifies eligibility for state appointed guardianship/conservatorship, clarifies the referral, petition and application process and establishes a Guardianship Referral Form.

(b) The necessity of the amendment to this administrative regulation: The amendment to 910 KAR 2:020 is necessary for the Cabinet to remain in compliance with revised statutes, to maintain operations and meet the needs of the wards. The

program is currently growing at an alarming rate the amendments help to enforce the provisions of KRS 387.530 that only the department can submit the petition for appointment to the state guardianship program rather than allowing anyone to submit it on the behalf of the department.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment clarifies and establishes standards for the provision of referring individuals to guardianship for determination of program eligibility for filing a petition with the court.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide guidance to Cabinet staff to implement the requirements of the KRS.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Cabinet for Health and Family Services, Department for Aging and Independent Living, Department for Community Based Services and disabled adults that do not meet the eligibility criteria for guardianship, the number of individuals is unable to be determined.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Department will implement the referral process, review all referrals for determination of eligibility and complete the petition for those accepted for the state Guardianship program. The Department for Community Based Services will need to provide the required referral form to the Department for Aging and Independent Living (DAIL) for determination of appropriateness of referral and shall not file a petition for state guardianship without the approval of DAIL.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals that are not appropriate for guardianship will not have a petition filed and they will maintain their rights. DAIL staff will be able to review documentation submitted and make a determination of eligibility. With fewer inappropriate appointments to the Cabinet the costs of operating the programs should reduce but the primary focus is for individuals that are capable of making their own decision will retain their rights.

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

(a) Initially: Initially there are no additional costs to implement this amended regulation, the current annual budget for Guardianship is 8 million dollars, funded 100% through state general funds. The budget is 100% for staffing the program, there are no monies for the provision of services to individuals.

(b) On a continuing basis: There are no additional costs to implement this amended regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Guardianship program is funded 100% through state general funds for the provision of staffing. No funding is provided for services to wards other than their own funds or benefits for which they are eligible.

(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 increased funding is necessary to implement this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees established or increased by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applied since policy is administered the same statewide.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Department for Aging and Independent Living, and the Department for Community Based Services.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 387.600(1), KRS 202A, 202B, 209.990, 210.290(3), (4), 387.97524, 367.97527, 387.500-387.990, 389A.010, 389.015, 20 C.F.R., 416.212, 42 U.S.C. 1382(e)(1)(G)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate additional revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate additional revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? For FY 2019, the program will cost \$8,000,000.00 in state general funds there is no increase in cost to administer the program. It is hoped that with consistently following this administrative regulation the cost of operating the guardianship program will reduce due to a decrease in the number of inappropriate appointments.

(d) How much will it cost to administer this program for subsequent years? In subsequent years, \$8,000,000.00 in state general funds will be required to administer this program. If the Guardianship program continues to operate status quo the cost will continue to increase at an unattainable rate. If the proposed amended regulation is implemented and enforced the costs of the program will hold steady or potentially decrease.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community Based Services

Division of Protection and Permanency

(Amended After Comments)

922 KAR 1:310. Standards for child-placing agencies.

RELATES TO: KRS 2.015, 17.165, 17.500(8), 158.135(1)(c), 189.125, 194A.060, 199.011, 199.430(3), 199.470, 199.492, 199.493, 199.510, 199.520, 199.570, 199.572, 199.590, 199.640, 199.645, 199.650-199.670, 258.015, 258.035, 273.161(8), 311.720(9), 311.840(3), 314.011(5), (7), 503.110(1), 527.100, 527.110, 600.020, 605.090(1), 610.110(6), 610.125, 615.010-615.990, 620.030, 620.090(2), 620.140(1)(d), 620.230(3), Chapter 625, 16 C.F.R. 1219-1220, 45 C.F.R. Parts 160, 164, 1355.34, 8 U.S.C. 1151, 42 U.S.C. 671, 42 U.S.C. 672, 677(a), 14901-14954

STATUTORY AUTHORITY: KRS 194A.050(1), 199.640(5)(a), 605.150(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce those administrative regulations necessary to implement programs

mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.640(5)(a) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations establishing basic standards of care and service for child-caring facilities and child-placing agencies. KRS 605.150(1) authorizes permits the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. This administrative regulation establishes basic standards for child-placing agencies.

Section 1. Definitions. (1) "Adequate supervision" means adult oversight of a child's activities with consideration of the child's past and current:

- (a) Incidents;
- (b) High risk behaviors; and
- (c) Needs.

(2) "Adoption" means the legal process by which a child becomes the child of a person or persons other than biological parents.

(3) "Adoptive home" means a home in which the family has been approved by the child-placing agency to adopt a child.

(4) "Aftercare" means services provided to the child after discharge from a child-placing agency.

(5) "Applicant" means an individual or a family subject to approval by the child-placing agency as a:

- (a) Foster home; or
- (b) Adoptive home.

(6) "Board of directors" is defined by KRS 273.161(8).

(7) "Case management" means a process whereby a state agency or child-placing agency assesses the individualized needs of a child or family, arranges for the provision of services, and maintains documentation of actions and outcomes.

(8) "Child" means:

(a) A child as defined by KRS 199.011(4) and 600.020(9)~~[600.020(8)]~~;

(b) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6) or 620.140(1)(d); or

(c) A person under age twenty-one (21) who meets the exceptions to the age of majority in accordance with KRS 2.015.

(9) "Child with medical complexity" means a child who is determined to have a medical condition pursuant to 922 KAR 1:350, Section 4(1)(b).

(10) "Child-placing agency" is defined by KRS 199.011(6)~~[199.011(7)]~~.

(11) "College or university" means:

(a) An institution accredited by one (1) of the eleven (11) regional accrediting organizations recognized by the U.S. Department of Education, Office of Postsecondary Education;

(b) For a Kentucky institution, one (1) that is licensed by the Kentucky Council on Postsecondary Education or the Kentucky Board for Proprietary Education; and

(c) For an out-of-state institution, one (1) that is licensed in its home state if licensure is required in that state.

(12) "Executive director" means the person employed by the board of directors to be responsible for the overall administration and management of a child-placing agency.

(13) "Foster home" means:

(a) A "foster family home" as defined by KRS 199.011(10) 199.044(9) and 600.020(30) ~~[600.020(28)]~~, if referring to a physical structure; or

(b) Any individual approved as a foster parent by the child-placing agency, if referring to an individual.

(14) "Health professional" means a person actively licensed as a:

(a) Physician as defined by KRS 311.720(12)~~[311.720(9)]~~;

(b) Physician assistant as defined by KRS 311.840(3);

(c) Advanced practice registered nurse as defined by KRS 314.011(7); or

(d) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.

(15) "Home study" means an assessment done on a prospective foster or adoptive home by a social services worker that meets the requirements specified in Section 4(3) of this administrative regulation.

(16) "Independent living program" means a planned program that:

(a) Is licensed by the cabinet and designed to teach a child age sixteen (16) or older life skills that enable a child to become self-sufficient; and

(b) Meets requirements specified in 922 KAR 1:340.

(17) "Independent living services" means services provided to an eligible child, as described in Section 16 of this administrative regulation, to assist the child in the transition from dependency of childhood to living independently.

(18) "Individual treatment plan" or "ITP" means a plan of action developed and implemented to address the needs of a child.

(19) "Mental health treatment" means services provided to an individual determined to have emotional, mental, or behavioral problems.

(20) "Placement" means:

(a) The physical relocation of a child removed from the child's home of origin with a provider of out-of-home services; or

(b) A foster or adoptive home that has been approved by completing an application process, home study, and required preparation.

(21) "Program director" means the person responsible for supervising the day-to-day operation of the program.

(22) "Respite care" means temporary care provided by another individual or family that meets requirements specified in Section 13 of this administrative regulation to **meet the needs of the child or** provide relief to a foster care parent, therapeutic foster care parent, or medically complex foster parent with the expectation that the child shall~~will~~ return to the foster home.

(23) "Sex crime" is defined by KRS 17.500(8).

(24) "Social services" means a planned program of assistance to help an individual move toward a mutual adjustment of the individual and the individual's environment.

(25) "Social services worker" means a person retained by a child-placing agency who meets the qualifications as specified in Section 2(4)(c) of this administrative regulation.

(26) "Supervision plan" means a written supplement to a child's ITP, developed pursuant to Section 6(7)(b)2 of this administrative regulation, that details a child-placing agency's roles and responsibilities to assure adequate supervision of a child in the agency's care, including those roles and responsibilities delegated to a foster home parent.

(27) "Therapeutic foster care" is defined by KRS 158.135(1)(c).

(28) "Therapeutic services" means clinical or supportive services provided to a child with severe emotional or behavioral needs.

(29) "Treatment director" means an individual who meets the qualifications as specified in Section 2(4)(d) of this administrative regulation.

Section 2. Administration and Operation. (1) Licensing procedures.

(a) Licensing procedures for a child-placing agency shall be administered pursuant to 922 KAR 1:305.

(b) An independent living program shall be an optional component of the child-placing agency's license in accordance with 922 KAR 1:340.

(c) A child-placing agency shall obtain accreditation within two (2) years of initial licensure or within two (2) years of acquiring an agreement with the cabinet to provide private child care services, whichever is later. Accreditation shall be from a nationally-recognized accreditation organization, such as:

1. The Council on Accreditation; ~~or~~

2. The Joint Commission on Accreditation for Healthcare Organizations; or

3. The Commission on Accreditation of Rehabilitation Facilities.

(d) The cabinet shall revoke a license if a child-placing agency fails to:

1. Become accredited in accordance with paragraph (c) of this subsection; or

2. Maintain accreditation.

(e) The child-placing agency shall provide proof of accreditation to the Office of Inspector General, Division of Regulated Child Care:

1. Upon receiving initial accreditation; and

2. At the time of annual inspection for re-licensure.

(2) Board of directors. The child-placing agency shall have a board of directors, or an advisory board if the child-placing agency is a privately-held for-profit organization, that shall:

(a) Consist of a minimum of seven (7) members;

(b) Meet at least quarterly;

(c) Cause minutes of the meeting to be taken and kept in written form;

(d) Be responsible for and have the authority to ensure the continuing compliance with the requirements established by this administrative regulation;

(e) Approve a mission statement;

(f) Establish and revise, when necessary, the child-placing agency's:

1. Purpose;

2. Objective;

3. Scope of services to be provided; and

4. Intake policy specifying the type of child to be accepted for care;

(g) Hire, supervise, and annually evaluate the executive director of the child-placing agency; and

(h) Delineate in writing the duties of the executive director.

(3) Executive director.

(a) The executive director shall:

1. Be responsible for the child-placing agency and its affiliates, pursuant to the child-placing agency's written policies and procedures;

2. Oversee all aspects of the child-placing agency; and

3. Report to the board, on a quarterly basis, the following:

a. Evaluation of program services;

b. Measurement of attainment of the objective established pursuant to subsection (2)(f)2 of this section;

c. Staff training; and

d. Incident reports.

(b) The criteria and process of the evaluation required in paragraph (a)3a of this subsection shall be approved by the board annually.

(c) If the executive director is not available on the premises or accessible by telephone, a designated staff person shall be responsible for the day-to-day operation of the child-placing agency.

(4) Staff qualifications.

(a) An executive director shall possess the following qualifications:

1.a. A master's degree from a college or university in any of the following human services fields:

(i) Social work;

(ii) Sociology;

(iii) Psychology;

(iv) Guidance and counseling;

(v) Education;

(vi) Religious education;

(vii) Business administration;

(viii) Criminal justice;

(ix) Public administration;

(x) Child-care administration;

(xi) Nursing;

(xii) Family studies; or

(xiii) Another human service field related to working with families and children; and

b. Two (2) years of work experience in a human services program; or

2.a. A bachelor's degree with a major in a discipline designated in subparagraph 1 of this paragraph; and

b. Four (4) years of work experience in a human services program.

(b) A licensed child-placing agency shall have one (1) member of the social work staff designated as program director who shall hold:

1. A master's degree from a college or university in social work or in a discipline designated in paragraph (a)1 of this subsection; or

2.a. A bachelor's degree from a college or university in social work or in a discipline designated in paragraph (a)1 of this subsection; and

b. At least two (2) years of professional experience in working with a child or family.

(c) A social services worker shall:

1. Be responsible for planning and coordinating services to a child; and

2. Hold at least a bachelor's degree from a college or university in social work or a human services field.

(d) A treatment director shall:

1. Oversee the day-to-day operation of the treatment program, including:

a. Reviewing all client treatment plans;

b. Meeting a minimum of once monthly with each therapist providing treatment to a child placed in the care of the private child-placing agency to discuss the child's progress and individualized treatment plan[Providing face-to-face supervision to therapists under the treatment director's supervision at least twice per month];

c. Remaining accessible to therapists[at all times] to provide consultation; and

d. Reviewing any critical incidents, including debriefs with involved staff;

2. Hold at least a master's degree from a college or university in a human services discipline; and

3. Have at least five (5) years of total experience in mental health treatment, with a minimum of three (3) years of experience in mental health treatment of children with emotional or behavioral disabilities and their families.

(e)1. A child-placing agency contracting for the service of a social services worker not an employee of the child-placing agency shall obtain documentation that the social services worker meets the qualifications in paragraph (c) of this subsection.

2. An agreement for this provision of service shall be on file at the child-placing agency and shall specify the qualifications of the social services worker.

(f) The program director shall supervise social services workers.

(g) A treatment director shall carry out approval and evaluation of services.

(h)1. Social services workers shall not carry a caseload of more than twenty (20) children.

2. If a social services worker carries a caseload of children in some combination of foster care, therapeutic foster care, medically complex foster care, or an independent living program, the allowable caseload for the social services worker shall be determined by:

a. Dividing the number of children in each placement type on the worker's caseload by the maximum caseload for the placement type to derive a percentage;

b. Adding each percentage calculated in clause a. of this subparagraph to derive a sum; and

c. Maintaining the sum derived in clause b. of this subparagraph at or below 100 percent.

(5) Personnel policy.

(a) A child-placing agency shall have and comply with written personnel policies and procedures.

(b) An employee shall:

1. Be at least eighteen (18) years of age;

2. Submit to a criminal background check in accordance with KRS 17.165 and a central registry check in accordance with 922 KAR 1:470; and

3. Submit to a new criminal background check in accordance

with KRS 17.165 and central registry check in accordance with 922 KAR 1:470 once every two (2) years.

(c)1. An employee shall not be alone with a child if a central registry check has not yet been completed as required by 922 KAR 1:470.

2. If a substantiated finding of abuse, neglect, or exploitation of a child has been made against a person, a child-placing agency shall not employ the person or allow the person to volunteer in a position involving direct contact with a child.

3.[2.] The cabinet shall respond to allegations of abuse, neglect, or exploitation of a child in accordance with 922 KAR 1:330 and 922 KAR 1:480.

(d) A current personnel record shall be maintained for an employee that includes the following:

1. Name, address, Social Security number, date of employment, and date of birth;

2. Evidence of qualifications, including degree from a college or university, current registration, certification, or licensure;

3. Record of participation in staff development;

4. Record of performance evaluation;

5. Criminal records and central registry checks pursuant to paragraph (b)2 and 3 of this subsection;

6. Record of a physical exam related to employment, as specified in the child-placing agency's policies and procedures;

7. Personnel action;

8. Application for employment, resume, or contract; and

9. Evidence of personnel orientation.

(e) A child-placing agency shall have an ongoing staff development program under the supervision of a designated staff member.

(f) An employee under indictment, legally charged with felonious conduct, or subject to a cabinet investigation in accordance with 922 KAR 1:330 shall:

1. Be immediately removed from contact with a child; and

2. Not be allowed to work with a child until:

a. A prevention plan has been written and approved by a designated regional cabinet staff;

b. The person is cleared of the charge; or

c. A cabinet investigation reveals an unsubstantiated finding, if the charge resulted from an allegation of child:

(i) Abuse;

(ii) Neglect; or

(iii) Exploitation.

(g) Unless the volunteer is a practicum student, a volunteer who performs a similar function as paid staff described in subsection (4) of this section shall meet the same requirements and qualifications.

(h) Practicum students and volunteers shall submit to a background check and any other mandatory requirements listed in subsection (5)(b) and (c) of this section.

(i) A current personnel record shall be maintained for a practicum student or volunteer that includes the following:

1. Name, address, Social Security number, starting date, and date of birth;

2. Evidence of qualifications if the volunteer performs a similar function as paid staff; and

3. Criminal records and central registry checks pursuant to paragraph (h) of this subsection.

(6) Physical management. If a child-placing agency uses physical management, the agency shall have established guidelines and policies governing the use of physical management that shall be:

(a) Consistent with accreditation standards; and

(b) In accordance with 922 KAR 1:300.

(7) Notifications. A licensed child-placing agency shall provide written notification within one (1) week to the Office of Inspector General, Division of Regulated Child Care when there is a change in the following leadership staff:

(a) Executive director;

(b) Program director; or

(c) Treatment director.

Section 3. Interstate Placement. (1) Prior to accepting a child

from another state or prior to placing a child outside Kentucky, a child-placing agency shall comply with:

(a) KRS 615.030 to 615.040, Interstate Compact on Placement of Children;

(b) KRS 615.010, Interstate Compact for Juveniles; and

(c) 42 U.S.C. 671(a)(23).

(2) A child-placing agency shall comply with subsection (1) of this section if a child placed with the child-placing agency visits or receives respite care in another state for a period to exceed:

(a) Thirty (30) days; or

(b) The child's school vacation period as ascertained from the academic calendar of the school.

(3) If an emergency placement of a child into a licensed child-placing agency is made, the placement source shall be responsible for compliance with KRS 615.030 to 615.040.

Section 4. Evaluation of an Applicant. (1) A child-placing agency's ~~social services~~ staff shall recruit a prospective foster or adoptive home.

(2) A child-placing agency shall:

(a) Complete a home study; and

(b) Approve the home prior to the placement of a child.

(3) Documentation of the home study shall include the following:

(a) A minimum of two (2) home visits for the purpose of conducting:

1. One (1) interview with each of the household members individually to assess each member's attitude toward the placement or adoption of a child; and

2. One (1) family consultation with all household members present to observe the functioning of the applicant's household, including interpersonal relationships and patterns of interaction;

(b) Proof of the applicant's:

1. Identity, such as a federally or state-issued photo identification card;

2. Age of twenty-one (21) years or older, unless an exception is granted pursuant to subsection (4) of this section; and

3. United States citizenship or legal immigrant status as described in 8 U.S.C. 1151;

(c) A statement for each member of the applicant's household that shall:

1. Be signed by a health professional who is not a member of the applicant's household; and

2. Verify that the individual:

a. Is free of a communicable or infectious disease; and

b.] has no illness or condition that would present a health or safety risk to a child placed in the applicant's home, which may include a communicable disease;

(d) A signed statement by a health professional who is not a member of the applicant's household regarding the applicant's physical ability to provide necessary care for a child.

(e)1. All household members shall disclose mental health and substance abuse issues, including any history of drug or alcohol abuse treatment; and

2. The private child placing agency shall require further documentation or evaluation to determine the suitability of the home if there is an indicator of current or past mental health or substance abuse issues;

(f) All adult household members demonstrate functional literacy;

(g) [(e)] Verification that the applicant has a source of income separate from:

1. Foster care reimbursement; or

2. Adoption assistance;

(h) [(f)] Documentation of references to include:

1. a. The name of three (3) personal references including [who]:

(i) One (1) relative [a. Are not related to the applicant]; and

(ii) Two (2) non-relatives.

b. The references required by clause a. of this subparagraph [(i)] shall:

(i) Be interviewed by the child-placing agency staff in person or by telephone; or

(ii) [Shall] Provide letters of reference for the applicant; and

2. Two (2) credit references or a credit report;

(j) [(g)] Verification that the applicant's financial stability has been assessed and approved in accordance with a child-placing agency's written policies and procedures;

(j) [(h)] Documentation of an in-person or telephone interview with each adult child of the applicant, who does not live in the applicant's home, regarding the applicant's parenting history unless a documented exception exists and is approved by the program director due to inaccessibility;

(k) [(i)] If applicable, verification from the applicant regarding a:

1. Previous divorce;

2. Death of a spouse; or

3. Present marriage;

(l) [(j)] If the applicant does not have custody of the applicant's own child:

1. A copy of a visitation order, if applicable;

2. A copy of a child support order, if applicable; and

3. Proof of current payment of child support, if applicable;

(m) [(k)] Proof that the child-placing agency performed background checks on the applicant and any member of the applicant's household as required by [in accordance with criteria established in] 922 KAR 1:490;

(n) [(l)] Documentation that the applicant has access to:

1. Transportation that meets the child's needs, including restraint requirements pursuant to KRS 189.125;

2. School;

3. Recreation;

4. Medical care; and

5. Community facilities;

(o) [(m)] If an applicant or household member shall [will] be transporting a foster child:

1. Proof that the individual possesses a valid driver's license and has automobile or driver's insurance coverage; and

2. Documentation that the applicant or household member shall abide by passenger restraint laws;

(p) [(n)] Documentation that the applicant's home:

1. Does not present a hazard to the health and safety of a child;

2. Is well heated and ventilated;

3. Complies with state and local health requirements regarding water and sanitation; and

4. Provides access to indoor and outdoor recreation space appropriate to the developmental needs of a child placed in the applicant's home;

5. Provides functioning kitchen facilities; and

6. Provides a functioning bathroom, including a:

a. Toilet;

b. Sink; and

c. Bathtub or shower.

(q) [(o)] Verification that the requirements established by this paragraph are being followed.

1. More than four (4) children, including the applicant's own children, shall not share a bedroom;

2. Thorough consideration shall be given to age, gender, and background if children share a bedroom;

3. Children of different genders over the age of five (5) shall not share a bedroom unless an exception has been granted to facilitate the placement of a sibling group or children who are related and share a sibling-like relationship, such as cousins, and no high-risk behaviors are present that would require separation;

4. A bedroom used by a child in the custody of a state agency shall be comparable to other bedrooms in the house; and

5. A foster parent shall not share a bedroom with a child in the custody of a state agency, unless prior approval is obtained from the state agency based on the needs of the child;

(r) [(p)] Verification that an individual bed:

1. Is provided for each child in the home;

2. If the child is under age one (1), is a crib that meets the Consumer Products Safety Commission Standards pursuant to 16 C.F.R. 1219-1220;

3. Is age and size appropriate for the child; and

4. Has a mattress that:
 - a. Meets current Consumer Products Safety Commission Standards in 16 C.F.R. Parts 1632 and 1633;
 - b. Is in good repair; and
 - c. Has a clean, fitted sheet that shall be changed:
 - (i) Weekly; or
 - (ii) Immediately if it is soiled or wet;

(s)(q) Verification that the following are inaccessible to a child:

1. Alcoholic beverages;
2. Poisonous or hazardous materials;
3. Ammunition and firearms in accordance with KRS 527.100 and 527.110;
4. An animal that presents a danger to a child; and
5. Medication unless an exception is granted pursuant to subsection (10) of this section;

(u)(f) Proof that the applicant has:

1. First aid supplies~~[with unexpired dates]~~ available and stored in a place easily accessible by the foster parent;
2. ~~An accessible~~(A) working telephone;
3. A working smoke alarm within ten (10) feet of each bedroom ~~and on each floor of the home~~;
4. A working carbon monoxide detector in a home with gas heating or appliances; and
5. Any household animal vaccinated in accordance with KRS 258.015 and 258.035;

(u)(s) If a business open to the public adjoins the applicant's household, consideration of potential negative impacts on the child and family, including:

1. Hours of operation;
2. Type of business; and
3. Clientele; ~~and~~

(v)(t) ~~Safety precautions related to an accessible swimming pool or body of water, if applicable; and~~

(w)(u) If an applicant was approved to foster or adopt a child by another child placing agency or the cabinet and the applicant's home was closed:

1. Verification of the closure; and
2. A statement to indicate whether the closure was at the request of the applicant or the agency.

(4) Exception to subsection (3)(b)2 of this section shall be granted if the applicant is:

- (a) Between eighteen (18) and twenty-one (21) years of age;
- (b) A relative of the child to be placed in the applicant's home; and
- (c) Able to meet the needs of the child to be placed in the applicant's home.

(5) For each potential applicant evaluated, a child-placing agency shall keep a written record of the findings of the home study and the evidence on which the findings are based.

(6)(a) A child-placing agency shall request written approval from the state agency with custody of the child, for the foster home to provide services as a:

1. Certified provider of Supports for Community Living in accordance with 907 KAR 12:010[4:445];
2. Therapeutic foster care provider for adults in accordance with 907 KAR 12:010[3:030];
3. Certified family child-care home in accordance with 922 KAR 2:100; or
4. Licensed child-care center in accordance with 922 KAR 2:090.

(b) An approved foster home shall not simultaneously be used as a licensed or certified health care or social service provider for a child in the foster home's care.

(7)(a) An employee of the department who provides protection and permanency services shall be considered for approval as~~[prohibited from becoming]~~ a foster parent or respite care provider for a child in the custody of the cabinet if prior approval by the commissioner or designee is granted in writing through the service region administrator in the region of the employment.

(b) If approval is granted, the private child-placing agency shall not place children from within the region of employment

unless:

1. The employee is related to the child; or
2. The employee is determined to be fictive kin as the result of a relationship developed outside of employment prior to the child being placed in the custody of the cabinet~~[, unless the:~~

~~(a) Employee was a foster parent or respite care provider for the child at the time employment with the department in protection and permanency services began; and~~

~~(b) Commissioner approves, in writing, the employee to be a foster parent or respite care provider for the child].~~

(8) An employee of the department who provides protection and permanency services may apply to adopt a child in the custody of the cabinet if the commissioner approves, in writing, the employee to adopt.

(9)(a) A child-placing agency shall develop written policies and procedures regarding employees of the child-placing agency serving as:

1. A foster parent;
2. An adoptive parent; or
3. A respite care provider.

(b) Policies and procedures developed in accordance with paragraph (a) of this subsection shall address the prevention or appearance of:

1. A conflict of interest; or
2. Misuse of influence.

(10) A child-placing agency may make an exception to subsection ~~(3)(s)5~~(3)(q)5 of this section if:

(a) The exception is documented in the ITP of a child placed in the foster or prospective adoptive home;

(b)1. The child is approved by a health professional to self-administer medicine under the supervision of the foster or prospective adoptive parent or other caretaker; or

2. Emergency access to the medication may be necessary to save the child's life, such as in the case of severe allergic reaction or asthma attack; and

(c) Measures are taken to prevent unauthorized access by another child in the same home.

(11) If an applicant is approved as a foster home, adoptive home, or respite care provider by a state agency or another child-placing agency, a child-placing agency shall:

(a) Conduct a home study in accordance with subsections (2), (3), and (5) of this section; and

(b) Document that the applicant meets training requirements in accordance with Section 5, 7, 10, 13, or 18 of this administrative regulation. If an applicant lacks training in accordance with this paragraph, the child-placing agency shall, prior to placement of a child in the home:

1. Provide training in accordance with Section 5, 7, 10, 13, or 18 of this administrative regulation; or
- 2.a. Develop an individualized curriculum to fulfill unmet training needs; and
- b. Document the applicant's compliance with the individualized curriculum.

Section 5. Orientation and Preparation of a Foster Home. (1) With the exception of training requirements specified in 922 KAR 1:495 for a foster home that cares for a child in the custody of the cabinet, a child-placing agency shall:

(a) Develop and maintain an orientation and preparation curriculum to be kept on file;

(b) Provide a minimum of twenty-four (24) hours of orientation and preparation to a prospective foster parent, to include the following:

1. Child-placing agency program description with mission statement;
2. Information about the rights and responsibilities of the home;
3. Background information about the foster child and the child's family, including information in accordance with KRS 605.090(1)(b);
4. An example of an actual experience from a foster parent that has fostered a child;
5. Information regarding:

- a. The stages of grief;
 - b. Identification of the behavior linked to each stage;
 - c. The long-term effect of separation and loss on a child;
 - d. Permanency planning for a child, including independent living services;
 - e. The importance of attachment on a child's growth and development and how a child may maintain or develop a healthy attachment;
 - f. Family functioning, values, and expectations of a foster home;
 - g. Cultural competency;
 - h. How a child enters and experiences foster care, and the importance of achieving permanency; and
 - i. The importance of birth family and culture and helping children leave foster care;
6. Identification of changes that may occur in the home if a placement occurs, to include:
- a. Family adjustment and disruption;
 - b. Identity issues; and
 - c. Discipline issues and child behavior management; and
7. Specific requirements and responsibilities of a foster parent; and
- (c) Maintain an ongoing foster home preparation and training program that:
- 1. Provides a minimum of six (6) hours of foster home training annually; and
 - 2. Maintains a record of preparation and training completed.
- (2) Training provided in accordance with 922 KAR 1:495 may be utilized for a foster home that does not care for a child in the custody of the cabinet if the governmental agency or individual with oversight of the child approves the training.

Section 6. Placement, Case Management, and Supervision of a Child in a Foster Home, Medically Complex Foster Home, or Therapeutic Foster Care Home. (1) A child-placing agency shall:

- (a) Place a child only in an approved foster home; and
 - (b) Keep a child who has been committed to the Department of Juvenile Justice for the commission of a sex crime in a separate foster home or prospective adoptive home from a child committed to the cabinet in accordance with KRS 605.090(1), 620.090(2), and 620.230(3).
- (2) A child-placing agency shall select a foster home for a child based upon the individual needs of the child, including:
- (a) The child's assessment and ITP, if available;
 - (b) Any information concerning the child's needs in placement; and
 - (c) Measures to support the safety of the child, such as a placement restriction in accordance with subsection (1)(b) of this section or another child in the foster home.
- (3) A child shall participate in the intake process to the extent that the child's age, maturity, adjustment, family relationships, and the circumstance necessitating placement justify the child's participation.
- (4) Unless an exception is granted pursuant to subsection (6) of this section, the number of children residing in a foster home shall not exceed six (6)~~five (5)~~, including the foster parent's own children living in the home.
- (5) Unless an exception is granted pursuant to subsection (6) of this section, a child-placing agency shall have a maximum of two (2) children under two (2) years of age placed in the same foster home at the same time, including children placed in the custody of the cabinet and the foster parent's own children.
- (6)(a) Justification for an exception to subsection (4) or (5) of this section shall be:
- 1. Documented in the foster parent file; and
 - 2. Authorized by the program director because a plan is in place with the foster parent to ensure that the needs of all children in the home are met.
- (b) For a foster home that cares for a child in the custody of the cabinet, the child-placing agency shall submit a DPP-112B, Private Child-Placing Agency Placement Exception Request, for an exception to subsection (4) or (5) of this section to designated cabinet staff prior to the placement documenting:

- 1. The reason the placement is in the best interest of the child; and
 - 2. Specific support services to be provided.
- (c) The number of foster children residing in a foster family home may exceed the limitation established in subsection (4) or (5) of this section with documentation on the DPP-112B in order to allow:
- 1. A parenting youth in foster care to remain with the child of the parenting youth;
 - 2. Siblings to remain together;
 - 3. A child with an established meaningful relationship with the family to remain with the family;
 - 4. A family with special training or skills to provide care to a child who has a severe disability; or
 - 5. Other circumstances noted in the DPP-112B and approved by the service region administrator or designee.
- (d) If an exception to subsection (4) or (5) of this section is necessary for a placement to occur outside of normal business hours:
- 1. The child-placing agency shall verbally provide all information contained within the DPP-112B to designated cabinet staff prior to the placement;
 - 2. A verbal approval from designated cabinet staff shall be required prior to the placement occurring; and
 - 3. The completed DPP-112B shall be submitted on the first business day following placement.
- (7) A child-placing agency shall:
- (a) Assess a child to be placed in foster care;
 - (b) Within thirty (30) days of a child's placement, develop:
 - 1. An ITP:
 - a. Based upon the individual strengths and needs of the child and, if appropriate, the child's family, which addresses the:
 - (i) Visitation, health, and educational needs of the child;
 - (ii) Child's permanency goals and related objectives;
 - (iii) Methods for accomplishing each goal and objective; and
 - (iv) Designation of an individual or individuals responsible for completion of each goal and objective; and
 - b. With the child and the child's parent:
 - (i) That includes offering the child the opportunity to sign the ITP signifying the child's understanding; and
 - (ii) Unless a circumstance exists which precludes engagement of the child or the child's parent from occurring and is documented in the child's case record; and
 - 2. A supervision plan for the child which:
 - a. Is attached to the child's ITP;
 - b. Identifies the current supervision needs of and expectations for the child based upon the child's recent and past:
 - (i) Incidents;
 - (ii) High-risk behaviors; and
 - (iii) Needs identified in the assessment conducted pursuant to paragraph (a) of this subsection;
 - c. Includes goals and objectives for the child's improvement with tasks assigned to the child-placing agency and foster home parent;
 - d. Is signed and dated by the social service worker and foster home parent; and
 - e. Remains a part of the child's record;
 - (c) Review a child's ITP and supervision plan on a quarterly basis or more frequently as the child's needs or circumstances dictate;
 - (d) Have a written agreement with the foster home stating the:
 - 1. Responsibilities of the:
 - a. Child-placing agency; and
 - b. Foster home; and
 - 2. Terms of each placement;
 - (e) Require a foster home to certify, in writing, that supervision from the child-placing agency or the state agency, which has custody of the child, shall be allowed;
 - (f) Document a placement in the foster home file;
 - (g) Report immediately to the state agency which has custody of the child if there is:
 - 1. A hospitalization or life-threatening accident or illness;

2. An absence without official leave;
3. A suicide attempt;
4. Criminal activity by the child;
5. Death;
6. Possession of a deadly weapon by a child;
7. Change in address;
8. Change in the number of people living in the home; or
9. Significant change in the foster home, such as changes in health or income status of an individual living in the foster home;
- (h) Establish policies and procedures for supervision of a foster home by a worker other than the social services worker assigned to the foster home, who meets qualifications specified in Section 2(4)(c) of this administrative regulation to:
 1. Include:
 - a. Frequency of an in-home visit with the foster parent;
 - b. Means of supervision;
 - c. Methods of supervision; and
 - d. Personnel conducting the supervision;
 2. Ensure a foster child's placement stability and safety; and
 3. Be individualized, as needed, for the:
 - a. Child; or
 - b. Foster home;
- (i) Identify and make available necessary supports to a foster home, including:
 1. A plan for respite care in accordance with Section 13 of this administrative regulation;
 2. Twenty-four (24) hour crisis intervention; and
 3. A foster home support group;
- (j) Assure that a child receives care and services, including independent living services:
 1. In accordance with Section 16 of this administrative regulation; and
 2. As prescribed by the child's needs as assessed in the child's ITP;
- (k) Provide information to a foster parent regarding the behavior and development of the child placed by the child-placing agency;
- (l) Inform the foster parent, in accordance with KRS 605.090(1)(b), of:
 1. Inappropriate sexual acts or sexual behavior of the child as specifically known to the child-placing agency; and
 2. Any behaviors of the child that indicate a safety risk for the placement;
- (m) Document each effort to:
 1. Protect the legal rights of the family and the child; and
 2. Maintain the bond between the child and the child's family, in accordance with the child's permanency plan;
- (n) Assure that a child shall have, for the child's exclusive use, clothing comparable in quality and variety to that worn by other children with whom the child may associate;
- (o) Be responsible for monitoring the child's school progress and attendance;
- (p) Secure psychological and psychiatric services, vocational counseling, or other services if indicated by the child's needs;
- (q) Reassess and document quarterly, in the child's ITP, placement and permanency goals, including independent living services, in accordance with Section 16 of this administrative regulation;
- (r) Conduct and document a face-to-face visit with the child at least once per month; and
- (s) Maintain foster care records in accordance with Section 17 of this administrative regulation.
- (8) Without prior notification to and written authorization from the Kentucky Interstate Compact Administrator, a child shall not be:
 - (a) Placed with a family that normally resides in another state; or
 - (b) Permitted to go with a person to take up residence in another state.
- (9)(a) An approved foster home in use shall be evaluated **at least every three (3) years[on an annual basis]** for compliance with responsibilities listed in the written agreement described in subsection (7)(d) of this section.

- (b) Results shall be recorded in the foster parent file.
- (10) Factors that shall result in a review of a foster home shall include:
 - (a) Death or disability of a family member;
 - (b) Sudden onset of a health condition that impairs a foster parent's ability to care for a child placed in the home;
 - (c) Change in marital status or home address;
 - (d) Sudden, substantial decrease in, or loss of, income;
 - (e) Child birth;
 - (f) Use of a form of punishment that includes:
 1. Cruel, severe, or humiliating actions;
 2. Corporal punishment inflicted in any manner;
 3. Denial of food, clothing, or shelter;
 4. Withholding implementation of the child's ITP;
 5. Denial of visits, telephone, or mail contacts with family members, unless authorized by a court of competent jurisdiction; and
 6. Assignment of extremely strenuous exercise or work;
 - (g) A report of abuse, neglect, or dependency that results in a finding that is:
 1. Substantiated; or
 2. Reveals concern regarding the care of the child;
 - (h) If the foster parent is cited with, charged with, or arrested due to a violation of law other than a minor traffic offense;
 - (i) An incident required to be reported in accordance with subsection (7)(g) of this section and Section 12(6) of this administrative regulation;~~[or]~~
 - (j) Other factors identified by a child-placing agency that jeopardize the physical, mental, or emotional well-being of the child; **or**
 - (k) Failure to meet annual training requirements.**
- (11) The documentation of a review, specified in subsection (10) of this section, shall contain:
 - (a) Identifying information;
 - (b) Current composition of the household;
 - (c) Description of the situation that initiated the review;
 - (d) An assessment of the family functioning to determine if the child's needs are met; and
 - (e) Corrective action that may include a recommendation for closure of the foster home.

Section 7. Orientation and Preparation of a Therapeutic Foster Care Home. (1) A child-placing agency shall maintain the orientation and preparation curriculum on file.

(2) Unless a therapeutic foster care home cares for a child in the custody of the cabinet and is subject to training requirements specified in 922 KAR 1:495, a child-placing agency shall provide a minimum of thirty-six (36) hours of orientation and preparation for a prospective therapeutic foster care parent that shall incorporate the following topic areas:

- (a) Child-placing agency program description with mission statement;
- (b) Information about the rights and responsibilities of the therapeutic foster care home;
- (c) Background information about a foster child and the child's family;
- (d) An example of an actual experience of a therapeutic foster care parent that has fostered a child;
- (e) Stages of grief;
- (f) Behaviors linked to each stage of grief;
- (g) Long-term effects on a child from separation and loss;
- (h) Permanency planning for a child, including independent living services;
- (i) Importance of attachment on a child's growth and development and the way a child maintains and develops a healthy attachment, including attachment disorder and associated behaviors;
- (j) Family functioning, values, and expectations of a therapeutic foster care home;
- (k) Changes that may occur in the home with placement of a child regarding:
 1. Family functioning;
 2. Family adjustment;

3. Identity issues;
4. Discipline issues and child behavior management; and
5. Family disruption;
- (l) Specific requirements and responsibilities of a therapeutic foster care home;
- (m) Behavior management;
- (n) Communication skills;
- (o) Skill teaching;
- (p) Cultural competency;
- (q) Behavior management de-escalation techniques;
- (r) The dynamics of a child who has experienced sexual abuse or human trafficking; and
- (s) The effect of chemical abuse or dependence by the child or the child's biological parent.
- (3) A therapeutic foster care home shall receive:
 - (a) A minimum of twenty-four (24) hours of annual training; or
 - (b) Training in accordance with 922 KAR 1:495 if the home provides care to a child in the custody of the cabinet.
- (4) A child-placing agency that provides therapeutic foster care shall maintain an ongoing therapeutic foster care preparation and training program that:
 - (a) Provides training to meet requirements of subsection (2) of this section; and
 - (b) Maintains a record of preparation and training completed.

Section 8. Additional Requirements for Therapeutic Foster Care. (1) A therapeutic foster care home shall accommodate the needs of a child who is unable to live with the child's own family and who:

- (a) May benefit from care in a family setting; and
- (b) 1. Has clinical or behavioral needs that exceed supports available in a foster home; or
2. Is transitioning from group care as part of the process of returning to family and community.
- (2) Unless an exception is granted pursuant to subsection (3) of this section, the number of children residing in a therapeutic foster care home that does not care for a child in the custody of the cabinet shall be limited to a total of six (6)~~five (5)~~ children, including no more than two (2) therapeutic foster care children.
- (3) Justification for an exception to subsection (2) of this section shall be:
 - (a) Documented in the therapeutic foster care parent's file; and
 - (b) Authorized by the treatment director because a plan is in place with the foster care parent to ensure that the needs of all children in the home are met.
- (4) Unless an exception is granted pursuant to subsection (5) of this section, the number of children residing in a therapeutic foster care home that cares for a child in the custody of the cabinet shall be limited to a total of four (4) children, including no more than two (2) therapeutic foster care children.
- (5) To make a request for an exception to subsection (4) of this section, a child-placing agency shall follow the procedure set forth in Section 6(6)(b) of this administrative regulation.
- (6) A treatment director shall supervise a treatment team and shall participate in the development of the ITP and the quarterly case consultation.
- (7) A child-placing agency shall provide or contract, as specified in KRS 199.640(5)(a)2, for therapeutic services individualized for the child, as needed, at least two (2) times per month.
- (8) A therapeutic foster care parent shall be responsible for:
 - (a) Participation in the development of an assessment, ITP, and supervision plan as specified in Section 6(7) of this administrative regulation;
 - (b) Facilitation of in-home services provided by a social services worker at least two (2) times per month;
 - (c) Adequate supervision of the child and implementation of components of the ITP, including daily log documentation as specified in the ITP;
 - (d) Working with the child-placing agency to promote stability and avoid disruption for the child; and
 - (e) Working with the child-placing agency in the development

of a plan for the smooth transition of the child to a new placement, if there is a disruption.

(9) Except for a child who is the legal responsibility or in the custody of the cabinet or the Department of Juvenile Justice, a child-placing agency shall be responsible for:

(a) A preplacement conference, in a nonemergency placement, for the purpose of:

1. Developing permanency goals and a discharge plan for the child, including independent living services;
 2. Developing a plan for the implementation of services;
 3. Identifying the treatment goals; and
 4. Developing a behavior management plan if applicable; and
- (b) Inviting and encouraging attendance to the preplacement conference by:

1. The prospective therapeutic foster care home;
2. A respite care provider approved in accordance with Section 13(4) of this administrative regulation;
3. The child, if appropriate; and
4. The child's family.

(10) The social services worker shall:

(a) Have a face-to-face visit with a child and therapeutic foster care parent on the day of the child's placement;

(b) Have another face-to-face visit with the therapeutic foster care parent or child within ten (10) calendar days of the child's placement;

(c) Telephone or visit, on a weekly basis, at least one (1) of the therapeutic foster care parents of each child on the therapeutic foster care worker's caseload;

(d) Visit a therapeutic foster care parent a minimum of two (2) times a month with at least one (1) visit being in the foster home;

(e) Visit the foster child face-to-face a minimum of two (2) times a month with at least one (1) visit in the therapeutic foster care home and one (1) visit outside the foster home;

(f) Carry a caseload of not more than twelve (12) therapeutic foster care children, taking into account:

1. Required responsibilities other than the case management of a child in foster care;

2. Additional support, contact, and preparation needed by a therapeutic foster care home, due to the extent of the needs of the child served;

3. The intensity of services provided to the child and the child's family; and

4. Caseload expectations established in Section 2(4)(h) of this administrative regulation;

(g) Conduct a quarterly case consultation, including the:

1. Foster home;
 2. Child's public agency worker;
 3. Child-placing agency treatment director and social services worker; and
 4. Child and the child's family of origin, to the extent possible;
- (h) Identify the support needed by the foster family, including

a:

1. Plan for respite care as provided in Section 13 of this administrative regulation;

2. Plan for twenty-four (24) hour on-call crisis intervention; and

3. Foster home support group;

(i) Recommend and prepare an aftercare plan for a child, prior to discharge from therapeutic foster care, to ensure a successful transition; and

(j) Document a quarterly case consultation and revision to a child's ITP as determined by the case consultations.

(11) A child-placing agency shall:

(a) Meet requirements specified in Section 6(1) through (3) and (7) through (11) of this administrative regulation; and

(b) Annually reevaluate a therapeutic foster care home in accordance with Section 15 of this administrative regulation.

Section 9. Child With Medical Complexity. (1) A child with medical complexity shall be:

(a) A child in the custody of the cabinet; and

(b) Determined by the cabinet to meet the child with medical complexity requirements of 922 KAR 1:350.

(2) The decision to accept a child with medical complexity shall be optional to a child-placing agency.

(3) If a child placed with a child-placing agency in a non-medically complex foster home becomes medically complex in accordance with subsection (1) of this section, the Division of Protection and Permanency director or designee and child-placing agency shall reevaluate the placement and ensure the child's needs can be met.

Section 10. Preparation of a Medically Complex Foster Home. (1) A child-placing agency shall create a medically complex foster home only if the child-placing agency has:

(a) Staff meeting qualifications established in Section 2(4) of this administrative regulation supervising the home, who have received medically complex training in accordance with subsection (2)(b) and (c) of this section; and

(b) A liaison established with the cabinet.

(2) A foster home shall be approved to care for a child with medical complexity by a child-placing agency if the foster home:

(a) Includes a primary caregiver who is not employed outside the home, unless approved in writing by designated cabinet staff;

(b) Completes training as specified in 922 KAR 1:495, Section 4;

(c) Maintains certification in:

1. Infant, child, and adult CPR; and

2. First aid;

(d) Is located within a:

1. One (1) hour drive of a medical hospital with an emergency room; and

2. Thirty (30) minute drive of a local medical facility; and

(e) Is evaluated in accordance with Section 4 of this administrative regulation.

(3) If the cabinet determines that a child currently in the care of a foster parent approved by the child-placing agency is a child with medical complexity in accordance with Section 9(1) of this administrative regulation, then the cabinet shall prioritize the foster home's enrollment in training as specified in subsection (2)(b) and (c) of this section.

(4) An approved medically complex foster home shall receive ~~annual~~ reapproval, if the foster home:

(a) Annually completes ongoing training as specified by subsection (2)(b) and (c) of this section; and

(b) Continues to meet the requirements in Section 15 of this administrative regulation.

(5) Except for a sibling group or unless approved by designated cabinet staff in accordance with the DPP-112B, ~~no~~ more than four (4) children, including the medically complex foster parent's own children, shall not reside in a medically complex foster home, with no more than two (2) children being medically complex or requiring therapeutic foster care.

(6) Unless an exception is approved by designated cabinet staff in accordance with the DPP-112B, a:

(a) One (1) parent medically complex foster home shall not care for more than one (1) child with medical complexity; and

(b) Two (2) parent medically complex foster home shall not care for more than two (2) children with medical complexity.

(7) If a placement would exceed a limit established by subsection (5) or (6) of this section, a child-placing agency shall request an exception in accordance with Section 6(6)(b) of this administrative regulation.

Section 11. Placement of a Child With Medical Complexity.

(1)(a) In addition to training required in Section 10(2)(b) and (c) of this administrative regulation, an approved medically complex foster parent shall receive training on how to care for the specific needs of a child with medical complexity placed in the home.

(b) The training shall be conducted by a health professional or a previous caregiver that was trained by a health professional.

(2) Unless an exception is granted by the director of the Division of Protection and Permanency or designee pursuant to subsection (3)(a) of this section, a child with medical complexity shall be placed in an approved medically complex foster home.

(3) A child-placing agency shall:

(a) Request an exception to subsection (2) of this section in accordance with Section 6(6)(b) of this administrative regulation;

(b) Provide case management services:

1. As described in Section 6(1) through (3), and (7) through (11) of this administrative regulation; and

2. In accordance with the child's:

a. Health plan developed by designated cabinet staff;

b. ITP; and

c. Supervision plan;

(c) Support the child's health plan developed by designated cabinet staff; and

(d) Conduct a face-to-face visit with the child at least two (2) times per month.

Section 12. Expectations for a Foster Home, Therapeutic Foster Care Home, or Medically Complex Foster Home. An approved foster parent, medically complex foster parent, or therapeutic foster care parent shall:

(1) Provide a child placed by the child-placing agency with a family life, including:

(a) Nutritious food;

(b) Clothing comparable in quality and variety to that worn by other children with whom the child may associate;

(c) Affection;

(d) Life skills development [including demonstrating functional literacy];

(e) Recreational opportunities;

(f) Education opportunities;

(g) Nonmedical transportation;

(h) Opportunities for development consistent with the child's religious, ethnic, and cultural heritage;

(i) Adequate supervision; and

(j) Independent living services for a child twelve (12) years of age or older; and

(k) Refraining from smoking in the direct presence of a child for whom their physician recommends, in writing, a smoke-free environment.

(2) Permit a child-placing agency and staff of a state agency to visit the home;

(3) Share with the child-placing agency and, if applicable, staff of the state agency which has custody of the child, information about the child placed by the child-placing agency;

(4) Notify the child-placing agency fourteen (14) calendar days prior if the home is approved to provide foster or adoptive services through another private child-placing agency or the cabinet;

(5) Notify the child-placing agency prior to:

(a) Leaving the state with a child placed by the child-placing agency for more than twenty-four (24) hours; or

(b) Allowing a child placed by the child-placing agency to be absent from the foster home for more than twenty-four (24) hours;

(6) Report immediately to the child-placing agency through which the child is placed if there is:

(a) A hospitalization or life-threatening accident or illness;

(b) An absence without official leave;

(c) A suicide attempt;

(d) Criminal activity by the child;

(e) Death of any member in the household;

(f) A child's possession of a deadly weapon;

(g) Change in address;

(h) Change in the number of people living in the home;

(i) Significant change in circumstance in the foster home; or

(j) Failure of the foster child or foster parent to comply with the supervision plan;

(7) Cooperate with the child-placing agency if child-placing agency staff arranges for a child, placed in the foster home by the child-placing agency, and the child's birth family regarding:

(a) Visits;

(b) Telephone calls; or

(c) Mail;

(8) Surrender a child or children to the authorized

representative of the child-placing agency or the state agency, which has custody of the child, upon request;

(9) Keep confidential all personal or protected health information as shared by the cabinet or child-placing agency, in accordance with KRS 194A.060 and 45 C.F.R. Parts 160 and 164, concerning a child placed in a home or the child's birth family;

(10) Support an assessment of the service needs, including respite care, and the development of an ITP, including the supervision plan, of a child placed by the child-placing agency;

(11) Participate in a case planning conference concerning a child placed by the child-placing agency;

(12) Cooperate with the implementation of the permanency goal established for a child placed by the child-placing agency;

(13) Ensure that a child in the custody of the cabinet receives the child's designated per diem allowance;

(14) Facilitate the delivery of medical care to a child placed by the child-placing agency as needed, including:

(a) Administration of medication to the child and daily documentation of the administration; and

(b) Physicals and examinations for the child;

(15) Treat a child placed by the child-placing agency with dignity;

(16) Report suspected incidents of child abuse, neglect, and exploitation in accordance with KRS 620.030; and

(17) Comply with general supervision and direction of the child-placing agency or, if applicable, the state agency that has custody of the child, concerning the care of the child placed by the child-placing agency.

Section 13. Respite For Foster Care, Medically Complex Foster Care, or Therapeutic Foster Care. (1) The child-placing agency shall develop written policies and procedures to address the respite care needs of a child or a foster parent.

(2) Respite care shall not be used as a means of placement for a child.

(3) Respite care shall be in accordance with Section 3(2) of this administrative regulation.

(4) The child-placing agency shall not approve a respite care provider unless the provider meets requirements specified by Section 4(3)(b), (d), and ~~(m)(k)~~ through ~~(u)(s)~~ of this administrative regulation.

(5) A respite care provider shall:

(a) Receive, from the agency or foster parent, preparation for placement of a child, including:

1. Information in accordance with KRS 605.090(1)(b); and
2. Information regarding the supervision plan of the child;

(b) Provide adequate supervision in accordance with the child's supervision plan;

- c) 1. Give relief to a foster parent caring for a child; or
2. Provide for an adjustment period for a child;

(d) Meet the requirements of Section 6(4) through (6) of this administrative regulation; and

(e) Meet the requirements of Section 8(4) of this administrative regulation if the provider cares for a child requiring therapeutic foster care.

(6) A respite care provider for a child with medical complexity shall:

(a) Meet the requirements of Section 10(4)(b), (5), and (6) of this administrative regulation;

(b) Receive training on how to meet the specific needs of the child with medical complexity from:

1. A health professional; or
2. The foster parent trained by a health professional; and
- (c) Maintain certification in:
 1. Infant, child, and adult CPR; and
 2. First Aid.

Section 14. Private Placement Process. Except for a child in the custody of or otherwise made the legal responsibility of the cabinet or the Department of Juvenile Justice, a child-placing agency shall follow the procedures established by this section if a private placement is conducted.

(1) For a child being placed with a child-placing agency, the child-placing agency shall obtain an:

(a) Agreement for voluntary care signed by the custodian; or

(b) Order from a court of competent jurisdiction placing the child into the custody of the child-placing agency.

(2) The child-placing agency shall:

(a) Complete an intake assessment of the strengths and needs of the child and the child's family of origin; and

(b) Ascertain the appropriateness of the referral for the child.

(3)(a) The child-placing agency shall develop an ITP individualized for a child and the child's family based on an individualized assessment of the child's and family's needs:

1. Within thirty (30) days of the child's placement with the child-placing agency; or

2. Prior to the child being placed out of state.

(b) An exception to the requirement specified in paragraph (a) of this subsection may be made for a child:

1. Under the age of twelve (12) months; and
2. With no extraordinary needs.

(c) The assessment shall be revised as needed.

(d) The assessment and ITP shall include the type and extent of services to be provided to the child and the child's family.

(e) Assessment of the child shall include consideration of the following history:

1. Behavioral health treatment;
2. Trauma;
3. Risk for harm to self or others; and
4. Past behaviors or safety issues that could increase the likelihood of placement disruption.

(4) Unless not in the best interest of the child, the child, parent, and foster parent shall be included in developing the assessment and ITP.

(5)(a) The foster home selected for placement shall be the most appropriate home based on the child's needs and the strengths of the foster family.

(b) The foster home shall be located as close as possible to the home of the family of origin, in order to facilitate visiting and reunification.

(6)(a) The social services worker and the foster parent shall work collaboratively to prepare the child prior to the placement.

(b) Unless a circumstance precludes preparation and the circumstance is documented in the case record, a child shall have a period of preparation prior to the placement in the foster home.

(7) The child-placing agency shall:

(a) Provide or arrange for services to support reunification for a child for whom family reunification is the goal;

(b) Assess and document the parent's capacity for reunification quarterly;

(c) Provide for review of the child in order to evaluate the progress toward achieving the child's permanency goal every six (6) months; and

(d) Assure that foster care continues to be the best placement for the child.

(8)(a) Services to the family of origin and to the child shall be adapted to their individual capacities, needs, and problems.

(b) A reasonable effort shall be made to return the child to the family of origin.

(9) Planning for the child regarding treatment program matters, including visitation, health, education, and permanency goals, shall be developed in collaboration with the:

- (a) Family of origin;
- (b) Treatment director;
- (c) Social services worker; and
- (d) Foster home.

(10)(a) The child-placing agency shall work with a foster home to promote stability and avoid disruption for a child, to include:

1. Services specified in Section 6(1) through (3), and (7) through (11) of this administrative regulation; and

2. **[Annual]** Reevaluation of the foster home in accordance with Section 15 of this administrative regulation.

(b) A request for the removal of a child from a foster home

shall be explored immediately and shall be documented by the social services worker.

(c) If disruption is unavoidable, the child-placing agency and foster home shall develop a plan for the smooth transition of the child to a new placement.

(11)(a) Preparation for the return of a child to the family of origin shall be supervised by a social services worker.

(b) The family shall participate in planning for the child's return.

(c) If regular contact with the child's family does not occur, a plan for the child's return shall include at least one (1):

1. Prior visit between the child and the family; and
2. Preliminary visit of the child to the child's family home.

(12) The child-placing agency shall recommend a plan for aftercare services for a child and the child's family.

Section 15. **[Annual]** Reevaluation of an Approved Adoptive Home Awaiting Placement or an Approved Foster Home.

(1) **Every third year during the initial approval month [Annually]**, a child-placing agency shall:

(a) Conduct a personal interview in the home with an approved:

1. Adoptive home awaiting placement; or
2. Foster home; and

(b) Assess:

1. Any change in the home;
2. The ability of the home to meet the needs of a child placed in the home; and
3. The home's continued compliance with the requirements of this administrative regulation in:

a. Section 4(3)(~~g~~), (~~i~~), and (~~k~~ through ~~u~~)(~~e~~), (~~g~~), and (~~i~~ through ~~s~~), and Section 4(5) through (11) of this administrative regulation, with regard to evaluation, if the home is approved as a foster or adoptive home;

b. Sections 6(9)(a) and 12 of this administrative regulation, with regard to case management and expectations, if the home is approved as a foster home;

c.(i) Sections 5(1)(c) or 7(3)(a) of this administrative regulation, with regard to annual training, if the home is approved as a foster home; or

(ii) 922 KAR 1:495 with regard to annual training if the home is approved to receive a child in the custody of the cabinet; and

d. Section 18(3) of this administrative regulation, with regard to annual training, if the home is approved as an adoptive home.

(2) After initial approval, a foster parent, an adoptive parent awaiting placement, a respite care provider, or a member of a foster or adoptive parent's household shall comply with a child-placing agency's request for a statement regarding the parent, provider, or household member's general health and medical ability to care for a child.

(3) If a prospective adoptive home is awaiting an international adoption, the child-placing agency shall conduct a reevaluation of the home once every eighteen (18) months.

Section 16. Independent Living Services. A child-placing agency shall:

(1) Provide independent living services:

(a) To a child:

1. In the custody of a state agency; and
2. Who is twelve (12) to twenty-one (21) years of age;

(b) Directly or indirectly through a foster parent with whom the child is placed;

(c) As prescribed in the child's ITP; and

(d) In accordance with 42 U.S.C. 677(a); and

(2) Teach independent living:

(a) To a child:

1. In the custody of a state agency; and
2. Sixteen (16) years of age and older; and

(b) Developed in accordance with 922 KAR 1:340, Section 3(1)(a).

Section 17. Maintenance of a Foster Care, Medically Complex Foster Care, or Therapeutic Foster Care Record.

(1)(a) The child-placing agency shall maintain a record on each child and foster home, including medically complex foster homes and therapeutic foster care homes.

(b) The child's record and the foster home record shall show the reason for placement change and steps taken to ensure success.

(c) A case record shall be maintained in conformity with existing laws and administrative regulations pertaining to confidentiality, pursuant to KRS 199.430(3), 199.640, and 45 C.F.R. Parts 160 and 164.

(2) The record of the child, including information of the child's family, shall include:

(a) Identifying information for child, parent, and foster home;

(b) Commitment order or custodian's consent for admission;

(c) Birth and immunization certificate;

(d) Educational record;

(e) Medical and dental record since placement;

(f) Social history and assessment;

(g) ITP and review;

(h) Supervision plan and updates to the plan;

(i) Permanency goals, including independent living services;

(j) Incident reports, including details of the child's behavior and supervision at the time of the incident;

(k) Monthly progress notes based on the ITP and supervision plan;

(l) Quarterly revisions to the child's ITP;

(m) Correspondence with the:

1. Court;
2. Family;
3. Department for Community Based Services; or
4. Department of Juvenile Justice;
- (n) Discharge report; and
- (o) Aftercare plan.

(3) The foster home's record shall include documentation relating to the:

(a) Orientation and preparation of the home, including all adult caregivers in the household;

(b) Required preparation hours and the topics covered;

(c) Placement of the child;

(d) Narrative summary of the initial and **subsequent[annual] foster home's home study evaluation**;

(e) Supervision of the foster home, including critical incidents;

(f)1. Annual training requirements that are met in accordance with Section 5(1)(c) of this administrative regulation by the foster parent and all adult caregivers in the household; or

2. If applicable, annual training requirements in accordance with Section 7(3) or 10 of this administrative regulation;

(g) Background checks in accordance with Sections **4(3)(m)[4(3)(k)]** and 15(1)(b)3.a of this administrative regulation;

(h) Copy of any placement exceptions granted; and

(i) If applicable, copy of the written statement of the foster home's closure completed pursuant to Section 22(5) of this administrative regulation.

(4) A child-placing agency shall:

(a) Maintain a child or foster home's record for at least three (3) years;

(b) After three (3) years of inactivity:

1. Archive the record and have it transferred to one (1) of the cabinet's designated record centers; or

2. Maintain the record in accordance with 725 KAR 1:061 within the child-placing agency;

(c) Transfer the record to the cabinet, if:

1. The agency ceases operations; and
2. No other operational governing entity exists; and

(d) Make available all records maintained by the agency to the cabinet or its designee upon request.

Section 18. Orientation and Preparation of an Adoptive Home for a Child Not in the Custody of the Cabinet. For a child not in the custody of the cabinet, a child-placing agency shall:

(1) Prepare and maintain the orientation and preparation curriculum on file;

(2) Provide orientation and preparation to a prospective adoptive home in accordance with the child-placing agency's policies and procedures to include the following:

- (a) An example of an actual experience from a parent who has adopted a child;
 - (b) Challenging behavior characteristics of an adoptive older child;
 - (c) Referral resources for a developmental delay;
 - (d) Transition issues with focus on stages of grief, and a honeymoon period;
 - (e) Loss and the long-term effects on a child;
 - (f) Attachment and identity issues of the child;
 - (g) Cultural competency;
 - (h) Medical issues including referral resources;
 - (i) Family functioning, family values, and expectations of an adoptive home;
 - (j) Identification of changes that may occur in the family unit upon the placement of a child to include:
 1. Family adjustment and disruption;
 2. Identity issues; and
 3. Discipline; and
 - (k) Financial assistance available to an adoptive home; and
- (3) Ensure that an approved adoptive home awaiting the placement of a child receives adoptive home training annually in accordance with the child-placing agency's established policies and procedures.

Section 19. Adoption Placement Process For a Child Not in the Custody of the Cabinet. (1) A child shall not be placed for adoption until the:

- (a) Adoptive home has been approved;
 - (b) Parental rights of the mother, legal or birth father, and putative father of the child, if not the same person as the legal father, are terminated by a circuit court order entered pursuant to KRS Chapter 625; and
 - (c) Child is placed with the child-placing agency for the purpose of adoption placement.
- (2) A child's parent shall not be induced to terminate parental rights by a promise of financial aid or other consideration.
- (3)(a) A child-placing agency licensed by the cabinet shall not use the authority authorizing the agency to place a child for adoption to facilitate an adoptive placement planned by a doctor, lawyer, clergyman, or person or entity outside the child-placing agency.
- (b) The child-placing agency shall comply with provisions of 922 KAR 1:010.
- (4) The child-placing agency shall obtain the following:
- (a) A developmental history of the adoptive child to include:
 1. Birth and health history;
 2. Early development;
 3. Characteristic ways the child responds to people and situations;
 4. Any deviation from the range of normal development;
 5. The experiences of the child prior to the decision to place the child for adoption;
 6. Maternal attitude during pregnancy and early infancy;
 7. Continuity of parental care and affection;
 8. Out-of-home placement history;
 9. Separation experiences; and
 10. Information about the mother, legal father, and putative father, if not the same person as the legal father, and family background:
 - a. That may affect the child's normal development in order to determine the presence of a significant hereditary factor or pathology; and
 - b. Including an illness of the biological mother or father;
 - (b) A social history of the biological or legal parent, to include:
 1. Name;
 2. Age;
 3. Nationality;
 4. Education;
 5. Religion or faith; and

6. Occupation;

(c) Information obtained from direct study and observation of the child by a:

1. Social services worker; and
 2. Physician or other health professional;
- (d) If indicated, information obtained from direct study and observation of the child by a:
1. Foster parent;
 2. Nurse;
 3. Psychologist; or
 4. Other consultants; and
- (e) Information from the mother, if possible, identifying the biological father, or legal father, if different from the biological father, for the purpose of:
1. Determining the father's parental rights; and
 2. Establishment of possible hereditary endowments.
- (5) If either biological or legal parent is unavailable, unwilling, or unable to assist with the completion of information necessary to comply with KRS 199.520 and 199.572, the child-placing agency shall document information, to the extent possible, from the existing case record.

(6) Prior to finalization of the adoptive placement, a licensed physician or other health professional shall make a medical examination to determine:

- (a) The state of the child's health;
 - (b) Any significant factor that may interfere with normal development; and
 - (c) The implications of any medical problem.
- (7) The condition under which an adoptive home agrees to accept the child shall be decided upon, prior to placement of the child. The written agreement between the child-placing agency and the adoptive home shall embody the following provisions:

- (a) The adoptive home shall agree to:
 1. Comply with KRS 199.470;
 2. File an adoptive petition at a time agreeable to the adoptive home and the child-placing agency; and
 3. Permit supervision by the child-placing agency in accordance with the child-placing agency's policies and procedures:
 - a. After placement; and
 - b. Preceding a final judgment of adoption by the circuit court;
- (b) The child-placing agency shall be responsible for providing the adoptive home with written information regarding the child's:
 1. Background;
 2. Medical history;
 3. Current behavior; and
 4. Medical information necessary to comply with KRS 199.520(4)(a); and

(c) The adoptive home and the child-placing agency shall agree that the child may be removed from the placement, at the request of either party, before the filing of the adoptive petition.

(8)(a) Preplacement visits shall be arranged for the adoptive home and a child.

(b) The pattern and number of visits shall be based on the child's:

1. Age;
2. Development; and
3. Needs.

(9) During preparation, the child-placing agency shall discuss the child's readiness to accept the selected placement with the child, in accordance with the child's age and ability to understand.

(10)(a) Unless the child-placing agency and, if applicable, the state agency which has custody of a child belonging to a sibling group, determines that it is more beneficial for siblings to be placed in separate adoptive homes, siblings who have had a relationship with each other shall be placed together.

- (b) If siblings have been separated in placements:
 1. The case record shall reflect a valid basis for the separation;
 2. The decision to separate siblings shall be made by the executive director of the child-placing agency; and

3. Continued contact between siblings shall be maintained, if possible.

(11) A child-placing agency shall comply with Section 6(1)(b) of this administrative regulation during the process of placing a child in a prospective adoptive home.

Section 20. Supervision of an Adoptive Placement of a Child Not in the Custody of the Cabinet. (1) For a child not in the custody of the cabinet, the child-placing agency placing a child shall remain responsible for the child until the adoption has been granted. This responsibility shall involve the following:

(a) Two (2) meetings by the social services worker with the child and the adoptive home, including both adoptive parents if not a single parent adoption, one (1) visit of which shall be in the adoptive home before filing of the adoption petition;

(b) The continuation of case management, visits, and telephone contacts based upon the needs of the child until the adoption is legally granted; and

(c) Awareness of a change in the adoptive home including health, education, or behavior.

(2) Upon request of the cabinet, the child-placing agency shall:

(a) Provide information pursuant to KRS 199.510, as necessary to report to the court to proceed with adoption;

(b) Prepare and provide the original confidential report to the court; and

(c) Forward to the cabinet a copy of:

1. The confidential report that was provided to the court; and

2. Information required by KRS 199.520 and 199.572.

(3) If the court finds the adoptive home to be unsuitable and refuses to grant a judgment, the child-placing agency shall remove the child from the home.

Section 21. Maintenance of Adoptive Case Record. (1) The child-placing agency shall maintain a case record from the time of the application for services through the completed legal adoption and termination of child-placing agency services for:

(a) A child accepted for care and the child's family; and

(b) An adoptive applicant.

(2) The case record shall contain material on which the child-placing agency decision may be based and shall include or preserve:

(a) Information and documents needed by the court;

(b) Information about the child and the child's family;

(c) A narrative or summary of the services provided with a copy of legal and other pertinent documents; and

(d) Information gathered during the intake process including the following:

1. A description of the situation that necessitated placement of the child away from the child's family or termination of parental rights;

2. A certified copy of the order of the circuit court terminating parental rights and committing the child to the child-placing agency for the purpose of adoption;

3. Verification of the child's birth record and the registration number;

4. A copy of the child's medical record up to the time of placement;

5. A copy of the required evaluation of the adoptive placement;

6. Date of adoptive placement;

7. A statement of the basis for the selection of this adoptive home for the child;

8. A record of after-placement services with dates of:

a. Visits;

b. Contacts;

c. Observations;

d. Filing of petition;

e. Granting of judgments; and

f. Other significant court proceedings relative to the adoption;

9. Child's adoptive name; and

10. Verification of preparation and orientation and annual training in accordance with Section 18 of this administrative

regulation.

(3) If there is a need to share background information with a party to a completed adoption, or to have the benefits of information from a closed adoption record to offer services following completion of an adoption, the child-placing agency shall comply with KRS 199.570.

(4) Records on adoption that contain pertinent information shall be:

(a) Maintained indefinitely following final placement of a child; and

(b) Sealed and secured from unauthorized scrutiny.

(5) A child-placing agency shall submit adoptive case records to the cabinet, if:

(a) The child-placing agency closes; and

(b) No other operational governing entity exists.

Section 22. Closure of an Approved Foster or Adoptive Home. (1) A foster or adoptive home shall be closed if:

(a) Sexual abuse or exploitation by a resident of the household is substantiated;

(b) Child maltreatment by a resident of the household occurs that is serious in nature or warrants the removal of a child;

(c) A serious physical or mental illness develops that may impair or preclude adequate care of the child in the home; or

(d) The home fails to meet requirements of this administrative regulation in:

1. Section 4(3)(~~g~~), (~~i~~), and (~~k~~) through (~~u~~)(~~e~~), (~~g~~), and (~~i~~) through (~~s~~), and Section 4(5) through (11) of this administrative regulation, with regard to evaluation, if the home is approved as a foster or adoptive home;

2. Sections 6(9)(a) and 12 of this administrative regulation, with regard to placement and case management, if the home is approved as a foster home;

3. Sections 5, 7, or 10 of this administrative regulation, with regard to annual training, if the home is approved as a foster home. An exception to this subparagraph may be granted by the Division of Protection and Permanency director or designee for a foster parent caring for a child in the custody of the cabinet if it is in the best interest of a child placed in the foster home to allow the exception. If an exception is approved for a foster parent caring for a child in the custody of the cabinet, a new or additional child shall not be placed in the home until the foster parent has met the training requirement; and

4. Section 18(3) of this administrative regulation, with regard to annual training, if the home is approved as an adoptive home.

(2) A foster or adoptive home may be closed:

(a) In accordance with the terms specified in the written agreement between the child-placing agency and the foster or adoptive home; or

(b) In accordance with the terms specified in the written contract between the cabinet and the child-placing agency.

(3) If closure of an approved foster or adoptive home is necessary, a child-placing agency shall:

(a) State the reason for the closure in a personal interview with the family unless the family refuses or declines the personal interview; and

(b) Document the reason in the foster or adoptive home's case record.

(4) A child-placing agency shall confirm the decision to close a home in a written notice to the foster or adoptive parent. The notice shall be provided within fourteen (14) calendar days of the interview with a foster or adoptive parent. If the foster or adoptive parent refuses to be interviewed, the notice shall be provided within fourteen (14) calendar days of the foster or adoptive parent's refusal.

(5) The written notice shall include:

(a) Date of approval and termination; and

(b) Indication of whether the closure was at the request of the foster parents or the agency.

Section 23. Foster Care Registry. (1) A child-placing agency shall register a foster home with the cabinet, approved by the child-placing agency, to include medically complex foster homes

and therapeutic foster care homes.

(2) Information shall be provided to the cabinet in a format prescribed by the cabinet, to include:

(a) The foster parent's:

1. Full name;
2. Social Security number; and
3. Address, including county of residence;

(b) The child-placing agency's:

1. Name; and
2. Mailing address;

(c) 1. The date the foster home was:

a. Approved;

b. Denied;

c. Withdrawn; or

d. Closed; and

2. The reason for the change in the foster home status; and

(d) Whether the foster home is currently active or inactive.

(3) Subsection (2)(c)(Paragraph (c) of subsection (2))

shall have a delayed implementation due to the integration of technology, but shall be effective no later than October 30, 2019.

Section 24. Emergency Preparedness. Each foster home shall submit an emergency preparedness plan to the private agency that would allow the agency to identify, locate, and ensure continuity of services to children who are in the custody or control of the cabinet or agency.

Section 25[24]. Incorporation by Reference. (1) The "DPP-112B, Private Child-Placing Agency Placement Exception Request", 4/19[10/15], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ERIC T. CLARK, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: July 12, 2019

FILED WITH LRC: July 15, 2019 at 10 a.m.

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746, fax 502-564-7091, CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Laura Begin, Phone Number: (502) 564-3703, Email: Laura.Begin@ky.gov; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for child-placing agencies who provide contracted foster care placements for children in the custody of the cabinet.

(b) The necessity of this administrative regulation: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services (CHFS) to promulgate, administer, and enforce programs mandated by federal law or to qualify for the receipt of federal funds. KRS 199.640(5)(a) requires CHFS to promulgate administrative regulations establishing basic standards of care and service for child-caring and child-placing agencies.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary to implement programs mandated by federal law and to qualify for the receipt of federal funds, establishes basic standards of care and service for child-placing agencies, and implements the provision of KRS Chapter 605.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation conforms to KRS 194A.050(1), 199.640(5)(a), and 605.150(1) by establishing standards for child-placing agencies.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation incorporates federal model standards into the certification and approval process of foster care and adoptive homes contracted through child-placing agencies. Unless an exception is permitted, the maximum number of children residing in a foster home is being amended to six rather than five, in accordance with section 472(c)(1)(A)(ii)(III) of the Family First Prevention Services Act. The amendment also includes updates needed for consistency between public and private foster and adoptive homes and for compliance with KRS Chapter 13A. The administrative regulation is being further amended in response to comments received during the public comment period to make clarifications regarding employees who are waiting on background check results, clarify home-study requirements, and change the time period for foster home evaluation from annual to every three years as required by House Bill 446's amendment to KRS 620.360(4).

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure child-placing agencies incorporate federally issued model standards for foster and adoptive homes into their processes and procedures. Further amendments were necessary for clarify and conformity with passed legislation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 194A.050(1) requires the cabinet to promulgate, administer, and enforce programs mandated by federal law or to qualify for the receipt of federal funds. KRS 199.640(5)(a) requires the cabinet to promulgate administrative regulations establishing basic standards of care and service for child-caring and child-placing agencies. This amendment incorporates federal standards into the procedures of child-placing agencies.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will ensure that child placing agencies make the necessary changes to the approval and certification process of foster and adoptive homes to meet federal standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently over 9,000 children in foster care and approximately 5,000 foster/adoptive homes. In 2018, the cabinet substantiated or found that services were needed for 32,411 unique children (TWS-M272F, 1/2/19). Private child-placing agencies are a partner to the cabinet to ensure that children who are in out of home care have a safe and secure environment when they are no longer able to remain in their home.

(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: Private child-placing agencies will need to require potential foster and adoptive parents to submit to the requirements being added into this administrative regulation to become certified. Additional requirements include applicants demonstrating functional literacy, refraining from smoking in the presence of a child for whom a physician recommends a smoke-free environment, and the development of an emergency prepared plan.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to child-placing agencies as a result of the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Certified foster and adoptive homes will be in compliance with federal standards.

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

(a) Initially: There is no cost to the administrative body.

(b) On a continuing basis: There is no cost to the

administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this administrative regulation are supported through funds under Title IV-E of the Social Security Act and General Funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as this administrative regulation is applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

16 C.F.R. 1219-1220, 45 C.F.R. Parts 160, 164, 1355.34, 8 U.S.C. 1151, 42 U.S.C. 671, 42 U.S.C. 677(a), 14901-14954

2. State compliance standards. KRS 194A.050(1), 199.640(5)(a), 605.150(1)

3. Minimum or uniform standards contained in the federal mandate. 16 C.F.R. 1219-1220, 45 C.F.R. Parts 160, 164, 1355.34, 8 U.S.C. 1151, 42 U.S.C. 671, 42 U.S.C. 677(a), 14901-14954

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services is impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.640(5)(a), 605.150(1), 16 C.F.R. 1219-1220, 45 C.F.R. Parts 160, 164, 1355.34, 8 U.S.C. 1151, 42 U.S.C. 671, 42 U.S.C. 677(a), 14901-14954

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new revenues for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no new revenues for subsequent years.

(c) How much will it cost to administer this program for the first year? The administrative body projects costs associated with implementation of this administrative regulation will be within existing appropriations for the first year. General Fund and Title

IV-E funds are used in the implementation of this program.

(d) How much will it cost to administer this program for subsequent years? The administrative body projects costs associated with the implementation of this administrative regulation will be within existing appropriations for subsequent years. General Fund and Title IV-E funds are used in the implementation of this 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 Protection and Permanency

(Amended After Comments)

922 KAR 1:350. Requirements for public child welfare agency foster parents, adoptive parents, and respite care providers.

RELATES TO: KRS 2.015, 61.870-61.884, 194A.005(1), 194A.050(1), 194A.060, 199.011, 199.472(1), 202A.011(12), 258.015, 258.035, 311.720(12)[311.720(9)], 311.840(3), 314.011(5), (7), (9), 527.100, 527.110, 600.020, 605.090, 605.100(1), 610.110, 620.030, 620.050, 620.140(1)(d), 620.360, Chapter 625, [8 U.S.C. 1151, 1181], 16 C.F.R. 1219-1220, 1632-1633, 42 C.F.R. 435.407, 45 C.F.R. Parts 160, 164, 8 U.S.C. 1151, 1181, 42 U.S.C. 671, 672, 677

STATUTORY AUTHORITY: KRS 194A.050(1), 199.472(1), 605.100(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary for the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet and to implement programs mandated by federal law or to qualify for the receipt of federal funds. KRS 605.100(1) requires the cabinet to arrange programs designed to provide for classification, segregation, and specialized treatment of children according to their respective problems, needs, and characteristics. KRS 199.472(1) requires[authorizes] the cabinet to promulgate administrative regulations to establish the process of determining an applicant's capacity for foster or adoptive parenthood. This administrative regulation establishes criteria for public agency foster homes, adoptive homes, and respite care providers caring for foster or adoptive children.

Section 1. Definitions. (1) "Adoptive home" means a home in which a parent is approved by the cabinet to provide services as specified in Section 2(12) of this administrative regulation.

(2) "Applicant" means an individual or family subject to approval by the cabinet as a foster or adoptive home.

(3) "Cabinet" is defined by KRS 194A.005(1) and 600.020(7)[600.020(6)].

(4) "Care Plus" means a foster care program for a child who is determined to have specialized care needs as specified in Section 5 of this administrative regulation.

(5) "Child" means:

(a) A child as defined by KRS 199.011(4) and 600.020(9)[600.020(8)];

(b) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6) or 620.140(1)(d); or

(c) A person under age twenty-one (21) who meets the exceptions to the age of majority in accordance with KRS 2.015.

(6) "Child specific foster home" means an individual or family subject to approval by the cabinet as a foster family home for a relative or fictive kin placement.

(7) "Child with medical complexity" means a child who has a medical condition in accordance with Section 4(1)(b) of this

administrative regulation.

(8)(7) "Commissioner" means commissioner of the Department for Community Based Services.

(9) "Department" means the Department for Community Based Services.

(10)(8) "Foster home" means:

(a) A "foster family home" as defined by KRS 199.011(10) [199.044(9)] and 600.020(30) [600.020(28)], if referring to a physical structure; or

(b) If referring to an individual, any individual approved as a foster parent by the cabinet to provide services as specified in Section 2(12) of this administrative regulation.

(11)(9) "Health professional" means a person actively licensed as a:

(a) Physician as defined by KRS 311.720(12) [344.720(9)];

(b) Physician assistant as defined by KRS 311.840(3);

(c) Advanced practice registered nurse as defined by KRS 314.011(7); or

(d) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.

(12)(10) "Home study" means an assessment done on a prospective foster or adoptive home by a social services worker.

(13)(11) "Independent living services" means services provided to an eligible child to assist the child in the transition from the dependency of childhood to living independently.

(14)(12) "Placement" means the physical change in the location and living arrangement of a child in the custody of the cabinet removed from the child's home of origin.

(15)(13) "Respite care" means temporary care provided by a provider, as specified in Section 17 of this administrative regulation, to meet the needs of the child or provide relief to the foster or adoptive parents with the expectation of a child's return to the current foster or adoptive home.

Section 2. General Requirements for a Foster or Adoptive Parent. (1)(a) Unless an exception is approved pursuant to paragraph (b) of this subsection by designated cabinet staff, a foster or adoptive parent applicant shall be at least twenty-one (21) years of age.

(b) A foster or adoptive parent applicant between eighteen (18) and [to] twenty-one (21) years of age may be approved as a foster or adoptive parent if:

1. The foster or adoptive parent applicant is related to the child under the custodial control of the cabinet;

2. The foster or adoptive parent applicant can meet the needs of the child; and

3. Cabinet staff determines the placement is in the best interest of the child.

(2) A foster or adoptive parent applicant shall provide proof of the applicant's United States citizenship or legal immigrant status, as described in 8 U.S.C. 1151, 8 U.S.C. 1181, and 42 C.F.R. 435.407.

(3) A department employee who provides protection and permanency services may apply to adopt a child in the care and custody of the cabinet if the commissioner approves the employee to adopt and the adoption is in the best interest of the child.

(4)(a) A department employee who provides protection and permanency services shall be approved as [prohibited from becoming] a respite care provider or foster parent for a child in the care and custody of the cabinet if prior approval; regardless of the child's residence, unless it is approved by the commissioner or designee is granted in writing through the service region administrator in the region of employment [because the employee was a foster parent or respite care provider for the child when employment with the department protection and permanency services began].

(b) If approval is granted, the department shall:

1. Ensure the employee completes pre-service training outside the region of employment;

2. Assign a social services worker outside of the applicant employee's region of employment to complete the home study;

3. Maintain the case outside of the applicant employee's

region of employment; and

4. Ensure that the employee shall not accept the placement of a child from within the region of employment unless:

a. The employee is related to the child; or

b. The employee is determined to be fictive kin as the result of a relationship developed outside of employment prior to the child being placed in the custody of the cabinet.

(5) A married couple may apply to become foster or adoptive parents.

(6) A single, unmarried person may apply to become a foster or adoptive parent.

(7) The decision to foster or adopt a child shall be agreed to by each adult member of the applicant's household.

(8)(a) Each foster or adoptive applicant and adult member of the applicant's family shall submit a DPP-107, Health Information Required for Foster or Adoptive Parents, Applicants, or Adult Household Members, completed:

1. (a) By a health professional who is not a member of the applicant's household, based upon health information within the past year, documenting:

a. 1- The individual has no illness or condition that would present a health or safety risk to a child placed in the applicant's home, which may include a communicable disease [applicant's general health, including that the applicant is free of communicable or infectious disease or a health condition that presents a health or safety risk to a child placed in the applicant's home]; and

b. 2- That there are no known health factors that would interfere with the applicant's ability to become a foster or adoptive parent;

2. (and (b)) As part of:

a. 1- The initial application;

b. 2- The [annual] reevaluation; or

c. 3- A foster or adoptive home review pursuant to Section 13 of this administrative regulation; and

3. By all household members in which the household member discloses mental health and substance abuse issues, including any history of drug or alcohol abuse or treatment.

(b) The department shall require further documentation or evaluation to determine the suitability of the home if there is an indicator of current or past mental health or substance abuse issues in a household member.

(9) Each foster or adoptive parent applicant shall submit a DPP-108, Health Information Required for Foster or Adoptive Parents or Applicants Regarding Dependent Children, for each child member of the applicant family.

(10) A foster or adoptive parent applicant shall have a source of income:

(a) Sufficient to meet the applicant's household expenses; and

(b) Separate from:

1. Foster care reimbursement; or

2. Adoption assistance.

(11) Unless specified in a contract between the cabinet and a child welfare agency that provides foster care services, a foster or adoptive parent shall accept a child for foster care only from the cabinet.

(12) An approved foster or adoptive parent shall be willing to:

(a) Provide foster care services for a child placed in out-of-home care by the cabinet;

(b) Adopt a child:

1. Whose parent's parental rights have been terminated; and

2. Who is under the custodial control of the cabinet;

(c) Provide respite care for a child under the custodial control of the cabinet; or

(d) Provide any combination of the services described in paragraphs (a) through (c) of this subsection.

(13) A foster or adoptive applicant shall provide to the cabinet:

(a) 1. The names of three (3) personal references including [who]:

a. One (1) relative reference; and

b. Two (2) non-relative references. [1- Are not related to the

applicant; and]

2. The references required by subparagraph 1. of this paragraph [a-] shall:

a. Be interviewed by cabinet staff in person or by telephone; or

b.[Shall] Provide letters of reference for the applicant; and

(b) Two (2) credit references or a credit report.

(14) Unless a documented exception exists and is approved by designated cabinet staff due to inaccessibility, each adult child of the foster or adoptive parent applicant who does not live in the home shall be interviewed by cabinet staff in person or by telephone regarding the applicant's parenting history.

(15) If applicable, verification shall be obtained from the foster or adoptive parent applicant regarding:

- (a) Previous divorce;
- (b) Death of a spouse; and
- (c) Present marriage.

(16) A foster or adoptive parent applicant who does not have custody of his or her own child shall provide:

- (a) A copy of the visitation order, if applicable;
- (b) A copy of the child support order, if applicable; and
- (c) Proof of current payment of child support, if applicable.

(17) A foster or adoptive parent applicant and any member of the applicant's household shall submit to the background checks required by [in accordance with] 922 KAR 1:490.

(18) The cabinet shall perform background checks in accordance with criteria established in 922 KAR 1:490.

Section 3. Home Environment. (1) The foster or adoptive parent shall request written approval from designated cabinet staff to provide services as a:

(a) Certified provider of supports for community living in accordance with 907 KAR 12:010[4:145];

(b) Certified family child care home in accordance with 922 KAR 2:100; or

(c) Provider of child-care center services in accordance with 922 KAR 2:090.

(2) If the foster or adoptive home adjoins a place of business open to the public, potential negative impact on the family and the child shall be examined including the:

- (a) Hours of operation;
- (b) Type of business; and
- (c) Clientele.

(3) The foster or adoptive parent shall have access to:

- (a) Reliable transportation;
- (b) School;
- (c) Recreation;
- (d) Medical care; and
- (e) Community facilities.

(4) A foster or adoptive parent who drives shall:

- (a) Possess a valid driver's license;
- (b) Possess proof of liability insurance; and
- (c) Abide by passenger restraint laws.

(5)(a)[Ne] More than four (4) children, including the foster or adoptive parent's own children, shall not share a bedroom, with thorough consideration given to each child's age, gender, and background.

(b) Children of different genders over the age of five (5) shall not share a bedroom except as approved by designated department staff if:

1. Necessary to facilitate the placement of a sibling group or children who are related and share a sibling-like relationship, such as cousins[Siblings are placed together]; and

2. There are no high-risk behaviors.

(6) Each child shall have:

(a) A separate bed that is age and size appropriate for the child; or

(b) If the child is under age one (1), a crib that meets Consumer Products Safety Commission standards pursuant to 16 C.F.R. 1219-1220.

(7) A child's mattress shall:

(a) Meet current Consumer Products Safety Commission

Standards in 16 C.F.R. Parts 1632 and 1633;

(b) Be in good repair; and

(c) Have a clean fitted sheet that shall be changed:

- 1. Weekly; or
- 2. Immediately if it is soiled or wet.

(8) Except as approved by designated cabinet staff, a foster or adoptive parent shall not share a bedroom with a child under the custodial control of the cabinet unless necessary due to the needs of the child.

(9) A bedroom used by a child under the custodial control of the cabinet shall be comparable to other bedrooms in the house.

(10) The physical condition of the foster or adoptive home shall:

- (a) Not present a hazard to the safety and health of a child;
- (b) Be well heated and ventilated;
- (c) Comply with state and local health requirements regarding water and sanitation;[and]

(d) Provide access to indoor and outdoor recreation space appropriate to the developmental needs of a child placed in the foster or adoptive home;[and]

(e) Provide functioning kitchen facilities; and

(f) Provide a functioning bathroom, including a:

- 1. Toilet;
- 2. Sink; and
- 3. Bathtub or shower.

(11) The following shall be inaccessible to a child:

(a) Medication, unless an exception is granted pursuant to subsection (12) of this section;

- (b) Alcoholic beverage;
- (c) Poisonous or cleaning material;
- (d) Ammunition; and

(e) Firearms in accordance with KRS 527.100 and 527.110.

(12) An exception may be provided by designated cabinet staff to subsection (11)(a) of this section if:

(a)1. The child is approved by a health care professional to self-administer medicine under the supervision of the foster or adoptive parent; or

2. Emergency access to the medication may be necessary to save the child's life, such as in the case of severe allergic reaction or asthma attack; and

(b) Measures are taken to prevent unauthorized access by another child in the same home.

(13) Any household animal shall be vaccinated in accordance with KRS 258.015 and 258.035.

(14) A dangerous animal shall not be allowed near the child.

(15) First aid supplies[with unexpired dates] shall be available and stored in a place easily accessible to an adult.

(16) A working telephone shall be accessible[available in the home].

(17) The home shall be equipped with a working smoke alarm within ten (10) feet of each bedroom and on each floor of the home.

(18) A home with gas heating or appliances shall be equipped with a working carbon monoxide detector.

(19) Safety precautions related to an accessible swimming pool or body of water shall be documented, if applicable.

Section 4. Medically Complex Foster or Adoptive Home. (1) An applicant shall be approved by cabinet staff as a medically complex home if the foster or adoptive parent:

(a) Meets the requirements in Sections 2 and 3 of this administrative regulation, except for Section 2(10), which may be considered as an exclusion on a case-by-case basis by designated cabinet staff based on the best interests or needs of the child;

(b) Cares for a child in the custody of the cabinet who is determined to be medically complex by designated cabinet staff due to:

1. Significant medically oriented care needs related to a serious illness or condition diagnosed by a health professional that may become unstable or change abruptly, resulting in a life-threatening event;

2. A chronic condition that is expected to be life-long and progressive and to require extensive services;

3. An acute, time-limited condition requiring additional oversight; or

4. A severe disability that requires the routine use of medical devices or assistive technology to compensate for the loss of a vital body function needed to participate in activities of daily living and significant and sustained care to avert death or further disability;

(c) Is a primary caretaker who is not employed outside the home, except as approved by designated cabinet staff and based on the needs of the child;

(d) Completes training in accordance with 922 KAR 1:495, Section 4;

(e) Receives training with documentation of completion from a health professional or a previous caregiver that was trained by a health professional in how to care for the specific child with medical complexity who shall[will] be placed in the foster or adoptive parent's care;

(f) Maintains current certification in:

1. Infant, child, and adult CPR; and

2. First aid; and

(g) Has a home within:

1. One (1) hour of a medical hospital with an emergency room; and

2. Thirty (30) minutes of a local medical facility.

(2) Except for a sibling group or unless approved by designated cabinet staff in accordance with Section 16 of this administrative regulation, more than four (4) children, including the foster or adoptive parent's own children, shall not reside in a medically complex foster or adoptive home.

(3) Unless an exception is approved pursuant to Section 16(2) of this administrative regulation and a medically complex foster or adoptive home has daily support staff to meet the needs of a child with medical complexity:

(a) A one (1) parent medically complex foster or adoptive home shall:

1. Not care for more than one (1) child with medical complexity; and

2. Demonstrate access to available support services; and

(b) A two (2) parent medically complex foster or adoptive home shall:

1. Not care for more than two (2) children with medical complexity; and

2. Demonstrate access to available support services.

(4) Unless an exception pursuant to Section 16(2) of this administrative regulation is approved, a child with medical complexity shall be placed in an approved medically complex foster or adoptive home.

(5) Unless the home is closed[,], pursuant to Section 14 of this administrative regulation, an approved medically complex foster or adoptive parent shall receive[annual] reapproval by the cabinet as a medically complex home if the parent:

(a) Annually completes training specified in 922 KAR 1:495, Section 4; and

(b) Continues to meet the requirements of this section.

(6) An approved medically complex foster or adoptive parent shall cooperate in carrying out the child's health plan.

Section 5. Care Plus Home. (1) An applicant shall be approved by cabinet staff as a care plus parent if the foster or adoptive parent:

(a) Meets the requirements of Sections 2 and 3 of this administrative regulation, except for Section 2(10) which may be considered as an exclusion on a case-by-case basis by designated cabinet staff based on the best interests or needs of the child;

(b) Agrees to care for a child in the custody of the cabinet approved by cabinet staff as a care plus child because the child:

1. Has a diagnosed emotional or behavioral problem;

2. Is due to be released from a treatment facility;

3. Displays aggressive, destructive, or disruptive behavior;

4. Is at risk of being placed in a more restrictive setting;

5. Is at risk of institutionalization; or

6. Has experienced numerous placement failures;

(c) Is a primary caretaker who is not employed outside the home, unless the cabinet determines that the child's needs continue to be met;

(d) Completes training in accordance with 922 KAR 1:495, Section 6;

(e) Agrees to maintain a weekly[daily] record of the care plus child's activities and behaviors; and

(f) Agrees to attend case planning conferences.

(2) Unless an exception is approved pursuant to Section 16(2) of this administrative regulation and the care plus home parent can demonstrate access to available support services:

(a) No more than four (4) children, including the foster or adoptive parent's own children, shall reside in a care plus home;

(b) A one (1) parent care plus home shall not care for more than one (1) care plus child as described in subsection (1)(b) of this section; and

(c) A two (2) parent care plus home shall not care for more than two (2) care plus children as described in subsection (1)(b) of this section[, including the care plus foster or adoptive parent's own children].

(3) Unless the home is closed pursuant to Section 14 of this administrative regulation, an approved care plus foster or adoptive parent shall receive[annual] reapproval by the cabinet as a care plus home, if the parent:

(a) Annually completes training in accordance with 922 KAR 1:495, Section 6;

(b) Submits to a review of the parent's:

1. Strengths and needs;

2. Records maintained on services provided to the child; and

3. Ability to meet the goals established for the child; and

(c) Continues to meet the requirements of this section.

Section 6. Preparation and Selection of a Foster or Adoptive Home. (1) The cabinet shall recruit a foster or adoptive home and approve the home prior to the placement of a child, except in the case of a child specific placement with a relative or fictive kin caregiver.

(2) Prior to approval as a foster or adoptive parent, an applicant shall complete training requirements in accordance with 922 KAR 1:495.

(3) If a new adult moves into an approved foster or adoptive home where a child is already placed by the cabinet, the child may remain and additional children may be placed if the new adult:

(a) Completes training in accordance with subsection (2) of this section within six (6) months of entering the home; and

(b) Meets the requirements specified in Sections 2 and 3 of this administrative regulation.

(4) An adult child or incapacitated person who resides in the foster or adoptive home shall not be required to complete training in accordance with 922 KAR 1:495 if that individual shall [will] not be responsible for routine daily care of a child placed in the home by the cabinet.

(5) The cabinet shall not be obligated to grant foster or adoptive home approval or placement of a specific child to an individual or family that completes pre-service training.

(6) In addition to completion of training in accordance with 922 KAR 1:495, at least two (2) family consultations shall be conducted by cabinet staff in the home of an applicant, to include:

(a) Documentation that the requirements in Sections 2 and 3 of this administrative regulation have been met;

(b) Documentation that a personal interview with each member of the applicant's household has been completed;

(c) Discussion of the attitude of each member of the applicant's household toward placement of a child;

(d) Observation of the functioning of the applicant's household, including interpersonal relationships and patterns of interaction; and

(e) Assurance that the applicant is willing to accept a child's relationship with the child's family of origin.

(7) An applicant approved as a foster or adoptive parent or respite care provider by another state or by a child-placing agency as defined in~~[described by]~~ KRS 199.011(6)~~[199.011(7)]~~ shall:

(a) Meet the requirements provided within Sections 2 and 3 of this administrative regulation;

(b) Be assessed by cabinet staff to ascertain the applicant's level of skill as a potential Kentucky foster or adoptive parent;

(c) Provide verification of the closure and a statement to indicate whether the closure was at the request of the foster or adoptive parent, the other state, or the agency; and

(d) Not be required to complete training in accordance with 922 KAR 1:495 for approval as a Kentucky foster or adoptive parent if cabinet staff:

1. Determine that the applicant possesses the necessary skills for fostering; and

2. Obtain records and recommendation from the other state or child-placing agency.

(8) Following initial training as specified in 922 KAR 1:495, if cabinet staff determines that an applicant or adult household member lacks the necessary skills to become a foster or adoptive parent, an individualized training curriculum shall be developed to fulfill unmet training needs.

(9)(a) A foster or adoptive parent shall request the recommendation of cabinet staff prior to enrolling in training specified in 922 KAR 1:495, Section 4(1) or 6(1); and

(b) Cabinet staff may recommend the foster or adoptive parent to receive training specified in 922 KAR 1:495, Section 4(1) or 6(1), if the parent possesses the aptitude to care for a child described in Section 4(1)(b) or 5(1)(b) of this administrative regulation.

Section 7. Completion of the Foster or Adoptive Approval Process. (1) Designated cabinet staff in a supervisory role shall approve a foster or adoptive applicant if:

(a) The applicant provides written and signed information pertaining to family history and background;

(b) The applicant completes training requirements as required by 922 KAR 1:495;

(c) The information required in Section 2(8) through (10) and (13) through (17) of this administrative regulation has been obtained, unless a waiver has been granted for a child specific placement with a relative or fictive kin caregiver;

(d) Designated cabinet staff recommends approval; and

(e) The applicant's ability to provide a foster, adoptive, or respite care service is consistent with the:

1. Cabinet's minimum foster or adoptive home requirements established in this administrative regulation; and

2. Needs of the families and children served by the cabinet.

(2) If the designated cabinet staff determines that an applicant does not meet the minimum requirements for approval as a foster or adoptive parent, the cabinet shall recommend that the applicant withdraw the request.

Section 8. Denial of a Foster or Adoptive Home Request. (1) Designated cabinet staff shall notify an applicant, in writing, if the request to become a foster or adoptive parent is not recommended for one (1) of the following reasons:

(a) The applicant is unwilling to withdraw the request to become a foster or adoptive parent after receiving a recommendation to withdraw; or

(b) The applicant desires to adopt, but is unwilling to adopt a child under the custodial control of the cabinet.

(2) If the foster or adoptive applicant disagrees with the cabinet's recommendation to not accept the applicant as a foster or adoptive home, designated cabinet staff shall review the request to become a foster or adoptive parent and issue a final written determination regarding the cabinet's recommendation.

Section 9. Expectations of a Foster or Adoptive Home. A foster or adoptive home providing services for a child in the custody of the cabinet shall:

(1) Provide a child placed by the cabinet with a family life,

including:

(a) Nutritious food;

(b) Clothing comparable in quality and variety to that worn by other children with whom the child may associate;

(c) Affection;

(d) Life skills development~~[, including demonstrating functional literacy];~~

(e) Recreational opportunities;

(f) Educational opportunities;

(g) Nonmedical transportation;

(h) Independent living services for a child age twelve (12) and older; ~~and~~

(i) Opportunities for development consistent with their religious, ethnic, and cultural heritage;

(j) Adequate supervision; and

(k) Refraining from smoking in the direct presence of a child for whom the child's[their] physician recommends, in writing, a smoke-free environment.

(2) Permit cabinet staff to visit;

(3) Share with cabinet staff pertinent information about a child placed by the cabinet;

(4) Comply with the general supervision and direction of the cabinet concerning the care of a child placed by the cabinet;

(5) Report immediately to the cabinet if there is a:

(a) Change of address;

(b) Hospitalization or life-threatening accident or illness of a child placed by the cabinet;

(c) Change in the number of people living in the home;

(d) Significant change in circumstances in the foster or adoptive home, such as income loss, marital separation, or other household stressor;

(e) Child placed in the home that is absent without official leave;

(f) Suicide attempt of a child placed by the cabinet; or

(g) Criminal activity by the child placed by the cabinet;

(6) Notify the cabinet if:

(a) Leaving the state with a child placed by the cabinet for more than twenty-four (24) hours; or

(b) A child placed by the cabinet is to be absent from the foster or adoptive home for more than twenty-four (24) hours;

(7) Cooperate with the cabinet if a contact is arranged by cabinet staff between a child placed by the cabinet and the child's birth family including:

(a) Visits;

(b) Telephone calls; or

(c) Mail;

(8) Surrender a child to the authorized representative of the cabinet upon request;

(9) Keep confidential all personal or protected health information as shared by the cabinet, in accordance with KRS 194A.060, 620.050, and 45 C.F.R. Parts 160 and 164 concerning a child placed by the cabinet or the child's birth family;

(10) Support an assessment of the service needs of a child placed by the cabinet;

(11) Participate in case-planning conferences concerning a child placed by the cabinet;

(12) Cooperate with the implementation of the permanency goal established for a child placed by the cabinet;

(13) Notify the cabinet at least fourteen (14) calendar days in advance of the home's intent to become certified to provide foster care or adoption services through a private child-placing agency in accordance with 922 KAR 1:310;

(14) Treat a child placed by the cabinet with dignity;

(15) Arrange for respite care services in accordance with Section 10(5) of this administrative regulation;

(16) Ensure that a child in the custody of the cabinet receives the child's designated per diem allowance;

(17) Facilitate the delivery of medical care to a child placed by the cabinet as needed, including:

(a) Administration of medication to the child and daily documentation of the medication's administration; and

(b) Physicals and examinations for the child;

(18) Report suspected incidents of child abuse, neglect, and

exploitation in accordance with KRS 620.030;

(19) Comply with KRS 620.360(2); ~~and~~

(20) Have appeal rights in accordance with 922 KAR 1:320;

and

(21) Demonstrate functional literacy.

Section 10. Reimbursements for Foster Homes. (1) Types of per diem reimbursement. The cabinet shall approve a foster home as specified in Sections 2 and 3 of this administrative regulation and authorize a per diem reimbursement as established in this subsection.

(a) A child specific per diem reimbursement shall be made to a foster home that:

1. Has been approved pursuant to Section 7 of this administrative regulation; and

2. Meets initial training requirements for a child specific foster home.

(b) A basic per diem reimbursement shall be:

1. Based on the age of a child placed by the cabinet in the foster home; and

2. Made to the foster home that meets:

~~a. Meets criteria specified in paragraphs (b) through (j) of this subsection; and~~

~~b. Meets~~ annual training requirements in accordance with 922 KAR 1:495, Section 3. ~~(c)(b)~~ An advanced per diem reimbursement shall be:

1. Made to a foster home that has:

a. Been approved for two (2) years as a foster or adoptive parent; and

b. Met training requirements in accordance with 922 KAR 1:495, Section 3; and

2. Based on the age of the child placed by the cabinet.

~~(d)(e)~~ A basic medically complex per diem reimbursement shall be made to a foster parent who:

1. Meets criteria specified in Section 4 of this administrative regulation; and

2. Provides for the care of a child with medical complexity.

~~(e)(d)~~ An advanced medically complex per diem reimbursement shall be made to a foster parent who:

1. Meets criteria specified in Section 4 of this administrative regulation;

2. Has been approved for two (2) years as a foster or adoptive parent;

3. Has met training requirements in accordance with KRS 922 KAR 1:495, Section 3; and

4. Provides for the care of a child with medical complexity.

~~(f)(e)~~ A degreed medically complex per diem reimbursement shall be made to a foster parent who:

1. Meets criteria specified in Section 4 of this administrative regulation;

2. Maintains a current license as a health professional; and

3. Provides for the care of a child with medical complexity.

~~(g)(f)~~ A basic care plus foster home per diem reimbursement shall be made to a foster parent who:

1. Meets criteria specified in Section 5 of this administrative regulation; and

2. Provides for the care of a child described in Section 5(1)(b) of this administrative regulation.

~~(h)(g)~~ An advanced care plus foster home per diem reimbursement shall be made to a foster parent who:

1. Meets criteria specified in Section 5 of this administrative regulation;

2. Has been approved for two (2) years as a foster or adoptive parent;

3. Has met training requirements in accordance with 922 KAR 1:495, Section 3(1); and

4. Provides for the care of a child described in Section 5(1)(b) of this administrative regulation.

~~(i)(h)~~ A specialized medically complex per diem reimbursement shall be made to a foster parent who:

1. Meets criteria specified in Section 4 of this administrative regulation; and

2. Provides for the care of a child with medical complexity

determined by designated cabinet staff to meet specialized medically complex criteria due to a required higher level of medical care or oversight, which may also include behavioral or emotional needs related to the medical condition.

~~(j)(i)~~ A degreed specialized medically complex per diem reimbursement shall be made to a foster parent who:

1. Maintains a current license as a health professional;

2. Meets criteria specified in Section 4 of this administrative regulation; and

3. Provides for the care of a child with medical complexity determined by designated cabinet staff to meet specialized medically complex criteria due to a required higher level of medical care or oversight, which may also include behavioral or emotional needs related to the medical condition.

~~(k)(j)~~ Upon placement of a child by the cabinet, a per diem reimbursement shall:

1. Be specified in a contract between an approved foster home and the cabinet; and

2. Provide for the care of a child placed by the cabinet, to include:

a. Housing expenses;

b. Food-related expenses;

c. Nonmedical transportation;

d. Clothing;

e. Allowance;

f. Incidentals;

g. Babysitting, excluding childcare authorized in subsection

(4)(b) of this section;

h. Sports, recreation, and school activities;

i. One (1) day of respite care per child per month; and

j. School expenses.

(2) Medical coverage.

(a) Cabinet staff may authorize payment for medical expenses for a child in the custody of the cabinet after verification is provided that the child is not covered by health insurance, Medicaid, or the Kentucky Children's Health Insurance Program (K-CHIP).

(b) Designated cabinet staff shall approve or deny authorization of payment for a medical treatment greater than \$500.

(3) Child care services.

(a) The cabinet shall review requests for child care services every six (6) months for a working foster parent.

(b) Designated cabinet staff may approve requests for child care services for a nonworking foster parent if:

1. A medical crisis affects the foster parent; or

2. The child care is appropriate to support the foster home or child.

(c) Designated cabinet staff shall review approved requests for child care services for a nonworking foster parent every three (3) months.

(d) Reimbursements shall not be made simultaneously to the same provider for foster care and child care services.

(e) A foster parent shall not simultaneously be used as a licensed or certified health care or social service provider for a child placed in the foster parent's care by the cabinet.

(4) Training. To the extent funds are available, the cabinet shall provide a reimbursement to an approved foster or adoptive home for ongoing training expenses commensurate with the foster or adoptive parent's training needs, including:

(a) Mileage;

(b) Babysitting; and

(c) Tuition or fees up to the amount of:

1. \$100 per parent per year; or

2. \$200 per parent per year for a:

a. Medically complex foster or adoptive home; or

b. Care plus foster or adoptive home.

(5) Respite care.

(a) Respite care shall be available for a child placed by the cabinet in a foster home.

(b) A foster home shall be eligible for one (1) day of respite care per month per child.

(c) A foster home that cares for a child in the custody of the

cabinet and meets criteria established in Sections 4 and 5 of this administrative regulation shall be eligible for three (3) days of respite care per month per child.

(d) Designated cabinet staff may extend a foster parent's respite care use to fourteen (14) days if designated cabinet staff document that the:

1. Foster parent requires the additional respite care:
 - a. To stabilize the child's placement in the foster home; or
 - b. Due to unforeseen circumstances that may occur, such as:
 - (i) Death in the family;
 - (ii) Surgery; or
 - (iii) Illness; or
2. Child placed in the foster home requires additional respite care to allow for a period of adjustment.

(e) The cost of respite care shall not exceed the per diem for the child.

(f) A respite care provider shall be approved in accordance with Section 17 of this administrative regulation.

(6) Appeals. A foster or adoptive parent may appeal the timeliness of reimbursement in accordance with 922 KAR 1:320.

Section 11. Home Study Requests. (1) Upon receipt of a request from another state's Interstate Compact on the Placement of Children Administrator in the interest of a child in the legal custody of that state's public agency, the cabinet shall complete the foster or adoptive home approval process as specified in Section 7 of this administrative regulation.

(2) The cabinet shall share a previously approved home study in accordance with the Kentucky Open Records Act, KRS 61.870-61.884, and 42 U.S.C. 671(a)(23).

(3) An individual may request an administrative hearing in accordance with 922 KAR 1:320 for failure of the cabinet to act in accordance with subsections (1) and (2) of this section.

Section 12. Foster or Adoptive Home ~~Annual~~ **Reevaluation**. (1) Prior to or during the month of the anniversary date of the initial approval as a foster or adoptive parent, the foster or adoptive parent shall be required to complete annual training requirements as specified in 922 KAR 1:495.

(2)(a) Failure to meet training requirements specified in subsection (1) of this section shall lead to closure unless an exception is granted by the designated cabinet staff for a foster parent caring for a child in the custody of the cabinet and it is determined that it is in the best interest of a child placed in the foster home.

(b) If an exception is approved as specified in paragraph (a) of this subsection, a new or additional child shall not be placed in the home until the foster parent has met the training requirement.

(3) A cabinet staff member shall conduct a personal, in-home interview with a foster or adoptive parent prior to or during the month of the anniversary date of the third year of the initial approval as a foster or adoptive home. The interviewer shall assess:

- (a) Any change in the foster or adoptive home;
- (b) The ability of the foster or adoptive home parent to meet the needs of a child placed in the home; and
- (c) Continuing compliance with the requirements of Sections 2 and 3 of this administrative regulation.

(4) The cabinet staff ~~member~~ **person** shall document requirements of subsection (3) of this section to include:

(a) A list of persons residing in or frequently in the home since the initial approval or reevaluation ~~within the past twelve (12) months~~;

(b) A list of all foster children placed in the home since the initial approval or reevaluation ~~within the past twelve (12) months~~ and exit reasons for the children no longer in the home;

- (c) Use of formal and informal support systems including:
 1. Respite;
 2. Extended family support; and
 3. Friends or community partners;
- (d) Description of parenting and discipline strategies;
- (e) Changes in the physical environment including:
 1. Address change; and

2. School district change;

(f) Discussion of stressors within the home to include:

1. Pregnancy or birth;
2. Physical or mental health conditions;
3. Employment changes;
4. Financial changes;
5. Death, grief, or loss;
6. Childhood trauma; and
7. Divorce or personal relationship changes;
- (g) Alcohol or drug use and any substance abuse treatment;
- (h) Functioning of relationships within the household;
- (i) Assessment of the family's ability to meet the needs of the children placed in the home;
- (j) List of foster or adoptive home reviews;
- (k) Areas of concern or actions to be addressed that may exist within the household; and
- (l) Placement recommendations.

Section 13. Foster or Adoptive Home Reviews. (1) Upon notification of a factor that may place unusual stress on the foster or adoptive home or create a situation that may place a child at risk, cabinet staff shall:

(a) Immediately assess the health and safety risk of the child; and

(b) Complete a review of the foster or adoptive home within thirty (30) calendar days.

(2) Factors that shall result in a review of a foster or adoptive home shall include:

- (a) Death or disability of a family member;
- (b) Sudden onset of a health condition that would impair a foster or adoptive parent's ability to care for a child placed in the home by the cabinet;
- (c) Change in marital status or home address;
- (d) Sudden, substantial decrease in, or loss of, income;
- (e) Childbirth;
- (f) Use of a form of punishment that includes:
 1. Cruel, severe, or humiliating actions;
 2. Corporal punishment inflicted in any manner;
 3. Denial of food, clothing, or shelter;
 4. Withholding implementation of the child's treatment plan;
 5. Denial of visits, telephone, or mail contacts with family members, unless authorized by a court of competent jurisdiction;
- (g) Assignment of extremely strenuous exercise or work;
- (g) A report of abuse, neglect, or dependency that results in a finding that:
 1. Is substantiated; or
 2. Reveals concern relating to the health, safety, and well-being of the child;
- (h) If the foster or adoptive parent is cited with, charged with, or arrested due to a violation of law other than a minor traffic offense; ~~or~~

(i) Other factor identified by cabinet staff that jeopardizes the physical, mental, or emotional well-being of the child; or
(j) Failure to meet annual training requirements.

(3) The narrative of the review shall contain:

- (a) Identifying information;
- (b) Current composition of the household;
- (c) Description of the situation that initiated the review;
- (d) An evaluation of the foster or adoptive home's family functioning to determine if the child's needs are met; and
- (e) A plan for corrective action that may include a recommendation for closure of the foster or adoptive home.

Section 14. Closure of an Approved Foster or Adoptive Home. (1) A foster or adoptive home shall be closed if:

- (a) Cabinet staff determines that the family does not meet the general requirements, as specified in Sections 2 and 3 of this administrative regulation, for a foster or adoptive home;
- (b) A situation exists that is not in the best interest of a child;
- (c) Sexual abuse or exploitation by the foster or adoptive parent or by another resident of the household is substantiated;
- (d) Substantiated child abuse or neglect by a resident of the

household occurs that is serious in nature or warrants removal of a child;

(e) A serious physical or mental illness develops that may impair or preclude adequate care of the child by the foster or adoptive parent; or

(f) The cabinet has not placed a child in the home within the preceding two (2) year period.

(2) A foster or adoptive home may be closed according to the terms of the contract between the cabinet and the foster or adoptive home.

(3) If it is necessary to close an approved foster or adoptive home, the reason shall be stated by cabinet staff in a personal interview with the family, unless the family refuses or declines the personal interview.

(4) The cabinet shall:

(a) Confirm, in a written notice to the foster or adoptive parent, the decision to close a home; and

(b) Deliver the notice to the foster or adoptive home within fourteen (14) calendar days of the interview with a foster or adoptive parent.

(5) The written notice for closure of a foster or adoptive home shall include:

(a) Notice that the cabinet shall not place a child in the home; and

(b) The reason why the foster or adoptive home is being closed.

Section 15. Reapplication. (1) A former foster or adoptive home parent whose home was closed pursuant to Section 14(1)(a) through (f) of this administrative regulation may be considered for reapproval if the cause of closure has been resolved.

(2) To reapply, a former foster or adoptive parent shall:

(a) Attend an informational meeting; and

(b) Submit the:

1. Names of references specified in Section 2(13) of this administrative regulation; and

2. Authorization for criminal records release specified in Section 2(17) of this administrative regulation.

(3) A reapplying former foster or adoptive parent shall reenroll and complete training requirements, as specified in Section 6 of this administrative regulation, unless:

(a) The former foster or adoptive parent has previously completed training requirements, as specified in Section 6(2) of this administrative regulation; and

(b) An exception to reenrollment is provided by designated cabinet staff which have ascertained that the former foster or adoptive parent otherwise meets the necessary skill level.

Section 16. Placement Considerations. (1) Unless an exception is approved pursuant to subsections[subsection] (2) or (3) of this section because a placement is in the best interest of the child and specific support services shall[will] be provided, the requirements established by this subsection shall apply to foster homes.

(a) More than six (6)[five–(5)] children, including children under the custodial control of the cabinet and the foster parent's own children living in the home, shall not reside in a foster home.

(b) More than two (2) children under age two (2), including children under the custodial control of the cabinet and the foster parent's own children living in the home, shall not reside in a foster home.

(c) A child with medical complexity shall be placed in an approved medically complex home.

(2) To request an exception to the criteria established by subsection (1) of this section, cabinet staff shall submit the DPP-112A, DCBS Placement Exception Request, to designated cabinet staff prior to the proposed placement documenting:

(a) The reason the placement is in the best interest of the child; and

(b) Specific support services to be provided.

(3) The number of foster children residing in a foster family home may exceed the limitation established in subsection (1)(a)

of this section with documentation on the DPP-112A in order to allow:

(a) A parenting youth in foster care to remain with the child of the parenting youth;

(b) Siblings to remain together;

(c) A child with an established meaningful relationship with the family to remain with the family;

(d) A family with special training or skills to provide care to a child who has a severe disability; or

(e) Other circumstances noted in the DPP-112A and approved by the service region administrator or designee.

(4) If an exception to subsection (1) or (2) of this section is necessary for a placement to occur outside of normal business hours:

(a) Cabinet staff shall verbally provide all information contained within the DPP-112A to designated cabinet staff prior to the placement;

(b) A verbal approval from designated cabinet staff shall be required prior to the placement occurring; and

(c) The completed DPP-112A shall be submitted on the first business day following placement.

(5)[(4)] Cabinet staff shall inform the foster parent of conditions related to the child in accordance with:

(a) KRS 605.090(1)(b); and

(b) KRS 605.090(6).

(6) Cabinet staff shall place a child with higher level needs in an advanced level home or above if a relative or fictive kin placement has not been identified.

(7)[(5)] A foster or adoptive parent may adopt a child for whom parental rights have been terminated if:

(a) Foster or adoptive parent adoption is determined by cabinet staff to be in the best interest of the child;

(b) The child resides in the foster or adoptive home; and

(c) Criteria in 922 KAR 1:100 are met.

(8)[(6)] If a foster or adoptive parent expresses interest in adopting a foster child currently placed in the home and an alternative permanent placement is in the child's best interest, cabinet staff shall meet with the foster or adoptive parent prior to selection of an adoptive home to explain:

(a) Why an alternative permanent placement is in the child's best interest; and

(b) The foster or adoptive parent's right to submit a request to the cabinet to reconsider the recommendation.

Section 17. Requirements for Respite Care Providers. (1) A respite care provider shall:

(a) Be:

1. An approved foster or adoptive home; or

2. Approved in accordance with subsection (2) of this section; and

(b) Receive preparation for placement of a child, including information in accordance with:

1. KRS 605.090(1)(b); and

2. Section 4(1)(e) through (g) of this administrative regulation, if the child is designated as medically complex.

(2) If a foster or adoptive parent chooses a respite care provider who is not an approved foster or adoptive home, the respite care provider shall:

(a)1. Meet criteria established in Sections 2(1), (2), (17), (18) and 3 of this administrative regulation if respite care is provided outside the home of the foster or adoptive parent; or

2. Meet criteria established in Section 2(1), (2), (17), and (18) of this administrative regulation if respite care is provided inside the home of the foster or adoptive parent; and

(b)1. If providing respite care for a child described in Section 5(1)(b) of this administrative regulation, have:

a. Child-specific training in the mental health treatment of children or their families; or

b. A certificate of completion for twelve (12) hours of care plus training specified in 922 KAR 1:495, Section 6(1); or

2. If providing respite care for a child with medical complexity or specialized medical complexity:

a. Meet training requirements in accordance with 922 KAR

1:495, Section 7;

b. Hold a current certificate in first aid;

c. Hold a current certificate in infant, child, and adult CPR; and

d. Receive child specific training from a health professional or a foster parent who has been trained by a health professional in how to care for the specific medical needs of the child.

(3) A respite care provider:

(a) May attend pre-service training as specified in Section 6 of this administrative regulation; and

(b) Shall comply with Sections 16 and 17 of this administrative regulation.

Section 18. Waiver Review Process. (1) The department may waive requirements for a relative or fictive kin seeking approval as a child specific foster home if the removal of those requirements does not jeopardize the health, safety, or welfare of the child being placed.

(2) The department shall not grant a waiver to the requirements established in the following sections of this administrative regulation:

(a) Section 2, subsections (1)(a) through (7), (10) through (12), (16) through (18); or

(b) Section 3, subsections (1) through (5), (6)(b), (7) through (10)(c), (10)(e) through (10)(f)(g), (11) through (18).

(3) An applicant may request a waiver of non-safety standards. A representative of the department shall submit a written request that states the:

(a) Specific provision(s) for which a waiver is requested; and

(b) Justification for the requested waiver.

(4) A child specific foster home that seeks approval as a basic foster home or higher level shall complete all prior waived training and meet the requirements established in Sections 2 and 3 of this administrative regulation.

Section 19. Emergency Preparedness. Each foster home shall submit an emergency preparedness plan to the department that would allow the department to identify, locate, and ensure continuity of services to children who are in the custody of the cabinet.

Section 20. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DPP-107, Health Information Required for Foster or Adoptive Parents, Applicants, or Adult Household Members", 10/15;

(b) "DPP-108, Health Information Required for Foster or Adoptive Parents or Applicants Regarding Dependent Children", 10/15; and

(c) "DPP-112A, DCBS Placement Exception Request", 4/19[10/15].

(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.

ERIC T. CLARK, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: July 12, 2019

FILED WITH LRC: July 15, 2019 at 10 a.m.

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746, fax 502-564-7091, CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Laura Begin, Phone Number: (502) 564-3703, Email: Laura.Begin@ky.gov; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amended administrative regulation establishes criteria for public agency foster homes, adoptive homes, and respite care providers caring

for foster or adoptive children.

(b) The necessity of this administrative regulation: This amended administrative regulation is necessary to establish standards for public agency foster parents, adoptive parents, and respite care providers who care for children in the custody of the cabinet.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1), 199.472(1), and 605.100(1) require the cabinet to promulgate administrative regulations necessary to operate programs to fulfill the responsibilities vested in the cabinet; arrange programs designed to provide for classification, segregation, and specialized treatment of children according to their respective needs; and promulgate administrative regulations to establish the process of determining an applicant's capacity for foster or adoptive parenthood.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended administrative regulation assists in the effective administration of the statutes by establishing criteria for public agency foster parents, adoptive parents, and respite care providers.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation establishes a new category of child specific foster home provided to relative and fictive kin caregivers of children and the requirements applicants must adhere to for agency approval. The amendment establishes a waiver process for foster and adoptive parents and for child specific foster homes in which requirements that do not jeopardize the health, safety, or welfare of the child being placed may be waived by the cabinet. Unless an exception is permitted, the maximum number of children residing in a foster home is being amended to six rather than five, in accordance with Section 472(c)(1)(A)(ii)(III) of the Family First Prevention Services Act. The amendment also incorporates federal model standards into the certification and approval process of public foster care and adoptive homes and includes updates needed for consistency between public and private foster and adoptive homes and for compliance with KRS Chapter 13A. The administrative regulation is being further amended in response to comments received to make clarifications in the home-study requirements and change the time period for foster home evaluation from annual to every three years as required by House Bill 446's amendment to KRS 620.360(4).

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to establish a new child specific category of foster homes for relative and fictive kin caretakers and to incorporate federal model licensing standards for public foster and adoptive homes. Further amendments were necessary for clarification and conformity with passed legislation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 194A.050(1) requires the cabinet to promulgate, administer, and enforce programs mandated by federal law or to qualify for the receipt of federal funds. KRS 199.472(1) requires the cabinet to promulgate administrative regulations to establish the process of determining an applicant's capacity for foster or adoptive parenthood.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will ensure that public foster and adoptive homes meet federal standards necessary for federal funding reimbursement and by establishing the process for which a relative or fictive kin caregiver may become a certified child specific foster home.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently over 9,000 children in foster care and approximately 5,000 foster or adoptive homes. In 2018, the cabinet substantiated or found services were needed for 32,411 unique children (TWS-M272F, 1/2/19). Establishing procedures whereby relatives and fictive kin may become foster

homes for children when they are unable to remain safely in the home of their parents may reduce trauma by placing children in these approved homes with people whom they are already familiar. The cabinet highly values relative and fictive kin placements. The Annie E. Casey Foundation analysis and assessment indicated that Kentucky has approximately 16,000 active relative placements – approximately ten relative cases for every six children in foster care. Not all of these caregivers will choose to be certified as a child specific home, but the cabinet will be affected in that there will be more resource homes that need to be certified as well as additional costs through the payment of monthly per diem rates to homes that were previously not eligible.

(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: Relative and fictive kin caregivers will make contact with the cabinet and follow the procedures outlined in this administrative regulation to become a child specific foster home. The administrative regulation provides a waiver process to facilitate approval.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to relative or fictive kin caregivers. The cabinet will realize increased costs, as there will be more foster homes that were previously not eligible for reimbursement for accepting a relative into their home in the circumstance that the child could not remain in their parents' home due to safety concerns. The number of relatives that will want to be approved as a child specific foster home is unknown at this time.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will benefit children who have to be placed outside of their home by enduring less trauma through relative and fictive kin placements and the administrative regulation will provide resources to the relative and fictive kin caregivers.

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

(a) Initially: The Annie E. Casey Foundation analysis and assessment indicated that Kentucky has approximately 16,000 active relative placements – approximately ten relative cases for every six children in foster care. Not all of these caregivers will choose to be certified as a child specific home, but the cabinet will be affected in that there will be more foster homes that need to be certified as well as additional costs through the payment of monthly per diem rates to homes that were previously not eligible. Over \$200,000 of federal funding has been secured as a result of the Family First Prevention Services Act to implement kinship supports and a kinship service array, including costs of this new foster home type. Federal funds will be leveraged for this program.

(b) On a continuing basis: Over \$200,000 of federal funding has been secured as a result of the Family First Prevention Services Act to implement kinship supports and a kinship service array. This program will not cause an additional cost for the state agency with the exception of minor administrative costs. Federal funds will be leveraged for this program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this administrative regulation will meet federal guidelines and be eligible for Title IV-E reimbursement. The implementation and enforcement of this administrative regulation are supported through funds under Title IV-E of the Social Security Act and General Funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as this administrative regulation is applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

16 C.F.R. 1219-1220, 45 C.F.R. Parts 160, 164, 8 U.S.C. 1151, 42 U.S.C. 671, 677

2. State compliance standards. KRS 194A.050(1), 199.472(1), 605.100(1)

3. Minimum or uniform standards contained in the federal mandate. 16 C.F.R. 1219-1220, 45 C.F.R. Parts 160, 164, 8 U.S.C. 1151, 42 U.S.C. 671, 677

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services 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), 199.472, 605.100(1), 16 C.F.R. 1219-1220, 45 C.F.R. Parts 160, 164, 8 U.S.C. 1151, 42 U.S.C. 671, 677

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no new revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? Over \$200,000 of federal funding has been secured as a result of the Family First Prevention Services Act to implement kinship supports and a kinship service array. This program will not cause an additional cost for the state agency with the exception of minor administrative costs. Federal funds will be leveraged for this program.

(d) How much will it cost to administer this program for subsequent years? Over \$200,000 of federal funding has been secured as a result of the Family First Prevention Services Act to implement kinship supports and a kinship service array. This program will not cause an additional cost for the state agency with the exception of minor administrative costs. Federal funds will be leveraged for this 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 Protection and Permanency
(Amended After Comments)

922 KAR 1:495. Training requirements for foster parents, adoptive parents, and respite care providers for children in the custody of the cabinet.

RELATES TO: KRS 61.870, 158.135(1)(c), 194A.005(1), 194A.050(1), 199.011[199.011(9)], 199.464, 199.472(1), 199.640, 311.720(12)[311.720(9)], 311.840(3), 314.011(5), (7), 600.020, 605.100(1), 605.150(1), 620.360, 45 C.F.R. Parts 160, 164, 42 U.S.C. 671(a), 675

STATUTORY AUTHORITY: KRS 194A.050(1), 199.472(1), 199.640(5), 605.100(1), 605.150(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary for the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 199.472(1) requires[authorizes] the cabinet to promulgate administrative regulations to establish the process of determining an applicant's capacity for adoptive parenthood. KRS 199.640(5)(a) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations establishing basic standards of care and service for child-caring facilities and child-placing agencies. KRS 605.100(1) requires the cabinet to arrange programs designed to provide for classification, segregation, and specialized treatment of children according to their respective problems, needs, and characteristics. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. In addition, 42 U.S.C. 671(a)(24) includes a certification that, before a child in foster care under the responsibility of the state is placed with prospective foster parents, the prospective foster parents will be prepared adequately with the appropriate knowledge and skills to provide for the needs of the child, and that such preparation will be continued, as necessary, after the placement of the child. This administrative regulation establishes minimum training requirements for foster parents, adoptive parents, and respite care providers caring for foster or adoptive children in the custody of the cabinet.

Section 1. Definitions. (1) "Adoptive parent" means an individual who is seeking to adopt a child placed in the custody of the cabinet.

(2) "Applicant" means an individual or family, subject to approval by the cabinet, or by a private child-placing agency, as a foster or adoptive home.

(3) "Cabinet" is defined by KRS 194A.005(1) and 600.020(7) [600.020(6)].

(4) "Care Plus" means a foster care program for a child who is determined to have specialized care needs as specified in 922 KAR 1:350, Section 5.

(5) "Child specific foster home" means an individual or family subject to approval by the cabinet as a foster family home for a relative or fictive kin placement.

(6) "Foster home" means:

(a) A "foster family home" as defined by KRS 199.011(10)[199.011(9)] and 600.020(30)[600.020(28)], if referring to a physical structure; or

(b) If referring to an individual, any individual approved as a foster parent by:

1. A child-placing agency in accordance with 922 KAR 1:310;

or

2. The cabinet in accordance with 922 KAR 1:350.

(7)[(6)] "Health professional" means a person actively licensed as a:

(a) Physician as defined by KRS 311.720(12)[311.720(9)];

(b) Physician assistant as defined by KRS 311.840(3);

(c) Advanced practice registered nurse as defined by KRS 314.011(7); or

(d) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.

(8)[(7)] "Medically complex" means a foster care program for a child who is determined to have a medical condition as specified in 922 KAR 1:350, Section 4.

(9)[(8)] "Professional experience" means paid employment or volunteer work in a setting where there is supervision or periodic evaluation.

(10)[(9)] "Reasonable and prudent parent standard" is defined by 42 U.S.C. 675(10).

(11)[(10)] "Respite care" means temporary care provided by another individual or family:

(a) To meet the needs of the child or provide relief to a foster or adoptive parent approved in accordance with 922 KAR 1:310 or 922 KAR 1:350; and

(b) With the expectation of a child's return to the current foster or adoptive home.

(12)[(11)] "Therapeutic foster care" is defined by KRS 158.135(1)(c).

(13)[(12)] "Trauma informed care" means training developed using an organizational strengths-based framework to recognize and respond to the impact of traumatic stress on children, caregivers, and service providers with a goal to facilitate and support the recovery and resiliency of the child and family.

Section 2. General Training Requirements. (1) The purpose of the foster or adoptive parent training shall be to:

(a) Orient the applicant to the philosophy and process of the foster care or adoption programs;

(b) Develop greater self-awareness on the part of the applicant to determine strengths and needs;

(c) Sensitize the applicant to the kinds of situations, feelings, and reactions that are apt to occur with a child in the custody of the cabinet;

(d) Effect behavior so that an applicant may better fulfill the role as a foster or adoptive parent to a child; and

(e) Emphasize:

1. Self-evaluation; and

2. Experiential learning.

(2)(a) A foster or adoptive parent applicant shall complete a minimum of fifteen (15) hours of curricula in the following topic areas:

1. Information about the rights, responsibilities, and expectations of a foster or adoptive parent;

2. The importance of birth parents and culture;

3. The process of a child entering foster care;

4. Types of child maltreatment;

5. Impact of childhood trauma;

6. Stages of grief;

7. Long term effects of separation and loss;

8. Permanency planning for a child, including independent living for transitioning youth;

9. Importance of attachment on a child's growth and development and the way a child maintains and develops a healthy attachment;

10. Family functioning, values, and expectations of a foster or adoptive home;

11. Cultural competency;

12. Emergency preparedness;

13. Child development;

14. Basic discipline and behavior management skills; and

15. Reasonable and prudent parent standard.

(b) The cabinet may waive up to twelve (12) hours of preservice training curricula for an applicant seeking approval as a child specific foster home.

(c) The cabinet shall not waive the required electronic courses required by subsection (3) of this section.

~~(d)[(b) Beginning July 1, 2016,]~~ Training curricula specified in paragraph (a) of this subsection shall be:

1. Provided by the cabinet; or
2. Approved by the cabinet in accordance with Section 8 of this administrative regulation.

~~(e)[(c)]~~ Unless justification is documented pursuant to paragraphs ~~(f)[(d)]~~ and ~~(g)[(e)]~~ of this subsection, foster or adoptive parent training for placement of a child in the custody of the cabinet shall be completed in a group setting by each adult who resides in the household and may provide routine care to a child in the custody of the cabinet.

~~(f)[(d)]~~ A justification to provide foster or adoptive parent training other than in a group setting pursuant to paragraph ~~(e)[(c)]~~ of this subsection shall:

1. Include the circumstance ~~that[, which]~~ prevents the foster or adoptive parent training from occurring in a group setting; and
2. Be documented utilizing the DPP-113, Request for Applicant or Adult Household Member to Attend Individualized Training.

~~(g)[(e)]~~ A justification completed in accordance with paragraph ~~(f)[(d)]~~ of this subsection shall be placed in the foster or adoptive parent's case file.

~~(h)[(f)]~~ An applicant shall not receive more than eight (8) hours of individualized training during a twenty-four (24) hour period.

(3) In addition to initial training requirements in subsection (2)(a) of this section, a foster or adoptive parent applicant shall complete the following electronic courses provided by the cabinet prior to approval:

- (a) Pediatric Abusive Head Trauma;
- (b) First Aid and Universal Precautions;
- (c) Medication Administration; ~~and~~
- (d) Medical Passports; ~~and~~
- (e) Reasonable and Prudent Parenting.

(4) First aid certification may substitute for the training requirement provided within subsection (3)(b) of this section if the foster or adoptive parent applicant provides documentation of current certification.

Section 3. General Annual Training Requirements. (1) Prior to or during the month of the second anniversary date of a foster or adoptive parent's initial approval, the foster or adoptive parent shall complete a minimum of thirty (30) hours of training in the following areas:

- (a) Trauma informed care curriculum provided or approved by the cabinet in accordance with Section 8 of this administrative regulation;
- (b) Psychotropic medications curriculum provided by the cabinet;
- (c) Sexual abuse curriculum provided or approved by the cabinet in accordance with Section 8 of this administrative regulation; and
- (d) Behavior management and skill development.

(2) If a private child-placing agency provides training in accordance with subsection (1) of this section prior to a foster or adoptive home's approval, the thirty (30) hours shall be in addition to the fifteen (15) hours of pre-service training required by Section 2(2) of this administrative regulation.

~~(3)[A foster or adoptive home approved prior to the adoption of this administrative regulation shall complete the training described in subsection (1) of this section within two (2) years of the effective date of this administrative regulation.]~~

(4) If training requirements of subsections (1) ~~and (2)~~ [through (3)] of this section are met, a foster or adoptive parent shall complete the following prior to or during each subsequent anniversary of the foster or adoptive parent's initial approval:

- (a) Ten (10) hours of private child-placing agency or cabinet-sponsored training related to knowledge or skills relevant to foster parenting, or training approved in advance by the private child-placing agency or the cabinet; and
- (b) If applicable, training as specified in Section 2(3)(a) of this administrative regulation once every five (5) years in accordance with KRS 199.464.

~~(4)(a) The cabinet may waive annual ongoing training requirements for a foster home approved as a child specific foster home.~~

~~(b) The cabinet shall assess the need for ongoing training for the child specific foster home during the [annual] re-evaluation [(5) A foster or adoptive parent shall complete training regarding the reasonable and prudent parent standard in accordance with 42 U.S.C. 671(a) and Section 2(2)(a)15 of this administrative regulation within one (1) year of the effective date of this administrative regulation].~~

(5) A foster or adoptive home who has accepted the placement of a child age fourteen (14) or older shall complete a cabinet-approved training that instructs parents on facilitating the development of life skills for the child, effective July 1, 2020.

Section 4. Medically Complex Foster Parent Training Requirements. (1) In addition to the general training requirements ~~established[specified]~~ in Section 2 of this administrative regulation and annual training requirements ~~established[specified]~~ in Section 3 of this administrative regulation, a medically complex foster parent applicant shall:

(a) Complete twelve (12) hours of cabinet-provided medically complex training in the following topic areas specific to children with medical complexity:

1. Growth and development;
2. Nutrition;
- ~~3.[An overview of procedures and techniques which may be utilized to provide care;~~
- ~~3.Observation and assessment;~~
- ~~4.Management of diet and environment;~~
- ~~5.] Documentation of provided care;~~
4. Medical conditions~~6. Parenting skills;~~ and
5. Standards of practice related to the medically complex home type~~7. Permanency planning]; and~~

(b) Hold a current certification in infant, child, and adult CPR and first aid.

(2) Prior to or during the anniversary month of the foster parent's initial approval as a foster parent and annually thereafter, an approved medically complex foster parent shall:

- (a) Meet the requirements in subsection (1)(b) of this section;
- (b) Complete the annual training requirements as specified in Section 3 of this administrative regulation; and
- (c) Complete twelve (12) hours of ongoing cabinet-provided training related to the care of children with medical complexity.

(3) Professional experience related to the care of a child with medical complexity may substitute for the initial and annual medically complex training requirements specified in subsections (1)(a) and (2)(c) of this section if approved by designated cabinet staff based on the foster or adoptive parent:

- (a) Being a health professional; and
- (b) Having completed twelve (12) hours of continuing education focusing on pediatrics within the past year that will assist the parent in the care of a child with medical complexity.

Section 5. Therapeutic Foster Care Training Requirements. (1) In addition to the general training requirements specified in Section 2 of this administrative regulation and annual training requirements specified in Section 3 of this administrative regulation, a therapeutic foster care applicant in accordance with 922 KAR 1:310 shall complete twelve (12) hours of private agency-sponsored training or training approved in advance by the child-placing agency in the following topic areas:

- (a) Specific requirements and responsibilities of a therapeutic foster care home;
- (b) Crisis intervention and behavior management;
- (c) De-escalation techniques;
- (d) Communication skills;
- (e) Skill development;
- (f) The dynamics of a child who has experienced sexual abuse or human trafficking; and
- (g) The effect of substance use, abuse, or dependency by either the child or the child's biological parent.

(2) An approved therapeutic foster parent shall:

(a) Complete the annual training requirements as specified in Section 3 of this administrative regulation; and

(b) Prior to or during the anniversary month of the foster parent's initial approval as a foster parent and annually thereafter, complete twelve (12) hours of private agency-sponsored training or training approved in advance by the private agency in topic areas relevant to therapeutic foster care.

(3) A therapeutic foster care applicant may concurrently complete general training requirements as specified in Section 2 of this administrative regulation and training requirements established in subsection (1) of this section.

Section 6. Care Plus Training Requirements. (1) In addition to the general training requirements specified in Section 2 of this administrative regulation and annual training requirements specified in Section 3 of this administrative regulation, a care plus applicant in accordance with 922 KAR 1:350 shall complete twelve (12) hours of cabinet-sponsored training or training approved in advance by the cabinet in the following topic areas:

(a) Specific requirements and responsibilities of a care plus foster home;

(b) Crisis intervention and behavior management;

(c) De-escalation techniques;

(d) Communication skills;

(e) Skill development;

(f) Cultural competency;

(g) The dynamics of a child who has experienced sexual abuse or human trafficking; and

(h) The effect of substance use, abuse, or dependency by either the child or the child's biological parent.

(2) An approved care plus foster parent shall:

(a) Complete the annual training requirements as specified in Section 3 of this administrative regulation; and

(b) Prior to or during the anniversary month of the foster parent's initial approval as a foster parent and annually thereafter, complete twelve (12) hours of ongoing cabinet-sponsored training or training approved in advance by the cabinet prior to or during the anniversary month of initial approval as a foster parent in the topic areas described in subsection (1) of this section.

Section 7. Respite Care Providers. If a respite provider is not approved as a foster or adoptive parent in accordance with 922 KAR 1:350 or 922 KAR 1:310, prior to initial approval as a respite care provider, the individual shall complete a minimum of two (2) hours of cabinet or private child-placing agency provided curriculum including an overview of the department and the policies and procedures of the agency related to the care of the child.

Section 8. Preapproval of Training Curricula. (1) If a private child-placing agency intends to offer curricula other than curricula provided by the cabinet as specified in Sections 2(2) or 3(1) of this administrative regulation, the private child-placing agency shall submit its curricula to the cabinet or its designee for consideration.

(2) The cabinet shall approve curricula that are:

(a) Comparable in content to curricula provided by the cabinet; or

(b) Recognized evidence-based practices.

(3) The cabinet shall make a determination:

(a) Within thirty (30) calendar days; or

(b) As a part of the child-placing agency's initial application to provide services to a child in the custody of the cabinet.

Section 9. Incorporation by Reference. (1) "DPP-113, Request for Applicant or Adult Household Member to Attend Individualized Training", 11/15, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ERIC T. CLARK, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: July 12, 2019

FILED WITH LRC: July 15, 2019 at 10 a.m.

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746, fax 502-564-7091, CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Laura Begin, Phone Number: (502) 564-3703, Email: Laura.Begin@ky.gov; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes minimum training requirements for foster parents, adoptive parents, and respite care providers caring for children in the custody of the cabinet.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to distinguish and establish training requirements for foster parents, adoptive parents, and respite care providers caring for children in the custody of the cabinet.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes minimum training requirements for foster parents, adoptive parents, and respite care providers caring for foster or adoptive children.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 199.472(1) requires the cabinet to promulgate administrative regulations to establish the process of determining an applicant's capacity for adoptive parenthood. KRS 199.640(5)(a) requires the cabinet to promulgate administrative regulations establishing basic standards of care and service for child-caring facilities and child-placing agencies

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

(a) How the amendment will change this existing administrative regulation: This amendment to the administrative regulation allows the cabinet to waive up to twelve hours of preservice training as well as ongoing training requirements for child-specific relative or fictive kin foster homes. This administrative regulation is being further amended in response to comments received to make conforming changes to the definition of respite care, require independent living training for specific foster homes, and change the time period for foster home evaluation from annual to every three years as required by House Bill 446's amendment to KRS 620.360(4).

(b) The necessity of the amendment to this administrative regulation: Applicants approved as a child-specific foster home have a prior existing relationship with the child placed in their home, and therefore a waiver of preservice training is appropriate to the specific needs of those families. Further amendments were necessary for clarification and conformity with passed legislation.

(c) How the amendment conforms to the content of the authorizing statutes: Approved child-specific foster homes will still receive minimal preservice training as required by statute for approval as a foster home and will complete the required web-based trainings.

(d) How the amendment will assist in the effective administration of the statutes: Applicants who are approved as a child-specific foster home will receive training tailored to their needs and provide them with the knowledge to care for a child with whom they are related or already possess a significant relationship.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact relatives and fictive kin who have a child placed with them due to the child being removed from their home for safety reasons. This number is unknown as these caregivers may not be in contact with the cabinet currently. However, Annie E. Casey

Foundation's analysis and assessment indicates that Kentucky has approximately 16,000 active relative placements – approximately ten relative cases for every six children in foster care. Not all of these caregivers may want to be approved as child-specific foster homes.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A waiver of the preservice training requirement will expedite the approval process for child-specific foster homes. Relative and fictive-kin caregivers will be advised of their options by DCBS staff. If they choose to move forward in pursuit of approval as a foster parent, these caregivers will be guided through the training process by DCBS staff.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to comply with training requirements for participants seeking approval to become a child-specific foster home as outlined in this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Relative and fictive kin caregivers will be able to be approved as child-specific foster homes through an easier and faster process than is currently available. In addition to guidance and an array of services provided by the cabinet, approved foster homes also receive a per diem from the cabinet.

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

(a) Initially: Annie E. Casey Foundation's analysis and assessment indicate that Kentucky has approximately 16,000 active relative placements – approximately ten relative cases for every six children in foster care. If Kentucky were to reinstate kinship care program benefits for 16,000 relative placements, the fiscal impact would equate to \$57.6M dollars annually. However, creating a foster home type specific for relatives and fictive kin caregivers allows for federal funding to be leveraged. The *D.O. v. Glisson* court ruling ordered DCBS to pay a foster care per diem to relatives and fictive kin caregivers raising kin children. This new child-specific foster home type will replace the funding source for this per diem and offer a wider array of service options for caregivers. This is in addition to providing clothing vouchers, special expenses, and child care assistance. From February through early December 2018, DCBS spent \$9.5 million in benefits payments alone under the ruling. Current outlays are averaging \$1.5 million per month, meaning that the ruling is on track to cost the cabinet \$18 million in benefits by the end of SFY 2019. Application of the ruling to other like cases is absorbing and exceeding additional appropriations to DCBS for relative supports and kinship care in the current budget biennium.

(b) On a continuing basis: Over \$200,000 of federal funding has been secured as a result of the Family First Prevention Services Act to implement kinship supports and a kinship service array. This program will not cause an additional cost for the state agency with the exception of minor administrative costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal and state funds under Title IV-E the Social Security Act and General Funds are the sources of funding for 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 increases 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: This administrative regulation does not establish or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied as this

administrative regulation is applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 671(a)(24)

2. State compliance standards. KRS 194A.050(1), 199.472, 199.640(5), 605.100(1), 605.150(1)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 671(a)(24) includes a certification that, before a child in foster care under the responsibility of the state is placed with prospective foster parents, the prospective foster parents will be prepared adequately with the appropriate knowledge and skills to provide for the needs of the child, and that such preparation will be continued, as necessary, after the placement of the child. This administrative regulation establishes minimum training requirements for foster parents, adoptive parents, and respite care providers caring for foster or adoptive children in the custody of the cabinet.

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 allows for a waiver of training requirements as allowed per federal code.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements This amended administrative regulation does not impose stricter standards.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services is impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.472(1), 199.640(5), 605.100(1), 605.150(1); 42 U.S.C. 671(a)(24)

(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. Currently, as a result of the *D.O. v. Glisson* court ruling, the state is spending over one million dollars per month to provide a financial benefit to relative and fictive-kin caregivers who are caring for children placed in their homes. Establishing this easier, more efficient process of approving child-specific foster homes is expected to decrease state expenditures as federal funding will be leveraged.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no revenue generated as a result of this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no revenue generated as a result of this administrative regulation.

(c) How much will it cost to administer this program for the first year? Over \$200,000 of federal funding has been secured as a result of the Family First Prevention Services Act to implement kinship supports and a kinship service array. This program will not cause an additional cost for the state agency with the exception of minor administrative costs.

(d) How much will it cost to administer this program for subsequent years? Federal funding will be leveraged and the cost will be absorbed as this new foster home type does not stray from current standards of practices with the exception of the waiver of non-safety standards.

Note: If specific dollar estimates cannot be determined,

VOLUME 46, NUMBER 2– AUGUST 1, 2019

provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PROPOSED AMENDMENTS

COUNCIL ON POSTSECONDARY EDUCATION
(Amendment)

13 KAR 1:020. Private college licensing.

RELATES TO: KRS 13B.005-13B.170, 164.020(23), 164.945, 164.946, 164.947, 164.992, 165A.320, 20 U.S.C. 1001 et. seq.

STATUTORY AUTHORITY: KRS 164.947(1), (2), 164.020(38) [164.020(37)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.947(1) requires the Council on Postsecondary Education to promulgate an administrative regulation to establish the procedures for the licensing of colleges as defined in KRS 164.945. KRS 164.947 provides that religious instruction or training shall not be restricted. This administrative regulation establishes the private college licensing requirements and the requirements for religious in-state colleges to apply for an exemption to those licensing requirements.

Section 1. Definitions. (1) "Accredited" means the approval of an accrediting agency.

(2) "Accrediting agency" means a national or regional agency which evaluates colleges and is recognized by the United States Department of Education, the Council on Higher Education Accreditation, or the Council on Postsecondary Education.

(3) "Agent" means any person employed by a college to act as a solicitor, broker, or independent contractor to procure students for the college by solicitation in any form made at any place other than the main campus of the college.

(4) "College" is defined by KRS 164.945(1).

(5) "Degree" is defined by KRS 164.945(2).

(6) "Diploma" is defined by KRS 164.946(3).

(7) "In-state college" means a college that is chartered by, organized within, and has its principal location in Kentucky.

(8) "Net tuition and fees" means the total of tuition and mandatory fee revenue less institutional scholarships and fellowships.

(9) "Operating or soliciting" means having a physical presence within Kentucky and includes:

(a) An instructional or administrative site within Kentucky whether owned, leased, rented, or provided without charge;

(b) Instruction, whether theory or clinical, originating from or delivered within Kentucky utilizing teachers, trainers, counselors, advisors, sponsors, or mentors;

(c) An agent, recruiter, in-state liaison personnel, institution, or business located in Kentucky that advises, promotes, or solicits for enrollment, credit, or award of an educational or occupational credential;

(d) An articulation agreement with a Kentucky licensed college or state-supported institution; or

(e) Advertising, promotional material, or public solicitation in any form that targets Kentucky residents through distribution or advertising in the state.

(10) "Out-of-state college" means a college that is chartered, organized, or has its principal location outside of Kentucky.

(11) "President" means the president of the Council on Postsecondary Education.

(12) "Unearned tuition" means the excess of cumulative collections of tuition and other instructional charges over the cumulative amount of earned tuition and other institutional charges prior to the first date of refund in accordance with the college's refund policy.

(13) "Unrestricted cash" means any cash or cash equivalents held by a college which are available to cover payments to students for any unearned tuition.

Section 2. General Requirements. (1)(a) Except as provided in paragraph (b) of this subsection or subsection (7) of this section, an in-state or out-of-state college that is operating or soliciting in Kentucky shall be licensed.

(b) If a college is operating or soliciting in Kentucky solely for

on-ground instruction at a location outside of Kentucky in which students leave Kentucky to attend, licensure shall not be required.

(2)(a) An out-of-state college shall be licensed separately for each instructional site in Kentucky.

(b) Except as provided in paragraph (c) of this subsection, an out-of-state college that is operating or soliciting using on-line instruction to Kentucky residents shall be considered to have an online campus which shall be licensed separately as an instructional site.

(c) Licensure shall not be required for an out-of-state college if the college:

1. Is only operating and soliciting under Section 1(9)(b) of this administrative regulation solely due to a faculty member residing in Kentucky and providing online instruction to Kentucky students; and

2. Has less than one (1) percent of its faculty members residing in Kentucky.

(3) A college awarding a certificate, diploma, associate degree, baccalaureate degree, master's degree, doctoral degree, or other degree, whether the degree is earned or honorary, shall be licensed. If a college's program is also required to be licensed or approved by another state agency as well as the Council on Postsecondary Education, the president shall attempt to coordinate the licensing function with that agency.

(4) A college shall offer only those programs, courses, and degrees, including honorary degrees, specifically authorized in the license.

(5) If a college ceases offering a licensed program, course, or degree, the college shall notify the president in writing and request that the program, course, or degree be removed from the college's license.

(6) Providing false or misleading information shall be grounds for denial of a license, or suspension or revocation of an existing license.

(7) A religious in-state college may operate or solicit in Kentucky if the college submits to the council an Application for Religious In-State College Letter of Exemption per KRS 164.947(2). The institution shall submit an application each year by the anniversary of its initial submission date. As part of the application, the institution shall verify compliance with the requirements established in this subsection.

(a) The institution shall be nonprofit, owned, maintained, and controlled by a church or religious organization which is exempt from property taxation under the laws of Kentucky.

(b) The name of the institution shall include a religious modifier or the name of a religious patriarch, saint, person, or symbol of the church.

(c) The institution shall offer only educational programs that prepare students for religious vocations as ministers or laypersons in the categories of ministry, counseling, theology, religious education, administration, religious music, religious fine arts, media communications, or social work.

(d) The titles of degrees issued by the institution shall be distinguished from secular degree titles by including a religious modifier that:

1. Immediately precedes, or is included within, any degree title, including an Associate of Arts, Associate of Science, Bachelor of Arts, Bachelor of Science, Master of Arts, Master of Science, Advanced Practice Doctorate, Doctor of Philosophy, or Doctor of Education degree; and

2. Is placed on the title line of the degree, on the transcript, and wherever[~~whenever~~] the title of the degree appears in official school documents or publications.

(e) The duration of all degree programs offered by the institution shall be consistent with Section 8(8)(b) of this administrative regulation.

(f) The institution shall comply with the truth in advertising requirements established in Section 8(11) of this administrative regulation.

(g)1. The institution shall disclose to each prospective student:

a. A statement of the purpose of the institution, its educational

programs, and curricula;

- b. A description of its physical facilities;
- c. Its status regarding licensure;
- d. Its fee schedule and policies regarding retaining student fees if a student withdraws;
- e. Its refund policy on tuition and other instructional charges; and
- f. A statement regarding the transferability of credits to and from other institutions.

2. The institution shall make the disclosures required by subparagraph 1. of this paragraph in writing at least one (1) week prior to enrollment or collection of any tuition from the prospective student. The required disclosures may be made in the institution's current catalog.

(h) The institution shall not seek to be eligible for state or federal financial aid.

Section 3. Licensure Application Procedures. (1) An application for a license shall be submitted on the form entitled:

- (a) Application for Licensure as an In-State, Non-Public Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020, if the applicant is an in-state college; or
- (b) Application for Licensure as an Out-of-State Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020, if the applicant is an out-of-state college.

(2) An application shall be accompanied by a copy of the following:

- (a) College charter;
- (b) College catalog;
- (c) College constitution and bylaws;
- (d) Student enrollment application;
- (e) Student contract or agreement;
- (f) 1. Documentation of accreditation, licensure, or approval by appropriate state, federal, and accrediting agencies; and
- 2. Disclosure of any prior loss or denial of:
 - a. Accreditation with the dates and reason for the loss or denial; or
 - b. Licensure or approval by an agency in this state or another state with the dates and reason for the loss or denial; ~~and~~
 - (g) Disclosure of any former names of the college with the dates each former name was used.

Section 4. Site Visits. (1) Within ninety (90) working days of the receipt of a full and complete application for a license, a supplementary application, or Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020, the president may conduct, or may have conducted, a site visit. Personnel conducting the site visit shall possess the expertise appropriate to the type of college to be visited. The purpose of a site visit shall be to make an assessment of a college using the standards for licensure as set forth in Section 8 of this administrative regulation.

(2) The president may conduct, or may have conducted, an announced or unannounced site visit of a licensed college during reasonable business hours to inspect the files, facilities, and equipment as well as conduct interviews to determine the college's compliance with this administrative regulation and KRS 164.945, 164.946, and 164.947.

(3) Failure to provide full access to the college's files, facilities, and equipment or prevention of interviews shall be grounds for denial of a license, or suspension or revocation of an existing license.

(4) Cost of site visits.

(a) Costs connected with a site visit and subsequent visits as may be necessary, such as travel, meals, lodging, and consultant honoraria, shall be paid by the college.

(b) The estimated cost of the site visit shall be paid by the college prior to the site visit.

(c) The final settlement regarding actual expenses incurred shall be paid by the college no later than thirty (30) days after receipt of the invoice.

(d) Failure to pay these costs shall be grounds for denial of a license, or suspension or revocation of an existing license.

Section 5. Action on Licensure Application. (1) Within ninety (90) working days of the completion of the site visit, or within sixty (60) working days of the submission of a complete licensure application if a site visit is not conducted, the president shall do one (1) of the following:

- (a) Issue a license for a period of no less than one (1) year, nor more than two (2) years;
- (b) Deny the application for a license;
- (c) Notify the applicant college of deficiencies which shall be corrected before a license is issued; or
- (d) Issue a conditional license in accordance with subsection (3) of this section if the college has:

1. Not met all of the standards for licensure when~~at the time~~ the application is filed; and

2. Provided a written business plan to the president demonstrating it will meet the standards for licensure within a period not to exceed two (2) years.

(2) If an institution fails to respond in writing to an official notification of deficiency within sixty (60) working days, it shall submit a new application and fee, as required by Section 15 of this administrative regulation, to apply for licensure.

(3) A conditional license shall not exceed a period of two (2) years and shall include the conditions the college shall meet in order for the college to progress toward and eventually meet the standards for licensure, including when the college shall report progress to the president and when the college shall be required to have satisfied all the conditions.

(a) The college's failure to satisfy the conditions within the specified timeframe shall:

- 1. Result in automatic revocation of the conditional license; or
- 2. Result in an extension of the conditional license based on a determination by the president that the college is making progress in satisfying the conditions in response to the college's written request for an extension with supporting justification.

(b) If the college satisfies all the conditions with the timeframe specified, the president shall issue a license in accordance with subsection (1)(a) of this section.

Section 6. Supplementary Application Procedures. (1)(a) A Supplementary Application for Change of Name of Institution Pursuant to 13 KAR 1:020 shall be submitted to the council at least ninety (90) days prior to the effective date of a change in the name of a college.

(b) A Supplementary Application for Change of Location of Principal Location of a College or Location of a Licensed Instructional Site in Kentucky Pursuant to 13 KAR 1:020 shall be submitted to the council at least ninety (90) days prior to the effective date of a change in the principal location of a college or the location of a licensed instructional site in Kentucky.

(c) A Supplementary Application for Change of Ownership or Governance Pursuant to 13 KAR 1:020 shall be submitted to the council at least ninety (90) days prior to the effective date of a change in ownership or governance of a college.

(d) An out-of-state college shall submit a Supplementary Application to Operate as an Out-of-State Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020 at least ninety (90) days prior to implementation of a change to offer an additional certificate, diploma, or degree program, major, or other concentration or specialty at an instructional site.

(e) A Supplementary Application to Operate as an In-State Nonpublic Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020 shall be submitted by an in-state college at least ninety (90) days prior to the effective date of:

1. A change to offer an additional certificate, diploma, or degree program, major, or other concentration or specialty at the main campus; or

2. The establishment of an instructional site away from the main campus of an in-state college for the purpose of offering courses for college credit which comprise at least fifty (50) percent~~twenty-five (25) percent~~ of the course requirements for a degree program.

(f) A college shall submit a Supplementary Application for Administrative Site, Recruitment Office, or Advising Center

Pursuant to 13 KAR 1:020 at least ninety (90) days prior to the establishment of an administrative site, recruitment office, or advising center in Kentucky, or the change of location of a licensed administrative site, recruitment office, or advising center in Kentucky, if the site, office, or center is not part of a licensed instructional site or proposed instructional site for which the college is seeking licensure.

(g) A college shall submit a Supplementary Application for Notification of Change in Accreditation or Licensure Status Pursuant to 13 KAR 1:020 within thirty (30) days following action by an accrediting agency or another state licensing agency which results in:

1. A college being placed in a probationary status;
2. A college losing accreditation or licensure; or
3. A college being denied accreditation or licensure.

(2) A site visit may be conducted as part of the supplementary application process in accordance with Section 4 of this administrative regulation.

(3) Failure to submit a complete and accurate supplementary application, if required, shall be sufficient cause for denial of a license, or suspension or revocation of an existing license. The president shall notify the college by registered mail, return receipt, of the denial, suspension, or revocation of the college's license.

Section 7. Action on Supplementary Applications. (1) Within sixty (60) working days of the submission of a complete supplementary application if a site visit is not conducted, or within ninety (90) working days of the completion of a site visit, the president shall do one (1) of the following:

- (a) Approve the supplementary application and amend the current license without changing the renewal date;
- (b) Deny the supplementary application without amendment to the college's license;
- (c) Suspend or revoke the college's license;
- (d) Notify the applicant college of deficiencies which shall be corrected before the supplementary application is approved and the license is amended; or
- (e) Issue a conditional license in accordance with subsection (3) of this section if the college has:

1. Not met all of the standards for licensure ~~when~~at the time the application is filed; and
2. Provided a written business plan to the president demonstrating it will meet the standards for licensure within a period not to exceed two (2) years.

(2) If an institution fails to respond in writing to an official notification of deficiency within sixty (60) working days, it shall submit a new application to apply for licensure.

(3) A conditional license shall not exceed a period of two (2) years and shall include the conditions the college shall meet in order for the college to progress toward and eventually meet the standards for licensure, including when the college shall report progress to the president and when the college shall be required to have satisfied all the conditions.

(a) The college's failure to satisfy the conditions within the specified timeframe shall:

1. Result in automatic revocation of the conditional license; or
2. Result in an extension of the conditional license based on a determination by the president that the college is making progress in satisfying the conditions in response to the college's written request for an extension with supporting justification.

(b) If the college satisfies all the conditions with the timeframe specified, the president shall amend the current license in accordance with subsection (1)(a) of this section.

Section 8. Standards for Licensure. A college shall meet the requirements and standards established in this section in order to be licensed. (1) Financial requirements. The college shall adhere to generally accepted accounting practices and present evidence of financial stability, including the following:

(a) Financial statements including:

1. A statement of financial position of unrestricted net assets and liabilities, including foundation and trust agreements;
2. An audit report prepared by an independent certified public

accountant for each corporation of the college; and

3. If available, audit reports for the past three (3) years;

(b) The name of a bank or other financial institution used by the college as a reference;

(c) A statement from the Kentucky Higher Education Assistance Authority related to programs administered by that agency and from the U.S. Department of Education related to programs administered by that department that the college is in good standing; and

(d) An annual operating budget for the college.

(2) Agents. A college shall be responsible for the actions of its agents ~~if~~when acting on behalf of the college.

(3) Guarantee of refund of unearned tuition. A college shall guarantee the refund of any unearned tuition held by the college as established in this subsection.

(a) Except as provided in paragraph (d) of this subsection, an in-state college shall:

1. Secure and maintain a surety bond equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year, executed by a surety company qualified and authorized to do business in Kentucky, and made payable to the Council on Postsecondary Education;

2. Maintain an unrestricted cash reserve equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year; or

3. Provide a letter of credit equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year.

(b) An out-of-state college shall secure and maintain a surety bond:

1. That is:

a. Equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year; and

b. At least \$10,000;

2. Executed by a surety company qualified and authorized to do business in Kentucky; and

3. Made payable to the Council on Postsecondary Education.

(c) A college applying for a license for the first time shall estimate the amount of unearned tuition based on projected enrollment and tuition and other instructional charges.

(d) An in-state college licensed continuously by the council for:

1. Five (5) to ten (10) years shall maintain coverage by surety bond, letter of credit, or unrestricted cash reserve for ten (10) percent of its annual total net tuition and fees collected by the college in its most recently completed fiscal year; or

2. Ten (10) years or more shall maintain coverage by surety bond, letter of credit, or unrestricted cash reserve for five (5) percent of its annual total net tuition and fees collected by the college in its most recently completed fiscal year.

(e) A college shall provide a letter from an independent certified public accountant confirming that the college is in compliance with this subsection.

(4) Notice required.

(a) If a surety bond is terminated, a college shall notify the president and the license shall automatically expire with the bond unless a replacement bond is provided without a lapse in bonding.

(b) An in-state college using an unrestricted cash reserve or letter of credit to satisfy the provisions of subsection (3) of this section shall notify the president if the unrestricted cash reserve or letter of credit falls below the required amount, and the college shall obtain a surety bond for the required amount.

(c) A college shall notify the president within ten (10) days of the college receiving written notice from the U.S. Department of Education of placement on heightened cash monitoring status or calculation of college's financial responsibility composite score at below 1.0. If an in-state college is using unrestricted cash reserve to satisfy subsection (3) of this section, it shall within thirty (30) days of either event:

1. Obtain a surety bond or letter of credit in the required amount until the college is satisfactorily removed from heightened cash monitoring status by the U.S. Department of Education or the

college's financial responsibility composite score is 1.0 or higher; or

2. Transfer the unrestricted cash reserve to the Council in the required amount to be held on behalf of the college, which the Council shall return once the college is satisfactorily removed from heightened cash monitoring status by the U.S. Department of Education, the college's financial responsibility composite score is 1.0 or higher, or once all unearned tuition claims have been paid.

(d) Upon notice to the college, the Council may call in a letter of credit upon any valid claim of unearned tuition in the amount of the claim, or for the full amount of the letter if necessary to protect access to those funds. If the full amount of the letter is called, the Council shall return any funds remaining after claims have been paid, either to the bank or the college, as appropriate, after one (1) year from the date of closure of the college.

(e) A college shall notify the president within ten (10) days of the college receiving notice from an accrediting agency or any state or federal agency that the college is the subject of any investigative action, complaint, or disciplinary matter with the accrediting agency or state or federal agency.

(5) Personnel requirements.

(a) The college shall furnish information regarding the administrative officers, the directors, the owners, and the faculty, as required by the [appropriate] application form.

(b) The chief administrator shall hold at least an earned baccalaureate degree from an accredited or licensed college and shall have sufficient experience to qualify for the position.

(c) Faculty members.

1. For a course or program licensed by the council prior to January 1, 2014:

a. Effective until December 31, 2015, faculty members shall possess academic, scholarly, and teaching qualifications similar to those required for faculty in accredited colleges that offer degrees at comparable levels.

b. Effective beginning on January 1, 2016, faculty members shall meet the requirements established in paragraph (d) of this subsection.

2. For a course or program not licensed by the council prior to January 1, 2014, faculty members shall meet the requirements established in paragraph (d) of this subsection when[at the time] the course or program is licensed.

(d) Faculty member qualifications.

1. Each degree possessed by a faculty member shall be from an institution accredited by an accrediting agency recognized by the U.S. Department of Education or the Council for Higher Education Accreditation.

2. To teach a certificate or diploma course, a faculty member shall have:

a. A bachelor's degree; or

b. A high school diploma or GED along with one (1) or more of the following:

(i) Completed a training or degree program in the applicable occupational area;

(ii) Demonstrated outstanding professional experience;

(iii) Demonstrated outstanding professional contributions to the discipline being taught; or

(iv) Professional licensure or certification in the field.

3. To teach an associate degree course not designed for transfer to a baccalaureate degree, a faculty member shall hold:

a. A bachelor's degree in the discipline being taught; or

b. An associate's degree in the discipline being taught along with one (1) or more of the following:

(i) Demonstrated outstanding professional experience;

(ii) Demonstrated outstanding professional contributions to the discipline being taught; or

(iii) Professional licensure or certification in the field.

4. To teach a general education course, a faculty member shall hold:

a. A master's degree in the discipline being taught; or

b. A master's degree with a minimum of eighteen (18) graduate semester hours in the discipline being taught.

5. To teach a baccalaureate course or an associate course designed for transfer to a baccalaureate degree, a faculty member

shall hold:

a. A master's degree in the discipline being taught;

b. A master's degree with a minimum of eighteen (18) graduate semester hours in the discipline being taught; or

c. A baccalaureate degree in the discipline being taught along with one (1) or more of the following:

(i) Demonstrated outstanding professional experience;

(ii) Demonstrated outstanding professional contributions to the discipline being taught; or

(iii) Professional licensure or certification in the field.

6. To teach a graduate course, a faculty member shall hold:

a. An earned doctorate or terminal degree in the discipline being taught or in a related discipline; or

b. A master's degree in the discipline being taught along with one (1) or more of the following:

(i) Demonstrated outstanding professional experience;

(ii) Demonstrated outstanding professional contributions to the discipline being taught; or

(iii) Professional licensure or certification in the field.

(e) There shall be a sufficient number of full-time faculty to ensure continuity and stability of the educational program.

(f) Teaching loads of faculty members shall be consistent with recognized educational practices, and shall be appropriate to the field, the variety of courses assigned, class size, and other related factors.

(6) Facilities and equipment.

(a) An instructional program shall be conducted in a facility in accordance with the requirements specified on the [appropriate] application form.

(b) Enrollment shall not exceed the design characteristics of the facilities.

(c) A college shall have facilities and equipment that are:

1. Maintained and operated in compliance with the safety and health requirements set forth in local, city, and county ordinances, and federal and state law; and

2. Adequate and appropriate for instruction in classrooms and laboratories consistent with accrediting and licensing requirements.

(7) Library resources. The library shall ~~be appropriate to~~ support the programs offered by the college in accordance with this subsection.

(a) A college, through ownership or formal agreements, shall provide and support student and faculty access to adequate library collections, and to other learning and information resources where courses and programs are offered. Library resources shall be appropriate to the degree level offered by the college, and shall be sufficient to support all educational, research, and public service programs.

(b) A college that does not provide its own library facilities, but instead relies on another institution, shall demonstrate that it has permission to utilize the resources of the other institution, by providing a copy of the written agreement to the president with the[at the time of] license application, and prior to the offering of any courses.

(c) A college that is dependent on another college or library for library resources shall make the extent of the dependence and the details of the agreements clear both to the president and to students and faculty.

(d) Library expenditures, expressed as a percentage of the total educational and general budget, shall be consistent with the percentage of library expenditures commonly observed in accredited colleges of similar types.

(e) Library staff shall be qualified as required for accredited colleges of similar types.

(f) Sufficient seating and work space for a reasonable proportion of the faculty and students to be accommodated at one (1) time shall be provided as observed in accredited colleges of similar types.

(g) The library shall provide a safe and secure physical and virtual environment conducive to study and research[The physical environment of the library shall be conducive to reflective intellectual pursuits common to institutions of higher learning].

(8) Curriculum. Earned degrees awarded by a college shall be bona fide academic degrees and the courses offered in degree

programs shall be of collegiate quality as determined by the president using the criteria established in this section.

(a)1. Except as provided in subparagraph 2. of this paragraph, a course offered in a degree program shall be consistent with a course that is generally transferable for credit among accredited colleges where the program is at a corresponding degree level, or for credit toward the baccalaureate degree if a program is at the associate degree level.

2. A course may be offered that is not transferable based on the uniqueness of a program.

(b) A college shall require a minimum of:

1. Sixty (60) student credit hours for an associate degree;

2. 120 student credit hours for a baccalaureate degree; or

3. Thirty (30) student credit hours for a post-baccalaureate, graduate, or first professional degree.

(c) A minimum of twenty-five (25) percent of the student credit hours required for a degree shall be earned through instruction offered by:

1. The college awarding the degree; or

2. A college that is:

a. A party to a joint, cooperative, or consortia agreement; and

b. Either:

(i) Licensed by the Council on Postsecondary Education; or

(ii) A Kentucky state-supported postsecondary education institution.

(d) A majority of the student credit hours required for a graduate degree may be met through a joint, cooperative, or consortia agreement in which the instruction is offered by a college that is:

1. A party to the agreement; and

2. Either:

a. Licensed by the Council on Postsecondary Education; or

b. A Kentucky state-supported postsecondary education institution.

(e) A college shall have a systematic program of curriculum revision in order to maintain the general standards of accredited colleges with similar programs.

(f) A college shall have a program of evaluation that includes a periodic assessment of the changes in student achievement.

(9) General education.

(a) A minimum of fifteen (15) student credit hours for associate degree programs and thirty (30) student credit hours for baccalaureate degree programs shall be earned in general education, including science, mathematics, social and behavioral sciences, and humanities. A college which offers an interdisciplinary general education program, a block-type program, or other unique general education program shall be considered to be in compliance with the general education requirement if the president determines that the program content and distribution are[appropriately] related to the degree and institutional purposes.

(b) A new college, or any existing college which initiates a new associate degree or baccalaureate degree program or major, or other concentration or specialty, after March 5, 2010, shall comply fully from the outset with the general education requirements.

(10) Program supervision and instructional support. Regardless of location, type of program, method of instruction, or other characteristics, an instructional program for which degree credit is awarded shall include:

(a) Adequate supervision by the college; and

(b) Instructional~~Other—instructional~~ support necessary to maintain the program.

(11) Truth in advertising. A college shall meet the requirements established in this subsection regarding advertising.

(a) Advertisements, announcements, or promotional material of any kind which are distributed in Kentucky shall not contain any statements that are untrue, deceptive, or misleading with respect to the college, its personnel, its services, or the content, accreditation status, or transferability of its courses or degree programs.

(b) Advertisements, announcements, or other materials produced by or on behalf of the college shall not indicate that the college is "supervised", "recommended", "endorsed", or "accredited" by the Commonwealth of Kentucky, by the Council on Postsecondary Education, or by any other state agency. A

statement using the name of the Council on Postsecondary Education, if any, shall be in exactly the following form, based on which statement is applicable to the college:

1. "(Name of College) is licensed by the Kentucky Council on Postsecondary Education."; or

2. "(Name of College) has a religious exemption from the Kentucky Council on Postsecondary Education to operate or solicit in Kentucky."

(12) Recruitment and enrollment procedures. A college shall furnish the following to each student prior to enrollment:

(a) The college's policies on grades, attendance, and conduct;

(b) A description of the instructional program;

(c) A detailed schedule of all charges, rentals, and deposits;

(d) The schedule of refunds of all charges, rentals, and deposits; and

(e) The student enrollment application, contract, or agreement.

(13) Student affairs.

(a) Students admitted to the college shall have completed a state-approved secondary school program or its equivalent unless dually enrolled in high school.

(b) The college shall provide academic counseling by faculty or staff to each student when admitted ~~[at the time of admission]~~ and throughout the program.

(c) The college shall make assistance and counseling available to each student who completes a technical or vocational program for the purpose of assisting the student with an appropriate job placement or with transfer.

(d) The college shall maintain sufficient records for each student to provide an understanding of his or her background, to record progress through the instructional program, and for reference purposes. By January 1, 2022, the college shall maintain all student records in an electronic format that is searchable and readily transferable consistent with industry standards. For a college not licensed by the Council prior to January 1, 2020, the college shall meet this requirement when the college is licensed.

(e) Administrative officers of the college shall be knowledgeable of the federal and state laws and administrative regulations concerning the disclosure of student information and shall comply with those laws and administrative regulations.

(f) A college shall make provision for the maintenance of student records if the college ceases operations in accordance with KRS 164.020(23). The location of student records shall be approved in advance by the president.

(14) College policies.

(a) The college shall maintain records in an orderly manner and make them available for inspection by the president or his or her designated representative.

(b) A catalog shall be published and distributed at least every two (2) years and shall include general information, administrative policies, and academic policies of the college including:

1. General information:

a. Official name and address of the college, name of the chief administrative officers, members of the governing body, and names of principal owners;

b. The college's calendar for the period covered by the catalog including beginning and ending dates of each term or semester, registration and examination dates, legal holidays, and other important dates;

c. Names of faculty, including relevant education and experience; and

d. Full disclosure of the philosophy and purpose of the college;

2. Administrative policies:

a. Admissions policies and procedures, applicable to the various programs, including policies regarding granting of credit for previous education;

b. Policies and procedures regarding student conduct and behavior and the process for dealing with cases which culminate in probation or dismissal;

c. Schedules for all tuition and instructional charges, and refund schedules for the tuition and instructional charges;

d. Statement of financial aid available to students; and

e. Procedures for obtaining transcripts in a timely fashion and at reasonable cost; and

3. Academic policies, including:

- a. Policy on class attendance;
- b. Description of grading system;
- c. Description of the degree, diploma, certificate, or other programs, including the course requirements and the time normally required to complete each degree, diploma, certificate, or other program; and
- d. Full description of the nature and objectives of all degrees offered.

(c) Refund policy on tuition and other instructional charges. The refund policy shall meet the minimum requirements established in this paragraph.

1. If tuition and other instructional charges are collected in advance of enrollment and the student fails to enroll, the college shall retain not more than \$100, or not more than ten (10) percent of the tuition and other instructional charges for a term or semester, whichever is less.

2.a. Except as provided in clause b. of this subparagraph, tuition and other instructional charges shall be charged by the enrollment period, and the student shall not be obligated for tuition or other instructional charges relating to an enrollment period that had not begun when the student withdrew.

b. The president may approve program tuition for a specific program at a college if a student may only enroll at the beginning of the program sequence and shall remain in phase. If program tuition is approved, the college shall refund tuition and other instructional charges in accordance with its published refund policy that considers both the coursework completed prior to withdrawal and the coursework that remains.

3. If a student withdraws from the college, or if a student fails to attend classes for a period of thirty (30) days during which classes are in session, the college shall officially withdraw the student from the college and shall refund an amount reasonably related to the period for which the student is not enrolled and shall refund 100 percent of all other tuition and other fees collected by the college for subsequent enrollment or registration periods unless the student is enrolled in a program for which program tuition is charged as specified in subparagraph 2. of this paragraph.

a. After completion of fifty (50) percent of the enrollment period, the college shall not be required to make refunds of tuition or other fees for that period.

b. In all other cases, including illness or accident, the college shall make a refund settlement.

c. Refunds shall be made within thirty (30) days after notification of withdrawal has been received by the college.

4. If a college is accredited by an accrediting agency which has a specific refund policy which is more favorable to the student, that policy shall be followed.

5. An out-of-state college shall refund in accordance with this section unless its policy is more favorable to the student, in which case the latter shall be followed.

Section 9. Failure to Apply for a License. (1) If a college which is subject to this administrative regulation fails to apply for a license, the president shall notify the college by registered mail of the requirement to obtain a license.

(2) If a license application is not then received within sixty (60) days of notification by the president, the president shall require the chief administrative officer to appear for a hearing as provided in Section 14 of this administrative regulation.

(3) If the chief administrative officer does not appear for the hearing, the president shall refer the case to the appropriate county attorney for enforcement.

Section 10. Annual Maintenance of a College's License and Renewal of a College's License. (1) A college shall submit an Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020 to the president by April 1 of each year.

(a) In an odd numbered year, the application shall contain the following information:

1. Financial Information:

- a. A statement from the Kentucky Higher Education Assistance

Authority related to programs administered by that agency and from the United States Department of Education related to programs administered by that department that the college is in good standing;

b. A letter prepared by an independent certified public accountant confirming that the college is in compliance with Section 8(3) of this administrative regulation;[and]

c. Financial statement including assets and liabilities and an audit report prepared by an independent certified public accountant within the last year.[:]

2. Institutional information:

a. Name and address of college;

b. Chief executive officer's name, title, address, phone number, fax number, and email address;

c. Institutional liaison's name, title, address, phone number, fax number, and email address;

d. A current list of the college's agents;

e. Copies of articles of incorporation, charter, constitution, and by-laws if there have been any changes to the documents within the last two (2) years; and

f. A copy of each articulation agreement the college has with a Kentucky licensed college or state-supported institution entered into or changed within the last two (2) years;

3. Accreditation status:

a. If the college is accredited by an accrediting agency, verification of the college's accreditation status and documentation of any notice of disciplinary action, warning, or probation from any state, federal, or accrediting agency within the past two (2) years; or

b. If an in-state[the] college is not accredited by an accrediting agency, a statement indicating its intention to receive accreditation and its timeline for attainment[if, when, and from whom the college will seek accreditation:].

4. Tuition for the current enrollment period per credit hour, specifying semester hour, quarter hour, or other basis, and per full-time student;

5. A copy of the college's current catalog;

6. For an in-state college, a list of all licensed instructional sites away from the main campus of the in-state college for the purpose of offering courses for college credit which comprise at least fifty (50) percent[~~twenty-five (25) percent~~] of the course requirements for a degree program, including the name and title of the primary contact of the off-campus site, address, phone number, and program or programs by CIP code offered at the site, or course or courses if not offering an entire degree program at the site;

7. Program information:

a. Changes, if any, in program requirements for each program within the last two (2) years including admission requirements, courses required, and the number of credit hours required for the program or major;

b. Results of the most recent program evaluation;

c. Methods used to assess student achievement;

d. Results of the most recent assessment of student achievement; and

e. A list of programs withdrawn within the last two (2) years in which there are no longer students enrolled including program title, degree level, CIP code, and address where the program is no longer being offered;

8. Faculty information: Faculty credentials[~~Vitae~~] for each program faculty member employed within the last two (2) years;

9. Facilities information: Verification of compliance with all applicable local, state, and federal safety and fire codes; and

10. Library information regarding the library collection and budget, and lease, contract, or letter of agreement authorizing use of another library collection, if any.

(b) In an even numbered year, the application shall only contain the information required by paragraphs (a)1.b. and d., and (a)2.a., b., and c., of this subsection. An institution shall provide any other information listed in paragraph (a) of this subsection upon request of the council.

(2) The president may conduct, or may have conducted, a site visit as part of the annual maintenance of a license or renewal of a license process in accordance with Section 4 of this administrative

regulation.

(3) Within ninety (90) working days of the submission of a complete and accurate Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020 if a site visit is not conducted, or within ninety (90) working days of the completion of a site visit, the president shall:

- (a) Notify the college of any deficiencies which shall be corrected before the college's license is maintained or renewed;
- (b) Deny maintenance or renewal of the college's license;
- (c) Maintain the college's license without changing the college's license renewal date;
- (d) Renew the college's license to June 30 of the next year; or
- (e) Issue a conditional license in accordance with subsection (4) of this section if the college has:

1. Not met the of the standards for licensure ~~when[at the time]~~ the application is filed; and

2. Provided a written business plan to the president demonstrating it will meet the standards for licensure within a period not to exceed one (1) year.

(4) A conditional license shall not exceed a period of one (1) year and shall include the conditions the college shall meet in order for the college to progress toward and eventually meet the standards for licensure, including when the college shall report progress to the president and when the college shall be required to have satisfied all the conditions.

(a) The college's failure to satisfy the conditions within the specified timeframe shall:

- 1. Result in automatic revocation of the conditional license; or
- 2. Result in an extension of the conditional license based on a determination by the president that the college is making progress in satisfying the conditions in response to the college's written request for an extension with supporting justification.

(b) If the college satisfies all the conditions with the timeframe specified, the president shall renew the license in accordance with subsection (3)(d) of this section.

(5) A college's failure to submit a complete and accurate Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020 shall be grounds for denial of a license, or suspension or revocation of an existing license, and the president shall notify the college by registered mail, return receipt, of the denial, suspension, or revocation of the college's license.

Section 11. Required Data Submission. (1) A licensed college shall submit student attendance and performance data in an electronic format. The required data fields, the format and method of submission, and the dates for submission shall be in accordance with the Licensure Compliance Reporting Manual.

(2) The president may conduct, or may have conducted, a site visit as part of the data submission process in accordance with Section 4 of this administrative regulation.

(3) A college's failure to submit complete, timely, and accurate data shall be sufficient grounds for denial of a license, or suspension or revocation of an existing license, and the president shall notify the college by registered mail, return receipt, of the denial, suspension, or revocation of the college's license.

Section 12. License Expiration. (1) A license shall automatically expire if the college ceases operating or soliciting.

(2) A college that ceases operating or soliciting shall comply with Section 8(13)(f) of this administrative regulation and KRS 164.020(23).

Section 13. Consumer Complaint Procedure. A person with a complaint or grievance involving misrepresentation against a college licensed under this administrative regulation shall make a reasonable effort to resolve the complaint or grievance directly with the college. If a mutually satisfactory solution cannot be reached, the procedures established in this section shall be followed. (1) A person shall submit a written complaint to the president which contains evidence relevant to the complaint and documentation that a reasonable effort was made to resolve the complaint directly with the college.

(2) The president shall require an institution to file a written

response setting forth the relevant facts concerning the consumer complaint, including a statement on the current status of the complaint, and any resolution of the complaint.

(3) The president shall review the facts as presented and may intervene to bring the matter to a satisfactory conclusion through facilitation, but the facilitation shall not include legal action on behalf of any party.

Section 14. Hearings and Appeals. (1) The president shall, for cause, require the chief administrative officer, or other officers, of a college to appear for a hearing within thirty (30) working days of notice in order to determine the facts if the president has determined that:

(a) There is sufficient cause for a suspension, a revocation of a license, or placement of a college's license in a probationary status, based upon the college's failure to comply with this administrative regulation; or

(b) A college which is subject to this administrative regulation fails to apply for a license[there is sufficient cause for a suspension, a revocation of a license, or placement of a college's license in a probationary status or if a college which is subject to this administrative regulation fails to apply for a license].

(2) The officer, or other officers, of the college may be accompanied at the hearing by counsel of their own choosing and at their expense.

(3) Within thirty (30) working days after a hearing is held or if the college fails to appear for the hearing, the president shall reach a determination and shall issue findings, in writing, to the council and to the chief executive officer of the college.

(4) If it is determined that the public interest requires that sanctions be imposed, the president shall:

- (a) Impose one (1) of the following sanctions:
 - 1. Place the college's license in a probationary status for a designated period not to exceed one (1) year while deficiencies are being corrected;
 - 2. Suspend the college's license for a period not to exceed one (1) year; or
 - 3. Revoke the college's license; or

(b) Refer the case to other officials for appropriate legal action.

(5) A college which is sanctioned, whether the sanction is probation, suspension of license, or revocation of license, shall comply with the terms of the sanction.

(6) A college may appeal the actions of the president regarding the denial of issuance of a license or license renewal or the imposition of sanctions according to the procedures established in this subsection.

(a) A college shall notify the president of the intent to appeal an action within fourteen (14) days of the receipt of the letter notifying the college of the action taken.

(b) The president shall request that the Office of Administrative Hearings appoint a hearing officer who shall conduct an administrative hearing consistent with the provisions of KRS 13B.005-13B.170.

(c) The appeal shall be presented in writing no later than sixty (60) days following the receipt of notification of intent to appeal. The appeal shall be considered on the written record alone.

(d) The appeals officer shall review findings of fact, consider testimony, draw conclusions, and formulate a recommendation consistent with the facts and this administrative regulation.

(e) Upon completion, the report of the appeals officer shall be forwarded to the college and to the president of the Council on Postsecondary Education.

(f) Within thirty (30) working days of receiving the report of the appeals officer, the president shall take one (1) of the following actions:

- 1. Issue a license;
- 2. Renew the license;
- 3. Impose one (1) of the sanctions authorized in this section; or
- 4. Refer the case to other officials for appropriate action.

Section 15. License Fees. (1) The president shall assess a fee in accordance with the Kentucky Licensure Fee Schedule.

(2) Failure to pay a fee shall be sufficient grounds for denial of

a license, or suspension or revocation of an existing license.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Licensure as an In-State, Non-Public Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", June 2013;

(b) "Application for Licensure as an Out-of-State Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", June 2013;

(c) "Supplementary Application for Change of Name of Institution Pursuant to 13 KAR 1:020", June 2013;

(d) "Supplementary Application for Change of Location of Principal Location of a College or Location of a Licensed Instructional Site in Kentucky Pursuant to 13 KAR 1:020", June 2013;

(e) "Supplementary Application for Change of Ownership or Governance Pursuant to 13 KAR 1:020", June 2013;

(f) "Supplementary Application to Operate as an Out-of-State Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", June 2013;

(g) "Supplementary Application to Operate as an In-State Nonpublic Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", ~~June 2013~~ July 2019;

(h) "Supplementary Application for Administrative Site, Recruitment Office, or Advising Center Pursuant to 13 KAR 1:020", June 2013;

(i) "Supplementary Application for Notification of Change in Accreditation or Licensure Status Pursuant to 13 KAR 1:020", June 2013;

(j) "Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020", June 2013;

(k) "Licensure Compliance Reporting Manual", September 8, 2009;

(l) "Kentucky Licensure Fee Schedule", June 2013; and

(m) "Application for Religious In-State College Letter of Exemption per KRS 164.947(2)", September 2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SHERRILL ZIMMERMAN, Chair

TRAVIS POWELL, VP & General Counsel

APPROVED BY AGENCY: July 15, 2019

FILED WITH LRC: July 15, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2019 at 10:00 a.m. at the Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601 in Conference Room A. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2019. 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: Sarah Levy, Executive Director of Postsecondary Licensing, Council on Postsecondary Education, 1024 Capital Center Dr., Suite 320, Frankfort, Kentucky 40601, Phone: 502.573.1555, Fax: 502.573.1535, Email: sarah.levy@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sarah Levy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets the standards and rules related to the licensing of private postsecondary education institutions, both for profit and nonprofit, offering a bachelor's degree and above.

(b) The necessity of this administrative regulation: KRS 164.945 through 164.947 requires the Council on Postsecondary Education to license these institutions as a protection for Kentucky citizens and to protect bona fide institutions from those who engage in fraudulent practices, unfair competition, or substandard educational programs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.947 states that the Council on Postsecondary Education, by regulation, shall adopt standards and procedures for the licensing of colleges.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation sets out the standards institutions must meet in order to be licensed to operate in Kentucky. It also defines the process for new license applications, for amendments to licenses, and for license renewals.

(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: First, in-state colleges will be required to receive approval for an instructional site where 50% of an academic program is offered, rather than 25%. Second, colleges will be required to provide notice to the Council when certain measures of federal financial aid distress are triggered. Third, when those measures are triggered, in-state colleges using unrestricted cash to meet their unearned tuition coverage obligations will be required to obtain a surety bond or letter of credit or transfer the cash to the Council until those measures are no longer triggered. Fourth, the process for the Council to call in a letter of credit to protect student claims for unearned tuition is outlined. Fifth, institutions will be required to provide notice that they are the subject of any investigation, complaint, or disciplinary matter with any accreditors or state or federal agencies within 10 days of their receipt of notice. Sixth, by January 1, 2022 all licensed colleges shall maintain all student records in an electronic format that is searchable and readily transferable consistent with industry standards. New colleges seeking licensure shall meet this requirement as a part of initial licensure. Seventh, as part of the annual application for licensure, colleges must provide documentation of any notice of disciplinary action, warning or probation from any state, federal, or accrediting agency within in the past two years. And finally, technical revisions are being made.

(b) The necessity of the amendment to this administrative regulation: Moving the threshold of site approval for in-state institutions from 25% to 50% of a program being offered at a location aligns with institutional accreditor requirements. Requiring notice, and in some instances action, when certain measures of federal financial aid distress are triggered allows the Council to better secure repayment of unearned tuition for students and to allow the Council to intervene, if necessary, to better protect students in the event of potential institutional closure. Providing information related to action by an institution's accreditors or other governmental agencies will allow the Council to know if those agencies have identified any issues with the institution that might also be in violation of the Council's licensure requirements. Requiring that institutions maintain electronic student records, particularly transcripts, helps protect against the loss of records due to physical damage, helps ensure the orderly maintenance of such records, and makes them more easily transferrable in the event of closure.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms with the requirements of KRS 164.947 by helping to ensure that licensed institutions provide a quality educational experience for Kentucky students.

(d) How the amendment will assist in the effective administration of the statutes: The amendment helps to better protect institutions in the event of school closure and to better track issues arising with other authorizing entities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Council currently licenses 87 institutions with multiple licensed instructional sites and three (3) new initial licensure applications are currently under review.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Colleges will be required to provide notice to the Council when certain measures of federal financial aid distress are triggered. When those measures are triggered, in-state colleges using unrestricted cash to meet their unearned tuition coverage obligations will be required to obtain a surety bond or letter of credit or transfer the cash to the Council until those measures are no longer triggered. As part of the annual application for licensure, colleges must provide documentation of any notice of disciplinary action, warning or probation from any state, federal, or accrediting agency within in the past two years. A college shall notify the president within ten (10) days of the college receiving notice from an accrediting agency or any state or federal agency that the college is the subject of any investigative action, complaint, or disciplinary matter with the accrediting agency or state or federal agency. Existing licensed colleges will be required to digitize student records by January 1, 2022.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs will be incurred to digitize records if not already in digital format. From surveys conducted, licensed institutions have at least some records digitized. Costs will vary depending on how many paper records need to be scanned. If an institution hits one of those financial distress markers and are using unrestricted cash to cover unearned tuition, they will be required to pay a fee to obtain a surety bond. Most institutions already use these and it is our understanding that the cost is usually \$5,000 or less. Otherwise, costs of compliance should be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Digitizing student records will assist institutions in the protection, management, and organization of student records.

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

(a) Initially: We estimate that there will be no additional cost in implementing the proposed changes to the regulation.

(b) On a continuing basis: We estimate that there will be no additional costs on a continuing basis to implement the proposed changes to the regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: License fees and General Fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No. Implementation of this amendment does not require an increase in fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes. This regulation assesses fees but they will not be increased, directly or indirectly, by this amendment.

(9) TIERING: Is tiering applied? No, tiering is not applied to this amendment as all changes apply to all licensees in the same manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will

be impacted by this administrative regulation? CPE is responsible for implementation, but this regulation only applies to private colleges and universities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.947 and 164.020(37)

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? We estimate revenue from university and college renewals at \$105,000 per year. In most prior years, these renewal fees combined with initial application fees were greater than expenses, creating a reserve to cover costs in case initial applications were lower than expected.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? See 3(a).

(c) How much will it cost to administer this program for the first year? Approximately \$355,500.

(d) How much will it cost to administer this program for subsequent years? Approximately \$355,500.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: N/A

PERSONNEL CABINET (Amendment)

101 KAR 2:102. Classified leave general requirements.

RELATES TO: KRS 18A.020, 18A.030, 18A.095, 18A.110, 18A.140, 18A.145, 18A.195, 18A.990, 61.394, 61.673, 118.035, [61-373], 344.030, 29 C.F.R. 825, 29 U.S.C. 8, 29 U.S.C. 201 – 219, 2601 – 2654

STATUTORY AUTHORITY: KRS 18A.030(2)(b), 18A.110, 29 U.S.C. 201 – 219, 2601 – 2654

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.030(2)(b) requires the Secretary of Personnel to promulgate administrative regulations, consistent with KRS Chapter 18A and federal standards, for the administration of a personnel system. KRS 18A.110(7)(g) requires the secretary, with the approval of the Governor, to promulgate administrative regulations that govern annual leave, sick leave, special leaves of absence, and other conditions of leave. This administrative regulation establishes the leave requirements for classified employees.

Section 1. Annual Leave. (1) Accrual of annual leave.

(a) Each full-time employee shall accumulate annual leave at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180-239 months	1 3/4 days per month; 21 per year
240 months & over	2 leave days per month; 24 per year

(b) A full-time employee shall have worked, or been on paid leave, other than educational leave with pay, for 100 or more regular hours per month to accrue annual leave. This does not include hours worked in excess of the prescribed hours of duty.

(c) Accrued leave shall be credited on the first day of the month following the month in which the annual leave is earned.

(d) In computing months of total service for the purpose of earning annual leave, only the months for which an employee earned annual leave shall be counted.

(e) A former employee who has been rehired~~[, except as provided in paragraph (f) of this subsection,]~~ shall receive credit for months of prior service, unless the employee had been dismissed for cause or has retired from a position covered by a state retirement system~~[as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990].~~

~~(f) [An employee, who has retired from a position covered by a state retirement system, is receiving retirement benefits, and returns to state service, shall not receive credit for months of service prior to retirement.~~

~~(g) [A part-time employee shall not be entitled to accrue annual leave.~~

(2) Use and retention of annual leave.

(a) Annual leave shall be used in increments of ~~[hours of]~~ one-quarter (1/4) hours.

(b) Except as provided in paragraph (c) of this subsection, an employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time earned that year, if the operating requirements of the agency permit.

(c) An appointing authority may require an employee who has a balance of at least 100 hours of compensatory leave to use compensatory leave before the employee's request to use annual leave is granted, unless the employee's annual leave balance exceeds the maximum number of hours that may be carried forward pursuant to this administrative regulation.

(d) Absence due to sickness, injury, or disability in excess of the amount available for those purposes shall, at the request of the employee, be charged against annual leave.

(e) An employee shall be able to use annual leave for an absence on a regularly scheduled workday.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain accumulated annual leave in the receiving agency.

(g) An employee who is eligible for state contributions for life insurance pursuant to KRS Chapter 18A shall have worked or been on paid leave, other than holiday or educational leave, during any part of the previous month.

(h) An employee who is eligible for state contributions for health benefits pursuant to KRS Chapter 18A shall have worked or been on paid leave, other than holiday or educational leave, during any part of the previous pay period.

(i) Annual leave may be carried from one (1) calendar year to the next. If annual leave is carried from one (1) calendar year to the next, the leave shall be calculated as established in the following table:

Months of Service	Maximum Amount	37.5 Hour Week Equivalent	40 Hour Week Equivalent
0-59	30 workdays	225 hours	240 hours
60-119 months	37 workdays	277.50 hours	296 hours
120-179 months	45 workdays	337.50 hours	360 hours
180-239 months	52 workdays	390 hours	416 hours
240 months and over	60 workdays	450 hours	480 hours

(j) Leave in excess of the maximum amounts specified in paragraph (i) of this subsection shall be converted to sick leave at the end of the calendar year or upon retirement.

(k) The amount of annual leave that may be carried forward and the amount of annual leave that may be converted to sick leave shall be determined by computing months of service as provided by subsection (1)(d) of this section.

(3) Annual leave on separation.

(a)1. If an employee is separated by proper resignation or

retirement, the employee shall be paid in a lump sum for accumulated annual leave.

2. The accumulated annual leave for which the employee is paid shall not exceed the amounts established by subsection (2)(i) of this section.

3. Following payment of annual leave at resignation, any remaining annual leave after the payment of the maximum shall:

- Not be paid to the employee or converted to sick leave; and
- Be removed from the balance.

(b) If an employee is laid off, the employee shall be paid in a lump sum for all accumulated annual leave.

(c) An employee in the unclassified service who reverts to the classified service, or an employee who resigns one (1) day and is employed the next workday, shall retain the accumulated leave in the receiving agency.

(d) An employee who has been dismissed for cause~~[related to misconduct or who has failed, without proper excuse, to give proper notice of resignation or retirement]~~ shall not be paid for accumulated annual leave.

(e) An appointing authority may withhold payment of accumulated annual leave for an employee who has failed to give proper notice of resignation or retirement as described in 101 KAR 2:095 Section 6, or who has submitted notice of resignation or retirement after receiving an intent to dismiss letter.

(f) Upon the death of an employee, the employee's estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

~~(g) [(f)]~~ An employee may request in writing that accumulated annual leave not be paid upon resignation, and that all or part of the amount of accumulated annual leave that does not exceed the amount established by this section be waived, if:

- The employee resigns, or is laid off, because of an approved plan of privatization of the services performed; and
- The successor employer has agreed to credit the employee with an equal amount of annual leave.

Section 2. Sick Leave. (1) Accrual of sick leave.

(a) An employee, except a part-time employee, shall accumulate sick leave with pay at the rate of one (1) working day per month.

(b) An employee shall have worked or been on paid leave, other than educational leave, for 100 or more regular hours in a month to accrue sick leave. This does not include hours worked in excess of the prescribed hours of duty.

(c) An employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(d) A full-time employee who completes 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

(e) A full-time employee who completes 240 months of total service with the state shall be credited with another ten (10) additional days of sick leave upon the first day of the month following the completion of 240 months of service.

(f) In computing months of total service for the purpose of crediting sick leave, only the months for which an employee earned sick leave shall be counted.

(g) A former employee who has been rehired shall receive credit for months of prior service, and shall be credited with the unused sick leave balance that existed at the time of the previous separation, unless the employee had been dismissed for cause or has retired from a position covered by a state retirement system.

(h) The total service shall be verified by the Personnel Cabinet before the leave is credited to the employee's record.

(i) Sick leave may be accumulated with no maximum [(h) A former employee who has been rehired, except as provided in paragraph (i) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

(i) A former employee who is appointed, reinstated, or reemployed, other than a former employee receiving benefits pursuant to a state retirement system, shall be credited with the

~~unused sick leave balance upon separation.~~

~~(j) Sick leave may be accumulated with no maximum.~~

(2) Use and retention of sick leave.

(a) An appointing authority shall grant or may require the use of sick leave with or without pay if an employee:

1. Is unable to work due to medical, dental, or optical examination or treatment;

2. Is disabled by illness or injury. If requested by the appointing authority, the employee shall provide a statement from an appropriate medical health professional certifying the employee's inability to perform the employee's duties for the days or hours sick leave is requested. Before an employee is permitted to return to work, if requested by the appointing authority, the employee shall obtain and present a fitness-for-duty certification from an appropriate medical health care professional indicating the employee is able to resume work~~[provide a certificate from an appropriate medical health professional certifying the employee's fitness to return to duty before the employee is permitted to return to work];~~

3. Is required to care for or transport a member of the employee's immediate family in need of medical attention for a reasonable period of time. If requested by the appointing authority, the employee shall provide a statement from an appropriate medical health professional certifying the employee's need to care for a family member;~~[or]~~

4. Would jeopardize the health of the employee or others at the employee's work station because of a contagious disease or communicable condition. Before an employee is permitted to return to work, if requested by the appointing authority, the employee shall obtain and present a fitness-for-duty certification from an appropriate medical health care professional indicating the employee is able to resume work; or

5. ~~Demonstrates[demonstration of] behavior that might endanger the employee or others. Before an employee is permitted to return to work, if requested by the appointing authority, the employee shall obtain and present a fitness-for-duty certification from an appropriate medical health care professional indicating the employee is able to resume work.~~

(b) At the termination of sick leave with pay, the appointing authority shall return the employee to the employee's former position.

(c) An employee eligible for state contributions for life insurance pursuant to the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than holiday or education leave, during any part of the previous month.

(d) An employee who is eligible for state contributions for health benefits pursuant to the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than holiday or educational leave, during any part of the previous pay period.

(e) Sick leave shall be used in increments of ~~[hours or]~~ one-quarter (1/4) hours.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain accumulated sick leave in the receiving agency.

(g) An employee shall be credited for accumulated sick leave if separated by proper resignation, layoff, or retirement.

(3) Sick leave without pay.

(a) An appointing authority shall grant sick leave without pay, without a change in the employee's personnel status, for the duration of an employee's impairment by injury or illness, if:

1. The leave does not exceed thirty (30) continuous calendar days; and

2. The employee has used or been paid for all accumulated annual, sick, and compensatory leave unless the employee has requested to retain up to ten (10) days of accumulated sick leave.

(b) Within an employee's first twelve (12) months of employment after initial appointment, an appointing authority shall grant sick leave without pay to an employee who does not qualify for family and medical leave due to lack of service time and who has exhausted all accumulated paid leave if the employee is required to care for a member of the immediate family, or for the duration of the employee's impairment by illness or injury, for a period not to exceed thirty (30) working days in a calendar year.

(4) Sick leave by personnel action.

(a) If the duration of an employee's impairment by illness or injury exceeds the sick leave without pay allotment of thirty (30) continuous calendar days, including holidays, the appointing authority shall place the employee on sick leave without pay by personnel action.

(b) The appointing authority shall notify the employee in writing that the employee is being placed on sick leave by personnel action.

(c) Sick leave by personnel action shall not exceed one (1) year.

(d) If requested by the appointing authority, the employee shall provide statements during the year from an appropriate medical health professional attesting to the employee's continued inability to perform the essential functions of the employee's duties with or without reasonable accommodation.

(e) If an employee has given notice of the employee's ability to resume duties following sick leave by personnel action, the appointing authority shall return the employee to the original position or to a position for which the employee is qualified and which resembles the former position as closely as circumstances permit. The appointing authority shall notify the employee in writing of the following:

1. The effective date of the employee's return;
2. The position to which the employee is being returned;~~[and]~~
3. The employee's salary upon return to work;~~and~~
4. The employee's new annual increment date, if applicable.

(f) If reasonable accommodation is requested, the employee shall:

1. Inform the employer; and
2. Upon request, provide supportive documentation from a certified professional.

(g) An employee shall be deemed resigned if the employee:

1. Has been on one (1) year continuous sick leave by personnel action;

2. Has been requested by the appointing authority in writing to return to work at least ten (10) days prior to the expiration of leave;

3. Is unable to return to the employee's former position or to a position for which the employee is qualified and which resembles the former position as closely as circumstances permit;

4. Has been given priority consideration by the appointing authority for a vacant, budgeted position with the same agency, for which the employee is qualified and is capable of performing its essential functions with or without reasonable accommodation; and

5. Has not been placed by the appointing authority in a vacant position.

(h) Sick leave granted pursuant to this subsection shall not be renewable after the employee has been medically certified as able to return to work.

(i) An employee with status who is deemed resigned pursuant to paragraph (g) of this subsection shall retain reinstatement privileges that were accrued during service in the classified service.

(5) Application for sick leave and supporting documentation.

(a) An employee shall file a written application for sick leave with or without pay within a reasonable time.

(b) Except for an emergency illness, an employee shall request advance approval for sick leave for medical, dental, or optical examinations, and for sick leave without pay.

(c) If the employee is too ill to work, the employee shall notify the immediate supervisor or other designated person. Failure, without good cause, to do so in a reasonable period of time shall be cause for denial of sick leave for the period of absence.

(d) An appointing authority may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave.

(e) A medical certificate may be required, signed by a licensed practitioner and certifying to the employee's incapacity, examination, or treatment.

(f) An appointing authority shall grant sick leave if the application is supported by acceptable evidence but may require confirmation if there is reasonable cause to question the authenticity of the certificate or its contents.

Section 3. Family and Medical Leave. (1) An appointing authority shall comply with the requirements of the Family and Medical Leave Act (FMLA) of 1993, 29 U.S.C. 2601 – 2654, and the federal regulations implementing the Act, 29 C.F.R. Part 825.

(2) An employee in state service shall qualify for twelve (12) weeks of unpaid family leave if the employee has:

(a) Completed twelve (12) months of service; and

(b) Worked or been on paid leave at least 1,250 hours in the twelve (12) months immediately preceding the first day of family and medical leave.

(3) Family and medical leave shall be awarded on a calendar year basis.

(4) An employee shall be entitled to a maximum of twelve (12) weeks of unpaid family and medical leave for the birth, placement, or adoption of the employee's child.

(5) While an employee is on unpaid family and medical leave, the state contribution for health and life insurance shall be maintained by the employer.

(6) An employee shall use accrued paid leave concurrently with FMLA leave, except an employee may reserve up to ten (10) days of accumulated sick leave while on FMLA leave. If an employee reserves accumulated sick leave, the remaining FMLA leave will be unpaid. The employee shall satisfy any procedural requirements of this administrative regulation for use of accrued paid leave only in connection with the receipt of such payment.~~If the employee would qualify for family and medical leave, but has an annual, compensatory, or sick leave balance, upon the employee's request, the agency shall permit the employee to:~~

~~(a) Reserve ten (10) days of accumulated sick leave and be placed on FMLA leave; or~~

~~(b) Use accrued paid leave concurrently with FMLA leave.~~

Section 4. Court Leave. (1) An employee shall be entitled to court leave during the employee's scheduled working hours without loss of time or pay for the amount of time necessary to:

(a) Comply with a subpoena by a court, administrative agency, or body of the federal or state government or any political subdivision thereof; or

(b) ~~Serve as a juror or a witness, unless the employee or a member of the employee's family is a party to the proceeding.~~

(2) Court leave shall include necessary travel time.

(3) If relieved from duty as a juror or released from subpoena[witness] during the employee's normal working hours, the employee shall return to work or use annual or compensatory leave.

(4) An employee shall not be required to report as court leave attendance at a proceeding that is part of the employee's assigned duties.

(5) An employee shall not be eligible for court leave to comply with a subpoena if the employee or a member of the employee's family is a party to the proceeding.

Section 5. Compensatory Leave and Overtime. (1) Accrual of compensatory leave and overtime.

(a) An appointing authority shall comply with the overtime and compensatory leave provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. Chapter 8.

(b) An employee who is directed to work, or who requests and is authorized to work, in excess of the prescribed hours of duty shall be granted compensatory leave and paid overtime subject to the provisions of the Fair Labor Standards Act, 29 U.S.C. Chapter 8, the Kentucky Revised Statutes, and this administrative regulation.

(c) An employee deemed to be "nonexempt" by the provisions of the FLSA shall be compensated for hours worked in excess of forty (40) per week as provided by subparagraphs 1 through 3 of this paragraph.

1. An employee who has not accumulated the maximum amount of compensatory leave shall have the option to accumulate compensatory leave at the rate of an hour and one-half (1 1/2) for each hour worked in excess of forty (40) per week in lieu of paid overtime.

2. The election to receive compensatory leave in lieu of paid

overtime shall be in writing on the Overtime Compensation Form and shall remain in force for a minimum of three (3) months. The election shall be changed by the submission of a new form. The effective date of a change shall be the first day of the next work week following receipt of the election.

3. An employee who does not elect compensatory leave in lieu of paid overtime shall be paid one and one-half (1 1/2) times the regular hourly rate of pay for all hours worked in excess of forty (40) hours per week.

(d) An employee deemed to be "exempt" pursuant to the provisions of the FLSA shall accumulate compensatory time on an hour-for-hour basis for hours worked in excess of the regular work schedule.

(e) Compensatory leave shall be accumulated or used in increments of one-quarter (1/4) hours~~taken off in one-quarter (1/4) hour increments.~~

(f) The maximum amount of compensatory leave that may be carried forward from one (1) pay period to another shall be:

1. 239.99 hours by an employee in a non policy-making position; or

2. 240 hours by an employee in a policy-making position.

(g) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain the compensatory leave in the receiving agency.

(2) Reductions in compensatory leave balances.

(a) An appointing authority may require an employee who has accrued at least 100 hours compensatory leave to use compensatory leave before annual leave and shall otherwise allow the use of compensatory leave if it will not unduly disrupt the operations of the agency.

(b) An appointing authority may require an employee who has accrued 200 hours of compensatory leave to take off work using compensatory leave in an amount sufficient to reduce the compensatory leave balance below 200 hours.

(c) An employee who is not in a policy-making position may, after accumulating 151 hours of compensatory leave, request payment for fifty (50) hours at the regular rate of pay. If the appointing authority or the designee approves the payment, an employee's leave balance shall be reduced accordingly.

(d) An employee who is not in a policy-making position shall be paid for fifty (50) hours at the regular hourly rate of pay upon accumulation of 240 hours of compensatory leave at the end of a pay period. In the event a work week is split between pay periods, then the 240 hours of compensatory leave required for payment must be accrued at the end of the pay period following the split pay period week.~~upon accumulating at the end of the pay period, 240 hours of compensatory leave.~~ The employee's leave balance shall be reduced accordingly.

(e) If an employee's prescribed hours of duty are normally less than forty (40) hours per week, the employee shall receive compensatory leave for the number of hours worked that:

1. Exceed the number of normally prescribed hours of duty; and

2. Do not exceed the maximum amount of compensatory time that is permitted.

(f) Only hours actually worked shall be used for computing paid overtime or time and one-half (1 1/2) compensatory time.

(g) Upon separation from state service, an employee shall be paid for all unused compensatory leave at the greater of the employee's:

1. Regular hourly rate of pay; or

2. Average regular rate of pay for the final three (3) years of employment.

Section 6. Military Leave. (1) Upon request, an employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the National Guard shall be relieved from the civil duties, to serve under order or training duty without loss of the regular compensation for a period not to exceed the number of working days specified in KRS 61.394 for a federal fiscal year.

(2) The absence shall not be charged to leave.

(3) Absence that exceeds the number of working days specified in KRS 61.394 for a federal fiscal year shall be charged to annual leave, compensatory leave, or leave without pay.

(4) If requested by the appointing authority, the employee shall provide a copy of the orders requiring the attendance of the employee before military leave is granted.

(5) An appointing authority shall grant an employee entering military duty a leave of absence without pay for the period of duty in accordance with KRS 61.373. Upon receiving military duty leave of absence, all accumulated annual and compensatory leave shall be paid in a lump sum, if requested by the employee.

Section 7. Voting and Election Leave. (1) An employee who is eligible and registered to vote shall be allowed, upon prior request and approval, leave up to four (4) hours[.] for the purpose of voting or to appear before the county clerk to request an application for or to execute an absentee ballot. A supervisor, manager, or appointing authority may specify the hours an employee may be absent.

(2) An employee casting an absentee ballot shall record the leave on the day the employee's vote is cast. An employee shall be regularly scheduled to work on the day the vote is cast in order to receive the leave.

(3) An election officer shall receive additional leave if the total leave for election day does not exceed a regular workday.

(4) The absence shall not be charged against leave.

(5) An employee who is permitted or required to work during the employee's regular work hours, in lieu of voting leave, shall be granted compensatory leave on an hour-for-hour basis for the hours during the times the polls are open, up to a maximum of four (4) hours.

Section 8. Funeral and Bereavement Leave. (1) Upon the approval of the appointing authority, an employee who has lost an immediate family member by death may utilize five (5) days of accrued sick leave, compensatory leave, annual leave, or leave without pay if the employee does not have accrued leave, or a combination thereof.

(2) An appointing authority may approve the use of additional sick leave, compensatory leave, annual leave, or leave without pay if the employee does not have accrued leave, or a combination thereof, at the request of the employee following the loss of an immediate family member.

(3) For purposes of funeral and bereavement leave, an immediate family member shall include the employee's spouse, parent, grandparent, child, brother, or sister, or the spouse of any of them, and may include other relatives of close association if approved by the appointing authority.

Section 9. Special Leave of Absence. (1) If approved by the secretary, an appointing authority may grant a leave of absence for continuing education or training.

(a) Leave may be granted for a period not to exceed twenty-four (24) months.

(b) If granted, leave shall be granted either with pay (if the employee contractually agrees to a service commitment) or without pay.

(c) Leave shall be restricted to attendance at a college, university, vocational, or business school for training in subjects that relate to the employee's work and will[provide] benefit[te] the state.

(2) An appointing authority, with approval of the secretary, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this administrative regulation that are of tangible benefit to the state.

(3) If approved by the secretary, an appointing authority may place an employee on special leave with pay for investigative purposes pending an investigation of a work-related incident or an allegation of employee misconduct.

(a) Leave shall not exceed sixty (60) working days.

(b) The employee shall be notified in writing by the appointing authority that the employee is being placed on special leave for

investigative purposes, and the reasons for being placed on leave.

(c) If the investigation reveals no misconduct by the employee, records relating to the investigation shall be purged from agency and Personnel Cabinet files maintained in accordance with KRS 18A.020(2)(a).

(d) The appointing authority shall notify a current[the] employee, in writing, of the completion of the investigation and the action taken.[This notification shall be made to the employee, whether the employee has remained in state service, or has voluntarily resigned after being placed on special leave for investigative purposes.]

(4) An appointing authority may place an employee on administrative leave with pay upon the employee's receipt of an intent to dismiss letter as authorized by KRS 18A.095(2)(c).

Section 10. Absence Without Leave. (1) An employee who is absent from duty without prior approval shall report the reason for the absence to the supervisor immediately.

(2) Unauthorized or unreported absence shall:

(a) Be considered absence without leave;

(b) Be treated as leave without pay for an employee covered by the provisions of the Fair Labor Standards Act, 29 U.S.C. Chapter 8; and

(c) Constitute grounds for disciplinary action.

(3) An employee who has been absent without leave or notice to the supervisor for a period of five (5)[ten-(10)] working days shall be deemed resigned.

Section 11. Absences Due to Adverse Weather. (1) An employee, who is not designated for mandatory operations and chooses not to report to work or chooses to leave early if there are adverse weather conditions, such as tornado, flood, blizzard, or ice storm, shall have the time of the absence reported as:

(a) Charged to annual or compensatory leave;

(b) Taken as leave without pay, if annual and compensatory leave has been exhausted; or

(c) Deferred in accordance with subsections (3) and (4) of this section.

(2) An employee who is on prearranged annual, compensatory, or sick leave shall charge leave as originally requested.

(3) If operational needs allow, except for an employee in mandatory operations, management shall make every reasonable effort to arrange schedules whereby an employee shall be given an opportunity to make up time not worked rather than charging it to leave.

(4) An employee shall not make up work if the work would result in the employee working more than forty (40) hours in a workweek.

(a) Time lost shall be made up within four (4) months of the occurrence of the absence. If it is not made up within four (4) months, leave shall be deducted from compensatory leave, followed by annual leave, and if no compensatory or annual leave is available, time lost shall be charged to leave without pay and deducted from an employee's wages[annual or compensatory leave shall be deducted to cover the absence, or leave without pay shall be charged if no annual or compensatory leave is available].

(b) If an employee transfers or separates from employment before the leave is made up, the leave shall be charged to annual or compensatory leave or deducted from the final paycheck.

(5) If catastrophic, life-threatening weather conditions occur, as created by a tornado, flood, ice storm, or blizzard, and it becomes necessary for authorities to order evacuation or shutdown of the place of employment, the provisions established in paragraphs (a) and (b) of this subsection shall apply.

(a) An employee who is required to evacuate or who would report to a location that has been shutdown shall not be required to make up the time that is lost from work during the period officially declared hazardous to life and safety.

(b) An employee who is required to work in an emergency situation shall be compensated pursuant to the provisions of Section 5 of this administrative regulation and the Fair Labor Standards Act, 29 U.S.C. Chapter 8.

Section 12. Blood Donation Leave. (1) An employee who, during regular working hours, donates whole blood at a licensed blood center certified by the Food and Drug Administration shall receive four (4) hours leave time, with pay, for the purpose of donating and recuperating from the donation.

(2) Leave granted pursuant to this section shall be used when the blood is donated unless circumstances as specified by the supervisor required the employee to return to work. If the employee returns to work, the unused portion of the leave time shall be credited as compensatory leave.

(3) An employee shall request leave in advance to qualify for blood donation leave.

(4) An employee who is deferred from donating blood shall not:

(a) Be charged leave time for the time spent in the attempted donation; and

(b) Qualify for the remainder of the blood donation leave.

Section 13. Incorporation by Reference. (1) "Overtime Compensation Form", May 2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

THOMAS B. STEPHENS, Secretary

MATTHEW G. BEVIN, Governor

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2019 at 10:00 a.m. at 501 High Street, 3rd floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. August 31, 2019. 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: Rosemary Holbrook, Executive Director, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone: (502) 564-7430, fax: (502) 564-0224, email: RosemaryG.Holbrook@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Rosemary Holbrook

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation details the various types of leave available to KRS Chapter 18A classified employees.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the various types of leave available to KRS Chapter 18A classified employees, and the requirements for these types of leave.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to 18A.030(2), the Personnel Cabinet Secretary is required to promulgate comprehensive regulations consistent with the provisions for KRS Chapter 18A. KRS 18A.110(7)(g) requires the Secretary of Personnel, with the approval of the Governor, to promulgate administrative regulations which govern annual leave, sick leave, special leaves of absence, and other conditions of leave.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the consistent application and treatment for classified employees on all employment leave matters.

(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: In the annual leave section, provisions for prior service credit and payout of annual leave are amended to convey that dismissal for cause shall nullify those allowances. A provision is added to allow withholding payout of annual leave for an employee's notice of resignation or retirement after receipt of an intent to dismiss letter.

In the sick leave section, rehires receive credit for prior service and unused sick leave balances unless previously dismissed for cause. In the sick leave usage subsection, a "communicable condition" is added as a reason to grant or require sick leave. Authority is clarified throughout for fitness-for-duty certification. The sick leave without pay subsection is amended to clarify eligibility if an employee does not qualify for family medical leave due to lack of service time. Notification and consideration requirements are added to the sick leave by personnel action subsection.

The family medical leave section is amended to synchronize with a March 2019 U.S. Department of Labor opinion regarding the timing of designation.

The voting and election leave section is amended to clarify that an agency employer may specify the hours in which an employee can be absent.

The special leave of absence section is amended to provide for placement on paid investigative leave for a work-related incident that does not initially include an allegation of misconduct. The requirement is removed for notification of the outcome to an employee who resigns prior to completion of an investigation.

The absence without leave section is amended to state that an employee shall be deemed resigned after five (5) working days.

Leave accrual, compensatory time, and adverse weather provisions are amended to clarify existing requirements. Finally, general maintenance edits are made throughout the administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure the continued consistent application and handling of the multiple types of leave for KRS Chapter 18A classified service.

(c) How the amendment conforms to the content of the authorizing statutes: Pursuant to 18A.030(2), the Personnel Cabinet Secretary is required to promulgate comprehensive regulations consistent with the provisions for KRS Chapter 18A. KRS 18A.110(7)(g) requires the Secretary of Personnel, with the approval of the Governor, to promulgate administrative regulations which govern annual leave, sick leave, special leaves of absence, and other conditions of leave.

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates provisions to assist with the continued consistent application and handling of paid and unpaid leave for KRS Chapter 18A classified service.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: KRS Chapter 18A classified employees

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action is required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No additional benefits will accrue.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

VOLUME 46, NUMBER 2– AUGUST 1, 2019

This regulation, as amended, is not anticipated to generate any new or additional costs.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030(2)(b), 18A.110, 29 U.S.C. 201 – 219, 2601 – 2654

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PERSONNEL CABINET (Amendment)

101 KAR 3:015. Leave requirements for unclassified service.

RELATES TO: KRS 18A.020, 18A.030, 18A.110, 18A.140, 18A.145, 18A.195, 18A.990, 61.373, 61.394, 118.035, 344.030, 29 C.F.R. 825, 29 U.S.C. 8, 29 U.S.C. 201 – 219, 2601 – 2654

STATUTORY AUTHORITY: KRS 18A.030(2)(b), 18A.110(2), (7)(g), 18A.155, 29 U.S.C. 201 – 219, 2601 – 2654

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.030(2)(b) requires the Secretary of Personnel to promulgate administrative regulations, consistent with KRS Chapter 18A and federal standards, for the administration of a personnel system. KRS 18A.110(2) and 18A.155 require the secretary to promulgate administrative regulations for the unclassified service. KRS 18A.110(7)(g) requires the secretary, with the approval of the Governor, to promulgate administrative regulations to govern annual leave, sick leave, special leaves of absence, and other conditions of leave. This administrative regulation establishes the leave requirements for unclassified employees.

Section 1. Annual Leave. (1) Accrual of annual leave.

(a) Each full-time employee shall accumulate annual leave at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180-239 months	1 3/4 days per month; 21 per year
240 months & over	2 leave days per month; 24 per year

(b) A full-time employee shall have worked, or been on paid leave, other than educational leave with pay, for 100 or more regular hours per month to accrue annual leave. This does not include hours worked in excess of the prescribed hours of duty.

(c) Accrued leave shall be credited on the first day of the month following the month in which the annual leave is earned.

(d) In computing months of total service for the purpose of earning annual leave, only the months for which an employee earned annual leave shall be counted.

(e) A former employee who has been rehired[~~—except as provided in paragraph (f) of this subsection;~~] shall receive credit for months of prior service, unless the employee had been dismissed for cause or has retired from a position covered by a state retirement system[~~as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.~~]

(f)[~~An employee, who has retired from a position covered by a state retirement system, is receiving retirement benefits, and returns to state service, shall not receive credit for months of service prior to retirement.~~]

(g) A part-time [or interim] employee shall not be entitled to accrue annual leave.

(2) Use and retention of annual leave.

(a) Annual leave shall be used in increments of [hours or] one-quarter (1/4) hours.

(b) Except as provided in paragraph (c) of this subsection, an employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time earned that year, if the operating requirements of the agency permit.

(c) An appointing authority may require an employee who has a balance of at least 100 hours of compensatory leave to use compensatory leave before the employee's request to use annual leave is granted, unless the employee's annual leave balance exceeds the maximum number of hours that may be carried forward pursuant to this administrative regulation.

(d) Absence due to sickness, injury, or disability in excess of the amount available for those purposes shall, at the request of the employee, be charged against annual leave.

(e) An employee shall be able to use annual leave for an absence on a regularly scheduled workday.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain accumulated annual leave in the receiving agency.

(g) An employee who is eligible for state contributions for life insurance pursuant to KRS Chapter 18A shall have worked or been on paid leave, other than holiday or educational leave, during any part of the previous month.

(h) An employee who is eligible for state contributions for health benefits pursuant to KRS Chapter 18A shall have worked or been on paid leave, other than holiday or educational leave, during any part of the previous pay period.

(i) Annual leave may be carried from one (1) calendar year to the next. If annual leave is carried from one (1) calendar year to the next, leave shall be calculated as established in the following table:

Months of Service	Maximum Amount	37.5 Hour Week Equivalent	40 Hour Week Equivalent
0-59	30 workdays	225 hours	240 hours
60-119 months	37 workdays	277.50 hours	296 hours

120-179 months	45 workdays	337.50 hours	360 hours
180-239 months	52 workdays	390 hours	416 hours
240 months and over	60 workdays	450 hours	480 hours

(j) Leave in excess of the maximum amounts specified in paragraph (i) of this subsection shall be converted to sick leave at the end of the calendar year or upon retirement.

(k) The amount of annual leave that may be carried forward and the amount of annual leave that may be converted to sick leave shall be determined by computing months of service as provided by subsection (1)(d) of this section.

(3) Annual leave on separation.

(a)1. If an employee is separated by proper resignation or retirement, the employee shall be paid in a lump sum for accumulated annual leave.

2. The accumulated annual leave for which the employee is paid shall not exceed the amounts established by subsection (2)(i) of this section.

3. Following payment of annual leave at resignation, any remaining annual leave after the payment of the maximum shall:

- Not be paid to the employee or converted to sick leave; and
- Be removed from the balance.

(b) If an employee is laid off, the employee shall be paid in a lump sum for all accumulated annual leave.

(c) An employee in the unclassified service who reverts to the classified service, or an employee who resigns ~~[or is terminated]~~ one (1) day and is employed the next workday, shall retain the accumulated leave in the receiving agency.

(d) An employee who has been dismissed for cause ~~[related to misconduct or who has failed, without proper excuse, to give proper notice of resignation or retirement]~~ shall not be paid for accumulated annual leave.

(e) An appointing authority may withhold payment of accumulated annual leave for an employee who has failed to give proper notice of resignation or retirement as described in 101 KAR 3:050 Section 8.

(f) Upon the death of an employee, the employee's estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

~~(g) [(f)]~~ An employee may request in writing that accumulated annual leave not be paid upon resignation, and that all or part of the amount of accumulated annual leave that does not exceed the amount established by this section be waived, if:

- The employee resigns, or is laid off, because of an approved plan of privatization of the services performed; and
- The successor employer has agreed to credit the employee with an equal amount of annual leave.

Section 2. Sick Leave. (1) Accrual of sick leave.

(a) An employee, except a part-time employee, shall accumulate sick leave with pay at the rate of one (1) working day per month.

(b) An employee shall have worked or been on paid leave, other than educational leave, for 100 or more regular hours in a month to accrue sick leave. This does not include hours worked in excess of the prescribed hours of duty.

(c) An employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(d) A full-time employee who completes 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

(e) A full-time employee who completes 240 months of total service with the state shall be credited with another ten (10) additional days of sick leave upon the first day of the month following the completion of 240 months of service.

(f) In computing months of total service for the purpose of crediting sick leave, only the months for which an employee earned sick leave shall be counted.

~~(g) A former employee who has been rehired shall receive credit for months of prior service, and shall be credited with the unused sick leave balance that existed at the time of the previous separation, unless the employee had been dismissed for cause or has retired from a position covered by a state retirement system.~~

~~(h) The total service shall be verified by the Personnel Cabinet before the leave is [shall be] credited to the employee's record.~~

~~(i) Sick leave may be accumulated with no maximum[(h) A former employee who has been rehired, except as provided in paragraph (i) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.~~

~~(i) A former employee other than a former employee receiving benefits pursuant to a state retirement system, who is appointed, reinstated, or reemployed, shall be credited with the unused sick leave balance upon separation.~~

~~(j) Sick leave may be accumulated with no maximum.]~~

(2) Use and retention of sick leave.

(a) An appointing authority shall grant or may require the use of sick leave with or without pay if an employee:

1. Is unable to work due to medical, dental, or optical examination or treatment;

2. Is disabled by illness or injury. If requested by the appointing authority, the employee shall provide a statement from an appropriate medical health professional certifying the employee's inability to perform the employee's duties for the days or hours sick leave is requested. Before an employee is permitted to return to work, if requested by the appointing authority, the employee shall obtain and present a fitness-for-duty certification from an appropriate medical health care professional indicating the employee is able to resume work[provide a certificate from an appropriate medical health professional certifying the employee's fitness to return to duty before the employee is permitted to return to work];

3. Is required to care for or transport a member of the employee's immediate family in need of medical attention for a reasonable period of time. If requested by the appointing authority, the employee shall provide a statement from an appropriate medical health professional certifying the employee's need to care for a family member; ~~[or]~~

4. Would jeopardize the health of the employee or others at the employee's work station because of a contagious disease or communicable condition. Before an employee is permitted to return to work, if requested by the appointing authority, the employee shall obtain and present a fitness-for-duty certification from an appropriate medical health care professional indicating the employee is able to resume work; or

5. Demonstrates[demonstration of] behavior that might endanger the employee or others. Before an employee is permitted to return to work, if requested by the appointing authority, the employee shall obtain and present a fitness-for-duty certification from an appropriate medical health care professional indicating the employee is able to resume work.

(b) At the termination of sick leave with pay, the appointing authority shall return the employee to the employee's former position.

(c) An employee eligible for state contributions for life insurance pursuant to the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than holiday or education leave, during any part of the previous month.

(d) An employee who is eligible for state contributions for health benefits pursuant to the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than holiday or educational leave, during any part of the previous pay period.

(e) Sick leave shall be used in increments of ~~[hours or]~~ one-quarter (1/4) hours.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain accumulated sick leave in the receiving agency.

(g) An employee shall be credited for accumulated sick leave if separated by proper resignation, layoff, or retirement.

(h) The duration of an interim employee's appointment shall not be extended by the use or approval for sick leave with or

without pay.

(3) Sick leave without pay.

(a) An appointing authority shall grant sick leave without pay, without a change in the employee's personnel status, for the duration of an employee's impairment by injury or illness, if:

1. The leave does not exceed thirty (30) continuous calendar days; and

2. The employee has used or been paid for all accumulated annual, sick, and compensatory leave unless the employee has requested to retain up to ten (10) days of accumulated sick leave.

(b) Within an employee's first twelve (12) months of employment after initial appointment, an appointing authority shall grant sick leave without pay to an employee who does not qualify for family and medical leave due to lack of service time and who has exhausted all accumulated paid leave if the employee is required to care for a member of the immediate family, or for the duration of the employee's impairment by illness or injury, for a period not to exceed thirty (30) working days in a calendar year.

(4) Sick leave by personnel action.

(a) If the duration of an employee's impairment by illness or injury exceeds the sick leave without pay allotment of thirty (30) continuous calendar days, including holidays, the appointing authority shall place the employee on sick leave without pay by personnel action.

(b) The appointing authority shall notify the employee in writing that the employee is being placed on sick leave by personnel action.

(c) Sick leave by personnel action shall not exceed one (1) year.

(d) If requested by the appointing authority, the employee shall provide statements during the year from an appropriate medical health professional attesting to the employee's continued inability to perform the essential functions of the employee's duties with or without reasonable accommodation.

(e) If an employee has given notice of the employee's ability to resume duties following sick leave by personnel action, the appointing authority shall return the employee to the original position or to a position for which the employee is qualified and which resembles the former position as closely as circumstances permit. The appointing authority shall notify the employee in writing of the following:

1. The effective date of the employee's return;
2. The position to which the employee is being returned; ~~and~~
3. The employee's salary upon return to work; ~~and~~
4. The employee's new annual increment date, if applicable.

(f) If reasonable accommodation is requested, the employee shall:

1. Inform the employer; and
2. Upon request, provide supportive documentation from a certified professional.

(g) An employee shall be deemed resigned if the employee:

1. Has been on one (1) year continuous sick leave by personnel action;
2. Has been requested by the appointing authority in writing to return to work at least ten (10) days prior to the expiration of leave;
3. Is unable to return to the employee's former position or to a position for which the employee is qualified and which resembles the former position as closely as circumstances permit;

4. Has been given priority consideration by the appointing authority for a vacant, budgeted position with the same agency, for which the employee is qualified and is capable of performing its essential functions with or without reasonable accommodation; and

5. Has not been placed by the appointing authority in a vacant position.

(h) Sick leave granted pursuant to this subsection shall not be renewable after the employee has been medically certified as able to return to work.

(i) An employee who is deemed resigned pursuant to paragraph (g) of this subsection shall retain reinstatement privileges that were accrued during service in the classified service.

(5) Application for sick leave and supporting documentation.

(a) An employee shall file a written application for sick leave

with or without pay within a reasonable time.

(b) Except for an emergency illness, an employee shall request advance approval for sick leave for medical, dental, or optical examinations, and for sick leave without pay.

(c) If the employee is too ill to work, an employee shall notify the immediate supervisor or other designated person. Failure, without good cause, to do so in a reasonable period of time shall be cause for denial of sick leave for the period of absence.

(d) An appointing authority may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave.

(e) A medical certificate may be required, signed by a licensed practitioner and certifying to the employee's incapacity, examination, or treatment.

(f) An appointing authority shall grant sick leave if the application is supported by acceptable evidence but may require confirmation if there is reasonable cause to question the authenticity of the certificate or its contents.

Section 3. Family and Medical Leave. (1) An appointing authority shall comply with the requirements of the Family and Medical Leave Act (FMLA) of 1993, 29 U.S.C. 2601 – 2654[20 U.S.C. 2601—2654], and the federal regulations implementing the Act, 29 C.F.R. Part 825.

(2) An employee in state service shall qualify for twelve (12) weeks of unpaid family leave if the employee has:

(a) Completed twelve (12) months of service; and

(b) Worked or been on paid leave at least 1,250 hours in the twelve (12) months immediately preceding the first day of family and medical leave.

(3) Family and medical leave shall be awarded on a calendar year basis.

(4) An employee shall be entitled to a maximum of twelve (12) weeks of unpaid family and medical leave for the birth, placement, or adoption of the employee's child.

(5) While an employee is on unpaid family and medical leave, the state contribution for health and life insurance shall be maintained by the employer.

(6) An employee shall use accrued paid leave concurrently with FMLA leave, except an employee may reserve up to ten (10) days of accumulated sick leave while on FMLA leave. If an employee reserves accumulated sick leave, the remaining FMLA leave will be unpaid. The employee shall satisfy any procedural requirements of this administrative regulation for use of accrued paid leave only in connection with the receipt of such payment[If the employee would qualify for family and medical leave, but has an annual, compensatory, or sick leave balance, upon the employee's request, the agency shall permit the employee to:

(a) ~~Reserve ten (10) days of accumulated sick leave and be placed on FMLA leave; or~~

(b) Use accrued paid leave concurrently with FMLA leave].

Section 4. Court Leave. (1) An employee shall be entitled to court leave during the employee's scheduled working hours without loss of time or pay for the amount of time necessary to:

(a) Comply with a subpoena by a court, administrative agency, or body of the federal or state government or any political subdivision thereof; or

(b) ~~Serve as a juror or a witness, unless the employee or a member of the employee's family is a party to the proceeding~~].

(2) Court leave shall include necessary travel time.

(3) If relieved from duty as a juror or released from subpoena[witness] during the employee's normal working hours, the employee shall return to work or use annual or compensatory leave.

(4) An employee shall not be required to report as court leave attendance at a proceeding that is part of the employee's assigned duties.

(5) An employee shall not be eligible for court leave to comply with a subpoena if the employee or a member of the employee's family is a party to the proceeding.

Section 5. Compensatory Leave and Overtime. (1) Accrual of

compensatory leave and overtime.

(a) An appointing authority shall comply with the overtime and compensatory leave provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. Chapter 8.

(b) An employee who is directed to work, or who requests and is authorized to work, in excess of the prescribed hours of duty shall be granted compensatory leave and paid overtime subject to the provisions of the Fair Labor Standards Act, 29 U.S.C. Chapter 8, KRS Chapter 337, and this administrative regulation.

(c) An employee deemed to be "nonexempt" by the provisions of the FLSA shall be compensated for hours worked in excess of forty (40) per week as provided by subparagraphs 1 through 3 of this paragraph.

1. An employee who has not accumulated the maximum amount of compensatory leave shall have the option to accumulate compensatory leave at the rate of an hour and one-half (1 1/2) for each hour worked in excess of forty (40) per week in lieu of paid overtime.

2. The election to receive compensatory leave in lieu of paid overtime shall be in writing on the Overtime Compensation Form and shall remain in force for a minimum of three (3) months. The election shall be changed by the submission of a new form. The effective date of a change shall be the first day of the next workweek following receipt of the election.

3. An employee who does not elect compensatory leave in lieu of paid overtime shall be paid one and one-half (1 1/2) times the regular hourly rate of pay for all hours worked in excess of forty (40) hours per week.

(d) An employee deemed to be "exempt" pursuant to the provisions of the FLSA shall accumulate compensatory time on an hour-for-hour basis for hours worked in excess of the regular work schedule.

(e) Compensatory leave shall be accumulated or used in increments of one-quarter (1/4) hours[taken-off in one-quarter (1/4) hour increments].

(f) The maximum amount of compensatory leave that may be carried forward from one (1) pay period to another shall be:

1. 239.99 hours by an employee in a non policy-making position; or

2. 240 hours by an employee in a policy-making position.

(g) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain the compensatory leave in the receiving agency.

(2) Reductions in compensatory leave balances.

(a) An appointing authority may require an employee who has accrued at least 100 hours compensatory leave to use compensatory leave before annual leave and shall otherwise allow the use of compensatory leave if it will not unduly disrupt the operations of the agency.

(b) An appointing authority may require an employee who is not in a policy-making position and has accrued 200 hours of compensatory leave to take off work using compensatory leave in an amount sufficient to reduce the compensatory leave balance below 200 hours.

(c) An employee who is not in a policy-making position may, after accumulating 151 hours of compensatory leave, request payment for fifty (50) hours at the regular rate of pay. If the appointing authority or the designee approves the payment, an employee's leave balance shall be reduced accordingly.

(d) An employee who is not in a policy-making position shall be paid for fifty (50) hours at the regular hourly rate of pay upon accumulation of 240 hours of compensatory leave at the end of a pay period. In the event a work week is split between pay periods, then the 240 hours of compensatory leave required for payment must be accrued at the end of the pay period following the split pay period week[; upon accumulating at the end of the pay period, 240 hours of compensatory leave]. The employee's leave balance shall be reduced accordingly.

(e) If an employee's prescribed hours of duty are normally less than forty (40) hours per week, the employee shall receive compensatory leave for the number of hours worked that:

1. Exceed the number of normally prescribed hours of duty; and

2. Do not exceed the maximum amount of compensatory time that is permitted.

(f) Only hours actually worked shall be used for computing paid overtime or time and one-half (1 1/2) compensatory time.

(g) Upon separation from state service, an employee shall be paid for all unused compensatory leave at the greater of the employee's:

1. Regular hourly rate of pay; or

2. Average regular rate of pay for the final three (3) years of employment.

Section 6. Military Leave. (1) Upon request, an employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the National Guard shall be relieved from the civil duties, to serve under order or training duty without loss of the regular compensation for a period not to exceed the number of working days specified in KRS 61.394 for a federal fiscal year.

(2) The absence shall not be charged to leave.

(3) Absence that exceeds the number of working days specified in KRS 61.394 for a federal fiscal year shall be charged to annual leave, compensatory leave, or leave without pay.

(4) If requested by the appointing authority, the employee shall provide a copy of the orders requiring the attendance of the employee before military leave is granted.

(5) An appointing authority shall grant an employee entering military duty a leave of absence without pay for the period of duty in accordance with KRS 61.373. Upon receiving military duty leave of absence, all accumulated annual and compensatory leave shall be paid in a lump sum, if requested by the employee.

Section 7. Voting and Election Leave. (1) An employee who is eligible and registered to vote shall be allowed, upon prior request and approval, leave up to four (4) hours[; for the purpose of voting or to appear before the county clerk to request an application for or to execute an absentee ballot. A supervisor, manager, or appointing authority may specify the hours an employee may be absent.

(2) An employee casting an absentee ballot shall record the leave on the day the employee's vote is cast. An employee shall be regularly scheduled to work on the day the vote is cast in order to receive the leave.

(3) An election officer shall receive additional leave if the total leave for election day does not exceed a regular workday.

(4) The absence shall not be charged against leave.

(5) An employee who is permitted or required to work during the employee's regular work hours, in lieu of voting leave, shall be granted compensatory leave on an hour-for-hour basis for the hours during the times the polls are open, up to a maximum of four (4) hours.

Section 8. Funeral and Bereavement Leave. (1) Upon the approval of the appointing authority, an employee who has lost an immediate family member by death may utilize five (5) days of accrued sick leave, compensatory leave, annual leave, or leave without pay if the employee does not have accrued leave, or a combination thereof.

(2) An appointing authority may approve the use of additional sick leave, compensatory leave, annual leave, or leave without pay if the employee does not have accrued leave, or a combination thereof, at the request of the employee following the loss of an immediate family member.

(3) For purposes of funeral and bereavement leave, an immediate family member shall include the employee's spouse, parent, grandparent, child, brother, or sister, or the spouse of any of them, and may include other relatives of close association if approved by the appointing authority.

Section 9. Special Leave of Absence. (1) If approved by the secretary, an appointing authority may grant a leave of absence for continuing education or training.

(a) Leave may be granted for a period not to exceed twenty-four (24) months or the conclusion of the administration in which the employee is serving, whichever comes first.

(b) If granted, leave shall be granted either with pay (if the employee contractually agrees to a service commitment) or without pay.

(c) Leave shall be restricted to attendance at a college, university, vocational, or business school for training in subjects that relate to the employee's work and will benefit the state.

(2) An appointing authority, with approval of the secretary, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this administrative regulation that are of tangible benefit to the state.

(3) If approved by the secretary, an appointing authority may place an employee on special leave with pay for investigative purposes pending an investigation of a work-related incident or an allegation of employee misconduct.

(a) Leave shall not exceed sixty (60) working days.

(b) The employee shall be notified in writing by the appointing authority that the employee is being placed on special leave for investigative purposes, and the reasons for being placed on leave.

(c) If the investigation reveals no misconduct by the employee, records relating to the investigation shall be purged from agency and Personnel Cabinet files maintained in accordance with KRS 18A.020(2)(a).

(d) The appointing authority shall notify a current[the] employee, in writing, of the completion of the investigation and the action taken.~~[This notification shall be made to the employee, whether the employee has remained in state service, or has voluntarily resigned after being placed on special leave for investigative purposes.]~~

Section 10. Absence Without Leave. (1) An employee who is absent from duty without prior approval shall report the reason for the absence to the supervisor immediately.

(2) Unauthorized or unreported absence shall:

(a) Be considered absence without leave;

(b) Be treated as leave without pay for an employee covered by the provisions of the Fair Labor Standards Act, 29 U.S.C. Chapter 8; and

(c) Constitute grounds for disciplinary action.

(3) An employee who has been absent without leave or notice to the supervisor for a period of five (5)~~ten (10)]~~ working days shall be deemed resigned.

Section 11. Absences Due to Adverse Weather. (1) An employee, who is not designated for mandatory operations and chooses not to report to work or chooses to leave early if there are adverse weather conditions, such as tornado, flood, blizzard, or ice storm, shall have the time of the absence reported as:

(a) Charged to annual or compensatory leave;

(b) Taken as leave without pay, if annual and compensatory leave has been exhausted; or

(c) Deferred in accordance with subsections (3) and (4) of this section.

(2) An employee who is on prearranged annual, compensatory, or sick leave shall charge leave as originally requested.

(3) If operational needs allow, except for an employee in mandatory operations, management shall make every reasonable effort to arrange schedules whereby an employee shall be given an opportunity to make up time not worked rather than charging it to leave.

(4) An employee shall not make up work if the work would result in the employee working more than forty (40) hours in a workweek.

(a) Time lost shall be made up within four (4) months of the occurrence of the absence. If it is not made up within four (4) months, leave shall be deducted from compensatory leave, followed by annual leave, and if no compensatory or annual leave is available, time lost shall be charged to leave without pay and deducted from an employee's wages~~[annual or compensatory leave shall be deducted to cover the absence, or leave without pay shall be charged if no annual or compensatory leave is available]~~.

(b) If an employee transfers or separates from employment before the leave is made up, the leave shall be charged to annual or compensatory leave or deducted from the final paycheck.

(5) If catastrophic, life-threatening weather conditions occur, as created by a tornado, flood, ice storm, or blizzard, and it becomes necessary for authorities to order evacuation or shutdown of the place of employment, the provisions established in paragraphs (a) and (b) of this subsection shall apply.

(a) An employee who is required to evacuate or who would report to a location that has been shut down shall not be required to make up the time that is lost from work during the period officially declared hazardous to life and safety.

(b) An employee who is required to work in an emergency situation shall be compensated pursuant to the provisions of Section 5 of this administrative regulation and the Fair Labor Standards Act, 29 U.S.C. Chapter 8.

Section 12. Blood Donation Leave. (1) An employee who, during regular working hours, donates whole blood at a licensed blood center certified by the Food and Drug Administration shall receive four (4) hours leave time, with pay, for the purpose of donating and recuperating from the donation.

(2) Leave granted pursuant to this section shall be used when the blood is donated, unless circumstances as specified by the supervisor required the employee to return to work. If the employee returns to work, the unused portion of the leave time shall be credited as compensatory leave.

(3) An employee shall request leave in advance to qualify for blood donation leave.

(4) An employee who is deferred from donating blood shall not:

(a) Be charged leave time for the time spent in the attempted donation; and

(b) Qualify for the remainder of the blood donation leave.

Section 13. Incorporation by Reference. (1) "Overtime Compensation Form", May 2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

THOMAS B. STEPHENS, Secretary

MATTHEW G. BEVIN, Governor

APPROVED BY AGENCY: June 18, 2019

FILED WITH LRC: July 15, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2019 at 10:00 a.m. at 501 High Street, 3rd floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. August 31, 2019. 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: Rosemary Holbrook, Executive Director, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone: (502) 564-7430, fax: (502) 564-0224, email: RosemaryG.Holbrook@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Rosemary Holbrook

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation details the various types of leave available to KRS Chapter 18A

unclassified employees.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the various types of leave available to KRS Chapter 18A unclassified employees, and the requirements for these types of leave.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to 18A.030(2), the Personnel Cabinet Secretary is required to promulgate comprehensive regulations consistent with the provisions for KRS Chapter 18A. KRS 18A.110(7)(g) and KRS 18A.155 require the Secretary of Personnel to promulgate administrative regulations which govern leave.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: These amendments are necessary to ensure the consistent application and handling of employee leave.

(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: In the annual leave section, provisions for prior service credit and payout of annual leave are amended to convey that dismissal for cause shall nullify those allowances. A provision is added to allow withholding payout of annual leave for an employee's notice of resignation or retirement after receipt of an intent to dismiss letter.

In the sick leave section, rehires receive credit for prior service and unused sick leave balances unless previously dismissed for cause. In the sick leave usage subsection, a "communicable condition" is added as a reason to grant or require sick leave. Authority is clarified throughout for fitness-for-duty certification. The sick leave without pay subsection is amended to clarify eligibility if an employee does not qualify for family medical leave due to lack of service time. Notification and consideration requirements are added to the sick leave by personnel action subsection.

The family medical leave section is amended to synchronize with a March 2019 U.S. Department of Labor opinion regarding the timing of designation.

The voting and election leave section is amended to clarify that an agency employer may specify the hours in which an employee can be absent.

The special leave of absence section is amended to provide for placement on paid investigative leave for a work-related incident that does not initially include an allegation of misconduct. The requirement is removed for notification of the outcome to an employee who resigns prior to completion of an investigation.

The absence without leave section is amended to state that an employee shall be deemed resigned after five (5) working days.

Leave accrual, compensatory time, and adverse weather provisions are amended to clarify existing requirements. Finally, general maintenance edits are made throughout the administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure the continued consistent application and handling of the multiple types of leave for KRS Chapter 18A unclassified service.

(c) How the amendment conforms to the content of the authorizing statutes: Pursuant to 18A.030(2), the Personnel Cabinet Secretary is required to promulgate comprehensive regulations consistent with the provisions for KRS Chapter 18A. KRS 18A.110(7)(g) and KRS 18A.155 require the Secretary of Personnel to promulgate administrative regulations which govern leave.

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates provisions to assist with the continued consistent application and handling of paid and unpaid leave for KRS Chapter 18A unclassified service.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: KRS Chapter 18A unclassified employees

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

amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action is required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No additional benefits will accrue.

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

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

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

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030(2)(b), 18A.110, 29 U.S.C. 201 – 219, 2601 – 2654

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)

103 KAR 25:131. Current month accelerated payment of sales and use taxes by larger taxpayers.

RELATES TO: KRS 139.590, 139.980, 139.990

STATUTORY AUTHORITY: KRS 131.130[4]

NECESSITY, FUNCTION, AND CONFORMITY: In order to facilitate payment of the sales and use taxes levied in KRS Chapter 139, KRS 139.590 permits the Department of Revenue, within its discretion, to require returns or tax payments for periods other than monthly periods. This administrative regulation prescribes a procedure whereby any taxpayer whose average monthly sales and use tax liability exceeds \$50,000[\$40,000] is required to remit by the 25th of each month, taxes applicable to the period commencing on the 16th of the previous month and extending through the 15th of the current month.

Section 1. Any taxpayer whose average monthly sales and use tax liability exceeds \$50,000[\$40,000] shall[must] report and remit by the 25th of each month, sales and use taxes applicable to the period beginning on the 16th of the previous month and extending through the 15th of the current month.

Section 2. The department shall review all taxpayer payments annually on a calendar year basis and identify those taxpayers who meet the \$50,000 test based on the average monthly tax liability for that period. In determining the amount of tax due from a taxpayer for a reporting period, the department shall consider the total amount due based on current tax reporting procedure. Changes in reporting procedure for the purpose of circumventing the requirements of this administrative regulation shall not be permitted. The department shall notify such taxpayers in writing of their obligation to begin remitting tax as set forth in this administrative regulation at least forty (40) days in advance of the date that the first such payment is to be forwarded to the department.

Section 3.[2-] (1) This accelerated filing requirement[This change in filing requirements] shall be effective for the July tax return following the department's calendar year review and notification referenced in Section 2 of this administrative regulation.

(2) Those taxpayers identified in Section 1 of this administrative regulation shall file the July return no later than August 25th and remit tax for both the full month of July and for the first fifteen (15) calendar days of August.[that normally would be filed on or before September 20, 1988. Instead, those taxpayers identified in Section 1 of this administrative regulation must file the August, 1988 return no later than September 25, 1988, and remit tax for both the full month of August, 1988 and for the first fifteen (15) calendar days of September, 1988.]

(3) The tax due for the first fifteen (15) days of August[September] may be computed either on an actual basis or an estimated basis. If the taxpayer elects to use the estimated basis, the tax paid for the first fifteen (15) days of August[September] cannot be less than one-half (1/2) of the total tax liability for the month of July[August, 1988].

(4) After the initial return is filed under this procedure, subsequent returns shall be due on or before the 25th of each month and shall include payment of tax covering the period from the 16th of the previous month through the 15th of the current month, with the fifteen (15) days of the current month reported on either an actual or estimated basis. The estimated amount cannot be less than one-half (1/2) the total tax computed for the previous calendar month before applying any credit for prepayment.

Section 4[3]. Taxpayers shall make the election to file on an estimated or actual basis referred to in Section 3(3)[2] of this administrative regulation at the time of filing the initial return under this administrative regulation, and shall continue to file on that basis unless a change is authorized in writing by the

department.[Section 4. The Department of Revenue shall review all taxpayer payments for the 1987 calendar year and all subsequent years and identify those taxpayers who meet the \$10,000 test based on the average monthly tax liability for that period. In determining the amount of tax due from a taxpayer for a reporting period, the department shall consider the total amount due based on current tax reporting procedure. Changes in reporting procedure for the purpose of circumventing the requirements of this administrative regulation shall not be permitted. The department shall notify such taxpayers in writing of their obligation to begin remitting tax as set out in this administrative regulation at least forty (40) days in advance of the date that the first such payment is to be forwarded to the department.]

Section 5. The department[Department of Revenue] shall develop procedures for implementing and administering the payment program set forth[out] in this administrative regulation. Taxpayers electing to "estimate" tax due shall be permitted to continue to report gross receipts, deductions, and purchases subject to use tax, on a calendar month basis with appropriate credit given for the tax already remitted for the first fifteen (15) days.

Section 6. Taxpayers required to remit tax as described in this administrative regulation shall continue such practice until notified otherwise in writing by the department. Taxpayers shall[will] be relieved of such responsibility only if their average monthly tax liability is less than \$40,000[\$8,000] for two (2) consecutive calendar years.

Section 7. Taxpayers failing to comply with the provisions of this administrative regulation shall be subject to penalties as provided in KRS 139.980 and interest as provided in KRS 131.183.103 KAR 25:131

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: July 12, 2019

FILED WITH LRC: July 12, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2019, at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, (502) 564-9526 (telephone), (502) 564-3875(fax), Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation prescribes a procedure whereby any taxpayer whose average monthly sales and use tax liability exceeds \$50,000 is required to remit by the 25th of each month, taxes applicable to the period commencing on the 16th of the previous month and extending through the 15th of the current month.

(b) The necessity of this administrative regulation: This amendment is necessary to update the accelerated filing threshold

and update outdated language on the dates used to calculate the accelerated filing amount.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is an amendment that updates the accelerated filing threshold and updates outdated language on the dates used to calculate the accelerated filing amount.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change this existing administrative regulation by updating the accelerated filing threshold from \$10,000/month to \$50,000/month, updating outdated language on the dates used to calculate the accelerated filing amount and updating the thresholds on discontinuing accelerated filing from \$8,000/month to \$40,000/month.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the accelerated filing threshold and update outdated language on the dates used to calculate the accelerated filing amount.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131.

(d) How the amendment will assist in the effective administration of the statutes: The amendment updates the accelerated filing threshold and update outdated language on the dates used to calculate the accelerated filing amount.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, organizations, or state and local governments that access the amended regulation, specifically those previous businesses whose sales and use tax liability exceeds \$10,000/month and current businesses whose sales and use tax liability exceeds \$50,000/month.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Department of Revenue shall review all taxpayer payments annually on a calendar year basis and identify those taxpayers who meet the \$50,000/month test based on the average monthly tax liability for that period.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to comply with the amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anyone who accesses the amended regulation will benefit from the updated information contained therein, and specifically those businesses falling under the sales tax threshold may no longer have to file on an accelerated basis.

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

(a) Initially: There is no expected cost to implement the proposed amendment. Current staff and budgeted funding will absorb the implementation of this administrative regulation.

(b) On a continuing basis: There is no cost expected on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this proposed amendment.

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

additional funding or increase in fees is needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed amended regulation will be applied equally to all entities impacted 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 Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and KRS 131.131.

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? No revenues are expected to be generated by updating this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? The potential cost in the first year of administration is related to those businesses that currently file on an accelerated basis no longer being required to do so. Such businesses would potentially have a credit to use for future periods that would reduce the amount of sales and use tax remitted for those credited periods.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be 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 (+/-): The potential cost in the first year of administration is related to those businesses that currently file on an accelerated basis no longer being required to do so. Such businesses would potentially have a credit to use for future periods that would reduce the amount of sales and use tax remitted for those credited periods.

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET Department of Revenue (Amendment)

103 KAR 26:070. Contractors[Construction-contractors].

RELATES TO: KRS 139.210, 139.240, 139.260, 139.270, 139.310, 139.340, 139.710, 139.730

STATUTORY AUTHORITY: KRS 131.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130 authorizes the Department of Revenue to promulgate administrative regulations to [Te] interpret the sales and use tax law as it applies to transactions involving contractors making improvements to real property.

Section 1. Definitions. (1) "Construction contract" as used herein means a contract for erecting, remodeling, or repairing a building or other structure on land or replacing, furnishing, or installing materials or fixtures permanently to real property and includes lump sum, cost plus, and time-and- materials contracts.

"Construction contract" includes a contract for the sale and installation of machinery, appliances, or equipment which the contractor has sold and permanently affixed to real property.

(2)(a)"Contractor" and "subcontractor" are used herein in the common and ordinary acceptance of the terms and include both general contractors and subcontractors engaged in such building trades as:

1. Carpentry;
2. Bricklaying;
3. Wall to wall carpeting;
4. Cement work;
5. Steel work;
6. Plastering;
7. Sheet metal work (including aluminum siding);
8. Roofing;
9. Tile and terrazzo work;
10. Cabinet work;
11. Electrical work;
12. Plumbing;
13. Central heating and air conditioning;
14. Painting;
15. Interior decorating;
16. Storm window work; or
17. Permanent awning work.

(b) The terms "contractor" and "subcontractor" as used herein does not include any person who repairs tangible personal property.

(3) The term "contractor-retailer" means contractors and subcontractors that operate in a dual business which includes selling machinery, appliances, or equipment or reselling to the general public on an "over-the-counter" basis the same type of building materials and supplies as is used by them in their own construction work along with their sales of construction contracts. Examples of machinery, appliances or equipment sold by contractor-retailers include:

- (a) Refrigerators;
- (b) Oven-ranges and dishwashers which are not built-in;
- (c) Laundry appliances;
- (d) Window unit air conditioners; or
- (e) Space heaters.

(4) "Fixtures" means things which are accessory to a building and do not lose their identity as accessories but which do become a permanent part of the realty. Examples of fixtures are:

- (a) Lighting fixtures;
- (b) Plumbing fixtures;
- (c) Hot water heaters;
- (d) Furnaces;
- (e) Boilers;
- (f) Central heating units;
- (g) Elevators;
- (h) Hoists;
- (i) Security and fire alarm fixtures;
- (j) Central air conditioning;
- (k) Built-in refrigeration units;
- (l) Built-in oven-ranges and dishwashers;
- (m) Storm doors and windows; or
- (n) Cabinets.

(5) The term "improvements to real estate" as used in this administrative regulation includes, but is not limited to improvements to:

- (a) Buildings;
- (b) Roads;
- (c) Sewers;
- (d) Dams;
- (e) Railroads; or
- (f) Fences.

(6) The term "materials" means all of the tangible personal property, other than fixtures, which enters into and becomes a permanent part of a structure. Examples of materials are:

- (a) Bricks;
- (b) Builders hardware;
- (c) Cement;
- (d) Gravel;

- (e) Sand;
- (f) Macadam;
- (g) Asphalt;
- (h) Lumber;
- (i) Electrical wiring;
- (j) Wall board and coping;
- (k) Roofing;
- (l) Guttering; or
- (m) Aluminum siding.

Section 2. Sales to Contractors. (1) All sales to contractors, subcontractors, builders, or owners of building materials, fixtures, and supplies which are to be incorporated or fabricated into any structure or improvement to real estate by the process of erecting, remodeling, replacing, or repairing such structure or improvement are subject to the sales or use tax at the time of sale to the contractor, subcontractor, builder, or owner. This applies irrespective of the type of contract (lump sum and materials, cost plus fixed fee, or other) for which the purchase is made.

(2) A contractor, subcontractor, or builder shall not claim that the purchase of materials or fixtures is exempt from the tax because the property is to be used in fulfilling a construction contract with the federal government, state government or political subdivision thereof, or any department, agency, or instrumentality of the federal government, state government or political subdivision thereof, or with a religious, educational, or charitable institution.

Section 3. Contractors Not Issued a Sales Tax Permit. A person, firm, association, partnership or corporation engaged exclusively in construction work as a contractor or subcontractor is not required to hold a retail sales tax permit and such a permit will not be issued to these persons.

Section 4. Contractor-retailers. A contractor-retailer constitutes the sole exception under which a contractor will be issued a sales tax permit. Because of the retail business operated, a contractor-retailer must make application for a Retail Sales and Use Tax Permit. Upon issuance of the permit, a contractor-retailer may then execute resale certificates for the machinery, appliances, or equipment purchased for resale and for all items of inventory purchased for resale in its retail business. The contractor-retailer may also issue a resale certificate for any items that it regularly holds in stock when it does not know at the time of purchase whether such items will be resold or used in its own construction business.

Section 5. Suppliers. (1) A Kentucky supplier and any out-of-state supplier who is the holder of a permit for collection of the use tax, shall bill and collect Kentucky tax from the contractor. A contractor, unless it falls within the exception described in Section 4 of this administrative regulation, will not be the holder of a retail sales and use tax permit and is not entitled to execute a resale certificate.

(2) The supplier is not to accept any number of the 900000-series as evidence that the purchaser is the holder of a permit. Such numbers are issued to contractors for the purpose of reporting on a Consumer's Use Tax Return. Nor is the supplier to accept any resale certificate from a contractor-retailer who holds a permit under the exception to this rule, for any materials or supplies which the supplier, in fact, knows are to be used by such purchaser in his own construction business.

(3) Any contractor, subcontractor, builder, or owner who purchases such items from an out-of-state supplier who is not licensed to collect the Kentucky use tax shall report and pay such use tax directly to the department on a Consumer's Use Tax Return based upon its purchase price of the property.

Section 6. Contractors Manufacturing Their Own Materials or Supplies. In the event any contractor, subcontractor, builder, or contractor-retailer is the manufacturer of the building material or supplies it used in its construction business, the tax shall apply to the purchase price to it of all tangible personal property which enters into the manufacture of such materials or supplies.

Section 7. Contractors With No Fixed Place of Business. Any contractor-retailer who has no fixed place of business from which he regularly operates may be required to post a security as provided in KRS 139.660.

Section 8. Contractor Examples and Scenarios. The list in this section shall provide general examples and the taxable treatment for certain common contractor scenarios. (1) An entity that contracts for the provision and installation of wall-to-wall carpeting into real property is a contractor. The contractor shall pay sales or use tax on its purchase of the carpet, materials, fixtures, and any other tangible personal property that goes into the charge to its customer on the cost of the construction contract.

(2) An entity contracts for the installation of a sidewalk into real property is a contractor. The contractor shall pay sales or use tax on its purchase of the concrete, supplies, materials, fixtures, and any other tangible personal property that goes into the provision of the construction contract. The contractor shall not bill sales tax as a separate charge to its customer on the cost of the construction contract.

(3) An entity that repairs a hot water heater that has been installed into real property is a contractor. The contractor shall pay sales or use tax on its purchase of the supplies, materials, fixtures, and any other tangible personal property that goes into the repair of the hot water heater. The contractor shall not bill sales tax as a separate charge to its customer on the cost of the repair.

(4) A contractor that sells and delivers a freestanding refrigerator operating as a contractor-retailer. The contractor-retailer may issue a resale certificate for its purchase of the refrigerator to be resold. The contractor-retailer would charge sales tax on the retail sale of the refrigerator to the end customer along with any delivery or installation charges associated with the sale of the refrigerator. [Section 2. Definitions. (1) The terms "contractor" and "subcontractor" are used herein in the common and ordinary acceptance of the terms and include both general contractors and subcontractors engaged in such building trades as carpentry, bricklaying, wall to wall carpeting, cement work, steel work, plastering, sheet metal work (including aluminum siding), roofing, tile and terrazzo work, cabinet work, electrical work, plumbing, central heating and air conditioning, painting, interior decorating, and storm window and permanent awning work. The terms "contractor" and "subcontractor" as used herein do not include any person who repairs tangible personal property.

—(2) The term "construction contract" as used herein means a contract for erecting, remodeling, or repairing a building or other structure on land and includes lump sum, cost plus, and time and materials contracts, but does not include a contract for the sale and installation of machinery, appliances or equipment which the contractor has sold but which do not become part of the real property. (In this latter case, the contractor must apply for a retail sales and use tax permit and remit tax on his sales price of the machinery, appliances or equipment.) Examples of taxable sales include refrigerators, oven-ranges and dishwashers which are not built-in, laundry appliances, window unit air conditioners and space heaters.

—(3) The term "materials" means all of the tangible personal property, other than fixtures, which enters into and becomes a permanent part of a structure. Examples of materials are: bricks, builders hardware, cement, gravel, sand, macadam, asphalt, lumber, electrical wiring, wall board and coping, roofing, guttering, aluminum siding, storm doors and windows, and cabinets.

—(4) The term "fixtures" means things which are accessory to a building and do not lose their identity as accessories but which do become a permanent part of the realty. Examples of fixtures are: lighting fixtures, plumbing fixtures, hot water heaters, furnaces, boilers, central heating units, elevators, hoists, burglar and fire alarm fixtures, central air conditioning and built-in refrigeration units, built-in oven-ranges and dishwashers, and cabinets.

—(5) The term "improvements to real estate" as used in this administrative regulation includes, but is not limited to, buildings, roads, sewers, dams, railroads, and fences.

—Section 3. A contractor may not claim that the purchase of

materials or fixtures is not subject to the tax because the property is to be used in fulfilling a contract with the federal government, state government or political subdivision thereof, or any department, agency, or instrumentality of the federal government, state government or political subdivision thereof, or with a religious, educational, or charitable institution.

—Section 4. A Kentucky supplier and any out-of-state supplier who is the holder of a permit for collection of the use tax, shall bill and collect Kentucky tax from the contractor. A contractor, unless he falls within the exception described in Section 5 of this administrative regulation, will not be the holder of a retail sales and use tax permit and is not entitled to execute a resale certificate. The supplier is not to accept any number of the series 900000 as evidence that the purchaser is the holder of a permit. Such numbers are issued to contractors for the purpose of reporting on a Consumer's Use Tax Return. Nor is the supplier to accept any resale certificate from a contractor-retailer who holds a permit under the exception to this rule, for any materials or supplies which the supplier, in fact, knows are to be used by such purchaser in his own construction business. Any contractor, subcontractor, builder or owner who purchases such items from an out-of-state supplier who is not licensed to collect the Kentucky use tax shall report and pay such use tax directly to the cabinet on a Consumer's Use Tax Return based upon his purchase price of the property.

—Section 5. In some instances, contractors and subcontractors are in a dual business which includes selling machinery, appliances or equipment as described in Section 2 of this administrative regulation or reselling to the general public on an "over-the-counter" basis the same type of building materials and supplies as is used by them in their own construction work. A person operating such a dual business is referred to in this administrative regulation as a contractor-retailer, and constitutes the sole exception under which a contractor will be issued a permit. Because of the retail business he operates, such a contractor-retailer must make application for a Retail Sales and Use Tax Permit. Upon issuance of the permit, a contractor-retailer may then execute resale certificates for the machinery, appliances or equipment purchased for resale and for all items of inventory which he purchases for resale in his retail business. He may also issue a resale certificate for any items that he regularly holds in stock when he does not know at the time of purchase whether such items will be resold or used by him in his own construction business.

—Section 6. In the event any contractor, subcontractor, builder, or contractor-retailer is the manufacturer of the building material or supplies he uses in his construction business, the tax shall apply to the sales price to him of all tangible personal property which enters into the manufacture of such materials or supplies.

—Section 7. Any contractor-retailer who has no fixed place of business from which he regularly operates may be required to post a security as provided in KRS 139.660.]

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: July 12, 2019

FILED WITH LRC: July 12, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on August 22, 2019, at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. Send written notification of intent to be

heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, (502) 564-9526 (telephone), (502) 564-3875(fax), Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation is an amendment that updates regulatory language to clarify the previous guidance contained and to specify the types of property sold.

(b) The necessity of this administrative regulation: The amendment is necessary to update outdated regulatory language, to clarify the previous guidance contained and to specify the types of property sold.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to address outdated information currently contained in the regulation.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change this existing administrative regulation by adding an authorizing sentence to the "Necessity, Function and Conformity" section, adding "digital property" as a type of property sold, specifying sales made in interstate commerce are not subject to the tax, clarifying the tax treatment related to newsstands, drugstores, street vendors, and other businesses, removing the notation related to "fixed location", and updating language.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to remove outdated regulatory language to clarify the previous guidance contained and to specify the types of property sold.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to address outdated information currently contained in the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, organizations, or state and local governments that access the amended regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions are necessary to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to comply with the amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anyone who accesses the amended regulation will benefit from the updated information contained therein.

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

(a) Initially: There is no expected cost to implement the

proposed amendment. Current staff and budgeted funding will absorb the implementation of this administrative regulation.

(b) On a continuing basis: There is no cost expected on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this proposed amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed amended regulation will be applied equally to all entities impacted 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 Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and KRS 131.131.

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? No revenues are expected to be generated by updating this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be 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 (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET Department of Revenue (Amendment)

103 KAR 26:090. Veterinarians and pet care providers.

RELATES TO: KRS 139.010, 139.200, 139.260, 139.290, 139.480

STATUTORY AUTHORITY: KRS 131.130[(4)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the assessment, collection, refunding, administration, and enforcement of Kentucky tax laws. This administrative regulation interprets [To interpret] the sales and use tax law as it applies to transactions involving veterinarians.

Section 1. Definitions. (1) "Pet care services" means non-

medical services performed for the benefit of pets and other companion animals including, but not limited to, the services listed in KRS 139.200.

(2) "Small animal veterinary services" means all activities related to the wellness, diagnosis, or treatment of pets and other companion animals performed by veterinarians or other persons in support of the veterinary services provided.

Section 2. Small Animal Veterinary Services. (1) Small animal veterinary services are subject to sales tax pursuant to KRS 139.200.

(2) The list in this subsection shall serve as general examples of small animal veterinary services:

- (a) Bloodwork;
- (b) Dentistry and teeth cleaning;
- (c) Emergency care;
- (d) Euthanasia services (excluding cremation);
- (e) Health and wellness examinations;
- (f) Laboratory testing and examination of lab work;
- (g) Performing surgeries;
- (h) Prescribing medicines and treatments;
- (i) Preventive care;
- (j) Spaying/neutering;
- (k) Vaccinations; or
- (l) X-rays and ultrasounds.

Section 3. Animals Treated by Small Animal Veterinary Service Providers. The list in this subsection shall serve as general examples of the types of animals treated by small animal veterinary service providers:

- (1) Birds;
- (2) Cats;
- (3) Dogs;
- (4) Ferrets;
- (5) Gerbils;
- (6) Guinea pigs;
- (7) Hamsters;
- (8) Rabbits;
- (9) Reptiles; or
- (10) Turtles.

Section 4. Tangible Personal Property, Digital Property, or Services Purchased by Small Animal Veterinary Service Providers for Resale. (1) Effective July 1, 2018, a small animal veterinary service provider may purchase tangible personal property or digital property for resale to the end customer exempt from the sales and use tax according to the provisions of KRS 139.260. Examples include, but are not limited to, prescription and non-prescription dog food, animal shampoos, collars and toys sold at retail along with the medicines, vaccines, surgical sutures, flea treatments, and anesthetics injected into or remaining with the animal. Small animal veterinary service providers may also purchase food they supply to the animals while under veterinary care or while providing pet care services exempt for resale.

(2) Effective July 1, 2019, a small animal veterinary service provider may purchase small animal veterinary services exempt for resale to the end customer according to the provisions of KRS 139.260. An example of services for resale are lab-testing services where a laboratory is billing its services to a small animal veterinary service provider which requested the service for a specific customer. The resale exemption for services only applies to services that are specifically resold to the customer.

(3) The small animal veterinary service provider shall issue the Resale Certificate (Form 51A105) or the Streamlined Sales and Use Tax Certificate (Form 51A26) for these purchases made for resale.

(4) Small animal veterinary providers are the consumers of the materials, supplies, and general services used or consumed while providing veterinary services. Providers of small animal veterinary services may not claim a resale exemption on purchases of products used or consumed while providing veterinary services. Examples of these items include, but are not limited to, surgical tools, tables, paper towels, syringes, needles, lab testing kits,

general supplies, and janitorial services.

Section 5. Veterinary Services Provided for Animals Excluded from Small Animal Veterinary Services. (1) Veterinary services for animals excluded from small animal veterinary services are not subject to sales tax and the providers are the consumers of the tangible personal property, digital property, or services that they use in performing their services.

(2) As the consumer, providers of veterinary services for animals excluded from small animal veterinary services are responsible for paying the applicable sales and use tax on all products used in performing their services including any medicines, vaccines, surgical sutures, flea treatments, anesthetics, surgical tools, tables, paper towels, syringes, needles, general supplies, and taxable services that are used or consumed in the provision of their veterinary services.

Section 6. Mixed Veterinary Practices. (1) Persons providing both small animal veterinary services and veterinary services for animals excluded from small animal veterinary services shall maintain records in a manner that documents and distinguishes the specific products and supplies used while rendering both types of veterinary services.

(2) Persons providing both types of veterinary services may issue a resale certificate for tangible personal property held in inventory if it is unknown at the time of purchase whether the property will be resold or used in the provision of veterinary services not subject to sales tax. If any portion of the tangible personal property is used or consumed in the provision of veterinary services not subject to sales tax, then the purchaser shall report and pay the sales and use tax on that portion directly to the department according to the provisions of KRS 139.290.

Section 7. Pet Care Services. (1) Pet care services are subject to sales tax pursuant to KRS 139.200. Any person, including veterinarians, that provides pet care services is subject to the sales tax on the gross receipts derived from the provision of these services.

(2) Pet care services include, but are not limited to, the services listed under the provisions of KRS 139.200.

(3) Persons providing pet care services are the consumers of the tangible personal property, digital property, or services they use in performing their services.

(a) Pet care service providers may not claim a resale exemption on purchases of products used or consumed while providing their taxable services. Examples of these items include, but are not limited to, grooming equipment, shampoo, toothpaste, toys, bedding, and general supplies.

(b) Pet care service providers may claim a resale exemption on purchases of products provided to and remaining with the animals. Examples of these items include, but are not limited to, flea treatments, food, and treats.

Section 8. Treatment of other transactions. (1) Pet adoption fees are taxable receipts subject to sales and use tax. Payment of these fees is consideration made for the transfer of tangible personal property in a retail sale.

(2) Services provided to service animals covered under the Americans with Disabilities Act (ADA) are not small animal veterinary services or pet care services subject to sales tax.

(3) Services provided to farm work stock animals that are exempt under the provisions of KRS 139.480 are not small animal veterinary services or pet care services subject to sales tax. [Section 1. Veterinarians are the consumers of the materials, supplies or other items of tangible personal property which they use in performing their services. The tax, accordingly, applies to the sale of tangible personal property to them. Drugs, medicines and other tangible personal property which are personally administered by a veterinarian or by an assistant under his direction during treatment of a patient is not the subject of a "retail sale."

— Section 2. Any veterinarian who, for a separate charge,

VOLUME 46, NUMBER 2– AUGUST 1, 2019

~~supplies or dispenses drugs, medicines or other tangible personal property in any manner other than the manner described above is a retailer of such tangible personal property and the tax applies at the time of the delivery of the tangible personal property to the consumer.]~~

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: July 12, 2019

FILED WITH LRC: July 12, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2019 at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, (502) 564-9526 (telephone), (502) 564-3875(fax), Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends 103 KAR 26:090 to provide guidance to veterinarians and pet care providers per tax law changes.

(b) The necessity of this administrative regulation: To conform to changes made in the authorizing statutes per HB 487 2018/GA regarding the expansion of sales tax on services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed updates amend regulatory language to conform with KRS 131.130 and 131.131.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The changes made in this amendment will provide the most current and up to date guidance to taxpayers impacted by the provisions of this regulation.

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

(a) How the amendment will change this existing administrative regulation: See (1)(a).

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, or organizations providing veterinary or pet care type services.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They may have new or expended reporting requirements, and/or be required to obtain a sales tax identification number.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Undeterminable, but may be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will remain in good standing with the Department of Revenue.

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

(a) Initially: There is no expected cost to implement the proposed amendment. Current staff and budgeted funding will absorb the implementation of this administrative regulation.

(b) On a continuing basis: There is no cost expected on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this proposed amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed amended regulation will be applied equally to all entities impacted 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 Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and KRS 131.131.

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? Undetermined. There may be additional revenue generated for the state in the first year, however the Department of Revenue has no way of knowing how many veterinarians or pet care providers will be impacted in this early stage of implementation.

(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? Undetermined.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect. Any costs associated with this new requirement should be absorbed into the current department maintenance contracts and operating budget.

(d) How much will it cost to administer this program for subsequent years? No additional costs should be 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 (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)

103 KAR 27:180. Vending machines.

RELATES TO: KRS 139.010, 139.240, 139.260, 139.470, 139.485, 139.720

STATUTORY AUTHORITY: KRS 131.130[(4)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations to administer and enforce Kentucky's tax laws. This administrative regulation establishes the requirements when interpreting the sales and use tax law as it applies to sales of tangible personal property through vending machines.

Section 1. Definition. "Bulk vending machine" is defined in KRS 139.470(5).

Section 2. Persons who own vending machines which dispense tangible personal property, or operators of the machines under lease or rental agreements, shall complete a "Kentucky Tax Registration Application", Revenue form 10A100, to obtain a Kentucky Retail Sales and Use Tax permit to engage in the business of selling tangible personal property and shall report and pay to the department the tax upon the gross receipts from sales made through the machines by utilizing Revenue Form 51A102, "Sales and Use Tax Return". One (1) permit shall be sufficient for all machines of one (1) owner or operator.

Section 3.[2.] The owners or operators of vending machines shall be responsible for reporting and paying the tax on the total gross receipts even though the owner or operator of the place in which the machines are located receives a share of the gross receipts under a commission or concession contract. In reporting and paying the tax, the owner or operator shall be deemed the agent of the operator or owner of the place of business in which the machine is located to the extent of commissions due the latter. Gross receipts from bulk vending machine sales of tangible personal property made in portions of fifty (50) cents or less~~[through coin-operated bulk vending machines where unsorted merchandise is dispensed in approximately equal portions]~~ are exempt from the sales and use tax pursuant to KRS 139.470(5).~~[(KRS 139.470(6)).]~~

Section 4.[3.] A statement in the following form must be affixed upon each vending machine in a conspicuous place: "This vending machine is owned (operated) by _____ Owner (Operator), _____ Place of Business of Owner (Operator), who holds Permit No. _____, issued pursuant to the Sales and Use Tax Law."

Section 5.[4.] If the owner or operator of vending machines also places upon each machine a statement that the sales tax is included in the price of the property dispensed, they[he] may compute the[his] liability for the tax in the same manner as all other retailers who separately state the tax.

Section 6.[5.] Adequate and complete records must be kept by the owner or operator showing the location of each vending machine owned or operated,[by him,] the serial number thereof, purchases and inventories of merchandise bought for sale through such machine, and the gross receipts derived from each location during each tax period.

Section 7.[6.] Forms. The forms listed within this administrative regulation may be inspected, copied, or obtained, subject to applicable copyright law:

- (1) At the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620;
- (2) At a Kentucky Taxpayer Service Center; or
- (3) On the department Web site at <http://revenue.ky.gov>.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: July 12, 2019

FILED WITH LRC: July 12, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2019 at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, (502) 564-9526 (telephone), (502) 564-3875(fax), Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends 103 KAR 27:180 to move a definition for "bulk vending machine" from Section 3 to Section 1 to adhere to KRS Chapter 13A drafting requirements, and update statutory citations.

(b) The necessity of this administrative regulation: The amendment is necessary to comply with KRS Chapter 13A guidelines, or run the risk of this administrative regulation being ruled deficient.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform to the formatting and drafting rules of KRS Chapter 13A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendment doesn't impact the administration of the provisions of this administrative regulation. It only moves current language from one section to another to comply with KRS Chapter 13A and correct a statutory citation.

(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: See (1)(a).

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, or organizations that are impacted by 103 KAR 27:180 for the purposes of sales in vending machines.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions are necessary to comply with the amendment. This amendment is only a formatting correction.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None. The information provided is the same, only the section where it was located in this administrative regulation has changed.

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

(a) Initially: There is no expected cost to implement the proposed amendment. Current staff and budgeted funding will absorb the implementation of this administrative regulation.

(b) On a continuing basis: There is no cost expected on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this proposed amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? Tiering is not applicable as this administrative regulation will be applied equally to all entities impacted 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 Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A, 131.130, and 131.131.

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? No revenues are expected to be generated by updating this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect. Any costs will be incurred as normal operating expenditures of the Department of Revenue.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be 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 (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET Department of Revenue (Amendment)

103 KAR 28:010. Admissions.

RELATES TO: KRS [138.480,] 139.010, 139.200, 139.260, 139.470, 139.480, 139.482, 139.495

STATUTORY AUTHORITY: KRS 131.130[4]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. This administrative regulation establishes sales and use tax requirements for sale of admissions.

Section 1. Definition. "Admissions" is defined in KRS 139.010.

Section 2. Excluded admissions. The admissions listed in this section are specifically excluded from sales tax by statute:

(1) Admissions to race tracks upon which tax is levied under KRS 138.480;

(2) Admission fees paid to enter or participate in a fishing tournament or for the use of a boat ramp as provided under KRS 139.010;

(3) Admissions to historical sites defined in KRS 139.482;

(4) Admissions charged by nonprofit educational, charitable, or religious institutions exempt under KRS 139.495;

(5) Admissions charged by nonprofit civic, governmental, or other nonprofit organizations exempt under KRS 139.498; and

(6) Admissions to unarmed combat shows such as boxing and wrestling shows taxed under KRS 229.031.

Section 3. Nontaxable fees. (1) Fees for instruction (tuition, registration fees, or ticket charges paid to attend instructional seminars, conferences, or workshops) shall not be considered the taxable sale of admissions if the primary intent of the program is for education rather than entertainment. Separate charges for meals, books, recordings, or other materials sold at or in conjunction with instructional seminars, conferences, or workshops shall be subject to sales and use tax unless an applicable exemption applies. Examples of nontaxable instructional seminars, conferences, or workshops include:

(a) Art classes, including painting and pottery;

(b) Certified training programs for lifeguard certification classes;

(c) Classes providing continuing education credits;

(d) Classes to obtain a professional designation, including but not limited to, a Certified Public Accountant, Registered Nurse, or Registered Land Surveyor;

(e) Dance lessons;

(f) Instructor-led recreational training, including but not limited to, swimming classes, fitness classes, golf lessons, and personal trainer exercise instruction;

(g) Music Lessons;

(h) Summer resident camps and day camps; or

(i) Team memberships fees that include athletic training skills for youth.

(2) Other non-taxable fees include:

(a) Day care and child care facility fees;

(b) Driver's license, hunting license, and fishing license fees;

(c) General facility rentals, including but not limited to, conference rooms, ballrooms, and temporary storage facilities; or

(d) Professional and fraternal order membership fees.

Section 4. Taxable Admissions. The list in this section shall serve as examples of admissions charges that are subject to the tax either as a payment for the right of entrance, payment for the privilege of using facilities, or payment to participate in an event or activity. These same charges made by an Internal Revenue Code 501(c)(3) charitable, religious, or educational organization, nonprofit civic organization, governmental organization, and all other nonprofit organizations are exempt under the provisions of KRS 139.495 and KRS 139.498:

(1) Amusement park entrance and ride charges;

(2) Art exhibits;

(3) Auditoriums where lectures and concerts are given for entertainment purposes;

(4) Bars with cover charges;

(5) Baseball parks;

(6) Bowling center rentals and fees to participate in games;

(7) Box seats;

- (8) Dance halls;
- (9) Disc golf courses;
- (10) Fitness and recreational sports centers;
- (11) Golf courses;
- (12) Gymnasiums;
- (13) Health spas;
- (14) Indoor and outdoor play spaces including but not limited to arcade games, ball pits, inflatables, obstacle courses, rides, slides, and other similar activities;
- (15) Locker rentals at recreational facilities;
- (16) Miniature golf fees;
- (17) Movie theatres;
- (18) Museums;
- (19) National park facilities that are operated under lease by a for-profit entity;
- (20) Night clubs;
- (21) Race tracks not taxed under KRS 138.480;
- (22) Simulcast facilities;
- (23) Shooting ranges and gun clubs;
- (24) Skating rink rentals and fees to participate in activities;
- (25) Skiing charges;
- (26) Sports league fees to participate in games;
- (27) Street fairs;
- (28) Swimming pool rentals and fees to participate in activities;
- (29) Tennis court rentals and fees to participate in activities;
- (30) Theatres; or
- (31) Weight training facilities.

Section 5. No Resale of Admissions. Sales of admissions are not eligible for the resale exemption according to the provisions of KRS 139.260.

Section 6. Ticketing. (1)(a) If the tax is included in the total price, a statement shall appear on the ticket to the effect that the sales tax is included in the price unless the tax is separately stated on a sign posted in a conspicuous place at the ticket window and all sales are made at the ticket window. For online sales, a prominent statement on the website may substitute for a statement on the ticket itself.

(b) If the tax is not included in the total price, a receipt shall be given showing that the sales tax was charged and separately stated.

(2) Each admission shall be a separate sale.

(3) Complimentary passes provided by the person conducting the event are not subject to the tax.

(4) Separately stated event sponsorships and advertising which do not include admission to an event are not subject to the tax.

Section 7. Required payments. Payments that are required as a prerequisite for admission, even if designated as a donation, shall be subject to tax.

Section 8. (1) This administrative regulation shall replace Revenue Circular 51C001-S6 and Revenue Policies 51P396 and 51P400.

(2) Revenue Circular 51C001-S6 and Revenue Policies 51P396 and 51P400 are hereby rescinded and shall be null, void, and unenforceable. [means the right of entrance to a display, program, sporting event, music concert, performance, play, show, movie, exhibit, fair, or other entertainment event or amusement.

Section 2. (1) The gross receipts from the sale of admissions shall be subject to tax unless the fees are paid for the privilege of using the facilities or participating in the event or activity or the fee is a separate or additional charge from any general admission charge.

(2)(a) If the tax is included in the total price, a statement shall appear on the ticket to the effect that the sales tax is included in the price unless the tax is separately stated on a sign posted in a conspicuous place at the ticket window and all sales are made at the ticket window.

(b) If the tax is not included in the total price, a receipt shall be

given showing that the sales tax was charged and separately stated.

(3) Each admission shall be a separate sale.

(4) Payments that are required as a prerequisite for admission even if designated as a donation shall be subject to tax.

Section 3. (1) Tuition, registration fees, or ticket charges paid to attend instructional seminars, conferences, or workshops shall not be considered the taxable sale of admissions if the primary intent of the program is for education rather than entertainment.

(2) Separate charges for books, tapes, or other materials sold at or in conjunction with instructional seminars, conferences, or workshops shall be subject to sales and use tax unless an applicable exemption applies.

Section 4. Taxable Admissions. The list in this section shall serve as examples of admissions paid that are subject to the tax:

- (1) Amusement parks;
- (2) Art exhibits;
- (3) Auditoriums where lectures and concerts are given for entertainment purposes;
- (4) Bars with cover charges;
- (5) Baseball parks;
- (6) Box seats;
- (7) Cabarets;
- (8) Dance halls;
- (9) Fairgrounds;
- (10) Football stadiums;
- (11) Gymnasiums;
- (12) Movie theatres;
- (13) Museums;
- (14) National park facilities that are operated under lease;
- (15) Night clubs;
- (16) Race tracks;
- (17) Simulcast facilities;
- (18) Skating rinks or skating parks as a spectator;
- (19) State parks;
- (20) Street fairs; or
- (21) Theatres.

Section 5. Nontaxable fees. The list in this section shall serve as examples of nontaxable fees if the fees are paid for the privilege of using the facilities or participating in an event or activity or the fee is a separate or additional charge from any general admission charge:

- (1) Amusement park ride charges;
- (2) Bowling fees;
- (4) Fishing or picnicking fees;
- (5) Golf, greens fees or driving range fees;
- (6) Miniature golf fees;
- (7) Skating fees;
- (8) Skiing charges; or
- (9) Swimming fees.

Section 6. The admissions listed in this section shall not be subject to sales tax:

- (1) Admissions to race tracks upon which tax is levied under KRS 138.480;
- (2) Admissions to historical sites defined in KRS 139.482;
- (3) Admissions sold by nonprofit charitable and educational institutions qualifying for exemption under KRS 139.495;
- (4) Complimentary passes provided by the person conducting the event; or
- (5) Gross receipts from the first \$50,000 in sales of admissions to county fairs as provided in KRS 139.470(22).

Section 7. (1) This administrative regulation shall replace Revenue Circular 51C001-S6 and Revenue Policies 51P396 and 51P400.

(2) Revenue Circular 51C001-S6 and Revenue Policies 51P396 and 51P400 are hereby rescinded and shall be null, void, and unenforceable.]

VOLUME 46, NUMBER 2– AUGUST 1, 2019

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: July 12, 2019

FILED WITH LRC: July 12, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2019 at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, (502) 564-9526 (telephone), (502) 564-3875(fax), Lisa.Swiger@ky.gov(email).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends 103 KAR 28:010 to add new requirements for taxpayers that charge admissions under KRS 139.200.

(b) The necessity of this administrative regulation: The changes to this administrative regulation are necessary to provide guidance to taxpayers on the types of admissions that are now taxable and nontaxable.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amendment updates the regulatory language to conform with KRS 131.130, 131.131 and 139.200 by providing taxpayers with explanations and lists of types of taxable admissions. It also updates statutory references to keep the regulation from being deemed deficient.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

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

(a) How the amendment will change this existing administrative regulation: See (1)(a).

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses and organizations that may charge an admission fee for entrance into a facility, event, class, etc. that may be taxable or nontaxable.

(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 entity may have new or additional reporting requirements and/or may need to obtain a sales tax identification number from the Department of Revenue.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Undetermined but may be minimal. It depends on the needs of the taxpayer in order to comply. Obtaining a sales tax ID

number is free. It has been televised and highly publicized for several months now that this requirement would be coming.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will remain in good standing with the Department of Revenue.

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

(a) Initially: There is no expected cost to implement the proposed amendment. Current staff and budgeted funding will absorb the implementation of this administrative regulation.

(b) On a continuing basis: There is no cost expected on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this proposed amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? Tiering is not applicable as the provisions of this administrative regulation will be applied equally to all entities impacted 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 Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130, 131.131, and 139.200.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be new revenue generated on the sales of admissions if all sales are reported accurately. However the amount of new revenue is undetermined. The Department of Revenue has no way of determining the fiscal impact from the new law changes at this early stage of implementation.

(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? Undetermined.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect. Any costs will be incurred as normal operating expenditures of the Department of Revenue.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be 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 (+/-): + new revenue in an undeterminable amount at this early stage.

Expenditures (+/-): 0.00

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)

103 KAR 30:170. Containers, wrapping, and packing materials.

RELATES TO: KRS 139.010, 139.470

STATUTORY AUTHORITY: KRS 131.130[(4)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the assessment, collection, refunding, administration, and enforcement of Kentucky tax laws. This administrative regulation defines and clarifies~~To define and clarify~~ the sales and use tax law as it applies to containers, wrapping and packing materials, labels and related products.

Section 1. Definitions. (1) The term "containers"~~[which appears in KRS 139.470]~~ means articles used for shipment or delivery of tangible personal property. Examples of such articles are wrapping materials, bags, cans, twine, gummed tape, boxes, bottles, drums, carboys, cartons, baling wire, and sacks.

(2) "Nonreturnable containers" means all containers other than those defined in Section 2 of this administrative regulation. Examples are wrapping and packing materials, paper bags, twine, medicine, and distilled spirits bottles.

(3) "Returnable containers" means containers of a kind customarily returned by the buyer of the contents for reuse. Examples of returnable containers are milk bottles, steel drums, beer and soft drink bottles, wine barrels, chemical carboys, totes, and gas cylinders.

Section 2. Sales of Returnable Containers. (1)~~["Returnable containers" means containers of a kind customarily returned by the buyer of the contents for reuse. Examples of returnable containers are milk bottles, steel drums, beer and soft drink bottles, wine barrels, chemical carboys and gas cylinders.~~

—(2) Sales of returnable containers when sold without the contents to manufacturers, compounders, bottlers, etc., who place the contents in the container and sell the contents together with the container are not subject to the sales or use tax. The container is not subject to the tax when it is sold at retail in connection with a retail sale of its contents. The fact that the retailer may require a deposit against the return of the container or allows a credit upon its return does not alter the rule. Returnable containers are not subject to the tax when they are resold by the final buyer for refilling.

(2) Sales of returnable containers, for example totes, to manufacturing suppliers who place the contents in the totes and sell the contents but not the tote to their manufacturing customer are subject to the sales and use tax. As the tote is not sold to the manufacturer, the sales and use tax exemption found in KRS 139.470(2) is not applicable.

Section 3. Sales of Nonreturnable Containers. (1)~~—All containers other than those defined in Section 2 of this administrative regulation are nonreturnable containers. Examples are wrapping and packing materials, paper bags, twine, medicine and distilled spirits bottles.~~

—(2) Sales of nonreturnable containers to manufacturers, compounders, bottlers, etc., for use in packaging their product for resale which are not intended to be returned for reuse are not subject to the sales or use tax. Bottle caps and crowns shall be treated at all times as nonreturnable containers for use in packaging a product for resale.

(2)~~[(3)]~~ Sales of wrapping paper, clothes hangers, twine, tape, and similar articles to persons who use them to package merchandise for sale at retail are usually sales made for resale and are therefore not subject to the tax. Sales of such articles to persons who use them in the conduct of an activity other than sale of tangible personal property at retail, for example, laundries and dry cleaning establishments, are subject to the sales or use tax.

(3)~~[(4)]~~ Sales of nonreturnable paper napkins, straws, and like

articles to restaurants, lunch counters, etc., who use them in connection with the sale and serving of food are sales made for resale and are therefore not subject to the tax.

Section 4. Labels and Name Plates. (1) Sales of labels and name plates are not subject to the sales or use tax if:

(a) They are affixed to a nonreturnable container of property sold; or

(b) They are affixed to returnable containers if a new label is affixed to the container each time it is refilled.

(2) Labels, name plates and price tags which are permanently affixed to the product for sale become a component part of that product and thus not subject to tax when sold to the manufacturer to be affixed by him.

(3) Price tags, shipping tags and advertising materials used in connection with the sale of property or enclosed with the property sold are subject to the tax.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: July 12, 2019

FILED WITH LRC: July 12, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2019 at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, (502) 564-9526 (telephone), (502) 564-3875(fax), Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends 103 KAR 30:170 to move definitions for certain types of taxable "containers" contained within the body of the language to Section 1 per KRS 13A requirements; and add examples of these types of containers; and add clarifying language.

(b) The necessity of this administrative regulation: The amendment is necessary to update outdated regulatory language and information per KRS 13A requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed updates amend regulatory language to conform with KRS 13A, 131.130, and KRS 131.131.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendment updates outdated information currently contained in the regulation and corrects formatting errors.

(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: See (1)(a).

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective

administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any taxpayer who may utilize a returnable or non-returnable container may be impacted by this administrative regulation. The number of industries or taxpayers this may include is unknown, as the Department of Revenue does not know the day to day operation of all current or potential taxpayers that may use containers.

(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: Unknown. They may have new or additional reporting requirements, or may need to apply for a sales tax identification number.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs should be minimal, if any. Most, if not all, taxpayers impacted by this amendment already possess the equipment needed to comply.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will remain in good standing with the Department of Revenue.

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

(a) Initially: There is no expected cost to implement the proposed amendment. Current staff and budgeted funding will absorb the implementation of this administrative regulation.

(b) On a continuing basis: There is no cost expected on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this proposed amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed amended regulation will be applied equally to all entities impacted 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 Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and KRS 131.131.

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? No revenues are expected to be generated by updating this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this

regulation being in effect. Any costs will be incurred as normal operating expenditures of the Department of Revenue.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be 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 (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET Kentucky Real Estate Authority Kentucky Real Estate Commission (Amendment)

201 KAR 11:121. Standards of professional~~improper~~ conduct.

RELATES TO: KRS 324.010(3), 324.111, 324.121, 324.160, 324.310, 324.360, 324.281(5), 24 C.F.R. 3500, 44 C.F.R. 64.3(b)

STATUTORY AUTHORITY: KRS 324.281(5), 324.282, 324.360

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.281(5) and 324.282 require~~requires~~ the Real Estate Commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS Chapter 324. KRS 324.121 authorizes a principal broker to designate an affiliated licensee to act as agent for a seller or lessor, buyer or lessee, or prospective buyer to the exclusion of all other licensees associated with the principal broker. This administrative regulation establishes requirements for designated agency. KRS 324.360(2) requires the commission to promulgate an administrative regulation authorizing a seller's disclosure of conditions form whose content is set forth by KRS 324.360(3). This administrative regulation establishes the required Seller's Disclosure of Property Condition form. KRS 324.160(4)(e) authorizes the commission to take disciplinary action if a licensee acts for more than one (1) party in a transaction without the knowledge of all parties. This administrative regulation establishes a specific process and form for disclosing prior relationships between parties in a residential transaction. Additionally, this administrative regulation establishes standards and requirements, to inform and set certain standards for licensees and to protect the public, regarding delivery of signed documents, broker supervision, broker record retention, sales associate affiliation and termination, and written agreements between licensees and consumers to provide real estate brokerage services, including standards for listing and purchase contracts. This administrative regulation establishes behavior considered improper conduct.

Section 1. Improper Conduct. (1) In addition to the obligations and prohibitions set forth in KRS 324.160, a licensee shall not~~Definition. "Guaranteed sales plan" means an offer or solicitation to guarantee the:~~

~~(1) Sale of an owner's real estate; or~~

~~(2) Purchase of the owner's real estate if the owner's real estate is not sold by the broker.~~

Section 2. ~~(1) It shall constitute improper conduct for a licensed agent to:~~

~~(a) Accept or agree to accept, or offer or agree to offer, anything of value to another person in violation of the federal Real Estate Settlement Procedures Act, 12 U.S.C.S. 2601 through 2617 ("RESPA"). [Accept or agree to accept, without written disclosure to the seller and buyer or lessor or lessee on the purchase or lease contract, a referral fee from any person in return for directing a client or customer to that person, or another, who provides or agrees to provide any goods, service, insurance or financing related to a transaction involving real estate.] This provision shall~~

not affect paying or receiving referral fees between principal brokers~~[licensed agents]~~ for brokerage services.~~;~~

(b) Refuse or prohibit any prospective purchaser from viewing or inspecting real estate listed for sale or lease with the real estate brokerage company with which the licensee~~(the agent)~~ is affiliated, ~~[or with the agent's company]~~ without the written and signed direction of the listing or leasing client~~[owner]~~. This provision shall not be construed to permit otherwise unlawful discrimination;

(c) Offer real estate for sale or lease without written consent from the person or persons or entity or entities authorized to sell or lease the subject real estate;

(d) Fail to satisfy one (1) or more of the following fiduciary duties owed to the licensee's client:

1. Loyalty;
2. Obedience to lawful instructions;
3. Disclosure;
4. Confidentiality;
5. Reasonable care and diligence; and
6. Accounting;

(e) Fail to satisfy one (1) or more of the following duties owed to the licensee's prospective client:

1. Good faith;
2. Fair dealing; and
3. The fiduciary duty of confidentiality;

(f) Fail to satisfy one (1) or more of the following duties owed to a consumer or to any other party in a transaction:

1. Good faith; and
2. Fair dealing.

(g) Enter an ongoing team or group relationship with any other licensee at the same brokerage company without the written consent of the principal broker;

(h) Induce any party to a contract for sale or lease to break such contract for the purpose of substituting in lieu thereof a new contract for sale or lease with another client;

(i) If advertising real property at an absolute auction, sell the advertised property to anyone other than the highest bona fide bidder on the day of the auction; and

(j) If dually licensed as an auctioneer and real estate licensee, before a real estate licensee commences an auction, the licensee shall disclose his or her status as a real estate licensee to potential purchasers and whether he or she intends to bid during the auction.~~[(d) Advertise a guaranteed sales plan without:~~

1. Disclosing whether:
 - a. A fee is charged for participation;
 - b. The real estate shall meet qualifications for participation;
 - c. The purchase price under a guarantee of purchase of the owner's real estate shall be determined by the licensee or a third party; and
 - d. The owner of the real estate shall purchase other real estate listed for sale by the licensee or his or her designee; and
2. Including, in:
 - a. Print advertising, letters that shall be at least twenty-five (25) percent the size of the largest letter in the advertisement;
 - b. Radio advertising, communication that shall be clearly understandable; or
 - c. Television advertising:
 - (i) Verbal communication that shall be clearly understandable;
 - (ii) Written communication that shall appear on the screen at least three (3) seconds for the first line of lettering and at least one (1) second for each additional line of lettering and in letters that shall be at least eighteen (18) video scan lines in size for uppercase letters or at least twenty-four (24) video scan lines for uppercase capital letters if uppercase capitals and lowercase letters are used; or
 - (iii) Any combination of verbal and written communication that shall comply with the requirements of this clause; or

(e) Violate a provision of KRS Chapter 324 or 201 KAR Chapter 11 governing brokers, sales associates, or real estate transactions.]

(2) The fiduciary duty of confidentiality, if owed, shall survive the termination of the Agency Consent Agreement contemplated in section 6 of this administrative regulation.

(3) It shall not be considered improper conduct for a licensee

~~[licensed agent]~~ to advertise the fee or other compensation the principal broker~~[licensed agent]~~ agrees to charge for his or her services.

(4) It shall not be considered improper conduct for a licensee to offer rebates, discounts, or other inducements to consumers, prospective clients, or clients to use the licensee's services or truthfully advertise the same.

(5) It shall not be considered improper conduct for a licensee to use his or her registered nickname in place of the licensee's first name anytime the licensee is required to identify himself or herself on an official document or to the commission.

Section 2. Submission of Written Offers. (1) If a principal broker has entered into a written listing agreement, or any other written agreement, under the terms of which the principal broker agrees to provide real estate brokerage services for a fee, compensation or other valuable consideration for the client, the principal broker shall provide, unless otherwise agreed in writing with the client, for real estate that is the subject of the written agreement, the following services:

(a) Accept delivery and submit to the client, without delay, all written offers to lease or purchase;

(b) Accept all earnest money deposits that are presented to the principal broker or an affiliated licensee of the principal broker;

(c) Until the completion of the transaction, assist the client in developing, communicating, negotiating, and presenting offers, counteroffers, and notices that relate to offers and counteroffers; and

(d) Answer the client's questions relating to offers, counteroffers, notices, and contingencies involved in the lease or purchase.

(2)(a) Each principal broker, or an affiliated licensee of the principal broker, who represents a client shall, without delay, submit all written offers to lease or purchase real estate from the principal broker's client to the person or legal entity authorized to sell or lease the property or to the principal broker, or an affiliated licensee of the principal broker, who has entered into a written agreement according to subsection (1) of this Section.

(b) If the principal broker is acting as a transactional broker, the principal broker shall follow the lawful instructions of the parties and provide the brokerage services as outlined in the transactional brokerage agreement.

(3) Failure to comply with Section 2 of this administrative regulation shall constitute gross negligence in violation of KRS 324.160(4)(v).

Section 3. Listing and Purchase Contracts. (1) A listing contract completed by or at the direction of a licensee shall include the:

(a) Listing price of the property, unless the sale is to be by auction;

(b) Date and time of the signing of the listing contract for all parties who sign;

(c) First and last name of the principal broker and the full name of the real estate brokerage company;

(d) Effective date and time of listing and advertising, if different;

(e) Date of expiration of the listing contract;

(f) The method and terms of cancellation of the listing contract;

(g) Fee, compensation, or other valuable consideration agreed upon between the principal broker and the client;

(h) Address or a general description of the real estate sufficient to identify the parcel(s);

(i) Signatures of all parties necessary to affect a sale of the property, including any dower or courtesy considerations or the official representative of a corporate entity, that is the subject of the listing agreement;

(j) Special directions of the client concerning limitations or restrictions on showings; and

(k) Date, time and, initials for all changes on the contract prior to acceptance.

(2) An offer to purchase completed by, or at the direction of, a licensee shall include the:

(a) Purchase price or a valid escalation clause with the

maximum purchase price:

(b) Amount of contract deposit, if given, who is to hold the deposit, and the time period to deliver the deposit;

(b) Date and time of signing of the offer for all parties who sign;

(c) Date and time when the offer expires;

(d) Address or a general description of the real estate sufficient to identify the parcel(s);

(e) Signatures of all parties making the offer and the printed first and last name of the licensee who completed or directed the completion of the offer;

(f) Date, time, and initials for all changes on the contract prior to acceptance;

(g) Provision setting forth the date by which, or the date range within, the closing shall occur and when possession shall be given to the buyer; and

(h) Proposed payment terms.

(3) A counteroffer completed by, or at the direction of, a licensee shall include any amendments to any term required by subsection (1) and (2) of this section and:

(a) Date and time of signing of the counteroffer for all parties who sign;

(b) Date and time when the counteroffer expires;

(c) Signatures of all parties making the counteroffer;

(d) The first and last name of the licensee who completed or directed the completion the offer, if not found on the original offer or a previous counteroffer; and

(e) Date, time, and initials for all changes on the contract prior to acceptance.

(4)(a) If a licensee presents an offer to purchase real estate for which an executory contract to sell the property is already in existence, the offer shall include language that indicates in writing that the offer is contingent upon the nonperformance of the existing executory contract.

(b) The contingency language required by the previous subsection shall indicate the disposition of any contract deposit and be:

1. Inserted by the licensee who completes or prepares the offer to purchase, if licensee is aware of the existing contract; or

2. Made by the listing licensee as a counteroffer.

(5) If financing is involved, a contract providing for the purchase of property shall specifically state:

(a) The manner in which the purchase shall be financed; and

(b) The amount of any encumbrance and whether it is to be underwritten by the seller or a commercial institution or otherwise.

(6) Any agreement for compensation, including rebates and inducements, from a licensee to his or her client shall be in writing.

(7) Prior to the expiration of a current listing agreement, another licensee shall not contact the seller to obtain a subsequent listing agreement.

(a) The seller may contact another licensee to obtain a subsequent listing agreement.

(b) A different principal broker may enter into a subsequent listing agreement with the seller if the new listing agreement will take effect upon the expiration or proper cancellation of the current listing agreement; and

(c) The licensee and seller properly complete and sign the Seller-Initiated Re-Listing Form.

(8) If a licensee fails to comply with the requirements in Section 3, the licensee's conduct and dealings shall be considered improper in violation of KRS 324.160(4)(u).

Section 4. Required Disclosures. (1) A licensee shall direct the seller-client of a single family residential real estate dwelling to accurately complete and sign the Seller's Disclosure of Property Condition form required by KRS 324.360, including all necessary initials and signatures, unless the seller-client refuses and documents his or her refusal, or the licensee documents the seller-client refusal, on the Seller's Disclosure of Property Condition form.

(2) A licensee who is involved in the brokerage of a condominium transaction shall advise the client in writing of the client's right to receive the certificate required by KRS 381.9203(1) and the purchasing client's right to void the sales contract consistent with KRS 381.9203(3).

Section 5. Prospective Client Disclosures. (1) A licensee shall complete, time and date, and deliver to the appropriate prospective client or party the "Guide To Agency Relationships" at the earliest of the following times:

(a) Prior to entering into a written agreement to provide real estate brokerage services for compensation with a prospective client or party;

(b) Prior to entering into an oral agreement to provide real estate brokerage services with a prospective client or party; or

(c) Prior to signing an agency consent agreement.

(2) The licensee shall solicit the signature of the prospective client or party on the Guide to Agency Relationships as acknowledgement by the prospective client or party of his or her receipt. The licensee shall maintain a record that the prospective client or party signed the Guide to Agency Relationships. If the prospective client or party refuses to, or does not, sign the Guide to Agency Relationships upon receipt, the licensee shall document the delivery, or attempted delivery, including a date and time, to the appropriate prospective client or party.

(3) The completed Guide to Agency Relationships shall provide or include:

(a) The agency relationships available between the licensee and client or party in Kentucky;

(b) The first and last name of the licensee completing the form, the first and last name of the principal broker of the licensee, and the full name of the licensee's real estate company;

(c) The name of the prospective client or party; and

(d) The signature, time, and date of signing by the prospective client or party.

(4) The commission's Guide to Agency Relationships may be personalized by a principal broker to include the principal broker's company-specific information, including logos.

(5) The provisions of this section of this administrative regulation shall not apply to:

(a) The sale of real estate at auction; or

(b) A commercial transaction.

Section 6. Agency Consent Agreement. (1) Prior to entering into a written agreement to provide real estate brokerage services or completing, or directing the completion of, a contract, offer, or lease for a real estate transaction:

(a) The licensee shall complete and deliver the Agency Consent Agreement to the prospective client or party; and

(b) Seek and obtain written consent to the Agency Consent Agreement from the prospective client or party.

(2) The commission's Agency Consent Agreement shall provide:

(a) The first and last name of the client or party, the first and last name of the licensee(s) and principal broker, and the full name of the real estate brokerage company;

(b) The specific agency relationship proposed between the principal broker of the real estate brokerage company, and any affiliated licensee of the real estate brokerage company, and the prospective client or party;

(c) If applicable, any known business, family, or personal relationship the licensee has with another party to the contemplated transaction who is not a party to the Agency Consent Agreement and an explanation of the nature of the relationship or relationships;

(d) Whether the transaction involves an unrepresented party; and

(e) Disclosure of prior contact with a former prospective client who is involved in the presently contemplated real estate transaction.

(3) The Agency Consent Agreement shall be updated, and written consent obtained, if the agency relationship initially established later changes.

(4) The provisions of this section of this administrative regulation shall not apply to a:

(a) Sale of real estate at auction; or

(b) Commercial transaction.

(5) The form of agency identified in the most recent Agency

Consent Agreement shall terminate upon either:

- (a) The provision of the agreed upon services; or
- (b) At the closing of the contemplated real estate transaction.

Section 7. Affiliation. (1) The principal broker shall be the owner of all written contracts for provision of real estate brokerage services, including but not limited to listing contracts, purchase contracts, and exclusive agency agreements.

(2) When a principal broker, or a licensee acting on behalf of the principal broker, enters into a written agreement with a client, an agency relationship is formed, and the client is the principal.

(3) Absent operating as a designated agency company, each licensee affiliated with the real estate brokerage company shall have the same agency relationship with respect to a client, prospective client, or party as the principal broker in an in-house transaction.

(4) If only one (1) broker is affiliated with a company, he or she shall be the principal broker.

(5) If one (1) or more additional licensees is affiliated with the company, one (1) broker shall be the principal broker registered with the commission.

(6)(a) Unless there is a written contract stipulating otherwise, a licensee shall, upon termination of his or her affiliation with his or her principal broker, immediately turn over to the principal broker any and all records described in Section 9(1)(a)-(h) of this administrative regulation obtained during his or her affiliation regardless of whether the information was originally received from his or her principal broker, copied from the records of the principal broker, or acquired by the licensee during his or her affiliation.

(b) Nothing in the previous subsection shall require an affiliated licensee to deliver to the principal broker records which the principal broker is not under an obligation to retain consistent with this administrative regulation or records which are already in the principal broker's possession.

(7)(a) A principal broker may be principal broker of more than one (1) real estate brokerage company.

(b) A principal broker may not also be an affiliate broker at another real estate brokerage company, except for as provided in KRS 324.112(5).

(8) A sales associate or broker affiliated with a principal broker shall only be affiliated with one (1) principal broker at one (1) office, or branch office, location.

(9) A real estate brokerage company may have more than one (1) physical office location, including branch offices.

Section 8. Facsimile and Digital Transmissions. (1) A licensee may use facsimile (FAX) devices and digital transmissions to transmit and receive documents according to the provisions of KRS Chapter 324 and the administrative regulations promulgated thereunder.

(2) If a licensee uses facsimile devices or digital transmissions to transmit and receive documents, the time of delivery of a document shall be the time of transmission for the facsimile (FAX) device or the time that it is sent from the originator.

(3) A document received by facsimile devices or digital transmissions shall be immediately placed in the licensee's file and retained as required by this administrative regulation.

Section 9. Principal Broker Duties and Prohibitions. (1) A principal broker shall confidentially preserve, either in hard copy or digital format, for five (5) years following its consummation or failure, records in one (1) file relating to any real estate transaction, which shall include:

- (a) Any written offers to lease or purchase the real estate;
- (b) The acquisition and disbursement of any monies;
- (c) Listing and sales contracts or leases;
- (d) Closing sheets;
- (e) Seller's and condominium certificate disclosure forms;
- (f) Agency Consent Agreement forms;
- (g) Guide to Agency Relationships forms; and
- (h) Timeshare records.

(2) A principal broker who engages in property management shall also confidentially preserve, either in hard copy or digital

format, for five (5) years:

- (a) Property management agreements;
- (b) Leases;
- (c) Monthly owner statements and reports;
- (d) Owner and unit ledgers; and
- (e) Bank statements relating to property management.

(3) In the event of the death or incapacity of the principal broker, records required to be maintained pursuant to this section shall be maintained by:

(a) A designated manager, so designated previous to the time of the death or incapacity of the principal broker to maintain the records;

(b) The real estate brokerage company of the principal broker at the time of the death or incapacity of the principal broker, if the company continues to be an active company;

(c) A licensee designated by the commission to maintain the records and serve as the principal custodian of the records, without any liability or obligation, other than to confidentially maintain the records and to provide the records to a party as required by law or by demand of the commission; or

(d) Any appointee of the commission who will agree to maintain the records and serve as the principal custodian of the records, without any liability or obligation, other than to confidentially maintain the records and to provide the records to a party as required by law or by demand of the commission.

(4) At the time of signing all documents, the principal broker, or an affiliated licensee of the principal broker, shall ensure that a copy of all documents are delivered to all parties executing the documents where the document has been provided, prepared by, or at the direction of the principal broker or an affiliated licensee of the principal broker.

(5) The principal broker, an affiliated licensee of the principal broker, shall ensure that a debit and credit type closing statement is furnished to a client upon closing a real estate transaction unless the financial institution, title agency, the attorney involved, or other authorized individuals, has prepared the closing statement.

(6) No principal broker shall be a party to an exclusive listing contract which contains an automatic continuation of the period of such listing beyond the fixed termination date set forth therein.

(7) If a principal broker permits teams, a principal broker shall notifying the commission in writing of the alternate or assumed name used by the team and the name of the team leader before permitting team advertising.

(8) If a principal broker authorizes team, group, or other business arrangements between affiliated licensees, the principal broker shall:

(a) Offer, at a minimum, company procedures for advertising, agency relationships, management and operations specific to team, group, or other business arrangements between affiliated licensees;

(b) Designate a licensee who shall be responsible, along with the principal broker and designated manager, for the operations of the team, group, or other business arrangement. The designated licensee shall be referred to as the "team leader" regardless of how the team, group or other business arrangement labels itself;

(c) Maintain a current list of all affiliated licensees, employees, office personnel, and clerical staff who are a part of each individual team, group, or other business arrangement; and

(d) Notify the commission in writing of the first and last name and license number of the team leader.

(9) A principal broker shall ensure any employee or unlicensed personal assistant, salaried or independently contracted, employed by, retained by, or under the direction of the principal broker or any affiliated licensee, are in compliance with the applicable provisions of KRS Chapter 324 and 201 KAR Chapter 11.

(10) A principal broker shall implement and maintain an appropriate information security system that shall:

(a) Notify licensees, management, employees, officer personnel, and clerical staff of company policy and procedures related to confidential information, including in-person interactions or discussions in the office environment;

(b) Prohibit the disclosure of confidential information by licensees, management, employees, office personnel and clerical

staff; and

(c) Require notification to each client involved in a transaction, if the principal broker becomes aware of an unauthorized or inadvertent disclosure of confidential information relating to that transaction.

(d) Nothing in this provision shall prohibit a licensee who is party to an Agency Consent Agreement from maintaining a separate individual client file containing confidential information.

(11) A principal broker of a real estate brokerage company that practices designated agency shall require that all documents that contain confidential information relating to a client be kept in an individual file maintained by the principal broker and accessed only by the principal broker, designated manager, or designated agent appointed by the principal broker to represent the individual.

(12) A principal broker who appoints a designated manager of the real estate brokerage company, a registered company branch, team, group, or other business arrangement shall notify the commission in writing of the name of the designated manager within ten (10) days of the appointment.

Section 10. Property Management. (1) A principal broker, or an affiliated licensee, shall not engage in property management without a current written property management agreement.

(2) A property management agreement shall contain, at a minimum:

(a) The full name and address of the principal broker's real estate brokerage company as registered with the commission;

(b) The name and address of the client for whom the property is being managed;

(c) The address of the real estate being managed and the number of units;

(d) The effective dates of the agreement, and a provision stating whether the client agrees to automatic annual renewal;

(e) A provision stating the method for early termination;

(f) The amount of, or the method for computing, the amount of compensation to the principal broker;

(g) The amount of, or the method of determining, the minimum security deposit to be collected from tenants for each unit managed;

(h) The name and address of the bank where the principal broker's escrow or management account is held, and, consistent with KRS 383.580(1), the account number. This information shall also be contained in the lease;

(i) A provision which is in accord with KRS 383.580 setting forth the procedures governing returning or retaining the security deposit. This provision shall also be contained in the lease;

(j) A provision setting forth the conditions under which the principal broker is authorized to pay expenses related to the real estate being managed;

(k) A statement setting forth the date when the principal broker shall send the client an accounting of the transactions related to the real estate being managed;

(l) A copy of the form of the lease document which the principal broker shall have the tenant sign shall be attached to the agreement;

(m) A provision whereby the client certifies that he has received a duplicate copy of the agreement and the attached lease form; and

(n) The signature and date of signature of the client and the principal broker.

(3) A principal broker shall maintain, in electronic or written form:

(a) An owner ledger for each client of real estate being managed.

(b) A unit ledger for each unit in the real estate being managed.

(c) Upon the written request of the client of the property being managed, the principal broker shall provide a unit ledger by tenant.

(4) Money received shall be deposited into an escrow or management account of the principal broker within three (3) business days of receipt.

(5) The amount of money received shall be entered into the owner and unit ledgers.

(6) A receipt shall be given for money received.

(7) Expenses paid by the principal broker shall be documented by invoice or receipt, by unit, and retained with a principal broker's records.

(8) Adjustments to a security deposit shall be made in accordance with KRS 383.580. Adjustments shall also be entered on the owner and unit ledgers.

(9) On the date determined by the parties, a principal broker shall send a monthly accounting to a client of transactions related to the real estate being managed, by unit.

(10) Within sixty (60) days of the termination of a management agreement, a principal broker shall send the client a final accounting that contains any transaction that occurred after the last monthly accounting.

(11) A principal broker who has an ownership interest in the real estate being managed shall:

(a) Maintain a unit ledger for each unit in the real estate being managed; and

(b) Comply with KRS 383.580 relating to receipt, deposit, and adjustment of tenant security deposits.

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

(a) "Seller-Initiated Re-Listing Form", 7/2019;

(b) "Seller's Disclosure of Property Condition", 7/2019;

(c) "Condominium Seller's Certificate", 7/2019;

(d) "Guide to Agency Relationships", 7/2019; and

(e) "Agency Consent Agreement", 7/2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 656 Chamberlin Avenue, Suite B, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available from the commission's Web site: www.krec.ky.gov.

LOIS ANN DISPONETT, Chair
H.E. CORDER II, Executive Director
K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: July 15, 2019

FILED WITH LRC: July 15, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2019 at 10:00 a.m. Eastern Time at the Kentucky Real Estate Commission, 656 Chamberlain Ave., Suite B, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this Department in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on August 31, 2019. 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: Alex D. Gaddis, Deputy General Counsel, Kentucky Real Estate Authority, 656 Chamberlin Ave., Suite B, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-1538 email: Alex.Gaddis@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alex D. Gaddis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards of conduct for all licensed real estate professionals.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to discharge the commission's duty set forth in KRS 324.281 to promulgate

administrative regulations concerning the proper conduct of licensees. This administrative regulation is also necessary to modernize and consolidate into one administrative regulation the professional standards of conduct expected for all licensees of the Kentucky Real Estate Commission.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324.121 authorizes a principal broker to designate an affiliated licensee to act as agent for a seller, buyer or prospective buyer to the exclusion of all other licensees associated with the principal broker. This administrative regulation establishes requirements for designated agency. KRS 324.360(2) requires the Kentucky Real Estate Commission to promulgate an administrative regulation authorizing a seller's disclosure of conditions form whose content is set forth by KRS 324.360(3). This administrative regulation establishes the required Seller's Disclosure of Property Condition form. KRS 324.160(4)(e) authorizes the commission to take disciplinary action if a licensee acts for more than one (1) party in a transaction without the knowledge of all parties. This administrative regulation establishes a specific format for disclosing prior relationships between parties in a real estate transaction. Additionally, this administrative regulation establishes requirements, to inform and set certain standards for licensees and to protect the public, regarding delivery of signed documents, broker supervision, broker record retention, sales associate affiliation and termination, and written agreements between licensees and consumers to provide real estate brokerage services, including standards for listing and purchase contracts. This administrative regulation establishes behavior considered improper conduct.

(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 within the commission's jurisdiction because it puts all licensees on notice of the expected standards of conduct for licensed real estate professionals in Kentucky. With modernized and streamlined standards of professional conduct, the commission will be better equipped to discharge its duty to protect the public and maintain the integrity of the profession.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation amendment consolidates into one regulation all standards of conduct applicable to licensed real estate professionals. The proposed amendments modernize standards relating to record retention and transmittal of documents to clients. Also, the proposed amendments, simultaneous with the proposed administrative regulation repealer, reduce burdens on licensees who engage in the promotion of out-of-state properties and property management.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to establish uniform and modern standards of conduct for licensed real estate professionals.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 324.281 requires the Kentucky Real Estate Commission to promulgate administrative regulations concerning the proper conduct of licensees. KRS 324.121 authorizes a principal broker to designate an affiliated licensee to act as agent for a seller, buyer or prospective buyer to the exclusion of all other licensees associated with the principal broker. This administrative regulation establishes requirements for designated agency. KRS 324.360(2) requires the Kentucky Real Estate Commission to promulgate an administrative regulation authorizing a seller's disclosure of conditions form whose content is set forth by KRS 324.360(3). This administrative regulation establishes the required Seller's Disclosure of Property Condition form. KRS 324.160(4)(e) authorizes the commission to take disciplinary action if a licensee acts for more than one (1) party in a transaction without the knowledge of all parties. This administrative regulation establishes a specific format for disclosing prior relationships between parties in a residential transaction. Additionally, this administrative regulation establishes standards and requirements, to inform and set certain standards for licensees

and to protect the public, regarding delivery of signed documents, broker supervision, broker record retention, sales associate affiliation and termination, and written agreements between licensees and consumers to provide real estate brokerage services, including standards for listing and purchase contracts. Overall, this administrative regulation establishes behavior considered improper conduct.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation consolidates and clarifies the rules that will govern practice as a licensed real estate professional in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all of the Real Estate Commission's current licensees, as well as prospective license applicants. Additionally, this administrative regulation will affect all of the Real Estate Commission's current prelicensing, post licensing, and continuing education providers. Lastly, this administrative regulation will affect the general public to the extent they interact with licensed real estate professionals.

(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: Prospective licensees and members of the general public are not required to take any action to be in compliance with this administrative regulation. Current licensees may have to modify some business practices to comply with modernized standards of conduct. Education providers will be required to amend their instruction materials to comply with the new licensing law requirements contained in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs associated with compliance with this administrative regulation for prospective licensees and members of the public. Current licensees may incur minor costs in compliance with modernized professional standards of conduct. Education providers may experience incidental expenses in updating instruction materials.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, licensees will be held to consistent, modern standards of professional conduct. The public will benefit from licensed real estate professionals held to consistent, modern, and high standards of professional conduct.

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

(a) Initially: There is no initial cost to implement this administrative regulation.

(b) On a continuing basis: There is no cost to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no funding necessary to implement this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: The implementation of this administrative regulation requires 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 administrative regulation neither directly nor indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation applies equally to all regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324.281(5) and KRS 324.282 require the Real Estate Commission to promulgate administrative regulations with the approval of the executive director of the Kentucky Real Estate Authority to fulfill the duties and functions outlined in KRS Chapter 324. KRS 324.121 authorizes a principal broker to designate an affiliated licensee to act as agent for a seller or lessor, buyer or lessee, or prospective buyer to the exclusion of all other licensees associated with the principal broker. KRS 324.360(2) requires the Kentucky Real Estate Commission to promulgate an administrative regulation authorizing a seller's disclosure of conditions form whose content is set forth by KRS 324.360(3). KRS 324.160(4)(e) authorizes the commission to take disciplinary action if a licensee acts for more than one (1) party in a transaction without the knowledge of all parties. KRS 324.160 requires the commission to sanction a licensee for improper conduct, and this administrative regulation establishes behavior considered improper.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? There is no cost to administer this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There is no cost to administer this administrative regulation for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: This administrative regulation is not expected to have a fiscal impact.

**PUBLIC PROTECTION CABINET
Kentucky Real Estate Authority
Kentucky Real Estate Commission
(Amendment)**

201 KAR 11:170. Education provider requirements[Real Estate School and pre-license course approval].

RELATES TO: KRS 324.010(7), 324.046(1), (2), (5), 324.085, 324.090, 324.160(1)(c), (4)(u), 324.281(7)

STATUTORY AUTHORITY: KRS 324.010(7), 324.046(1), (2), 324.085, 324.160, 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.281(5) and 324.282 authorize[authorizes] the Real Estate Commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to implement KRS Chapter 324. KRS 324.010(7) and (8) authorizes the commission to approve a real estate school. KRS 324.046(1) and (2) require an applicant for initial licensure as a broker or sales associate to have completed

the specified number of courses from an approved or accredited real estate school. KRS 324.085(4) and (5) require the commission to promulgate administrative regulations necessary to implement the continuing education, post-licensure education, and instructor qualification requirements of KRS 324.085. KRS 324.046(1)(a) requires the commission to promulgate an administrative regulation determining the required course content of a brokerage management skills course for all broker applicants. This administrative regulation establishes the requirements and application procedures for approval as a real estate school, post-licensing education provider, and a continuing education provider. This administrative regulation also establishes the requirements and application procedures for approval of instructors and courses for license credit. This administrative regulation establishes procedures for implementing the requirements for post-licensing education and the requirements for courses offered through distance education. This administrative regulation establishes the requirements of the brokerage management skills course and incorporates the curriculum by reference. This administrative regulation establishes the requirements and application procedures for an approved real estate school seeking approval of courses for license credit.]

Section 1. Education Providers. (1)(a) Accredited institutions and approved real estate schools may teach:

1. Pre-licensing education;

2. Post-licensing education; and

3. Continuing education.

(b) Consistent with KRS 324.010(7)(b), National Association of Realtors (NAR) recognized programs that meet the following criteria shall be deemed an approved real estate school:

1. Has a school administrator;

2. Is an affiliated organization with NAR or the Kentucky Realtors; and

3. Would otherwise be regulated by Kentucky Commission on Proprietary Education but the program is entitled to exemption from certification by Kentucky Commission on Proprietary Education.

(2) National Association of Realtors (NAR) recognized programs that do not meet the criteria established in Section 1(1)(b) shall only teach:

(a) Post-licensing education;

(b) Continuing education; and

(c) Designation courses toward broker curriculum.

(3) Governmental bodies shall only teach post-licensing education and continuing education.

(4) Broker-affiliated training programs may teach post-licensing education.

Section 2. Accredited Institutions and Approved Real Estate Schools; Initial Application for Provider Approval. (1) To apply for initial certification, an approved real estate school shall submit:

(a) Completed Education Provider Application and Renewal Form, KREC Form 101, signed by the education provider's administrator or representative;

(b) Copy of the license or certification from the Kentucky Commission on Proprietary Education, if applicable;

(c) Sample copy of an official transcript or certificate that will be issued by the school;

(d) 1. A copy of a sample contract or agreement, to be signed by the student, that outlines the class schedule, assignments or projects, examination requirements, grading system, and attendance requirements;

2. An approved real estate school offering a prelicensing course shall include a statement in the school application that a criminal conviction may, consistent with KRS Chapter 335B and 201 KAR 11:210, Section 6, prevent an applicant from qualifying for licensure under KRS 324.045;

(e) 1. An acceptable explanation of how the provider will verify a student's identity, ensure the student completes the course, and maintain the anonymity of student evaluations;

2. For classroom courses, at a minimum, the provider shall require a student to sign in and sign out of each course; and

(f) Any documentation necessary to explain an answer on the

application.

(2) To apply for renewal of an approved real estate school's approval, an approved real estate school shall submit a Education Provider Application and Renewal Form, KREC Form 101, signed by the education provider's administrator or representative, outlining any changes in the information submitted pursuant to subsection (1) of this section.

(3) After the initial approval, an approved real estate school shall renew annually consistent with subsection (2) of this section.

(4) An approved real estate school shall notify the commission in writing within ten (10) days of a substantive change in the information submitted on the initial or renewal application or in an attachment thereto.

Section 3. Education Provider: Initial Application for Provider Approval. (1) To apply for initial certification, an education provider offering continuing education or post-license education shall submit:

(a) Education Provider Application and Renewal Form, KREC Form 101, signed by the education provider's administrator or representative;

(b) Sample copy of an official transcript or certificate that will be issued by the provider;

(c) 1. An acceptable explanation of how the provider will verify a student's identity, ensure the student completes the course, and maintain the anonymity of student evaluations;

2. For classroom courses, at a minimum, the provider shall require a student to sign in and sign out of each course; and

(d) Any documentation necessary to explain an answer on the application.

(2) To apply for renewal of an education provider's approval, education provider shall submit a Education Provider Application and Renewal Form, KREC Form 101, signed by the education provider's administrator or representative, outlining any changes in the information submitted pursuant to subsection (1) of this section.

(3) After the initial approval, an education provider shall renew annually consistent with subsection (2) of this section.

(4) An education provider shall notify the commission in writing within ten (10) days of a substantive change in the information submitted on the initial or renewal application or in an attachment thereto.

Section 4. Education Course Curriculum Requirements. (1) All courses shall consist of topics that:

(a) Are generally applicable to real estate, including the other professions governed by the Kentucky Real Estate Authority; or

(b) Are specific to Kentucky real estate license law and regulation.

(2) To be approved as an education course, a course shall:

(a) Increase the student's knowledge of the real estate brokerage business; and

(b) Protect the public interest.

(3) Education providers approved by another real property board under the Kentucky Real Estate Authority may submit courses approved by the primary real property board to the commission for approval as a post-licensing and continuing education course.

(4) A course that is solely motivational or considered to be personal development in nature shall not be approved.

(5) The curriculum for a sales associate pre-license course at an approved real estate school shall:

(a) Be conducted for a maximum of nine (9) hours during a calendar day;

(b) Include course content on each of the following topics:

1. Introduction to the real estate business;

2. Real property and the law;

3. Forms of ownership and interests in real estate;

4. Land description;

5. Transfer of title;

6. Title records;

7. Real estate brokerage;

8. Real estate agency;

9. Client representation agreements and required disclosures;

10. Real estate contracts;

11. Real estate financing;

12. Closing a real estate transaction;

13. Real estate taxes and other liens;

14. Real estate appraisal and land valuation analysis;

15. Leases;

16. Fair Housing;

17. Property Management;

18. Land Use controls and property development;

19. Environmental issues in the real estate transaction; and

20. Kentucky real estate licensing law.

(c) 1. Instruction on all topics, except Kentucky specific law and regulation, shall be from a text approved by the commission.

2. To have a text approved by the commission, an education provider shall submit to the commission the proposed text and a written explanation of how the text covers the course content on the required topics.

(d) Be a course for academic credit consisting of content focused on real estate, but shall not be a continuing education unit, examination preparation or review, experiential education, or competency testing;

(e) Include a scenario-based practicum or project applicable to the practice of real estate brokerage that:

1. Is to be completed by the individual student, without peer assistance, before sitting for the final examination;

2. Contemplates the use of at least three (3) commission approved transaction related forms;

3. Requires completion of:

a. A real estate purchase contract or a real estate listing contract; and

b. A market analysis of property value.

4. Requires application of topics covered in the sales associate pre-licensing course relating to a transaction based experience; and

5. Is graded on a pass-fail scale.

(f) Be designated specifically as a real estate course by an approved education provider;

(g) Include a closed-book monitored final examination that shall:

1. Consist of 100 multiple choice questions which shall evaluate the student's practical application of real estate principles;

2. Require a passing score of at least seventy-five (75) percent; and

3. Cover all aspects of material covered in the course, including applicable Kentucky licensing laws and administrative regulations; and

(h) 1. The pre-licensing provider shall not allow a student to take the final examination more than three (3) times, unless the student retakes the sales associate pre-licensing course;

2. A student shall be permitted to retake the final examination no earlier than the fourth day following the date of a failure;

3. After the second failure, the pre-licensing provider shall provide the student with documentation of the area(s) of deficiency and the opportunity for additional training on the student's area(s) of deficiency consistent with the provider's student enrollment agreement.

(6) Approved pre-license education providers and instructors shall take appropriate steps to maintain the confidentiality of the final examinations. These steps shall include:

(a) Storing examinations and answer keys in a secure place accessible only to the school administrator and the instructor;

(b) Prohibiting students from retaining copies of the final examination and answer sheets;

(c) Monitoring students continuously during examinations; and

(d) Notifying the commission and taking appropriate steps, if an examination is compromised.

(7) The curriculum for a post-licensing education course shall be in hourly increments from one (1) to nine (9) hours with one (1) hour of course credit allowed for each fifty (50) minutes of actual instruction and consist of thirty-two (32) hours from the courses established in paragraphs (a) and (b) of this subsection and sixteen (16) hours as established in paragraph (c) of this subsection:

(a) The three (3) hour Commission Licensee Compliance course, which shall instruct new licensees on:

1. License statuses and the administrative processes relative to keep a license active and in good standing;

2. A review of controlling definitions;

3. A review of agency principles;

4. Overview of commission duties and functions and relationships with other governmental bodies, regulatory bodies, and professional associations; and

5. A review of disciplinary procedures and administrative case studies.

(b) The requirements in each of the following course topics:

1. Six (6) hours in Agency;

2. Six (6) hours in Contracts;

3. Three (3) hours in Finance;

4. Three (3) hours in Advertising;

5. Three (3) hours in Disclosure;

6. Three (3) hours in Fair Housing;

7. Three (3) hours in Technology and Data Security; and

8. Two (2) hours in Risk Management; and

(c) Sixteen (16) additional hours in approved mandatory courses in excess of the prescribed hours listed in (b)1.-8. or in the following elective topics chosen by the licensee:

1. Real Estate Auctions;

2. Anti-trust;

3. Appraisals

4. Home inspections;

5. Land Use;

6. Property Rights;

7. Property Management;

8. Real Estate Investments; and

9. Business Planning.

(d) Contain course content, objectives, and assessments that include scenario-based case studies designed to ensure the application of current real estate information and knowledge to practical brokerage scenarios.

(e) If a licensee takes a post-licensing education course with the same course number more than once, the licensee shall only receive credit for one course completion.

(8)(a)The curriculum for a continuing education course shall be in hourly increments from one (1) to nine (9) hours with one (1) hour of continuing education allowed for each fifty (50) minutes of actual instruction.

(b) If a licensee takes a continuing education course with the same course number more than once in an education cycle, the licensee shall only receive credit for one (1) course completion.

(9) The commission shall review all course content to ensure that the content meets the requirements established in this administrative regulation and shall be submitted to the commission for consideration.

Section 5. Pre-license Course Approval for Sales Associates.

(1) To obtain approval for a sales associate pre-license course, an approved education provider shall submit a Pre-license Course Application and Renewal Form, KREC Form 102, for each course for which approval is sought, at least ninety (90) days prior to the scheduled offering of a pre-license education course. The approval shall be valid for one (1) year. The completed form shall be accompanied by:

(a) A completed detailed course outline broken into four (4) hour increments to include, if applicable, teaching methods, learning objectives for the course, auxiliary aids, quizzes or examinations, and materials for each course.

(b) The course description and objectives;

(c) A description of the course practicum;

(d) When the final examination shall be conducted;

(e) The textbooks being used and how material will be taught in conjunction with completion of the projects and the final exam;

(f) A copy of the final examination question bank and answer key;

(g) A copy of all written material that the instructor will use in the classroom, including a copy of the curriculum that follows the mandated guidelines, if applicable;

(h) Completed Instructor Affiliation Form, KREC Form 104, for each instructor who will teach a course; and

(i) The nonrefundable initial review fee of seventy-five (75) dollars.

(2) To renew approval for a sales associate pre-license course, an approved education provider shall submit:

(a) A separate completed Pre-license Course Application and Renewal Form, KREC Form 102, for each course, at least ninety (90) days prior to the current expiration of the pre-license education course;

(b) The nonrefundable renewal review fee of twenty-five (25) dollars; and

(c) A detailed abstract of changes made to the course, course materials, and other required attachments since the initial application or most recent course renewal.

(3) An education provider shall notify the commission in writing within ten (10) days of a substantive change in the information submitted on the initial or renewal application for a sales associate pre-license course or in any attachment thereto.

(4) Every five (5) years an approved education provider shall submit a complete Pre-license Course Application and Renewal Form, KREC Form 102, for each course approval is sought, at least ninety (90) days prior to the scheduled offering of a pre-license education course.

(5) Nothing in this section shall prevent the commission from requesting the current version of a course from an approved education provider during the five (5) year review period.

Section 6. Continuing and Post-license Education Course Approval. (1) To obtain approval for a continuing education or post-license education course, an approved education provider shall submit a completed Continuing and Post-license Education Course Application and Renewal Form, KREC Form 103. The approval shall be valid for one (1) year.

(2) At least sixty (60) days prior to the scheduling of a continuing or post-license education course, an approved education provider wishing to offer a continuing or post-license education course shall submit:

(a) Continuing and Post-license Education Course Application and Renewal Form, KREC Form 103, and either:

1. The nonrefundable initial review fee of twenty-five (25) dollars for classroom courses or seventy-five (75) dollars for distance education courses; or

2. The nonrefundable renewal review fee of fifteen (15) dollars; and

(b) A completed detailed course outline broken into fifty (50) minute increments, to include, if applicable, learning objectives for the course, teaching methods, auxiliary aids, quizzes or examinations, materials, and the policies of the provider;

(c) The textbooks or course materials being used;

(d) A copy of the final examination question bank and answer key, if the course is a distance education course; and

(e) Completed Instructor Affiliation Form, KREC Form 104, for each instructor who will teach a course.

(3) A provider shall:

(a) Award each attendee listed on the roster who completes the course a course completion certificate that contains:

1. The licensee's name;

2. The licensee's license number;

3. The course completed, including the type of education, course title, and course number;

4. The date of completion; and

5. Signature of the school administrator or course provider representative.

(b) Submit to the commission, within ten (10) days of the student completing an approved continuing or post-license education course, unless the course is completed after December 21 of the calendar year in which case the deadline shall be on or before 11:59 p.m. December 31;

1. An attendance roster through the provider's online portal; and

2. A Course Evaluation, KREC Form E106, completed by each attendee listed on the roster; and

(c) Include a notice or warning that if the course is taken after December 21 of the calendar year, the licensee's license may be cancelled if the course is not timely completed; and

(d) Subject only to space limitations, make the course available to all licensees, unless the course is offered by a broker-affiliated training program.

(4) Be subject to discipline by the commission, if a course provider fails to submit all attendance and evaluation forms completed and returned by students to the course provider.

(5) A course that has been previously approved within the same education cycle may be conducted by another provider if:

(a) The same instructor teaches the course;

(b) The same number and type of credits are awarded for the course;

(c) The content of the course is the same; and

(d) The hosting provider submits a completed Provider Host Form, KREC Form 105, to the commission thirty (30) days prior to conducting the course.

(6) To renew approval for a continuing or post-license education course, an approved education provider shall submit:

(a) A completed Continuing and Post-license Education Course Application and Renewal Form, KREC Form 103, for each course approval is sought, at least sixty (60) days prior to the current expiration of the continuing or post-license education course, and

(b) A detailed abstract of changes made to the course, course materials, and other required attachments since the initial application or most recent course renewal.

(7) An education provider shall notify the commission in writing within ten (10) days of a substantive change in the information submitted on the initial or renewal application for a continuing or post-license education course or in any attachment thereto.

(8) Every five (5) years an approved education provider shall submit a complete Continuing and Post-license Education Course Application and Renewal Form, KREC Form 103, for each course approval is sought, at least ninety (90) days prior to the scheduled offering of a continuing or post-license education course.

(9) Nothing in this section shall prevent the commission from requesting the current version of a course from an approved education provider during the five (5) year review period.

Section 7. Pre-license Course Approval for Broker Curriculum.

(1) To obtain approval for a broker management or broker curriculum course, an approved education provider shall submit a Pre-license Course Application and Renewal Form, KREC Form 102, for each course approval is sought. The approval shall be valid for one (1) year.

(2) To satisfy the education prerequisites contained in KRS 324.046(1)(a), an applicant for a broker's license shall complete a broker management skills course. The broker management skills course shall:

(a) Satisfy three (3) academic credit hours of the applicant's twelve (12) academic credit hours of real estate courses required to become a broker;

(b)1. Instruction on all topics, except Kentucky specific law and regulation, shall be from a text approved by the commission.

2. To have a text approved by the commission, an education provider shall submit to the commission the proposed text and a written explanation of how the text covers the course content on each of the required topics.

(c) Be a three (3) academic hour comprehensive review of all the skills necessary to run a brokerage office in accordance with the applicable Kentucky licensing laws and administrative regulations relating to real estate and the standards of practice for a broker pertaining to adequate supervision of all affiliated licensees, including:

1. Leadership and management skills;

2. Communications and decision-making;

3. Analyzing the business environment;

4. Analyzing the market;

5. Developing a business plan, including structuring the organization, business systems, and finances;

6. Business policies and procedures;

7. Marketing and advertising;

8. The practical and legal realities of staffing;

9. Recruiting, selecting, and hiring the staff;

10. Professional development;

11. Critiquing operations; and

12. Managing risk.

(d)1. Include a scenario-based practicum or project that shall require each student to develop a sample business plan, a sample financial plan and an office policy and procedure manual. The practicum shall:

2. Be completed by the individual student, without peer assistance, before sitting for the final examination;

3. Require application of topics covered in the broker pre-licensing curriculum;

4. Be graded on a pass-fail scale; and

5. Be allotted up to one hour of course credit for completion and review of this requirement.

(e)1. Require each student to take a comprehensive, closed-book examination consisting of at least seventy-five (75) multiple choice questions;

2. The examination shall be submitted to the commission for approval prior to use in the course;

3. The passing score for the examination shall be a minimum score of seventy-five (75) percent;

4. The broker pre-licensing provider shall not allow a student to take the final examination more than three (3) times, unless the student retakes the broker management skills course;

5. A student shall be permitted to retake the final examination no earlier than the fourth day following the date of a failure;

6. After the second failure, broker pre-licensing provider shall provide the student with documentation of the area(s) of deficiency and the opportunity for additional training on the student's area(s) of deficiency consistent with the provider's student enrollment agreement.

(e) The education provider shall report a course completion certificate to the commission through the provider's online services portal within ten (10) days of issuing the certificate to the student.

(3) To be approved as a pre-licensing course for broker curriculum, a course shall cover one of the following topics:

(a) Federal Housing and Lending Law;

(b) Kentucky Real Estate Law and Regulation;

(c) Real Estate Finance;

(d) Real Estate Marketing;

(e) Property Management;

(f) Real Estate Investment;

(g) Real Estate Appraisal;

(h) Home Inspection;

(i) Real Estate Auction;

(j) Construction and Blueprints;

(k) Land Use Planning and Zoning;

(l) Commercial Real Estate;

(m) Real Estate Development; and

(n) Urban Planning.

(4) In addition to being specific to the course topics listed in (3)(a) through (n), each pre-licensing course for broker curriculum shall include:

(a) A comprehensive review specific to the course topic of all the relevant laws necessary to run a brokerage office in accordance with the applicable Kentucky licensing laws, administrative regulations, and federal laws, if applicable, relating to real estate and the standards of practice for a broker;

(b) An extensive review of case studies; and

(c) Instruction on personnel management and leadership models.

(5) In addition to being specific to the course topics listed in (3)(a) through (n), each pre-licensing course for broker curriculum shall be in either three (3) academic credit hour or six (6) academic credit hour intervals and shall not be accredited for continuing education credit.

(6) Within ten (10) days of completion of an approved broker curriculum course, the provider shall submit to the commission:

(a) An attendance roster; and

(b) A Course Evaluation Form, KREC Form 106, completed by

each attendee listed on the roster.

(7) If a licensee takes a broker pre-license course with the same course number more than once, the licensee shall only receive credit for one course completion.

(8) To renew approval for a broker management or broker curriculum course, an approved education provider shall submit:

(a) A completed Pre-license Course Application and Renewal Form, KREC Form 102, for each course approval is sought, at least ninety (90) days prior to the current expiration of the broker management or broker curriculum course; and

(b) A detailed abstract of changes made to the course, course materials, and other required attachments since the initial application or most recent course renewal.

(9) An education provider shall notify the commission in writing within ten (10) days of a substantive change in the information submitted on the initial or renewal application for a broker management or broker curriculum course or in any attachment thereto.

(10) Every five (5) years an approved education provider shall submit a complete Pre-license Course Application and Renewal Form, KREC Form 102, for each course for which approval is sought, at least ninety (90) days prior to the scheduled offering of a the broker management or broker curriculum course.

(11) Nothing in this section shall prevent the commission from requesting the current version of a course from an approved education provider during the five (5) year review period.

Section 8. Broker Electives. (1) To obtain approval for a broker elective course, an approved education provider shall submit a Continuing Education and Post-License Education Course Application and Renewal Form, KREC Form 103, for each course for which approval is sought, consistent with Section 6 of this administrative regulation. The approval shall be valid for one (1) year.

(2) The content of a broker elective course shall be:

(a) An NAR designation course; or

(b) A course tailored to the supervisory functions of managing and operating a real estate brokerage company beyond the scope of what is covered in a sales associate pre-licensing course.

Section 9. Distance Education Standards for Approval. (1) Continuing education, post-license education, and pre-license courses conducted for academic credit in an accredited college or university via interactive television shall include:

1. Two (2) way audio and video connections between the instructor and the student; and

2. College or university personnel stationed at each remote site to handle technology problems that may arise and to monitor attendance of students.

3. The program shall be one that has been properly approved by the college accrediting body as fulfilling the requirements for academic credit.

(2) A course initially approved for classroom instruction shall not be offered for distance education unless additional approval consistent with this section is obtained from the commission.

(3)(a) Consistent with this administrative regulation, an approved provider shall submit:

1. a. A completed Pre-license Course Application and Renewal Form, KREC Form 102 or

b. A completed Continuing Education and Post-licensing Education Course Application and Renewal Form, KREC Form 103.

(b) In addition to the attachments required by the appropriate course application form, the course application shall include:

1. A complete copy of the program on the medium that is to be used or a link to the internet site where the course is located;

2. A copy of the final examination question bank and key for each course; and

3. The appropriate non-refundable course review fee.

(4) The course shall:

(a) Be divided into learning units, modules, or chapters to provide mastery of the material. Each unit shall contain learning objectives that are sufficient to ensure that the course will likely be

mastered by the student upon completion of the material;

(b) Require quizzes at the end of each learning unit, module, or chapter to assess the student's performance before proceeding to the next learning unit, module, or chapter;

(c) Require a final examination consistent with subsection (6) of this section;

(d) Provide a method for tracking the length of time a student spends on the course; and

(e) Prohibit a student from bypassing the course materials to advance directly to the end-of-module quizzes or exercises that are included to assess the student's performance.

(5)(a) Each course shall have the approved instructor available to answer questions from students.

(b) The provider shall have reasonable oversight to monitor a student's work and electronic access in order to ensure that the student completing the work and receiving credit is the one who is enrolled in the course.

(6) For all distance education courses, the student shall pass a final exam covering the content of the course and real estate laws and administrative regulations that apply to those content areas with a score of at least seventy-five (75) percent.

(a) If the course is a continuing education or post-license education course, the final exam shall:

1. Be included as the last module of the course; and

2. Have a minimum of five questions for each approved hour of education.

(b) If the course is a pre-license education course, the final exam shall:

1. Contain a minimum of fifty (50) items for a three (3) academic credit hour course or contain a minimum of 100 items for a six (6) academic credit hour course;

a. Each course shall have an item bank from which the final examination questions shall be pulled.

b. The bank shall contain multiple choice items and have forty (40) percent more questions than required on the final examination, so that retake exams will contain unique new questions.

2. Be monitored by the approved instructor for the course or another individual designated by the instructor who is not a relative or a business associate of the student;

3. If another individual is designated to monitor the exam, the monitor shall be:

a. A certified librarian;

b. A public school administrator;

c. A College professor;

d. Other real estate instructor associated with the school offering the course; or

e. A monitor from a qualified online test monitoring service;

4. The monitor shall:

a. Sign a statement certifying that he or she is not affiliated with the student in any way;

b. Verify that the person taking the examination is the person registered for the course;

c. Observe the student taking the exam;

d. Assure that the student does not use aids of any kind;

e. Assure that a calculator is nonprogrammable;

f. Assure that limitations on the final examination are not exceeded;

g. Certify to the provider in a notarized statement that all requirements for the final examination have been met; and

h. Assure that any student's mobile device, cell phone, or camera is shut down and put away, while at the test site.

(7) Prior to awarding a student credit for a distance education course, the education provider shall require each student to complete an affidavit that includes the date of completion and the student's signature, which may be provided electronically. The affidavit shall certify that the student has personally completed all components of the course and the final exam with no academic assistance.

(8) Credit shall be denied and disciplinary action taken if it is determined that a student received academic assistance on the final exam.

(9) To obtain credit for a distance education course, a student

shall complete the course within the time frame allotted by the school for pre-license courses or within the education cycle for continuing and post-license education, unless the student is completing the course to comply with an order of the commission.

(10)(a) The completion date for all courses shall be the latest of the dates upon which the student completes the final examination with a passing score of at least seventy-five (75) percent and submits the student affidavit.

(b) The student shall submit the course evaluation and student affidavit to the provider from whom the course was taken.

(11)(a) The provider shall ensure that approved instructors are available to assist students who have questions regarding:

1. The technology used in the delivery;
2. The course content; or
3. The completion requirements.

(b) A student shall not be required to call more than one (1) person to obtain answers to questions about the course.

(12) The provider shall include a detailed explanation of how the course measures, documents and records the student completion of the material, and any activities or exercises required to achieve mastery of the material.

(13)(a) The provider shall obtain an evaluation from each student.

(b) An evaluation may be submitted to the provider electronically and a copy of each form shall be returned along with the attendance roster and other documents required by the commission for continuing education courses.

Section 10. Course Instructor Qualifications and Approval. (1) A person not approved pursuant to this administrative regulation shall not teach an education course for credit.

(2) To be approved, an instructor shall have:

(a) Qualifying education or experience:

1. A bachelor's or post-graduate degree from a college or university duly accredited by a nationally recognized rating or accrediting organization, in a field directly related to the nature of the course, such as real estate, business, law, or finance.

2. An associate degree in real estate from a college or university duly accredited by a nationally recognized rating or accrediting organization;

3. Completed five (5) consecutive years of full-time experience in the real estate related subject area that he or she is teaching; or

4. A combination of teaching, education, and full-time experience in real estate totaling five (5) years; and

(b) Sufficient and thorough knowledge of the subject area of the course he or she is teaching, familiarity of the provisions of Kentucky real estate licensing law and administrative regulations, and the importance of those provisions on the subject area of the course; and

(c) 1. Completed a mandatory educator training course within the twelve (12) months preceding the approval or renewal as an instructor from the commission, unless one of the following exemptions apply:

a. The instructor is a national level or unique speaker and training poses an impractical burden;

b. The instructor has taken a similar course in another jurisdiction within the preceding twelve (12) months;

c. The instructor teaches two (2) or fewer courses each year; or

d. The instructor has earned a Distinguished Real Estate Instructor designation or a comparable advanced designation.

2. The mandatory educator training course shall include a minimum of three (3) fifty (50) minute blocks of instruction consisting of:

a. Classroom management principles and Generally Accepted Practices of Education;

b. Fundamentals of instruction in adult education; and

c. A review of any pertinent changes to Kentucky or federal real estate brokerage laws and administrative regulations and current real estate brokerage principles.

(3) To apply for approval, an instructor shall submit:

(a) Instructor Application and Renewal Form, KREC Form 100;

(b) A copy of the instructor's current resume;

(c) Any information necessary to explain an answer on the application;

(d) A license certification from each jurisdiction where the instructor holds a professional license; and

(e) A certification of completion for the instructor course.

(4) Instructor approval shall last for one year.

(5) To renew, an instructor shall submit the Instructor Application and Renewal Form, a certification of completion for the instructor course, and note any changes from the materials submitted in subsection (3) of this section.

(6) The commission shall maintain a roster of approved instructors who are eligible to be added to an approved course upon submission of a Completed Instructor Affiliation Form, KREC Form 104.

(7) Approval of an instructor may be withdrawn, probated, or suspended by the commission for:

(a) A violation of a provision of KRS Chapter 324 or the administrative regulations promulgated thereunder;

(b) Falsification of material submitted to the commission;

(c) Failure to provide to the commission requested material;

(d) While acting as an instructor, engaging in brokerage activity with an enrolled student while present in an educational facility;

(e) Soliciting an investment from a student;

(f) Attempting to recruit a student to a real estate company while acting as an instructor;

(g) Receipt of a complaint or poor evaluation related to the conduct of the instructor;

(h) Improper or unprofessional conduct or communication during course instruction, including comments that are clearly derogatory, not germane to the course's subject matter, or are intended to offend a particular student or group of students;

(i) Permitting a student to receive credit for a course if the licensee arrives more than ten (10) minutes after the scheduled start of the course or any break during the course; or

(j) Failure to abide by the Generally Accepted Practices of Education or other documented deficiencies in classroom management.

Section 11. Evaluation of Instructors. (1) The commission shall review each Course Evaluation Form, KREC Form 106, submitted.

(2) Within the commission's discretion, the commission may monitor an instructor's course.

(3) The commission monitor shall submit a recommendation to the commission regarding whether the instructor shall be allowed to continue to teach courses.

(4) Based on the recommendation of the commission monitor, and the comments from the monitored class, the commission shall:

(a) Take no further action; or

(b) Take disciplinary action.

(5) If the commission issues a probationary order, the commission shall establish the length and terms of the probationary period as well as the date of any class to be monitored.

(6) At the conclusion of the probationary period, the commission shall determine if the instructor's approval shall continue.

(7) If the commission determines that instructor approval shall be suspended, the instructor shall not be allowed to teach any commission-approved education courses unless approval is reinstated.

(8) The commission shall notify the instructor and the school of its decision in writing.

(9)(a) Any instructor who has been suspended from teaching education courses may apply for reinstatement by submitting:

1. An application for approval to the commission; and

2. An explanation detailing how the applicant cured the deficiency which resulted in suspension; and

(b) After submission of the above documents and consideration by the commission, the commission shall approve or deny the instructor's request for reinstatement.

Section 12. Monitoring and Withdrawal of Provider Approval.

(1) An approved education provider shall ensure that all instructors

shall abide by the Generally Accepted Principles of Education as adopted by the Real Estate Educators Association.

(2) An approved education provider shall permit inspection and monitoring by the commission, or its designee, to evaluate the administration or operation of any approved real estate school or approved provider education course and to evaluate the performance of instructors.

(3) An approved education provider shall not:

(a) Advertise, or permit an advertisement to be made, in conjunction with the business of a principal broker or a real estate brokerage company;

(b) Discuss, induce, or promote affiliation with a principal broker or a real estate brokerage company;

(c) Submit an application or renewal that contains false, inaccurate or misleading information;

(d) Violate the provisions of this administrative regulation as it relates to the establishment or conduct of the provider, any instructor, or any course material;

(e) Directly or indirectly attempt, or allow an official, employee, or a person on their behalf, to reconstruct the real estate licensing examination or portion of the examination.

(4) If an approved education provider's approval may be subject to withdrawal for the reasons set forth in this section, the commission shall:

(a) Give written notice to the school of the intent to withdraw approval and the reasons therefor; and

(b) Give the school an opportunity to address the notice, in writing, within thirty (30) days of the date of the notice of intent to withdraw approval.

Section 13. Records Retention. (1) An approved education provider shall maintain accurate records on each student enrolled in a course for three (3) years.

(2) A record shall include each student's record of courses completed or attempted, academic hours awarded, final grades, and test scores, if applicable.

(3) A certificate of completion shall be:

(a) Included in the records of each student; and

(b) Delivered to each student upon completion of a course.

Section 14. Instructors to Receive Credit for Teaching. (1) A licensee who teaches an approved continuing education course shall receive credit on an hour-for-hour basis, not to exceed three (3) hours per calendar year.

(2) To obtain continuing education credit, the instructor's name shall be added to the education attendance roster for the course.

(3) The instructor shall not receive credit more than once in a calendar year for teaching a specific course.

Section 15. Effective Date. The first provider application, course approval application, and instructor application for each provider, course, or instructor received after the effective date of this administrative regulation shall be considered an initial application for purposes of the application and renewal processes prescribed in this administrative regulation.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Provider Application and Renewal Form", KREC Form 101, 07/19;

(b) "Pre-licensure Course Application and Renewal Form", KREC Form 102, 07/19;

(c) "Continuing and Post-licensure Education Course Application and Renewal Form", KREC Form 103, 07/19;

(d) "Instructor Application and Renewal Form", KREC Form 100, 07/19;

(e) "Provider Host Form", KREC Form 105, 07/19;

(f) "Instructor Affiliation Form", KREC Form 104, 07/19;

(g) "Course Evaluation Form", KREC Form 106, 07/19; and

(h) "Generally Accepted Principles of Education", KREC Form 107, 07/19.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate

Commission, 656 Chamberlin Avenue, Suite B, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available from the commission's Web site: www.krec.ky.gov.

LOIS ANN DISPONETT, Chair

H.E. CORDER II, Executive Director

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: July 15, 2019

FILED WITH LRC: July 15, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2019 at 10:00 a.m. Eastern Time at the Kentucky Real Estate Commission, 656 Chamberlain Ave., Suite B, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this Department in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on August 31, 2019. 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: Alex D. Gaddis, Deputy General Counsel, Kentucky Real Estate Authority, 656 Chamberlin Ave., Suite B, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-1538 email: Alex.Gaddis@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alex D. Gaddis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements and application procedures for approval as a real estate school, post-licensing education provider, and a continuing education provider. This administrative regulation also establishes the requirements and application procedures for approval of instructors and courses for license credit. This administrative regulation establishes procedures for implementing the requirements for post-licensure education and the requirements for courses offered through distance education. This administrative regulation establishes the requirements of the brokerage management skills course and incorporates the curriculum by reference.

(b) The necessity of this administrative regulation: KRS 324.281(5) and 324.282 authorize the Real Estate Commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to implement KRS Chapter 324. KRS 324.010(7) and (8) authorizes the commission to approve a real estate school. KRS 324.046(1) and (2) require an applicant for initial licensure as a broker or sales associate to have completed the specified number of courses from an approved or accredited real estate school. KRS 324.085(4) and (5) require the commission to promulgate administrative regulations necessary to implement the continuing education, post-licensure education, and instructor qualification requirements of KRS 324.085. KRS 324.046(1)(a) requires the commission to promulgate an administrative regulation determining the required course content of a brokerage management skills course for all broker applicants.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324.281(5) and 324.282 authorize the Real Estate Commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to implement KRS Chapter 324. KRS 324.010(7) and (8) authorizes the commission to approve a real estate school. KRS 324.046(1) and (2) require an applicant for initial licensure as a broker or sales associate to have

completed the specified number of courses from an approved or accredited real estate school. KRS 324.085(4) and (5) require the commission to promulgate administrative regulations necessary to implement the continuing education, post-licensure education, and instructor qualification requirements of KRS 324.085. KRS 324.046(1)(a) requires the commission to promulgate an administrative regulation determining the required course content of a brokerage management skills course for all broker applicants. This administrative regulation establishes the requirements and application procedures for approval as a real estate school, post-licensing education provider, and a continuing education provider. This administrative regulation also establishes the requirements and application procedures for approval of instructors and courses for license credit. This administrative regulation establishes procedures for implementing the requirements for post-licensure education and the requirements for courses offered through distance education. This administrative regulation establishes the requirements of the brokerage management skills course and incorporates the curriculum by reference.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Amendment to this administrative regulation will assist in the effective administration of KRS Chapter 324 because it consolidates into one regulation the approval process for education providers, instructors, and course curriculums.

(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: Amendment to this administrative regulation centralizes all of the requirements for becoming an approved prelicense, post-licensure, or continuing education provider.

(b) The necessity of the amendment to this administrative regulation: KRS 324.281(5) and 324.282 authorize the Real Estate Commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to implement KRS Chapter 324. KRS 324.010(7) and (8) authorizes the commission to approve a real estate school. KRS 324.046(1) and (2) require an applicant for initial licensure as a broker or sales associate to have completed the specified number of courses from an approved or accredited real estate school. KRS 324.085(4) and (5) require the commission to promulgate administrative regulations necessary to implement the continuing education, post-licensure education, and instructor qualification requirements of KRS 324.085. KRS 324.046(1)(a) requires the commission to promulgate an administrative regulation determining the required course content of a brokerage management skills course for all broker applicants.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements and application procedures for approval as a real estate school, post-licensing education provider, and a continuing education provider. This administrative regulation also establishes the requirements and application procedures for approval of instructors and courses for license credit. This administrative regulation establishes procedures for implementing the requirements for post-licensure education and the requirements for courses offered through distance education. This administrative regulation establishes the requirements of the brokerage management skills course and incorporates the curriculum by reference.

(d) How the amendment will assist in the effective administration of the statutes: Amendment to this administrative regulation will assist in the effective administration of KRS Chapter 324 because it consolidates into one regulation the approval process for education providers, instructors, and course curriculums.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently approved and prospective education providers will be affected by this administrative regulation. The Kentucky Real Estate Commission will be affected by this administrative regulation as well.

(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: Approved education providers will be required to update and modernize course offerings consistent with the subject matter outlined in this administrative regulation. Approved education providers will also be required to submit and renew course and instructor materials as outlined in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no new costs associated with comply with this administrative regulation. Approved education providers will be required to pay a course submission fee, which will be determined by the type of course being submitted for review.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Current and prospective licensees will benefit from updated, accurate, and consistent education from approved education providers. Education providers who are approved to offer education will experience streamlined submission and renewal rules.

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

(a) Initially: There is no cost associated with implementing this administrative regulation initially.

(b) On a continuing basis: There is no cost associated with implementing this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no funding required to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: An increase in fees or funding will not be necessary to implement this administrative regulation or the changes proposed herein.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increased any fees: This administrative raises the cost of submitting a continuing education course by five dollars (\$5). All fees established by this administrative regulation are provided for in statute, KRS 324.287, as modified by House Bill 436 (2019 RS).

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation applies equally to all regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments or school districts) will be impacted by this administrative regulation? The Kentucky Real Estate Commission 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 324.010(7), 324.046(1), (2), (5), 324.085, 324.090, 324.160(1)(c), (4)(u), 324.281(7), and 324.282.

(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 regulation is not expected to have any effect on the expenditures and revenue of state or local government.

(4) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation is expected to generate approximately \$28,000.00 in course review and approval fees. This includes pre-licensing, post-licensing, and continuing education course approvals for the 2020 education cycle. This number is an estimate based on the current number of courses approved by the

Commission.

(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 expected to generate approximately \$10,000.00 in course review and approval fees. This includes pre-licensing, post-licensing, and continuing education course approvals for the 2021-2024 education cycles. This number is an estimate based on the current number of courses approved by the Commission. The reduction in expected revenue from the first year to subsequent years is as a result of the revised renewal procedure for courses established in this regulation whereby approved providers will not submit a full course package each year.

(c) How much will it cost to administer this program for the first year? There is no cost associated with administering this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with administering this program for subsequent years.

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

Revenues (+/-): \$28,000 for the first year.

Expenditures (+/-): None.

Other Explanation: Not applicable.

PUBLIC PROTECTION CABINET
Kentucky Real Estate Authority
Kentucky Real Estate Commission
(Amendment)

201 KAR 11:190. Consumer and administrative complaints; discipline; administrative hearings[Rules of practice and procedure before the Kentucky Real Estate Commission].

RELATES TO: KRS 324.045, 324.046, 324.150, 324.151, 324.160, 324.170, 324.200, 324.281(5)

STATUTORY AUTHORITY: KRS 324.151(1), (3), 324.160, 324.170, 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.281(5) and KRS 324.282 require [requires] the commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to implement KRS Chapter 324. KRS 324.151(1) and (3) requires the commission to establish the required forms for a complaint and answer. [KRS 324.270(1) requires the commission to order a KRS Chapter 13B hearing before ordering any disciplinary action.] KRS 324.170(1) requires the commission to schedule and conduct an administrative hearing in accordance with the provisions of KRS Chapter 13B prior to denying an application for license, before ordering any disciplinary action, or before suspending or revoking a license. This administrative regulation establishes supplemental administrative hearing procedures for matters before the commission and the required forms for a complaint or answer and the standards when filing a sworn statement to the real estate commission. This administrative regulation is necessary to provide a settlement option after a hearing is ordered to allow opportunity for more economical and expeditious resolution of the pending matter. This administrative regulation establishes the informal settlement process for entry of agreed orders. This administrative regulation also incorporates supplemental provisions relating to consumer access to the commission's Research, Education, and Recovery Fund.

Section 1. Filing a Complaint. (1) A complaint shall:

(a) Be filed on the Sworn Statement of Complaint, KREC Form 300.

(b) Allege a prima facie case of specific violation of KRS 324.160 by a licensee or a case of unlicensed brokerage against

an unlicensed individual:

(c) State the basis of the complaint fully, including the name of the principal broker, if known.

(d) Be notarized by a notary public;

(e) Include a copy of all the following documents relevant to the complaint or a written explanation of why the documents are unavailable:

1. Listing contract;

2. Purchase contract;

3. Seller's disclosure form;

4. Agency Consent Agreement and the Guide to Agency Relationships forms;

5. Settlement statement; and

6. Any other documentation to support a claim or alleged violation; and

(2) The complaint shall be filed no more than one (1) year from:

(a) Actual knowledge of the cause of action; or

(b) The time circumstances would reasonably have put the complainant on notice of the cause of action.

Section 2. Complaint Review, Answers, and Replies. (1) Upon receipt of a complaint, commission staff shall review the complaint to determine whether the complaint states a prima facie violation of KRS Chapter 324.

(2) If a supplement to the complaint is required because the original complaint was deficient, the supplement shall be filed on Sworn Supplement to Complaint, KREC Form 302 and notarized.

(3)(a) If the commission staff determine the complaint alleges a prima facie case of a specific violation of KRS 324.160, the complaint shall be served for an answer on the licensee as established in KRS 324.151(2).

(b) A responding licensee shall file a Sworn Answer to Complaint, KREC Form 301 in accordance with KRS 324.151(3).

(4) The answer shall:

(a) State an answer to the complaint;

(b) Be notarized by a notary public; and

(c) Include a copy of the following documents or a written explanation of why the documents are unavailable:

1. Listing contract;

2. Purchase contract;

3. Seller's disclosure form;

4. Agency Consent Agreement and the Guide to Agency Relationships forms;

5. Settlement statement; and

6. Any other documentation to rebut a claim or alleged violation.

(5)(a) The complainant may file one reply to the respondent's Sworn Answer to Complaint within ten (10) days of receiving the respondent's Sworn Answer to Complaint;

(b) The respondent may file one reply to complainant's reply within ten (10) days of receiving the complainant's reply; and

(c) All replies shall be notarized and include any documents necessary to support or rebut an allegation or a violation.

(6)(a) For purposes of calculating filing deadlines prescribed by this administrative regulation, the commission shall follow the Kentucky Rules of Civil Procedure.

(b) A request for an extension of any filing deadline prescribed by this administrative regulation shall be made directly to the office of general counsel and granted or denied. If the request is denied, the requester shall have the opportunity to appeal the decision to the commission at its next scheduled meeting.

(7) The commission shall not entertain motions with regard to pending complaints.

Section 3. Complaint Screening Committee. (1)(a) The commission chair may create at least one complaint screening committee.

(b) Each complaint screening committee shall consist of no more than three (3) commissioners.

(2) The complaint screening committee shall:

(a) Review complaints, supplements, answers, and replies

consistent with the Complaint Review Process Chart:

(b) Order investigation or further investigation;

(c) Review investigative reports;

(d) Determine whether the commission's Research, Education, and Recovery fund shall be at issue; and

(e) Make recommendations as to the disposition of pending complaint to the full commission.

(3) The committee may be assisted by the commission staff and counsel.

(4)(a) Prior to the complaint screening committee's review of an investigative report, the commission's investigator shall notify the respondent that he or she may request a copy of the commission's investigation report to review and address factual matters contained in the investigation report.

(b) In the investigator's sole discretion, the report and exhibits shall be redacted to protect personal and sensitive information relating to witnesses.

(c) If the respondent believes a factual discrepancy exists in the investigation report, he or she shall notify the investigator in writing within five (5) days of receiving the report for review and provide the investigator with supporting documentation to rebut the factual discrepancy, if available.

(d) The investigator shall make any changes necessary based on his or her review of the respondent's notification.

(5) The committee shall report its findings and recommendations for disposition of complaints to the full commission in the form of a motion, and the commission shall:

(a) Dismiss the complaint without an administrative hearing if the facts or evidence do not indicate a prima facie case for a violation of KRS Chapter 324; or

(b) Find a violation of a provision of KRS Chapter 324 or 201 KAR Chapter 11 and issue notice of proposed action against the licensee consistent with KRS Chapter 13B.

(6) The commission, through the complaint screening committee, may engage in informal settlement negotiations, consistent with Section 5 of this administrative regulation.

(7) A commissioner shall recuse himself or herself from any matter relating to an administrative hearing or final order that resolves a case if he or she:

(a) Performed or directed some or all of the investigation;

(b) Has a personal or business relationship with either the complainant or the respondent(s);

(c) Is the complainant, a respondent, or a witness;

(d) Believes that his or her impartiality may fairly be called into question; or

(e) Is advised to recuse by the office of general counsel or the executive director of the Kentucky Real Estate Authority.

(8) The commission shall notify the complainant and respondent in writing of its decision regarding the disposition of a complaint.[Section 1. Complaint Review and Investigation. (1) An aggrieved party shall file a Sworn Statement of Complaint against a licensed real estate sales associate or broker. The complaint shall:

(a) Allege a prima facie case of specific violation of KRS 324.160 in accordance with KRS 324.151;

(b) State the basis of the complaint fully and concisely, including the name of the broker or principal broker;

(c) Be notarized by a notary public;

(d) Include a completed damages claimed form, with a copy of each receipt, estimate, or other evidence of damages attached to the report; and

(e) Be filed within two (2) years from:

1. Actual knowledge of the cause of action; or

2. The time circumstances would reasonably have put the aggrieved party on notice of the cause of action.

(2) If the commission staff review determines the Sworn Statement of Complaint does not allege a prima facie case of a specific violation of KRS 324.160, the aggrieved party shall file a Sworn Supplement to Complaint in accordance with KRS 324.151.

(3) A respondent shall file a Sworn Answer to Complaint if a complaint is filed against him in accordance with the requirements of KRS 324.151(3). The answer shall:

(a) Identify the respondent;

(b) State his responses to the complaint;

(c) Be notarized by a notary public; and

(d) Include a copy of the following documents:

1. Listing contract;

2. Purchase contract;

3. Seller's disclosure form;

4. Agency disclosure form; and

5. Settlement statement.

(4) Upon completion of an investigation following the submission of a complaint and answer, the commission shall:

(a) 1. Dismiss the case without an administrative hearing if the facts or evidence do not indicate a prima facie case for a violation of KRS Chapter 324; or

2. Schedule an administrative hearing pursuant to KRS Chapter 13B, 324.151, and 324.170; and

(b) Notify the complainant and respondent of its decision in writing. The notification shall include a brief statement explaining the commission's reasons for the decision.

Section 2. Motions. (1) A request for the commission or a hearing officer to take or refrain from taking an action shall be made by an oral or written motion.

(2) A motion shall state the basis for the motion, including a citation to or description of the legal authority in support of the requested action, if applicable.

(3) A party shall be given an opportunity to respond to a motion.]

Section 4[3]. Withdrawal of a Complaint. A complainant may withdraw a complaint if:

(1)(a) An answer has not been filed; and

(b) The withdrawal is made within twenty (20) days of the date the complaint was received by the respondent [filed]; or

(2)(a) There is good cause for the withdrawal; and

(b) The commission approves the withdrawal.

(3) Nothing in this subsection shall prevent the commission from filing its own complaint against a licensee.

Section 5[4]. Settlement by Informal Proceedings. (1) At any time following the filing of a complaint and answer, the commission, through its legal counsel, may enter into informal settlement proceedings with a licensee for the purpose of expeditiously resolving any disciplinary matter.

(2)(a) The commission shall approve or reject all settlement proposals.

(b) Any matter to which a licensee and the commission's legal counsel have stipulated that is rejected by the commission shall not thereafter bind the parties or the commission.

(3) The commission may employ mediation as a method of resolving the matter informally.

(4) All proposed agreed orders shall be signed by the licensee and shall advise the licensee that by entering into an agreed order, the licensee expressly acknowledges that the licensee is fully and completely informed of the due process rights afforded to the licensee and that the licensee knowingly, willingly, and voluntarily agrees to waive those rights and enter into an agreed order.

Section 6. Standards for filing a sworn statement. (1) Any licensee found to have misrepresented facts in any sworn statement shall be subject to disciplinary proceedings by the commission and the commission may seek a criminal indictment for perjury.

Section 7. Emergency orders and hearings. (1) Consistent with KRS 324.150(1)(b) and KRS 13B.125, the commission may conduct an emergency hearing when an alleged escrow account violation warrants emergency action.

(2) An escrow account violation shall warrant emergency action if:

(a) A licensee is alleged to have committed two (2) or more escrow account violations;

(b) A licensee is alleged to have committed one (1) escrow account violation in excess of five hundred dollars (\$500); or

(c) A substantiated threat to the public's health, safety, or welfare exists.

Section 8. Recovery fund proceedings. (1) When the Commission determines that the recovery fund shall be at issue in an administrative hearing, the complainant shall become a party.

(2) The Commission shall not represent the complainant in the administrative hearing.

(3) The complainant shall carry the burden of proof on the issue of damages.

~~Section 9. [Consolidation and Severance. (1) A hearing officer may consolidate cases assigned to his docket upon a finding by the hearing officer that:~~

~~(a) There are:~~

~~1. Common questions of law or fact; or~~

~~2. Identical issues or witnesses; and~~

~~(b) Consolidation is appropriate.~~

~~(2) A hearing officer may sever consolidated cases or claims in an administrative action upon a finding that the requirements for consolidation established in subsection (1) of this section are not met.] Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Sworn Statement of Complaint", KREC Form 300, 7/19 [3/01 edition, Kentucky Real Estate Commission];~~

~~(b) "Sworn Answer to Complaint", KREC Form 301, 7/19 [7/98 edition, Kentucky Real Estate Commission];~~

~~(c) "Sworn Supplement to Complaint", KREC Form 302, 7/19 [10/00, Kentucky Real Estate Commission]; and~~

~~(d) "Complaint Review Process Chart", 7/19.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 656 Chamberlin Ave., Suite B, Frankfort, Kentucky 40601 [40200 Linn Station Road, Suite 201, Louisville, Kentucky 40223], Monday through Friday, 8 a.m. to 4:30 p.m.~~

LOIS ANN DISPONETT, Chair

H.E. CORDER II, Executive Director

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: July 15, 2019

FILED WITH LRC: July 15, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2019 at 10:00 a.m. Eastern Time at the Kentucky Real Estate Commission, 656 Chamberlain Ave., Suite B, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this Department in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on August 31, 2019. 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: Alex D. Gaddis, Deputy General Counsel, Kentucky Real Estate Authority, 656 Chamberlin Ave., Suite B, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-1538 email: Alex.Gaddis@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alex D. Gaddis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes administrative hearing

procedures for matters before the commission and the required forms for a complaint or answer and the standards when filing a sworn statement to the Real Estate Commission.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide a settlement option after a hearing is ordered to allow opportunity for more economical and expeditious resolution of the pending matter. This administrative regulation establishes the informal settlement process for entry of agreed orders.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324.281(5) and KRS 324.282 authorize the commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to implement KRS Chapter 324. KRS 324.151(1) and (3) requires the commission to establish the required forms for a complaint and answer. KRS 324.170(1) requires the commission to schedule and conduct an administrative hearing in accordance with the provisions of KRS Chapter 13B prior to denying an application for license or ordering discipline such as suspending or revoking a license. This administrative regulation sets forth the rules of practice before the commission, including the filing, investigation, and disposition of complaints as well as the procedure for resolving an administrative complaint initiated by the commission.

(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 within the commission's purview because it provides the mechanism for filing, reviewing, and disposing of complaints against licensees and unlicensed persons accused of unlicensed brokerage.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment will change the current administrative regulation in that it adopts a more efficient process for reviewing complaints. The revised process also ensures that licensees are afforded due process by requiring recusal of a commission who has previously reviewed a complaint from the remainder of the process. The proposed administrative regulation also reduces the period of time in which a complaint may be filed against a licensee to be in line with professional liability standards for other real property boards within the Kentucky Real Estate Authority.

(b) The necessity of the amendment to this administrative regulation: Amendment to this administrative regulation is necessary to incorporate the current procedural practice of the commission with regarding to handling complaints and investigations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 324.281(5) and KRS 324.282 authorize the commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to implement KRS Chapter 324. KRS 324.151(1) and (3) requires the commission to establish the required forms for a complaint and answer. KRS 324.170(1) requires the commission to schedule and conduct an administrative hearing in accordance with the provisions of KRS Chapter 13B prior to denying an application for license or ordering discipline such as suspending or revoking a license. This administrative regulation sets forth the rules of practice before the commission, including the filing, investigation, and disposition of complaints as well as the procedure for resolving an administrative complaint initiated by the commission.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes within the commission's purview because it provides the mechanism for filing, reviewing, and disposing of complaints against licensees and unlicensed persons accused of unlicensed brokerage.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect

all of the Real Estate Commission's current licensees, as well as prospective license applicants. Additionally, this administrative regulation will affect all of the Real Estate Commission's current prelicensing, post licensing, and continuing education providers. Lastly, this administrative regulation will affect the general public to the extent they interact with licensed real estate professionals.

(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: Prospective licensees and members of the general public are not required to take any action to be in compliance with this administrative regulation. Current licensees may have to augment their business models to comply with new licensing terminology. Education providers will be required to amend their instruction materials to comply with the new procedures incorporated into this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): (b) There are no costs associated for any of the regulated entities or the general public to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with this administrative regulations, licensees will be on notice of the commission's complaint disposition practices. Members of the public will benefit from an easier to understand process for filing complaints.

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

(a) Initially: There will be no initial costs associated with implementing this administrative regulation.

(b) On a continuing basis: There will be no continuing costs associated with implementing this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary to implement and enforce 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 increased fees or funding are necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation applies equally to all regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments or school districts) will be impacted by this administrative regulation? The Kentucky Real Estate Commission will be impacted by this administrative regulation. Also, local real estate boards may 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 324.281(5), KRS 324.282, KRS 324.151, and KRS 324.170 require the Real Estate Commission to promulgate administrative regulations regarding the complaint review and administrative hearing process.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for state or local government in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? There is no cost associated with administering this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with administering this administrative regulation for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: This administrative regulation is not expected to have a fiscal impact.

PUBLIC PROTECTION CABINET Kentucky Real Estate Authority Kentucky Real Estate Commission (Amendment)

201 KAR 11:210. Licensing, education, and testing requirements.

RELATES TO: KRS 2.013, 324.010, 324.020, 324.040, 324.045(1), (2), (3), 324.046, 324.085, 324.090, 324.141, 324.160, 324.281, 324.287, 324.310, 324.330, 324.990, 28 C.F.R. 16.30-16.33

STATUTORY AUTHORITY: KRS 324.045, 324.141, 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.281(5) and 324.282 require [authorizes] the Real Estate Commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS Chapter 324. KRS 324.040(2) requires applicants for licensure as a broker or sales associate to apply in writing on forms prepared or furnished by the Real Estate Commission. KRS 324.045(4) authorizes the commission to promulgate an administrative regulation to require a national criminal history check prior to licensure. KRS 324.141(1) authorizes the commission to promulgate administrative regulations to establish license-recognition procedures that allow out-of-state actively-licensed sales associates and brokers to apply for a Kentucky license that is the same as, or equivalent to, their out-of-state license. KRS 324.090(1) requires the real estate commission to establish an expiration and renewal date for licenses. KRS 324.310(1) requires the delivery of a sales associate's license to the commission when an association with a principal broker is terminated, and KRS 324.330(2) allows a licensee to place his or her license into inactive status with the commission. KRS 324.330(1) requires notice to be given to the real estate commission when a licensee's location, firm name, surname, or affiliation changes. KRS 324.085(1) requires an actively-licensed agent, except an agent licensed prior to June 19, 1976, to successfully complete six (6) hours of mandatory continuing education each year as a condition of licensure renewal and requires that three (3) of the six (6) hours pertain to the study of real estate law. KRS 324.085(2) requires a licensee who is issued an initial sales associate license after January 1, 2016, to complete forty-eight (48) classroom or online hours of commission-approved post-license education. This administrative regulation establishes requirements for applying for initial licensure, license renewal, and license recognition and establishes the commission's criminal background check policies for all applicants [standards relative to education and licensure application—requirements]. Additionally, this administrative regulation establishes the procedures for a licensee to report changes to his or her contact information to the commission and

sets the penalty for failure to comply with KRS 324.330. Also, this administrative regulation establishes the procedure for the delivery of a sales associate's license to the commission when affiliation with a principal broker is terminated. This administrative regulation establishes the requirements relating to pre-license education, continuing education, and post-license education and the disciplinary consequences for failing to comply with the requirements.

Section 1. Initial Sales Associate License. (1) Prior to applying for an initial sales associate license, a prospective applicant shall:

(a) Complete six (6) academic credit hours, or its equivalent, of prelicensing education with either:

1. An approved pre-license education provider; or

2. An accredited institution as defined by KRS 324.010(8).

(2) An applicant for initial sales associate licensure shall submit:

(a) A national criminal history check in accordance with KRS 324.045(5) and this administrative regulation;

(b) A completed application submitted on Score Report/License Application obtained from the commission's testing provider after passing the required examination, which shall contain a recent photo of the applicant;

(c) Proof of:

1. High school graduation, or its equivalent, or

2. Successful post-secondary completion of:

a. A degree program or

b. Twenty-eight (28) academic credit hours, or the equivalent;

(d) Proof of completion of six (6) academic credit hours, or its equivalent in qualifying prelicense education;

(e) Proof of Errors and Omissions insurance coverage compliant with KRS 324.395 and 201 KAR 11:220, if the license will be immediately active;

(f) The nonrefundable sixty dollar (\$60) original license fee and sixty dollar (\$60) recovery fund fee required by KRS 324.287(2) and (8); and

(g) A completed and signed "Consent to Jurisdiction and Service of Process" KREC Form 205, if the applicant resides outside of the Commonwealth of Kentucky.

(3) An applicant may submit a paper or electronic application.

(4) Within ten (10) days of being issued a license number and OP ID, the licensee shall:

(a) Create an Online Services Portal account;

(b) Verify the licensee's current residential address and telephone number; and

(c) Provide one (1) valid electronic mail address. [In lieu of proof of high school graduation or a GED diploma, an applicant may submit an official transcript from a United States institution or from an institution outside of the United States, which indicates successful post-secondary completion of:

(1) A degree program; or

(2) Twenty-eight (28) academic semester hours or the equivalent.]

Section 2. Broker's License. (1) Prior to applying for a broker's license, a prospective applicant shall:

(a) Complete not less than twenty-one (21) academic credit hours, consistent with KRS 324.046(1)(a), of education to acquire a broker's license, including a minimum of:

1. Nine (9) academic credit hours of real estate courses, which shall not include an applicant's sales associate prelicense education;

2. Three (3) academic credit hours of Broker Management; and

3. Nine (9) academic credit hours of broker elective courses, approved by the commission.

(b) A licensee shall not get duplicate course credit toward a broker's license;

(c) A licensee shall get course credit toward his or her broker's license by completing NAR designation courses. Credit for the designation course shall be awarded consistent with accreditation at the time the course is completed.

(d) An applicant for a broker's license may submit a request for an education review by submitting a completed "Broker Education Review Form," KREC Form 207.

(2) An applicant for a broker's license shall submit:

(a) Proof of the requisite sales associate experience as provided in KRS 324.046(1)(b) or its equivalent as provided in KRS 324.046(3) or (4);

(b) A completed application submitted on Score Report/License Application obtained from the commission's testing provider after passing the required examination;

(c) Proof of completion of the broker curriculum education real estate courses required by KRS 324.046(1)(a) and KRS 324.046(3);

(d) Proof of Errors and Omissions insurance coverage compliant with KRS 324.395 and 201 KAR 11:220, if the license will be immediately active, or proof of extended reporting period coverage as required by KRS 324.395 if the license will be placed into inactive status;

(e) An original copy of the applicant's national criminal history check obtained consistent with KRS 324.045(5) and this administrative regulation;

(f) A completed and signed "Consent to Jurisdiction and Service of Process" KREC Form 205, if the applicant resides outside of the Commonwealth of Kentucky; and

(g) The nonrefundable sixty dollar (\$60) original license fee required by KRS 324.287(2).

(4) An applicant may submit a paper or electronic application.

Section 3. License Recognition. (1) An individual actively licensed as a real estate professional outside of Kentucky may apply for an equivalent Kentucky license.

(2) To obtain a license by license recognition, an individual shall:

(a) File with the commission a national criminal history check in accordance with KRS 324.045(5) and this administrative regulation;

(b) File with the commission a certification of licensure issued within the preceding ninety (90) days by the regulatory authority of each state in which the individual has, at any time, held a real estate license; and

(c) Pass the Kentucky law portion of the licensing examination for either a sales associate's license or a broker's license as appropriate;

(d) Submit a completed and signed "Consent to Jurisdiction and Service of Process" KREC Form 205, if the applicant resides outside of Kentucky; and

(e) The nonrefundable sixty dollar (\$60) original license fee and sixty dollar (\$60) recovery fund fee required by KRS 324.287(2) and (7).

(3) An applicant may submit a paper or electronic application.

(4) Within ten (10) days of being issued a license number and OP ID, the licensee shall:

(a) Create an Online Services Portal account;

(b) Verify the licensee's current residential address and telephone number; and

(c) 1. Provide one (1) electronic mail address;

2. The licensee may provide additional, unique electronic mail address(es).

Section 4. Real Estate Examination. (1) A successful passing score on required portions of the real estate examination mandated by KRS 324.045(2) shall be valid for sixty (60) days. [Any applicant who successfully passes the required portions of the real estate examination shall apply for a license within sixty (60) days after the examination. A candidate who fails to apply for a license within this period shall be reexamined.]

(2) An applicant who fails to pass any required portion of the examination mandated by KRS 324.045(2) three (3) times shall wait at least thirty (30) calendar days from the date of their third failed examination prior to retaking the examination, or the score shall be void.

Section 5. Foreign Language Diplomas or Transcripts. (1) If

an applicant submits documentation of qualifying education in a language other than English, the diploma or transcript shall:

(a) Be accurately translated by a foreign language document translation service; and

(b) Include a certification stating that the translation is true, accurate, and complete.

(2) The applicant shall provide a letter to the commission indicating that the curriculum of the proffered education is equivalent to a high school diploma or GED. The comparison shall be made by an education credential service provider with membership in the National Association of Credential Evaluation Services.

(3) If the applicant is unable to comply with the requirements of this section, the applicant shall submit proof of the receipt of a GED granted by an agency or institution within the United States.

Section 6. National Criminal History Check. (1) Prior to taking a licensure examination, an applicant shall request a copy of the applicant's national criminal history check, which shall only be valid for ninety (90) days from the date of the record report.

(2) (a) The applicant may request a copy of his or her national criminal history check from the Federal Bureau of Investigation pursuant to the provisions of 28 C.F.R. 16.30 to 16.33 or through the Kentucky State Police for submission to the Federal Bureau of Investigation consistent with KRS 324.045(5).

(b) An applicant may submit the Criminal History Affidavit, KREC Form 209, with his or her application for licensure if:

1. The applicant is unable to obtain his or her national criminal history check from the Federal Bureau of Investigation because the applicant's fingerprints are rejected;

2. The applicant submits proof that he or she was fingerprinted at a recognized state or local law enforcement agency;

3. The applicant submits a Kentucky Administrative Office of the Courts (AOC) Fast Check Criminal Records Report, or a similar informal background report from the jurisdiction where the applicant resides; and

4. The applicant submits proof of an alternate request for a Federal Bureau of Investigation records check by name or social security number.

(c) An issued license shall subject to discipline if, while an applicant, the licensee:

1. Having submitted a Criminal History Affidavit, KREC Form 209, with his or her application for licensure, fails to submit the national criminal history check within ten (10) days of receiving the report; or

2. Failed to report any new criminal charges or convictions that occurred after the national criminal history check report date.

(3)(a) The commission shall investigate a national criminal history check which reveals a felony conviction within the previous ten (10) years, or a misdemeanor conviction within the previous five (5) years, and may, at its discretion, investigate any charges or convictions revealed by the national criminal history check or any other evidence of dishonesty, untruthfulness, or bad reputation of the applicant.

(b) In the sole discretion of the chair of the commission, the commission may delegate the investigative process to the Applicant Review Committee, a subcommittee of the commission, to be comprised of no more than two (2) commissioners;

(c) The Applicant Review Committee shall operate consistent with KRS Chapter 335B.

(4) Following the completion of the investigation, the commission shall review the investigation report and shall:

(a) Order the applicant to appear before the commission for a hearing before the real estate commission or the real estate commission's authorized representative to determine whether the applicant meets the standards of KRS 324.045; or

(b) Allow the applicant to proceed with his or her licensure application without a hearing.

(5) If an authorized representative conducts the hearing, the authorized representative shall recommend to the real estate commission whether the applicant meets the standards of KRS 324.045. The real estate commission may accept the

recommendation, reject the recommendation and enter a separate order, or remand to the representative for further proceedings in accordance with KRS Chapter 13B.

(6) Following the hearing, if all other licensing pre-requisites are satisfied, the real estate commission shall either approve or deny the application and notify the applicant of its decision along with a written explanation of the reasons for its decision.

(7) If the real estate commission denies the application, the real estate commission shall indicate in its order, if and when, the applicant will be eligible to submit a subsequent licensure application.

(8) If an applicant, or a licensee without an active license, has engaged in any unlicensed brokerage activity within this Commonwealth, that person shall, prior to the issuance or reactivation of any license by the commission, submit proof that he or she has disgorged all fees earned or received as a result of the unlicensed brokerage activity, consistent with KRS 324.990(2).

Section 7. Release by Principal Broker. (1) Upon notification from the principal broker or the affiliate licensee that an affiliate licensee has been released pursuant to KRS 324.310(1), the commission shall notify the affiliate licensee at his or her last electronic mail address(es) on file at the commission that, within thirty (30) days of the date of the release notification, the licensee shall:

(a) Reaffiliate with another broker by submitting a completed "Acceptance and Release Form", KREC Form 200, or by using the licensee's online services portal; or

(b) Request that his or her license be placed into inactive status by using the licensee's online services portal or by submitting a completed "License Status and Personal Information Update Form", KREC Form 201;

(c) If the affiliate holds a broker license and was formerly a principal broker, he or she shall:

1. Affiliate with another principal broker;
2. Open a new office as principal broker; or
3. Place his or her license into inactive status.

(2) Failure to comply with the notification issued by the commission shall result in the cancellation of the licensee's license.

(3) A licensee with a cancelled license shall not engage in real estate brokerage activity during the period of cancellation.

Section 8. License Renewal. (1)(a) Licenses shall be renewed on or before March 31 through the licensee's Online Services Portal account.

(b) A licensee who is unable to renew his or her license using his or her Online Services Portal may utilize the License Renewal Form, KREC Form 208.

(2) A cancelled license shall not be renewed until the license is reactivated and in good standing.

(3)(a) A license shall be cancelled if not renewed.

(b) A licensee with a cancelled license is prohibited from engaging in real estate brokerage pursuant to KRS 324.160(2).

(4) A licensee shall file or verify with the commission at renewal a telephone number, residential address, and an electronic mail address(es).

Section 9. Licensing Records. (1)(a) A licensee shall notify the commission by submitting a completed "License Status and Personal Information Update Form", KREC Form 201, or through the online services portal, of a change in the following information:

1. The licensee's legal name;
2. The licensee's nickname;
3. Any alternate or assumed name being used by the licensee;
4. The licensee's residential address;
5. The licensee's electronic mail address(es); or
6. The licensee's preferred direct or personal phone number.

(b) If the licensee is changing his or her legal name, he or she shall provide legal documentation supporting the changed

name.

(c) Processing of the changes contemplated in (1)(a) of this section shall require payment of a nonrefundable ten dollar (\$10) change request fee required by KRS 324.287.

(d) The licensee shall submit a completed and signed "Consent to Jurisdiction and Service of Process" KREC Form 205, if the licensee is moving to a residence outside the Commonwealth of Kentucky.

(2)(a) A licensee shall notify the commission by completing, signing, and filing with the commission the "Certification of Insurance Coverage" KREC Form 203, or through the online services portal, of any change in private professional liability insurance coverage or extended reporting period coverage as required by KRS 324.395.

(b) This notice shall be accompanied by a nonrefundable ten dollar (\$10) change request fee required by KRS 324.287(7).

(3)(a) A principal broker shall notify the commission of any change of his or her primary company location, firm name, alternate or assumed name, D/B/A(s), branch office name, branch office address, designated manager(s), escrow account(s), or email address(es) by completing, signing, and filing with the commission the "Company Information Update Form", KREC Form 202, or through the online services portal.

(b) This notice shall be accompanied by a nonrefundable ten dollar (\$10) change request fee required by KRS 324.287.

(4)(a) A principal broker shall notify the commission of a change in principal broker at an existing real estate brokerage company by submitting a completed "Company Change of Principal Broker Form," KREC Form 204, or through the online services portal.

(b) This notice shall be accompanied by the fee required by KRS 324.287.

(5)(a) An affiliated licensee shall submit a completed "Acceptance and Release Form", KREC Form 200, to change his or her affiliation to another principal broker.

(b) This form shall be accompanied by the fee required by KRS 324.287.

(6) A licensee requesting a license history certification shall complete and submit the "License Status and Personal Information Update Form", KREC Form 201, accompanied by a nonrefundable ten dollar (\$10) fee for each certification requested.

(7) A licensee shall be subject to discipline consistent with the commission's authority in KRS 324.160(1) for a violation of KRS 324.160(4)(t) if the licensee fails to submit notification to the commission of any changes required by this section within ten (10) days of the change.

Section 9. Inactive Status. (1) An active licensee who wishes to place his or her license into inactive status shall submit Form 203, "License Status and Personal Information Update Form", or through the online services portal.

(2) All licensees placing a license into inactive status shall:

(a) Obtain extended reporting period (ERP) coverage insurance for a period of one year as established by KRS 324.395(1); and

(b) Submit a completed "Certificate of Insurance Coverage", KREC Form 203, with proof of the required coverage.

(3) The coverage obtained pursuant to subsection (2) of this section shall be consistent with the minimum requirements prescribed by 201 KAR 11:220.

(4) To reactivate a license from inactive status, a licensee shall complete and submit Form 203, "License Status and Personal Information Update Form", or through the online services portal, and comply with KRS 324.310 and complete the following education:

(a) If the licensee has not taken the Core course in four years, the licensee shall complete Core; and

(b) If the licensee has been inactive during more than one education cycle, the licensee shall take six (6) hours of continuing education for each education cycle he or she was inactive, with three (3) hours for each year in law courses.

(5) If the licensee is exempt from continuing education

requirements pursuant to KRS 324.046(5), the licensee shall not be required to complete any continuing education to reactivate a license from inactive status.

Section 10. Mandatory Continuing Education. (1) An active licensee, licensed by the commission on or after June 19, 1976, shall comply with the requirements of KRS 324.085(1) by attending and successfully completing six (6) hours of continuing education courses sponsored or approved by the commission each year. Three (3) of the hours of continuing education shall be in law, and three (3) of the hours of continuing education may be electives.

(a) An active licensee shall complete the continuing education requirements consistent with KRS 324.085(1) no later December 31 of the first year in the renewal cycle. An active licensee shall receive continuing education credit for any approved course completed on or before December 31, so long as the education provider has reported the licensee's course completion to the commission before 11:59 p.m. on December 31 consistent with 201 KAR 11:170, Section 6(3) for classroom courses or 201 KAR 11:170, Section 9(10) for distance education courses.

(b) An active licensee who fails to complete his or her continuing education requirement shall have his or her license cancelled and be ineligible to renew if the licensee has not completed the continuing education required by KRS 324.085(1) and this administrative regulation.

(2) An active licensee's annual mandatory continuing education requirement shall not be satisfied by the completion of a pre-license course.

(3) A candidate shall not submit completion of the same continuing education course more than once for licensure credit in the same calendar year.

(4) A licensee shall not receive credit for more than nine (9) hours of continuing education in a calendar day.

(5) A licensee shall not receive credit for a course if the licensee arrives more than ten (10) minutes after the scheduled start of the course or after the conclusion of any break during the course.

(6) An active licensee shall attend a commission-approved core course once every four (4) years, with the first four (4) year cycle beginning from the year of initial licensure. The core course shall:

(a) Satisfy the licensee's mandatory continuing education requirement for the year in which the course is taken; and

(b) Be a six (6) hour comprehensive review of the requirements of:

1. KRS Chapter 324;

2. 201 KAR Chapter 11;

3. Common and federal law relating to real estate; and

4. The standards of practice for a real estate licensee.

(7) An active licensee who fails to complete Core in a year in which the licensee is required to complete Core, even if the licensee completed other continuing education, shall be subject to the delinquency procedures set forth in Section 12.

Section 11. Exemptions from the Continuing Education Requirement. (1) No person licensed prior to June 19, 1976 shall be required to complete continuing education.

(2) A license recognition broker, who has been licensed for less than three (3) months when education is due, shall not be required to attend a continuing education course during the first education cycle in which he or she is licensed in Kentucky.

(3) A license recognition sales associate shall not be required to complete continuing education during the first two (2) full education cycles of licensure in Kentucky. A license recognition sales associate shall complete the education required by KRS 324.085(2).

(4) A licensee shall not be required to comply with KRS 324.085(1) during the first two (2) full education cycles from the date of issuance of a sales associate license.

(5) A licensee whose license is inactive shall not be required to attend continuing education courses while the license remains

inactive, except as provided in this administrative regulation.

Section 12. Continuing Education Compliance and Delinquency. (1) The commission shall, for good cause shown, extend the time requirements established by KRS 324.085(1) and this administrative regulation. Good cause may include a true hardship, extensive medical issues for the licensee or the licensee's immediate relative, active military duty or service, or other good cause that clearly warrants relief.

(2)(a) The request for extension and any supporting documentation shall be received in writing on or before the last day of the month or year in which the education requirement is due, unless the hardship prevents compliance with subsection (1).

(b) A license shall not be cancelled while a hardship request is pending.

(c) The commission shall review the hardship request and notify the licensee in writing of the commission's decision.

(3)(a) If a licensee fails to comply with the mandatory education requirements of this administrative regulation, the executive director or his representative shall issue a delinquency notice to the licensee.

(b) If the licensee fulfilled the education requirement in the year it was required, proof shall be forwarded to the commission upon request, and the licensee shall be reactivated.

(4)(a) If the licensee fails to request an extension and fails to forward proof of completion prior to the deadline, the license shall be cancelled automatically.

(b) A license cancelled for nonfulfillment of the continuing education requirements may be reactivated if the licensee enters into a written delinquency plan, pays a \$1,000 administrative fine, and either:

1. Places the license into inactive status; or

2. Agrees in the delinquency plan to complete the delinquent continuing education requirements for the previous calendar year on or before April 30.

(5) A licensee who places his or her license into inactive status under the provisions of this section shall not reactivate the license until he or she has:

(a) Completed all delinquent mandatory continuing education requirements; and

(b) Satisfied the requirements of KRS 324.310.

(6) A licensee who fails to place his or her license into inactive status or file the delinquency plan immediately following the year in which continuing education requirements were not fulfilled, shall automatically have the license cancelled and shall not be eligible to renew without completing the delinquent education.

(7) If a licensee fails to complete the requirements of the delinquency plan within twenty (20) days of the agreed completion date, the commission shall issue a notice of violation to the licensee.

(8) Failure to respond to the notice of violation shall result in a default order of suspension for a period of six (6) months.

(9) If the commission suspends the license as a result of a default order or after hearing, if one is requested, the licensee shall not be allowed to activate the license unless, within ninety (90) days following expiration of the suspension, the licensee:

(a) Completes all delinquent mandatory continuing education requirements;

(b) Submits the required documents to reinstate the license; and

(c) Pays all necessary reactivation, renewal, and transfer fees.

(10) If the licensee does not reinstate the license within ninety (90) days following the completion of the suspension period, the license shall be cancelled and the licensee shall be obligated to meet the requirements for initial licensure, including retaking the examination.

(11) A license cancelled under this section shall not be reactivated until the licensee has completed all of his or her mandatory education requirements, complied with all commission orders, and submitted all other applicable licensing requirements.

(12) Failure of the executive director or his representative to issue a deficiency notice to the licensee shall not relieve the licensee of his or her mandatory education requirements or the penalties associated with the deficiency.

(13) A license cancelled for continuing education deficiency shall be subject to the provisions of KRS 324.160(2).

Section 13. Post-License Education Compliance and Delinquency. (1) The time requirements established by KRS 324.085(2) and this administrative regulation shall be extended by the commission for good cause shown, such as a true hardship, extensive medical issues for the licensee or the licensee's immediate relative, active military duty or service, or other good cause that clearly warrants relief.

(2) The license of a licensee who fails to complete his or her post-licensing education on or before the licensee's deadline shall be automatically cancelled the following day.

(3) A license cancelled for post-license education deficiency shall not be permitted to reactivate his or her license until all delinquent post-licensing education is complete.

(4) A license cancelled for post-license education deficiency shall be subject to the provisions of KRS 324.160(2).

Section 14. Death or Incapacity of a Principal Broker. (1) Pursuant to KRS 324.425, an affiliated licensee may complete and close the existing business of a deceased or incapacitated broker for a temporary period, not to exceed six (6) months.

(2) Any affiliate requesting principal broker status pursuant to KRS 324.425 shall submit a completed "Notification of Death or Incapacity of a Licensee", KREC Form 206.

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

(a) "Acceptance and Release Form", KREC Form 200, 7/2019;

(b) "License Status and Personal Information Update Form", KREC Form 201, 7/2019;

(c) "Company Information Update Form", KREC Form 202, 7/2019;

(d) "Certification of Insurance Coverage", KREC Form 203, 7/2019;

(e) "Company Change of Principal Broker Form", KREC Form 204, 7/2019;

(f) "Consent to Jurisdiction and Service of Process", KREC Form 205, 7/2019;

(g) "Notification of Death or Incapacity of a Licensee", KREC Form 206, 7/2019;

(h) "Broker Education Review Form", KREC Form 207, 7/2019;

(i) "License Renewal Form", KREC Form 208, 7/2019; and

(j) "Criminal History Affidavit", KREC Form 209, 7/2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 656 Chamberlin Avenue, Suite B, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available from the commission's Web site: www.krec.ky.gov.

LOIS ANN DISPONETT, Chair

H.E. CORDER II, Executive Director

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: July 15, 2019

FILED WITH LRC: July 15, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2019 at 10:00 a.m. Eastern Time at the Kentucky Real Estate Commission, 656 Chamberlain Ave., Suite B, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this Department in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to

comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on August 31, 2019. 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: Alex D. Gaddis, Deputy General Counsel, Kentucky Real Estate Authority, 656 Chamberlin Ave., Suite B, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-1538 email: Alex.Gaddis@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alex D. Gaddis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for applying for initial licensure, license renewal, and license recognition and establishes the commission's criminal background check policies for all applicants. Additionally, this administrative regulation establishes the procedures for a licensee to report changes to his or her contact information to the commission and sets the penalty for failure to comply with KRS 324.330. Also, this administrative regulation establishes the procedure for the delivery of a sales associate's license to the commission when an association with a principal broker is terminated. Lastly, this administrative regulation also introduces the online portal and electronic application process for all current and prospective licensees.

(b) The necessity of this administrative regulation: KRS 324.281(5) and 324.282 require the Real Estate Commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS Chapter 324. KRS 324.040(2) requires applicants for licensure as a broker or sales associate to apply in writing on forms prepared or furnished by the Real Estate Commission. KRS 324.045(4) authorizes the commission to promulgate an administrative regulation to require a criminal background check prior to licensure. KRS 324.141(1) authorizes the commission to promulgate administrative regulations to establish license-recognition procedures that allow out-of-state actively-licensed sales associates and brokers to apply for a Kentucky license that is the same as, or equivalent to, their out-of-state license. KRS 324.090(1) requires the Real Estate Commission to establish an expiration and renewal date for licenses.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324.281(5) and 324.282 require the Real Estate Commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS Chapter 324. KRS 324.040(2) requires applicants for licensure as a broker or sales associate to apply in writing on forms prepared or furnished by the Real Estate Commission. KRS 324.045(4) authorizes the commission to promulgate an administrative regulation to require a criminal background check prior to licensure. KRS 324.141(1) authorizes the commission to promulgate administrative regulations to establish license-recognition procedures that allow out-of-state actively-licensed sales associates and brokers to apply for a Kentucky license that is the same as, or equivalent to, their out-of-state license. KRS 324.090(1) requires the Real Estate Commission to establish an expiration and renewal date for licenses. KRS 324.310(1) requires the delivery of a sales associate's license to the commission when an association with a principal broker is terminated, and KRS 324.330(2) allows a licensee to place his or her license into inactive status with the commission. KRS 324.330(1) requires notice to be given to the Real Estate Commission when a licensee's location, firm name, surname, or affiliation changes. This administrative regulation establishes requirements for applying for initial licensure, license renewal, and license recognition and establishes the

commission's criminal background check policies for all applicants. Additionally, this administrative regulation establishes the procedures for a licensee to report changes to his or her contact information to the commission and sets the penalty for failure to comply with KRS 324.330. Also, this administrative regulation establishes the procedure for the delivery of a sales associate's license to the commission when an association with a principal broker is terminated.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Amendment to this administrative regulation will allow for almost all processes to be completed by licensees by using an online services portal. This will drastically reduce paperwork and time to achieve basic licensing functions. Additionally, amendment to this administrative regulation will provide concise, clear guidance on the licensing process.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation establishes requirements for applying for initial licensure, license renewal, and license recognition and establishes the commission's criminal background check policies for all applicants. Additionally, this administrative regulation establishes the procedures for a licensee to report changes to his or her contact information to the commission and sets the penalty for failure to comply with KRS 324.330. Also, this administrative regulation establishes the procedure for the delivery of a sales associate's license to the commission when an association with a principal broker is terminated. Lastly, this administrative regulation also introduces the online portal and electronic application process for all current and prospective licensees.

(b) The necessity of the amendment to this administrative regulation: KRS 324.281(5) and 324.282 require the Real Estate Commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS Chapter 324. KRS 324.040(2) requires applicants for licensure as a broker or sales associate to apply in writing on forms prepared or furnished by the Real Estate Commission. KRS 324.045(4) authorizes the commission to promulgate an administrative regulation to require a criminal background check prior to licensure. KRS 324.141(1) authorizes the commission to promulgate administrative regulations to establish license-recognition procedures that allow out-of-state actively-licensed sales associates and brokers to apply for a Kentucky license that is the same as, or equivalent to, their out-of-state license. KRS 324.090(1) requires the Real Estate Commission to establish an expiration and renewal date for licenses. Amendment to this administrative regulation will bring the commission's processes into conformity with statute while also modernizing the process and reducing the need for duplicative paperwork.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 324.281(5) and 324.282 require the Real Estate Commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS Chapter 324. KRS 324.040(2) requires applicants for licensure as a broker or sales associate to apply in writing on forms prepared or furnished by the Real Estate Commission. KRS 324.045(4) authorizes the commission to promulgate an administrative regulation to require a criminal background check prior to licensure. KRS 324.141(1) authorizes the commission to promulgate administrative regulations to establish license-recognition procedures that allow out-of-state actively-licensed sales associates and brokers to apply for a Kentucky license that is the same as, or equivalent to, their out-of-state license. KRS 324.090(1) requires the Real Estate Commission to establish an expiration and renewal date for licenses. KRS 324.310(1) requires the delivery of a sales associate's license to the commission when an association with a principal broker is terminated, and KRS 324.330(2) allows a licensee to place his or her license into inactive status with the

commission. KRS 324.330(1) requires notice to be given to the Real Estate Commission when a licensee's location, firm name, surname, or affiliation changes. This administrative regulation establishes requirements for applying for initial licensure, license renewal, and license recognition and establishes the commission's criminal background check policies for all applicants. Additionally, this administrative regulation establishes the procedures for a licensee to report changes to his or her contact information to the commission and sets the penalty for failure to comply with KRS 324.330. Also, this administrative regulation establishes the procedure for the delivery of a sales associate's license to the commission when an association with a principal broker is terminated.

(d) How the amendment will assist in the effective administration of the statutes: Amendment to this administrative regulation will allow for almost all processes to be completed by licensees by using an online services portal. This will drastically reduce paperwork and time to achieve basic licensing functions. Additionally, amendment to this administrative regulation will provide concise, clear guidance on the licensing process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all of the Real Estate Commission's current licensees, as well as prospective license applicants. Additionally, this administrative regulation will affect all of the Real Estate Commission's current prelicensing, post licensing, and continuing education providers. Lastly, this administrative regulation will affect the general public to the extent they interact with licensed real estate professionals.

(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: Current and prospective licensees and members of the general public are not required to take any action to be in compliance with this administrative regulation. Education providers will be required to amend their instruction materials to comply with the new procedures incorporated into this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs associated for any of the regulated entities or the general public to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with this administrative regulations, current and prospective licensees will benefit from a simplified licensing process, from initial application to renewal and changing business relationships. Members of the public will benefit from real-time information for license verification purposes.

(a) Initially: There will be no initial costs associated with implementing this administrative regulation.

(b) On a continuing basis: There will be no continuing costs associated with implementing this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary to implement and enforce 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 increased fees or funding are necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation applies equally to all regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments or school districts) will be impacted by this administrative regulation? The Kentucky Real Estate Commission will be impacted by this administrative regulation. Also, local real estate boards may 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 324.281(5) and KRS 324.282 require the Real Estate Commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS Chapter 324. KRS 324.040(2) requires applicants for licensure as a broker or sales associate to apply in writing on forms prepared or furnished by the Real Estate Commission. KRS 324.045(4) authorizes the commission to promulgate an administrative regulation to require a criminal background check prior to licensure. KRS 324.141(1) authorizes the commission to promulgate administrative regulations to establish license-recognition procedures that allow out-of-state actively-licensed sales associates and brokers to apply for a Kentucky license that is the same as, or equivalent to, their out-of-state license. KRS 324.090(1) requires the Real Estate Commission to establish an expiration and renewal date for licenses.

(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 approximately \$1,320,900 in revenue for state government in the first year from renewal licensing fees, and approximately \$1,320,900 in revenue for state government in the first year from recovery fund fees. These estimates are based on the current number of licensees. The Commission anticipates generating approximately \$192,000 in revenue from initial licensing fees based on current licensing trends in the first year. The Commission anticipates generating approximately \$178,000 in revenue from miscellaneous licensing fees in the first year based on current trends. This administrative regulation will not generate any revenue for local government in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate approximately \$1,320,900.00 in revenue for state government in subsequent years from renewal licensing fees, and approximately \$1,320,900 in revenue for state government in subsequent years from recovery fund fees, with every other year being a year in which revenue is generated for license renewal and recovery fund fees. These estimates are based on the current number of licensees. The Commission anticipates generating approximately \$192,000.00 in revenue from initial licensing fees based on current licensing trends in subsequent years. The Commission anticipates generating approximately \$178,000 in revenue from miscellaneous licensing fees in subsequent years based on current trends. This administrative regulation will not generate any revenue for local government in subsequent years.

(c) How much will it cost to administer this program for the first year? There is no cost associated with administering this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with administering this administrative regulation for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: This administrative regulation is not expected to have a fiscal impact beyond ordinary revenues and expenditures.

**PUBLIC PROTECTION CABINET
Kentucky Real Estate Authority
Kentucky Real Estate Commission
(Amendment)**

201 KAR 11:220. Errors and omissions insurance requirements.

RELATES TO: KRS 324.010, 324.020, 324.395

STATUTORY AUTHORITY: KRS 324.282, 324.395(4), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.281(5) and 324.282 require[requires] the [Kentucky] Real Estate Commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 324. KRS 324.395 requires all real estate licensees except those whose licenses are in inactive status to carry[(4) allows licensees the option of obtaining] errors and omissions insurance to cover all activities contemplated under KRS Chapter 324.[independently, and] KRS 324.395(5) requires the commission to determine the terms and conditions of mandatory errors and omissions insurance coverage. This administrative regulation sets forth the minimum terms and conditions of insurance coverage required under KRS 324.395[procedures and standards for obtaining insurance independently].

Section 1. Minimum Coverage Requirements. (1) A licensee shall carry continuous errors and omissions coverage that, at a minimum includes:[(1) An insurance company providing real estate errors and omissions insurance for real estate licensees shall provide a signed certification to the insured licensee which shall confirm that the obligations of the insurance company meet the minimum requirements set forth in this administrative regulation.

(2) A licensee who chooses to be insured by other than the group insurance policy obtained by the commission shall file the private carrier certification of coverage with the license renewal application in accordance with KRS 324.395(6). This certification shall be available on the commission's Web site, www.krec.ky.gov, and shall be included in the yearly renewal package mailed to all principal brokers.

Section 2. The insurance for which the certification has been executed shall not be terminated, cancelled, lapsed, or nonrenewed unless the insurance company has provided the commission with prior written notice.

Section 3. The minimum requirements for the coverage contained in the insurance policy for which the certification has been executed shall provide that: (1) Coverage shall be that known as real estate agents errors and omissions insurance or real estate agents professional liability insurance.]

(a) A[(2) The] limit of liability[shall] not[be] less than \$100,000 for any one (1) claim, excluding the cost of investigation and defense; and

(b) An annual aggregate limit of liability of not[, nor] less than \$1,000,000 [annual aggregate limit of liability], excluding the cost of investigation and defense.

Section 2. Firm Coverage. (1) A principal broker who purchases[decides to purchase independent] errors and omissions "firm coverage" insurance shall have at least the following aggregate amounts:

(a) One (1) to forty (40) licensees shall carry a \$1,000,000 annual aggregate; or

(b) Forty-one (41) or more licensees shall carry a \$2,000,000 annual aggregate.

Section 3. Deductibles. All errors and omissions or professional liability insurance policies shall have maximum deductibles, which may be separate deductibles, which shall not exceed:

(1) \$2,500 for judgment or settlement and

(2) \$1,000 for the cost of investigation and defense.[(3) The maximum deductibles, which may be separate deductibles, shall not exceed \$2,500 for judgment or settlement and \$1,000 for the cost of investigation and defense.

(4) Coverage shall apply for any covered claim resulting from a licensed activity that occurred subsequent to April 1, 1987, unless the claim had been made against the licensee before the present insurance policy's inception or is insured by a previous insurance policy.

Section 4. Except as provided in Section 5 of this administrative regulation, coverage shall not exclude claims brought against the insured arising out of an act or failure to act by the insured licensee when performing a professional service for which a license is required by the Commonwealth of Kentucky under KRS 324.020.]

Section 4. Exclusions Permitted[5]. Coverage may exclude claims brought against the insured, regardless of whether the professional service involves an activity for which a license is required by the Commonwealth of Kentucky, consistent with common custom in the market.]:

(1) Arising out of a dishonest, fraudulent, criminal or malicious act, error, or omission, if committed by, at the direction of, or with the knowledge of the insured;

(2) Arising as a result of the insolvency of the insured;

(3) Brought about or contributed to by any inability or failure to pay or collect premium, escrow, or tax money;

(4) Brought about by any employee, or former employee arising out of the contract of employment with the insured and alleging breach thereof;

(5) Arising out of any injury or damage which the insured either expected or intended;

(6) Brought about by bodily injury, sickness, disease, or death of any person or physical injury to, or destruction of, or loss of use of tangible property;

(7) Arising out of libel, slander, defamation of character, false arrest or imprisonment, wrongful entry, [or] eviction, or other invasion of the right of private occupancy, publications or utterances in violation of an individual's right of privacy, or malicious prosecution;

(8) Arising out of services performed by the insured which are subject to the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, as amended;

(9) Arising out of any violation of the Securities Act of 1933, 15 U.S.C. 77a, as amended or the Securities Exchange Act of 1934, 15 U.S.C. 78a, as amended or any state blue sky or securities law, or similar state or federal statutes;

(10) Arising out of the conversion, misappropriation, commingling, or defalcation of funds or other property;

(11) Brought against a real estate property manager for failure to effect or maintain adequate levels or types of insurance;

(12) Arising out of unlawful discrimination;

(13) Arising out of liability assumed by the insured under any indemnity, hold harmless, or similar provisions or agreements, except this exclusion shall not apply to liability the insured would have in the absence of these agreements;

(14)(a) Arising:

1. Out of the insured's business; and

2. By or on behalf of an investor, shareholder, or partner in any corporation, limited or general partnership, real estate trust, or venture in which the insured has or had a participating interest, directly or indirectly, in the profits or losses; or

(b) In connection with the insured's activities as an underwriter, sponsor, partner, joint or coventurer, or member in any real estate partnership, venture, or syndicate;

(15) Arising out of, relating to, or based upon the dispersal, discharge, escape, release, or saturation of smoke, vapors, soot, fumes, acids, alkalies, toxic chemicals, liquids, gases, or other materials, irritants, contaminants, or pollutants. Pollutants shall include any solid, liquid, gaseous, thermal, biological, or radioactive substance, material, matter, toxin, irritant or contaminant, including radon, asbestos, chemicals and waste.

~~Waste shall include materials to be recycled, reconditioned, or reclaimed;~~

~~(16) Excluded by the Nuclear Energy Liability Exclusion Endorsement (broad form) filed by the Insurance Services Office, Inc. with the Kentucky Department of Insurance and identified as form #IL 00 21 11 85;~~

~~(17)(a) Arising from the sale or property management of property developed, constructed, or owned by:~~

~~1. The insured;~~

~~2. Any firm or corporation in which the insured has a financial interest; or~~

~~3. Any firm coming under the same financial control as the insured.~~

~~(b) This exclusion shall not apply and coverage shall be extended to claims arising from the sale of real property, if all three (3) of the following conditions are met:~~

~~1. The property was acquired by the insured under a guaranteed sale listing contract;~~

~~2. The title to the property was only temporarily held by the insured during the transit period, not to exceed one (1) year, from acquisition to resale; and~~

~~3. The property is listed for sale during the entire transit period; or~~

~~(18) Arising out of the interests, operations, or activities of the insured as a mortgage banker or correspondent, escrow agent, construction manager, or property developer. An insured shall not be considered engaging in the activities of an escrow agent merely because the insured holds earnest money deposits, rental deposits, or similar items.]~~

LOIS ANN DISPONETT, chair
H.E. CORDER II, Executive Director
K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: July 15, 2019

FILED WITH LRC: July 15, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2019 at 10:00 a.m. Eastern Time at the Kentucky Real Estate Commission, 656 Chamberlain Ave., Suite B, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this Department in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on August 31, 2019. 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: Alex D. Gaddis, Deputy General Counsel, Kentucky Real Estate Authority, 656 Chamberlin Ave., Suite B, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-1538 email: Alex.Gaddis@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alex D. Gaddis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the terms and conditions of insurance coverage required under KRS 324.395.

(b) The necessity of this administrative regulation: KRS 324.395 requires all real estate licensees except those whose licenses are in inactive status to carry errors and omissions insurance to cover all activities contemplated under KRS Chapter 324. KRS 324.395(5) requires the commission to determine the terms and conditions of mandatory errors and omissions insurance coverage.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: KRS 324.395 requires all real estate licensees except those whose licenses are in inactive status to carry errors and omissions insurance to cover all activities contemplated under KRS Chapter 324. KRS 324.395(5) requires the commission to determine the terms and conditions of mandatory errors and omissions insurance coverage. This administrative regulation sets forth the minimum terms and conditions of insurance coverage required under KRS 324.395.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 324.395 requires all real estate licensees except those whose licenses are in inactive status to carry errors and omissions insurance to cover all activities contemplated under KRS Chapter 324, and this regulation discharges the commission's duty under KRS 324.395(5) to determine the terms and conditions of mandatory errors and omissions insurance coverage.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies the requirements and application to be consistent with statute.

(b) The necessity of the amendment to this administrative regulation: Amendment to this administrative regulation is necessary to eliminate unnecessary and inappropriate provisions from the former regulation and to clarify requirements for required insurance coverage going forward.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 324.395 requires all real estate licensees except those whose licenses are in inactive status to carry errors and omissions insurance to cover all activities contemplated under KRS Chapter 324. KRS 324.395(5) requires the commission to determine the terms and conditions of mandatory errors and omissions insurance coverage. This administrative regulation sets forth the minimum terms and conditions of insurance coverage required under KRS 324.395.

(d) How the amendment will assist in the effective administration of the statutes: KRS 324.395 requires all real estate licensees except those whose licenses are in inactive status to carry errors and omissions insurance to cover all activities contemplated under KRS Chapter 324, and this regulation discharges the commission's duty under KRS 324.395(5) to determine the terms and conditions of mandatory errors and omissions insurance coverage.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Current and prospective licensees will be affected by this administrative regulation. Insurance providers will be affected to a lesser extent, as they may be required to provide new policies to satisfy the revised minimum terms and conditions of the required coverage.

(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: Licensees will be required to ensure that their coverage complies with the revised minimum terms and conditions of the required coverage. Insurance companies will have to offer compliant insurance products.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The coverage limits, deductibles, and exclusions for individual policies are not changing. Therefore, the entities identified in question (3) should not incur significant costs to comply with this administrative regulation. Costs may vary depending on the insurer and the type of policy.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with the amended administrative regulation, licensees will benefit from clear, consistent requirements for the required coverage.

(5) Provide an estimate of how much it will cost the

administrative body to implement this administrative regulation:

(a) Initially: There will be no initial costs associated with implementing this administrative regulation.

(b) On a continuing basis: There will be no continuing costs associated with implementing this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary to implement and enforce 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 increased fees or funding are necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Yes, tiering is applied. A principal broker who decides to purchase firm coverage is required to have aggregate coverage based on the number of licensees he or she employs to accurately account for risk.

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 Real Estate Commission will be impacted by this administrative regulation. Also, local real estate boards may 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 324.281(5), KRS 324.282, and KRS 324.395 require the Real Estate Commission to promulgate administrative regulations.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for state or local government in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? There is no cost associated with administering this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with administering this administrative regulation for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: This administrative regulation is not expected to have a fiscal impact.

BOARDS AND COMMISSIONS Board of Cosmetology (Amendment)

201 KAR 12:030. Licensing, permits, and examinations.

RELATES TO: KRS 317A.020, 317A.050, 317A.060

STATUTORY AUTHORITY: KRS 317A.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060 requires the board to promulgate administrative regulations governing licenses in cosmetology, esthetic practices, and nail technology, including the operation of schools and

salons of cosmetology, esthetic practices, and nail technology. This administrative regulation establishes procedures for examinations and licensing.

Section 1. Fees. License and permit fees are set forth in 201 KAR 12:260.

Section 2. Prior Felony Convictions. An applicant for any license, permit, or examination issued or conducted by the board convicted of a prior felony shall include with his or her application:

(1) A signed letter of explanation from the applicant;

(2) A certified copy of the judgment and sentence from the issuing court; and

(3) A letter of good standing from the applicant's probation or parole officer, if currently on probation or parole.

Section 3. Reciprocal Licensing. (1) A license issued by another state shall be considered comparable if the laws of that state require at a minimum:

(a) 1,500 hours of curriculum for cosmetology;

(b) 450 hours of curriculum for nail technology;

(c) 750 hours of curriculum for esthetics; or

(d) 750 hours of curriculum for instructors.

(2) An applicant licensed in another state may be licensed by reciprocity by submitting the Out of State Transfer Application and the following:

(a) Digital certification showing proof of a passing score on a board-approved nationally recognized theory and practical exam;

(b) Current digital certification of the out of state license from the issuing state board;

(c) Diploma or certified testing documents proving 12th grade equivalency education;

(d) Payment of the applicable license and endorsement fees required by 201 KAR 12:260;

(e) A copy of the applicant's government-issued photo identification; and

(f) A two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months.

(3) An applicant from a state whose licensing requirements fail to meet subsection (1) of this section shall apply for a reciprocal license by submitting:

(a) Documentation required by subsection (2)(a) through (f) of this section; and

(b) Payment of the applicable examination fees established in 201 KAR 12:260.

(4) Active duty military and family members shall apply for a reciprocal license by submitting:

(a) All documents required by subsection 2(a) through (f) of this section;

(b) The Military Transfer Application;

(c) A copy of the sponsor's active-duty orders listing the applicant as sponsor or an accompanying family member; and

(d) Payment of a twenty-five (25) dollar license fee.

(5) All requests for certification of hours or a license shall use the Certification Request Form accompanied by a copy of the applicant's government-issued photo identification[,] and payment of the fee as set forth in 201 KAR 12:260. Certifications shall be transmitted digitally to the reciprocal state agency.

Section 4. Permits. (1) Any person who engages in the practice of threading, makeup artistry, or eyelash artistry shall first obtain a permit from the board by submitting a completed Permit Application and paying the fee established in 201 KAR 12:260.

(2) The applicant shall include with the Permit Application:

(a) A copy of the applicant's government-issued photo identification;

(b) A two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months;

(c) Proof of completion of a board-approved sanitation course within the (1) year period preceding the application; and

(d) Proof of completion of a board-approved[national

certification] program, if applying for an eyelash artistry permit.

Section 5. Examination Registration. (1) Applicants shall register as follows:

(a) A student of a licensed cosmetology school shall register with the board at least eight (8) months prior to graduation for the requested cosmetologist examination date;

(b) A nail technician student shall register with the board at least ~~forty-five~~[fortyfive] (45) days prior to graduation for the requested nail technician examination date; and

(c) An esthetician student shall register with the board at least four (4) months prior to graduation for the requested esthetician examination date.

(2) A completed Application for Examination or Out of State Application for Examination shall be received in the Board office no later than ten (10) business days prior to the examination date to be scheduled for either the theory test or the practical demonstration component of the exam. Each exam component shall be scheduled using a separate application and payment of the fee set forth in 201 KAR 12:260.

(3) All examination applicants shall submit a two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months.

(4) Theory examination dates shall be valid for ninety (90) days from student notification.

(5) A passing score for the theory examination, proper application, and payment of fees shall be required prior to being scheduled for the practical examination.

(6) An applicant with curriculum hours obtained in another state shall include with the Out of State Application for Examination the following:

(a) Certification of curriculum hours from the state licensing board or agency where the hours were obtained, if the state requires the reporting of curriculum hours; or

(b) Certification of the valid licensing status of the school attended from the state board or licensing authority and an official transcript certified by the school.

(7) Examination applicants shall wear a full set of solid color medical scrubs and bring all instruments and supplies as listed on the board Web site for the practical examination. White colored scrubs or other clothing is prohibited.

Section 6. Examination Components. (1) The examination shall consist of a theory test and a practical demonstration taken from the curriculum requirements specified in 201 KAR 12:082.

(2) The practical demonstration shall be performed on a:

(a) Mannequin head and hand for the cosmetology practical examination;

(b) Mannequin head for the esthetician or blow drying services practical examination; or

(c) Mannequin hand for the nail technician practical examination.

(3) The applicant shall provide a mannequin head or hand as needed for an examination.

Section 7. Grading. (1) A minimum passing grade of seventy (70) percent on the theory test and the practical demonstration shall be required for the cosmetologist, esthetician, and nail technician examinations

(2) A minimum passing grade of eighty (80) percent on the theory test and eighty-five (85) percent on the practical demonstration shall be required for all instructor examinations.

(3) All passing exam scores shall be valid for six (6) months from completion.

Section 8. Practice before Examination Prohibited. A student engaging in the practice of cosmetology, esthetic practices, or nail technology prior to the board examination shall be ineligible to take the examination for a period of one (1) year from the date of the unauthorized practice.

Section 9. License Application. (1) An applicant who passes the examination shall have ninety (90) days following the

examination to apply for a license using the License Application form and the documentation listed below:

(a) Diploma or certified testing documents proving 12th grade equivalency education;

(b) Payment of the applicable license fee required by 201 KAR 12:260;

(c) A copy of the applicant's government-issued photo identification; and

(d) A two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months.

(2) Failure to apply for a license as required by subsection (1) of this section shall require payment of the appropriate restoration and licensing fees set forth in 201 KAR 12:260 before a license may be issued.

(3) An applicant may apply for an apprentice instructor license to be used for training in an approved program after one (1) year of professional licensing. Applicants shall use the Apprentice Instructor Application and provide the documentation listed below:

(a) Diploma or certified testing documents proving 12th grade equivalency education;

(b) Payment of the applicable license fee required by 201 KAR 12:260;

(c) A copy of the applicant's government-issued photo identification; and

(d) A two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months.

Section 10. Retaking Examinations. (1) Any applicant who fails either the theory test or the practical demonstration may retake that portion of the examination upon submitting a new Application for Examination with a two (2) by two (2) inch passport photo of the applicant taken within the preceding six (6) months, and paying the examination fee required by 201 KAR 12:260.

(a) After three (3) failed attempts, the examinee shall be required to wait six (6) months before retaking either portion of the examination. If the examinee does not receive a passing score after the third attempt, then the individual shall take an eighty (80) hour supplemental course in theory studies at a school licensed by the board prior to being eligible to retaking the examination.

(b) Following the supplemental course, the examinee may attempt the examination[test] two (2) additional times. If the examinee fails both attempts the examinee shall be prohibited from taking the examination within three (3) years from the date of the final failed attempt.

(2) An applicant caught cheating or impersonating another shall not be allowed to retake the examination for a minimum of one (1) year from the date of the original examination.

(3) Any applicant who fails to report for the examination on the date specified by the board shall submit a new examination application and examination fee prior to being rescheduled for examination. The board may waive the examination fee for good cause shown. "Good cause" includes:

(a) An illness or medical condition of the applicant that prohibits the applicant from reporting for the examination; or

(b) A death, illness, or medical condition in the applicant's immediate family that prohibits the applicant from reporting for the examination.

(4) Documents and certificates submitted with an Application for Examination are valid for one (1) year following the date of submission after which time applicants shall submit updated documents and a new examination application.

Section 11. Duplicate Licenses, Renewal, and Restoration.

(1) If a license is lost, destroyed, or stolen after issuance, a duplicate license may be issued. The licensee shall submit a statement verifying the loss of the license using the Duplicate License Application that includes a copy of a government-issued photo identification, and pay the duplicate license fee listed in 201 KAR 12:260. Each duplicate license shall be marked "duplicate".

(2) The annual license renewal period is July 1 through July 31. All licenses and permits shall:

(a) Be renewed using the Renewal Application or by using the board's online portal;

(b) Include the required copy of a government-issued photo identification;

(c) Include payment of the fee set forth 201 KAR 12:260; and

(d) Include payment of any outstanding fines associated with a prior disciplinary action as described in KRS 317A.145.

(3) To restore an expired license or permit, a Restoration Application shall be submitted to the board with payment of the restoration fee for each year the license has been expired, the total of which shall not exceed \$300 per license restored, as[and license fees] set forth in 201 KAR 12:260, together with[and] the following:

(a) For an expired individual license or permit, a copy of a government-issued photo identification;

(b) For an expired salon license or limited facility permit, a new Salon Application or Limited Facility Permit Application; or

(c) For an expired school license, a new School Application.

Section 12. Salon and Facility Applications. (1) Each person, firm, or corporation applying for a license to operate a new or relocating beauty salon, nail salon, esthetic salon, or limited facility shall submit the Salon Application or Limited Facility Permit Application with required copies of state identification and driver's licenses, pay the applicable fee set forth in 201 KAR 12:260, and be inspected by the board inspector a minimum of five (5) business days prior to opening for business.

(2) A new or relocating salon or facility shall comply with all applicable city, county, state zoning, building, and plumbing laws, administrative regulations, and codes.

(3) A salon or facility may be located on the premises of a nursing home or assisted living facility if the salon or facility meets all requirements of this section.

(4) Any salon or facility located in a residence shall have a separate outside entrance for business purposes only. This subsection shall not apply to a nursing home or assisted living facility if the home or facility has obtained a salon license from the board.

(5) A salon or facility shall not open for business prior to issuance of its license or permit.

(6) Each salon shall maintain a board licensed manager properly licensed in the services the salon provides at all times.

(7) Salon and limited beauty salon licenses and facility permits shall be mailed to the Kentucky mailing address on the application.

Section 13. Change in Salon Ownership or Transfer of Interest.

(1) The owners, firm, or corporation operating a licensed salon shall submit to the board a new Salon Application, Limited Facility Permit Application, or Manager Change Form and payment of the license or change fee as set forth in 201 KAR 12:260 no later than thirty (30) business days prior to selling, transferring, or changing ownership or changing managers.

(2) No transfer of ownership interest in a salon shall take effect while the salon license to be transferred is the subject of ongoing disciplinary action pursuant to KRS 317A.145.

Section 14. School Licenses. (1) Each person, firm, or corporation applying for a license to operate a school shall submit a School Application and the applicable fee set forth in 201 KAR 12:260.

(2) The School Application shall be accompanied by:

(a) A proposed student contract listing all financial charges to enrolling students; and

(b) A proposed floor plan drawn to scale by a draftsman or architect[; and

(c) Proof of five (5) years of residency in the Commonwealth].

(3) Each school shall comply with city, county, and state zoning, building, and plumbing laws, administrative regulations and codes.

(4) Prior to license issuance and following the receipt of a completed application with all accompanying materials, the board inspector and board administrator shall conduct an inspection.

(5)(a) The inspection shall be completed within twelve (12) months of the date that the School Application and all accompanying materials are received unless the board extends the time period for good cause. "Good cause" includes:

1. An illness or medical condition of the applicant that prohibits the applicant from completing the final preparations; or

2. A death, illness, or medical condition in the applicant's immediate family that prohibits the applicant from completing the final preparations.

(b) Requests for an extension of time shall be submitted in writing to the board and include the following:

1. The reason for the extension and the term of the request; and

2. Supportive documentation of the extension request.

(6) A license to operate a school shall be valid only for the location and person, firm, or corporate owner named on the application. A school license shall not be transferable from one (1) location to another or from one (1) owner to another.

(7) The school license shall contain:

(a) The name of the proposed school; and

(b) A statement that the proposed school may operate educational programs beyond secondary education.

(8) Each licensed school shall maintain a board licensed instructor as school manager at all times.

Section 15. Change in School Ownership or Management.

(1) The owners, firm, or corporation operating a licensed school shall submit to the board a new School Application or a Manager Change Form and payment of the applicable fee set forth in 201 KAR 12:260 no later than thirty (30) business days prior to selling, transferring, or changing ownership or changing school managers.

(2) A prospective owner(s) or manager shall meet all qualifications of KRS Chapter 317A and 201 KAR Chapter 12, and obtain approval of the board prior to assuming operation of the school.

Section 16. Classification as School. Any person, establishment, firm, or corporation that accepts, directly or indirectly, compensation for teaching any subject of cosmetology as defined in KRS 317A.010 shall comply with KRS Chapter 317A and 201 KAR Chapter 12.

Section 17. Owner and Manager Student Prohibited. An owner, partner, stockholder, corporate officer, or a manager of a licensed school shall not be enrolled as a student in the school.

Section 18. Board Member Disclosure. A board member shall disclose to the board a financial interest in a salon or school when submitting an application for a salon or school license.

Section 19. Demonstration Permits. Professional services performed outside a licensed facility shall have approval of the board and display the proper permit. Permits may be obtained by completing the Demonstration Permit Application and paying the applicable fee set forth in 201 KAR 12:260.

Section 20. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Out of State Transfer Application", October 2018;

(b) "Military Transfer Application", October 2018;

(c) "Certification Request Form" October 2018;

(d) "Permit Application", January 2019;

(e) "Application for Examination", January 2019;

(f) "Out of State Application for Examination", October 2018;

(g) "License Application", June 2019;

(h) "Apprentice Instructor Application", June 2019;

(i) "Duplicate License Application", January 2019;

(j) ~~[(h)]~~ "Renewal Application", January 2019;

(k) ~~[(i)]~~ "Restoration Application", June[January] 2019;

(b)(4) "Salon Application", June 2019;
 (m) October 2018;
 (k) "Limited Facility Permit Application", June/January 2019;
 (n)(4) "Manager Change Form", October 2018;
 (o)(m) "School Application", October 2018; and
 (p)(n) "Demonstration Permit Application", October 2018.
 (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Cosmetology, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JEANETTA THORNBURY, Chair

APPROVED BY AGENCY: July 15, 2019

FILED WITH LRC: July 15, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:30 a.m. on August 21, 2019 at 111 St. James Court, STE A, 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 is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on August 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Julie Campbell, Board Administrator, 111 St. James Court, STE A, Frankfort, Kentucky 40601, phone 15025644262, email julie.campbell@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Julie Campbell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for all examinations, licenses, and permits provided by the Kentucky Board of Cosmetology (KBC).

(b) The necessity of this administrative regulation: This amendment is necessary to establish the procedures to apply for examinations, permits, and licenses issued by the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 317A.050 requires KBC to issue licenses once certain statutory requirements are met. All applicants for any license type are required to submit the appropriate application for licensure. This administrative regulation conforms to KRS 317A.050 by establishing the content and supporting documentation necessary to apply for licensure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment provides a specific process for any interested person to apply for and receive a permit or license to practice cosmetology, esthetics, shampoo and style, or nail technology in the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: This amendment expands the type of training programs that may be approved by the board for issuance of an eyelash permit, provides clarity regarding how the restoration of license fees are processed, and provides additional forms that inadvertently were not included during the previous amendment to this administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to include new forms that inadvertently were not included during the previous amendment of this administrative regulation, to expand the

training programs available for board approval so that more eye lash permits may be issued, and to provide clarity regarding the process of how restoration of license fees are processed.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides the necessary steps to apply for a license or permit as authorized by KRS 317A.050.

(d) How the amendment will assist in the effective administration of the statutes: Through one concise administrative regulation, this amendment will facilitate the public's ability to apply for and receive the necessary examination, permit, and licensing to practice or teach cosmetology, esthetics, shampoo and style, or nail technology in the Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All students with finalized exam scores, approximately 5000 at any given time, are affected by this amendment. Any person choosing to apply for an apprentice license will also be affected.

(4) Provide an analysis of how the entities identified in the previous question 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 each of the regulated entities have to take to comply with this regulation or amendment: Students applying for a cosmetology or apprentice license will not have to take additional action as a result of this amendment. These individuals were already required to submit an application pursuant to KRS 317A.050. This regulation merely states the documentation that had always been required to be submitted pursuant to the application instructions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There are no anticipated costs to the regulated entities due to this amendment.

(c) As a result of compliance, what benefits will accrue to the entities: This amendment will simplify the process for applicants receiving a first time or new license and implement a form to support the requirements of licensure in the apprentice instructor program.

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

(a) Initially: There are no additional costs involved due to this amendment.

(b) On a continuing basis: There are no additional costs involved due to this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The KBC is entirely self-funded through collecting fees for examinations, permits, and licenses. Funds necessary for the implementation and enforcement of this administrative regulation are derived from the fees collected for KBC services.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment does not create an increase in fees. Prior KBC policy required that a licensee attempting to restore an expired license pay a restoration fee equal to the renewal fee for each year the license had been expired. This amendment caps that amount at \$300 per license being restored, whereas prior policy did not provide a cap on the potential restoration fee.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment does not directly or indirectly increase fees. In fact, this amendment places a cap on a fee that under previous regulation could in theory have resulted in substantial license restoration costs.

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this amendment apply equally to all applicants, permittees, and licensees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317A.050, KRS 317A.060.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The new licenses being issued are for students already in contact with schools and programs through this agency.

(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? Licensure guidelines here are only enforcing a process for current students or licensees looking to complete licensure or enroll in an apprentice instructor program.

(c) How much will it cost to administer this program for the first year? There are no new costs involved only a formalization of the forms and accompanying documents needed for initial licensure.

(d) How much will it cost to administer this program for subsequent years? There are no additional costs involved only a formalization of the forms and accompanying documents needed for initial licensure. There is an ever changing base of students being trained in this profession and there is no way to predict that volume at this time.

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

Revenues (+/-):
Increase.

Expenditures (+/-):
Increase.

Other Explanation: At this time, it is unclear how many applicants will avail themselves of the a new license. The expected increase in revenue and expenditures associated with the new licenses contained in this amendment can not be accurately assessed at this time. The individuals seeking new licensure using the forms in this amendment are already students or licensees of the agency.

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

301 KAR 1:201. Taking of fish by traditional fishing methods.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.340, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.470

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, and to make these requirements apply to a limited area. KRS 150.470 authorizes the department to promulgate administrative regulations for creel and size limits for fish. This administrative regulation establishes fish size limits, daily creel limits, and possession limits for fishing.

Section 1. Definitions. (1) "Artificial bait" means a lure, bare hook, or fly made of wood, metal, plastic, feathers, preserved pork rind, or a similar inert material.

(2) "Catfish" means a blue catfish, channel catfish, or flathead catfish.

(3) "Chumming" means placing substances in the water for the purpose of attracting fish to a particular area.

(4)(3) "Culling" means releasing a previously caught fish that an angler has kept as a part of a daily creel limit and replacing it with another fish of the same species.

(5)(4) "Daily creel limit" means the maximum number of a particular species or group of species a person may legally take in one (1) calendar day while fishing.

(6)(5) "Lake" means impounded waters from the dam upstream to the first riffle on the main stem river and tributary streams.

(7)(6) "Possession limit" means the maximum number of unprocessed fish a person may hold after two (2) or more days of fishing.

(8)(7) "Processed fish" means a fish that has been gutted, with the head removed.

(9)(8) "Release" means to return a fish to the water from which it was taken immediately after removing the hook.

(10)(9) "Shad" means a live gizzard shad or threadfin shad.

(11)(40) "Single hook" means a hook with no more than one (1) point.

(12)(44) "Size limit" means the minimum legal length of a fish that is measured by laying the fish flat on a ruler with the mouth closed and tail lobes squeezed together.

(13)(42) "Slot limit" means a size range of a fish species that shall be released by an angler.

(14)(43) "Traditional fishing methods" means the act of taking or attempting to take for noncommercial purposes any freshwater fish species using:

(a) Hook and line in hand; or

(b) Rod in hand.

(15) "Trophy catfish" means a:

(a) Blue or flathead catfish that is a minimum of thirty-five (35) inches in length; or

(b) Channel catfish that is a minimum of twenty-eight (28) inches in length.

(16)(44) "Unprocessed fish" means the whole fish prior to being processed.

Section 2. Statewide Limits and Requirements. (1) A person taking fish from public or private waters using traditional fishing methods shall observe the daily creel limits and size limits established in paragraphs (a) through (j)(4) of this subsection, except as established in Sections 3 through 8 of this administrative regulation or pursuant to 301 KAR 1:180:

(a) Black bass daily creel limit, six (6).

1. Largemouth bass and smallmouth bass size limit, twelve (12) inches.

2. Kentucky bass and Coosa bass, no size limit;

(b) Rock bass daily creel limit, fifteen (15); no size limit;

(c) Sauger, walleye, and any hybrid thereof daily creel limit, singly or in combination, six (6); size limit, fourteen (14) inches;

(d) Muskellunge daily creel limit, one (1); size limit, thirty (30) inches;

(e) Chain pickerel daily creel limit, five (5); no size limit;

(f) White bass and hybrid striped bass daily creel limit, singly or in combination, fifteen (15); size limit, no more than five (5) fish in a daily creel limit or ten (10) fish in a possession limit shall be fifteen (15) inches or longer;

(g) Striped bass daily creel limit, five (5); size limit, fifteen (15) inches;

(h) Crappie daily creel limit, twenty (20); no size limit;

(i) Trout.

1. No culling statewide.

2. Rainbow trout daily creel limit, eight (8); no size limit.

3. Brown trout daily creel limit, one (1); size limit, sixteen (16) inches.

4. Brook trout, catch and release only.[:]

5. Cutthroat trout daily creel limit, one (1); size limit, twenty (20) inches;

(j) Redear sunfish daily creel limit, twenty (20); no size limit; [and]

(k) Paddlefish daily creel limit, two (2); no size limit; and[.]

(l) Catfish daily creel limit is unlimited; no size limit, except that only one (1) trophy catfish of each species may be harvested daily.

(2) The possession limit shall be two (2) times the daily creel limit, except as established in Section 3 of this administrative regulation.

(3) A person shall release grass carp caught from a lake owned or managed by the department.

(4) A person shall release any:

(a) Lake sturgeon; or

(b) Alligator gar.

(5) A person shall release fish:

(a) Below the minimum size limits established by this administrative regulation;

(b) Within a protected slot limit established by this administrative regulation; or

(c) Of a particular species if a person already possesses the daily creel limit for that species.

(6) A person shall not possess more than one (1) daily creel limit of processed or unprocessed fish while:

(a) Fishing;

(b) On the shoreline; or

(c) On the water.

(7) A fishing tournament organizer or representative, excluding a tournament angler, may possess more than the daily creel limit of tournament caught fish:

(a) At the weigh-in site;

(b) At the release site; or

(c) While transporting live fish from a remote weigh-in site back to the water body of origin for release.

(8) A fishing tournament organizer or representative, excluding a tournament angler, may possess more than the daily creel limit of unprocessed tournament caught fish that expired at the sites established in subsection (7) of this section for subsequent disposal by one (1) of the methods established in paragraphs (a) through (c) of this subsection:

(a) Bagged, sealed, and placed in a garbage dump;

(b) Donated to a charity for the purpose of human consumption; or

(c) Transferred to a conservation officer or another agent of the department.

(9) A person shall not remove the head or tail of any fish for which a size limit or daily creel limit exists while:

(a) Fishing;

(b) On the shoreline; or

(c) On the water.

(10) A person may possess sport fish below the size limit or beyond the possession limit if the person:

(a) Obtains the fish from a licensed fish propagator or other legal source; and

(b) Retains a receipt or other written proof that the fish were legally acquired.

(11) A person shall release all caught trout unless the person:

(a) Has a valid trout permit;

(b) Is exempted from trout permit requirements pursuant to KRS 150.170(2); or

(c) Is fishing in a licensed pay lake stocked with trout by the lake operator.

(12) A person fishing in an artificial bait-only area shall not attach any of the items established in paragraphs (a) through (h) of this subsection to the artificial bait:

(a) An insect;

(b) Minnow;

(c) Fish egg;

(d) A worm;

(e) Corn;

(f) Cheese;

(g) Cut bait; or

(h) A similar organic bait substance including dough bait and putty or paste-type bait designed to attract fish by taste or smell.

(13) The fishing season shall be open year-round.

Section 3. Exceptions. All other provisions of this administrative regulation shall apply to the bodies of water listed in this section, with the exceptions established in subsections (1) through (70) of this section. (1) Bad Branch, Letcher County. A person shall only fish with artificial bait with a single hook;

(2) Barkley Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Crappie size limit, ten (10) inches;

(3) Barren River Lake.

(a) Crappie size limit, ~~ten (10)~~^{nine (9)} inches.

(b) Largemouth and smallmouth bass size limit, fifteen (15) inches, except that a person may keep one (1) bass under fifteen (15) inches within a daily creel limit.

(c) Blue and channel catfish aggregate daily creel limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches.

(d) Barren River Lake shall extend up:

1. Barren River to the Highway 100 bridge;

2. Long Creek to the Highway 100 bridge;

3. Beaver Creek to the Highway 1297 bridge;

4. Skaggs Creek to the Mathews Mill Road bridge; and

5. Peter Creek to the Peter Creek Road bridge;

(4) Beaver Lake, Anderson County. A person shall not possess shad or use shad as bait;

(5) Beech Fork Reservoir, Powell County.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) Bluegill daily creel limit, fifteen (15);

(6) Bert Combs Lake, Clay County. A person shall not possess shad or use shad as bait;

(7) Boltz Lake, Grant County. A person shall not possess shad or use shad as bait;

(8) Briggs Lake, Logan County. A person shall not possess shad or use shad as bait;

(9) Buckhorn Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Muskellunge size limit, forty (40) inches.

(c) Crappie size limit, nine (9) inches;

(10) Carnico Lake, Nicholas County.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) Sunfish daily creel limit, fifteen (15);

(11) Carr Creek Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Crappie size limit, nine (9) inches;

(12) Carter Caves State Park Lake, Carter County.

(a) Fishing shall be during daylight hours only.

(b) Largemouth bass.

1. There shall be a slot limit between twelve (12) and fifteen (15) inches.

2. The daily creel limit shall not include more than one (1) fish greater than fifteen (15) inches.

(c) A person shall not possess shad or use shad as bait;

(13) Cave Run Lake.

(a) Largemouth bass. There shall be a slot limit between thirteen (13) and sixteen (16) inches.

(b) Smallmouth bass size limit, eighteen (18) inches.

(c) Muskellunge size limit, thirty-six (36) inches.[:]

(d) Cave Run Lake shall extend up:

1. Scott's Creek to the Highway 801 culvert;

2. Beaver Creek to the Highway 1274 culvert;

3. North Fork Creek to the confluence of Crane Creek;

4. Licking River to the Highway 772 bridge; and

5. Ramey Creek to include the pool of water north of Highway 801;

(14) Cedar Creek Lake, Lincoln County. Largemouth bass size limit, twenty (20) inches; daily creel limit, one (1);

(15) Chimney Top Creek, Wolfe County. A person shall only fish with artificial bait~~[Brown trout size limit, sixteen (16) inches; daily creel limit, one (1); Artificial bait only];~~

(16) Corinth Lake, Grant County. A person shall not possess shad or use shad as bait;

(17) Cumberland Lake.

(a) 1. Largemouth bass size limit, fifteen (15) inches.

2. Smallmouth bass size limit, eighteen (18) inches.

3. Striped bass size limit, twenty-two (22) inches; daily creel limit, two (2).

4. Crappie size limit, ten (10) inches.

(b) Cumberland Lake shall extend up:

1. The Cumberland River to Cumberland Falls;

2. The Big South Fork to Devil's Jump;

3. The Rockcastle River to The Narrows; and

4. The Laurel River to Laurel River Dam;

(18) Cumberland River from Wolf Creek Dam downstream to the Kentucky-Tennessee state line and tributaries, except Hatchery Creek in Russell County as established in subsections~~[(33) and]~~ (34) and (35) of this section.

(a) Brown trout size limit, twenty (20) inches; daily creel limit, one (1).

(b) Brook trout size limit, fifteen (15) inches; daily creel limit, one (1).

(c) Rainbow trout. There shall be a slot limit between fifteen (15) and twenty (20) inches; daily creel limit, five (5), which shall not include more than one (1) fish greater than twenty (20) inches.

(d) A trout permit shall be required in order to fish the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and all other tributaries upstream to the first riffle.

(e) Chumming shall not be permitted in the Cumberland River below Wolf Creek Dam to the Tennessee state line, including the Hatchery Creek and all other tributaries upstream to the first riffle;

(19) Cumberland River below Barkley Lake. Fishing is prohibited at the mouth of the lock chamber, as designated by signs.

(20) Dale Hollow Lake.

(a) Smallmouth bass. There shall be a slot limit between sixteen (16) and twenty-one (21) inches. The daily creel limits shall not include more than one (1) fish less than sixteen (16) inches long and one (1) fish greater than twenty-one (21) inches long.

(b) Walleye and walleye hybrids, daily creel limit, five (5); size limit, sixteen (16) inches.

(c) Sauger daily creel limit, ten (10); size limit, fourteen (14) inches.

(d) Rainbow trout and brown trout, no size limit; daily creel limit, seven (7), singly or in combination.

(e) Largemouth bass size limit, fifteen (15) inches.

(f) Black bass aggregate daily creel limit, five (5), no more than two (2) of which shall be smallmouth bass.

(g) Crappie size limit, ten (10) inches; daily creel limit, fifteen (15);

~~(21)~~[(20)] Dewey Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Blue and channel catfish aggregate creel limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches.

(c) Muskellunge size limit, thirty-six (36) inches;

~~(22)~~[(24)] Dix River for two (2) miles downstream from Herrington Lake Dam. A person shall only fish with artificial bait;

~~(23)~~[(22)] Doe Run Lake, Kenton County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish daily creel limit, four (4).

(c) A person shall not possess shad or use shad as bait;

~~(24)~~[(23)] Dog Fork, Wolfe County. A person shall only fish with an artificial bait with a single hook;

~~(25)~~[(24)] Elkhorn Creek, downstream from the confluence of

the North and South forks to the first shoal located 3,400 feet above its confluence with the Kentucky River, as posted with signs. Largemouth bass and smallmouth bass.

(a) There shall be a slot limit between twelve (12) and sixteen (16) inches.

(b) The daily creel limit shall not include more than two (2) fish greater than sixteen (16) inches;

~~(26)~~[(25)] Elmer Davis Lake, Owen County.

(a) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches.

(b) A person shall not possess shad or use shad as bait;

~~(27)~~[(26)] Fishtrap Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Crappie size limit, nine (9) inches.

(c) Blue and channel catfish aggregate daily limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches;

~~(28)~~[(27)] Floyd's Fork Creek, from Highway 60 downstream to Bardstown Road in Jefferson County. Largemouth and smallmouth bass size limit, fifteen (15) inches; daily creel limit, one (1);

~~(29)~~[(28)] Golden Pond at the Visitors' Center at Land Between the Lakes. Channel catfish daily creel limit, five (5); size limit, fifteen (15) inches;

~~(30)~~[(29)] General Butler State Park Lake, Carroll County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish daily creel limit, four (4).

(c) A person shall not possess shad or use shad as bait;

~~(31)~~[(30)] Grayson Lake. Largemouth bass and smallmouth bass size limit, fifteen (15) inches;

~~(32)~~[(34)] Greenbo Lake, Greenup County.

(a) A person shall not possess shad or use shad as bait.

(b) Bluegill and sunfish daily creel limit, fifteen (15) fish;

~~(33)~~[(32)] Green River Lake.

(a) Crappie size limit, nine (9) inches.

(b) Muskellunge size limit, thirty-six (36) inches.;

(c) Green River Lake shall extend up:

1. Green River to the Snake Creek Boat Ramp;

2. Robinson Creek to the Highway 76 Bridge; and

3. Casey Creek to the Arnolds Landing Boat Ramp;

~~(34)~~[(33)] Hatchery Creek, upper section as established by signs, Russell County. Rainbow trout, brown trout, and brook trout, no size limit; daily creel limit, five (5), singly or in combination;

~~(35)~~[(34)] Hatchery Creek, lower section as established by signs, Russell County. A person fishing for trout shall:

(a) Only use artificial bait; and

(b) Release all trout;

~~(36)~~[(35)] Jericho Lake, Henry County.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) A person shall not possess shad or use shad as bait;

~~(37)~~[(36)] Kentucky Lake and the canal connecting Kentucky and Barkley lakes.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Crappie size limit, ten (10) inches;~~[(37) Kentucky River WMA, Boone Tract, Benjy Kinman Lake. Catfish daily creel limit, four (4);]~~

(38) Kentucky River WMA, Boone Tract, excluding Benjy Kinman Lake.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, one (1).

~~(b)~~[(Crappie daily creel limit, fifteen (15).]

~~(c)~~[(Sunfish daily creel limit, fifteen (15).]

~~(c)~~[(d)] Catfish daily creel limit, four (4);

(39) Lake Blythe, Christian County. Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;

(40) Lake Chumley, and the department-owned property surrounding the lake, Boyle and Lincoln counties. Closed to public access from one-half (1/2) hour after sunset through one-half (1/2) hour before sunrise;

(41) Lake Malone, Muhlenberg and Logan counties. Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;

(42) Lake Mingo, Jessamine County. A person shall not possess shad or use shad as bait;

(43) Lake Reba, Madison County. A person shall not possess shad or use shad as bait;

(44) Lake Shelby, Shelby County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish daily creel limit, four (4).

(c) A person shall not possess shad or use shad as bait;

(45) Laurel River Lake.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) Smallmouth bass size limit, eighteen (18) inches; daily creel limit, two (2).

(c) Crappie size limit, nine (9) inches; daily creel limit, fifteen (15);

(46) Lebanon City Lake (Fagan Branch), Marion County. Largemouth bass and smallmouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;

(47) Lincoln Homestead Lake, Washington County.

(a) A person shall not fish except during daylight hours.

(b) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(c) Channel catfish daily creel limit, four (4).

(d) A person shall not possess shad or use shad as bait;

(48) Marion County Lake.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) A person shall not possess shad or use shad as bait;

(49) McNeely Lake, Jefferson County. A person shall not possess shad or use shad as bait;

(50) Mill Creek Lake, Powell County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(b) A person shall not possess shad or use shad as bait;

(51) New Haven Optimist Lake, Nelson County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish daily creel limit, four (4).

(c) A person shall not possess shad or use shad as bait;

(52) Nolin River Lake shall extend up Bacon Creek to Highway 178 and to Wheelers Mill Road Bridge on the Nolin River.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches, except that the daily creel limit may contain one (1) bass under fifteen (15) inches.

(b) Crappie size limit, nine (9) inches;

(53) Ohio River.

(a) White bass, striped bass, and any hybrid thereof, daily creel limit, thirty (30); no more than four (4) in the daily creel limit shall be fifteen (15) inches or greater.

(b) The blue catfish daily creel limit shall be unlimited, except that no more than one (1) fish in the daily creel limit shall be thirty-five (35) inches or longer.

(c) The channel catfish daily creel limit shall be unlimited, except that no more than one (1) fish in the daily creel limit shall be twenty-eight (28) inches or longer.

(d) The flathead catfish daily creel limit shall be unlimited, except that no more than one (1) fish in the daily creel limit shall be thirty-five (35) inches or longer;

(54) Otter Creek, Meade County.

(a) Smallmouth and largemouth bass. There shall be a slot limit between twelve (12) and sixteen (16) inches.

(b) Daily limit shall not include more than one (1) smallmouth or largemouth bass over sixteen (16) inches;

(55) Paint Creek, between upper Highway 460 Bridge and Highway 40 Bridge, Johnson County. Trout size limit, sixteen (16) inches; daily creel limit, one (1); artificial bait only;

(56) Paintsville Lake. Smallmouth bass size limit, eighteen (18) inches;

(57) Parched Corn Creek, Wolfe County. A person shall only fish with an artificial bait with a single hook;

(58) Pikeville City Lake, Pike County. A person shall release largemouth bass;

(59) Poor Fork and its tributaries in Letcher County downstream to the first crossing of Highway 932. A person shall only fish with an artificial bait with a single hook;

(60) Rockcastle River WMA, all ponds collectively, Pulaski County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, one (1).

(b) Bluegill and sunfish daily creel limit, ten (10).

(c) Catfish daily creel limit, four (4).

(d) Crappie daily creel limit, fifteen (15);

(61) Rough River Lake.

(a) Crappie size limit, nine (9) inches.

(b) Largemouth bass and smallmouth bass size limit, fifteen (15) inches, except that the daily creel limit may contain one (1) bass under fifteen (15) inches.];

(c) Rough River Lake shall extend up Rough River to the Highway 84 Bridge;

(62) Shanty Hollow Lake, Warren County.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) A person shall not possess shad or use shad as bait;

(63) Shillalah Creek, Bell County, outside the Cumberland Gap National Park. A person shall only fish with an artificial bait with a single hook;

(64) Spurlington Lake, Taylor County. A person shall not possess shad or use shad as bait;

(65) Sympson Lake, Nelson County. Largemouth bass size limit, fifteen (15) inches;

(66) Taylorsville Lake, including the impounded waters of the lake to Dry Dock Road Bridge on the Salt River.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Blue and channel catfish:

1. Aggregate daily creel limit of fifteen (15); and

2. Only one (1) fish of either species in the aggregate daily creel limit shall be longer than twenty-five (25) inches.

(c) Crappie size limit, ten (10) inches; daily creel limit, fifteen (15);

(67) Trammel Creek, Allen County. [~~(a) Brown trout size limit, sixteen (16) inches; daily creel limit, one (1).~~

~~(b)]~~ Rainbow trout daily limit, five (5);

(68) Willisburg Park Pond, Washington County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, one (1).

(b) Catfish daily creel limit, four (4).

(c) Sunfish daily creel limit, fifteen (15);

(69) Wood Creek Lake. Largemouth and smallmouth bass size limit, fifteen (15) inches; and

(70) Yatesville Lake. Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

Section 4. Creel and Size Limits for Waters Containing Rockcastle Strain Walleye. (1) Rockcastle Strain Walleye Waters.

(a) Barren River and tributaries upstream from Lock and Dam 1, including Barren River Lake;

(b) Cumberland River and tributaries above Cumberland Falls;

(c) Kentucky River and tributaries upstream from Lock and Dam 14;

(d) Middle Fork Kentucky River and tributaries;

(e) North Fork Kentucky River and tributaries, including Carr Fork below Carr Creek Lake;

(f) South Fork Kentucky River and tributaries;

(g) Levisa Fork River and tributaries upstream from Fishtrap Lake, including Fishtrap Lake;

(h) Martins Fork Lake; and

(i) Wood Creek Lake.

(2) There shall be a slot limit between eighteen (18) and twenty-six (26) inches and a daily creel limit of two (2) for walleye in the waters established in subsection (1) of this section.

Section 5. Seasonal Catch and Release for Trout. (1) There shall be a catch and release trout season from October 1 through March 31 for the bodies of water established in subsection (3) of this section.

(2) A person shall:

- (a) Only use artificial bait; and
- (b) Release all trout.

(3) The streams established in paragraphs (a) through (n) of this subsection shall be open for the catch and release trout season:

- (a) Bark Camp Creek in Whitley County;
 - (b) Beaver Creek from Highway 90 Bridge upstream to Highway 200 Bridge in Wayne County;
 - (c) Big Bone Creek within Big Bone Lick State Park in Boone County;
 - (d) Cane Creek in Laurel County;
 - (e) Casey Creek in Trigg County;
 - (f) Clear Creek from mouth upstream to 190 Bridge in Bell County;
 - (g) East Fork of Indian Creek in Menifee County;
 - (h) Elk Spring Creek in Wayne County;
 - (i) Floyd's Fork Creek in Jefferson County from Highway 60 downstream to Bardstown Road;
 - (j) Gunpowder Creek in Boone County;
 - (k) Left Fork of Beaver Creek in Floyd County from Highway 122 Bridge upstream to the headwater; ~~[(k) Middle Fork of Red River in Natural Bridge State Park in Powell County;]~~
 - (l) Otter Creek in Meade County on the Fort Knox Reservation and Otter Creek Park;
 - (m) Rock Creek from the Bell Farm Bridge to the Tennessee state line in McCreary County; and
 - (n) Trammel Creek in Allen County.
- (4) There shall be a seasonal catch and release trout season for Swift Camp Creek in Wolf County from October 1 through May 31.

Section 6. Special Limits for Fishing Events. (1) The commissioner may establish special limits for fishing events including:

- (a) Size limits for selected species;
- (b) Daily creel limits for selected species;
- (c) Eligible participants; and
- (d) Dates and times of special limits.

(2) An event sponsor shall post signs informing anglers of any special limits for a minimum of twenty-four (24) hours before the event.

Section 7. Creel and Size Limits for Special Lakes and Ponds. (1) The requirements established in paragraphs (a) through (e) of this subsection shall apply to all bodies of water established in the Special Lakes and Ponds list:

- (a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, one (1);
- (b) Catfish daily creel limit, four (4);
- (c) Sunfish or bream daily creel limit, fifteen (15);
- (d) Rainbow trout daily creel limit, five (5); and
- (e) A person shall not possess shad or use shad as bait.

Section 8. Special Catfish Size Limit Lakes. All lakes established in the Special Catfish Size Limit Lakes list shall have a twelve (12) inch size limit on catfish.

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

(a) "Special Catfish Size Limit Lakes", 2019[2048] edition; and

(b) "Special Lakes and Ponds", 2019[2048] edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RICH STORM, Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY: July 10, 2019

FILED WITH LRC: July 12, 2019 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 26, 2019 at 11:00 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through August 31, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jessica Tyler, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, Email: fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jessica Tyler

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes size limits, daily creel limits, and possession limits for sport fish that may be taken from Kentucky waters.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to properly manage the sport fish populations of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the Department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, and to make these requirements apply to a limited area. KRS 150.470 authorizes the department to establish creel and size limits for fish.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by limiting the number and size of fish that may be taken from Kentucky's waters. This will ensure that Kentucky's valuable sport fish populations are maintained at high levels.

(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 put a limit on the number of trophy catfish anglers may keep daily and in possession, add definitions of "catfish" and "trophy catfish", add one seasonal catch and release stream and remove another, remove special regulations for catfish and crappie on several lakes at Kentucky River WMA, change the crappie size limit at Barren River Lake to 10 inches, add a new creel and size limit for cutthroat trout which are now being stocked in the Cumberland tailwater, add two new "special catfish size limit lakes" and amend details on three others, add upper lake boundaries to three large reservoirs, put restrictions on fishing in the area of a new bio-acoustical fish fence (BAFF) being used to prevent Asian carp movement into Barkley and Kentucky lakes, clean up brown trout regulation wording for Chimney Top and Trammel Creek which is already listed in statewide regulations, and change the name of Bob Noble Park Lake to Lake Montgomery in the "special lakes and ponds" list.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to adjust size and creel limits on several fish species in waterbodies across the state in

order to provide a better number and size of fish available to anglers, and to protect trophy catfish from excessive harvest. In addition, refinements were made to seasonal catch and release streams, "special catfish regulation lakes", and reservoir upper boundaries to make better use of these fisheries and to make it simpler to regulate these waterbodies. Restriction to fishing around the bio-acoustical fish fence is necessary to prevent damage to the unit while it is in operation. Finally, a couple of clean-ups to wording in the regulation were made.

(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 anglers fishing at the water bodies and for the species identified in 2(a) above will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Anglers will need to comply with the regulation changes identified in 2(a).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost incurred by the anglers identified.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anglers who fish at the water bodies and for the species identified in 2(a) above will benefit in the long run from a higher quality sport fishery and improved angling opportunities.

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

(a) Initially: There will be no initial cost to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It will not be necessary to increase a fee or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals fishing in Kentucky must abide by the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources' Divisions of Fisheries and Law Enforcement will be impacted by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the Department to promulgate administrative regulations to regulate bag, creel, and possession limits of game and fish. KRS 150.470 authorizes the department to promulgate creel and size limits for fish.

(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? It is unknown if this administrative regulation could indirectly increase any fishing license sales 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? There will be no direct revenue generated in subsequent years, and it is unknown if fishing license sales will be indirectly increased because of this amendment.

(c) How much will it cost to administer this program for the first year? There will be no initial cost to implement this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

301 KAR 1:410. Taking of fish by nontraditional fishing methods.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.235, 150.445, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.440, 150.470, 235.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make those requirements apply to a limited area. KRS 150.440 requires the department to promulgate administrative regulations for establishing open seasons and creel limits for rough fish by gigging, grabbing, snaring, and snagging. KRS 150.470 requires the department to promulgate administrative regulations for bag or creel limits for fish. KRS 235.280 requires the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of the state. This administrative regulation establishes the procedures for taking sport and rough fish by nontraditional fishing methods.

Section 1. Definitions. (1) "Angler" means a person holding a valid resident or nonresident fishing license and includes those persons who are fishing license exempt as established in[pursuant to] KRS 150.170.

(2) "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.

(3) "Asian carp" means bighead carp, silver carp, black carp, and grass carp.

(4) "Bow fishing" means shooting rough fish with an arrow with a barbed or retractable style point that has a line attached to it for retrieval with archery equipment, a crossbow, or a pneumatic arrow launching device.

(5) "Catfish" means a blue catfish, channel catfish, or flathead catfish.

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

(7) [(6)] "Cull" means to release a previously caught fish that an angler has kept as a part of a daily creel limit and replace it with another fish of the same species.

(8) [(7)] "Pneumatic arrow launching device" means a device

designed to fire an arrow through the use of a compressed air cartridge.

~~(9) [(8)]~~ "Possession limit" means the maximum number of unprocessed fish a person may hold after two (2) or more days of fishing.

~~(10) [(9)]~~ "Temporary aquatic area" means an area temporarily inundated from, but still connected to, a stream, river, or reservoir and that persists only for the duration of the elevated water levels.

~~(11) [(10)]~~ "Temporary pool" means an area temporarily inundated from, but not connected to, a stream, river, or reservoir.

~~(12) "Trophy catfish" means a:~~

~~(a) Blue or flathead catfish that is a minimum of thirty-five (35) inches in length; or~~

~~(b) Channel catfish that is a minimum of twenty-eight (28) inches in length.~~

Section 2. General Provisions. (1) The daily creel limit for catfish using any non-traditional fishing method shall not include more than one (1) trophy catfish of each species, except as established in Section 7 (3) of this administrative regulation.

(2) The possession limit for paddlefish and trophy catfish shall be two (2) times the daily creel limit for each species.

~~(3) [(2)]~~ A person shall release any:

(a) Lake sturgeon; or

(b) Alligator gar.

Section 3. Skin Diving, Scuba Diving, and Underwater Spear Fishing. (1) Skin diving or scuba diving shall be prohibited in all lakes owned by the department, except as established in subsections (2), (3), and (4) of this section.

(2) Skin diving and scuba diving shall be allowed in salvage operations if the diver receives prior written permission from:

(a) The department's Division of Law Enforcement; or

(b) The local conservation officer who is assigned to the particular department-owned lake.

(3) Skin diving or scuba diving shall be permitted anytime without prior authorization in cases of emergency involving the possibility of saving human life or in the recovery of a drowning victim.

(4) Skin diving and scuba diving shall be allowed in Greenbo Lake:

(a) In a designated cove marked with signage and buoys;

(b) From April 1 through October 31; and

(c) From 10:00 a.m. to 6:00 p.m. daily.

(5) A person who is skin diving or scuba diving in a designated cove as established in [pursuant to] subsection (4) of this section shall display an international diving flag as established in [pursuant to] 301 KAR 6:030.

(6) Recreational boating and angling shall be prohibited in the designated cove marked with signage and buoys during the times open to skin diving and scuba diving as established in subsection (4) of this section if an international diving flag is present in the cove.

(7) Underwater spearing of fish with a hand held spear or mechanically-propelled spear shall be legal throughout the year in lakes 1,000 surface acres in size or larger, as measured at the normal summer pool level as established in paragraphs (a) and (b) of this subsection.

(a) ~~An angler~~ [A participant] who is spearing fish shall:

1. Be completely submerged in the water where spearing takes place; and

2. ~~Possess a valid Kentucky fishing license or be license exempt pursuant to KRS 150.170; and~~

3. Only spear rough fish.

(b) The daily limit shall be fifteen (15) rough fish, no more than five (5) of which shall be catfish.

Section 4. Sport Fishing Trotlines, Jugging, and Setlines. (1) Each sport fishing trotline, jug line, or setline shall be permanently labeled or tagged with the customer identification number found on the current sport fishing license of the person

using it.

(2) Each trotline, jug line, or setline shall be checked by the owner at least once every twenty-four (24) hours, at which time the owner shall:

(a) Bait all hooks; and

(b) Remove all caught fish.

(3) A trotline, setline, or jug line shall be confiscated if it is not:

(a) Properly labeled or tagged; or

(b) Checked or baited at least once every twenty-four (24) hours.

(4) An angler shall not use more than:

(a) Two (2) sport fishing trotlines;

(b) Twenty-five (25) setlines; or

(c) Fifty (50) jug lines.

(5) Multiple anglers in one (1) boat shall not use more than fifty (50) jug lines per boat.

(6) ~~An angler~~ [A person] using a sport fishing trotline shall:

(a) Set the trotline at least three (3) feet below the water's surface;

(b) Not have more than fifty (50) single or multi-barbed hooks; and

(c) Have all hooks at least eighteen (18) inches apart on the trotline.

(7) A person shall not use a jug line or setline with more than one (1) single or multi-barbed hook.

(8) A sport fishing trotline, jug line, or setline shall not be used in the waters established in paragraphs (a) through (d) of this subsection:

(a) In the Tennessee River within 700 yards of Kentucky Dam;

(b) In the Cumberland River below Barkley Dam to the Highway 62 bridge;

(c) In any lake less than 500 surface acres owned or managed by the department, except:

1. Ballard Wildlife Management Area lakes, Ballard County;

2. Peal Wildlife Management Area lakes, Ballard County; and

3. Swan Lake Wildlife Management Area lakes, Ballard County; or

(d) In the areas of the Ohio River established in subparagraphs 1. through 8. of this paragraph:

1. Smithland Dam downstream to a line perpendicular to the end of the outer lock wall;

2. J. T. Meyers Dam downstream to a line perpendicular to the end of the outer lock wall and that portion of the split channel around the southern part of Wabash Island from the fixed weir dam to the first dike;

3. Newburgh Dam downstream to a line perpendicular to the end of the outer lock wall;

4. Cannelton Dam downstream to a line perpendicular to the end of the outer lock wall;

5. McAlpine Dam downstream to the K & I railroad bridge;

6. Markland Dam downstream to a line perpendicular to the end of the outer lock wall;

7. Meldahl Dam downstream to a line perpendicular to the end of the outer lock wall; or

8. Greenup Dam downstream to a line perpendicular to the end of the outer lock wall.

(9) An angler using a trotline, jug line, or setline shall follow all sport fish daily creel limits and size limits as established in [pursuant to] 301 KAR 1:201.

Section 5. Temporary Aquatic Areas and Temporary Pools.

(1) The department, with consent of the landowner, may delineate temporary aquatic areas and temporary pools where anglers may take rough fish ~~[may be taken]~~ by any method except:

(a) Poison;

(b) Electrical devices;

(c) Firearms; or

(d) Explosives.

(2) The department shall be authorized to establish the exact dates and times when rough fish may be taken in temporary

aquatic areas and temporary pools.

(3) ~~A person shall be required to possess a valid Kentucky fishing license or be license exempt pursuant to KRS 150.170.~~

(4) A person with a valid commercial fishing license may use nets and seines if the nets and seines are appropriately tagged, as established in 301 KAR 1:146.

(4) ~~(5)~~ A person shall first obtain the permission of the landowner before taking rough fish from a temporary pool.

Section 6. Gigging and Snagging. (1) Gigging and snagging season shall be February 1 through May 10, except as established in subsections (7) and (9) of this section.

(2) A person shall not:

(a) Gig or snag a sport fish, as established in 301 KAR 1:060, except as established in subsections (7) and (9) of this section;

(b) Gig or snag from a platform;

(c) Gig from a boat in any ~~a~~ lake ~~with a surface area of~~ less than 500 surface acres;

(d) Gig at night from a boat; or

(e) Snag from a boat.

(3) A snagging rod shall be equipped with:

(a) Line;

(b) Guides;

(c) A reel; and

(d) One (1) single hook or treble hook attached to the line, except that five (5) hooks, either single or treble, may be used while snagging in:

1. The Green River and its tributaries; or

2. The Rolling Fork River and its tributaries.

(4) A person who accidentally gigs or snags a sport fish shall immediately return the fish to the water, except as established in subsections (7) and (9) of this section.

(5) A person shall not gig or snag in the areas or bodies of water established in paragraphs (a) through (f) of this subsection:

(a) The Cumberland River below Wolf Creek Dam downstream to the Tennessee line, including Hatchery Creek;

(b) Any tributary of the Cumberland River below Wolf Creek Dam to the Tennessee line from the junction of the tributary with the Cumberland River to one-half (1/2) mile upstream;

(c) The Middle Fork of the Kentucky River, from Buckhorn Lake Dam downstream to the Breathitt County line in Perry County;

(d) The Rough River, below Rough River Lake Dam downstream to the State Highway 54 bridge in Breckinridge and Grayson Counties;

(e) Cave Run Lake; or

(f) Within 200 yards of any dam on a river or stream, except as established in subsection (7) of this section.

(6) A person shall not gig in the Tennessee River below Kentucky Lake Dam.

(7) A person may snag sport fish or rough fish in the Tennessee River below the Kentucky Lake Dam to the U.S. 62 bridge:

(a) For twenty-four (24) hours a day from January 1 through May 31; and

(b) From sunset to sunrise from June 1 through December 31.

(8) A person shall not snag in that section of the Tennessee River from the U.S. 62 bridge to the Interstate 24 bridge.

(9) A person may snag sport fish or rough fish year-round in the section of the Tennessee River from the Interstate 24 bridge to the Ohio River.

(10) A person shall not snag on the Tennessee River:

(a) Under the U.S. 62 bridge;

(b) Under the P & L Railroad bridge; or

(c) From the fishing piers located below the U.S. 62 bridge.

(11) There shall not be a daily creel limit for rough fish except:

(a) The daily creel limit for rough fish in the Cumberland River below Barkley Lake Dam shall be eight (8), except there shall not be a creel limit on Asian Carp;

(b) The daily aggregate creel limit for snagging of rough and sport fish in the Tennessee River below Kentucky Lake Dam

shall be eight (8), except there shall not be a creel limit on Asian Carp; and

(c) 1. The statewide daily creel limit for snagging paddlefish shall be two (2), in all areas outside those established in paragraphs (a) and (b) of this subsection; and

2. In an area established in paragraph (a) or (b) of this subsection, up to eight (8) paddlefish may be taken.

(12) A person shall immediately retain, and not release or cull, any gigged or snagged paddlefish.

(13) All snagged fish in the Tennessee River below Kentucky Lake Dam shall be immediately retained, and not released or culled, except for Asian carp, shad, or herring.

(14) All gigged or snagged rough fish in the Cumberland River below Barkley Lake Dam shall be immediately retained, and not released or culled, except for Asian carp, shad, or herring.

(15) A person shall immediately cease snagging if:

(a) A daily creel limit of paddlefish is reached; ~~or~~

(b) A daily creel limit of sport fish has been caught in the Tennessee River below Kentucky Lake Dam, even if the creel limit for that sport fish is less than eight (8); ~~or~~ or

(c) A trophy catfish is snagged.

Section 7. Grabbing. (1) The grabbing season for rough fish shall be June 1 to August 31 during daylight hours.

(2) Grabbing shall be permitted in all waters.

(3) The daily creel limit for grabbing shall be fifteen (15) fish, no more than five (5) of which may be catfish, except anglers grabbing at Barren River Lake, Dewey Lake, Fishtrap Lake, or Taylorsville Lake, may only harvest one (1) blue or channel catfish over twenty-five (25) inches.

Section 8. Bow Fishing. (1) An angler using archery equipment, a crossbow, or a pneumatic arrow launching device shall not take:

(a) Sport fish;

(b) Alligator gar;

(c) More than five (5) catfish daily;

(d) More than two (2) paddlefish daily; or

(e) Lake sturgeon.

(2) Any paddlefish or catfish shot with archery equipment, a crossbow, or a pneumatic arrow launching device shall:

(a) Be immediately retained, and not released or culled; and

(b) Count toward a person's daily limit.

(3) Bow fishing shall be open statewide, except:

(a) In the Cumberland River below Wolf Creek Dam downstream to the Tennessee line including Hatchery Creek;

(b) In any tributary of the Cumberland River below Wolf Creek Dam to the Tennessee line, from the junction of the tributary with the Cumberland River to one-half (1/2) mile upstream; or

(c) From a boat in restricted areas below navigation, power generating, or flood control dams.

RICH STORM, Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY: July 10, 2019

FILED WITH LRC: July 12, 2019 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 26, 2019 at 10:00 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation

through August 31, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jessica Tyler, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, Email: fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jessica Tyler

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for taking sport and rough fish by nontraditional fishing methods.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage the fish populations of Kentucky and to provide for reasonable recreational fishing opportunities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make those requirements apply to a limited area. KRS 150.440 requires the department to promulgate administrative regulations for establishing open seasons and creel limits for rough fish by gigging, grabbing, snaring, and snagging. KRS 150.470 requires the department to promulgate administrative regulations for bag or creel limits for fish. KRS 235.280 requires the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of the state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statutes by authorizing the methods used to take fish, the areas open for such take, and the seasons and limits to be used when taking fish by nontraditional methods.

(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 limit the number of trophy catfish in an anglers daily creel limit to one fish per species when using nontraditional fishing methods. It will also create a possession limit of two times the daily limit for trophy catfish. In addition, this amendment will define the terms "catfish" and "trophy catfish" and requires that a person immediately cease snagging if a trophy catfish is snagged.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide better protection of trophy catfish statewide.

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See 1(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all anglers using nontraditional fishing methods.

(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: Anglers using non-traditional fishing methods will be required to follow the new regulations listed in (2)(a).

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

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): Trophy catfish will be better protected statewide, allowing for enhanced fishing opportunities, especially for large fish, in the future.

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

(a) Initially: There will be no initial cost to the department to implement this administrative regulation.

(b) On a continuing basis: There will be no cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees were established for this program either directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering is not applied because all anglers using nontraditional fishing methods must abide by 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's Fisheries and Law Enforcement Divisions will be impacted by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1), 150.440, 150.470, and 235.280.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional costs incurred for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional 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 (+/-):

Expenditures (+/-):

Other Explanation:

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

301 KAR 2:185. Hunter education.

RELATES TO: KRS 150.010, 150.015, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.170

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of

VOLUME 46, NUMBER 2– AUGUST 1, 2019

fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make these requirements apply to a limited area. KRS 150.170 authorizes exemptions for certain people from hunting license and permit requirements. This administrative regulation establishes the requirements for hunter education.

Section 1. Definitions. (1) "Adult" means a person who is at least eighteen (18) years old.

(2) "Hunter education card" means ~~a [card or similar] document that verifies a person has successfully completed a:~~

(a) Kentucky hunter education course; or
(b) Hunter education course from another state, province, or country that meets the standards established by the International Hunter Education Association.

(3) "Hunter education exemption certificate" means a certificate issued by the department that allows a person who is required to obtain a hunter education card to hunt for a period of one (1) year from the date obtained.

Section 2. Hunter Education Card. (1) All persons shall carry a valid hunter education card while hunting in Kentucky, unless a person:

(a) Was born prior to January 1, 1975;

(b) Is exempt pursuant to Section 3 of this administrative regulation;

(c) Is license-exempt pursuant to KRS 150.170, subsections 1-3 or 5-7; or

(d) Is license-exempt pursuant to KRS 150.170, subsection 4 and was born prior to January 1, 2002[Unless exempt pursuant to Section 3 of this administrative regulation, or license-exempt pursuant to KRS 150.170, a person born on or after January 1, 1975 shall carry a valid hunter education card while hunting in Kentucky].

(2) A person who is less than twelve (12) years old hunting without a hunter education card shall be accompanied by an adult who is in position to take immediate control of the weapon and who:

(a) Has a valid hunter education card; or
(b) Is exempt from hunter education requirements.

(3) An adult shall not accompany more than two (2) hunters under twelve (12) years old at any one (1) time.

Section 3. Hunter Education Exemptions. (1) A person who is required to have a hunter education card may obtain a hunter education exemption certificate from the department.

(2) A person hunting with a valid hunter education exemption certificate shall:

(a) Carry the certificate while hunting; and

(b) Be accompanied by an adult who is in position to take immediate control of the weapon and who:

1. Is carrying a valid hunter education card; or

2. Is exempt pursuant to Section 2 of this administrative regulation[Was born before January 1, 1975].

(3) The department shall not issue more than one (1) hunter education exemption certificate to any individual.

Section 4. Hunter Education Course Requirements. (1) In order to obtain a Kentucky hunter education card, a person shall:

(a) Complete a hunter education course by:

1. Attending an entire department-sanctioned hunter education course; or

2. Obtaining and possessing a certificate of completion or its equivalent for course work meeting the standards of the International Hunter Education Association from:

a. An online hunter education course; or

b. A CD-ROM course or its equivalent; ~~and~~[-]

(b) Correctly answer at least eighty (80) percent of the questions on a department-sanctioned exam; ~~and~~

~~(c) Safely participate in department-sanctioned live fire exercises].~~

(2) A person shall be at least nine (9) years old in order to take the department-sanctioned exam.

RICH STORM, Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY: July 5, 2019

FILED WITH LRC: July 12, 2019 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 26, 2019 at 9:00 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through August 31, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jessica Tyler, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, Email: fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jessica Tyler

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes hunter requirements for Kentucky hunters.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish minimum standards for responsible and safe hunting.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make these requirements apply to a limited area. KRS 150.170 authorizes exemptions for certain people from hunting license and permit requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation will assist in the effective administration of the statutes by providing minimum standards for hunter education, thus placing additional safety requirements relating to methods of take.

(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 make it a requirement that all hunters in Kentucky, born on or after January 1st 2002, subject to limited exception, pass a hunter education course before hunting. Further, the amendment will allow students to receive their Hunter Education Certification without having to complete an "in-person" course or live fire exercise.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to maximize the proportion of hunters in the field who are trained in Hunter Education and to help ensure that every hunter is safe. Allowing the Hunter Education Certification to be achieved via an online learning course provides constituents with an additional opportunity to complete the Hunter Education requirement while still maintaining safety standards. The addition of an online only option allows the department to reach constituents that may have limited time and resources to travel to a range day or in-person course. By eliminating barriers to completing the Hunter Education requirement, the department is working to ensure that all hunters in the field have completed the Hunter Education

requirement.

(c) How the amendment conforms to the authorizing statutes: See 1(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See 1 (d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: There are approximately 320,000 Kentucky hunting license holders and 15,000 individuals who take hunter education instruction each year that will be affected by this administrative regulation. Additionally, if we follow the same pattern made by other states, this will likely affect those that have been illegally hunting without certification. This will also affect license exempt hunters, pursuant to KRS 150.170(4), born on or after January 1, 2002. We have not tracked how many license exempt hunters we have in the state.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Prospective hunters will be provided additional flexibility in obtaining hunter education certification by adding an online option to the existing certification options. License exempt hunters, pursuant to KRS 150.170(4), born on or after January 1, 2002 will now be required to have hunter education in order to hunt. This will be more convenient than before with the addition of an online only option.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Prospective hunters will be provided additional flexibility in obtaining hunter education certification by adding an online option to the existing certification options.

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

(a) Initially: There will be no additional cost to the agency to administer this regulation.

(b) On a continuing basis: There will be no additional cost to the agency to administer this regulation on a continuing basis.

(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation? The source of the 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 fees or funding to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied. The same hunter education requirements apply to all hunters in Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department's Information and Education Division and Law Enforcement Division 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) authorizes the department to promulgate administrative regulations to establish seasons for

the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make these requirements apply to a limited area. KRS 150.170 authorizes exemptions for certain people from hunting license and permit requirements.

(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 multiple factors that determine potential revenue for the department. If prospective hunters take the free online course, the department will be able to use each course taken as federal "match". This match will be determined by the market value of the course. That value has not been established yet, but will likely be \$16.25. If Kentucky follows the pattern set by other states, the department could generate more than \$200,000 per year in federal grant money.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? See 3(a) above.

(c) How much will it cost to administer this program for the first year? There will be no cost to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Department of Agriculture Office of Consumer and Environmental Protection (Amendment)

302 KAR 75:130. Packaging and labeling.

RELATES TO: KRS 363.510, 363.720, 363.730

STATUTORY AUTHORITY: KRS 363.590

NECESSITY, FUNCTION, AND CONFORMITY: KRS 363.590 requires that administrative regulations be filed and used in the enforcement of the weights and measures law relating to packaging and labeling of commodities. This administrative regulation enforces KRS 363.720 and 363.730 and requires accurate information on packages as to the identity and quantity of contents so that purchasers can make price and quantity comparisons.

Section 1. All packaging and labeling of commodities shall comply with requirements of the National Institute of Standards and Technology Handbook 130, Chapter IV-A, Uniform Packaging and Labeling Regulation, with the exception of Sections 13, 14, and 15.

Section 2. Incorporation by Reference. (1) Uniform Laws and Regulations in Chapter IV-A, of the National Institute of Standards and Technology Handbook 130 (2019)[(2002)], Uniform Laws and Regulations in the areas of legal metrology and engine fuel quality[~~As Adopted by the 86th National Conference on Weights and Measures, 2004~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

VOLUME 46, NUMBER 2– AUGUST 1, 2019

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: June 13, 2019

FILED WITH LRC: June 19, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2019 at 1:00 p.m., at the Kentucky Department of Agriculture, 109 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 prior to the end of the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. 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 administration creates the technical requirements for packaging and labeling in the Commonwealth by creating the handbook standard that will be applicable.

(b) The necessity of this administrative regulation: This regulation is necessary so that members of the public and regulated entities know which handbook edition is being used.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 363 authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations for weights and measures in the Commonwealth. This filing establishes the edition of the national handbook that will be used in the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists by providing the clear communication of the proper handbook edition to be used.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the handbook edition from 2002.

(b) The necessity of the amendment to this administrative regulation: This regulation is necessary because the prior handbook edition has been updated.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 363 authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations for weights and measures in the Commonwealth. This filing establishes the edition of the national handbook that will be used in the Commonwealth by updating the edition version dates.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists by providing the clear communication of the handbook edition to be used.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 60,000 businesses annually, 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: Regulated entities would need to follow

the 2019 edition of the handbook.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Hypothetically, nothing as businesses should already be compliant.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communication of the handbook editions used.

(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: State funds.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 363

(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 anticipated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is anticipated.

(c) How much will it cost to administer this program for the first year? Approximately \$115,000

(d) How much will it cost to administer this program for subsequent years? No changes to current costs will occur, so the KDA estimates \$115,000 going forward.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Department of Agriculture Office of Consumer and Environmental Protection (Amendment)

302 KAR 76:100. Method of sale.

RELATES TO: KRS 363.510, 363.710(1), 363.770, 363.780, 363.800

STATUTORY AUTHORITY: KRS 363.590, 363.710(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 363.710(2) authorizes the Director of the Division of Regulation and Inspection to promulgate administrative regulations that are necessary to assure that amounts of commodity sold are

determined in accordance with good commercial practice and are represented accurately and informatively. This administrative regulation requires accurate and adequate information about commodities to allow purchasers to make price and quantity comparisons.

Section 1. All method of sale procedures shall comply with requirements of the National Institute of Standards and Technology Handbook 130, Chapter IV-B, Uniform Regulations for the Method of Sale of Commodities, with the exception of Sections 4 and 5.

Section 2. Incorporation by Reference. (1) Uniform Regulations for the Method of Sale of Commodities in Chapter IV-B, of the National Institute of Standards and Technology Handbook 130 (2019)[(2002)], Uniform Laws and Regulations in the areas of legal metrology and engine fuel quality[, As Adopted by the 86th National Conference on Weights and Measures, 2004], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Department of Agriculture Web site, www.kyagr.com.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: June 13, 2019

FILED WITH LRC: June 19, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2019 at 1:00 p.m., at the Kentucky Department of Agriculture, 109 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 prior to the end of the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. 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 administration creates the technical requirements for method of sale in the Commonwealth by creating the handbook standard that will be applicable.

(b) The necessity of this administrative regulation: This regulation is necessary so that members of the public and regulated entities know which handbook edition is being used.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 363 authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations for weights and measures in the Commonwealth. This filing establishes the edition of the national handbook that will be used in the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists by providing the clear communication of the proper handbook edition to be used.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the handbook edition from 2002.

(b) The necessity of the amendment to this administrative regulation: This regulation is necessary because the prior handbook edition has been updated.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 363 authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations for weights and measures in the Commonwealth. This filing establishes the edition of the national handbook that will be used in the Commonwealth by updating the edition version dates.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists by providing the clear communication of the handbook edition to be used.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 60,000 businesses annually, 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: Regulated entities would need to follow the 2019 edition of the handbook.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Hypothetically, nothing as businesses should already be compliant.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communication of the handbook editions used.

(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: State funds.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 363

(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 anticipated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent

years? No revenue is anticipated.

(c) How much will it cost to administer this program for the first year? Approximately \$115,000

(d) How much will it cost to administer this program for subsequent years? No changes to current costs will occur, so the KDA estimates \$115,000 going forward.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET
Department of Agriculture
Office of Consumer and Environmental Protection
(Amendment)**

302 KAR 80:010. Examination procedure for price verification.

RELATES TO: KRS 363.510

STATUTORY AUTHORITY: KRS 363.590(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 363.590(1) authorizes the Director of the Division of Regulation and Inspection to promulgate administrative regulations establishing standards of net weight, measure, or count. This administrative regulation establishes a procedure to verify pricing practices to ensure that consumers are charged a correct price for items they purchase. This administrative regulation establishes procedures through the use of randomized and stratified sampling procedures used in routine inspections to ensure that consumers are charged the correct price for items they purchase.

Section 1. All scanners shall comply with requirements of National Institute of Standards and Technology Handbook 130, Examination Procedure for Price Verification.

Section 2. Any retail establishment not meeting a ninety-eight (98) percent compliance rate of errors not in favor of the customer shall be assessed an administrative penalty of not less than \$100 and not more than \$500 per inspection.

Section 3[2]. Incorporation by Reference. (1) Examination Procedure for Price Verification of the National Institute of Standards and Technology Handbook 130 ~~(2019)~~~~[(2002)]~~, Uniform Laws and Regulations in the areas of legal metrology and engine fuel quality~~], as adopted by the 86th National Conference on Weights and Measures, 2001,~~ is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: June 13, 2019

FILED WITH LRC: June 19, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2019 at 1:00 p.m., at the Kentucky Department of Agriculture, 109 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 prior to the end of the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative

regulation. Written comments shall be accepted through August 31, 2019. 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 administration creates the procedure for price verification in the Commonwealth by creating the handbook standard that will be applicable.

(b) The necessity of this administrative regulation: This regulation is necessary so that members of the public and regulated entities know which handbook edition is being used.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 363 authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations for weights and measures in the Commonwealth. This filing establishes the edition of the national handbook that will be used in the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists by providing the clear communication of the proper handbook edition to be used.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the handbook edition from 2002 to 2019. This filing also creates a penalty for compliance rates under 98 percent.

(b) The necessity of the amendment to this administrative regulation: This regulation is necessary because the prior handbook edition has been updated. Also, no penalty has existed for noncompliance.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 363 authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations for weights and measures in the Commonwealth. This filing establishes the edition of the national handbook that will be used in the Commonwealth by updating the edition, and creates a minimum compliance threshold.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists by providing the clear communication of the handbook edition and compliance rate.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 60,000 businesses annually, 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: Regulated entities would need to be at least 98 percent compliance and follow the 2019 edition of the handbook.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Hypothetically, nothing as businesses should already be compliant.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communication of the handbook edition and the compliance minimums.

(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: State funds.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fees are associated with this amendment.
- (8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established.
- (9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 363

(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 anticipated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is anticipated.

(c) How much will it cost to administer this program for the first year? Approximately \$115,000

(d) How much will it cost to administer this program for subsequent years? No changes to current costs will occur, so the KDA estimates \$115,000 going forward.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET

Department of Agriculture

Office of Consumer and Environmental Protection (Amendment)

302 KAR 81:010. Technical requirements for commercial weighing and measuring devices.

RELATES TO: KRS 363.410, 363.510, 363.610

STATUTORY AUTHORITY: KRS 363.590

NECESSITY, FUNCTION, AND CONFORMITY: KRS 363.590(2) requires the Director of the Division of Regulation and Inspection to promulgate administrative regulations establishing technical requirements for commercial weighing and measuring devices. This administrative regulation establishes technical requirements for commercial weighing and measuring devices and applies to any type of device and equipment covered in National Institute of Standards and Technology Handbook 44[for which evaluation procedures have been published in National Conference on Weights and Measures, Publication 14, "National Type Evaluation Program, Technical Policy, Checklists and Test Procedures"].

Section 1. Definitions. (1) "Active Certificate of Conformance" means a document issued based on testing by a participating laboratory, which the certificate owner maintains in active status under the National Type Evaluation Program. The document shall constitute evidence of conformance of a type with the requirements of this document and the NIST Handbooks 44, 105-1, 105-2, or 105-3.

(2) "Commercial equipment" means:

(a) Weighing and measuring equipment commercially used or employed in establishing the size, quantity, extent, area, or measurement of quantities, things, produce, or articles for distribution or consumption, purchased, offered, or submitted for sale, hire, or award, or in computing any basic charge or payment for services rendered on the basis of weight or measure; and

(b) Any accessory attached to or used in connection with a commercial weighing or measuring device if the accessory is so designed that its operation affects the accuracy of the device.

(3) "Device" means any weighing and measuring device.

(4) "Director" is defined by KRS 363.510(6).

(5) "Manufactured device" means any commercial weighing or measuring device shipped as new from the original equipment manufacturer.

(6) "National Type Evaluation Program" or "NTEP" means a program of cooperation between the National Conference on Weights and Measures, the National Institute of Standards and Technology, other federal agencies, the states, and the private sector for determining, on a uniform basis, conformance of a type with the relevant provisions of National Institute of Standards and Technology Handbook 44[, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," and National Conference on Weights and Measures, Publication 14, "National Type Evaluation Program, Technical Policy, Checklists, and Test Procedures"].

(7) "NIST" means National Institute of Standards and Technology.

(8) "One-of-a-kind device" means one (1) non-NTEP device per manufacturer which is designed to meet unique demands for a specific installation and of a specific design which is not commercially available elsewhere.

(9) "Participating laboratory" means any state measurement laboratory, state weights and measures agency, or other laboratory that has been authorized to conduct a type evaluation under the National Type Evaluation Program.

(10) "Person" means both singular and plural, as the case demands, and includes individuals, partnerships, corporations, companies, societies, and associations.

(11) "Remanufactured device" means a device that is disassembled, checked for wear, parts replaced or fixed, reassembled and made to operate like a new device of the same type.

(12) "Remanufactured element" means an element that is disassembled, checked for wear, parts replaced or fixed, reassembled and made to operate like a new element of the same type.

(13) "Repaired device" means a device on which work is performed that brings the device back into proper operating condition.

(14) "Repaired element" means an element on which work is performed that brings the element back into proper operating condition.

(15) "Type" means a model or models of a particular device, measurement system, instrument, or element that positively identifies the design. A specific type may vary in its measurement ranges, size, performance, and operating characteristics as specified in the Certificate of Conformance.

(16) "Type evaluation" means the testing, examination, and evaluation of a type by a participating laboratory under the National Type Evaluation Program.

Section 2. Certificate of Conformance. A device shall be traceable to an active certificate of conformance prior to its installation or use for commercial purposes. By maintaining the

certificate in active status, the certificate owner declares the intent to continue to manufacture or remanufacture the device consistent with the type and in conformance with the applicable requirements. For manufacturers of grain moisture meters, maintenance of active status also shall involve annual participation in the NTEP Laboratory Ongoing Calibration Program (OCP) Phase II. A device shall be traceable to an active Certificate of Conformance if it was manufactured during the period that the certificate was maintained in active status.

Section 3. Prohibited Acts and Exemptions. (1) Except for a device exempted by this section, a person shall not sell a device unless it is traceable to an active Certificate of Conformance.

(2) Except for a device exempted by this section, a person shall not use a device unless it is traceable to an active Certificate of Conformance.

(3) A device in service in this state prior to July 1, 2003, that meet the specifications, tolerances, and other technical requirements of National Institute of Standards and Technology Handbook 44 shall not be required to be traceable to an active Certificate of Conformance.

(4) A device in service in this state prior to July 1, 2003, removed from service by the owner or on which the department has issued a removal order after July 1, 2003, and returned to service at a later date shall be modified to meet all specifications, tolerance, and other technical requirements of National Institute of Standards and Technology Handbook 44 effective on the date of the return to service. The modified device shall not be required to be traceable to an active Certificate of Conformance.

(5) A device in service in this state prior to July 1, 2003, which is repaired after July 1, 2003, shall meet the specifications, tolerances, and other technical requirements of National Institute of Standards and Technology Handbook 44 and shall not be required to be traceable to active Certificate of Conformance.

(6) A device in service in this state prior to July 1, 2003, that is still in use may be installed at another location in this state if the device meets requirements in effect as of the date of installation in the new location; except, the device shall not be required to be traceable to an active Certificate of Conformance.

(7) A device in service in another state prior to July 1, 2003, may be installed in this state; except, the device shall meet the specifications, tolerances, and technical requirements for weighing and measuring devices in National Institute of Standards and Technology Handbook 44 and shall be traceable to an active Certificate of Conformance.

(8) One-of-a-kind device.

(a) If a device manufactured for sale by a company has been categorized and tested as a "one-of-a-kind" device and the manufacturer then decides to manufacture an additional device or devices of that same type, the device shall not be considered any longer a "one-of-a-kind". This also shall apply to a device that has been determined to be a "one-of-a-kind" device by a weights and measures jurisdiction in one (1) state and the manufacturer decides to manufacture and install another device of that same type in another state. If this occurs, the manufacturer of the device shall request an NTEP evaluation on the device through the normal application process unless NTEP has already deemed that the evaluation will not be conducted.

(b) The director may accept the design of a one-of-a-kind device without an NTEP evaluation pending inspection and performance testing to determine whether the device complies with Handbook 44 and is capable of performing within the Handbook 44 requirements for a reasonable period of time under normal conditions of use. Indicators and load cells in "one-of-a-kind" scale installations shall have an active NTEP Certificate of Conformance as evidence that the system meets the influence factors requirements of Handbook 44.

(9) Repaired device. If a person repairs or remanufactures a device, they shall be obligated to repair or remanufacture it consistent with the manufacturer's original design; except, that specific device shall not be traceable any longer to an active Certificate of Conformance.

(10) Remanufactured device. If a person repairs or

remanufactures a device, they shall be obligated to repair or remanufacture it consistent with the manufacturer's original design; except, that specific device shall not be traceable any longer to an active Certificate of Conformance.

(11) Copy of a device. The manufacturer who copies the design of a device that is traceable to an active Certificate of Conformance, but which is made by another company, shall obtain a separate Certificate of Conformance for the device. The Certificate of Conformance for the original device shall not apply to the copy.

(12) Device components. If a person buys a load cell(s) and an indicating element that are traceable to Certificates of Conformance then manufactures a device from the parts, that person shall obtain an active Certificate of Conformance for the device.

Section 4. Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "National Institute of Standards and Technology Handbook 44 (2019)[(2002)]";

[(b) "National Conference on Weights and Measures, Publication 44";]

(b)[(c)] "National Institute of Standards and Technology Handbook 105-1 (2019)[(1999)]";

(c)[(d)] "National Institute of Standards and Technology Handbook 105-2 (2019)[(1996)]"; and

(d)[(e)] "National Institute of Standards and Technology Handbook 105-3 (2019)[(1997)]".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: June 13, 2019

FILED WITH LRC: June 19, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2019 at 1:00 p.m., at the Kentucky Department of Agriculture, 109 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 prior to the end of the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. 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 administration creates the technical requirements for commercial weighing and measuring devices in the Commonwealth by creating the handbook standards that will be applicable.

(b) The necessity of this administrative regulation: This regulation is necessary so that members of the public and regulated entities know which handbook editions are being used.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 363 authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations for weights and measures in the

Commonwealth. This filing establishes the edition of the national handbooks that will be used in the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists by providing the clear communication of the proper handbook editions to be used.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the handbook edition from 2002, 1990, 1996 and 1997 to 2019.

(b) The necessity of the amendment to this administrative regulation: This regulation is necessary because the prior handbook editions have been updated.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 363 authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations for weights and measures in the Commonwealth. This filing establishes the editions of the national handbooks that will be used in the Commonwealth by updating the edition version dates.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists by providing the clear communication of the handbook editions to be used.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 10,000 businesses annually, 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: Regulated entities would need to follow the 2019 edition of the handbooks.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Hypothetically, nothing as businesses should already be compliant.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communication of the handbook editions used.

(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: State funds.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 363

(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 anticipated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is anticipated.

(c) How much will it cost to administer this program for the first year? The cost to the KDA to run this program is approximately \$1,500,000.

(d) How much will it cost to administer this program for subsequent years? No changes to current costs will occur. The KDA anticipates approximately \$1,500,000 going forward, annually.

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 of Water (Amendment)

401 KAR 6:001. Definitions for 401 KAR Chapter 6.

RELATES TO: KRS 223.400 through 223.460~~[223.400-223.460]~~, 223.991~~[, EO-2008-507, 2008-531]~~

STATUTORY AUTHORITY: KRS 223.420(1)(e), 223.435, 224.10-100, 224.70-100, 224.70-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.420 requires the cabinet to promulgate administrative regulations to carry out the purposes of KRS 223.405 through 223.460. KRS 223.435 requires the cabinet to promulgate administrative regulations establishing standards of practice for water well construction.~~[EO-2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet.]~~ This administrative regulation is necessary to define terms used by the cabinet in 401 KAR Chapter 6.

Section 1. Definitions. (1) "Abandon" means to seal or plug a well or borehole to prevent entry of surface water or contaminants and to prevent mixing of water from different water-bearing formations.

(2) "Annular space" means the opening between a well-bore or excavation and the well casing or between an outer casing pipe and an inner casing pipe or liner pipe.

(3) "Aquifer" means a water-bearing formation that transmits water in sufficient quantity to supply a well.

(4) "Base flood elevation" means the elevation of surface water resulting from a flood that has a one (1) percent chance of equaling or exceeding that level in any given year.

(5) "Bedrock" means a consolidated rock exposed at the surface of the earth or overlain by unconsolidated materials or soils.

~~(6) [(5)]~~ "Bentonite" means a clay in the montmorillonite series with a predominance of sodium as its major cation, having the property of expanding several times its original volume if saturated, and used to seal or plug wells, well annuluses, and well bores.

~~(7) [(6)]~~ "Board" is defined by KRS 223.400(2).

~~(8) [(7)]~~ "Bridging" means the deliberate or accidental closing or plugging of a section of a drill hole or annulus, beneath which is an open borehole or unfilled annulus.

(9) "Certified well driller" means a person who has met all

requirements of 401 KAR 6:320 and to whom the cabinet has issued a well driller certificate.

(10) "Certified well driller assistant" means a person who has met all requirements of 401 KAR 6:320 and to whom the cabinet has issued a well driller assistant certificate.

(11)(8) "Confining layers[~~zones~~]" and "confining formation" means a ~~zone[body]~~ of sufficiently low permeability[~~impermeable material~~] as to impede the vertical migration of groundwater.

(12)(9) "Consolidated formation" means a geological rock formation that ~~has grains that are bonded together[is bedrock]~~.

(13)(40) "Construction" means all acts necessary for obtaining groundwater by wells, including drilling or excavation of the well and installation or modification of casing, but excluding the installation of permanent pumps and pumping equipment.

(14)(41) "Direct supervision" means that a certified water well driller shall oversee and manage the work of the water well driller's assistant, including providing specific instruction regarding the construction, modification, alteration, repair, and abandonment of a water well, but the certified water well driller shall not be required to provide in-person supervision at the drilling site.

(15) "Driller" means "water well driller" as defined by KRS 223.400(8).

(16)(42) "Drilling derived waste" or "DDW" means soils, drill cuttings, drilling fluids, product-contaminated water, and decontamination rinseate.

(17)(43) "Finished ground surface" means the final or permanent elevation of the ground surface at the site of the well or abandoned borehole.

(18)(44) "Grout-pipe method" means that grout is placed[emplaced] into the borehole or annulus from bottom to top via gravity flow or by pumping through a pipe or funnel-like apparatus[with a funnel or hopper-like top].

(19)(45) "High solids sodium bentonite" means bentonite containing a minimum of thirty (30) percent solids.

(20)(46) "Impervious" means a material that will not permit the passage of water at a rate greater than 1×10^{-7} centimeters per second (cm/sec).

(21)(47) "Modification" means a change, replacement, or alteration of the water well.

(22)(48) "Monitoring well" means a well constructed when[if] the actual or intended use in whole or part is the removal of water for sampling, measuring, treating, or[~~test~~] pumping for scientific, engineering, or regulatory purposes.

(23)(49) "Perched" means a region in the unsaturated zone separated from an underlying aquifer where the materials are locally saturated because they overlie a confining layer.

(24) "Person" shall be defined by KRS 223.400(5) ["Natural person" means an individual person distinguished from a person as defined in KRS 224.01-040(17)].

(25)(20) "Pit" means a hole, shaft, or cavity in the ground.

(26)(24) "Pitless well adapter" means a device designed for attachment to one (1) or more openings through a well casing.

(27)(22) "Pitless well unit" means an assembly that extends from the upper end of the well casing to above the finished ground surface.

(28)(23) "Perched" means a region in the unsaturated zone separated from an underlying aquifer where the materials are locally saturated because they overlie a low permeability unit.]

(29)(24) "Potable water" means water that meets the provisions of 401 KAR Chapter 8, the quality of which is approved by the cabinet for human consumption.

(30)(25) "Sealing materials" means neat cement, cement-bentonite grout, or bentonite.[~~Drill cuttings are not sealing materials.~~]

(31) "Special flood zone" means an area that is subject to a one (1) percent or greater chance of flooding in any given year.

(32) "Special well types" means a well that is:

(a) Bored;

(b) Driven;

(c) Irrigation; or

(d) Radial collector.

(33)(26) "Static water level" means the level at which water

stands in a well when water is not being taken from the aquifer either by pumping or by free flow.

(34)(27) "Unconsolidated formation" means a loose-grained, non-lithified geological formation such as soil, sand, or gravel.

(35)(28) "Undesirable geologic formation" means a geologic formation with physical characteristics or water quality not conducive to the construction and use of a well.

(36)(29) "Undesirable groundwater" means groundwater not suitable for human or animal consumption, irrigation, manufacturing process water, or cooling.

(37)(30) "Water supply well" means "water well" or "well" as defined by KRS 223.400(7).

(38) "Water well driller's assistant" shall be defined by KRS 223.400.

(39)(31) "Water supply well" means "water well" or "well" as defined by KRS 223.400(7).

(32) "Well unsuitable for its intended use" means a well:

(a) The use of which has been permanently discontinued;

(b) That is in such a state of disrepair that it cannot be used to supply groundwater;

(c) That presents a health or safety hazard;

(d) From which usable groundwater is not obtainable; or

(e) With boreholes that:

1. Are dry;

2. Have caved in; or

3. Are unsuitable for further development and well construction.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 9, 2019

FILED WITH LRC: July 11, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, August 22, 2019 at 6:00 p.m. Eastern Standard Time at the Department for Environmental Protection, Training Room B, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. 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: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email: water@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for terms used in 401 KAR Chapter 6.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define terms used in 401 KAR Chapter 6.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.420 requires the cabinet to promulgate regulations to carry out the purposes of KRS 223.405 through 223.460. KRS 223.435 requires the cabinet to promulgate administrative regulations establishing standards of practice for water well construction.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides definitions for terms used throughout 401 KAR Chapter 6 for proper interpretation and enforcement.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies statutory authority, clarifies the terms "abandon", "aquifer", "confining layers", "consolidated formation", "finished ground surface", "grout-pipe method", "monitoring well", "person", and "unconsolidated formation", and adds definitions for "base flood elevation", "certified well driller", "certified well driller's assistant", "direct supervision", "special flood zone", "special well types", "water well driller's assistant".

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary for clarification of terms used in 401 KAR Chapter 6 required by Senate Bill 32 of the 2019 legislative session which amended KRS 223.400 through 223.460.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.420 requires the cabinet to promulgate regulations to carry out the purposes of KRS 223.405 through 223.460. KRS 223.435 requires the cabinet to promulgate administrative regulations establishing standards of practice for water well construction.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies ten (10) definitions, and adds three (3) definitions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 1000 water well owners per year, approximately 200 certified water well drillers and potentially 400 well driller assistants, and as many as 300 drilling/consulting companies. This administrative regulation also affects the Kentucky Division of Water, Kentucky Water Well Certification Board, and the Kentucky Ground Water Association.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation establishes definitions only. No further actions will be needed to comply.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation establishes definitions only. No additional costs will be incurred to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Affected entities will have clear definitions for understanding the terms used throughout 401 KAR Chapter 6.

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

(a) Initially: This administrative regulation will not result in additional costs.

(b) On a continuing basis: This administrative regulation will not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation establishes definitions only. No changes in funding are 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: This administrative regulation establishes definitions only. No changes

in fees or funding will be necessary.

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

(9) TIERING: Is tiering applied? Tiering is not applied because definitions do not require tiering.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Kentucky Division of Water and any division of state or local government that may employ a certified water well driller and well driller's assistant.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.420 requires the cabinet to promulgate regulations to carry out the purposes of KRS 223.405 through 223.460. KRS 223.435 requires the cabinet to promulgate administrative regulations establishing standards of practice for water well construction.

(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 establishes definitions only and will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation establishes definitions only and will not generate revenue.

(c) How much will it cost to administer this program for the first year? This administrative regulation establishes definitions only and will not result in additional costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation establishes definitions only and will not result in additional costs.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: This administrative regulation establishes definitions only and will not result in additional revenue or costs.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate regarding well construction.

2. State compliance standards. KRS 223.420(1)(e), 223.435, 224.10-100, 224.70-100, 224.70-110

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate regarding well construction.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? There is no federal mandate regarding well construction.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate regarding well construction.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amendment)

401 KAR 6:310 Water supply well construction practices and standards.

RELATES TO: KRS 223.400 through 223.460[223.400-223.460], 223.991, 224.1-010, 224.1-400[224.01-010, 224.01-400, EO 2008-507, 2008-531]

STATUTORY AUTHORITY: KRS[151-140,] 223.420(1)(e), 223.435, 224.10-100, 224.70-100, 224.70-110

NECESSITY, FUNCTION AND CONFORMITY: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.435 requires the cabinet to promulgate administrative regulations establishing standards of practice for water well construction.[EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet.] This administrative regulation provides minimum standards and requirements for construction, modification, and abandonment of water supply wells.

Section 1. General Requirements. (1)[Certified water supply well driller requirement.] Each water supply well subject to this administrative regulation shall be constructed, modified, or abandoned only by a certified water supply well driller or certified well driller assistant as established in[natural persons certified to drill water supply wells in accordance with] KRS 223.425 and 401 KAR 6:320.

(2) A water supply well driller's assistant shall work under the direct supervision, as defined by 401 KAR 6:001(14), of a certified water supply well driller.

(3) Well specifications shall:

(a) Be provided by the certified well driller to the well driller's assistant, as required under direct supervision defined by 401 KAR 6:001(14), for the work to be conducted including:

1. Construction;
2. Alteration;
3. Maintenance;
4. Repair;
5. Reworking;
6. Development;
7. Abandonment; or
8. Plugging; and

(b) Shall be recorded on the Uniform Kentucky Well Construction Record which shall be:

1. Retained by the water supply well driller's assistant; and
2. Available for inspection upon request by the cabinet.

(c) Changes made to water supply well specifications during any work being conducted on a water supply well shall be:

1. Approved in advance by a certified waters supply well driller;
2. Recorded on an amended Uniform Kentucky Well Construction Record;

3. Retained by the water supply well driller's assistant; and
4. Available for inspection upon request by the cabinet.

(4)[Construction and well performance requirement.] Permanent and temporary water supply wells shall be constructed, modified, and abandoned in[such] a manner that prevents[as to prevent] the introduction or migration of contamination to a water-bearing zone or aquifer through the casing, drill hole, or annular materials.

(5)[(3) Reporting requirement.] Within sixty (60) days after a water supply well has been completed, modified, or abandoned, the certified water supply well driller shall submit[a report of well construction, modification, or abandonment] to the cabinet[using] the Uniform Kentucky Well Construction Record or the Uniform Kentucky Well Maintenance and Plugging Record, as appropriate. The report shall include:

- (a) All information about the depth and the materials used in

the water supply well construction, modification, or abandonment; and[shall also be recorded.]

(b) ~~The[certified water supply well driller shall complete the bacteriological section on the Uniform Kentucky Well Construction Record to report the] results of the bacteriological[coliform] sampling as established[required] in Section 9(6) of this administrative regulation.[The certified driller shall retain the results of the bacteriological sample analysis.]~~

(6)[(4)] Records to water supply well owner. Within sixty (60) days after the water supply well has been completed or modified, the certified water well driller shall provide[the following material] to the well owner a copy of the:

(a) ~~[A copy of the] Uniform Kentucky Well Construction Record or the Uniform Kentucky Well Maintenance and Plugging Record submitted to the cabinet[, as appropriate];~~

(b) ~~[A copy of the] Results of bacteriological sample analysis collected in accordance with Section 9(6) of this administrative regulation;~~

(c) Water Well Owner's Guide; and

(d) ~~[A copy of] Analytical results if additional water quality analysis is conducted.~~

(7)[(5)] ~~The certified well driller shall tag] Each well constructed or modified shall be tagged with a well identification number tag provided by the cabinet.~~

(a) An existing well identification number shall be included on the Uniform Kentucky Well Maintenance and Plugging Record for any well being modified or abandoned.

(b) If a well identification number does not exist at the time of modification or abandonment, the well shall be tagged[certified driller shall tag the well, as appropriate,] and[include] the well identification number assigned shall be recorded on the Uniform Kentucky Well Maintenance and Plugging Record.

(8)[(6)] Variances. If conditions exist or are believed to exist that preclude compliance with the requirements established in[of] this administrative regulation, the certified water supply well driller may request a variance prior to well construction, modification, or abandonment. The variance request shall be submitted to the cabinet on the Kentucky Water Well Variance Request form.

(a) The variance request shall include[the following]:

1. A thorough description of the land use at the site and adjacent properties;

2. The distance between the proposed well location and existing water supply wells and monitoring wells on adjacent properties;

3. The distance between the proposed well location and potential pollution sources, both on site and on adjacent properties, including septic systems, sewers, and petroleum and chemical storage tanks;

4. A description of the geologic conditions at the site, including soil thickness, type of bedrock, perched water, confining zones, and the depth to groundwater;

5. A summary of the provisions, including the section numbers of this administrative regulation, for which the variance is requested;

6. A justification for the variance; and

7. a. The proposed well construction procedures to be used in lieu of compliance with this administrative regulation; and

b. An explanation of[as to] how the alternate well construction procedures ensure the protection of the quality of the groundwater and the protection of public health and safety.

(b) Written variance procedure.

1. The certified water supply well driller shall request a variance by submitting to the cabinet a Water Well Variance Request form signed by the certified water supply well driller and water supply well owner, and shall obtain written cabinet approval before well construction begins.[1. The driller shall submit the Kentucky Water Well Variance Request form, signed by the certified driller and well owner, and obtain written cabinet approval before well construction begins.]

2. The cabinet shall notify the applicant in writing within ten (10) days of its decision to either grant or deny the variance.

3. The cabinet shall not issue a variance if the proposed

VOLUME 46, NUMBER 2– AUGUST 1, 2019

water supply well construction will not ensure the protection of groundwater quality and public health and safety.

(c) Verbal variance for an emergency.

1. A certified water supply well driller may request a verbal variance for an emergency if the delay incurred due to the written variance procedure in paragraph (b) of this subsection may result in:

- a. Loss of access to potable water for the intended user;
- b. Failure to address an existing or impending environmental emergency in accordance with KRS 224.1-400[224.01-400]; or
- c. A risk to public health or safety.

2. The cabinet shall not issue a variance for an emergency if the proposed water supply well construction will not ensure the protection of groundwater quality and public health and safety.

3. Within fifteen (15) days of the date the cabinet approves the verbal variance for an emergency, the certified water well driller shall submit to the cabinet a Kentucky Water Well Variance Request form[;] signed by the certified water supply well driller and water supply well owner[; to the cabinet].

(d) The variance approval shall list the conditions of the variance, including the:

- 1.[The] Approved alternate well construction procedures;
- 2.[The] Well sampling requirements; and
- 3.[The] Requirement to notify surrounding property and well owners of the variance, if applicable.

(e) Within sixty (60) days of completing the well, the certified water supply well driller shall submit to the cabinet a copy of the Kentucky Water Well Variance Request form[;] signed by the certified water supply well driller and the water supply well owner[; to the cabinet within sixty (60) days after the well is completed].

(f) 1. After a variance is issued regarding the location of a well with respect to various pollution sources as established in Section 5(1) of this administrative regulation,[~~the certified well driller for which a variance has been issued shall collect~~] water samples from the well shall be collected and[have these samples] analyzed for the parameters[as] specified in

~~the [Kentucky Water Well Variance Request] variance approval[letter] issued by the cabinet.~~

2. The certified water well driller shall submit a copy of the analytical results on the Water Well Bacterial Report and Chain of Custody form to the well owner and the cabinet within ten (10) days of the receipt of the analytical results from the laboratory.

Section 2. Construction Materials and Requirements. (1) All materials[~~to be~~] used for the construction, modification, or abandonment of water supply wells shall be approved for use in water wells by ~~the [one (1) or more of the following]:~~

- (a) National Sanitation Foundation (N.S.F.)(NSF);
- (b) American Society for Testing and Materials (A.S.T.M.)(ASTM); or
- (c) American Petroleum Institute.

(2) Permanent well casing and liners.

(a) Well casing and liners shall be able to withstand the physical forces acting upon them during and following their installation and during their use including forces:[~~This includes forces~~]

1. Due to suspension in the borehole, grouting, development, purging, pumping, or sampling[;] and

2.[forces] Exerted on the well casing and liners by the surrounding geologic materials.

(b) Steel or PVC well casing and liners shall have a minimum inside diameter of four (4) inches, except for driven point wells and jetted wells as established[~~which are addressed~~] in Section 8(3) of this administrative regulation.

(c)[~~The certified well driller shall install~~] Well casing and liners shall be installed in accordance with manufacturer specifications.

(d)[~~The certified well driller shall not install~~] Used, damaged, or contaminated well casing or liner pipe shall not be installed.

(e) Steel well casing and liners.

1. Steel well casing and liners shall meet or exceed the minimum standards established[~~provided~~] in Table A of this administrative regulation.

Table A: Casing and Liner Pipe Weights and Dimensions

Size (inches)	External Diameter (inches)	Thickness (inches)	Weight (pounds per foot) per foot)
4	4.500	0.188	8.66
5	5.563	0.188	10.79
6	6.625	0.188	12.92
8	8.625	0.277	24.70
10	10.750	0.307	34.24
12	12.750	0.330	43.77
14	14.000	0.375	54.57
16	16.000	0.375	62.58
18	18.000	0.375	70.59
20	20.000	0.375	78.60

2. Joints and couplings shall be welded or threaded.

3. Joints shall be watertight.

(f) PVC well casing and liners.

1. PVC well casing and liners shall:
a. Meet[~~or exceed~~] the minimum standards established[~~provided~~] in Table B of this administrative regulation;

Table B: PVC Casing and Liner Pipe Specifications

Size (inches)	SDR	External Diameter(inches)	Minimum Wall (inches)
4	26	4.500	0.173
5	26	5.563	0.214
6	26	6.625	0.255
8	26	8.625	0.332
10	26	10.750	0.413

12	26	12.750	0.490
14	26	14.000	0.539
16	26	16.000	0.616

b. ~~[Have minimum Standard Dimension Ratio (SDR) 26;~~

e. ~~Have a minimum Impact Classification of IC-1; and~~

c. ~~[d.] At a minimum, meet; or exceed]~~

(i) ~~A.S.T.M.[American Society for Testing and Materials (ASTM)] Specification D1784-11[D1784-07] or F480-14[F480-066] found in A.S.T.M.[American Society for Testing and Materials (A.S.T.M.)] Specification D1784-11[D1784-07], Standard Specification for Rigid Poly (Vinyl Chloride) (PVC) Compounds and Chlorinated Poly(Vinyl Chloride) (CPVC) Compounds and A.S.T.M.[American Society for Testing and Materials (A.S.T.M.)] Specification F480-14[F480-06b], Standard Specification for Thermoplastic Well Casing Pipe and Couplings Made in Standard Dimension Ratios (SDR), SCH 40 and SCH 80;~~

(ii) ~~N.S.F.[e. Meet or exceed the National Sanitation Foundation (NSF)] Standard 14-2018[14] for potable water applications found in N.S.F.[National Sanitation Foundation (N.S.F.)] Standard 14-2018[14], Plastics Piping System Components and Related Materials; and~~

(iii) ~~N.S.F.[f. Meet or exceed the NSF Standard 61 found in National Sanitation Foundation (N.S.F.)] Standard 61-2018, Drinking Water System Components – Health Effects[61, Drinking Water System Components Health Effects].~~

2. Joints and couplings shall be welded, cemented, or threaded.

3. Joints shall be watertight.

4. PVC casing shall not be driven or pushed by force of the rig, either by direct hydraulic force or by hammer.

(3)(a) Temporary outer casing. Temporary outer casing used during well construction shall be sufficiently strong to permit installation without distorting or rupturing, and shall be removed upon well completion.

(b) ~~If [the driller determines that] temporary outer casing is to be used as permanent outer casing, the temporary outer casing shall be grouted in place.~~

(4) Well screens.

(a) 1. Well screens shall be capable of withstanding the stress to which the pipe will be subjected and the corrosiveness of the water with which it comes in contact.

2. Used, damaged, or contaminated well screens shall not be installed.

(b) Steel or PVC well screens with a minimum inside diameter of four (4) inches shall be installed, except for bored, driven, or jetted wells.

(c) Well screens shall be:

1. Installed in accordance with the manufacturer's specifications; ~~and~~ [.]

2. ~~[Wells screens shall be] Centered in the borehole.~~

(d) ~~[(e)] Steel screens. Joints and couplings shall be welded or threaded.~~

(e) ~~[(f)] PVC screens shall:~~

1. Have minimum Standard Dimension Ratio (SDR) 26;

2. Have a minimum Impact Classification of IC-1;

3. ~~At a minimum, meet; or exceed]~~

a. ~~A.S.T.M. [ASTM] Specification D1784-11[D1784-07] or F480-14[F480-066] found in A.S.T.M.[American Society for Testing and Materials (A.S.T.M.)] Specification D1784-11[D1784-07], Standard Specification for Rigid Poly (Vinyl Chloride) (PVC) Compounds and Chlorinated Poly(Vinyl Chloride) (CPVC) Compounds and A.S.T.M.[American Society for Testing and Materials (A.S.T.M.)] Specification F480-14[F480-06b], Standard Specification for Thermoplastic Well Casing Pipe and Couplings Made in Standard Dimension Ratios (SDR), SCH 40 and SCH 80;~~

b. ~~N.S.F.[4. Meet or exceed the NSF] Standard 14-2018[14] for potable water applications found in N.S.F.[National Sanitation~~

Foundation (N.S.F.) Standard 14-2018[14], Plastics Piping System Components and Related Materials and rated potable water (PW) or well casing (WC); and

4. ~~[5]. Joints and couplings shall be welded, cemented, or threaded.~~

(f) ~~[(g)] Screen slot size shall be selected to prevent the entry of sediment or other harmful material into the well.~~

(5) Air rotary drilling. Water shall be injected into the air stream at a rate sufficient to eliminate dust and to keep the borehole clean of cuttings.

(6) Mud rotary drilling ~~[method]~~. Pits to contain or re-circulate drilling fluids shall be constructed in a manner as to isolate the drilling fluid from runoff to a stream or other waterway.

(7) ~~[Lead.] Materials containing lead shall not be used in the construction of a water supply well.~~

Section 3. Sealing Materials. (1) ~~[Mixing.]~~ Sealing materials and additives that control or affect setting times or physical properties of the sealing materials shall be mixed in accordance with the manufacturer's specifications.

(2) Application. Grouting shall be performed using the grout-pipe method or a pressure grouting device to add the sealing materials and other materials used to seal the annulus from the bottom of the annulus upward in one (1) continuous operation until the annulus is filled to two (2) feet below the surface or to the point of pitless adapter attachment. If temporary or permanent outer casing is used, sealing materials ~~shall~~ may be added prior to installing the inner casing.

(a) Cement and concrete grout. The appropriate type of neat cement and concrete grout for the conditions present in the well shall be used in accordance with the manufacturer's specifications ~~[guidelines]~~.

(b) Neat cement-bentonite grout. Neat cement-bentonite grout shall set for a minimum of seventy two (72) hours prior to resuming drilling operations.

(c) ~~[4.] Bentonite grout.~~

1. Bentonite grout shall set until the slurry has hydrated according to the manufacturer's specifications.

2. Bentonite grout shall not be used if chlorides in groundwater exceed 1,000 parts per million (ppm).

(d) Reduced setting time. Setting time may be reduced with additives if used in accordance with the manufacturer's specifications.

(e) Bentonite in pellet, chip, or granular form. If bentonite pellets, chips, or granules are placed above the water table, ~~the certified driller shall comply with the following~~:

1. Dry bentonite pellets, chips, or granules shall be placed in increments not greater than two (2) feet in thickness to provide proper hydration and prevent bridging;

2. Each increment shall be hydrated prior to the continued placement of dry bentonite pellets, chips, or granules; and

3. Bentonite pellets, chips, or granules shall not be used if chlorides in groundwater exceed 1,000 parts per million (ppm).

(f) Construction water. Water used in the drilling or decontamination process shall be potable.

(g) 1. Drill cuttings. ~~[The certified well driller may use]~~ Clay, shale, or limestone drill cuttings may be used if cuttings are allowed to seal portions of the annulus.

2. Sandstone cuttings shall not be used.

Section 4. Design Factors. Each well shall be constructed to include ~~[the following]~~:

(1) Natural protection. The well shall be located to protect groundwater quality and public health and safety.

(2) Geologic formations.

(a) The well construction shall be adapted to the local or site-specific geologic formations and groundwater conditions.

(b) Undesirable groundwater shall be cased off or otherwise prevented from contributing to a well.

(3) Capacity. The well shall be constructed to optimize yield while maintaining the safe functioning and integrity of the aquifer.

(4) Pitless well adapters.

(a) A well casing shall not be cut off or cut into below finished ground surface except ~~[by a certified water supply well driller]~~ to install a pitless well adapter, a pitless well unit, or to make modifications.

(b) Construction or installation of pitless well adapters or pitless well units shall ~~[be done in such a manner as to]~~ provide a leak-proof seal. If a frost-free hydrant is installed, a Double~~[Dual]~~ Check Valve Backflow Preventer that meets the specifications of American Society of Sanitary Engineering (A.S.S.E.) 1015-2011~~[1024]~~ Performance Requirements for Double~~[Dual]~~ Check Backflow Prevention Assemblies~~[Preventers]~~ shall be installed between the pitless adapter and the frost-free hydrant.

(5) Flowing artesian wells. A flowing artesian well shall be constructed to:

(a) Maintain the head pressure within the aquifer; and

(b) Prevent an uncontrolled discharge of groundwater into the environment.

(6)~~[Accessibility.]~~ The well shall be constructed to allow access for repairs, maintenance, treatment, and inspection.

Section 5. Setback requirements. (1) Wells shall be installed~~[in accordance]~~ with the minimum lateral distances between the well and potential pollution sources established in Table C of this administrative regulation.

Table C: Setback Requirements	
Lateral Sources of Contamination	Minimum Distances
Leaching Pit	100 Feet
Petroleum Storage Tank	100 Feet
Grave or Cemetery	75 Feet
Manure Pile, Animal Waste Storage, or Confined Animal Feeding Operation	75 Feet
Wastewater Treatment Disposal System	75 Feet
Side Wall of Lateral Trench, Bed, or Lagoon	70 Feet
Geothermal – Closed Loop, Un- grouted	70 Feet
Water Supply Well	50 Feet
Septic Tank or Sewer Line	50 Feet
Livestock Pen, Corral, or Stable	50 Feet
Surface Water Body	25 Feet
Geothermal – Closed Loop, Grouted; Abandoned Water Well Grouted	20 Feet
Property Lines, Utility Lines, or Roadway Right of Way	10 feet

(2) The certified water supply well driller shall evaluate land-use activities, both on the property on which the well is to be located and on adjacent properties, and identify other potential pollution sources not listed subsection (1) of this section.

(3) If the unconsolidated material is less than twenty (20) feet thick and composed of predominantly sand or gravel, the minimum lateral distances established in subsection (1) of this section shall be doubled.

(4) A well~~[Wells]~~ may be constructed in an identified special flood hazard area~~[constructed in flood zones]~~ if an alternate site does not exist.

(5)~~[The certified well driller shall terminate]~~ The casing shall be terminated:

(a) A minimum of two (2) feet above the highest base~~[maximum known]~~ flood elevation at the site; and~~[or]~~

(b) Any known conditions of flooding by drainage or run-off from the surrounding land.

(6)~~[Buildings.]~~ The well extended vertically shall clear a projection from a building by a minimum of five (5) feet.

(7)~~[Pits and basements.]~~ Wells shall not be constructed in pits or basements.

Section 6. Wells Drilled into Consolidated Formations Using the Cable Tool, Air Rotary, Mud Rotary, Reverse Rotary, or Sonic

Methods. (1) Borehole construction.

(a) The diameter of the borehole shall be a minimum of 1.75 inches greater than the outer diameter of the casing.

(b) Steel casing may be driven or advanced through unconsolidated material without over-drilling using the dry-driven grout method in accordance with Section 8(2) of this administrative regulation.

(c) The borehole diameter of the open-hole portion of the well shall be smaller than the inside diameter of the lowermost permanent casing ~~so~~~~[in order]~~ that the:

1. Permanent casing can rest on the shoulder of the open borehole; ~~and~~~~[in order that the]~~

2. Lower portion of the permanent casing can be properly sealed.

(d) Plumbness and alignment. The borehole shall:

1. Be sufficiently plumb and straight to receive well casing, liner, and screen without binding; ~~and~~~~[shall]~~

2. Not interfere with the installation and operation of the pump.

(2) Casing installation.

(a) Casing shall extend below the surface a minimum of twenty (20) feet.

(b) Single-cased wells.

1.~~[Unconsolidated material thirty (30) feet thick or less.]~~ If unconsolidated material is thirty (30) feet thick or less, the~~[certified well driller shall install]~~ casing shall be installed to extend~~[extending]~~ a minimum of ten (10) feet into bedrock.

2.~~[Unconsolidated material greater than thirty (30) feet thick.]~~ If unconsolidated material is greater than thirty (30) feet thick, the~~[certified well driller shall install]~~ casing shall be installed to extend~~[extending]~~ a minimum of two (2) feet into bedrock.

3.~~[Fractures, crevices, voids, and undesirable geologic formations.]~~ Permanent casing shall be installed a minimum of two (2) feet below any fractures, crevices, voids, or undesirable geologic formations that may introduce harmful materials, pollutants, or undesirable groundwater to the well.

4.~~[The certified driller shall case off.]~~ Undesirable water-bearing formations shall be cased off~~[.]~~ leaving a minimum of two (2) feet below the bottom of the production zone.

(c) Multiple-cased wells.

1.~~[a.]~~ Temporary outer casing shall~~[.]~~

a. Have an~~[The]~~ inside diameter~~[of temporary outer casing shall be]~~ a minimum of two (2) inches greater than the outside diameter of the inner casing~~[.]~~

b. ~~[Temporary outer casing shall]~~ Be removed prior to well completion; ~~and~~~~[.]~~

c. ~~[If the driller determines that]~~ temporary outer casing is to be used as permanent outer casing, the temporary outer casing shall be grouted in place.

2.~~[Permanent outer casing.]~~ The inside diameter of permanent outer casing shall be a minimum of two (2) inches greater than the outside diameter of the inner casing.

3.~~[Inner casing. The certified well driller shall install]~~ Permanent inner casing shall be installed in accordance with the requirements established in~~[of]~~ subsection (2)(b) of this section.

(3) Screen and liner installation.

(a)~~[If a screen or liner is installed,]~~ Screen or liner slot size shall~~[be selected to]~~ prevent the entry of fine-grained sediment and other anticipated harmful material into the well.

(b) Screens and liners shall conform to the requirements established in~~[of]~~ Section 2 of this administrative regulation.

(4) Filter pack.

(a)~~[If]~~ An artificial filter pack~~[is installed, the filter pack]~~ shall~~[meet the following criteria]:~~

1.~~[(a) Filter pack material]~~ Be of a size that works~~[shall work]~~ in conjunction with the well screen to prevent the entry of fine material and sediment into the well;

2.~~[(b) Filter pack material shall]~~ Be disinfected prior to placement in the well or shall be disinfected in the well; ~~and~~

3.~~[(c) The filter pack shall]~~ Extend a minimum of two (2) feet above the screen~~[.]~~ ~~and~~

(b)~~[(d)]~~ Filter pack refill pipes may be installed if refill pipes:

1. Terminate above finished ground surface~~[.]~~

2. Are provided with a watertight cap; and
3. Are sealed in the annulus.

(5) Annular seal.

(a) ~~The certified well driller shall seal the~~ annulus shall be sealed in a manner that prevents the migration of pollutants through the annulus ~~and~~. ~~The certified well driller shall seal the annulus~~ by ~~one (1) of the following methods~~:

1. Sealing the entire annulus with sealing materials;
2. Sealing a minimum of the bottom two (2) feet of the annulus between the borehole and the permanent casing and sealing the remainder of the annulus with impervious drill cuttings, sealing materials, native clay, or a combination of these materials; or
3. Using the methods in subparagraphs 1 or 2 of this paragraph ~~used~~ in combination with a mechanical packer.

(b) Single-cased wells.

1. Open-hole construction. ~~The certified well driller shall seal~~

a. The bottom two (2) feet of the annulus shall be sealed with sealing materials; ~~and shall seal~~

b. The remainder of the annulus shall be filled with ~~impervious~~ drill cuttings, sealing materials, native clay, or a combination of these materials.

2. Screened construction. ~~The certified well driller shall seal~~

a. The bottom two (2) feet above the filter pack shall be sealed with sealing materials; ~~and shall seal~~

b. The remainder of the annulus shall be filled with ~~impervious~~ drill cuttings, sealing materials, native clay, or a combination of these materials.

(c) Multiple-cased wells.

1. Temporary outer casing.

a. ~~The certified well driller shall seal the~~ annulus shall be sealed below the temporary outer casing prior to removal of the temporary outer casing; ~~and~~.

b. ~~The certified well driller shall seal the~~ remainder of the annulus shall be filled in the zone where temporary outer casing was used upon removal of the temporary outer casing.

2. Permanent outer casing. ~~The certified well driller shall seal~~

a. The annulus shall be sealed between the borehole and permanent outer casing at the installation of the permanent outer casing; ~~The certified well driller shall seal~~

b. The bottom two (2) feet of the annulus shall be sealed between the bore hole and the permanent outer casing with sealing materials; ~~and shall seal~~

c. The remainder of the annulus shall be filled with ~~impervious~~ drill cuttings, sealing materials, native clay, or a combination of these materials.

3. Inner casing. ~~The certified well driller shall seal~~

a. The entire annulus shall be sealed around the inner casing, including the annulus between the outer and inner casing; ~~The certified well driller shall seal~~

b. The bottom two (2) feet of the annulus shall be sealed between the outer casing and the inner casing with sealing materials; ~~and shall seal~~

c. The remainder of the annulus shall be filled with ~~impervious~~ drill cuttings, sealing materials, native clay, or a combination of these materials.

Section 7. Wells Drilled in Unconsolidated Formations. (1) Borehole construction.

(a) The borehole diameter shall be a minimum of four (4) inches greater than the outside diameter of the well casing and screen; or

(b) Steel casing may be driven or advanced without over-drilling using the dry-driven grout method in accordance with Section 8(2) of this administrative regulation.

- (c) Plumbness and alignment. The borehole shall:

a. Be sufficiently plumb and straight to receive well casing, liner, and screen without binding; ~~and shall~~

b. Not interfere with the installation and operation of the pump.

- (2) Casing installation.

(a) Single-cased wells. A minimum of twenty (20) feet of

permanent casing shall be installed below finished ground surface excluding the screened interval.

(b) Multiple-cased wells.

1. Temporary outer casing.

a. The inside diameter of temporary outer casing shall be a minimum of four (4) inches greater than the outside diameter of the inner casing.

b. Temporary outer casing shall be removed prior to well completion.

2. Permanent outer casing. The inside diameter of permanent outer casing shall be a minimum of four (4) inches greater than the outside diameter of the inner casing.

3. Inner casing. A minimum of twenty (20) feet of permanent inner casing shall be installed below finished ground surface excluding the screened interval.

(3) ~~Screen installation~~. Screen slot size shall ~~be selected to~~ prevent the entry of fine sediment or other harmful material into the well.

(4) Filter pack. The natural formation may be developed to serve as a filter pack, or an artificial filter pack shall be installed.

(a) The artificial filter pack shall ~~meet the following criteria~~:

1. ~~(a) Filter pack material shall~~ Be sized to prevent the entry of fine sediment or other harmful material into the well;

2. ~~(b) Filter pack material shall~~ Be disinfected prior to placement in the well, or disinfected in place; ~~and~~

3. ~~(c) The filter pack shall~~ Extend a minimum of two (2) feet above the screen; ~~and~~

(b) ~~(d)~~ Filter pack refill pipes may be installed if they:

1. Terminate above finished ground surface; ~~and~~

2. Are provided with a watertight cap; ~~and~~

3. Are sealed in the annulus.

(5) Annular seal.

(a) The annulus shall be sealed in a manner that prevents the migration of groundwater and pollutants through the annulus ~~and~~. ~~The certified well driller shall seal the annulus~~ by ~~one (1) of the following methods~~:

1. Sealing the entire annulus with sealing materials;

2. Sealing the:

a. Two (2) feet of annulus directly above the filter pack with sealing materials; ~~and sealing the~~

b. Remainder of the annulus with drill cuttings, sealing materials, native clay, or a combination of these materials; or

3. Using the method established in subparagraph 2 ~~outlined above~~ in combination with a mechanical packer.

(b) Single-cased wells.

1. ~~The certified well driller shall seal~~ The annulus shall be sealed by sealing the ~~using one (1) of the following methods~~:

a. ~~Sealing the~~ Entire annulus with sealing materials; or

b. ~~(i) Sealing the~~ Two (2) feet of annulus directly above the filter pack with sealing materials; and

(ii) ~~sealing the~~ Remainder of the annulus with drill cuttings, sealing materials, native clay, or a combination of these materials.

2. The annular seal shall extend to a minimum depth of eighteen (18) feet below finished ground surface.

(c) Multiple-cased wells.

1. Temporary outer casing. ~~The certified well driller shall seal~~

a. The bottom two (2) feet of the annulus shall be sealed above the filter pack with sealing materials; ~~and~~

b. The remainder of the annulus shall be sealed below the temporary outer casing with drill cuttings, sealing materials, native clay, or a combination of these materials prior to removal of the temporary outer casing.

2. Permanent outer casing. ~~The certified well driller shall seal~~

a. The bottom two (2) feet of the annulus shall be sealed between the borehole and permanent outer casing above the filter pack with sealing materials; ~~and~~

b. The remainder of the annulus shall be sealed between the borehole and permanent outer casing with drill cuttings, sealing materials, native clay, or a combination of these materials at the installation of the permanent outer casing.

3. Inner casing.~~[The certified well driller shall seal]~~

a. The bottom two (2) feet of the annulus shall be sealed between the inner casing and outer casing with sealing materials; and

b. The remainder of the annulus shall be sealed between the inner casing and outer casing~~[shall be sealed]~~ with drill cuttings, sealing materials, native clay, or a combination of these materials.

Section 8. Special Well Types. Wells in this classification shall include bored, driven, irrigation, and radial collector wells.

(1) Bored well construction. Bored wells shall be constructed using the concrete-collar or the buried-slab method.

(a)~~[Borehole diameter.]~~ The borehole diameter shall be a minimum of four (4) inches greater than the outside diameter of the well casing or precast concrete tiles used below the buried-slab or concrete-collar method.

(b)~~[Casing materials.]~~ Casing materials for bored wells shall consist of pre-cast concrete tiles or corrugated fiberglass casing that meet the material construction standards established~~[set-out]~~ in Section 2 of this administrative regulation.

(c) Filter pack. The natural formation may serve as a filter pack, or an artificial filter pack may be installed in the annulus below the buried slab.~~[The filter pack shall meet the following criteria:]~~

1. ~~An~~~~[The]~~ artificial filter pack~~[material]~~ shall:

a. Be sized to prevent the entry of fine-grained sediment and other material into the well;~~[- and shall]~~

b. Be free from clay, silt, or other deleterious material;

c.~~[2. Artificial filter pack material shall.]~~ Be disinfected prior to placement in the well; and

d.~~[3. The filter pack shall.]~~ Not extend above the buried slab or concrete collar;~~[- and]~~

2.~~[4.]~~ Filter pack refill pipes shall~~[may be installed if they]~~ terminate above finished ground surface, are provided with a watertight cap, and are sealed in the annulus.

(d) Bored well construction using the buried-slab method.

1. The buried slab shall:

a. Be a minimum of ten (10) feet below ground surface;~~[-]~~

b.~~[2. The slab shall.]~~ Consist of reinforced concrete constructed without joints; and~~[-]~~

c.~~[3. The buried slab shall.]~~ Have a diameter sufficient to extend to the outer edge of the casing or tiles installed below the buried slab.

2.~~[4.]~~ The top of the buried slab shall slope away from the center and shall provide a watertight joint where the buried slab rests on the well casing.

3.~~[5.]~~ A coupling shall be cast in the buried slab in which to install the upper well casing.

4.~~[6.]~~ The joint between the well casing and coupling shall be water tight.

5.~~[7. Bentonite seal.]~~ A bentonite seal shall be:

a. Installed~~[The certified well driller shall install a bentonite seal]~~ above the buried slab that extends the entire diameter of the borehole; and~~[-]~~

b.~~[The bentonite seal shall be]~~ A minimum of twelve (12) inches thick.

6.~~[8.]~~ Upper well casing shall~~[-]~~:

a. Be installed~~[The certified well driller shall install well casing]~~ above the buried slab to extend a minimum of eight (8) inches above the ground surface;~~[-]~~

b. Have an~~[The]~~ inside diameter of at least~~[the casing shall be a minimum of]~~ four (4) inches;~~[-]~~

c.~~[The upper casing shall.]~~ Conform to the requirements of Section 2 of this administrative regulation; and

d.~~[shall]~~ Have only threaded or welded joints.

7.~~[9.]~~ Pitless adapter.

a. ~~A~~~~[If a pitless adapter is installed, installation of the]~~ pitless adapter~~[adapters]~~ shall be installed so that it provides~~[done in such a manner as to provide]~~ a leak-proof seal.

b. If a frost-free hydrant is installed, a Double~~[Dual]~~ Check Valve Backflow Preventer that meets the specifications of A.S.S.E.~~[American Society of Sanitary Engineering (A.S.S.E.)]~~

1015-2011~~[1024]~~ Performance Requirements for Double~~[Dual]~~ Check Backflow Prevention Assemblies~~[Preventers]~~ shall be installed between the pitless adapter and the frost-free hydrant.

8.~~[10.]~~ The annulus fill for the upper casing above the bentonite seal shall consist of sealing materials or clean, inert earth materials.

9.~~[11. The certified well driller shall install]~~ A water-tight well cap shall be installed at the top of casing.

(e) Bored well construction with concrete-collar method.

1. The upper ten (10) feet of the borehole diameter shall be a minimum of six (6) inches greater than the outside diameter of the well casing.

2. The annular space in the upper ten (10) feet of the borehole between the excavation and the installed concrete collar casing shall be sealed with concrete or sealing materials.

3. The diameter of the borehole below the grouting shall be a minimum of four (4) inches greater than the outside diameter of the well casing.

4. The casing shall extend a minimum of eight (8) inches above the finished ground surface.

5. The cover slab shall be a minimum of four (4) inches thick.

6. A pipe sleeve shall be cast in place in the slab to accommodate the type of pump or pump piping to be used for the well.

7. A watertight joint shall be made where the slab rests on the well casing.

(2) Dry-driven grout method.

(a) General.

1. Steel casing may be driven using the dry-driven grout method.

2. PVC casing shall not be driven or pushed by force of the rig, either by direct hydraulic force or by hammer.

(b)~~[Pilot hole.]~~ A pilot hole shall be constructed a minimum of three (3) feet deep and a minimum of six (6) inches larger in diameter than the outside diameter of the casing to be driven.

(c) Casing installation.

1. Dry bentonite granules no less~~[not smaller]~~ than fifty (50) mesh and no more~~[not larger]~~ than eight (8) mesh shall be poured into the pilot hole prior to driving the casing.

2. Bentonite shall continue to be poured into the pilot hole as the casing is driven and bentonite is drawn into the annulus.

(3) Driven point wells and jetted wells. Driven point wells and jetted wells shall be used for temporary dewatering purposes only.

(a) The well point, drive pipe, and joints shall be structurally suitable to prevent rupture or distortion during driving.

(b)~~[Driven point wells and jetted wells shall not supply water for human consumption.]~~

(c)~~[d)]~~ Driven point wells shall have a water-tight cap.

1. Not supply water for human consumption; and

2. Be abandoned in accordance with Section 11 of this administrative regulation.

(4) Radial collector wells.

(a) The certified water well driller shall submit plans for a proposed radial collector well to the cabinet and receive written approval prior to construction of a radial collector well.

(b) Factors that shall be considered for approval of a radial collector well include:

1. Depth of the well;

2. Types of formations;

3. The location of the well;

4. Sources of potential contamination in the area surrounding the well;

5. Intended use of the well; and

6. Planned or approved treatment schemes, if applicable.

(5) Irrigation wells.

(a) Irrigation wells shall be constructed with Double Check Valve Backflow Preventers that meet the specifications of the A.S.S.E. 1015-2011 Performance Requirements for Double Check Backflow Prevention Assemblies to prevent reverse flow of discharged water into the wellhead and aquifer.

(b) Reduced Pressure Backflow Preventers that meet the

specifications of A.S.S.E. 1013-2011 Performance Requirements for Reduced Pressure Principle Backflow Preventers shall be installed:

1. Onto irrigation wells that are capable of pumping greater than ten thousand gallons per day or supplying groundwater to center pivot irrigation systems; and

2. In line between the final discharge point and the well discharge head.

Section 9. Well Finishing, Disinfection, and Testing. (1) Upper terminal. Upon well completion, the ~~certified driller shall~~ requirements established in this section shall be completed. ~~comply with the following:~~

(a) Upper terminal. The casing shall be terminated:

~~1. The certified well driller shall terminate the casing~~ A minimum of four (4) inches above finished ground surface and shall slope the ground surface away from the well; and

~~2. In a flood zone.~~

(b) Flood zones. The certified well driller shall terminate the casing a minimum of two (2) feet above the highest base ~~maximum known~~ flood elevation at the site.

(2) ~~Well development.~~ Newly installed water supply wells shall be developed until the column of water in the well is free of visible sediment.

(3) Disinfection. Wells shall be disinfected in accordance with the procedures established in this paragraph. ~~following procedures:~~

(a) Determine the:

1. Feet of water in the well by subtracting the static water level from the total depth of the well;

~~2. (b) Determine the~~ Amount of chlorine disinfectant to use in order to provide a minimum chlorine concentration of 100 parts per million (ppm) in the well as established in this subparagraph;

a. 1. For a four (4) inch-diameter well, ~~the certified well driller shall use~~ a minimum of three (3) cups of chlorine bleach or two (2) ounces of hypochlorite granules per 150 feet of water in the well.

b. 2. For a six (6) inch-diameter well, ~~the certified well driller shall use~~ a minimum of three (3) cups of chlorine bleach or two (2) ounces of hypochlorite granules per seventy-five (75) feet of water in the well.

c. 3. For an eight (8) inch-diameter well, ~~the certified well driller shall use~~ a minimum of three (3) cups of chlorine bleach or two (2) ounces of hypochlorite granules per fifty (50) feet of water in the well.

d. 4. For a twenty-four (24) inch-diameter well, ~~the certified well driller shall use~~ a minimum of eight (8) cups of chlorine bleach or five (5) ounces of hypochlorite granules per ten (10) feet of water in the well; and

~~(b) (e)~~ Chlorine disinfection procedure.

1. Introduce the chlorine or hypochlorite granules into the well.

2. Circulate the chlorine solution throughout the well for a minimum of thirty (30) minutes, ensuring that the chlorinated water contacts all parts of the well casing, borehole, discharge pipes, and all internal well components.

3. Allow chlorinated water to stand in the well for a minimum of thirty (30) minutes.

4. After the chlorinated water solution has stood in the well for a minimum of thirty (30) minutes, purge the well of all chlorinated water.

5. Chlorinated water shall:

a. Be discharged to the ground in a manner that prevents environmental harm; and

b. shall Not be discharged to a surface water body.

(4) A sanitary seal or watertight well cap shall be installed. ~~Well cap.~~

~~(a) The certified well driller shall install a well cap or sanitary seal.~~

~~(b) The well cap shall be watertight.~~

~~(5) Vents. (a) A vent shall consist of a pipe;~~

1. That extends ~~extending~~ above the top of the well and above base ~~known~~ flood elevation. ~~elevations.~~

2. With the open end turned down; ~~and~~

3. The open end shall be covered with twenty-four (24) mesh or finer screen of durable material.

(b) For wells with naturally occurring methane, a vent shall be installed.

(6) Bacteriological ~~Fecal coliform~~ sampling.

(a) A well ~~If the well is~~ for potable use ~~, the certified well driller shall be~~ ~~have the well~~ analyzed for E. coli ~~fecal coliform bacteria~~ within thirty (30) days of the completion of the well.

(b) The sample shall not be collected until all residual chlorine has been purged from the well.

(c) Sample containers shall be sterile glass or plastic.

(d) Samples for E. coli ~~fecal coliform bacteria~~ shall be:

1. Delivered to the laboratory within six (6) hours of the time they are collected; ~~and~~

2. (d) Samples shall be Kept at four (4) degrees Centigrade (forty (40) degrees Fahrenheit) until delivered to the laboratory; ~~and~~ ~~during that time samples shall not be frozen.~~

(e) Sample containers shall be sterile glass or plastic.

3. Analyzed ~~(f) Fecal coliform analysis shall be conducted~~ at a laboratory certified in accordance with 401 KAR 8:040.

Section 10. Well Modification. (1) General. ~~If~~ A water supply well being ~~is~~ modified shall be brought ~~, the certified driller shall bring the well construction~~ into compliance with this administrative regulation.

(2) Well pits.

(a) A new well pit shall not be constructed, and ~~a person shall not modify~~ an existing well pit shall not be modified.

(b) When a well is being modified, the:

1. The certified well driller modifying a well shall eliminate an Existing well pit shall be eliminated; and

2. Casing shall be extended ~~shall extend the casing~~ a minimum of four (4) inches above the finished ground surface.

(c) 1. Flooring and the walls of the pit shall be broken and removed; ~~and~~

2. The pit shall be filled with compacted earth.

(3) Finishing and testing. The well ~~certified well driller~~ shall be:

1. Finished ~~Finish the well~~; and

2. (Have the well) Tested for E. coli ~~fecal coliform bacteria~~ in accordance with Section 9(6) of this administrative regulation.

(4) (Reporting requirement.) Within sixty (60) days of modification of a well, the certified water supply well driller shall submit a Uniform Kentucky Well Maintenance and Plugging Record to the well owner and the cabinet as established ~~in accordance with~~ Section 1(1)(3) and Section 1(4) ~~of this administrative regulation.~~

Section 11. Well Abandonment. (1) Well unsuitable for its intended use. A water supply well that has been damaged, or is otherwise unsuitable for use as a water supply well, shall be abandoned within thirty (30) days from the date it is determined that the well is no longer suitable for its intended use.

(a) Water supply wells shall be abandoned in ~~such~~ a manner that prevents ~~as to prevent~~ the migration of:

1. Surface water or contaminants to the subsurface; and

2. (to prevent migration of) Contaminants among water bearing zones.

(b) A record of the abandonment of a water supply well shall be submitted by the certified water supply well driller on the Uniform Kentucky Well Maintenance and Plugging Record to the cabinet ~~water well driller program~~ within sixty (60) days from the date abandoned.

(2) Well preparation for abandonment.

(a) Measurements. Prior to abandoning a water supply well, the certified water supply well driller shall record the measurements established in subparagraphs 1 through 3 of this paragraph on the Well Maintenance and Plugging Record:

1. (Measure the) Well depth;

2. (Measure the) Well diameter; and

3. (Measure the) Depth to static water level; ~~and~~

4. Record the information in subparagraphs 1 through 3 of

this paragraph on the Uniform Kentucky Well Maintenance and Plugging Record].

(b) Obstructions.

1. All obstructions shall be removed from the well prior to abandoning; or

2. If the pump or equipment is stuck in the well and cannot be removed, ~~the certified driller shall push~~ the material shall be pushed to the bottom of the well ~~as far as possible~~.

(c) ~~Disinfection.~~ The ~~certified well driller shall disinfect the~~ well shall be disinfected as established in ~~accordance with~~ Section 9(3) of this administrative regulation.

(3) Drilled wells.

(a) Well casing, screen, and liner removal.

1. ~~a.~~ All well casing, screens, and liners;

a. Shall be removed from the well prior to placing the sealing material by pulling or over-drilling; ~~and~~ ~~the~~

b. ~~Well casing, screens, and liners~~ May be removed simultaneously with the introduction of sealing material if necessary to avoid borehole collapse.

2. ~~a.~~ If the well casing has been grouted in place and ~~the driller is unable to remove~~ the casing cannot be removed, the casing may be cut off, the certified well driller may cut off the casing a minimum of five (5) feet below the ground surface.

b. ~~The driller shall fill the~~ well shall be filled with sealing materials or inert earth materials from the bottom of the well to a minimum of twenty (20) feet below the ground surface.

c. ~~The certified well driller shall fill the~~ remainder of the well shall be filled with sealing materials to a minimum of five (5) feet below the ground surface.

d. The uppermost five (5) feet of the well shall be filled with sealing materials or other inert earth material suitable to land use at the site.

(b) Sealing material placement.

1. ~~a.~~ The ~~certified well driller shall fill the~~ well or borehole shall be filled:

a. With sealing materials or other inert materials from the bottom to a minimum of twenty (20) feet below the ground surface; ~~and~~ ~~the~~

b. ~~Filling the well or borehole with sealing materials or inert material shall be done in a manner~~ So that all voids are completely filled and in a manner that prevents bridging across the well or well bore.

2. ~~The certified well driller shall fill the~~ well or borehole shall be filled with sealing materials from a minimum of twenty (20) feet below ground surface to a minimum of five (5) feet below the ground surface ~~in a manner that prevents the migration of pollutants along the well or well bore~~.

3. ~~The certified well driller shall use~~ Sealing materials, clay, or other inert material suitable to the proposed land use shall be used to fill the upper five (5) feet or less of a well being abandoned.

(4) Wells with multiple casing. ~~The certified well driller shall remove the~~ innermost well casing, screen, or liner shall be removed first and ~~fill~~ the well filled up to the level of the bottom of the next outer casing before removing the next outer casing.

(a) Voids. ~~The certified well driller shall fill the~~ well or borehole shall be filled with sealing materials or other inert materials from the bottom of the well to a minimum of five (5) feet below the bottom of a void.

1. A packer, expansion bridge, or other support shall be placed at the top of the void.

2. A permanent bridge consisting of a minimum of ten (10) feet of sealing materials shall be placed above the expansion bridge.

(b) 1. ~~The certified well driller shall plug the~~ remainder of the well or borehole shall be plugged with sealing materials or other inert materials from the bottom to a minimum of twenty (20) feet below the ground surface; ~~and~~ ~~The certified well driller shall~~

2. ~~Fill~~ The well or borehole shall be filled with sealing materials from a maximum of twenty (20) feet below the ground surface to a minimum of five (5) feet below the ground surface.

(c) ~~The certified well driller shall use~~ Sealing materials, clay, or other inert material suitable to the proposed land use shall be

used to fill the upper five (5) feet or less of a well being abandoned.

(5) Bored ~~and hand dug~~ wells.

(a) ~~The certified well driller shall fill the~~ well shall be filled with sealing materials, dense grade aggregate, limestone sand, or native clay from the bottom of the well to a maximum of five (5) feet below finished ground surface.

(b) ~~The certified well driller shall remove the~~ upper five ~~(five)~~ feet of well casing, tiles, or other well-wall material shall be removed. A minimum one (1) foot thick concrete surface seal shall be poured and allowed to cure for twenty-four (24) hours, and fill The uppermost five (5) feet of the borehole shall be filled with clay or an ~~inert~~ ~~impermeable~~ material appropriate to the intended use of the land.

(6) Driven wells.

(a) ~~The certified well driller shall remove~~ Well casing and screens shall be removed ~~and~~ sealing materials shall be introduced ~~simultaneously~~ from the bottom of the well to a maximum ~~of~~ five (5) feet below finished ground surface. A minimum one (1) foot thick concrete surface seal shall be poured and allowed to cure for twenty-four (24) hours.

(b) ~~The certified well driller shall use~~ Sealing materials, clay, or other inert material suitable to the proposed land use shall be used to fill the upper five (5) feet or less of a well being abandoned.

(7) Flowing artesian wells.

(a) ~~The certified well driller shall plug~~ Flowing artesian wells or wells in which there is upward movement of water between aquifers shall be plugged with neat cement grout that is pumped under pressure and mixed with the minimum quantity of water that will permit handling.

(b) ~~The driller may restrict~~ artesian flow may be restricted if necessary.

(c) ~~The certified well driller shall place~~ A well packer, cast-iron plug, or temporary bridge shall be placed at the bottom of the confining formation immediately overlying the artesian water-bearing horizon to seal off the flow.

(8) Hand dug wells.

(a) The pumps, casing, and equipment shall be removed and the well surface pad shall be demolished.

(b) The well shall be filled from the bottom to the top with clean rock, gravel, or sand to within five (5) feet of the ground surface.

(c) The poured concrete surface seal shall be:

1. A minimum of one (1) foot thick; and

2. Allowed to cure for twenty-four (24) hours before finishing to the ground surface.

(d) The remaining three (3) feet or less of annular space shall be filled from the top of the surface seal to the ground surface with clean soil or other appropriate surface material.

(9) ~~Reporting requirement.~~ Within sixty (60) days after a water well has been abandoned, the certified water supply well driller shall complete and submit a Uniform Kentucky Well Maintenance and Plugging Record to the well owner, if known, and to the cabinet.

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

(a) "Uniform Kentucky Well Construction Record", DEP No. DOW6010, July 2019 ~~April 2008~~;

(b) "Water Well Owner's Guide", Kentucky Energy and Environment Cabinet, DEP No. DOW6020, September 8, 2009 ~~July 2008~~;

(c) "Kentucky Water Well Variance Request", DEP No. DOW6030, July 2019 ~~2008~~;

(d) "Uniform Kentucky Well Maintenance and Plugging Record", DEP No. DOW6040, Month 2019 ~~April 2008~~;

(e) Water Well Bacterial Report and Chain of Custody form, DEP No. DOW6050, July 2019;

(f) American Society for Testing and Materials (A.S.T.M.) Specification D1784-11 ~~D1784-07~~, "Standard Specification for Rigid Poly (Vinyl Chloride) (PVC) Compounds and Chlorinated Poly(Vinyl Chloride) (CPVC) Compounds", 2011 ~~November~~

2007];

(g)[(f)] American Society for Testing and Materials (A.S.T.M.) Specification F480-14[F480-06b], "Standard Specification for Thermoplastic Well Casing Pipe and Couplings Made in Standard Dimension Ratios (SDR), SCH 40 and SCH 80", 2014[August 2006];

(h)[(g)] National Sanitation Foundation (N.S.F.) Standard 14-2018[14], "Plastics Piping System Components and Related Materials", June 2018[March 2007];

(i)[(h)] National Sanitation Foundation (N.S.F.) Standard 61-2018, "Drinking Water System Components – Health Effects" [64-, "Drinking Water System Components Health Effects"], February 2018[May 2008]; and

(j)[(i)] American Society of Sanitary Engineering (A.S.S.E.) 1015-2011[1024], "Performance Requirements for Double[Dual] Check Backflow Prevention Assemblies and Double Check Fire Protection Backflow Prevention Assemblies[Preventers]", August 2011[2004].

(k) American Society of Sanitary Engineering (A.S.S.E.) 1013-2011, "Performance Requirements for Reduced Pressure Principle Backflow Preventers and Reduced Pressure Principle Fire Protection Backflow Preventers", August 2011.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material in subsection (1)(a) through (d) of this section is also available on the Division of Water Web site, <https://eec.ky.gov/Environmental-Protection/Water/GW/Pages/default.aspx>[www.water.ky.gov].

(3)(a) American Society for Testing and Materials (A.S.T.M.) Specification D1784-11, "Standard Specification for Rigid Poly (Vinyl Chloride) (PVC) Compounds and Chlorinated Poly(Vinyl Chloride) (CPVC) Compounds", 2011, may also be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA, 19428-2949; Phone 1-610-832-9585.

(b) American Society for Testing and Materials (A.S.T.M.) Specification F480-14, "Standard Specification for Thermoplastic Well Casing Pipe and Couplings Made in Standard Dimension Ratios (SDR), SCH 40 and SCH 80", 2014, may also be obtained from the American Society for Testing Materials, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA, 19428-2949; Phone 1-610-832-9585.

(c) National Sanitation Foundation (N.S.F.) Standard 14-2018, "Plastics Piping System Components and Related Materials", June 2018, may also be obtained from the National Sanitation Foundation International, P.O. Box 130140, 789 N. Dixboro Road, Ann Arbor, MI, 48105; Phone 1-800-673-6275.

(d) National Sanitation Foundation (N.S.F.) Standard 61-2018 "Drinking Water System Components – Health Effects" [64-, "Drinking Water System Components Health Effects"], February 2018, may also be obtained from the National Sanitation Foundation International, P.O. Box 130140, 789 N. Dixboro Road, Ann Arbor, MI, 48105; Phone 1-800-673-6275.

(e) American Society of Sanitary Engineering (A.S.S.E.) 1015-2011, "Performance Requirements for Double Check Backflow Prevention Assemblies and Double Check Fire Protection Backflow Prevention Assemblies", August 2011, may also be obtained from the American Society of Sanitary Engineering, 18927 Hickory Creek Drive, Suite 220, Mokena, IL, 60448; Phone (708) 995-3019.

(f) American Society of Sanitary Engineering (A.S.S.E.) 1013-2011, "Performance Requirements for Reduced Pressure Principle Backflow Preventers and Reduced Pressure Principle Fire Protection Backflow Preventers", August 2011, may also be obtained from the American Society of Sanitary Engineering, 18927 Hickory Creek Drive, Suite 220, Mokena, IL, 60448; Phone (708) 995-3019.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 9, 2019

FILED WITH LRC: July 11, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on Thursday, August 22, 2019 at 6:00 p.m. Eastern Standard Time at the Department for Environmental Protection, Training Room B, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. 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: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email: water@ky.gov (Subject line: "Chapter 6 regulations")

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides performance standards and minimum standards for the construction, modification, and abandonment of water supply wells.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards of practice for water well construction as required by KRS 223.435.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.435 requires the cabinet to promulgate administrative regulations establishing standards of practice for water well construction. This administrative regulation provides minimum standards and requirements for construction, modification, and abandonment of water supply wells.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes performance standards and minimum standards and requirements for the construction, modification, and abandonment of water supply wells as required by KRS 223.435.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation revises language to conform to the requirements of KRS 13A, adds "well driller assistant" roles and responsibilities, adds specifications for irrigation, hand dug, and flowing artesian wells, clarifies requirements for bored and driven wells, adds a Water Well Bacterial Report and Chain of Custody form, and updates Materials Incorporated by Reference.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to include well driller assistant roles and responsibilities required by Senate Bill 32 of the 2019 legislative session which amended KRS 223.400 through 223.460, and to update standards and practices for well construction, modification, and abandonment to current standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.435 requires the cabinet to promulgate administrative regulations establishing standards of practice for water well construction. This

administrative regulation provides minimum standards and requirements for construction, modification, and abandonment of water supply wells.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will provide clear, updated standards for certified well drillers and well driller assistants in the construction, modification, and abandonment of water supply wells.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 1000 water well owners per year, approximately 200 certified water well drillers and potentially 400 well driller assistants, and as many as 300 drilling/consulting companies. This administrative regulation also affects the Kentucky Division of Water, Kentucky Water Well Certification Board, and the Kentucky Ground Water Association.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified in question (3) will need to comply with the updated minimum standards for the location, construction, modification, and abandonment of water supply wells.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation is not expected to increase costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in question (3) will be in compliance with all statutory requirements established in KRS 223.400 through 223.460.

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

(a) Initially: The amendment to this administrative regulation will not result in additional costs.

(b) On a continuing basis: The amendment to this administrative regulation will not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Water well driller and well driller assistant certification fees, Clean Water Act Section 106 for groundwater, and general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The amendment to this administrative regulation will not necessitate increased fees or funding.

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

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation because it establishes minimum standards for the construction, modification, and abandonment of water wells.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Water and those divisions of state or local government that would require a certified well driller to construct, modify, or abandon a water well, such as a municipally owned public water system.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.435 requires the cabinet to promulgate administrative regulations establishing standards of

practice for water well construction. This administrative regulation provides minimum standards and requirements for construction, modification, and abandonment of water supply wells.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate additional revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate additional revenue.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not result in additional costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not result in additional costs.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: This administrative regulation will not generate additional revenue or result in additional costs.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate for the construction, modification, or abandonment of water wells.

2. State compliance standards. KRS 223.435, 224.10-100, 224.70-100, 224.70-110

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate for the construction, modification, or abandonment of water wells.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? There is no federal mandate for the construction, modification, or abandonment of water wells.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate for the construction, modification, or abandonment of water wells.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Water (Amendment)

401 KAR 6:320 Certification of water well drillers and water well driller assistants.

RELATES TO: KRS 223.400 through 223.460[223.400-223.460], 223.991, 224.10-010, 224.10-100, 224.10-410 through 224.10-470[224.10-410 - 224.10-470], Chapter 322, Chapter 322A[, EO 2008-507, 2008-531]

STATUTORY AUTHORITY: KRS 223.410, 223.420(1)(e), 223.435, 224.10-100, 224.70-100, 224.70-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.420[223.420(1)(e)] requires the cabinet to promulgate administrative regulations concerning examination and certification of water well drillers and water well driller

VOLUME 46, NUMBER 2– AUGUST 1, 2019

~~assistants. [EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet.] This administrative regulation provides for the certification of water well drillers and water well driller assistants, including the requirements for examination, application, and disciplinary action.~~

Section 1. General Requirements. (1) The cabinet shall issue a water well driller or water well driller assistant ~~(drillers) certificate [pursuant to KRS Chapter 223] to qualified applicants as established in KRS Chapter 223 and [natural persons who qualify under] this administrative regulation.~~

~~(2) Certificate issuance. [The cabinet shall issue separate certificates for separate methods and activities as follows:]~~

~~(a) Monitoring well driller. A certificate [Separate certificates] shall be issued for drilling monitoring wells that [The certificates] shall specify the [for which] methods for which the certified driller is qualified to drill, including:~~

- ~~1. Cable tool drilling;~~
- ~~2. Air rotary drilling;~~
- ~~3. [Mud rotary drilling;~~
- ~~4.] Reverse rotary drilling;~~
- ~~4. [5.] Jetting and driving wells in unconsolidated material; [or]~~
- ~~5. Sonic drilling;~~
- ~~6. Direct push; or~~
- ~~7. [6.] Boring and auguring in unconsolidated materials. [; and]~~

~~(b) Water supply well driller. A certificate [Separate certificates] shall be issued for drilling water supply wells that [The certificates] shall specify the [for which] methods for which the certified driller is qualified to drill, including:~~

- ~~1. Cable tool drilling;~~
- ~~2. Air rotary drilling;~~
- ~~3. Mud rotary drilling;~~
- ~~4. Reverse rotary drilling;~~
- ~~5. Jetting and driving wells in unconsolidated material; [or]~~
- ~~6. Sonic drilling;~~
- ~~7. Direct push; or~~
- ~~8. Boring and auguring in unconsolidated materials.~~

~~(c) A combined certificate may be issued for drilling monitoring wells and water supply wells that shall specify the methods for which the water well driller is qualified to drill as established in this subsection.~~

~~(3) A person shall not construct, alter, repair, or abandon a water well without first obtaining a water well driller [driller's] or water well driller assistant certificate from the cabinet.~~

~~(4) Each water well driller or water well driller assistant certified to drill water supply wells may construct, alter, repair, or abandon water supply wells using the drilling method or methods specified on the [driller's] certificate.~~

~~(5) Each water well driller or water well driller assistant certified to drill monitoring wells may construct, alter, repair, or abandon monitoring wells using the drilling method or methods specified on the [driller's] certificate.~~

~~(6) In order to receive a water well driller or water well driller assistant certificate, an applicant [a driller] shall:~~

~~(a) Submit a complete [Provide an] application as established in [pursuant to] this administrative regulation;~~

~~(b) Earn a minimum passing score of seventy (70) percent on [Pass] applicable examinations as established in [taken pursuant to] this administrative regulation;~~

~~(c) Demonstrate that the:~~

~~1. Applicant [Driller] has the education and experience to qualify for a certificate as established in KRS Chapter 223 and [pursuant to] this administrative regulation; and~~

~~2. Applicant's [d] Demonstrate that the Driller's] certificate is not under suspension, temporary revocation, or permanent revocation as established in [pursuant to] Section 6[6(2)] of this administrative regulation.~~

Section 2. Applications. (1) Water well driller application. Each person desiring a water well driller certificate shall submit to the cabinet a complete ~~[provide the Cabinet with an] application~~

~~which shall include: [;]~~

~~(a) [Each application for certification shall be accompanied by] Payment of the application fee as established [specified] in KRS 223.447; [;]~~

~~(b) [The application shall be made on] The [Water Well and Monitoring Well Driller's Certification] Application for Certification; [; provided by the cabinet.~~

~~(2) The application shall include: [;]~~

~~(c) [(a)] All [The] information required by KRS 223.425 [; including proof the applicant is eligible to be a driller pursuant to KRS 223.425(2)];~~

~~(d) [(b)] Proof of the insurance and bond required by [pursuant to] KRS 223.430; and~~

~~(e) [(e)] 1. A notarized statement from a certified water well driller, a driller in another state, or another person who has directly supervised the applicant, that the applicant has worked under the driller's supervision for a minimum of two (2) years as established in [the statutory period of time pursuant to] KRS 223.425(2); or~~

~~2. Notarized proof of other qualifying experience, including:~~

~~a. Employment as an environmental professional working with the design and installation of wells and well drilling operations for a minimum of two (2) years; and~~

~~b. [One (1) of the following:]~~

~~(i) Employment as a registered professional geologist as established in [accordance with] KRS Chapter 322A;~~

~~(ii) Employment as a registered professional engineer as established in [accordance with] KRS Chapter 322; or~~

~~(iii) A graduate, bachelors, or associates degree in a natural science.~~

~~(2) Water well driller assistant application. An applicant desiring a water well driller assistant certification shall submit a completed application to the cabinet which shall include:~~

~~(a) The Application for Certification;~~

~~(b) All information required by KRS 223.425(5); and~~

~~(c) Payment of the application fee as established in KRS 223.447.~~

Section 3. Examinations. (1) An applicant for a water well driller or water well driller assistant certification shall earn a minimum passing score of seventy (70) percent on an applicable examination in order to receive a certificate [All persons receiving a certification shall pass an exam].

~~(2) The cabinet shall prepare and administer the examinations that determine the knowledge, ability, and judgment of approved applicants as established in this section and [in accordance with] Section 1[2] of this administrative regulation.~~

~~(a) 1. Examinations shall be administered at least annually [at a place and time scheduled] by the cabinet.~~

~~2. The applicant and cabinet shall schedule the cabinet-administered examination at a mutually agreeable date and time [The cabinet shall provide an advanced announcement of each examination and the availability of National Groundwater Association examinations].~~

~~(b) The applicant shall schedule to take other examinations required by this administrative regulation directly with the National Groundwater Association. [Arrangements may be made with the cabinet to take the examination at an alternate time].~~

~~(3) The cabinet shall administer the examination only to a qualified applicant who has:~~

~~(a) Submitted a complete application;~~

~~(b) Met all requirements established in [of] KRS 223.425;~~

~~(c) Met all requirements established in [of] Sections 1 and 2 of this administrative regulation; and~~

~~(d) Paid the examination fee [all applicable fees for the examination] as established [listed] in KRS 223.447.~~

~~(4) [The cabinet shall certify those applicants who pass the applicable examination.]~~

~~(a) An [Each applicant shall achieve a score of not less than seventy (70) percent to pass each examination administered.~~

~~(b) 1. Each] applicant who does not pass an examination may repeat the examination after forty-five (45) days from the date the~~

cabinet notifies the applicant~~[is notified]~~ of the results.

~~(b)[2-]~~ An applicant shall not repeat an examination more than six (6) times per calendar year.

(c) Examinations shall not be returned to the applicant, but the applicant may review results with a member of the board or an employee of the cabinet upon request.

(5) Contents of the water supply well driller examination.

(a) For a certificate to drill water supply wells, an examination shall consist of~~the following~~:

1. The Kentucky Water Well Certification Examination;
2. The National Ground Water Association General Exam;

and
3. One (1) or more of the~~following~~ National Ground Water Association specialty examinations applicable~~[applying]~~ to each drilling method for which the applicant wishes to be certified, including:

- a. Cable Tool Drilling Exam;
- b. Air Rotary Drilling Exam;
- c. Mud Rotary Drilling Exam;
- d. Reverse Rotary Drilling Exam;
- e. Jetting and Driving Wells in Unconsolidated Material Exam;

f. Boring and Augering in Unconsolidated Materials Exam; or
g. A substitute examination as identified or developed~~[jointly]~~ by the cabinet in consultation with~~[and]~~ the board to test~~[testing for]~~ knowledge of local laws or regulations as established ~~in accordance with~~ KRS 223.410.

(b) For a certificate to drill monitoring wells using hollow stem auger, solid stem auger, or direct push method, an examination shall consist of~~the following~~:

1. The Kentucky Monitoring Well Certification Examination;
2. The National Ground Water Association General Exam;

and
3. The National Ground Water Association Augering and Monitoring Exam; or

4. A substitute examination as identified or developed~~[jointly]~~ by the cabinet in consultation with~~[and]~~ the board to test~~[testing for]~~ knowledge of local laws or regulations as established ~~in accordance with~~ KRS 223.410.

(c) For a certificate to drill monitoring wells using another method, an examination shall consist of~~the following~~:

1. The Kentucky Monitoring Well Certification Examination;
2. The National Ground Water Association General Examination;

3. The National Ground Water Association Augering and Monitoring Exam; and

4. One (1) or more of the~~following~~ National Ground Water Association specialty examinations applicable~~[applying]~~ to each drilling method for which the applicant wishes to be certified, including:

- a. Cable Tool Drilling Exam;
- b. Air Rotary Drilling Exam;
- c. Mud Rotary Drilling Exam;
- d. Reverse Rotary Drilling Exam;
- e. Jetting and Driving Wells in Unconsolidated Material Exam;

f. Boring and Augering in Unconsolidated Materials Exam; or
g. A substitute examination as identified or developed~~[jointly]~~ by the cabinet in consultation with~~[and]~~ the board to test~~[testing for]~~ knowledge of local laws or regulations as established ~~in accordance with~~ KRS 223.410.

(6) Contents of the water supply well driller assistant examination. An applicant shall earn a minimum passing score of seventy (70) percent on:

(a) The Kentucky Water Well Driller Assistant Certification Examination; or

(b) A substitute examination as identified or developed by the cabinet in consultation with the board to test knowledge of local laws or regulations as established in KRS 223.410.

(7) Contents of the monitoring well driller assistant examination. An applicant shall earn a minimum passing score of seventy (70) percent on the:

(a) Kentucky Monitoring Well Driller Assistant Certification

Examination; or

(b) A substitute examination as identified or developed by the cabinet in consultation with the board to test knowledge of local laws or regulations as established in KRS 223.410.

Section 4. Issuance of Certificate. ~~(1) Upon satisfactory fulfillment of the requirements established in~~~~[of] this administrative regulation,~~ The cabinet shall issue a certificate~~to the applicant~~ designating the classification~~[of drilling]~~ for which the water well driller or water well driller assistant has demonstrated competence~~[-]~~.

(a) Upon satisfactory fulfillment of the requirements established in~~[of] this administrative regulation; and~~

(b) Payment of the initial certification fee as established in KRS 223.447.

~~(2) A~~~~[If the driller's employment or mailing address changes from that listed on the application, the]~~ water well driller or water well driller assistant shall provide written notification to the cabinet within thirty (30) days of a change of employment or mailing address.

~~(3) Display of certificate number.~~

(a) A certified water well driller shall have the certificate number affixed and prominently displayed on the drill rig used at the well site.

(b) The certificate number shall be:

1. ~~Inscribed with the format~~~~[in the following manner]:~~ KY. CERT. ~~XXXX-XXXX-XX~~~~[XXXX-XXXX]~~ (insert certificate number in place of the Xs)~~[-]~~

2.~~[(c)]~~ Inscribed with numbers that are~~[Numbers shall be]~~ at least three (3) inches in height and of a color that shall be easily distinguishable from that of the drill rig; and~~[-]~~

3.~~[(d)]~~ This number shall be Removed if the:

a. Drill rig is scrapped, sold, or otherwise changes ownership~~[-]~~; or

b.~~[(f)]~~ Certified water well driller's certificate becomes invalid.

Section 5. Service of Process. Each applicant, certified water well driller, and certified water well driller assistant~~[and driller]~~ shall provide the cabinet with an address for receipt of applicable legal documents for service of process. The last address provided to the cabinet~~[pursuant to this provision]~~ shall be the address at which the cabinet shall tender applicable legal notices in connection with an enforcement or disciplinary action.

Section 6. Disciplinary Action. (1) A certified water well driller or certified water well driller assistant shall be subject to disciplinary action if the water well driller or water well driller assistant:

(a) Practiced fraud or deception in obtaining a certificate or filing cabinet mandated reports;

(b) Did not use reasonable care or judgment in the performance of duties;

(c) Failed to apply knowledge in the performance of duties;

(d) Is~~[incompetent;]~~ unable~~[-]~~ or unwilling to properly perform duties; or

(e) Does not have bond and insurance required by KRS 223.430.

(2) The disciplinary action shall take the form of~~the following~~ sanctions established in this subsection depending on the severity, duration, and number of the violations, including:

(a) Probation, not to exceed one (1) year;

(b) Suspension of the water well driller's or water well driller assistant certificate, not to exceed one (1) year, during which the certificate shall be considered void;

(c)~~[-]~~ Temporary revocation of the~~[driller's]~~ certificate which~~[-]~~ 2. Temporary revocation shall be greater than one (1) year and not more than four (4) years;

(d) Permanent revocation of the~~[driller's]~~ certificate~~[certification]~~; or

(e) Civil or criminal penalties against the driller.

(3) Initial review procedures. Valid~~[Written]~~ complaints or a significant enforcement action against a water well driller or water

~~well driller assistant may[, unless duplicitous or frivolous, shall]~~ be reviewed at the next regularly scheduled board meeting.

(a) If the board decides a complaint or enforcement action warrants~~[complaints warrant]~~ further investigation, the water well driller or water well driller assistant shall be requested to appear before the board.

(b) Upon completion of its review of the complaint and available facts, the board shall send its recommendation and supporting facts to the cabinet.

(c) The cabinet shall:

1. Decide whether to take disciplinary action against the water well driller or water well driller assistant based on the board's recommendation and supporting facts~~;~~.

2.~~[(d) The cabinet shall]~~ Notify the water well driller or water well driller assistant and the board of its decision and the facts supporting its decision in writing.

~~[(e) The cabinet shall notify the board of its decision and the facts supporting its decision.]~~

(4) Action taken by the cabinet pursuant to this section shall not preclude the cabinet from pursuing additional civil or criminal action.

(5)(a) A water well driller or water well driller assistant whose certificate has been suspended or revoked shall not drill wells.

(b) If a certificate is permanently revoked, the water well driller or water well driller assistant shall be ineligible to receive a certificate as a water supply well driller~~;~~ or monitoring well driller~~;~~ or well driller assistant in the future.

(c) Experience gained during a suspension or temporary revocation shall not be included toward meeting the requirements established in~~[of]~~ Section 2~~[7(5)]~~ of this administrative regulation.

(6)(a) Sanction review and removal. During the water well driller's or water well driller assistant's probation or suspension the board and cabinet shall monitor the water well driller's or water well driller assistant's work activities.

(b) At the end of the sanction period, the board shall recommend that the cabinet lift the sanction or take additional action against the water well driller or water well driller assistant.

(7) Pursuant to KRS 224.10-420(2), a water well driller or water well driller assistant may contest~~[who considers himself aggrieved by]~~ a disciplinary action of the cabinet by filing~~[may file]~~ a petition for a hearing with the cabinet.

Section 7. Expiration and Renewal of Certificates. (1) All certified water well drillers and water well driller assistants shall renew their certificates annually.

(2)(a) Certificates shall be valid from the date of issuance until the following June 30. If an initial certificate is issued after May 1, it shall be effective until June 30 of the next calendar year.

(b) Certificates shall be renewed by July 1 of each year.

(3) Certificate renewal shall require submitting to the cabinet~~[(3)(a) A certified water well driller desiring to renew a certificate shall file]~~

(a) A complete Application for Certification Renewal~~[Application with the cabinet];~~ and

(b) Payment of the renewal fee as established~~[Pay the fees specified]~~ in KRS 223.447.~~[(b) The renewal application shall be made on the Well Driller's Certification Renewal Application.]~~

(4)(a) If the certificate renewal fee is not received within sixty (60) days of the renewal date of July 1, the certificate shall expire.

(b) Expired certificates may be renewed without examination within two (2) years of the expiration date, if the applicant:

1. Pays the renewal fee as established in KRS 223.447~~;~~;

2. Meets the continuing education requirements established~~[outlined]~~ in Subsection 5~~[five–(5)]~~ of this section within the twelve (12) months immediately preceding~~[prior to]~~ recertification~~;~~ and

3. Meets all other statutory and regulatory requirements for certification.

(5) Continuing education requirement.

(a) Certified water well drillers shall complete five (5) hours of cabinet-approved continuing education for certificate renewal. A

minimum of three (3) hours of continuing education shall pertain directly to well drilling.

(b) Certified well driller assistants shall complete a minimum of eight (8) hours of cabinet-approved continuing education as established in KRS 223.425. A minimum of four (4) hours of continuing education shall pertain directly to well drilling.

~~[(c)(a)]~~ Continuing education shall include correspondence courses, short courses, trade association meetings, and other job training courses relevant to water well construction.

~~[(d)(b)]~~ A~~[The]~~ certified water well driller or water well driller assistant shall obtain written approval from the cabinet prior to completing the continuing education training.

~~[(e)(e)]~~ The cabinet shall approve continuing education training events that meet~~[for all drillers if the training meets]~~ the requirements established in paragraphs~~[of paragraph]~~ (a) and (b) of this subsection.

(d) An applicant for certificate renewal shall submit documentation of continuing education~~[training]~~ with the renewal application.

Section 8. Certificates and Wallet Cards. (1) The cabinet shall provide certified water well drillers and water well driller assistants with certificates and wallet cards.

(2) A certified water well driller or water well driller assistant~~[The driller]~~ shall carry wallet cards at the job site.

~~Section 9.[Rig Operators. Rig operator cards shall not be issued after the most recent effective date of this administrative regulation.]~~

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

(a) "Application for Certification", DEP No. DOW6060, July 2019~~["Water Well and Monitoring Well Driller's Certification Application", July 2008; and];~~

(b) "Application for Certification Renewal", DEP No. DOW6070, July 2019~~["Well Driller's Certification Renewal Application", July 2008]; and~~

(c) "Affidavit of Supervision", DEP No. DOW6080, July 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Division of Water Web site at <https://eec.ky.gov/Environmental-Protection/Water/GW/Pages/GWDrillers.aspx>~~;~~ www.water.ky.gov.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 9, 2019

FILED WITH LRC: July 11, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, August 22, 2019 at 6:00 p.m. Eastern Standard Time at the Department for Environmental Protection, Training Room B, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. 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: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email: water@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for certification and certification renewal for water well and monitoring well drillers and well drillers assistants, including examinations, applications, disciplinary action, and certification renewal.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the requirement to promulgate administrative regulations for well driller and well driller assistants pursuant to KRS 223.420.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.420(1)(e) requires the cabinet to promulgate administrative regulations concerning examination and certification of water well drillers. This administrative regulation provides for the certification of water well drillers and water well driller assistants, including the requirements for examination, application, and disciplinary action.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.420(1)(e) requires the cabinet to promulgate administrative regulations concerning examination and certification of water well drillers. This administrative regulation provides for the certification of water well drillers and water well driller assistants, including the requirements for examination, application, and disciplinary action.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation revises language to comply with the requirements of KRS 13A, renames the regulation to include water well driller assistants, adds certification standards and requirements for water well driller assistants, establishes a minimum passing score of seventy percent (70%) on applicable examinations, provides that cabinet examinations shall be scheduled at a mutually agreeable date and time with the applicant, requires payment of the initial certification fee before a certificate will issue, establishes a continuing education requirement of eight (8) hours per year for well driller assistants, requires that at least fifty percent (50%) of continuing education units be pertinent to well drilling, updates existing Materials Incorporated by Reference, and adds an Affidavit of Supervision required for certified well driller assistants.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative is necessary to establish a water well driller's assistant program required by Senate Bill 32 of the 2019 legislative session, which amended KRS 223.400 through 223.460.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.420(1)(e) requires the cabinet to promulgate administrative regulations concerning examination and certification of water well drillers. This administrative regulation provides for the certification of water well drillers and water well driller assistants, including the requirements for examination, application, and disciplinary action.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation establishes a water well driller's assistant program required by Senate Bill 32 of the 2019 legislative session which amended KRS 223.400 through 223.460.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 1000 water well owners per year, approximately 200 certified water well drillers and potentially 400 well driller assistants, and as many as 300 drilling/consulting companies. This administrative regulation also affects the Kentucky Division of Water, Kentucky Water Well Certification Board, and the Kentucky Ground Water Association.

(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 individuals identified in question (3) will need to comply with the requirements for becoming certified, and to renew certification, as a water well driller's assistant.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): In complying with this administrative regulation, an applicant for initial certification as a water well driller or water well driller's assistant will pay a total of \$330 (\$50 application fee, eighty dollar \$80 examination fee, and \$200 certification fee) as established in KRS 223.447. Certified well drillers must also pay for the cost of the surety bond and \$1000,000 of general liability insurance. Certification renewal for water well drillers and water well driller assistants will cost \$200 as established in KRS 223.447.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in question (3) will be in compliance with all statutory requirements of KRS 223.400 through 223.600. Additionally, the entities will benefit from having a new water well driller's assistant program.

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

(a) Initially: The current cost of the program is about \$300,000 for 2.5 FTEs for certified water well drillers, which is well above the current annual revenue between approximately \$15,000 to \$20,000. The certified population could potentially triple, from about 150 to 450, with implementation of the new water well driller's assistant program.

(b) On a continuing basis: Should the new program triple the number of applicants, the program would require at least one additional FTE which would cost approximately \$69,000, to bring total annual cost to about \$369,000.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Water well driller and water well driller assistant certification fees, Clean Water Act Section 106 grant for groundwater, and general funds allocated by the legislature.

(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: Senate Bill 32 of the 2019 legislative session amended KRS 223.447 (Fees for water well driller certification) by increasing fees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The fees contained in this administrative regulation were established by Senate Bill 32 of the 2019 legislative session, which amended KRS 223.447 (Fees for water well driller certification) by increasing fees.

(9) TIERING: Is tiering applied? Tiering is applied. The fees and information required for certification are based on whether the certification is for a water well driller or water well driller's assistant, and whether certification is initial or a renewal.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

Water, which certifies water well drillers and water well driller assistants, and those divisions of state or local government that may employ certified water well drillers and water well driller assistants and pay their certification or renewal fees.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.420(1)(e) requires the cabinet to promulgate administrative regulations concerning examination and certification of water well drillers. This administrative regulation provides for the certification of water well drillers and water well driller assistants, including the requirements for examination, application, and disciplinary action.

(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 revenue generated by the certification fees revised by amendments to KRS 223.447 will result in revenue to the Division of Water of about \$136,800 if the new water well driller assistant program triples the current certified population.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The revenue generated by the certification fees revised by amendments to KRS 223.447 will result in revenue to the Division of Water of about \$136,800 if the new water well driller's assistant program triples the current certified population.

(c) How much will it cost to administer this program for the first year? The current cost of the program is about \$300,000 for 2.5 FTEs.

(d) How much will it cost to administer this program for subsequent years? The Division of Water may require an additional FTE if the new water well driller's assistant program triples the certified population, which will cost approximately \$369,000 per year.

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

Revenues (+/-): Approximately \$136,800

Expenditures (+/-): Approximately \$369,000

Other Explanation: N/A

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate for the certification of water well drillers or water well drillers assistants.

2. State compliance standards. KRS 223.410, 223.420(1)(e), 223.435, 224.10-100, 224.70-100, 224.70-110

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate for the certification of water well drillers or water well drillers assistants.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? There is no federal mandate for the certification of water well drillers or water well drillers assistants.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate for the certification of water well drillers or water well drillers assistants.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Water (Amendment)

401 KAR 6:350. Monitoring well construction practices and standards.

RELATES TO: KRS 223.400 through 223.460[223.400—223.460], 223.991, 224.1-400, 224.1-405, 224.43-010 through 224.43-815, 224.46-012 through 224.46-870, 224.60-100 through 224.60-160[224.01-400, 224.01-405, 224.43-010—224.43-815, 224.46-012—224.46-870, 224.60-100—224.60-160, EO 2008-507, 2008-531]

STATUTORY AUTHORITY: KRS 151.110, 223.435, 224.10-100, 224.70-100, 224.70-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.435 requires the Secretary of the Cabinet to promulgate administrative regulations establishing standards of practice for water well construction.[EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet.] This administrative regulation establishes requirements for the construction of monitoring wells, including temporary monitoring wells, and provides minimum standards for location, construction, modification, and abandonment.

Section 1. General Requirements. (1)[Certified monitoring well driller requirement.] Each monitoring well shall be constructed, modified, or abandoned by a monitoring well driller or monitoring well driller assistant[natural persons] certified in accordance with KRS 223.425 and 401 KAR 6:320.

(2) A monitoring well driller's assistant shall work under the direct supervision, as defined by 401 KAR 6:001(14), of a certified monitoring water well driller.

(3) Well specifications shall:

(a) Be provided by the certified well driller to the well driller's assistant, as required under direct supervision defined by 401 KAR 6:001(14), for the work to be conducted including:

1. Construction;

2. Alteration;

3. Maintenance;

4. Repair;

5. Reworking;

6. Development;

7. Abandonment; or

8. Plugging; and

(b) Shall be recorded on the Uniform Kentucky Well Construction Record which shall be:

1. Retained by the well driller's assistant; and

2. Available for inspection upon request by the cabinet.

(c) Changes made to well specifications during any work being conducted on a well shall be:

1. Approved in advance by a certified well driller;

2. Recorded on an amended Uniform Kentucky Well Construction Record;

3. Retained by the well driller's assistant; and

4. Available for inspection upon request by the cabinet.

(4)[Construction and well performance requirement.] Permanent and temporary monitoring wells shall be constructed, modified, and abandoned in[such] a manner that prevents[as to prevent] the introduction or migration of contamination to a water-bearing zone or aquifer through the casing, drill hole, or annular materials.

(5)[(3)] Reporting requirement. Within sixty (60) days after completion, modification, or abandonment of a monitoring well or temporary monitoring well, the certified monitoring well driller shall submit a report of well construction to the cabinet.

(a) Record all information about the depth and the materials used in the monitoring well construction, modification, or abandonment; and[shall also be recorded.]

(b) Submit a complete~~[The report shall be submitted on the form] Uniform Kentucky Well Construction Record form to the cabinet and monitoring well owner.~~

~~[(4)] Records to monitoring well owner. The certified monitoring well driller shall provide a copy of the Uniform Kentucky Well Construction Record to the monitoring well owner within sixty (60) days after a monitoring well has been constructed, modified, or abandoned.~~

~~[(5)] The certified well driller shall tag~~ Each well constructed or modified shall be tagged with a well identification number tag provided by the cabinet.

(a) An existing well identification number shall be included on the Uniform Kentucky Well Maintenance and Plugging Record for any well being modified or abandoned.

(b) If a well identification number does not exist at the time of modification or abandonment, the well shall be tagged~~[certified driller shall tag the well, as appropriate,] and~~~~[include]~~ the well identification number assigned shall be recorded on~~[in]~~ the Uniform Kentucky Well Maintenance and Plugging Record.

~~[(6)] Variance. If conditions exist or are believed to exist that preclude compliance with the requirements established in~~~~[of]~~ this administrative regulation, the certified monitoring well driller may request a variance from the cabinet~~[water well drillers program]~~ prior to well construction or well abandonment.

(a) The variance request shall be submitted in writing on the Kentucky Monitoring Well Variance Request form and shall include:

(a) The variance shall include the following:

1. A thorough description of the:

a. Land use at the site and at adjacent and surrounding properties; and

b. Expected geologic conditions at the site, including:

(i) Soil thickness;

(ii) Type of bedrock;

(iii) Depth to groundwater;

(iv) Perched water; and

(v) Confining zones;

2. Distance between the proposed monitoring well~~[monitoring well]~~ location and:

a. Other existing water-supply wells or monitoring wells on adjacent properties; and

b.~~[3. Distance between the proposed monitoring well location and] Potential pollution sources, both on site and on adjacent properties, including:~~

(i) Septic systems; and

(ii) Sewers; and

(iii) Petroleum and chemical storage tanks, or other potential pollution sources;

3.~~[4. A description of the geologic conditions expected at the site, including soil thickness, type of bedrock, if present, perched water, confining zones, and depth to groundwater;]~~

5.~~[A summary of the provisions, including the section numbers of this administrative regulation, for which the variance is requested;~~

6.~~[A justification for the variance; and]~~

7.~~[Proposed construction, modification, or abandonment procedures to be used in lieu of compliance with this administrative regulation; and]~~

8.~~[An explanation of] as to how the alternate well construction procedures will ensure the protection of the quality of the groundwater and the protection of public health and safety.~~

(b) Written variance procedure.

1. The certified monitoring well driller shall:

a. Request a variance by submitting to the cabinet a complete Kentucky Monitoring Well Variance Request form signed by the certified monitoring well driller and, if possible, by the monitoring well owner; and

b. Obtain cabinet approval before well construction begins.~~[4. The driller shall submit the Kentucky Water Well Variance Request form, signed by the certified driller and well owner, and obtain written cabinet approval before well construction begins.]~~

2. The cabinet shall:

a. Notify the applicant in writing within ten (10) days of its

decision to either grant or deny the variance; and

b.~~[3. The cabinet shall] Not issue a variance if the proposed monitoring~~~~[water supply] well construction will not ensure the protection of groundwater quality and public health and safety.~~

(c) Verbal variance for an emergency.

1. A certified monitoring well driller may request a verbal variance for an emergency if the delay incurred due to the written variance procedure established in paragraph (b) of this subsection may result in:

a. Loss of access to potable water for the intended user;

b.~~[Failure to address an existing or impending environmental emergency in accordance with KRS 224.1-400] 224.01-400; or~~

c.~~[A risk to public health or safety.]~~

2. The cabinet shall not issue a variance if the proposed monitoring~~[water supply] well construction will not ensure the protection of groundwater quality and public health and safety.~~

3. Within fifteen (15) days of the date the cabinet approves the verbal variance for an emergency, the certified monitoring~~[water] well driller shall submit to the cabinet a complete Kentucky Monitoring~~~~[Water] Well Variance~~~~[variance] Request form~~~~], signed by the certified monitoring well driller and monitoring well owner,~~ to the cabinet.

(d) The variance approval shall list the conditions of the variance, including the:

1. ~~[The] Approved alternate well construction procedures;~~

2. ~~[The] Well sampling requirements; and~~

3. ~~[The] Requirement to notify surrounding property and well owners of the variance, if applicable.~~

(e) The certified monitoring well driller shall submit to the cabinet and the monitoring well owner a copy of the Kentucky Monitoring Well Variance Request form~~], signed by the certified monitoring well driller and the monitoring well owner,~~ to the cabinet and the monitoring well owner~~], within sixty (60) days after the well is completed.~~

Section 2. Design Factors. Monitoring well construction shall comply with the requirements established in this section.~~[The certified monitoring well driller shall construct each monitoring well to comply with the following:] (1) Monitoring wells shall not be constructed in an identified special flood hazard area unless~~~~[constructed in flood zones;]~~

(a) An alternate site~~[If a reasonable location] does not exist;~~

(b)~~[monitoring wells may be constructed in flood zones providing] The well is water tight; and~~

1. The well is of flush mounted construction; or~~[and]~~

2. The well casing extends a minimum of two (2) feet above the highest base~~[maximum known] flood elevation at the site.~~

(2)~~[(b)] Measures shall be taken during drilling and well construction to prevent the introduction or migration of contaminants to a water-bearing zone or aquifer;~~

(3)~~[(2)] Water used in the drilling or decontamination process shall be potable;~~

(4)~~[(a)] (3)] Each water-bearing zone that is intercepted during the drilling phase but not intended for groundwater monitoring shall be:~~

1. Sealed off to prevent down-hole cross contamination before advancing the borehole; and

2. (a) Each water-bearing zone that is intercepted during the drilling phase but not intended for groundwater monitoring shall be Prevented from contributing to a well by installing outer casing with a watertight seal.

(b) The permanent outer casing shall have a minimum two (2) inch annulus between the:

1. Borehole and the outside diameter of the outer casing; and

2. a minimum two (2) inch annulus between the Outer casing and the inner casing.

(c) The outer casing shall be grouted with sealing materials using a grout pipe.

(d) A minimum cure time in accordance with~~[following]~~ the sealing material manufacturer's specifications~~[recommendation]~~ shall be required before drilling through the grout seal.

(e) Temporary outer casing may be installed.

Section 3. Monitoring Well Construction. (1) General Requirements.

(a) All permanent and temporary monitoring wells shall be constructed, modified, and abandoned in a manner that prevents[as to prevent] the introduction or migration of contamination to a water-bearing zone or aquifer through the casing, drill hole, or annular materials.

(b) Monitoring wells shall be constructed in a manner that yields[as to yield] both groundwater samples and groundwater-level measurements that shall be representative of the water-bearing zone or aquifer to be monitored.

(2) Boreholes.

(a)1. Boreholes drilled in unconsolidated formations shall be a minimum of four (4) inches greater than the outside diameter of the well casing and well screen except for sonic wells, direct push wells, and temporary wells.

2. The ~~driller shall clean out the~~ open borehole shall be cleaned if soil or rock fall into the open borehole during auger or drill-stem retrieval.

(b) Boreholes drilled in consolidated formations shall be a minimum of two (2) inches greater than the outside diameter of the well casing and screen.

(c) Boreholes drilled by the hollow-stem auger or sonic drill method shall have a minimum auger or casing inner diameter (ID) as established in this subsection.[for the following:]

1. Four and one quarter (41/4) inches ID for the installation of two (2) inch monitoring well casing;

2. Six and one quarter (61/4) inches ID for the installation of four (4) inch monitoring well casing; or

3. Larger augers shall be required if installation difficulties due to geologic conditions or greater depths are anticipated.

(3)(a) Lubricant shall not be used on drill pipe threads, hollow-stem or solid-stem augers, or on the exterior of the drill pipe, unless approved in advance by the cabinet following the variance procedure established in Section 1(8)(4)(6) of this administrative regulation.

(b) A request to use a lubricant shall:

1. Be submitted by the certified monitoring well driller in writing to the cabinet; ~~water well drillers program,~~ and

2. Include a[Material] Safety Data Sheet [(MSDS)] for the proposed lubricant ~~shall be submitted with the request~~.

(4)(a) If the air rotary drilling method is used drill cuttings shall be contained.

(b) Air rotary drills using screw compressor systems shall have a coalescing filter system that captures excess entrained compressor oils.

(5) Drilling Derived Waste (DDW) shall be properly containerized.

Section 4. Monitoring Wells Completed Below Ground Surface. (1)(a) Flush mount wells may be approved in[used for parking lot] areas where above-ground completion is not practical or poses a threat to monitoring well integrity and safety[with high traffic, and limited space, such as Underground Storage Tank (UST) facilities, if installed in a manner that prevents surface water or contaminants from migrating into the well].

(b) Monitoring wells completed below ground surface shall have a flush-mount manhole with a bolt-down well cover and waterproof seals installed to prevent the inflow of surface water and contaminants.

(2) The concrete surface pad shall slope away from the monitoring well to prevent precipitation or contaminants from accumulating around the well.

(3)(a) Waterproof seals shall be installed between the cover and the box; ~~;~~ and

(b) O-rings or gaskets shall be installed around the bolts that mount on the cover.

(4) The cover shall consist of material able to withstand the maximum expected loadings.

(5) A water-tight lockable cap shall be attached to the top of the well casing.

(6) The well casing shall be cut so that the locking cap shall install properly and provide a waterproof seal.

(7) A flush-mount monitoring well shall have a concrete surface pad that shall be a minimum of four (4) inches thick with a minimum two (2) foot diameter or square pad centered on the well.

Section 5. Direct Push Monitoring Wells. (1) Direct push monitoring wells installed using direct push technology shall be constructed, modified, and abandoned in ~~[such]~~ a manner that prevents[as to prevent] the introduction or migration of contamination to a water-bearing zone or aquifer through the casing, drill hole, or annular materials.

(2) Temporary monitoring wells installed by the direct push method shall:

(a) Be constructed in ~~[such]~~ a manner that yields[as to yield] both groundwater samples and groundwater level measurements that shall be representative of the water-bearing zone or aquifer to be monitored; ~~;~~

(b) Not allow the mixing of hydrogeologically distinct groundwater zones;

(c) Not exceed fifty (50) feet in depth unless otherwise approved by the cabinet; and

(d) Comply with requirements as established in Section 6 of this administrative regulation.

(3) Direct push monitoring wells shall also comply with the ~~[following]~~ additional standards established in this subsection.;

(a) The outside diameter of the borehole shall be a minimum of one (1) inch greater than the outside diameter of the well casing;

(b) Premixed bentonite slurry or bentonite chips with a minimum of one-eighth (1/8) inch diameter shall be used in the sealed interval below the static water level; and

(c)1. Direct push monitoring wells shall not be constructed through more than one (1) water-bearing formation unless the upper water bearing zone is isolated by temporary or permanent casing.

2. The direct push tool string may serve as temporary casing.

(4) Prepacked well screens may be used.

Section 6. Temporary Monitoring Wells. (1) Temporary monitoring wells shall be:

(a) Constructed, modified, and abandoned in ~~[such]~~ a manner that prevents[as to prevent] the introduction or migration of contamination to a water-bearing zone or aquifer through the casing, drill hole, or annular materials; ~~and;~~

~~(b)(a) Temporary monitoring wells shall be~~ Constructed in ~~[such]~~ a manner that yields[as to yield] both groundwater samples and groundwater level measurements that shall be representative of the water-bearing zone or aquifer to be monitored.

~~(2)(b)~~ The annulus between the borehole and the well casing shall be sealed at the surface with a bentonite seal to prevent surface water from migrating into the borehole.

~~(3)(2)~~ Each temporary monitoring well shall be properly abandoned within seventy-two (72) hours after the well was constructed.

~~(4)(3)(a)~~ A record of a temporary monitoring well constructed and abandoned shall be submitted by the certified monitoring well driller on the Uniform Kentucky Well Maintenance and Plugging Record to the cabinet and the monitoring well owner within sixty (60) days from the date abandoned. ~~(b) A copy of the Uniform Kentucky Well Construction Record and the Uniform Kentucky Well Maintenance and Plugging Record shall also be submitted to the Division of Waste Management program regulating the facility, if applicable.]~~

Section 7. Materials for Monitoring Wells and Temporary Monitoring Wells. (1) Well casing and screens.

(a) Monitoring well casing and screens[well screen materials] shall:

1. Be constructed of materials determined on a site-specific basis to ensure that the integrity of the material shall not be affected by contaminants or introduce contaminants to the

groundwater;[.]

~~2.[(b) Well casing and screens shall]~~ Be resistant to chemical and microbiological corrosion and degradation;[.]

~~3.[(c) Monitoring well casings and screens shall]~~ Be able to withstand the physical forces acting upon them during and following their installation, and during their use, including force;[. This includes force]

a. Due to suspension in the borehole, grouting, development, purging, pumping, sampling;[.] and

b.[forces] Exerted on the well casing and screens by the surrounding geologic materials; and.[.]

4. Have a minimum inside diameter of two (2) inches except for direct push and temporary wells.

~~(b)[(d) The certified driller shall not install]~~ Used, damaged, or contaminated well casing or screens shall not be installed.~~[(e) Well casing and screens shall have a minimum inside diameter of two (2) inches except for direct push and temporary wells.]~~

(2) Joints and couplings.

(a)1. All joints and couplings shall be flush type.

2. All joints shall be watertight.

(b) The monitoring well casing shall extend a minimum of two and one half (2 1/2) feet above ground surface, except as established~~[provided for]~~ in Section 4 of this administrative regulation.

(c)1. A minimum annular space of two (2) inches shall be maintained between the borehole wall and the outside diameter of the monitoring well casing.

2. In a multi-cased monitoring well the annulus between the well casings shall be a minimum of two (2) inches.

(d) Centralizers shall be installed:

1.[Used] In monitoring wells greater than fifty (50) feet in depth; and.[.]

~~2.[Centralizers shall be installed]~~ At a minimum of ten (10) foot intervals.

(3) Filter pack.

(a)[4-] The filter pack materials shall:

1. Consist of clean, rounded to well-rounded, insoluble particles of quartz silica composition; and.[.]

2.~~[The filter pack materials shall]~~ Be of a size that minimizes head losses through the filter pack and prevents sediment movement through the well screen into the well.

(b) The filter pack shall be placed:

1. In the annulus in[such] a manner that prevents~~[as to prevent]~~ bridging; and.[.]

2.~~[At a minimum, the filter pack shall be placed]~~ Slowly and carefully by the free-fall method; or

3. Using another method that ensures proper placement of the filter pack.

(c) The depth to the filter pack shall be continually monitored during installation.

(d)1. A minimum of six (6) inches of filter pack shall be placed below the bottom of the well screen.

2. The filter pack shall extend at least two (2) feet above the top of the well screen.

(e) Prepacked well screens may be used if the filter-pack material, filter-pack grain size, and the screen slots are properly sized for the monitoring zones.

(4) Sealing materials.

(a) Only potable water shall be used in mixing sealing materials used in the construction or abandonment of monitoring wells.

(b) The sealing material shall be placed in the annulus by a grout pipe, starting at the top of the bentonite seal to within three (3) feet of the ground surface.

(c) Side-discharge grout pipes shall be used if sealing the annulus for wells that are 100 feet deep or greater.

(d) The concrete surface pad or surface casing shall not be installed until the sealing materials placed in the annulus have settled and cured.

(e) Bentonite seal.

1. The bentonite seal shall:

a. Consist of high solids sodium bentonite pellets with a minimum of thirty (30) percent solids; and

b.[shall] Be placed in the annulus by a method that ensures the prevention of bridging.

2.a. The depth to the bentonite seal shall be continually monitored during installation.

b. The bentonite seal shall extend a minimum of two (2) feet above the top of the filter pack.

3.a. Hydration time of the bentonite seal shall be according to the manufacturer's specifications~~[recommendation]~~.

b. Only potable water shall be used~~[, if necessary,]~~ as the hydration medium.

c. The surface opening and the annulus shall be protected during the hydration period to prevent material from falling into the borehole.

(f) Annular seal.

1. The annular seal shall be installed in[such] a manner that prevents~~[as to prevent]~~ the migration of contaminants or pollutants along the monitoring well annulus into the well.

2. The sealing material shall be placed so that pollutants cannot migrate through the annulus.

3. The sealing materials shall not have a harmful effect on the well casings or screens or damage the surface completion of the well.

Section 8. Surface Completion. (1) Surface casing.

(a) Monitoring wells completed with the well casing extending above ground surface shall be constructed with a steel, anodized aluminum, or PVC outer protective surface casing with a locking cap.

(b) A water tight well cap shall be installed on the well casing.

(c) The well casing shall be cut in a manner so that the locking cap shall install properly and provide a waterproof seal.

~~(d)[4-a.] The outer~~~~[Outer]~~ protective surface casing~~[casings]~~ shall:

1. Have a minimum of two (2) inches of clearance between the inside diameter of the outer protective casing and the outside diameter of the well casing;[.]

~~2.[b. The outer protective surface casing shall]~~ Extend a minimum of one (1) inch and a maximum of twelve (12) inches above the inner well casing;[.]

3. a.[c. The outer protective surface casing shall] Be installed by pouring a concrete slurry mix into the borehole from the top of the annular seal to the ground surface; and.[.]

~~b.[2. The outer protective surface casing shall]~~ Then be pushed into the wet concrete slurry a minimum of two (2) feet below the ground surface;[.]

4. a.[3. The outer protective surface casing shall] Have a minimum of two (2) weep holes for drainage;[.]

b. The weep holes shall be a minimum diameter of one-quarter (1/4) inch and shall be located directly above the top of the concrete surface pad; and.[.]

~~5.[4. The outer protective surface casing shall]~~ Bear the Kentucky Water Well Tag with the water well number.

(2) Bumper guards.

(a) Monitoring wells extending above ground surface shall have:

1. Four (4) protective bumper guards consisting of steel pipes a minimum of three (3) inches in diameter; and

2. A minimum of five (5) feet in length.

~~(b)[(a)4-]~~ The bumper guards shall:

1. Be installed to a minimum depth of two (2) feet below ground surface in a concrete footing; and[.]

2.~~[shall]~~ Extend a minimum of three (3) feet above ground surface;[.]

3. Be filled with concrete for additional strength if the bumper guards are steel pipe; and

4.~~[2. Concrete shall be placed into the steel pipe bumper guards for additional strength.~~

~~(b) The bumper guards shall]~~ Be painted a highly visible color.

(c) A modification to the bumper guard requirement shall be pre-approved by the cabinet~~[water well drillers program]~~ according to the variance procedure established in Section ~~1(8)[4(6)]~~ of this administrative regulation.

(3) Concrete surface pad.

(a) All monitoring wells shall have a concrete surface pad a minimum of six (6) inches thick with a minimum three (3) foot diameter or square pad centered on the well.

(b) The concrete surface pad shall slope away from the monitoring well in a manner as to prevent precipitation or contaminants from accumulating around the well.

Section 9. Well Development. (1) Newly installed monitoring wells shall be developed until the column of water in the well is free of visible sediment.

(2) ~~The~~This well-development protocol established in paragraph 1 of this Section shall not be used as a method for purging prior to water quality sampling.

Section 10. Repairs or modifications to the well casing shall be~~performed by a certified monitoring well driller and shall be~~ reported to the cabinet by the certified monitoring well driller~~water well-drillers program~~ on the Uniform Kentucky Well Maintenance and Plugging Record.

Section 11. Monitoring Well Abandonment. (1) General requirements.

(a) A monitoring well that has been damaged or is otherwise unsuitable for use as a monitoring well, shall be abandoned:

1. Within thirty (30) days from the last sampling date; or

2. Thirty (30) days from the date it is determined that the well is ~~no~~not longer suitable for its intended use.

(b)~~(a)~~ Monitoring wells shall be abandoned in~~such~~ a manner that prevents~~as to prevent~~ the migration of:

1. Surface water or contaminants to the subsurface; and

2.~~to prevent migration of~~ Contaminants among water bearing zones.

(c)~~(b)~~ A Division of Waste Management program that permits or regulates the facility at which a monitoring well is to be abandoned shall be notified by the certified monitoring well driller a minimum of ten (10) working days prior to abandonment of each monitoring well.

(d) ~~A~~(e) Each temporary monitoring well shall be abandoned within seventy-two (72) hours after installation.

(e)~~(d)~~ A record of the monitoring well abandonment shall be submitted to the cabinet by the certified monitoring well driller on the Uniform Kentucky Well Maintenance and Plugging Record~~to the water well-drillers program~~ within sixty (60) days from the date abandoned.~~2. A copy of the Uniform Kentucky Well Maintenance and Plugging Record shall be submitted to the cabinet program regulating the facility, if applicable.~~

(2) Abandonment methods and sealing materials for all types of monitoring wells.

(a) The surface casing, monitoring well casing, well screen, filter pack, bentonite seal, and cement shall be removed.

(b) The borehole shall be plugged with sealing material by grout-pipe method or by pressure injection from the bottom of the boring to within three (3) feet of the top of the borehole, except as established~~provided~~ in paragraph (c) of this subsection.

(c) The borehole may be plugged using the gravitational displacement, or free-flow method to a maximum depth of fifty (50) feet with bentonite~~;- If this method is employed, the well driller shall use bentonite~~

1. With a minimum particle size of three-eighths (3/8) inch, and

2.~~the bentonite shall be~~ Used according to the manufacturer's specifications~~recommendation~~.

(d) The top two (2) feet of the borehole shall be filled with materials consistent with the surrounding ground surface.

(e) If the well casing cannot be removed, an alternate method of abandonment may be used~~employed~~, if approved in advance by the cabinet in accordance with the variance process established in Section 1(8)~~4(6)~~ of this administrative regulation.

Section 12. Division of Waste Management Program Requirements. (1) Prior to the installation or abandonment of a monitoring well at a facility regulated by the cabinet~~Division of~~

~~Waste Management~~, all monitoring well~~monitoring well~~ construction designs and all monitoring-well materials shall be pre-approved by the cabinet~~Division of Waste Management~~ in accordance with the requirements established in KRS 224.1-400, 224.1-405~~224.01-400, 224.01-405,~~ 224.43-010 through 224.43-815, 224.46-012 through 224.46-870, and 224.60-100 through 224.60-160.

(2) The cabinet~~Division of Waste Management regulating program~~ shall be notified at least ten (10) working days prior to a monitoring well~~monitoring well~~ construction, modification, or abandonment so that a cabinet representative may be present at the construction, modification, or abandonment.

~~[(3) A copy of the Uniform Kentucky Well Construction Record and the Uniform Kentucky Well Maintenance and Plugging Record shall be submitted to the Division of Waste Management program regulating the facility, if applicable.]~~

Section 13. Documents Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Uniform Kentucky Well Construction Record", DEP No. DOW6010, July 2019~~April 2008~~;

(b) "Uniform Kentucky Well Maintenance and Plugging Record", DEP No. DOW6040, July 2019~~April 2008~~; and

(c) "Kentucky Monitoring Well Variance Request", DEP No. DOW6090, July 2019~~2008~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Division of Water Web site, <https://eec.ky.gov/Environmental-Protection/Water/GW/Pages/GWDrillers.aspx>; www.water.ky.gov.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 9, 2019

FILED WITH LRC: July 11, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, August 22, 2019 at 6:00 p.m. Eastern Standard Time at the Department for Environmental Protection, Training Room B, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. 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: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email: water@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements and minimum standards for the location, construction, modification, and abandonment of monitoring wells and temporary monitoring wells.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards of practice for water well construction as required by KRS 223.435.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.435 requires the Secretary of the Cabinet to promulgate administrative regulations establishing standards of practice for water well construction. This administrative regulation establishes requirements for the construction of monitoring wells, including temporary monitoring wells, and provides minimum standards for location, construction, modification, and abandonment.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements and minimum standards for the location, construction, modification, and abandonment of monitoring wells and temporary monitoring wells as required by KRS 223.435.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation revises language to conform to the requirements of KRS 13A, adds "well driller assistant" roles and responsibilities, clarifies that the administrative regulation applies to monitoring wells rather than water supply wells, replaces "flood zones" with "identified special flood hazard area" to align with current terminology, replaces "known" with "base" flood elevation; adds additional requirements for temporary monitoring wells installed by the direct push method; clarifies monitoring well abandonment requirements regarding the plugging of boreholes, and updates Materials Incorporated by Reference.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to include well driller assistant roles and responsibilities as required by Senate Bill 32 of the 2019 legislative session which amended KRS 223.400 through 223.460, and to update standards and practices for monitoring well construction, modification, and abandonment to current standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.435 requires the Secretary of the Cabinet to promulgate administrative regulations establishing standards of practice for water well construction. This administrative regulation establishes requirements for the construction of monitoring wells, including temporary monitoring wells, and provides minimum standards for location, construction, modification, and abandonment.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will provide clear, updated standards for certified well drillers and well driller assistants in the construction, modification, and abandonment of monitoring wells.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 1000 water well owners per year, approximately 200 certified water well drillers and potentially 400 well driller assistants, and as many as 300 drilling/consulting companies. This administrative regulation also affects the Kentucky Division of Water, Kentucky Water Well Certification Board, and the Kentucky Ground Water Association.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified in question (3) will need to comply with the updated minimum standards for the location, construction, modification, and abandonment of monitoring wells.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified

in question (3): The amendment to this administrative regulation is not expected to increase costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in question (3) will be in compliance with all statutory requirements established in KRS 223.400 through 223.460.

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

(a) Initially: The amendment to this administrative regulation will not result in additional costs.

(b) On a continuing basis: The amendment to this administrative regulation will not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Monitoring well driller and monitoring well driller assistant certification fees, Clean Water Act Section 106 grant for groundwater, and general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The amendment to this administrative regulation will not necessitate increased fees or funding.

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

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation because it establishes minimum standards for the construction, modification, and abandonment of monitoring wells.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Water and those divisions of state or local government that would require a certified well driller to construct, modify, or abandon a monitoring well, such as a municipally owned public water system.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.435 requires the cabinet to promulgate administrative regulations establishing standards of practice for water well construction. This administrative regulation provides minimum standards and requirements for construction, modification, and abandonment of water supply wells.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate additional revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate additional revenue.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not result in additional costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not result in additional costs.

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

Revenues (+/-): NA
Expenditures (+/-): NA

Other Explanation: This administrative regulation will not generate additional revenue or result in additional costs.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate for the construction, modification, or abandonment of monitoring wells.
2. State compliance standards. KRS 223.435, 224.10-100, 224.70-100, 224.70-110
3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate for the construction, modification, or abandonment of monitoring wells.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? There is no federal mandate for the construction, modification, or abandonment of monitoring wells.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate for the construction, modification, or abandonment of monitoring wells.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division for Air Quality (Amendment)

401 KAR 51:010. Attainment status designations.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 50, 51, 52, 53, 58, 75, 81.318, 42 U.S.C. 7401-7671q

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.20-110, 42 U.S.C. 7407

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes[requires] the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation designates the status of all areas of the Commonwealth of Kentucky with regard to attainment of the ambient air quality standards.

Section 1. Definitions. (1) "Rest of state" means the remainder of the state has been designated and identified on a county by county basis.

(2) "Road" means a Kentucky route, a county road, a lane, or a U.S. route, highway, or interstate.

(3) "Statewide" means the entire state has been designated on a county by county basis.

Section 2. Attainment Status Designations. (1) The attainment status of areas of the Commonwealth of Kentucky with respect to the ambient air quality standards for carbon monoxide, lead, nitrogen oxides, ozone, particulate matter, and sulfur dioxide is listed in Sections 4 through 10 of this administrative regulation.

(2) Within sixty (60) days of revision by the U.S. Environmental Protection Agency (U.S. EPA) of a national ambient air quality standard, the cabinet shall review applicable data and submit to the U.S. EPA a revision to the attainment - nonattainment list pursuant to 42 U.S.C. 7407(d)(1).

(3) A road, junction, or intersection of two (2) or more roads as used in Section 7 of this administrative regulation that defines a nonattainment boundary for an area that is a portion of a county designated as nonattainment for ozone for any classification except marginal shall include as nonattainment an area extending 750 feet from the center of the road, junction, or intersection.

Section 3. Attainment Timetable. Primary and secondary ambient air quality standards shall be attained as expeditiously as practicable.

Section 4. Attainment Status Designations for Carbon Monoxide (CO). 1971 Standard:

Designated Area	Designation Type
Statewide	Unclassifiable/Attainment

Section 5. Attainment Status Designations for Lead (Pb). 2008 Standard:

Designated Area	Designation Type
Statewide	Unclassifiable/Attainment

Section 6. Attainment Status Designations for Nitrogen Oxides (NO₂). (1) 1971 Annual Standard:

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than Standards
Statewide		X

(2) 2010 One (1) Hour Standard:

Designated Area	Designation Type
Statewide	Unclassifiable/Attainment

Section 7. Attainment Status Designations for Ozone (O₃). (1) The 1971 One (1) Hour Standard was revoked effective June 15, 2005, for all areas in the Commonwealth of Kentucky. The Cincinnati-Hamilton, Edmonson County, Huntington-Ashland, Lexington-Fayette, Louisville, Owensboro, and Paducah areas shall be considered maintenance areas for the one (1) hour national ambient air quality standards for the purposes of 40 C.F.R. Part 51, Subpart X.

(2) 1997 Eight (8) Hour Primary and Secondary Standard:

Designated Area	Designation Type
Boone County	Attainment ⁽¹⁾
Boyd County	Attainment ⁽¹⁾
Bullitt County	Attainment ⁽¹⁾
Campbell County	Attainment ⁽¹⁾
Christian County	Attainment ⁽¹⁾
Jefferson County	Attainment ⁽¹⁾
Kenton County	Attainment ⁽¹⁾
Oldham County	Attainment ⁽¹⁾
Rest of state	Unclassifiable/Attainment

Footnote: ⁽¹⁾ Existing sources located in areas previously designated as nonattainment shall continue to comply with all applicable conditions pursuant to 401 KAR Chapters 59 and 61.

(3) 2008 Eight (8) Hour Primary and Secondary Standard:

Designated Area	Designation Type
Boone County (part) 2000 Census tracts: 701, 702, 703.01, 703.04, 703.05, 703.06, 703.07, 703.08, 703.09, 704.01, 704.02, 705.01, 705.02, 706.03	Attainment ⁽¹⁾
Campbell County (part) 2000 Census tracts: 501, 502, 503, 504, 505, 506, 511.01, 511.02, 512, 513, 519.01, 519.03, 519.04, 521, 522, 523.01, 523.02, 524, 525, 526, 528, 529, 530, 531	Attainment ⁽¹⁾
Kenton County (part) 2000 Census tracts: 603, 607, 609, 610, 611, 612, 613, 614, 616, 636.03, 636.04, 636.05, 636.06, 638, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655.01, 655.02, 656, 657, 658, 659, 668, 669, 670, 671	Attainment ⁽¹⁾
Rest of state	Unclassifiable/Attainment

Footnote: ⁽¹⁾ Existing sources located in areas previously designated as nonattainment shall continue to comply with all applicable conditions pursuant to 401 KAR Chapters 59 and 61.

(4) 2015 Eight (8) Hour Primary and Secondary Standard

Designated Area	Designation Type	Classification
Boone County (part)	Nonattainment	Marginal

VOLUME 46, NUMBER 2- AUGUST 1, 2019

The entire county except for 2010 U.S. Census Tracts 706.01 and 706.04		
Bullitt County	Nonattainment	Marginal
Campbell County (part) The entire county except for 2010 U.S. Census Tracts 520.01 and 520.02	Nonattainment	Marginal
Jefferson County	Nonattainment	Marginal
Kenton County (part) The entire county except for 2010 U.S. Census Tracts 637.01 and 637.02	Nonattainment	Marginal
Oldham County	Nonattainment	Marginal
Rest of state	Attainment/Unclassifiable	

Section 8. Attainment Status Designations for PM_{2.5}. (1) 1997 Annual Primary and Secondary Standard:

Designated Area	Designation Type	[Classification]
Boone County	Attainment ⁽¹⁾	
Boyd County	Attainment ⁽¹⁾	
Bullitt County	Attainment ⁽¹⁾ [Nonattainment]	[Moderate]
Campbell County	Attainment ⁽¹⁾	
Jefferson County	Attainment ⁽¹⁾ [Nonattainment]	[Moderate]
Kenton County	Attainment ⁽¹⁾	
Lawrence County (part) The area described by U.S. Census 2000 block group identifier 21-127-9901-6	Attainment ⁽¹⁾	
Rest of state	Unclassifiable/Attainment	

Footnote: ⁽¹⁾ Existing sources located in areas previously designated as nonattainment shall continue to comply with all applicable conditions pursuant to 401 KAR Chapters 59 and 61.

(2) 2012 Annual [PM_{2.5}] Primary Standard:

Designated Area	Designation Type
Statewide	Unclassifiable/Attainment

[Designated Area]	Designation Type
Bullitt County (part) 2010 Census tracts: 201.01, 201.02, 201.03, 202.01, 202.02, 203, 204, 205, 206.01, 206.02, 207.01, 207.02, 208, 211.01, 211.02	Unclassifiable
Jefferson County	Unclassifiable
Rest of state	Unclassifiable/Attainment

(3) 1997 Twenty-four (24) Hour Primary and Secondary Standard:

Designated Area	Designation Type
Statewide	Unclassifiable/Attainment

(4) 2006 Twenty-four (24) Hour Primary and Secondary Standard:

Designated Area	Designation Type
Statewide	Unclassifiable/Attainment

Section 9. Attainment Status Designations for Sulfur Dioxide (SO₂). (1) 1971 Primary and Secondary Standard:

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Statewide				X

(2) 2010 Primary Standard:

Designated Area	Designated Type
Campbell County (part) That portion of Campbell County which lies south and west of the Ohio River described as follows: Beginning at geographic coordinates 38.9735 North Latitude, 84.3017 West Longitude on the edge of the Ohio River running southwesterly to Kentucky Highway 1566; thence continuing running southwesterly along Kentucky Highway 1566 to Kentucky Highway 9 (AA Highway); thence running northwesterly along Kentucky Highway 9 (AA Highway) from Hwy 1566 to Interstate 275; thence running northeasterly along Interstate 275 to Highway 2345 (John's Hill Road), Hwy 2345 to US-27, US-27 to I-275, I-275 to the Ohio River; thence running southeasterly along the Ohio River from I-275 to geographic coordinates 38.9735 North Latitude, 84.3017 West Longitude	Attainment ⁽¹⁾
Henderson County (part) Census Block Groups 211010207013, 211010207014, 211010207024, and 211010208004	Attainment/ Unclassifiable
Jefferson County (part) That portion of Jefferson County compassed by the polygon with the vertices using Universal Traverse Mercator (UTM) coordinates in UTM zone 16 with datum NAD83: Ethan Allen Way extended to the Ohio River at UTM Easting (m) 595738, UTM Northing 4214086 and Dixie Highway (US60 and US31W) at UTM Easting (m) 597515, UTM Northing 4212946; Along Dixie Highway from UTM Easting (m) 597515, UTM Northing 4212946 to UTM Easting (m) 595859, UTM Northing 4210678; Near the adjacent property lines of Louisville Gas and Electric-Mill Creek Electric Generating Station and Kosmos Cement where they join Dixie Highway at UTM Easting (m) 595859, UTM Northing 4210678 and the Ohio River at UTM Easting (m) 595326, UTM Northing 4211014; Along the Ohio River from UTM Easting (m) 595326, UTM Northing 4211014 to UTM Easting (m) 595738, UTM Northing 4214086	Attainment ⁽¹⁾
Ohio County	Unclassifiable
Pulaski County	Unclassifiable
Rest of state ⁽²⁾	Attainment/ Unclassifiable

[Designated Area]	Designation Type
Boyd County	Unclassifiable/ Attainment

VOLUME 46, NUMBER 2– AUGUST 1, 2019

Campbell County (part) That portion of Campbell County that lies south and west of the Ohio River described as follows: Beginning at geographic coordinates 38.9735 North Latitude, 84.3017 West Longitude on the edge of the Ohio River running southwesterly to Kentucky Hwy 1566; continuing running southwesterly along Kentucky Hwy 1566 to Kentucky Hwy 9 (AA Highway); running northwesterly along Kentucky Hwy 9 (AA Highway) from Hwy 1566 to Interstate 275; running northeasterly along Interstate 275 to Hwy 2345 (John's Hill Rd.); Hwy 2345 to US-27, US-27 to I-275, I-275 to the Ohio River; running southeasterly along the Ohio River from Interstate 275 to geographic coordinates 38.9735 North Latitude, 84.3017 West Longitude	Attainment ⁽⁴⁾
Daviess County	Unclassifiable/Attainment
Fayette County	Unclassifiable/Attainment
Greenup County	Unclassifiable/Attainment
Henderson County	Unclassifiable/Attainment
Jefferson County (part) That portion of Jefferson County compassed by the polygon with the vertices using Universal Transverse Mercator (UTM) coordinates in UTM zone 16 with datum NAD83: Ethan Allen Way extended to the Ohio River at UTM Easting (m) 595738, UTM Northing 4214086 and Dixie Hwy (US60 and US31W) at UTM Easting (m) 597515, UTM Northing 4212946; along Dixie Hwy from UTM Easting (m) 597515, UTM Northing 4212946 to UTM Easting (m) 595859, UTM Northing 4210678; Near the adjacent property lines of Louisville Gas and Electric-Mill Creek Electric Generating Station and Kosmos Cement where they join Dixie Hwy at UTM Easting (m) 595859, UTM Northing 4210678 and the Ohio River at UTM Easting (m) 595326, UTM Northing 4211014; Along the Ohio River from UTM Easting (m) 595326, UTM Northing 4211014 to UTM Easting (m) 595738, UTM Northing 4214086	Nonattainment
Jessamine County	Unclassifiable/Attainment
Livingston County	Unclassifiable/Attainment
McCracken County	Unclassifiable/Attainment
Rest of state	Unclassifiable

Footnote: ⁽¹⁾ Existing sources located in areas previously designated as nonattainment shall continue to comply with all applicable conditions pursuant to 401 KAR Chapters 59 and 61.

⁽²⁾ Excluding Webster and the remainder of Henderson County.

Section 10. Attainment Status Designations for Total Suspended Particulates (TSP), 1971 Standard:

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Bell County				X
Boyd County			X	
That portion of Bullitt County in Shepherdsville				X
That portion of Campbell County in				X

Newport				
That portion of Daviess County in Owensboro bordered by the Ohio River on the north, by Frederica Street projected to the river on the west, by Fourth Street and U.S. 60 on the south, and by the Beltline (KY 212) projected to the river on the east			X	
That portion of Henderson County in Henderson			X	
Jefferson County			X	
That portion of Lawrence County in Louisa			X	
McCracken County				X
That portion of Madison County in Richmond			X	
Marshall County				X
Muhlenberg County				X
That portion of Perry County in Hazard			X	
That portion of Pike County in Pikeville			X	
That portion of Whitley County in Corbin				X
Rest of state				X

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 9, 2019

FILED WITH LRC: July 12, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on August 26, 2019 at 10:00 a.m. (Local Time) in Conference Room 214 at 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 20, 2019, 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 August 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person. This administrative regulation is contained in Kentucky's State Implementation Plan approved by US EPA. The 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: Paige Stephens, Environmental Scientist II, Division for Air Quality, 300 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601, Phone: (502) 782-6286, Fax: (502) 564-4245, Email: Paige.Stephens@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paige Stephens

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation designates the status of all areas of the Commonwealth of Kentucky (Commonwealth) with regard to attainment of ambient air quality standards. Under section 107 of the Clean Air Act, the state has the primary responsibility of assuring air quality within the entire geographic area by submitting an implementation plan that specifies the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality region in that state.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because it designates whether an area is attaining ambient air quality standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 authorizes the Energy and Environment Cabinet (Cabinet) to promulgate administrative regulations for the prevention, abatement, and control of air pollution. KRS 224.20-110 prohibits pollution of the air under the jurisdiction of the Commonwealth in contravention of the emission standards or the ambient air standards adopted by the cabinet. Section 107 of the Clean Air Act provides states with the primary responsibility for assuring air quality within the entire geographic area of the state. This administrative regulation designates the status of all areas of the Commonwealth with regard to attainment of the National Ambient Air Quality Standards (NAAQS).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Kentucky State Implementation Plan (SIP) specifies the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in the state depending on the attainment status designation of the area as established in this administrative regulation.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment to this administrative regulation will update the attainment status of geographic areas in Kentucky for new and revised national primary and secondary ambient air quality standards.

(b) The necessity of the amendment to this administrative regulation: The proposed amendment to this administrative regulation updates the state designations based on the most recent air quality data.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendment to this administrative regulation conforms to the content of the authorizing statutes by identifying the status of areas in Kentucky with regard to attainment of ambient air quality standards for the planning and implementation of the Kentucky SIP.

(d) How the amendment will assist in the effective administration of the statutes: The Kentucky SIP specifies the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in the state depending on the attainment status designation of the area as prescribed in this administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The number and type of entities

affected by this administrative regulation depends on the location of the facility since this regulation designates areas of the Commonwealth with regard to attainment of the NAAQS based on ambient air quality data.

(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 action to comply directly with this administrative regulation. However, an entity may be required to meet additional requirements established in other administrative regulations due to the attainment status designation assigned to them in this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost associated with the proposed amendment to this administrative regulation as it updates the attainment status designations to be consistent with federal regulations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with standards set forth by other regulations due to the status designations in this administrative regulation will ensure entities are complying with the requirements of the Kentucky SIP to protect human health and the environment.

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

(a) Initially: The Cabinet will not incur any additional costs for the implementation of the proposed amendment to this administrative regulation.

(b) On a continuing basis: The Cabinet will not incur any additional costs for the implementation of the proposed amendment to this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Cabinet's current operating budget will be used to implement and enforce the proposed amendment to this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The proposed amendment to this administrative regulation will not establish, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering is not applicable because this regulation only indicates the attainment status designation for an area based on the most recent air quality data.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division for Air Quality will continue to use the attainment status designations in this regulation to determine applicability of other regulations. State and local governments that own or operate affected facilities may be subject to other regulatory requirements based on the location of the affected facility and the facility's operating parameters.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5), 224.20-110, 42 U.S.C. 7407, 40 C.F.R. 81.318

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The proposed amendment to this administrative regulation will not generate revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The proposed amendment to this administrative regulation will not generate revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? The Division for Air Quality's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The Division for Air Quality's operating budget will be used to administer this program for subsequent years.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

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. 81.318 and 42 U.S.C. 7407.

2. State compliance standards. This administrative regulation designates the status of areas in the Commonwealth associated with ambient air quality standards.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 7407 requires each state with the primary responsibility for assuring air quality within the entire geographic area of the state.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, the administrative regulation does not impose stricter requirements or additional or different responsibilities than those required by the federal mandate.

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.

JUSTICE AND PUBLIC SAFETY CABINET Department Of Corrections (Amendment)

501 KAR 6:060. Northpoint Training Center.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Northpoint Training Center.

Section 1. Incorporation by Reference. (1) "Northpoint Training Center Policies and Procedures", July 15, 2019[April 14, 2015], are incorporated by reference. Northpoint Training Center policies and procedures include:

- NTC 01-17-01 Relationships with Public, Media and Other Agencies (Amended 7/14/14)
- NTC 02-07-02 Institutional Religious Center Fund (Amended 4/11/17)
- NTC 02-08-01 Inmate Canteen (Amended 7/15/19[2/14/17])
- NTC 02-12-01 Inmate Accounts (Amended 7/15/19[2/14/17])
- NTC 03-03-01 Tobacco Products and Nicotine Procedures (Amended 2/14/17)
- NTC 03-25-01 Firewood Cutting and Firewood Sales (Added 7/15/19[2/14/17])
- NTC 06-01-01 Offender Information Services (Amended 7/15/19[9/28/15])
- NTC 06-01-02 Offender Information Services - Release of Information (Amended 9/13/11)
- NTC 09-06-01 Searches and Contraband Procedures; Disposition of Contraband (Amended 4/11/17)
- NTC 09-14-01 Inmate Death (Amended 7/15/19[7/13/11])
- NTC 09-16-01 Restricted Areas (Amended 2/14/17)
- NTC 10-01-01 Restrictive Housing Unit (Amended 7/15/19[4/11/17])
- NTC 11-04-02 Menu, Nutrition, Special, and Individual Diets (Amended 9/28/15)
- NTC 11-05-02 Food Service Staff Health Standards (Amended 9/28/15)
- NTC 12-02-01 Personal Hygiene for Inmates: Clothing and Linens (Amended 7/15/19[2/14/17])
- NTC 12-02-02 Issuance of Personal Hygiene Products (Amended 2/14/17)
- NTC 12-06-01 Housekeeping Procedures (Amended 7/15/19[7/13/11])
- NTC 12-07-01 Grooming and Hair Care Standards (Amended 2/14/17)
- NTC 13-01-01 Emergency Medical Care Plan (Amended 4/11/17)
- NTC 13-02-01 Provisions and Authority for Health Services (Amended 7/15/19[12/9/15])
- NTC 13-03-01 Sick Call and Pill Call (Amended 2/14/17)
- NTC 13-04-01 Use of Pharmaceutical Products (Amended 2/14/17)
- NTC 13-05-01 Dental Services (Amended 9/28/15)
- NTC 13-08-01 Medical and Dental Records (Amended 9/28/15)
- NTC 13-10-01 Notification of Inmate's Family or Designation Individual of Serious Illness or Injury, Surgery, or Inmate Death (Added 11/15/07)
- NTC 13-11-01 Inmate Health Screening and Evaluation (Amended 7/15/19[2/14/17])
- NTC 13-12-01 Special Health Care Programs (Amended 12/9/15)
- NTC 13-13-01 Inmate Self Administration of Medication (Amended 2/14/17)
- NTC 13-19-01 Mental Health Care Program (Amended 7/15/19[2/14/17])
- NTC 13-19-03 Suicide Prevention and Intervention Program (Amended 2/14/17)
- NTC 13-20-02 Infectious Disease Control (Amended 2/14/17)
- NTC 13-22-01 Informed Consent (Amended 9/28/15)
- NTC 13-26-01 Public Advocacy Access to Psychological and Psychiatric Reports (Amended 12/13/05)
- NTC 14-01-01 Legal Services Program (Amended 7/15/19[2/14/17])
- NTC 14-02-01 Inmate Grievance Procedure (Amended 9/28/15)
- NTC 14-03-02 Board of Claims (Amended 9/13/11)
- NTC 15-02-01 Due Process and Disciplinary Procedures (Amended 9/28/15)
- NTC 15-02-02 Extra Duty Assignments (Amended 7/15/19[9/28/15])
- NTC 15-03-01 Rules for Inmates Assigned to Outside Detail (Amended 7/15/19[9/28/15])
- NTC 15-03-02 Rules for General Population Dormitories (Amended 7/15/19[4/11/17])
- NTC 15-04-01 Inmate Identification (Amended 2/14/17)

VOLUME 46, NUMBER 2– AUGUST 1, 2019

NTC 15-05-01	Drug Abuse and Intoxicants Testing (Amended 2/14/17)
NTC 16-01-01	Inmate Mail (Amended 7/15/19[4/44/47])
NTC 16-02-01	Visiting (Amended 7/15/19[2/44/47])
NTC 16-03-01	Inmate Furloughs (Amended 9/28/15)
NTC 16-05-01	Telephone Use and Control (Amended 2/14/17)
NTC 17-01-01	Personal Property Control (Amended 7/15/19[4/44/47])
NTC 17-01-04	Disposition of Unauthorized Property (Amended 7/15/19[2/44/47])
NTC 17-02-03	Mattress and Pillow Issue (Amended 4/11/17)
NTC 17-03-01	Assessment and Orientation (Amended 7/15/19[12/9/45])
NTC 18-01-01	Preparole Progress Report (Amended 9/28/15)
NTC 18-02-01	Classification (Amended 7/15/19[4/44/47])
NTC 18-02-02	Classification - 48 Hour Notification (Amended 5/12/06)
NTC 18-02-03	Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) (Amended 12/9/15)
NTC 18-03-01	Conflict Notification (Amended 7/15/19[2/44/47])
NTC 18-05-01	Transfer of Inmates (Amended 7/14/14)
NTC 19-01-01	Inmate Work Programs (Amended 4/11/17)
NTC 20-01-01	Educational Programs (Amended 7/15/19[2/44/47])
NTC 20-02-02	Live Work Projects in Technical School Classes (Amended 7/15/19[4/44/47])
NTC 20-02-03	Correspondence Courses (Added 9/28/15)
NTC 21-01-01	Library Services (Amended 2/14/17)
NTC 22-03-01	Conducting Inmate Organizational Meetings and Programs (Amended 7/15/19[9/28/45])
NTC 23-01-01	Religious Services (Amended 2/14/17)
NTC 23-03-01	Marriage of Inmates (Amended 4/11/17)
NTC 24-04-01	Honor Housing (Amended 7/15/19[2/44/47])
NTC 24-06-01	Veterans Honor Dormitory (Amended 7/15/19[12/9/45])
NTC 25-01-01	Release Preparation Program (Amended 9/28/15)
NTC 25-01-02	Temporary and Community Center Release
NTC 25-02-01	Funeral Trips and Bedside Visits (Amended 7/14/14)
NTC 25-03-01	Inmate Release Procedure (Amended 7/15/19[12/9/45])
NTC 26-01-01	Citizen Involvement and Volunteer Services Program (Amended 2/14/17)

(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.

KATHLEEN M. KENNEY, Commissioner

APPROVED BY AGENCY: July 11, 2019

FILED WITH LRC: July 15, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2019, 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 August 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Northpoint Training Center including the rights and responsibilities of employees and the inmate population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020 and to meet American Correctional Association (ACA) accreditation requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of the Northpoint Training Center (NTC).

(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 NTC employees and the inmate population concerning employee duties, inmate responsibilities, and the procedures that govern operations of the institution.

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

(a) How the amendment will change this existing administrative regulation: The amendment brings the Northpoint Training Center Northpoint Training Center 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 Northpoint Training Center.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff, inmates, and visitors information concerning the effective and orderly management of the institution.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 300 employees and 1270 inmates at the Northpoint Training Center and all volunteers and visitors to the institution.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff, inmates, volunteers, and visitors will have to follow the changes made in the policies and procedures. They will have to change their actions to comply with the 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 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: Northpoint Training Center budgeted funds.

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

(8) State whether or not this administrative regulation

established any fees or directly or indirectly increased any fees: The amendment does not establish any fee.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendments to this regulation do not create any revenue for the Northpoint Training Center.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendments to this regulation do not create any revenue for the Northpoint Training Center.

(c) How much will it cost to administer this program for the first year? The amendment to this regulation impacts how the institution operates, but does not increase costs from what will be budgeted to the Northpoint Training Center.

(d) How much will it cost to administer this program for subsequent years? The amendment to this regulation impacts how the institution operates, but is not expected to increase costs from what will be budgeted to the Northpoint Training Center

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 6:140. Bell County Forestry Camp.

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 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 Bell County Forestry Camp.

Section 1. Incorporation by Reference. (1) "Bell County Forestry Camp Policies and Procedures," July 12, 2019[44, 2047], are incorporated by reference. Bell County Forestry Camp Policies and Procedures include:

BCFC 01-08-01 Public Information and News Media Access (Amended 5/15/08)

BCFC 02-01-01 Inmate Canteen (Amended 5/15/08)

BCFC 03-01-01 General Rules for Staff (Added 7/12/19)

BCFC 06-01-01 Offender Records (Amended 8/14/12)

BCFC 06-02-01 Storage of Expunged Records (Amended 10/15/01)

BCFC 07-02-01 Preventative Maintenance Plan (Amended 6/15/12)

BCFC 07-05-01 Permit Required Confined Space (Amended 8/14/12)

BCFC 08-03-01 Fire Procedures (Amended 5/15/08)

BCFC 08-09-01 Guidelines for the Control and Use of Flammable, Toxic, and Caustic Substances (Amended 10/15/01)

BCFC 09-05-01 Entry and Exit onto Institutional Grounds (Amended 5/12/17)

BCFC 09-06-01 Search Policy and Disposition of Contraband (Amended 5/12/17)

BCFC 09-08-02 Breathalyzer Testing (Amended 5/12/17)

BCFC 09-09-01 Operation of Licensed Vehicles by Inmates (Amended 5/15/08)

BCFC 09-14-01 Bell County Forestry Camp Restricted Areas (Amended 8/14/12)

BCFC 09-27-01 Procedures for Prohibiting Inmate Authority Over Other Inmates (Amended 5/15/08)

BCFC 09-28-01 Canine Unit (Amended 5/12/17)

BCFC 10-01-01 Temporary Holding Area (Amended 7/11/17)

BCFC 11-01-01 Food Services: General Guidelines (Amended 6/15/12)

BCFC 11-02-01 Food Service Security (Amended 6/15/12)

BCFC 11-03-01 Dining Room Guidelines (Amended 8/14/12)

BCFC 11-04-01 Food Service: Meals (Amended 6/15/12)

BCFC 11-04-02 Food Service: Menu, Nutrition and Special Diets (Amended 6/15/12)

BCFC 11-05-01 Food Service: Kitchen and Dining Room Inmate Work Responsibilities (Amended 6/15/12)

BCFC 11-05-02 Health Requirements of Food Handlers (Amended 8/14/12)

BCFC 11-06-01 Food Service: Inspection and Sanitation (Amended 6/15/12)

BCFC 11-07-01 Food Service: Purchasing, Storage and Farm Products (Amended 8/14/12)

BCFC 12-01-01 Sanitation, Living Condition Standards, and Clothing Issues (Amended 5/15/08)

BCFC 12-01-02 Bed Areas and Bed Assignments (Amended 5/15/08)

BCFC 12-02-01 Issuance of Clean Laundry and Receiving of Dirty Laundry (Amended 5/15/08)

BCFC 12-03-01 Personal Hygiene Items: Issuance and Placement Schedule (Amended 5/15/08)

BCFC 12-03-02 Barber Shop Services and Equipment Control (Amended 5/15/08)

BCFC 12-07-01 BCFC Recycling Project (Amended 10/15/01)

BCFC 13-01-01 Medical Services (Amended 5/12/17)

BCFC 13-02-01 Sick Call and Physician's Weekly Clinic (Amended 5/12/17)

BCFC 13-03-01 Dental Services (Amended 5/12/17)

BCFC 13-04-01 Inmate Medical Screenings and Health Evaluations (Amended 5/12/17)

BCFC 13-05-01 Emergency Medical Care (Amended 5/12/17)

BCFC 13-06-01 Consultations (Amended 5/12/17)

BCFC 13-07-01 Health Records (Amended 6/15/12)

BCFC 13-08-01 Vision and Optometry Services (Amended 5/12/17)

BCFC 13-09-01 Family Notification: Serious Illness, Serious Physical Injury, or Death (Amended 5/15/08)

BCFC 13-10-01 Health Education: Special Health Care Needs (Amended 5/15/08)

BCFC 13-11-01 Informed Consent (Amended 5/15/08)

BCFC 13-12-01 Mental Health Care (Amended 5/12/17)

BCFC 13-13-01 Special Health Care Programs (Amended 6/15/12)

BCFC 13-14-01 Use of Pharmaceutical Products (Amended 8/14/12)

VOLUME 46, NUMBER 2– AUGUST 1, 2019

BCFC 13-15-01	Parenteral Administration of Medications and Use of Psychotropic Drugs (Amended 8/14/12)
BCFC 13-16-01	Elective Services (Amended 6/15/12)
BCFC 13-18-01	Serious and Infectious Diseases (Amended 5/12/17)
BCFC 13-19-01	Continuity of Health Care (Amended 5/15/08)
BCFC 13-20-01	Inmates Assigned to Health Services (Amended 5/15/08)
BCFC 13-21-01	Suicide Prevention and Intervention Program (Amended 5/15/08)
BCFC 13-24-01	Inmate Self-Administration of Medication (Amended 5/15/08)
BCFC 13-25-01	Syringes, Needles, and Sharps Control (Amended 5/15/08)
BCFC 13-26-01	Sexual Assault (Amended 5/15/08)
BCFC 14-01-01	Inmate Rights and Responsibilities (Amended 5/15/08)
BCFC 16-01-01	Inmate Visiting (Amended 7/12/19[7/44/47])
BCFC 17-01-01	BCFC Inmate Receiving and Orientation Process (Amended 5/15/08)
BCFC 17-04-01	BCFC Inmate Property Control (Amended 7/8/08)
BCFC 17-05-01	Inmate Canteen (Amended 5/15/08)
BCFC 18-02-01	Identification of Special Needs Inmates (Amended 6/15/12)
BCFC 19-01-01	Work Assignment (Amended 5/15/08)
BCFC 19-02-01	Governmental Services Program (Amended 5/15/08)
BCFC 20-01-01	Academic School (Amended 5/15/08)
BCFC 21-01-01	Library Services (Amended 5/15/08)
BCFC 22-01-01	Recreation and Inmate Activities (Amended 6/15/12)
BCFC 22-02-01	Inmate Clubs and Organizations (Amended 5/15/08)
BCFC 23-01-01	Religious Services (Amended 5/15/08)
BCFC 24-01-01	Social Services and Counseling Program (Amended 7/1/19[5/45/08])
BCFC 24-01-02	Casework Services (Amended 5/15/08)
BCFC 25-01-01	BCFC Prerelease Program (Amended 5/15/08)
BCFC 25-02-01	Community Center Program (Amended 7/8/08)
BCFC 25-04-01	Inmate Discharge Procedure (Amended 5/15/08)
BCFC 26-01-01	Citizen Involvement and Volunteer Services Program (Amended 5/15/08)

(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.

KATHLEEN M. KENNEY, Commissioner

APPROVED BY AGENCY: July 11, 2019

FILED WITH LRC: July 12, 2019 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2019, 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 August 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Bell County Forestry Camp including the rights and responsibilities of employees and the inmate population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020 and to meet American Correctional Association (ACA) accreditation requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of the Bell County Forestry Camp (BCFC).

(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 BCFC employees and the inmate population concerning employee duties, inmate responsibilities, and the procedures that govern operations of the institution.

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

(a) How the amendment will change this existing administrative regulation: The amendment brings the Bell County Forestry Camp 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 Bell County Forestry Camp.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff, inmates, and visitors information concerning the effective and orderly management of the institution.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 63 employees and 300 inmates at the Bell County Forestry Camp and all volunteers and visitors to the institution.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff, inmates, volunteers, and visitors will have to follow the changes made in the policies and procedures. They will have to change their actions to comply with the 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 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: Bell County Forestry Camp 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 establish any fee.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Bell County Forestry Camp.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to this regulation does not create any revenue for the Bell County Forestry Camp.

(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 Bell County Forestry Camp.

(c) How much will it cost to administer this program for the first year? The amendment to this regulation impacts how the institution operates, but does not increase costs from what will be budgeted to the Bell County Forestry Camp.

(d) How much will it cost to administer this program for subsequent years? The amendment to this regulation impacts how the institution operates, but does not increase costs from what will be budgeted to the Bell County Forestry Camp.

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 Juvenile Justice (Amendment)

505 KAR 1:160. Department of Juvenile Justice Policy[~~Policies~~] and Procedures ~~Manual~~:[~~treatment program for~~] Juvenile Sexual Offender Treatment Program[~~offenders~~].

RELATES TO: KRS 15A.065, 15A.067, 200.080-120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.067, 15A.160, 200.115, 605.150, 635.095, [635.095,] 635.500, 635.505(1), 635.515, 635.520, 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095, 635.520, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

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

(a) "Department of Juvenile Justice Policy and Procedures Manual: Juvenile Sexual Offender Treatment Program", July 12, 2019[April 9, 2013], which includes the following:

800 Definitions (Added 7/12/19);

801[890] Treatment Program for Declared Juvenile Sexual Offenders (Amended 7/12/19);[2/15/13];

803 Polygraph Examinations (Amended 7/12/19);[2/15/10];

806 Private Provider Application, Approval, and Renewal Process for Juvenile Sexual Offender Treatment or Assessor Status[and Assessment Professional Approval Process] (Amended 7/12/19);[4/9/13];

(b) "Standard Operating Procedures Manual for the Treatment of Declared Juvenile Sexual Offenders", (Amended 7/12/19);[4/9/13];

(c) "Estimate of Risk of Adolescent Sexual Offense Recidivism, Version 2.0 (ERASOR)", 8/15/06;

(d) "Juvenile Sex Offender Assessment Protocol-II Manual (J-SOAP-II)", 8/15/06;

(e) "Juvenile Sexual Offender Tracking System Initial Reporting Form Part I", 7/12/19);[2/15/10]; and

(f) "Juvenile Sexual Offender Tracking System Reporting Form Part II", 7/12/19);[2/15/10].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m.

RAYMOND F. DEBOLT, Commissioner

APPROVED BY AGENCY: July 12, 2019

FILED WITH LRC: July 12, 2019 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 30, 2019 at 10:00 a.m. Eastern Time, at the Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. The hearing is open to the public. A transcript of this hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. 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: William Codell, Assistant General Counsel, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2738, fax (502) 573-0836, email William.Codell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: William Codell

(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 Department of Juvenile Justice sex offender treatment program, including the rights and responsibilities of the Department of Juvenile Justice employees, treatment providers and the residential and community population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 15A.065, 15A.067, KRS 635.500, KRS 635.505(1); KRS 635.515 and KRS 635.520 and to specifically provide a treatment protocol for juvenile sexual offenders.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs every aspect of the sexual offender treatment protocol of the Department of Juvenile Justice.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing

clear and concise sexual offender treatment protocol to the Department of Juvenile Justice employees, treatment providers and the residential and community 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 will provide a uniform written sexual offender treatment protocol for all youth committed to the Department of Juvenile Justice and declared juvenile sexual offenders, and reflect the treatment and practice of the agency.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 15A.065, 15A.067, 635.500, 635.505(1), KRS 635.520, and KRS 635.515.

(c) How the amendment conforms to the content of the authorizing statutes: It provides for the operation, policies and procedures governing the Department of Juvenile Justice sexual offender treatment program.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist the Department of Juvenile Justice to treat juvenile sexual offenders more efficiently and uniformly.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 250 youth annually, 20 treatment providers, and Department personnel.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The youth who participate in the juvenile sexual offender treatment program will be provided with specific information regarding the required treatment protocol and the steps that shall be expected of them to complete the treatment program. Treatment providers and DJJ employees will provide assessments and treatment in accordance with the treatment protocol as outlined in the regulation and the materials incorporated by reference.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): In complying with this administrative regulation no monetary costs will be incurred by the youth, the treatment providers, or the DJJ employees. All costs of implementation of this treatment protocol will be paid out of budgeted monies by the Department of Juvenile Justice.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Youth who receive treatment in the juvenile sexual offender treatment program shall be more effectively and consistently served. The treatment providers and the DJJ employees who administer the assessments and the treatment protocol shall provide treatment tailored to the youth's individual needs.

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

(a) Initially: No additional cost is projected.

(b) On a continuing basis: No additional cost is projected.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Department of Juvenile Justice General 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: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(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. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection"

and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as the Sections 2 and 3 of the Kentucky Constitution.

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? Response: Department of Juvenile Justice

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Response: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 200.115, 605.150, 635.095, 635.100(7), 635.500, 635.505(1), 635.520, 635.515, 640.120, and 645.250.

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? Response: 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? Response: None.

(c) How much will it cost to administer this program for the first year? Response: No additional cost is projected.

(d) How much will it cost to administer this program for subsequent years? Response: No additional cost is projected.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Oil and Gas (Amendment)

805 KAR 1:020. Protection of fresh water zones.

RELATES TO: KRS 349.045, 349.110, 353.520

STATUTORY AUTHORITY: KRS ~~349.115~~[Chapter 13A,] 353.540, 353.550, 353.560

NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.540 authorizes the Department for Natural Resources to administer and enforce the provisions of KRS 353.500 to 353.720. KRS 349.115 authorizes the Department for Natural Resources to adopt all rules, administrative regulations, and amendments to implement the provisions of KRS Chapter 349 governing coal bed methane wells. This administrative regulation establishes the requirements to protect fresh water zones from contamination associated with the production of oil and gas. [The waste of oil and gas is prohibited by KRS 353.520. It is the purpose of this administrative regulation to protect fresh water zones from contamination associated with the production of oil and gas. KRS 353.550 provides that the department shall have the authority to set forth the requirements for casing, operation and plugging of wells to prevent escape of oil or gas, the detrimental intrusion of water, blowouts, cave-ins, seepages and fires.]

Section 1.[Definitions. The definitions contained in KRS 353.540 and the following additional definitions shall apply to this administrative regulation:

(1) "Abnormal pressure" means a reservoir pressure that exceeds the hydrostatic pressure of fresh water extending from

the reservoir to the surface.

(2) "Annulus" means the space between two (2) strings of casing or between a string of casing and the bore hole wall.

(3) "Casing (casing string)" means steel tubes or pipes installed in a well.

(4) "Surface casing" means the first and largest diameter casing installed in a well and its primary uses are to make the bore hole stand up and to protect the fresh water zones.

(5) "Intermediate casing" means one or more strings of pipes installed in a well in addition to the surface casing in which each string is smaller in diameter than the previous.

(6) "Long casing string" means the last casing installed in a well to be used for production or injection purposes.

(7) "Zone" means a layer of strata capable of producing or receiving fluids.

Section 2.] Protection of Fresh Water Zones for Drilling and/or Plugging Operations. (1) During drilling operations, one (1) of the following methods shall be used to protect fresh water zones:

(a) Method A. Casing shall be set on a casing shoulder and said casing shall have a shoe installed on the bottom of the bottom joint. Upon the completion of the drilling program, all the recoverable casing must be removed or cemented to the surface.

(b) Method B. Casing shall be set on a shoulder and cemented sufficiently to cover 100 feet including the shoe. Upon completion of the drilling, all of the recoverable casing must be removed or cemented to the surface.

(c) Method C. A top to bottom drilling mud system with a filtrate water loss of less than ten (10) cubic centimeters, as established in "Recommended Practice for Field Testing Water-based Drilling Fluids" API RP 13B-1 Fourth Edition, March, 2009 [determined by American Petroleum Institute standards, in its publication "Standard Procedures for Field Testing Water Based Drilling Fluids" API RP 13B-1, Sections 1, 2 and 3, June 1, 1990, filed and incorporated herein by reference. Copies may be obtained from the Department for Natural Resources, P. O. Box 14090, Lexington, Kentucky 40512-4090]. Certification of filtrate water loss shall [must] be made by the operator.

(2) In the event a well is to be plugged, then it shall be plugged in the manner prescribed by 805 KAR 1:060 [or 805-KAR 1:070].

Section 2[3]. Protection of Fresh Water Zones. Any well drilled in the Commonwealth of Kentucky subject to the jurisdiction of the Division of Oil and Gas [Department for Natural Resources subsequent to the effective date of this administrative regulation] shall be equipped with the following fresh water protection prior to production or injection. (1) A protective string of casing, be it surface, intermediate, or long string, shall extend thirty (30) feet below the deepest known fresh water zone. The [Such] protective string shall have cement circulated in the annular space outside said casing of a sufficient volume of cement, calculated using approved engineering methods, to assure the return of the cement to the surface. In the event cement does not return to the surface, every reasonable attempt will be made to fill the annular spaces by introducing cement from the surface. If the intermediate casing or long casing string is:

(a) Cemented to the surface; or

(b) Cemented thirty (30) feet into the next larger string of cemented casing in conformity with prescribed procedure, the string or combination of strings shall be considered as the fresh water protection.

(2) In areas where abnormal pressures are expected or encountered, the surface and/or intermediate casing string shall be anchored in sufficient cement, at a sufficient depth to contain said pressures, and blowout prevention valves and related equipment shall be installed.

(3) If a well is drilled through a void, the hole shall be drilled at least thirty (30) feet below the void, the annular space shall be cemented from the base of the casing up to the void and to the surface from the top of the void, or it shall be cemented at least fifty (50) feet into the next higher string or strings of casing that

are cemented to the surface and be verified by a cement top log. If an operator is unable to perform the casing and cementing requirement described above, the department may approve alternative casing procedures proposed by the operator, if the director determines that the alternative casing procedures are operationally equivalent to the requirements imposed by this subsection. If an operator encounters more than one (1) void, the department may also impose special requirements on the operator to prevent communication between two (2) or more voids. [Section 4. Wells Used for Injection of Fluids.

(1) The injection of fluids shall be accomplished through a tubing and packer arrangement with the packer set immediately above the injection zone, and the annulus between the tubing and casing shall be monitored by pressure sensitive devices. The injection pressure shall be regulated to minimize the possibility of fracturing the confining strata. Upon application, and after notice and hearing, a variance from this requirement may be granted by the director, upon a showing by an individual operator that alternate prudent engineering practices shall result in fresh water protection. The following are exempted from the requirements of this section:

(a) Injection of fluids for the purpose of well stimulation; and

(b) Injection of gas for the purpose of storage.

(2) Before injecting fluids into a well not previously permitted for injection purposes, the operator shall make application to the department for an injection permit for said well. The application for a permit to drill, deepen or convert a well for the purpose of injection of fluids shall include:

(a) A statement by the operator as to whether the well is to be used for pressure maintenance, secondary recovery, tertiary recovery, gas storage or for disposal purposes;

(b) The approximate depths of the known fresh water zones; and

(c) A plat showing:

1. The names of all lessees and lessors contiguous to the tract on which the injection shall occur;

2. The Carter Coordinate location and the elevation of the well site;

3. The geologic name and depth of the injection zone;

4. At least two (2) surface features, by bearing and distance from the proposed well site, which appear on the U.S.G.S. seven and one-half (7 1/2) minute topographic map of the area;

5. The name of said topographic map and county;

6. The location of all known fresh water wells within a radius of 1,000 feet of the proposed injection well site;

7. The location and completion and/or plugging record of all wells whether producing or plugged, within a radius of 1,000 feet of the proposed injection well site.

(3) Prior to injection into any well, the operator shall furnish the department with a certificate indicating that all requirements of this administrative regulation have been met. The certificate shall include the following:

(a) The identification of said well by permit number, operator's name, lease name, well number, Carter Coordinate location, elevation and county;

(b) The entire casing and cementing record, any packers and other special down hole equipment, and cement bond logs, if run;

(c) The anticipated maximum bottom hole pressure (psi) and volume in barrels or cubic feet, per day;

(d) The identification of the injection zone by geological name and depth (top and bottom of zone), the number of perforations if applicable, or the interval of open hole; and

(e) Certification by the operator that the mechanical integrity of the well has been tested.

Section 5. Exemptions for Preexisting Wells. Any injection well in existence prior to the effective date of this administrative regulation shall be exempt from the requirements of this administrative regulation until such time as in the opinion of the department, said well is leaking fluids to other zones, or to the surface; provided, however, that this exemption shall not apply unless within one (1) year from the effective date of this administrative regulation, the operator files an area plat, or plats,

~~showing all of such operator's injection and associated production wells.~~

~~Section 6. Recordkeeping. The operator of an injection project shall monitor injection pressures and volumes at least monthly, and shall keep said records on file in his place of business for the life of the project, plus five (5) years. The director may require more frequent monitoring, if in his opinion, good reason therefor exists.]~~

Section 3. Material Incorporated by Reference. (1) "Recommended Practice for Field Testing Water-based Drilling Fluids" API RP 13B-1 Fourth Edition, March, 2009, is incorporated by reference;

(2) This document may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Natural Resources, Division of Oil and Gas, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 10, 2019

FILED WITH LRC: July 11, 2019 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2019 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone: (502) 782-6720, fax: (502) 564-4245, email: michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation protects fresh water zones from contamination associated with the production of oil and gas.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to protect freshwater zones.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 353.550 authorizes that the department shall have the authority to set forth the requirements for casing, operation and plugging of wells to prevent escape of oil or gas, and the detrimental intrusion of water. This administrative regulation sets forth requirements for the protection of freshwater zones.

(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 protecting freshwater zones.

(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 deletes definitions that will then be inserted into a new definition administrative regulation for the chapter. It also updates material incorporated

by reference and inserts necessary language for the merging of coalbed methane information into the administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to place information related to coalbed methane wells into 805 KAR Chapter 1 as well as update forms and remove definitions.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by inserting information related coalbed methane wells and the protection of freshwater zones.

(d) How the amendment will assist in the effective administration of the statutes: KRS 353.550 authorizes that the department shall have the authority to set forth the requirements for casing, operation and plugging of wells to prevent escape of oil or gas, and the detrimental intrusion of water. These amendments assists in the effective administration of the statutes by providing information that protects freshwater zones for coalbed methane wells in the same location as all other oil or gas wells.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 1,060 active oil and gas operators in the commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will be required to comply with the provisions of this administrative regulation for coalbed methane wells as well as the new document incorporated by reference.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with these amendments will not cost the regulated entity any additional funds. These requirements are currently in 805 KAR 9:010.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Oil and gas operators will benefit from having all the information related to drilling a gas well in one location including coalbed methane.

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

(a) Initially: There will be no costs to the administrative body with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the administrative body with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The amendments to this administrative regulation will not require an increase in fees or funding.

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

(9) TIERING: Is tiering applied? No. All entities that operate an oil or gas well in the Commonwealth will be required to meet the same standards regarding protection of freshwater.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Oil and Gas and the Division of Water.

2. Identify each state or federal statute or federal regulation

that requires or authorizes the action taken by the administrative regulation. KRS 353.540, 353.550, and 353.560.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Oil and Gas
(Amendment)

805 KAR 1:030. Well location and as-drilled location plat, preparation, form and contents.

RELATES TO: KRS 349.015, 349.115, 353.550, 353.590, 353.737

STATUTORY AUTHORITY: KRS 349.015, 353.540, 353.550, 353.590(6)[~~353.590(4)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.590(6) authorizes[~~KRS 353.540 authorizes the department to promulgate administrative regulations to administer KRS 353.500 to 353.720. KRS 353.550 and 353.590(4) authorize~~] the department to promulgate administrative regulations concerning the preparation and filing of reports and plats. KRS 349.015 requires a plat to be filed with the department before a permit can be issued for a coal bed methane well. This administrative regulation establishes requirements for uniformity and clarity in well locations and identity.

Section 1. Applicability. This administrative regulation shall apply only to the oil- and gas-producing industry and shall not apply to transmission and distribution systems or to product storage facilities.

Section 2. General Information. (1)(a) Location plats for wells proposed to be drilled pursuant to the provisions of KRS Chapter 353 or KRS Chapter 349 and the as-drilled location plat to be submitted after a well is drilled shall be prepared and certified in accordance with KRS 353.590(6)[~~KRS 353.737~~].

(b) If the location of the well is known to be underlain by coal bearing stratum, the location plat for the well proposed to be drilled [pursuant to the provisions of KRS 353.590(4)] shall be:

1.[Be] Prepared in accordance with KRS 353.737; and

2. Certified by an engineer, as defined in KRS 322.010(2), registered in Kentucky.

(c) If any plat submitted by an applicant is determined by the department to be materially inaccurate or incomplete, the department shall require that a new plat be prepared and submitted.

Section 3. Waiver. (1) A person shall not drill a well for oil, gas, or coal bed methane within 150 feet, measured horizontally, from the surface location of the well bore to any occupied[~~of any~~] building, unless:

(a) A waiver of objection to the drilling is secured in the manner established below; or

(b) The department, after notice and a hearing, determines that the drilling and production of the well is not violative of the public policy set out in KRS 353.500 or KRS 349.005.

(2) The surveyor preparing the plat for a permit shall indicate the location of a proposed well site relative to all buildings within 150 feet of the well site.

(3) If an owner of a building located within 150 feet of a proposed well site waives objection to locating a well closer than 150 feet to the building, then a copy of the executed agreement of waiver shall accompany the application for permit.

(4) A waiver shall not be transferable unless it contains an express provision that it is transferable.

Section 4. (1) A separate location plat shall be submitted with each application to drill, deepen, or reopen a well.

(2) To ensure the division has accurate information regarding the location of a well drilled through a workable coal bed, a plat with the as-drilled location and elevation of the well shall be provided to the division pursuant to KRS 353.737 in addition to the well location plat submitted to drill a proposed well.

(3) For coal bed methane wells, a copy of the plat shall be attached to the "Application for Permit," OG-1, incorporated by reference in 805 KAR 1:010, and submitted to the relevant parties pursuant to KRS 349.015(2), (3), (4), or (7).

Section 5. Plat Preparation. Location plats for wells proposed to be drilled pursuant to the provisions of KRS Chapter 353 or KRS Chapter 349 shall be prepared in the following manner:

(1) All plats shall be clearly legible and submitted on a sheet eight and one-half (8 1/2) by fourteen (14) inches. This sheet may be:

- (a) Bond paper;
- (b) Tracing cloth; or
- (c) Tracing paper.

(2) The well location plat shall:

(a) Show the location of the proposed well relative to the two (2) nearest boundaries of oil and gas ownership, including any subdivision of the lease;

(b) Indicate all producing wells and permitted well sites within 1,000 feet of the proposed well site or sites within 1,500 feet for a coal bed methane well; and

(c) Clearly display all distances in feet.

(3) The location of the proposed well shall be shown on the plat, by bearing and distance, relative to two (2) permanent points/monuments that appear on the applicable USGS, seven and one half (7 1/2) minute; topographic quadrangle map, which permanent points/monuments include though are not limited to road intersections, bench marks, and buildings. A photocopy of a portion of the topographic quadrangle map showing the proposed well site shall be acceptable in lieu of identifying the points/monuments on the plat.

(4) The location of the well site shall be prepared with reference to either the Carter coordinate system, latitude and longitude, or the Kentucky coordinate system.

(5) The elevation of the well site shall be determined by instrument and calculation. Estimated topographic elevations shall not be acceptable.

(6) The plat shall be prepared to a scale of one (1) inch equals 100, 200, 300, 400, 500, 600, or 800 feet.

Section 6. As-Drilled Plat Location. Location plats for as-drilled wells shall be prepared in the following manner:

(1) All plats shall be clearly legible and submitted on a sheet eight and one-half (8 1/2) by fourteen (14) inches. This sheet may be:

- (a) Bond paper;
- (b) Tracing cloth; or

- (c) Tracing paper.
- (2) The well location plat shall:
 - (a) Show the location of the as-drilled well relative to the two nearest boundaries of oil and gas ownership, including any subdivision of the lease;
 - (b) Identify[Indicate] all producing wells and permitted well sites within 1,000 feet of the as-drilled well site or sites within 1,500 feet for a coal bed methane well; and
 - (c) Clearly display all distances in feet.
- (3) The as-drilled well location plat shall provide coordinates in feet, using the NAD 83, with Single Zone Projection as the terms are defined in KRS 353.010.
- (4) The location of the as-drilled well shall be shown on the as-drilled well location plat, by bearing and distance, relative to two (2) permanent points or monuments that appear on the applicable USGS seven and one-half (7 1/2) minute; topographic quadrangle map, which permanent points or monuments include though are not limited to road intersections, bench marks, and buildings. A photocopy of a portion of the topographic quadrangle map showing the proposed well site shall be acceptable in lieu of identifying the points or monuments on the plat.
- (5) In addition to the requirements of subsection (3) of this section, the location of the well site shall be prepared with reference to either the Carter coordinate system, latitude and longitude, or the Kentucky coordinate system.
- (6) The elevation of the well site shall be determined by instrument and calculation. Estimated topographic elevations shall not be acceptable.
- (7) The plat shall be prepared to a scale of one (1) inch equals 100, 200, 300, 400, 500, 600, or 800 feet.

Section 7. Additional Requirements. In addition to the data required in Section 5 of this administrative regulation, well location plats shall include the following information:

- (1) Operator;
- (2) Farm or lease name;
- (3) Well number;
- (4) County;
- (5) Scale at which the plat is drawn;
- (6) North direction;
- (7) Legend:
 - - Proposed well site;
 - - Oil well;
 - ☀ - Gas well;
 - ⊕ - Coal bed methane well;
 - ⊙ - Injection well;
 - ⊠ - Plugged well; and
 - ∅ - Abandoned well, not plugged;
- (8) Date of preparation of plat;
- (9) Name of the topographic quadrangle map on which the well site may be located;
- (10) Owners, lessors and lessees of oil and gas on tracts that are offset by the proposed well;
- (11) Certification in the following form: "I hereby certify that the above plat is accurate and correct and satisfies the requirements of 805 KAR 1:030 to the best of my knowledge and belief"; and
- (12) Certification shall be followed by the written signature of the person preparing the plat, the preparer's mailing address, registration number, and telephone number.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 10, 2019

FILED WITH LRC: July 11, 2019 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2019 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who

wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone: (502) 782-6720, fax: (502) 564-4245, email: michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes requirements for uniformity and clarity in well locations and identity.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for plats to be submitted to the Division of Oil and Gas.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 353.590 and KRS 349.015 requires operators to submit to the division a plat showing the location of each well. This administrative regulation provides detailed information on the requirements for plat submittal.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by providing detailed information to clarify the statutory requirement for plat submittal.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: This amendment will incorporate information related to plat submittal for coal bed methane production. This information was previously in 805 KAR 9:020.
 - (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to consolidate two administrative regulations into one administrative regulation related to submittal of plats related to an oil or gas permit.
 - (c) How the amendment conforms to the content of the authorizing statutes: The amendment consolidates plat submittal requirements as required by KRS 353.590 and 349.015.
 - (d) How the amendment will assist in the effective administration of statutes: These amendments will assist in the effective administration of the statutes by consolidating two administrative regulations related to the submittal of plats.
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. There are approximately 1,060 active oil and gas operators in the commonwealth
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
 - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will meet the same requirements related to the submittal of plats to the division. However, the information related to plat submittal for coal bed methane drilling will now be in this administrative regulation instead of 805 KAR 9:020.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs for related to these amendments.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, entities will be able to find all information related to the submittal

of plats for oil and gas drilling in one administrative regulation.

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

(a) Initially: The division will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: The division will not incur any additional costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of general and restricted funds will be used for the implementation of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering was not used. The provisions in this administrative regulation will apply equally to all oil and gas operator.

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 applies almost entirely to the Division of Oil and Gas.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 349.015 and 353.590.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The proposed administrative regulation will not generate revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The proposed administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The cabinet's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The cabinet's operating budget will be used to administer this program for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Oil and Gas (Amendment)

805 KAR 1:050.[Surety] Bonds; requirements, cancellation.

RELATES TO: KRS 349.120, 353.590

STATUTORY AUTHORITY: KRS 349.115[Chapter 13A,] 353.540, 353.550

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.590 and KRS 349.120 requires operators filing a permit application to provide proof of bonding and provides[Provide] for methods of giving notice to operators and sureties of noncompliance. This administrative regulation establishes[Establish] requirements for[of] release, cancellation and forfeiture of bonds.

Section 1. Bonds Required. As part of the permit or transfer application, the applicant shall post a bond in an amount required by KRS 353.590(7) for oil or gas production wells or KRS 349.120 for coalbed methane wells.

Section 2. Surety Bonds. (1) An operator that chooses to post a surety bond to meet the requirements of Section 1 of this administrative regulation shall file with the division an Individual Surety Bond, OG-5 or a Blanket Surety Bond, OG-6.

(2) Cancellation of a Surety Bond. A blanket surety bond filed pursuant to KRS 353.590(12) for production wells or KRS 349.120(1) for coalbed methane wells may be cancelled by the surety by a communication in writing to division. Cancellation shall be effective only to relieve the surety from liability under the bond for wells which permits have not been issued at the time of the receipt of the notice by the division. Liability under the bond for wells which permits have been issued prior to the receipt by the division of the notice shall not be affected by the cancellation.

Section 3. Property Bonds. An operator that chooses to post a property bond to meet the requirements of Section 1 of this administrative regulation shall file with the division a completed and notarized Property Bond, Form OG-15 pursuant to KRS 353.590(17).

Section 4. Other Bonds. An operator that chooses to post any other bond available to meet the requirements of Section 1 of this administrative regulation shall file:

(a) Irrevocable Letter of Credit, Form OG-16;

(b) Verification of Certificate of Deposit, Form OG-20; or

(c) A completed and notarized Individual Cash Bond, Form OG-45 or Blanket Cash Bond, Form OG-46.

Section 5 Notice of Noncompliance. (1) At any time the division causes a notice of noncompliance to be served upon an operator, the notice shall be sent by certified mail to the address of record. Should the operator fail to comply within the timeframe provided for in KRS 350.590(24), the bond shall be ordered forfeited as provided in that section.

(2) For wells covered by a surety bond pursuant to Section 2 of this administrative regulation, the surety shall be afforded the opportunity to act on behalf of the operator within the time set forth in KRS 350.590(24) in regard to the proper plugging of the well or wells and submission of required records.

Section 6. Bond Release. A bond shall be released upon the proper plugging of the well and the filing with the division of all required records and fees or upon transfer of the well to a successor operator pursuant to KRS 353.590 for production wells or KRS 349.120 for coalbed methane wells. A bond shall not be released until a request has been made in writing by the operator or surety to the division.

Section 7. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Individual Surety Bond", Form OG-5, June 2019;

(b) "Blanket Surety Bond", Form OG-6, June 2019;

(c) "Property Bond", Form OG-15, June 2019;

(d) "Letter of Credit", Form OG-16, June 2019;

(e) "Verification of Certificate of Deposit", Form OG-20, June 2019;

(f) "Individual Cash Bond", Form OG-45, June 2019; and

(g) "Blanket Cash Bond", Form OG-46, June 2019.

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Oil and Gas, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [At any time the department causes a notice of noncompliance to be served upon an operator (principal) pursuant to KRS 353.590(7), copies of such notice shall be mailed by registered or certified mail to the surety company at the address provided to the Kentucky Office of Insurance for receipt of notices. The surety shall be afforded the opportunity to act in behalf of the operator (principal) within the time set forth in KRS 353.590(7) in regard to the proper plugging of the well or wells and submission of required well log and completion reports, electric logs, if run, and plugging affidavits. Should the operator (principal) and surety fail to comply within the time provided for in KRS 353.590(7) then and in that event only the bond shall be forfeited as provided in that section.]~~

Section 2. An individual well bond shall be released upon the proper plugging of the well and the filing with the department of a plugging affidavit, well log and completion report and electric log, if run. A blanket bond shall be released upon the proper plugging of all wells of the operator (principal) covered by the bond, and the filing with the department of plugging affidavits, well logs and completion reports and electric logs, if run, for such wells.

Section 3. A blanket surety bond filed pursuant to KRS 353.590(5) may be cancelled by the surety by a communication in writing delivered personally or by registered or certified mail to the office of the Division of Oil and Gas, Department for Natural Resources, provided such cancellation shall be effective only to relieve the surety from liability under the bond for wells which permits have not been issued at the time of the receipt of the notice by the department. Liability under the bond for wells which permits have been issued prior to the receipt by the department of the notice shall not be affected by the cancellation.]

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 10, 2019

FILED WITH LRC: July 11, 2019 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2019 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone: (502) 782-6720, fax: (502) 564-4245, email: michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements of release, cancellation, and forfeiture of bonds.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide operators and sureties information related to bond release, cancellation, and forfeiture of bonds.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 353.590 and KRS 349.120 requires operators to provide proof of bonding as part of a permit application. This administrative regulation establishes requirements of release, cancellation, and forfeiture of bonds.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by providing requirements for the release, cancellation, and forfeiture of bonds.

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

(a) How the amendment will change this existing administrative regulation: This amendment will incorporate information related to bond release, cancellation, and forfeiture of coal bed methane wells into this administrative regulation. The amendment also adds statutorily authorized language related to bonding oil and gas wells and is no longer strictly related to surety bonds. This information was previously in 805 KAR 9:030.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to consolidate two administrative regulations into one administrative regulation related to bond release, cancellation, and forfeiture.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment consolidates bonding information required by KRS 353.590 and 349.120 into this administrative regulation.

(d) How the amendment will assist in the effective administration of statutes: These amendments will assist in the effective administration of the statutes by consolidating two administrative regulations related bonding oil and gas wells.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. There are approximately 1,060 active oil and gas operators in the commonwealth

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will meet the same bonding requirements. However, the information related to bond release, cancellation, and forfeiture for coal bed methane drilling will now be in this administrative regulation instead of 805 KAR 9:030.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, entities will be able to find all information related to bonding for oil and gas drilling in one administrative regulation.

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

(a) Initially: The division will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: The division will not incur any additional costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of general and restricted funds will be used for the implementation of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor

does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering was not used. The provisions in this administrative regulation will apply equally to all oil and gas operators.

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 applies almost entirely to the Division of Oil and Gas.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 349.120 and 353.590.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The proposed administrative regulation will not generate revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The proposed administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The cabinet's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The cabinet's operating budget will be used to administer this program for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Oil and Gas (Amendment)

805 KAR 1:060. Plugging wells.

RELATES TO: KRS 211.892, 211.893, 353.120, 353.170, 353.180(1), 353.550, 353.990

STATUTORY AUTHORITY: KRS 353.560(1), 353.739

NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.560(1) requires the department to promulgate administrative regulations to regulate the plugging of all wells. This administrative regulation establishes the minimum acceptable requirements to plug or temporarily abandon wells.

Section 1.[Definitions.

(1) "Abandoned" is defined by KRS 353.510(12).

(2) "Cement" is defined by KRS 353.010(4).

(3) "Pool" is defined by KRS 353.510(9).

(4) "TENORM" is defined by KRS 211.862(13), and is subject to the exemption established in KRS 211.863(5).

(5) "Unit" is defined by KRS 353.010(18).

(6) "Well" is defined by KRS 353.510(14).

Section 2.] Temporary Abandonment Permit. (1) An owner or operator shall not leave a well drilled for oil, gas, salt water disposal, or any other purpose in connection with the production

of oil and gas unplugged after the well is no longer used for the purpose it was drilled or converted.

(2) An owner or operator who wants to temporarily abandon a well shall apply for a permit from the division on the Temporary Abandonment Permit form OG-12[ED-12].

(3)(a) Nothing herein shall prevent the division, upon application and for good cause shown, from issuing a temporary abandonment permit[.] for a period not to exceed two (2) years. Nothing shall alter the provisions of KRS 353.170 relative to utilizing a well for the purpose of introducing air, gas, water, or other liquid pressure into or upon the producing strata for the purpose of recovering oil and gas. The temporary abandonment permit may be renewed on or before the expiration of the two (2) year period. To renew, the permittee shall reapply on the Temporary Abandonment Permit form OG-12[ED-12].

(b) All wells on which a temporary abandonment permit has been issued shall be cased and capped prior to temporary abandonment in a manner to protect all potential oil, gas, and fresh water zones.

(4) Each oil and gas well drilled through coal bearing strata shall be cased and vented to prevent the accumulation of gas in the casing annulus or bore hole.

(5) Pursuant to KRS 353.739, the division shall order a well drilled through a workable coal bed to be plugged and abandoned if:

(a) The well's permit conditions cannot be satisfied by remediation; or

(b) The operator is not able to comply with the ordered remediation.

(6) If a well is ordered plugged and abandoned pursuant to KRS 353.739, then a temporary abandonment permit shall not be granted.

Section 2[3]. Notice for Plugging an Oil or Gas Well. (1)(a) Before work is commenced to plug and abandon a well, the owner or operator shall give notice to the division of the intention to abandon the well.

(b) A representative of the division shall provide plugging and abandonment direction and may be present at the time of plugging the well.

(2) The notice for plugging wells shall include at a minimum:

(a) The permit number of the well;

(b) The location of the well; and

(c) A fixed time when the work of plugging and filling will be commenced. The time shall not[te] be less than five (5) days after the day on which the notice is received by the division.

(3)(a) In addition to the requirements of subsection (2) of this section, an operator of a well drilled through a workable coal bed shall notify, by certified mail, the owners of record, lessee of record, and operators of the coal bed and the proper oil and gas inspector of the intention to plug and abandon the well.

(b) A representative of the coal operator or owner may be present at the plugging and filling of the well.

Section 3[4]. Plugging an Oil and Gas Well in Non-coal Bearing Strata. A well drilled through non-coal bearing strata shall be plugged as established in subsections (1) through (6) of this section.

(1) The bottom of the hole shall be filled to the top of each producing formation, or a bridge shall be placed at the top of each producing formation, and in either event a cement plug not less than fifteen (15) feet in length shall be placed immediately above each producing formation if possible.

(2) A cement plug not less than fifteen (15) feet in length shall be placed immediately below all fresh water bearing strata.

(3)(a) A surface cement plug not less than fifteen (15) feet in length shall be placed at the top of the well and cemented to surface.

(b) The casing shall be cut off three (3) feet below surface so as not to interfere with soil cultivation.

(4) An uncased rotary hole drilled with the aid of liquid shall be plugged with heavy mud, approved pursuant to 805 KAR 1:020, Section 1(1)(c)[805 KAR 1:020. Section 2(1)(e)], up to the

base of the surface string at which point a plug of not less than fifteen (15) feet of cement shall be placed. The hole shall be capped similar to other abandoned holes.

(5) Any well in which casing has been cemented from surface to total depth and casing cannot be pulled may be plugged as established in paragraphs (a) and (b) of this subsection.

(a) The bottom of the hole shall be filled to the top of the producing formation and a cement plug not less than fifteen (15) feet in length shall be placed above this fill.

(b) A surface plug shall be placed as established in subsection (3) of this section. An intermediate plug shall not be required.

(6) The operator shall have the option as to the method of plugging cement in the hole by:

(a) Dump bailer;

(b) Pumping through tubing; or

(c) Other method approved by the director to accommodate unforeseen well conditions.

(7) Within thirty (30) days after the plugging of a well has been completed, the owner or operator shall file with the division a completed and notarized[an] Affidavit to Time and Manner of Plugging and Filling Well, Form OG-38 [ED-38].

Section 4[5]. Plugging an Oil and Gas Well in Coal-bearing Strata. Each well drilled through a workable coal bed, including for the extraction of coal bed methane, shall be plugged and abandoned as established in subsections (1) through (7) of this section. (1) A cement plug shall be placed to a point forty (40) feet below the lowest workable coal bed.

(a) The hole shall be filled with cement from the bottom to a point twenty (20) feet above the top of the lowest oil, gas, or water-bearing strata; or

(b) A permanent bridge shall be anchored thirty (30) feet below its lowest oil, gas, or water-bearing strata, and from the bridge it shall be filled with cement to a point twenty (20) feet above the strata.

(2) Following compliance with the requirements of subsection (1)(a) or (b) of this section a cement plug shall be used to completely seal the hole.

(3)(a) Between the sealing plug referenced in subsection (2) and a point twenty (20) feet above the next higher oil, gas, or water-bearing strata, the hole shall be plugged in accordance with subsections (1) and (2) of this section.

(b) Another cement plug shall be installed above this oil, gas, or water-bearing strata in accordance with subsection (2) of this section.

(4) In accordance with subsection (1) through (3) of this section, the hole shall be filled and plugged or bridged, filled, and plugged, in each of its oil, gas, or water-bearing strata. If these strata are not widely separated and are free from water, the strata may be grouped and treated as a single productive stratum.

(5) After plugging all strata, a final surface plug shall be anchored approximately ten (10) feet below the bottom of the largest casing in the well and from that point to the surface, the well shall be filled with cement.

(6) The operator shall place cement in the hole in one of the following ways:

(a) Dump bailer;

(b) Pumping through tubing; or

(c) A method approved by the director to accommodate unforeseen well conditions.

(7) Within thirty (30) days after the plugging of a well has been completed, the owner or operator shall file with the division an Affidavit to Time and Manner of Plugging and Filling Well, Form OG-38[ED-38].

(8) If any of the strata in the well have been completed or stimulated, creating cavities that cannot readily be filled in the manner established in subsections (1) through (7) of this section, the well operator shall follow either of the methods established in paragraphs (a) or (b) of this subsection.

(a) If the stratum that has been completed or stimulated is the lowest one in the well, there shall be placed, at the nearest

suitable point but not less than twenty (20) feet above the stratum, a plug of cement or other suitable material that shall completely seal the hole; but if the completion or stimulation has been done above one (1) or more oil or gas-bearing strata in the well, plugging in the manner established shall be done at the nearest suitable point, but not less than twenty (20) feet below and above the stratum completed or stimulated.

(b) If the cavity is in the lowest oil or gas-bearing stratum in the well, a liner shall be placed that shall extend from below the stratum to a suitable point, but not less than twenty (20) feet above the stratum in which the completion or stimulation has been done; but if the completion or stimulation has been done above one (1) or more oil or gas-bearing strata in the well, the liner shall be placed so that it shall extend not less than twenty (20) feet above or less than twenty (20) feet below the stratum in which completion or stimulation has been done. After the liner is placed, it shall be compactly filled with cement, clay, or other nonporous sealing material.

(9)(a) Once a well drilled through coal-bearing strata has been filled and securely plugged to a point forty (40) feet below the lowest workable coal bed, and in the judgment of the well operator, the coal operator, and the division, a permanent outlet to the surface is required, the outlet shall be provided as established in subparagraphs 1. through 3. of this paragraph.

1. A plug of cement shall be placed in the well at a depth[.] not less than ten (10) feet below the lowest workable coal bed. In this plug and passing through the center of it shall be securely fastened an open pipe, not less than two (2) inches in diameter, which shall extend to the surface.

2. At or above the surface, the pipe shall be provided with a device that shall permit the free passage of gas and prevent obstruction.

3. After the plug and pipe are set, the hole shall be filled with cement to a point ten (10) feet above the lowest workable coal bed.

(b)1. If there are additional overlying workable coal beds, they shall be treated similarly, if this treatment is necessary in the reasonable judgment of the well operator, the coal operator, and the division.

2. If the parties cannot agree, the decision of the division shall control.

Section 5[6]. Oil and Gas Wells used as Fresh Water Wells.

(1) If a well drilled through noncoal-bearing strata is to be plugged and can safely be used as a fresh water well, and if the utilization is desired by the landowner, the well need not be filled above the required sealing plug set below fresh water. A written authority for the use shall be secured from the landowner and filed with the division.

(2)(a) If the well to be plugged is drilled through coal-bearing strata and can safely be used for a fresh water well, and the utilization is desired by the landowner and is agreeable to the owner or operator of all coal-bearing strata beneath the location of the well, the well shall not be filled above the required sealing plug set below fresh water. A written authority for the use shall be secured from the landowner, and coal owner or operator, and filed with the division.

(b) In order for the operator to be released of any further plugging responsibility, the operator shall provide to the division evidence of compliance with the domestic water well construction requirements pursuant to 401 KAR 6:310 as administered by the Department for Environmental Protection.

Section 6[7]. Downhole Disposal of TENORM Contaminated Material. (1) On-site downhole disposal of tubular goods, sludge, and scale containing TENORM shall be allowed by the Division of Oil and Gas in combination with plugging and abandonment of an oil or gas production well if an inspector from the Division of Oil and Gas is present for the duration of the disposal and plugging activity and the standards established in paragraphs (a) through (g) of this subsection are met.

(a) The operator shall certify that the owner of the oil and gas rights covering the depths and formations where the TENORM

waste is proposed to be disposed has consented, by lease or other document, to allow the on-site disposal of TENORM waste.

(b) The TENORM waste shall be limited to that generated at the lease, pool, or unit where disposal is proposed.

(c) The TENORM waste shall be placed in the well at a depth of at least 200 feet below the base of the deepest encountered underground source of drinking water with a total dissolved solids concentration of 10,000 ppm or less.

(d) The TENORM waste shall be placed in the well in a manner approved by the division to ensure proper placement and containment.

(e) A cement plug shall be placed below the TENORM waste, isolating the waste from any producing formation and preventing migration of TENORM waste below the disposal interval. The well shall be cemented from above the TENORM waste to the top of the well.

(f) The cement of the surface plug shall be color dyed with red iron oxide.

(g) A permanent marker that shows the three (3) bladed radiation symbol shall be placed at the top of the surface cement plug or welded to a steel plate at the top of the well casing at ground level.

(2) The operator shall apply to dispose of TENORM downhole, on Application for Authorization for Down-hole Disposal of TENORM Materials in Well Plugging and Abandonment Operations, form ED-39, which shall, at a minimum, contain:

(a) A description of the type of TENORM waste disposed;

(b) The approximate volume of each type of waste disposed;

(c) Results of activity concentration analysis of combined Ra-226 and Ra-228 in picocuries per gram (pCi/g) or radiation exposure or dose rate measured through the use of portable radiation detector appropriate for the radiation being measured, calibrated at least annually, and reported in microroentgen per hour (μR/hr) or microrem per hour (μrem/hr);

(d) The name, permit number, and GPS location of the well to be plugged in which TENORM waste is proposed to be disposed; and

(e) The formation or formations from which the TENORM waste originated.

(3) A copy of the Application for Authorization for Down-hole Disposal of TENORM Materials in Well Plugging and Abandonment Operations, form ED-39 shall be provided to the Cabinet for Health and Family Services, Radiation Control Branch, the owner of the oil and gas rights covering the depths and formations where the TENORM waste is proposed to be disposed, and to the owner of the surface estate at the time of filing of the application with the division.

(4) The division shall review the Application for Authorization for Down-hole Disposal of TENORM Materials in Well Plugging and Abandonment Operations, form ED-39 for completeness and for compliance with the information in subsection (2) of this section in order to prevent migration of TENORM contaminated wastes from the borehole.

(5) The division shall provide written notice to the applicant of its approval or denial of the application. If the application is denied, the division shall notify the applicant in writing of the additional information necessary to satisfy the requirements of this section.

Section 7[8]. If a person fails to comply with this administrative regulation, any person lawfully in possession of land adjacent to or in the neighborhood of the well may enter on the land upon which the well is located and plug the well in the manner established in KRS 353.180(1) or this administrative regulation, and may maintain a civil action against the owner or person abandoning the well, jointly or severally, to recover the cost of plugging the well. This section shall not apply to persons owning the land on which the well is situated and drilled by other persons.

Section 8[9]. Well Plugging Prioritization. The prioritization for reclaiming abandoned storage tanks, properly plugging and

abandoning eligible wells, and addressing imminent threats pursuant to KRS 353.562 shall be in accordance with the Kentucky Abandoned Storage Tank and Orphan Well Prioritization Schedule.

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

(a) "Affidavit to Time and Manner of Plugging and Filling Well", Form OG-38, June 2019;~~ED-38, July 2017.~~

(b) "Temporary Abandonment Permit", Form OG-12, June 2019;~~ED-12, July 2017; and~~

(c) "Application for Authorization for Down-Hole Disposal of TENORM Materials in Well Plugging and Abandonment Operations", Form ED-39, September 2017; and

(d) "Kentucky Abandoned Storage Tank and Orphan Well Prioritization Schedule", June 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Oil and Gas, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 10, 2019

FILED WITH LRC: July 11, 2019 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2019 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone: (502) 782-6720, fax: (502) 564-4245, email: michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation identifies the minimum acceptable requirements to plug or temporarily abandon wells.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish plugging requirements for oil and gas wells.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 353.560 requires the department to regulate the plugging of all wells. This administrative regulation conforms to the authorizing statutes by establishing plugging requirements for oil and gas wells.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by providing oil and gas operators the necessary information to meet the division's plugging requirements.

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

(a) How the amendment will change this existing administrative regulation: This amendment will incorporate by reference a document detailing the method the division intends to prioritize orphan wells and abandoned storage tanks for the

Kentucky Abandoned Storage Tank and Orphan Well (KASTOW) fund.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to incorporate by reference the division's prioritization schedule for the KASTOW fund.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 353.560 requires the department to regulate the plugging of all wells. This amendment will prioritize those orphan wells and abandoned storage tanks for the KASTOW fund.

(d) How the amendment will assist in the effective administration of statutes: These amendments assist in the effective administration of KRS 353.560 by establishing a prioritization schedule that will rank the order in which the division will address orphan wells and abandoned storage tanks based on criteria in the document incorporated by reference.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. There are approximately 1,060 active oil and gas operators in the commonwealth

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) not be directly impacted by this amendment. The document will only address those wells and abandoned storage tanks that do not have a responsible party associated with them. Therefore, no action is necessary on the part of the regulated entity.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to the regulated entity for plugging orphan wells and abandoned storage tanks.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, entities will benefit from the amendment by having an established cleanup program that will address these orphan wells and abandoned storage tanks.

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

(a) Initially: The division may see a slight increase in the costs associated with running the KASTOW program. However, at this time is difficult to predict the actual cost.

(b) On a continuing basis: The division may see a slight increase in the costs for the implementation of this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This program will be funded by the KASTOW fund. Any administrative costs that are associated with running the program are eligible to be charged to the fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. An increase in fees will not be required to implement this program. However, the department will be seeking additional funding for the KASTOW fund to address these sites in future budget requests.

(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? A tiering structure is used when determining which orphan well or abandoned storage tank will be addressed by the KASTOW program. The document incorporated by reference will clearly establish how this will occur.

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 applies to the Division of Oil and Gas.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 353.560, 353.562, 353.563, 353.564, and 353.739.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The proposed administrative regulation will not generate revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The proposed administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The cabinet's budget will receive a transfer of funds to accomplish the goals of the KASTOW program in the first year.

(d) How much will it cost to administer this program for subsequent years? The cabinet's operating budget will continue to need budget appropriations in future budget cycles.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Oil and Gas (Amendment)

805 KAR 1:080. Gas storage reservoirs; drilling, plugging in vicinity.

RELATES TO: KRS 349.035, 353.500, 353.520, 353.540, 353.550, 353.560

STATUTORY AUTHORITY: KRS 349.115[13A.100], 353.540, 353.670

NECESSITY, FUNCTION, AND CONFORMITY: KRS 349.115 and 353.540 authorizes the Department for Natural Resources to promulgate administrative regulations to implement the Commonwealth's oil, gas, and coalbed methane programs. This administrative regulation establishes requirements[Provides] for the protection of the integrity of gas storage reservoirs by requiring certain techniques of drilling, casing, operating and plugging be applied when operating in the vicinity of gas storage reservoirs.

Section 1. Purpose. This administrative regulation is[Rules and administrative regulations set out herein are] designed for the protection of gas storage reservoirs which are natural resources of the state, and no person, firm, or corporation shall cause physical damage to, or create a hazardous condition threatening the existence of, [such] a reservoir in any manner as to make any [such] reservoir less susceptible for use for gas storage. Any well penetrating, drilled to a geologic stratum overlying, or[and] drilled in the vicinity of an underground gas storage reservoir shall be maintained at all times in [such] a manner as will both:

(1) Exclude the encroachment of oil, gas or water into such reservoir; and

(2) Protect such reservoir from a blowout or waste of gas during the drilling of and after completion ~~or~~ plugging of ~~the~~ well. In addition, this administrative regulation has as its purpose the equitable adjustment of correlative rights of gas storage owners and oil and gas operators and it shall be liberally construed to give effect to such public policy.

Section 2. ~~[Definitions. (1) "Gas storage reservoirs" are special geologic and geometric elements of underground strata which are or can be so arranged and situated as to be recognized as useful for the retention, injection, storage and recovery of gas therefrom on a commercial service level.~~

~~—(2) "Underground gas storage" is the utilization of subsurface strata and associated facilities for storing and withdrawing gas held in place for the primary purposes of conservation, fuller utilization of pipeline facilities, and more effective and beneficial service of gas to the public.~~

~~—(3) "Gas storage operator" is any corporation, partnership, or individual who is engaged in the work of preparing to inject, or who injects gas into, or who stores gas in, or removes gas from, a gas storage reservoir, and who owns the right to do so, including but not limited to those engaged in transporting and delivering such gas in public service.~~

~~—(4) "Well operator" is any person who proposes to or does locate, drill, operate or abandon any well.~~

~~—(5) "Well" is any borehole drilled or proposed to be drilled, deepened or reopened for which a permit is required by KRS 353.570(1).~~

~~—Section 3.] Establishment of a Gas Storage Reservoir. (1) Before an [any] area may be declared to contain one (1) or more gas storage reservoirs for the purpose of this administrative regulation the gas storage operator shall file with the Director of Oil and Gas ~~for~~ [Conservation as to] each[such] reservoir, a:~~

~~(a) Certificate of convenience, issued by the Federal Power Commission or its successor, if[such-is] issued; or a~~

~~(b) Certificate of convenience issued by the Kentucky Public Service Commission or its successor, if[such-is] issued; or or a~~

~~(c) Declaration of intent, found by the department to be bona fide, prepared by the gas storage operator to develop a gas storage facility.~~

~~(2)(a) The [above-cited] filing, established in subsection (1) of this section, shall be accompanied by a map, prepared on the scale of one (1) inch equals 2,000 feet and using the appropriate seven and one-half (7 1/2) minute topographic map as the base, which~~

~~(b) The map shall outline[outline] in detail the properties on which storage rights have been or are being obtained, whether by purchase or condemnation, and an outline of the storage reservoir protection zone as suggested by the storage operator.~~

~~(c) This protection zone shall not be[be] wider than 2,000 feet from the nearest property on which gas storage rights have been or are being obtained, and The width shall be subject to the approval of the department based on the characteristics of the reservoir and the maximum anticipated storage pressure.~~

~~(3)(2) The required map shall be refilled at any time that storage rights on additional acreage are acquired or at any time that acreage on which storage rights have been acquired is eliminated.~~

~~(4)(3)[No] Gas shall not be moved and stored until the above cited filing is made with the director. This shall[does] not include moved and stored gas that[which] is to be used to determine whether or not underground gas storage is feasible.~~

~~(5)(4) Any operator of an existing gas storage reservoir shall file the above cited certificate or declaration and map with the director within sixty (60) days of the date that this administrative regulation becomes effective.~~

Section 3. Application for Permit to Drill, Deepen or Reopen a Well on Property Where Gas Storage Rights are Acquired. (1) Before drilling, deepening or reopening a well on a[any] property

where gas storage rights have been acquired the well operator shall, at the time of filing with the department, also forward to the gas storage operator by registered or certified mail, or by personal service a copy of the application and plat.

(2) On a[any] property where there is an outstanding oil and gas lease or on a[any] property on which producing wells are located, it shall be the responsibility of the gas storage operator to notify the well operator at the time storage rights are acquired of ~~the~~[such] acquisition and that a copy of all future applications to drill, deepen, or reopen wells by the well operator shall be furnished to the gas storage operator.

Section 4. Application for Permit to Drill, Deepen, or Reopen a Well on Property Where Gas Storage Rights are Not Acquired but which Lies Within the Storage Reservoir Protection Zone. When an[any] application for permit to drill, deepen, or reopen a well is received by the department where the location of the proposed well will fall within the storage reservoir protection zone, the department shall notify the well operator and the gas storage operator of the receipt of the application by first class mail, postage prepaid.

Section 5. Objection and Hearing. (1) Applications to drill, deepen, or reopen a well on a property on which gas storage rights have been or are being acquired or upon any property that lies within the storage reservoir protection zone shall be held for five (5) days after receipt.

(2)(a) During the time established in subsection (1) of this section the gas storage operator may file with the division specific objections to the proposed well. If objections are filed, the gas storage operator shall notify the well operator by registered certified mail or by personal service.

(b) The department shall set a time and place for the hearing. The hearing time shall be no more than ten (10) days after the end of the five (5) day period.

(c) At the hearing, the division, well operator, and the gas storage operator shall consider the objections and agree to the drilling proposal as submitted or agree to changes in the drilling proposal that meets the approval of the division. Any agreed upon amendments to the drilling proposal shall be included on an amended drilling application and filed with the division.

(d) The division, upon receipt of the amended application, shall issue to the well operator a drilling permit approving the drilling of the well.

(e) If the gas storage operator and the well operator are unable to agree at the hearing, the division shall issue to the well operator a permit to drill the well either as originally proposed or with the amendments to the proposal as the division determines appropriate to protect the underground gas storage reservoir and prevent the loss of gas without unnecessarily restricting drilling operations. [Upon receipt of an application to drill, deepen, or reopen a well on any property on which gas storage rights have been or are being acquired or upon any property which lies within the storage reservoir protection zone, the department shall hold the application for five (5) days. This will enable the gas storage operator to file with the department specific objections to the proposed well; and if the objections are so filed, the gas storage operator shall, at the same time, serve the same upon the well operator by registered or certified mail, or by personal service and the department shall fix a time and a place for a hearing, not more than ten (10) days after the end of the five (5) day period, at which hearing the objections shall be considered. At the hearing, the well operator and the gas storage operator or such of those as are present or represented, shall consider the objections and either agree upon the drilling of the well as proposed or make such change in the drilling program as to satisfy all objections and meet the approval of the department. All changes agreed upon in the drilling of such well shall be set out on an amended application for permit to drill by the well operator and filed with the department within a reasonable period of time after the hearing. The department, upon receipt of the amended application, shall issue to the well operator a drilling permit approving the drilling of such well. If the gas storage operator

~~and the well operator are unable to agree at the hearing, the department shall, in view of the purpose and intent of KRS Chapter 353, issue to the well operator a permit to drill such well either as originally proposed or with such added or corrective program as the department deems appropriate to protect the underground gas storage reservoir and prevent the loss of gas therefrom without unnecessarily restricting drilling operations.]~~

~~(3)[(2)] If the gas storage operator and the well operator cannot agree on the proposal[program] under which the well is to be drilled, completed, and plugged, then the department shall in its order specify what costs, if any, in excess of costs normally expended in the drilling, completion, and plugging of the well shall be borne by the gas storage operator and shall specify when and in what manner payment for such costs shall be made.~~

~~(4)(a)[(3)] The gas storage operator may waive objections by letter, telegram, or telephone, provided the[such] telephone notice of waiver is followed by a written waiver, to the division[department] on:~~

- ~~1. Any one (1) well;[-]~~
- ~~2. Group of wells;[-]~~
- ~~3. All wells to be drilled by a well operator; or[-]~~
- ~~4. All wells to be drilled in a specific area or on a specific lease.~~

~~(b) If the[such] waiver or waivers are filed with the division[department], and the division[department] having determined that the public interest is being served, then the division[department] shall issue the permit[without delay].~~

Section 6. Notice to Well Operator. The gas storage operator shall give[tø] the well operator a notice of intention to drill, deepen, or reopen a well in the manner provided for in Section 4 of this administrative regulation. Notice shall be required only to the well operator in possession at the time rights of storage are acquired or a[his] successor in interest if the latter notifies the gas storage operator in writing of the[his] acquisition. The well operator shall have the same rights and obligations as[does] the gas storage operator with respect to objections and hearing as detailed in Section 6 of this administrative regulation.

Section 7. Notice of Intention to Plug Wells. (1)(a) Prior to plugging a well, a well operator shall notify the gas storage operator and the division of the intention to properly plug and abandon the well if the well is:

1. Drilled through or penetrates an underground gas storage reservoir; or
2. Drilled through or penetrates the same stratigraphic horizon as the gas storage reservoir in the storage reservoir protection zone.

~~(b) The notice shall be given in time for the representatives of the gas storage operator and the division to have the opportunity to be present at the plugging and filling of the well. If representatives do not appear, the well operator may proceed, at the time fixed in the notice, to plug and fill the well.[Prior to the abandonment of a well drilled through or which penetrates an underground gas storage reservoir, or which is drilled through or which penetrates the same stratigraphic horizon as the gas storage reservoir in the storage reservoir protection zone, the well operator shall notify the gas storage operator and the department of their intention to plug and abandon the well. The notice shall be timely and reasonable in order that representatives of the gas storage operator and the department will have the opportunity to be present at the plugging and filling of the well. Whether or not such representatives appear, the well operator may proceed, at the time fixed in his notice, to plug and fill the well.]~~

(2)(a) Upon receipt of notice of intention to properly plug and abandon the gas well, the gas storage operator may, and after determining from the well operator the physical condition of the well, elect to only properly plug and abandon the well or bear the entire cost of proper plugging and abandonment.

(b) If the gas storage operator elects to properly plug and abandon the well or bear the entire cost of proper plugging and abandonment, the gas storage operator shall provide notice in

writing to the gas well operator and the division.

(c) Upon receipt of the notice from the gas storage operator, the gas well operator shall advise in writing both the gas storage operator and the division of the condition of the well, of any equipment or pipe that may be in the well and the existence and type of any equipment or materials that have been lost in the hole.

~~(d) Upon receipt by the division of the notice required of the gas storage operator in paragraph (a) of this subsection and the advice required of the well operator in paragraph (c) of this subsection, the division shall cause the well operator's bond to be released and the well shall be placed under the bond of the gas storage operator.[Upon receipt of notice of intention to plug, the gas storage operator may, at his option, and after determining from the well operator the physical condition of the well, elect to plug the well or bear the entire cost of plugging. The option may be exercised only for the purpose of plugging the well. If the option is exercised, the gas storage operator shall notify in writing both the well operator and the department of his election. The well operator shall then advise in writing both the gas storage operator and the department the condition of the well, any equipment or pipe that may be in the well and the existence and type of any equipment or materials that have been lost in the hole. Upon receipt by the department of the notice required of the gas storage operator and the advice required of the well operator, the department shall cause the well operator's bond to be released and the well shall be placed under the bond of the gas storage operator.]~~

(3) When the plugging and filling have been completed by either the gas well operator or the gas storage operator, an affidavit setting forth the time and manner in which the well was plugged shall be made by the operator[two (2) experienced men who participated in the work]. The affidavit shall be made on the Affidavit to Time and Manner of Plugging and Filling Well, Form OG-38, incorporated by reference in 805 KAR 1:060[forms furnished by the department]. One (1) copy of the affidavit shall be retained by the person that caused the well to be properly plugged and abandoned, one (1) mailed to the gas storage operator or the well operator and one (1) to the department.

Section 8. Drilling Against High Reservoir Pressures. Whenever possible, the drilling into or through storage reservoirs shall[will] be conducted when the reservoir pressure is equal to or less than the original formation pressure and the[such] original formation pressure shall be provided by the gas storage operator.

Section 9. Nothing in this administrative regulation shall be construed to prohibit a well operator or a gas storage operator from drilling a well that they[he] would otherwise have the right to drill.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 10, 2019

FILED WITH LRC: July 11, 2019 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2019 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation

Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone: (502) 782-6720, fax: (502) 564-4245, email: michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for the protection of the integrity of gas storage reservoirs by requiring certain techniques of drilling, casing, operating and plugging be applied when operating in the vicinity of gas storage reservoirs.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for the protection of the integrity of gas storage reservoirs by requiring certain techniques of drilling, casing, operating and plugging be applied when operating in the vicinity of gas storage reservoirs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 353.540 and KRS 349.115 authorize the division to promulgate administrative regulations in order to implement the oil and gas programs within the Commonwealth. This administrative regulation conforms to the authorizing statutes by establishing criteria for wells drilled through or near a gas storage reservoir.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by providing requirements for wells drilled through gas storage reservoirs.

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

(a) How the amendment will change this existing administrative regulation: This amendment will delete the definitions in the administrative regulation and incorporates information related to coal bed methane wells drilled through gas storage reservoirs into this administrative regulation. This information was previously in 805 KAR 9:050.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to consolidate two administrative regulations into one administrative regulation related to drilling wells through gas storage reservoirs.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment consolidates gas storage reservoir information as authorized by KRS 349.115 and 353.540 into this administrative regulation.

(d) How the amendment will assist in the effective administration of statutes: These amendments will assist in the effective administration of the statutes by consolidating two administrative regulations related to wells drilled through gas storage reservoirs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. There are approximately 1,060 active oil and gas operators in the commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will meet the same requirements related to wells drilled through gas storage reservoirs. However, the information related to wells drilled through gas storage reservoirs for coalbed methane drilling will now be in this administrative regulation instead of 805 KAR 9:050.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, entities will be able to find all information related to wells drilled through gas storage reservoirs in one administrative regulation.

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

(a) Initially: The division will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: The division will not incur any additional costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of general and restricted funds will be used for the implementation of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering was not used. The provisions in this administrative regulation will apply equally to all oil and gas operators.

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 applies almost entirely to the Division of Oil and Gas.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 349.115, 353.540, and 353.670.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The proposed administrative regulation will not generate revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The proposed administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The cabinet's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The cabinet's operating budget will be used to administer this program for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Oil and Gas
(Amendment)

805 KAR 1:110. Underground injection control.

RELATES TO: KRS 353.180(3), 353.510, 353.520, 353.550, 353.570(1), (2), 353.590, 353.992, 40 C.F.R. 146.6, 42 U.S.C. 300j-6

STATUTORY AUTHORITY: KRS 353.540, 353.550, 353.560, 353.592

NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.540 authorizes the Department for Natural Resources to administer and enforce the provisions of KRS 353.500 to 353.720. The waste of oil and gas is prohibited by KRS 353.520, which provides that prohibited waste includes the unreasonable damage to underground fresh or mineral water supply, workable coal seams, or other mineral deposits in the operations for the discovery, development, production, or handling of oil and gas; the unnecessary or excessive surface loss or destruction of oil or gas or their constituents; and the drowning with water of any stratum or part thereof capable of providing oil or gas in paying quantities, except for secondary recovery or disposal purposes, or in hydraulic fracturing or other completion practices. KRS 353.592 authorizes the department to develop a regulatory program for the purpose of accepting primary responsibility for the administration of the Underground Injection Control Program. This administrative regulation establishes requirements for the drilling, casing, operation, plugging, construction, conversion, and maintenance of Class II wells and the protection of fresh water zones from contamination associated with the production of oil and gas.

Section 1. Definitions. The definitions contained in KRS 353.510 and the following additional definitions shall apply to this administrative regulation:

(1) "Administrator" means the regional administrator for Region IV of U.S. EPA.

(2) "Aquifer" means an underground geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

(3) "Area of review" means that area within not less than a fixed radius of one-fourth (1/4) mile around an injection well, except that at the request[option] of the permit applicant and approval of the director, the area of review may be deemed to be the zone of endangering influence calculated in accordance with 40 C.F.R. 146.6.

(4) "Casing" means a pipe or tubing of appropriate material, of varying diameter and weight, lowered into a borehole during or after drilling in order to support the sides of the hole and prevent the walls from caving, to prevent loss of drilling mud or fluids into porous ground or to prevent water, gas, or other fluid from entering or leaving the hole.

(5) "Cementing" means the operation in which a cement slurry is displaced around the casing's annulus using approved engineering methods.

(6) "Class II well" means a well which injects fluids:

(a) Which are brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste when injected;

(b) For enhanced recovery of oil or natural gas; or

(c) For permanent disposal of produced brine water; or

(d) For storage of hydrocarbons which are liquid at standard temperature and pressure.

(7) "Commercially producible" means a well which may be used commercially for the production of oil and gas or for Class II injection.

(8) "Confining zone" means a geological formation, group of formations, or part of a formation that is capable of limiting fluid movement above an injection zone.

(9) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

(10) "Date of primacy" means the effective date of the Administrator's approval of Kentucky's Underground Injection Control (UIC) Program made pursuant to Section 1425 of the Safe Drinking Water Act as codified in 42 U.S.C. 300h-4.

(11) "Division" means the Kentucky Division of Oil and Gas Conservation.

(12) "Endangerment" means that an injection operation may result in the presence of a contaminant in ground water, which supplies or may reasonably be expected to supply any public water system, and that the presence of that contaminant, or any contaminant, may result in violation of any national primary drinking water regulation or may otherwise adversely affect the health of persons.

(13) "EPA" means the United States Environmental Protection Agency.

(14) "Flow rate" means the volume per time unit given to the flow of gases or other fluid substance which emerges from an orifice, pump, or turbine or passes along a conduit or channel.

(15) "Fluid" means any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or other form or state.

(16) "Formation breakdown pressure" means indicated values from data recorded prior to and during squeeze cementing, acidizing, or hydraulic fracturing treatments performed by appropriate service companies. These breakdown pressure values are frequently reported as the surface gauge pressure which shall, through appropriate engineering calculations, be modified to reflect the pressure at which an exposed formation fractures and allows fluid to be injected into the formation.

(17) "Freshwater" means an underground source of drinking water.

~~(18)~~ "(18)" "Freshwater zone" means an underground source of drinking water.

~~(19)~~ "(19)" "Ground water" means water below the land surface in an aquifer's zone of saturation.

~~(20)~~ "(20)" "Injection well" means a well into which fluids are being injected.

~~(21)~~ "(21)" "Injection zone" means a geological formation, group of formations, or part of formation receiving fluids through a well.

~~(22)~~ "(22)" "Mechanical integrity" means a condition of injection wells which exists if there is not leakage in the well's casing, tubing, or packer and if there is not fluid movement into an underground source of drinking water through vertical channels adjacent to the well bore.

~~(23)~~ "(23)" "Owner or operator" means the company or person having secured a permit for:

(a) A new or converted well; or

(b) A rule authorized well in operation prior to the effective date or primacy, as defined in subsection (10) of this section.

~~(24)~~ "(24)" "Packer" means a device lowered into a well to produce a fluid-tight seal.

~~(25)~~ "(25)" "Plugging" means the act or process of stopping the flow of water, oil or gas into or out of a formation through a borehole or well penetrating that formation by the placement of cement plugs in the wellbore.

~~(26)~~ "(26)" "Project" means a group of wells in a single operation.

~~(27)~~ "(27)" "Public water system" means a system for the provision to the public of piped water for human consumption, if the system has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals.

~~(28)~~ "(28)" "Underground source of drinking water or "USDW" means an aquifer or its portion, which is not an exempted aquifer and which:

(a) supplies any public water system; or

(b) contains a sufficient quantity of groundwater to supply a public system; and

1. Currently supplies drinking water for human consumption; or

2. Contains less than 10,000 mg/l total dissolved solids.

~~(28)~~~~[(29)]~~ "Well" means a borehole drilled, or proposed to be drilled, for the purpose of:

- (a) Producing natural gas or petroleum, or one through which natural gas or petroleum is being produced; or
- (b) Injecting water, gas, or other fluid or one into which water, gas, or other fluid is being produced.

Section 2. General. (1) A person shall not drill a Class II well without first obtaining a permit to drill pursuant to KRS 353.570(1) and (2).

(2) A person shall not inject fluids to the subsurface through a Class II well without the authorization of the division in the form of a permit issued pursuant to Section 11 of this administrative regulation.

(3) The owner or operator of a Class II well shall maintain financial responsibility and resources to close, plug, and abandon the underground injection operation pursuant to the requirements in Section 8 of this administrative regulation.

(4) The fee requirements for an application to drill a new Class II injection well pursuant to KRS 353.590(2)(a) and a fifty (50) dollar fee pursuant to KRS 353.590(2)(b) shall suffice for and be applicable to the permit to inject.

(5) The permit to operate any Class II well may be transferred to a successor only after notice is given to the division on the Well Transfer for UIC Wells, Form OG[ED]-26, and shall include at least the following:

- (a) The original operator's company name and address;
 - (b) The successor's company name and address;
 - (c) The permit number of the well;
 - (d) The Carter Coordinate location;
 - (e) The farm name and well number;
 - (f) Signatures of the original operator and the successor or that of their official representatives; and
 - (g) A statement that the successor assumes all responsibility for the well and provides financial responsibility pursuant to Section 8 of this administrative regulation.
- (6) A Class II well with an outstanding noncompliance shall not be transferred, unless the successor is willing to correct deficiencies and submit a corrective action plan which is approved by the division pursuant to subsection (11) of this section.

(7) A Class II well shall be plugged in the manner established in 805 KAR 1:060~~[and 805 KAR 1:070, whichever is applicable]~~.

(8) An injection permit shall not be issued unless the applicant demonstrates that the Class II well will not cause the endangerment of a USDW.

(9)(a) If the casing and cementing of a Class II well is inadequate and movement of fluids cause the endangerment of a USDW, the division shall require the owner or operator of a well to take necessary corrective action.

(b) Corrective action shall be completed within ninety (90) days of notification from the division to the owner or operator.

(c) Injection shall not be authorized until the corrective action has been completed and mechanical integrity has been demonstrated.

(10)(a) In administering and applying this administrative regulation, the division shall, as practicable, take into account the varying geologic, hydrological, and historical conditions in different areas within the state.

(b) The division may, if consistent with other provisions of this section, upon submittal of the Class II Well Permit Application for Underground Injection Control, Form OG[ED]-14 and after notice and hearing, grant a variance from any requirement established in subsection (8) of this section upon a demonstration that alternate prudent engineering practices will protect a USDW.

(11) The division may modify, suspend, or revoke a Class II well permit if the injection operation is altered in a way that does not adequately protect the USDW or if a mechanical integrity failure or downhole condition compromises the injection system.

Section 3. Exempted Aquifers. An aquifer or a portion thereof

which meets the criteria established in this section for a USDW may be determined by the division to be an "exempted aquifer" if it meets the following criteria:

(1) It does not currently serve as a source of drinking water; and

(2) It cannot now and will not in the future serve as a source of drinking water because:

(a) It is mineral, hydrocarbon, or geothermal energy producing, or may be demonstrated to contain minerals or hydrocarbons that, considering their quantity and location, are expected to be commercially producible;

(b) It is situated at a depth or location which makes recovery of water for drinking water purposes economically or technologically impractical;

(c) It is so contaminated that it would be economically or technologically impractical to render that water fit for human consumption; or

(d) The total dissolved solids content of the groundwater is more than 3,000 mg/l, and less than 10,000 mg/l and it is not reasonably expected to supply a public water system.

Section 4. Requirements Applicable to Class II Well Permits. Authorization to inject fluids through a Class II well shall be conditioned upon compliance with the following requirements:

(1)(a) The owner or operator shall promptly notify the director in writing of any modification in the manner in which the injection operation is conducted or of any mechanical failure or downhole problem encountered in the operation of the Class II well or upon recognition of a failure in an injection system.

(b) The well or wells which appear to be leaking shall be shut down immediately and correction procedures shall be initiated within fifteen (15) days, or the permit to inject may be revoked under appropriate conditions.

(c) The prescribed notice to the director shall describe all proposed modifications or corrective actions and shall be subject to the approval of the director.

(2) The owner or operator shall afford the director, or his authorized representative(s) upon proper presentation of credentials, access to Class II wells and related facilities for the purpose of conducting inspections, witnessing mechanical integrity tests, implementing corrective action operations and plugging procedures, and testing samples of injected fluids.

(3)(a) The owner or operator shall regulate the injection pressure in a manner so that the pressure in the injection zone does not initiate new fractures or propagate existing fractures in the confining zone that would cause the movement of injected fluids into a USDW.

(b) The division may, if necessary to ensure compliance with this requirement, establish limitations on the wellhead pressure at which a Class II well may be operated.

(c) Any limitation shall be included as a permit condition or through an order issued after notice and opportunity for hearing.

(4)(a) The owner or operator shall provide for the mechanical integrity of the well by operating without leaks in the casing, tubing, or packer and without fluid movement into a USDW through vertical channels adjacent to the well bore.

(b) The owner or operator shall, upon request of the division, conduct tests of the mechanical integrity of the Class II well, utilizing a method approved by the division as required in Section 6 of this administrative regulation.

(c) Each Class II well shall be tested for mechanical integrity at least every five (5) years pursuant to Section 6(6) of this administrative regulation.

(d) An alternative mechanical integrity test authorized by the division shall be approved by the administrator.

(5)(a) The owner or operator shall monitor and record injection pressures rates and volumes at least monthly and shall submit on a completed and notarized~~[the]~~ Annual Disposal or Injection Well Monitoring Report, Form OG[ED]-18 provided by the division, an annual report of the results of monitoring to the division.

(b) The owner or operator shall retain all these records on file for a period of five (5) years.

(c) The owner or operator of hydrocarbon storage or enhanced recovery wells may monitor them by manifold monitoring on a field or project basis rather than on an individual well basis if the facilities consist of more than one (1) injection well, operated with a common manifold, and provided the owner or operator demonstrates to the division that manifold monitoring is equivalent to individual well monitoring.

Section 5. Construction Requirements for Class II Wells.

(1)(a) A class II injection well proposed to be constructed after the effective date of primacy shall be constructed in accordance with applicable provisions of KRS 353.570(1) and (2) and 805 KAR 1:020 in a manner that shall prevent injected fluids from escaping to a USDW.

(b) Existing Class II wells authorized by EPA are exempt from this requirement unless the division determines that corrective action is necessary to prevent injected fluids from escaping to a USDW.

(c)1. A freshwater string of casing shall extend fifty (50) feet below the freshwater depth stated on the permit or the base of the deepest fresh water, whichever is greater.

2. All freshwater casing strings shall have cement circulated to fill the annular space of the casing.

3. This casing shall be cemented, using approved engineering methods to assure the circulation of the cement to the surface.

4. The long string of casing shall extend at least from the surface to immediately above the injection interval, and shall have a minimum of 300 feet of cement behind the lowermost 300 feet of casing.

5. If the fresh water is not protected by a separate string of casing, then the long string shall be cemented with circulation of cement back to surface.

(d) Tubing shall be installed in the casing with a packer set at a depth not to exceed fifty (50) feet above the injection zone.

(e) The owner or operator shall provide a detailed description of the casing plan on the Casing and Cementing Plan for UIC Wells, Form ED-25, and submitted with the Class II Well Permit Application for Underground Injection Control, Form OG[ED]-14 for permit to inject.

(f) The casing plan shall be approved by the director and shall include a listing of the casing size, type, grade, depth of each casing string, and the class and volume of the cement to be used.

(2)(a) An active oil and gas well or an abandoned or plugged well reopened for the purpose of conversion to a Class II injection well[,] shall satisfy the requirements for cementing of a Class II well.

(b) If perforation of existing casing is required to satisfy the cementing requirements during the conversion of the well to a Class II well, a tubing and packer shall be installed in the existing casing to the area immediately above the injection interval, not to exceed fifty (50) feet above the injection interval.

(3) A Class II disposal well shall be designed to ensure that disposal zones are hydraulically isolated from USDW.

(4) The owner or operator shall provide the division with all required geophysical logs and results of tests conducted during the drilling and completion of a Class II well that specifically relate to the USDW, the confining zone adjacent to it, and the injection and adjacent formations, and shall include the following:

(a) A geophysical log marked to indicate all fresh water zones, the confining zone and the injection interval;

(b) A geologic description of the confining and injection zone that shall include the lithologic description, geologic name, and thickness; and

(c)1. A report describing the nature of fluids and formation pressure in the injection zone.

2. This information may be obtained from geophysical logs, physical examinations of samples and cores, and chemical analysis, and shall be prepared by a professional geologist registered in the state of Kentucky.

3. The owner or operator may substitute information from nearby wells if comparable to the injection well, and in the case

of an area permit, if sufficient information is available from wells within the field to adequately describe the whole field.

Section 6. Mechanical Integrity Requirements for Class II Injection Wells. (1)(a) Operators shall demonstrate mechanical integrity of new and existing Class II injection wells.

(b) The owner or operator shall submit a plan to demonstrate mechanical integrity with the application for permit to inject.

(2) An injection well is determined to have mechanical integrity if:

(a) There are not leaks in the casing, tubing, or packer; and

(b) There is not fluid movement into an underground source of drinking water through vertical channels adjacent to the injection well bore.

(3) One (1) of the following methods shall be used to evaluate the absence of significant leaks under subsection (2)(a) of this section:

(a) Following an initial pressure test, performed with liquid or gas, monitoring of the tubing and casing annulus pressure with sufficient frequency to be representative, as determined by the division, while maintaining an annulus pressure different from atmospheric pressure measured at the surface;

~~[(b) A pressure test shall be performed with liquid or gas;] or~~

~~[(b)]~~(e) Records of monitoring demonstrating the absence of significant changes in the relationship between injection pressure and injection flow rate for the following Class II enhanced recovery wells:

1. Existing wells completed without a packer provided that a pressure test has been performed and the data is available and provided further than one (1) pressure test shall be performed at a time when the well is shut down and if the running of the test does not cause further loss of significant amounts of oil or gas; or

2. Existing wells constructed without a long string casing but with surface casing, which terminates at the base of fresh water, provided that local geological and hydrological features allow this construction and provided further that the annular space shall be visually inspected. For these wells, the division shall prescribe a monitoring program, which shall verify the absence of significant fluid movement from the injection zone into an USDW.

(4) One (1) of the following methods shall be used to confirm the absence of fluid movement under subsection (2)(b) of this section:

(a) The results of a temperature log, ~~or~~ noise log, or cement bond log;

(b) Cementing records demonstrating the presence of adequate cement to prevent a migration; or

(c) other methods approved by the director~~administrator~~.

(5)(a) The mechanical integrity test shall be performed on the annulus of the tubing and casing.

(b) A minimum pressure of 300 psi shall be applied to the annulus of the tubing and casing.

(c) The well is considered to have mechanical integrity if, at the end of thirty (30) minutes, there is no more than a plus or minus of three (3) percent change of the test pressure on the gauge.

(d) A mechanical integrity test shall be witnessed and approved by a division field inspector.

(e) The division may require higher test pressures to be used when the anticipated injection pressure will be high.

(f) In the event a mechanical integrity test failure occurs, the owner or operator shall initiate corrective measures within thirty (30) days of the initial failure and perform a follow-up test within thirty (30) days after the completion of corrective measures. Should the corrective measures require removal of the packer from the wellbore, the owner or operator shall submit a completed and notarized Class II Well Re-Work Report, Form OG-4 documenting the work performed.

(g) The test results shall be filed on the Certification~~Certificate~~ of Mechanical Integrity, Form OG[ED]-22.

(6)(a) The owner or operator of a Class II well shall schedule at five (5) year intervals or less, a mechanical integrity test as described in subsection (5) of this section.

(b) The owner or operator shall certify the test results to the division in writing within fifteen (15) days of completion of the test.

(7)(a) The owner or operator shall not perform a mechanical integrity test of a Class II well without giving written notice to the division on the Application for Class II Internal Mechanical Integrity Test, Form OG-44 within fifteen (15) calendar days prior to the proposed test date.

(b) The division shall then notify the owner or operator of the earliest possible date available to test the well.

Section 7. Area of Review for Class II Wells. The owner or operator shall supply the following information if applying for a permit to inject pursuant to Section 11 of this administrative regulation:

(1) A description of the area of review which shall be determined by:

(a) A fixed radius of one-fourth (1/4) mile around the injection well, or one-fourth (1/4) mile around the permit area boundary; or

(b) The zone of endangering influence calculated in accordance with 40 C.F.R. 146.6 for an area of review less than one-fourth (1/4) mile.

(2) A map showing the following information within the area of review:

(a) Existing producing wells, injection wells, abandoned wells, dry holes, and water wells;

(b) Surface and subsurface mines, quarries and other pertinent surface features including residences, roads, and faults; and

(c) The distribution manifold applying injection fluid to all wells in the area of review including all system monitoring points, for those injection wells, if operating from a common manifold;

(3) The following data for wells within the area of review:

(a) A tabulation of data, reasonably available from public records or otherwise known to the applicant, including a description of well type, construction, date drilled, location, depth, record of plugging or completion, and applicable additional information; and

(b) The record of completion and plugging for each well which penetrates the injection zone, and any other wells within the area of review wells which would be affected by any proposed increase in pressure if the injection well is to be operated over the fracture pressure of the injection formation; and

(4)(a) For wells in the area of review which are improperly sealed, completed, or abandoned, a corrective action plan which consists of steps or modifications as necessary to prevent movement of fluid into underground sources of drinking water.

(b) The division shall consider the following criteria and factors during evaluation of the corrective action plan:

1. Nature and volume of injected fluids;
2. Nature of native fluids or by-products of injection;
3. Potentially affected population;
4. Geology;
5. Hydrology;
6. History of injection operations;
7. Completion and plugging records;
8. Plugging procedures upon abandonment; and
9. Hydraulic connections with underground sources of drinking water.

Section 8. Financial Responsibility. (1) The owner or operator of all Class II wells shall demonstrate financial responsibility to plug and abandon a well based on projected plugging cost estimates on the Class II Plugging and Abandonment Plan, Form OG-41. The form shall be reviewed for completeness and adequacy to protect the USDW as determined by the division.

(a) Financial responsibility of existing Class II wells prior to the date of primacy shall be submitted to the division pursuant to Section 9 of this administrative regulation.

(b) The owner or operator of a Class II well authorized by a permit to inject pursuant to this administrative regulation shall, upon application, demonstrate financial responsibility and submit

the plugging abandonment plan in accordance with 805 KAR 1:060 [or 805 KAR 1:070].

~~(2)(a) The owner or operator shall provide financial coverage to adequately plug the well pursuant to the individual well bond requirements of KRS 353.590(5).~~

~~(b) 1.] If the division issues a letter of violation, forfeits the individual bond, and subsequently plugs the well, the owner or operator shall be responsible for any additional costs expended by the division for plugging the well which exceeds the bond amount.~~

~~(b) 2.] These costs, if not paid, shall be recovered by civil suit pursuant to KRS 353.180(3).~~

~~(c) 3.] In addition to the recovery of costs, the owner or operator shall be subject to penalties as prescribed in KRS 353.992.~~

Section 9. Transitional Requirements for Owner or Operators of Class II Wells. (1)(a) The division shall accept a Class II well permit, including rule authorized wells, issued under the authority of the EPA administered program. Rule authorized wells shall be deemed permitted by the division, provided the owner or operator satisfies the requirements this section.

(b) The division shall:

1. Accept records from EPA of all authorized wells; and
2. Create an inventory of approved existing wells.

(c) The financial responsibility demonstration required in Section 8 of this administrative regulation and the submission of the plugging and abandonment plan in Section 10 of this administrative regulation shall be completed within ninety (90) days following the effective date of primacy.

(d) If the existing bond posted with EPA meets the requirements of Section 8 of this administrative regulation and is transferable to the division, the transfer of the bond shall be accepted by the division.

(2)(a) The owner or operator of a Class II well having a mechanical integrity test approved by EPA shall remain on the same schedule of mechanical integrity tests[,] upon the effective date of primacy.

(b) A copy of all documents showing approval by EPA of the well's mechanical integrity and a copy of all forms, test data, and logs required by and submitted to EPA shall be submitted to the division within ninety (90) days of the effective date of primacy.

(3) The owner or operator with a pending application submitted for Class II wells under the EPA program may transfer a pending application to the division and shall satisfy the permitting requirements in Section 11 of this administrative regulation upon the effective date of primacy.

Section 10. Plugging and Abandonment of Class II Wells. (1) A Class II well shall be plugged in accordance with 805 KAR 1:060[or 805 KAR 1:070, whichever is applicable].

(2) The owner or operator shall provide a detailed description of the proposed plugging procedure and costs on the Class II Plugging and Abandonment Plan, Form OG-41, and submitted for approval with a completed and notarized Class II Well Permit Application for Underground Injection Control, Form OG-14 for permit to inject.

(3) The owner or operator shall notify the division in writing thirty (30) days prior to plugging and shall schedule with the division inspector a time and date for performing the plugging procedure.

(4) [(3)] The inspector shall schedule the earliest date available.

(5) [(4)] Upon completion of the plugging, the owner or operator shall file a plugging affidavit on "Affidavit to Time and Manner of Plugging and Filling Well" Form OG-38, incorporated by reference in 805 KAR 1:060 [Form ED-38].

(6) [(5)] After cessation of operations of two (2) years, the owner or operator shall plug and abandon the well in accordance with the plan, unless a notice is sent to the division describing actions or procedures that the owner or operator shall take to ensure that the well will not cause the endangerment of a USDW during the period of temporary abandonment. These actions and

procedures shall include compliance with the technical requirements applicable to active injection wells unless waived by the division.

Section 11. Requirements for a Permit to Inject into a Class II Well. All persons seeking a permit to inject into a Class II well shall, after the effective date of primacy, comply with the requirements of this section. (1) A person shall not inject fluids into the subsurface through a Class II well without obtaining a permit to inject.

(2) An application for a permit to inject shall be submitted on form OG[ED]-14 and shall include:

(a) A statement by the owner or operator as to whether the well will be used for enhanced recovery, hydrocarbon storage, or for disposal purposes;

(b) The approximate depth of the deepest known freshwater zone.

(c) In accordance with 805 KAR 1:030, a location plat for a permit to inject into a Class II injection well.

(d) An area of review map prepared on a 7.5 minute quadrangle topographic map and including:

1. The location of all known freshwater wells;
2. The location and completion or plugging record of all wells, whether producing or plugged;
3. The location of hazardous waste treatment or disposal facilities;
4. The location of rivers or streams;
5. The location of quarries and surface and subsurface mines;
6. The location of faults; and
7. The location of permanent residences;

(e) A schematic diagram of the well showing the following:

1. The total depth of the plugback of the well;
2. The depth of the injection or disposal interval;
3. The geological name of the injection or disposal zone;
4. The geological name, thickness, and description of the confining zone;

5. The vertical distance separating the uppermost extremity of the injection zone from the base of the lowest USDW;

6. The depth of the top and the bottom of the casing and the cement;

7. The size of the casing and tubing and the depth of the packer; and

8. The depth to the base of the lowermost underground source of drinking water;

(f) For the conversion of an existing well, a copy of the completion report and any available geophysical log of the well;

(g) Proposed operating data as follows:

1. The geological name, depth, and location of the source of the injection fluid;

2. A standard laboratory analysis of a representative sample of the fluid to be injected under the proposed Class II permit, with the following parameters, as contained in 40 C.F.R. 136.3 and 40 C.F.R. Part 261 Appendix III:

- a. Barium if sulfate is less than 500 mg/l;
- b. Calcium;
- c. Total Iron;
- d. Magnesium;
- e. Sodium;
- f. Bicarbonate;
- g. pH;
- h. Specific Gravity;
- i. Carbon Dioxide;
- j. Total Dissolved Solids; and
- k. Hydrogen Sulfide if H₂S odor is detected.

3. A material safety data sheet for inhibitors if added to the injection fluid for control of scaling, corrosion, or bacterial growth;

4.a. The nature of the annulus fluid to be used in the annulus between the tubing and casing.

b. This description shall include the type of fluid to be used and the corrosivity of the annulus fluid.

c. The amount of inhibitor to be added shall be listed;

5. The proposed maximum injection rate and pressure. The owner or operator shall limit injection pressure to either a value:

a. That does not exceed a maximum injection pressure at the wellhead calculated to assure that the pressure during injection does not initiate new fractures or propagate existing fractures in the confining zone adjacent to an underground source of drinking water and will not cause the movement or injection of fluids into an underground source of drinking water; or

b. For wellhead pressure calculated by using the following formula: $P_{max} = (0.733 \text{ psi/ft} - (.433 \text{ psi/ft} (S_g)))d$, Where: P_{max} = Maximum injection pressure (psia) at the wellhead; S_g = Specific gravity of the injected fluid; and d = Depth to the top of the injection zone in feet;

c. Alternate maximum injection pressures calculations may be utilized using instantaneous shut-in pressures recorded after stimulation treatments in adjacent wells in the same formation as the proposed injection zone;

(h) The location and description of each underground source of drinking water through which the well would penetrate;

(i) A description of the current or proposed casing program on the Casing and Cementing Plan for UIC Wells, Form ED-25, including the following:

1. Casing size, weight, and type;
2. Cement volume and type; and
3. Packer type;

(j) A description of all proposed stimulation programs;

(k) A description of proposed plans to cope with all shut-ins or well failures, so as to prevent migration of fluids into any underground source of drinking water;

(l) If a manifold monitoring program is utilized, a description of the program and a demonstration equivalence to individual well monitoring.

(m) A corrective action plan, which shall be submitted for all wells[well] within the area of review as required in Section 7(4) of this administrative regulation;

(n) A demonstration of financial responsibility as required in Section 8(2) of this administrative regulation and a plugging and abandonment plan as required in Section 10 of this administrative regulation; and

(o) The plan by the owner or operator of mechanical integrity. Each well shall be tested for mechanical integrity using the method as described in Section 6(5) of this administrative regulation.

(3) An application for permit shall be signed by the owner or operator of the injection well, including corporate officers, general partners, sole proprietors, or other persons authorized to execute documents on behalf of the applicant.

(4) With respect to an application, a Class II Well Permit Application for Underground Injection Control, Form OG[ED]-14, for a Class II well, an applicant shall personally or by certified mail submit a written notification describing the proposed well to each of the following persons, if the described property is located within one-quarter (1/4) mile of the proposed well:

(a) The owner or operator of each well for oil and gas purposes, including a well having temporary abandonment status under this administrative regulation or not yet in production;

(b) The permittee of an underground mine permitted under KRS Chapter 350; and

(c) Each owner of rights to surface or subsurface property that the well penetrates.

(5)(a)1. The notification required under this subsection shall specify that a person who wishes to object to issuance of the permit shall, within thirty (30) days of receipt of the notification, submit written comments or request a hearing.

2. The notification shall include the address to which written comments or the hearing request shall be forwarded and where additional information may be obtained.

(b)1. In addition to the notification required under this subsection, the applicant shall cause a notice of a permit application to be placed in a newspaper of general circulation in the county where the proposed well is located.

2. Individual and publication notices shall include:

- a. The name and address of the applicant;
- b. The location of the proposed well;
- c. The geological name and depth of the injection zone;

- d. The maximum injection pressure; and
- e. The maximum rate of barrels each day.

3. The notice shall specify that a person who wishes to object to issuance of the permit may, within thirty (30) days of publication of the notification, submit written comments or request a hearing.

4. The notification shall include the address to which the written comments or hearing requests shall be forwarded, how a person may receive written notice of the proceedings, and where additional information concerning the proposed permit may be obtained.

5. Proof of service of the notification required in this subsection shall be delivered to the division before a permit for a Class II well shall be issued.

(6)(a) The owner or operator shall verbally notify field inspectors five (5) days before all mechanical integrity tests are performed.

(b) A written notice shall be given to the division fifteen (15) days before the tests are performed as required in Section 6(7) of this administrative regulation.

(7)(a) The permit to inject into a Class II injection well shall remain valid for the life of the well or project.

(b) The permit may be terminated if the well or project is in violation of this administrative regulation and applicable provisions of KRS Chapter 353.

(c) The owner or operator shall comply with the requirements of all applicable administrative regulations.

Section 12. Completion and Monitoring Reports. (1) The owner or operator shall upon completion of construction of a Class II well file with the division a completed and notarized Certificate of Completion for an Injection Well, Form ED-23, within ninety (90) days of final construction.

(2)(a) The owner or operator shall file an annual report of monthly monitoring of injection fluid volumes, injection pressure, and casing annulus pressure on Annual Disposal or Injection Well Monitoring Report, Form OG[ED]-18, on the twenty-eighth day of January for the previous twelve (12) months.

(b) The owner or operator shall retain all records on file for a period of five (5) years.

(c) The owner or operator of a liquid hydrocarbon storage or enhanced recovery well may monitor them by manifold monitoring on a field or project basis rather than on an individual well basis if the facilities:

- 1. Consist of more than one (1) injection well;
- 2. Operate with a common manifold; and
- 3. Provided the owner or operator demonstrates to the director that manifold monitoring is equivalent to individual monitoring.

(3) The owner or operator [permittee] of a Class II injection well shall notify the director in writing within thirty (30) days of the termination of operations at which time the permit to inject shall expire.

Section 13. Workover of Class II Wells. (1) The owner or operator shall notify the division within ninety (90) days of a well workover, logging, or testing that may reveal downhole conditions.

(2) The owner or operator shall submit a Well Rework Report, Form OG[ED]-4, documenting the activity within thirty (30) days following the completion of the rework.

(3) If the packer unseats during the workover, a mechanical integrity test shall be conducted under the provisions of Section 6 of this administrative regulation.

(4) Injection shall not be allowed until an approved mechanical integrity test has been performed.

Section 14. Procedures for Public Participation in Enforcement Actions. Upon receiving a complaint from the public, interested parties or others, the division shall:

(1) Investigate and provide written response to all citizen[citizens] complaints submitted regarding any concerns for the endangerment of an underground source of drinking water;

(2) Not oppose intervention by any citizen when permissive intervention is authorized pursuant to KRS 353.180(3).

(3) Publish notice of and provide at least thirty (30) days for public comment on any proposed settlement of a division enforcement action beyond the forfeiture of a bond for a Class II well.

Section 15. Confidentiality of Information. (1) Information submitted to the division pursuant to this administrative regulation may be claimed as confidential by the submitter. A claim of confidentiality shall be asserted upon submission in the manner prescribed on the application form or instructions. Other submissions shall be stamped with the words "confidential business information" on each page containing confidential information. If a claim is not made at the time of submission, the division may make the information available to the public without further notice.

(2) Claims of confidentiality shall not apply to:

- (a) The name and address of any permit applicant or permittee;
- (b) Information regarding the existence, absence, or level of contaminants in drinking water; and
- (c) Records directly by statute to be disclosed or published.

Section 16. Penalties. An owner or operator in violation of the requirements of this administrative regulation shall be subject to the penalties established in KRS 353.992.

Section 17. Primacy. The provisions of this administrative regulation shall become effective upon the date of primacy, on or after which a Class II well shall be subject to the requirements of this administrative regulation and shall be exempt from Sections 4, 5, and 6 of 805 KAR 1:020.

Section 18. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Class II Well Rework Report," Form OG-4, June 2019[ED-4, August 2007];
- (b) "Class II Well Permit Application for Underground Injection Control," Form OG-14, June 2019[ED-14 August 2007];
- (c) "Annual Disposal or Injection Well Monitoring Report," Form OG-18, June 2019[ED-18, August 2007];
- (d) "Certification of Mechanical Integrity," Form OG-22, June 2019[ED-22, August 2007];
- (e) "Certificate of Completion for an Injection Well," Form OG-23, June 2019[ED-23, October 2007];
- (f) "Casing and Cementing Plan for UIC Wells," Form OG-25, June 2019[ED-25, October 2007];
- (g) "Well Transfer for UIC Wells," Form OG-26, June 2019[ED-26, October 2007; and]
- (h) [~~"Affidavit to Time and Manner of Plugging and Filling Well," Form ED-38, October 2007.~~]
"Class II Plugging and Abandonment Plan", Form OG-41, June 2019; and
- (i) "Application for Class II Internal Mechanical Integrity Test, Form OG-44, June 2019.

(2) These forms may be inspected, copied, and obtained, subject to applicable copyright law, at the Division of Oil and Gas [Conservation], 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 10, 2019

FILED WITH LRC: July 11, 2019 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2019 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who

wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone: (502) 782-6720, fax: (502) 564-4245, email: michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for the drilling, casing, operation, plugging, construction, conversion, and maintenance of Class II wells and the protection of fresh water zones from contamination associated with the production of oil and gas.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for Class II wells.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 353.592 authorizes the department to develop a regulatory program for the purpose of accepting primary responsibility for the administration of the Underground Injection Control Program (UIC). This administrative regulation conforms to the authorizing statutes by providing details related to the UIC program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by providing the necessary information for a complete regulatory program for an UIC program.

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

(a) How the amendment will change this existing administrative regulation: This amendment provides information on what happens if a mechanical integrity test (MIT) results in a failure, provides that an UIC operator shall provide full cost bonding as required by the US EPA, and incorporates new forms.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to make needed updates to the UIC program related to MIT tests.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by updating information required for the UIC program as authorized by KRS 353.592.

(d) How the amendment will assist in the effective administration of statutes: These amendments assist in the effective administration of the statutes by making corrections to the administrative regulation and updating information related to MITs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. There are approximately 1,060 active oil and gas operators in the Commonwealth. Any of these operators could drill a Class II injection well. Currently there are approximately 350 UIC operators in the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will be required to use a new form for reporting as well as a form for requesting MITs.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendments to this administrative regulation will not increase the cost to the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, entities will have a new form for reporting proposed plugging procedures and the associated cost. Also, the information related to a MIT failure is established in the administrative regulation.

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

(a) Initially: The division will not incur any additional costs for the implementation of this administrative regulation. The division is already monitoring MITs.

(b) On a continuing basis: The division will not incur any additional costs for the implementation of this administrative regulation. The division is already monitoring MITs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of general and restricted funds will be used for the implementation of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? No, tiering was not used. The provisions in this administrative regulation will apply equally to all oil and gas operators who own or operate Class II injection wells.

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 applies almost entirely to the Division of Oil and Gas.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 353.540, 353.550, 353.560, and 353.592.

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? There are no additional costs associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There are no additional costs associated with the amendments to this administrative regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Oil and Gas
(Amendment)

805 KAR 1:120. Operating or deepening existing wells and drilling deeper than the permitted depth.

RELATES TO: KRS 353.520

STATUTORY AUTHORITY: KRS 349.015[Chapter 13A,]
353.540, 353.550, 353.560, 353.570, 353.590

NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.550 and KRS 349.015 requires the Department for Natural Resources to regulate the drilling and operation of all wells, while KRS 353.590 and KRS 349.015 requires the department[it] to regulate the drilling of a well past the permitted depth. This administrative regulation establishes the requirements to operate a well and drill a well deeper than the permitted depth.

Section 1. New Permit Required. The applicant shall obtain a permit, in accordance with 805 KAR 1:010, to operate any well previously in violation of KRS Chapter 349, KRS Chapter 353, 805 KAR Chapter 1, or 805 KAR Chapter 9 and whose bond the division has forfeited for noncompliance. Before a new permit is granted the applicant shall comply with:

(1) 805 KAR Chapter 1 for all wells; and

(2) KRS Chapter 353 for oil and gas wells; or

(3) KRS Chapter 349 for coalbed methane wells.[Definitions. The definitions contained in KRS 353.510 and the following additional definitions shall apply to this administrative regulation:

(1) "Deepening" means ~~the drilling deeper of any existing well where new drilling is to proceed past the depth at which the initial drilling of the well ceased.~~

(2) "Operating a well" means ~~to reenter, reopen, deepen, drill, inject into, produce, attempt to produce, or work over, any well.~~

Section 2. ~~Permit Required. The operator shall obtain a permit to operate any well if the well is in violation of applicable standards and the department has forfeited the bond for noncompliance.]~~

Section 2. (1) New Permit Not Required. An operator may operate an existing well if the operator[he] submits a completed and notarized Well Transfer Form[an acceptable well transfer on form] OG[ED]-13, incorporated by reference in 805 KAR 1:170 Section 10, and bonding as required in KRS 353.590(7) and KRS 349.120[KRS 353.590(5)] if either of the conditions in paragraphs (a) and (b) of this subsection[subsections (1) and (2) of this section] apply.[The well transfer form, ED-13, revised April 4, 1990, is filed and incorporated herein by reference. Copies may be obtained from the Department for Natural Resources, P.O. Box 14090, Lexington, Kentucky 40512-4090, Monday through Friday, 8 a.m. to 4:30 p.m.]

(a)[(1)] The well is producing or capable of producing, not abandoned and not in violation of[applicable standards] KRS Chapter 353 Chapter 349 or 805 KAR Chapter 1; or

(b)[(2)] The well has been abandoned by the previous operator, but the current operator's sole intent is to reenter the well for the purpose of properly plugging and abandoning it.

Section 3. New Permit Required for Deepening. The operator:

(1) Shall obtain a new permit, in accordance with 805 KAR 1:010, prior to deepening any well if:

(a) The original permit is more than one (1) year old; or

(b) The original well was drilled prior to the permitting requirements of the department;[,] and

(2) Shall not drill until the permit is issued.

Section 4. (1) New Permit Not Required for Deepening. The permitted operator may deepen an existing well if the permit is not more than one (1) year old and if the well has not been drilled past the permitted and bonded depth.

(2) For coalbed methane wells, an operator shall not drill

deeper than the permitted depth if the drilling causes the well to be in noncompliance with the well spacing standards set out in KRS 349.075 or the notice requirements contained in KRS 349.015.

Section 5. Drilling Deeper Than the Permitted Depth. An operator may drill deeper than the permitted depth of the well provided that the operator[he] brings the[his] permit into compliance within the time and conditions set forth below:

(1) The operator shall notify division personnel that he has drilled deeper than the permitted depth the next official work day of the department.

(2) The operator shall, within ten (10) days of drilling deeper than the permitted depth, amend his permit to the depth to which he has drilled.

(3) The operator shall, within ten (10) days of drilling deeper than the permitted depth, submit additional bonding required to satisfy KRS 353.590(7) and KRS 349.120[KRS 353.590(5)].

(4) The operator shall not drill deeper than the permitted depth if the[such] drilling causes the well to be in noncompliance with the well spacing standards set out in KRS 353.610 or KRS 349.075.

Section 6. A directional or horizontal well or a deep well shall not be deepened without prior approval of the director or a permit therefor being issued.

Section 7. Operator Noncompliance. An operator in noncompliance with the requirements of this administrative regulation is subject to penalties pursuant to KRS 353.991 for oil and gas wells and KRS 349.155 for coalbed methane wells.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 10, 2019

FILED WITH LRC: July 11, 2019 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2019 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone: (502) 782-6720, fax: (502) 564-4245, email: michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements to operate a well and drill deeper than the permitted depth.

(b) The necessity of this administrative regulation: KRS 353.590 requires the division to regulate the drilling of a well past the permitted depth. This administrative regulation establishes the requirements for drilling a well past its permitted depth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 353.590 requires the division to regulate the drilling of a well past the permitted depth. This administrative regulation conforms to the content of the

authorizing statutes by establishing the procedure for this process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by providing a procedure for an operator to drill past its permitted depth.

(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 deletes the definitions and inserts information related to coal bed methane wells drilled through gas storage reservoirs into this administrative regulation. This information was previously in 805 KAR 9:060.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to consolidate two administrative regulations into one administrative regulation related to deepening a well past its previously permitted depth.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment consolidates information related to drilling past a wells permitted depth as authorized by KRS 349.015 and 353.590 into this administrative regulation.

(d) How the amendment will assist in the effective administration of statutes: These amendments will assist in the effective administration of the statutes by consolidating two administrative regulations related to deepening a well past its previously permitted depth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. There are approximately 1,060 active oil and gas operators in the Commonwealth

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will meet the same requirements related to deepening a well past its previously permitted depth. The information related to wells drilled past its permitted depth for coal bed methane drilling will now be in this administrative regulation instead of 805 KAR 9:060.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, entities will be able to find all information related to drilling wells past its originally permitted depth in one administrative regulation.

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

(a) Initially: The division will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: The division will not incur any additional costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of general and restricted funds will be used for the implementation of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering was not used.

The provisions in this administrative regulation will apply equally to all oil and gas operators.

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 applies almost entirely to the Division of Oil and Gas.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 349.015 and 353.590.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The proposed administrative regulation will not generate revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The proposed administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The cabinet's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The cabinet's operating budget will be used to administer this program for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Oil and Gas (Amendment)

805 KAR 1:140. Directional and horizontal wells.

RELATES TO: KRS 349.015, 349.035, 349.040(3), 349.075, 349.120, 349.155, 353.050, 353.060, 353.180, 353.510, 353.520, 353.561 – 353.564, 353.590, 353.5901, 353.592, 353.610, 353.651, 353.652, 353.6601 – 353.6606, 353.730, 353.737, 353.991, Chapter 424

STATUTORY AUTHORITY: KRS 349.115, 353.540, 353.550

NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.540 authorizes the department to promulgate administrative regulations to administer KRS 353.500 to 353.720. KRS 353.550 authorizes the department to regulate the drilling and casing of all wells and filing of all downhole surveys. KRS 349.110 authorizes the department to exercise supervision over the drilling, casing, plugging, and filling of all coalbed methane wells. This administrative regulation establishes the requirements for permitting directional and horizontal wells for the purpose of oil, or gas, or coalbed methane extraction.

Section 1. ~~Definitions. —(1)"Blow-out preventer" or "BOP" means a device installed on the surface casing, which is the first and largest diameter casing installed in a well with the primary use to make the bore hole stand up and to protect a fresh water zone layer of strata capable of producing or receiving fluids, or installed on the intermediate casing, which is one (1) or more~~

strings of pipes installed in a well in addition to the surface casing in which each string is smaller in diameter than the previous. The device is used to prevent the escape of pressure either in the annulus, which is the space between two (2) strings of casing or between a string of casing and the bore hole wall, between casing and drill pipe, or in the open hole without drill pipe, and that is used during drilling operations.

- (2) "Casing" is defined by KRS 353.010(3).
- (3) "Deep well" is defined by KRS 353.510(16).
- (4) "Directional survey" is defined by KRS 353.010(8).
- (5) "Intersection length" means the horizontal distance between the point at which the well penetrates the top of the intended formation and the end point within that formation.
- (6) "True vertical depth" means the depth of the well from any point in the well being measured to the surface of the ground above the point being measured.

—Section 2.] Information Submittal. (1) Prior to drilling a directional or horizontal well, the operator shall submit:

(a) 1. A completed Application for Permit, Form OG-1, incorporated by reference in 805 KAR 1:010 for oil or gas well; and

2. [An Application for Permit, ED-1, for a permit to drill the well, with] A cover letter from the operator making a request for drilling the horizontal or directional well;

(b) Three (3) copies of a location plat satisfying the requirements of 805 KAR 1:030 (plan view), in addition to:

1. The surface location and proposed target formation with their respective Carter Coordinates;

2. The proposed path of the wellbore~~course of the well~~; and

3. The identification of the intersection length of the proposed well and the proposed producing formation. To avoid any conflicts with the spacing requirements, a dashed line shall be drawn around the intersection length in feet with regard to the spacing requirements in;

a. KRS 353.610 for an oil or gas well;

b. KRS 349.075 for a coal bed methane well; or, for deep wells;

c. 805 KAR 1:100 and KRS 353.651 and 353.652 for deep wells. This distance shall be clearly shown in feet;

(c) A bond as required in KRS 353.590(7) for oil or gas wells or KRS 349.120 for coalbed methane wells; and

(d) An application fee pursuant to the requirements in 805 KAR 1:010 [of \$300].

(2)(a) In addition to the plan view required in this section, the operator shall submit three (3) copies of a plat that shows a vertical cross-section view of the area to be drilled by the well.

(b) This cross-section shall be prepared from the proposed "predrill hole" directional survey compiled by the contractor responsible for the directional drilling of the proposed wellbore~~control mechanism and certified as required by 805 KAR 1:030, Sections 2 and 7(1)(k)].~~

(c) The cross-section shall include the area from the well site to the target made through the proposed course of the well.

(d) The surface shall be located as zero in reference to the depth and the lateral distance from the well site and true vertical depths shall be shown for:

1. The kick-off point or selected depth at which the deviation is started;

2. The known coal seams to be intersected;

3. The producing interval;

4. The proposed producing formation; and

5. The proposed target.

(3) Upon permit issuance, the operator shall provide verbal or written notice to the department field inspector at least forty-eight (48) hours in advance of the commencement of drilling operations.

(4) Once the well has been drilled and completed, the following shall be submitted within thirty (30) days from the date of completion:

(a) Three (3) copies of an amended plan view of the well location plat required in subsection (1)(b)1. through 3. of this section, with the actual course drilled, the kick-off point, and the

actual target superimposed on the proposed well location plat. A correction in the target Carter Coordinates, if necessary, shall then be issued by the department;

(b) Three (3) copies of the side or cross-sectional view plat required in subsection (2)(d)1 through 5 of this section~~of this section~~ shall be amended for the actual path of the wellbore~~well~~, showing the actual formation, coal seams, target formation, and kick-off point; and

(c) Copies of all directional surveys certified by the operator and the contractor responsible for the directional survey.

1. This survey shall be submitted for the entire well bore, and the operator shall be able to identify the path or depth of the well bore at any given time during and after the drilling of the directional or horizontal well.

2. The survey points shall be made at a maximum of 200 foot~~feet~~ intervals or at any intervals more frequent.

(5) The operator shall satisfy spacing requirements for offset mineral boundary lines and between wells for the actual drilled path of the wellbore and its end point and the intersection of the wellbore and the producing formations in accordance with:

(a) KRS 353.610 for oil or gas wells;

(b) KRS 349.075 for coalbed methane wells; or

(c) [or, for deep wells,] 805 KAR 1:100 and KRS 353.651 and 353.652 for deep wells, of offset mineral boundary lines and between wells for the actual drilled course of the well and its end point and the intersection of the well bore and the producing formations].

(6) A coal operator or owner affected by the drilling of a directional or a horizontal well shall be provided a copy of the predrill plat and cross-section plat established in subsections (1)(b) and (2)(b) of this section~~of this section~~ as required by KRS 353.050 and 353.060 for oil and gas wells or KRS 349.015 for coalbed methane wells. Within ten (10) days after the well is drilled, the operator shall submit to the coal operator or owner the revised plats and deviation survey log required in subsection (4) of this section.

(7) The requirements for a deep directional or horizontal well shall satisfy those requirements established in 805 KAR 1:100 and KRS 353.651 and 353.652 regarding the application process and spacing units. Prior to the deep directional or horizontal well being drilled, a hearing shall be held pursuant to KRS Chapter 13B and 805 KAR 1:100 before the Kentucky Oil and Gas Conservation Commission.

Section 2. If an application for a directional or horizontal permit is submitted to the department, the operator shall prepare a detailed drilling and casing plan on Casing and Cementing Plan, Form OG-7 ~~[ED-7]~~, for the review by and the approval or denial of the department. The items requested in 805 KAR 1:130, Section 3(1), (2), and (3) shall be submitted with this plan.

Section 3. The operator shall install a blow-out preventer with a minimum~~blow-out prevention device capable of withstanding a~~ working pressure of 1,500 psi and a test pressure of 3,000 psi or a minimum working pressure greater than the maximum anticipated surface pressure, whichever is greater. (1) A description of this device and its installation shall be included with the drilling and casing plan required in Section 3 of this administrative regulation.

(2) This BOP equipment shall be tested at intervals necessary to maintain its ability to operate at rated capacity. The results of these tests shall be kept at the drill site and made available to department personnel at their request.

Section 4. The requirements of 805 KAR 1:130, Sections 5, 6, and 7 shall also apply to this administrative regulation.

Section 5. An operator in noncompliance with the requirements of this administrative regulation shall be subject to penalties pursuant to KRS 353.991 for oil and gas wells or KRS 349.155 for coalbed methane wells.

Section 6. Incorporation by Reference. (1)~~The following~~

material is incorporated by reference:

—(a) "Application for Permit", ED 1, June 2004; and
 —(b) "Casing and Cementing Plan", OG-7, June 2019[ED-7, March 2015] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Oil and Gas[Conservation], 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 10, 2019

FILED WITH LRC: July 11, 2019 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2019 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone: (502) 782-6720, fax: (502) 564-4245, email: michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for permitting directional and horizontal wells for the purpose of oil or gas extraction.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for permitting directional and horizontal wells for the purpose of oil or gas extraction.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 353.540 authorizes the department to promulgate administrative regulations to administer KRS 353.500 to 353.720. This administrative regulation conforms to the authorizing statutes by establishing requirements for permitting directional and horizontal wells for the purpose of oil or gas extraction.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by providing requirements for permitting directional and horizontal wells for the purpose of oil or gas extraction.

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

(a) How the amendment will change this existing administrative regulation: This amendment will incorporate information related to permitting directional and horizontal wells for the purpose of coalbed methane extraction. This information was previously in 805 KAR 9:070.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to consolidate two administrative regulations into one administrative regulation related to permitting directional and horizontal wells for the purpose of oil, gas, or coalbed methane extraction.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment consolidates permitting

information for directional and horizontal wells from 805 KAR Chapter 9 into this administrative regulation.

(d) How the amendment will assist in the effective administration of statutes: These amendments will assist in the effective administration of the statutes by consolidating two administrative regulations related to permitting directional and horizontal wells.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. There are approximately 1,060 active oil and gas operators in the commonwealth

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will meet the same requirements related to directional and horizontal wells. However, the information as it relates to coalbed methane drilling will now be in this administrative regulation instead of 805 KAR 9:070.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, entities will be able to find all information related to directional and horizontal wells in one administrative regulation.

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

(a) Initially: The division will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: The division will not incur any additional costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of general and restricted funds will be used for the implementation of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering was not used. The provisions in this administrative regulation will apply equally to all oil and gas operators.

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 applies almost entirely to the Division of Oil and Gas.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 349.115, 353.540, and 353.670.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The proposed administrative regulation will not generate revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The proposed administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The cabinet's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The cabinet's operating budget will be used to administer this program for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Oil and Gas
(Amendment)

805 KAR 1:170. Content of the operations and reclamation plan.

RELATES TO: KRS 349.015, 349.105, 349.120, 349.155, 353.180, 353.510, 353.520, 353.561 – 353.564, 353.590, 353.5901, 353.592, 353.595, 353.597, 353.651, 353.652, 353.6601 – 353.6606, 353.730, 353.737, 353.991

STATUTORY AUTHORITY: KRS 349.130, 353.540, 353.550, 353.5901, 353.670

NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.5901(1) requires an oil or gas[a] well operator to submit to the Department for Natural Resources an operations and reclamation plan. KRS 349.130 requires an applicant for a coal bed methane well permit to submit to the Department for Natural Resources an operations and reclamation proposal when applying for a permit. This administrative regulation establishes the content of the operations and reclamation plan, establishes the form on which that plan is to be filed, and establishes the form on which well transfers are indicated.

Section 1.[Definitions. (1) "Best management practices" or "BMPs" is defined by KRS 353.540(28).

(2) "Final reclamation" means the date on which the operator has completed drilling operations at the well site, has plugged the well, and has performed all obligations described in the operations and reclamation plan.

(3) "Wellsite boundary" means the area of disturbance by an operator, excluding access roads, to drill an oil or gas well.

Section 2.-] (1) The operations and reclamation plan shall be filed on a completed and notarized Operations and Reclamation Plan, Form OG[ED]-10.

(2) In addition to the requirements set out in KRS 353.5901 and KRS 349.130, the following information shall be submitted on Form OG[ED]-10:

(a)1. The operator's and surface owner's names, addresses, and telephone numbers;

2. The county in which the well is proposed to be drilled; and

3. The well number;

(b)1. A listing or description of fertilizers and soil amendments to be used and seed mixes or trees to be planted as established in the table in this subparagraph.

**RECOMMENDED HERBACEOUS MIXTURES
FOR REVEGETATION**

Note: A species enclosed in parenthesis may be substituted for the species to the left. Its seeding rate is enclosed in parentheses.

Species Mixture	Seeding Rate (Pounds/acre PLS)
Spring - February 15 to May 15	
1. Orchardgrass	10
White or Ladino clover	2
Red clover	6
2. Orchardgrass	10
White or Ladino clover	1
Red clover	4
Kobe lespedeza	10
3. Orchardgrass	10
Birdsfoot trefoil (Alfalfa)	8 (15)
Red clover	6
4. 31 Tall fescue	20
5. Wheat (Spring oats)	25 (32)
Switchgrass	10
Indiangrass	10
Big bluestem	5
Little bluestem	5
Birdsfoot trefoil	6
Except for mixture 5, add one (1) of the following quick cover species to the selected permanent spring seeding mixture:	
Wheat (before April 15)	30
Spring oats (before April 15)	32
Balbo rye (before April 15)	30
Perennial ryegrass	10
Annual ryegrass	5
Weeping lovegrass (after April 1)	2
Summer - May 15 to August 1	
Orchardgrass	10
Kobe lespedeza	15
Red clover	4
White clover (Birdsfoot trefoil)	1 (6)
Alfalfa	12
Add one (1) of the following quick cover species to the permanent summer seeding mixture:	
Sorghum	20
Foxtail (German) millet	12
Japanese millet	15
Soybeans	40
Cowpeas	40
Pearl millet	10
31 Tall fescue	20
Fall - August 1 to October 1	
1. Orchardgrass	10
White or Ladino clover	2
Red clover	6
2. Orchardgrass	10
Alfalfa (Birdsfoot trefoil)	15 (8)
Red clover	6
3. 31 Tall fescue	20
4. Deertongue	12
Birdsfoot trefoil	8
Red clover	6
Add one (1) of the following quick cover species to the selected permanent fall seeding mixture:	
Winter wheat	30
Balbo rye or Winter rye	30
Winter oats	32
Perennial ryegrass	10
Annual ryegrass	5
Mixtures for Wet or Poorly Drained Areas and Pond Borders	
Spring - February 15 to May 15	
Japanese millet	10
Redtop (Reed canarygrass)	3 (15)
Alsike clover	4
31 Tall fescue	20

Common annual lespedeza (quick cover species)	10
Fall - August 1 to October 1	
Redtop	3
Reed canarygrass	15
Alsike clover	6
31 Tall fescue	20
Common annual lespedeza (quick cover species)	10
Mixture for Areas to be Stocked With Woody Plants	
Spring or Fall Seeding	
Redtop	3
Perennial ryegrass	5
Birdsfoot trefoil (Appalow lespedeza)	10 (20)
Foxtail millet (quick cover species)	5
If both Appalow lespedeza and birdsfoot trefoil are used, cut their seeding rates in half.	

2. The requirements in subparagraph 1. of this paragraph shall apply for each affected area requiring revegetation treatment; and

(c) A detailed map of the road, well location, and proposed area of disturbance, which shall be in sufficient detail to allow ready identification of surface features and which shall satisfy the requirements established in subparagraphs 1. through 4. of this paragraph.

1.a. The surface owner's tract shall be identified on the map, with the name of the surface owner if not listed on the legend.

b. The map shall indicate the acreage to be disturbed.

2. The map may be made over an enlarged section of the United States Geological Survey (USGS) 1:24000 topographic map, or an equivalent format, and shall be:

a. Enlarged to 1"=400'; and

b. Submitted on a minimum of an eight and one-half (8 1/2) inch by fourteen (14) inches sheet, using the symbols established on Form OG[ED]-10.

3. The map shall have a legend with the operator's and surface owner's names not listed on the map, the scale of the map, the well name and number, and the lease name. Within 500 feet of the permitted wellsite boundary and 100 feet of the well site access road centerline, the map shall show:

a. The location of all features listed on the legend of form OG[ED]-10;

b. All water bodies; and

c. If reasonably ascertainable, public utility infrastructure.

4. The map shall show the drainage pattern on and away from the area to be affected, including the direction of flow, proposed constructed drainways, natural drainways to be used for drainage, and the streams or tributaries to receive discharges from the proposed operation.

(3) A signature of the surface owner shall be obtained in instances of a complete severance of the ownership of the oil, ~~and gas, or coalbed methane~~ from the ownership of the surface to be disturbed. Signatory sections for the operator and surface owner shall be completed on Form OG[ED]-10 pursuant to paragraphs (a) and (b) of this subsection.

(a) The name and title, if any, of the operator shall be indicated and his or her signature notarized.

1.a. The signature shall be either that of an officer of the company or of a person who holds a duly recorded power of attorney to execute documents.

b. A copy of the power of attorney shall be filed with the division.

2. If the prospective operator is an individual, the signatory shall be in the same name as the applicant's. If someone other than the applicant signs the form, the signatory shall hold a duly recorded power of attorney.

(b) The surface owner's name shall be indicated and his or her signature notarized if he or she approves of the operations and reclamation plan, together with any attachments submitted

with it.

Section 2. Unsigned Reclamation Forms. If the owner of the surface of the severed minerals tract is unwilling or for some other reason has failed to sign[submit] Form OG[ED]-10, the operator shall file:

(1) A written petition for mediation; and

(2) The items established in paragraphs (a) and (b) of this subsection.

(a) A copy of the certified mail receipt verifying that the operations and reclamation plan, the statement required in KRS 353.5901(4)(b), and the plat were mailed to and received by the surface owner or, if not received, the original or a copy of the unclaimed envelope. A copy of the operations and reclamation plan and the attachments enclosed in the envelope mailed to the surface owner shall also be included.

(b) If the surface owner cannot be reached at his last known address of record and certified mail is returned as undeliverable or unknown, the operator shall publish a notice of intended activity, together with a request for information on the whereabouts of the surface owner.

1. The publication shall be made two (2) consecutive times in a local newspaper in the county where the proposed well is located and once in a newspaper of general circulation.

2. A copy of the notice of intended activity and request for surface owner information shall be included with the operator's application for permit and shall include:

a. The name and address of the operator;

b. A brief description of the intended activity as established in the operations and reclamation plan; and

c. A statement of where interested persons may obtain additional information as to the operator's intended activity.

3. The surface owner shall respond to the notice established in this paragraph.

Section 3. Mediation of Dispute. (1) The surface owner may file with the division a request for mediation after receiving from the operator the proposed operations and reclamation plan, but only after the operator has filed his request for mediation and not later than the time set forth in the Notice of Request for Mediation provided by the department and mailed to the surface owner. The surface owner's request to participate in mediation shall include the mediation fee, in accordance with KRS 353.5901(6), or a request for waiver of the fee.

(2) Contents of a request for fee waiver. The request for waiver of the mediation fee shall include:

(a) A brief statement of facts underlying the request for a determination that the individual is financially unable to pay the mediation fee required by KRS 353.5901(6); and

(b)1. Documentation that the individual is receiving or has been deemed eligible to receive public assistance; or

2. An affidavit, subject to penalties for perjury, establishing:

a. The applicant's individual income;

b. The applicant's household income;

c. Property owned;

d. Outstanding obligations;

e. The number and age of dependents; and

f. A copy of his or her most recent Kentucky and federal income tax returns.

(3) Waiver determination.

(a) Within thirty (30) days of filing of the petition, the mediator shall issue a determination accepting or denying the request for fee waiver. If the fee waiver is denied, the applicant shall be informed in writing and the applicant shall be given thirty (30) days from the mailing of the mediator's waiver denial to submit the mediation fee to the department, or the surface owner shall be deemed to have failed to satisfy the statutory requirements applicable to mediation and a report shall be issued pursuant to subsection (4) of this section.

(b) The mediator's waiver determination shall not be subject to appeal.

(c) In considering the request for fee waiver, the mediator shall consider the statement and affidavit submitted by the

surface owner and consult the Federal Poverty Guidelines in effect upon the date the request is mailed.

(d) The mediator shall waive the mediation fee for any surface owner whose household income is at or below 100 percent of the Federal Poverty Guidelines.

(e) The mediator shall waive the mediation fee for any surface owner whose household income exceeds 100 percent of the Federal Poverty Guidelines if the mediator determines that the surface owner has demonstrated financial inability to pay the fee.

(f) It shall be presumed that the surface owner has the financial ability to pay the mediation fee if that person:

1. Is not receiving, or is not eligible to receive, public assistance payments upon the date the affidavit is submitted; or
2. Owns more than one (1) motor vehicle.

(4) If the surface owner does not file the mediation fee within the time and in the manner required in the Notice of Request for Mediation, the surface owner shall be deemed to have failed to satisfy the statutory requirements applicable to mediation. The mediator shall file a report noting the failure and recommend the acceptance of the operator's operations and reclamation plan.

(5)(a) The mediator shall not settle damage claims or make any determinations regarding damage claims in the report.

(b) Information presented by the operator or surface owner as to costs incurred by either party as a result of the projected drilling and the loss of minerals or surface damage may be utilized by the mediator in recommending the placement of roads, pits, or other construction and reclamation activities in a manner that has the least adverse surface impact.

(6) If the operator withdraws his or her application for a permit to drill, deepen, or reopen a well after receipt by the division of the surface owner's mediation fee, that fee shall be refunded to the surface owner.

Section 4. Construction, Reclamation, and Maintenance. (1) Pre-construction planning shall be performed to design access roads, wellsite, and pits along existing topography to minimize erosion and identify locations for sediment control practices and devices in accordance with the operations and reclamation plan.

(2) Construction activities shall incorporate BMPs for erosion and sedimentation control on all disturbed areas.

(a) All cuts and fills shall have side slopes that are stable for the soil or fill material utilized.

(b) A wellsite shall be constructed on a stable base.

(c) If practicable, pits shall be constructed in solid ground on the cut or highwall side of the wellsites ~~[, and in accordance with 401 KAR 5:090, Section 9(5)(a)].~~

1. A disturbed area shall be graded and stabilized so that soil erosion, surface disturbances, and stream sedimentation is minimized utilizing best management practices, in accordance with the approved operations and reclamation plan.

2. If practicable, all topsoil present in the area to be disturbed shall be removed and segregated for redistribution during reclamation.

3. Temporary erosion control measures shall be implemented during construction of the road to minimize sedimentation and erosion until permanent control measures including seeded and mulched road ditches can be established.

(3) If the well produces and the site is kept open for long-term use for well servicing and for oil and gas removal, the operator shall:

(a) Maintain access roads in a manner as to:

1. Allow access by the operator without causing unreasonable settlement of the roadbed or slides of the cut slopes; and

2. Provide that maintenance shall be in accordance with the operations and reclamation plan;

(b)1. Establish drainage to adequately accept runoff from access roads, the well site, and other areas in a manner that shall prevent unreasonable interference with the surface owner's property, roads, farming operations, and buildings; and

2. Establish drainage in accordance with the operations and reclamation plan; and

(c) Repair access roads, the well site area, and pits damaged by events as floods, landslides, or excessive settlement of the embankment as soon as practicable after the damage has occurred. The operator shall not be responsible for damage attributable to another party's use of the access road not relating to the drilling, construction, or operation of the well by the operator.

Section 5. Site closure. (1) The department shall consider a wellsite closed after:

(a) All surface production facilities have been removed;

(b) The well has been plugged under direction of the department;

(c) Written notice has been provided by the operator to the division that final reclamation and site closure has been completed~~[and the reclamation work]~~ pursuant to the operations and reclamation plan; and

(d) The cabinet has verified that the reclamation work complies with the operations and reclamation plan in the approved permit package.

(2) The bond required in KRS 353.590(7), (8),~~[and]~~ (9) or KRS 349.120 shall not be released until a division inspector has:

(a) Made an inspection of the well site one (1) year after the date of the letter of notification from the operator of final reclamation and plugging; and

(b) Filed a report to the director documenting that the following have occurred:

1. All areas disturbed by the operator have been secured in a manner to prevent runoff, sedimentation, ~~[or]~~ settlement of the roadway, or sliding of cut slopes or any fill material;

2. A diverse and effective permanent vegetative cover has been established; and

3. Any matters relating to settlement, inadequate vegetative cover, or erosion have been corrected.

Section 6. Transfer of Wells having Existing Reclamation Plans. (1) Prior to transferring a well for which an approved operations and reclamation plan is on file with the division, the operator shall:

(a) Provide the successor operator a copy of the approved reclamation forms and attachments on file with the division before signing Well Transfer Form OG[ED]-13;

(b) Advise the successor operator of any reclamation responsibility the transferring operator had with regard to the well and related surface disturbance;

(c) Secure from the successor operator a letter indicating that the operator has received from the transferring operator a copy of Form OG[ED]-10 and that he or she is willing to accept responsibility for the reclamation of the well site and other surface disturbances related to the operation of the well;

(d) Submit to the division the completed and notarized Well Transfer, Form OG[ED]-13, applicable fee, and the letter of the successor operator's agreement to accept responsibility for reclamation in the manner established on Form OG[ED]-10; and

(e) Provide the surface owner of record with a copy of form OG[ED]-13 upon submission to the division.

(2) The division shall not transfer the well until the requirements of this section are satisfied and shall advise the transferring and successor operators in writing upon transfer of the well.

(3)(a) The transferee of a well shall assume all obligations in accordance with the terms of the permit,~~[and]~~ this section, and KRS 353.590(23) upon transfer~~[regardless of whether the transferor commenced the activity and regardless of whether the transferor failed to properly perform the transferor's obligations in accordance with the permit and this chapter. The transfer of the permit shall relieve the transferor of any future obligations under the terms of the permit or 805 KAR Chapter 1, but shall not relieve the transferor of any civil penalties that arose from violations occurring prior to the transfer].~~

Section 7. (1) If a well is to be drilled and completed on federal lands, the director shall accept a copy of a surface use

reclamation agreement between the well operator and the federal agency in lieu of the operations and reclamation plan.

(2) If the operator elects to submit this agreement, it shall be submitted with the application for permit to drill a well.

Section 8. (1) If a field inspection indicates there is noncompliance with the approved operations and reclamation plan or the requirements of Section 6 of this administrative regulation, a written notice of violation describing the noncompliance shall be given to the operator, together with a statement of the action required to correct the noncompliance.

(2) The written notice of violation shall allow the operator up to forty-five (45) days to correct the violation.

(3) An operator may file for an extension of time to correct a violation. A request for an extension of time shall be submitted via a letter to the director describing the need for that extension. If the director concludes that the reasons for the request are beyond the operator's control and that an extension of time will not violate the requirements of this administrative regulation or applicable statutes, the director shall grant the request for extension of time.

(4) The operator's bond shall be forfeited to the department's oil and gas well plugging fund, pursuant to KRS 353.590(27)[KRS-353.590(40)], if the operator fails to make required corrections.

(5) An operator who, after a hearing, is determined by the department to be in noncompliance with any section of this administrative regulation, or who fails to abate any noncompliance of the approved operations and reclamation plan, shall be subject to the penalties described in KRS 353.991.

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

(a) "Operations and Reclamation Plan", OG-10, June 2019[ED-40, April 2015]; and

(b)[Form ED-13, "Well Transfer", OG-13, June 2019][April 16, 1990 edition, Division of Oil and Gas].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Oil and Gas, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 10, 2019

FILED WITH LRC: July 11, 2019 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2019 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone: (502) 782-6720, fax: (502) 564-4245, email: michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This

administrative regulation establishes the content of the operations and reclamation plan, establishes the form on which that plan is to be filed, and establishes the form on which well transfers are indicated.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the content of the operations and reclamation plan, establishes the form on which that plan is to be filed, and establishes the form on which well transfers are indicated.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 353.5901 authorizes the department to require an operations and reclamation plan. This administrative regulation establishes the requirements for an operations and reclamation plan. KRS 353.590 authorizes the department to review and approve transfer of wells. This administrative regulation establishes the form on which well transfers are submitted.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by providing information related to reclaiming oil and gas sites as well as information related to transferring wells.

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

(a) How the amendment will change this existing administrative regulation: This amendment will incorporate information related to reclaiming coalbed methane wells and transferring coalbed methane wells. This information was previously in 805 KAR 9:080.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to consolidate two administrative regulations into one administrative regulation related to reclaiming wells and transferring wells.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment consolidates reclamation and transfer information related to coalbed methane wells from 805 KAR Chapter 9 into this administrative regulation.

(d) How the amendment will assist in the effective administration of statutes: These amendments will assist in the effective administration of the statutes by consolidating two administrative regulations related to reclaiming well sites and transferring wells.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. There are approximately 1,060 active oil and gas operators in the commonwealth

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will meet the same requirements related to reclamation of oil, gas, and coalbed methane wells. However, the information as it relates to coalbed methane reclamation will now be in this administrative regulation instead of 805 KAR 9:080.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, entities will be able to find all information related reclaiming and transferring wells in one administrative regulation.

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

(a) Initially: The division will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: The division will not incur any additional costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of general and restricted funds will be used for the implementation of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering was not used. The provisions in this administrative regulation will apply equally to all oil and gas operators.

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 applies almost entirely to the Division of Oil and Gas.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 349.130, 353.540, 353.550, 353.5901, 353.670.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The proposed administrative regulation will not generate revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The proposed administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The cabinet's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The cabinet's operating budget will be used to administer this program for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Oil and Gas (Amendment)

805 KAR 1:180. Production reporting.

RELATES TO: KRS 353.550(1)

STATUTORY AUTHORITY: KRS 349.115, 353.540, 353.550(4), 353.670(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.550(1) and KRS 349.115 authorizes the department to promulgate administrative regulations requiring an operator of oil and gas properties in the Commonwealth to identify producing leases. This administrative regulation is necessary to specify the requirement of annual reporting, the content of the report, and

the form on which the report shall be made.

Section 1.[Definitions. In addition to the definitions set out in KRS 353.510, the following definitions shall apply to this administrative regulation:

- (1) "GPS" means a global positioning satellite, which:
 - (a) Receives radio frequencies from more than one (1) satellite; and
 - (b) Is able to locate a point on the earth.
- (2) "Mcf" means 1,000 cubic feet of natural gas.
- (3) "Net gas sales" means the amount of metered or prorated gas sold into the line of first purchase and may be different from produced gas, due to line loss and compressor usage.
- (4) "Produced gas" means the amount of produced gas metered or prorated at the well head on a monthly basis.
- (5) "Purchaser or lease number" means the number assigned by the purchasing company to the lease or well for accounting and payment purposes.
- (6) "Topographic spot" means the act of locating a well on a United States Geological Survey 1:24,000 Topographic Map and scaling that well location on the map to determine its Carter Coordinate location.

Section 2.] Annual Report of Monthly Production. (1) An oil or gas operator shall:

- (a) Compile and retain records of the monthly production of natural gas and crude oil; and
 - (b) For the preceding year, file the production information with the Division by April 15.
- (2) The information may be submitted to the division:
- (a) On Form OG-17[ED-17], "Annual Report of Monthly Production for Natural Gas and/or Crude Oil"; or
 - (b) By using:
 1. Common personal computer spread sheet or database software;
 2. An electronic mail attachment.
- (3) An operator shall be permitted to submit the information in accordance with subsection (2)(b) of this section, subject to the division being able to process the production data electronically.
- (4) The following shall be included in the information submitted by the operator:
- (a) Operator name and address;
 - (b) Production year;
 - (c) Permit number issued by the Division of Oil and Gas;
 - (d) Purchaser number;
 - (e) Number of wells on the lease for which the report is being filed;
 - (f) Farm name, complete with the individual well name and well number;
 - (g) County of production;
 - (h) Producing formation or, if production is commingled from multiple wells which are not metered separately, the identification of the wells as "commingled" and the pertinent formations from which production was made; and
 - (i) Well status, identified as producing or shut-in.

(5) Production from a gas well shall be reported in Mcf of net gas sales by well. In addition to reporting net gas sales, produced gas may also be reported at the option of the operator.

(6) Monthly oil production shall be reported in barrels by individual well or by lease; if by lease, the operator shall attach to Form OG-17[ED-17] a list identifying the purchaser number and division permit number of all wells producing on that lease.

(7) For a well drilled prior to the date upon which a permit for the drilling and production of a well was statutorily required, the operator shall provide a Carter Coordinate location for each well not having a location on file with the division; that location may be estimated by a topographic spot, a GPS locator, or by survey.

(8) Production information reported pursuant to this administrative regulation shall be organized into a standard format and shall be made available for public release no earlier than January 1 nor later than March 1 of the following year.

Section 2[3]. Penalties. If an operator does not file his

production data on Form OG-17 [ED-17] by April 15 after each production year, the division shall notify the operator [him] in writing of the [his] noncompliance. If the operator [he] does not submit all required production information within forty-five (45) days after being notified of the [his] noncompliance, the operator [he] shall be subject to denial of permits in accordance with KRS 353.570 or KRS 349.040 for coalbed methane wells and the penalties established in KRS 353.991(2), (3) and (4) or KRS 349.155 for coalbed methane wells.

Section 3. Incorporation by Reference. (1) "Annual Report of Monthly Production for Natural Gas and/or Crude Oil", OG-17, June 2019 [(November 12, 1997 edition), Division of Oil and Gas,] is incorporated by reference.

(2) This form may be obtained, examined, or copied, subject to applicable copyright law, at the Kentucky Department for Natural Resources, Division of Oil and Gas, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 10, 2019

FILED WITH LRC: July 11, 2019 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2019 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone: (502) 782-6720, fax: (502) 564-4245, email: michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation is necessary to specify the requirement of annual reporting, the content of the report, and the form for the report.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements for production reporting.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 353.550(1) authorizes the department to promulgate administrative regulations requiring an operator of oil and gas properties in the Commonwealth to identify producing leases. This administrative regulation conforms to the authorizing statutes by establishing the procedures under which oil and gas operators are to submit production reporting information.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by providing information related to production reporting from producing oil and gas wells.

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

(a) How the amendment will change this existing

administrative regulation: This amendment will incorporate information related to production reporting for coalbed methane wells. This information was previously in 805 KAR 9:090.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to consolidate two administrative regulations into one administrative regulation related to production reporting.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment consolidates production reporting information related to coalbed methane wells from 805 KAR Chapter 9 into this administrative regulation.

(d) How the amendment will assist in the effective administration of statutes: These amendments will assist in the effective administration of the statutes by consolidating two administrative regulations related to production reporting.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. There are approximately 1,060 active oil and gas operators in the commonwealth

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will meet the same requirements related to production reporting for wells. However, the information as it relates to coalbed methane well production reporting will now be in this administrative regulation instead of 805 KAR 9:090.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, entities will be able to find all information related production reporting in one administrative regulation.

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

(a) Initially: The division will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: The division will not incur any additional costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of general and restricted funds will be used for the implementation of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering was not used. The provisions in this administrative regulation will apply equally to all oil and gas operators.

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 applies almost entirely to the Division of Oil and Gas.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 349.130, 353.540, 353.550, 353.5901, 353.670.

3. Estimate the effect of this administrative regulation on the

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The proposed administrative regulation will not generate revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The proposed administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The cabinet's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The cabinet's operating budget will be used to administer this program for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Oil and Gas
(Amendment)

805 KAR 1:190. Gathering lines.

RELATES TO: KRS 353.160, 353.500(2), 353.590, 353.745, 353.991, 353.5901(1), 40 C.F.R. Part 112, 49 C.F.R. Parts 191, 192, 194, 195

STATUTORY AUTHORITY: KRS 353.500(2), 353.540
NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.540 authorizes the department to promulgate administrative regulations to administer KRS 353.500 to 353.720. KRS 353.500(2) requires the department to promulgate administrative regulations pertaining to gathering lines, in order to minimize their potential effects on the citizens and the environment of the Commonwealth. KRS 349.115 authorizes the department to promulgate administrative regulations to implement the coalbed methane program. [EO 2009-538, effective June 12, 2009, abolishes the Environmental and Public Protection Cabinet and establishes the new Energy and Environment Cabinet.] This administrative regulation establishes provisions for the installation of gathering lines, reclamation of disturbed areas, and safety requirements of gathering lines as they pertain to oil and gas production operations.

Section 1. [Definitions.

(1) "Division" means the Division of Oil and Gas.

(2) "Environmentally sensitive feature" means a stream, spring, sinkhole, wetland, state or national park, wilderness area, or wildlife refuge.

(3) "Existing gathering line" means any gathering line installed and not abandoned or taken out of service prior to March 18, 2004.

(4) "Gas production flow line" means:

(a) The segment of a gathering line running from a well to the point of interconnection with another gathering line or production compressor; or

(b) If a well produces both oil and gas, the line from a well.

(5) "Gathering line" means any pipeline that is installed or used for the purpose of transporting crude oil or natural gas from a well or production facility to the point of interconnection with another gathering line, an existing storage facility or a

transmission or main line, including all lines between interconnections, except those lines or portions thereof subject to the exclusive jurisdiction of the United States Department of Transportation under 49 C.F.R. Parts 191, 192, 194 and 195.

(6) "GPS" means the collection method of acquiring location data using the Global Positioning System that is:

(a) 1. Reported as latitude and longitude in degrees and decimal degrees;

2. Captured in three (3) meter accuracy for stationary location data, such as line markers; and

3. Submitted as waypoints and track logs for the gathering line location;

(b) Recorded in the datum of WGS84; and

(c) Submitted as ArcView shape file or as an ASCII file is submitted electronically.

(7) "Oil production flow line" means:

(a) A gathering line running from a well or wells to a tank battery for production treatment and storage; or

(b) If an injection well, the line from the tank battery to the well.

(8) "Production compressor" means a compressor installed on a gathering line and used to increase produced gas pressure to enhance delivery.

(9) "Transmission line" means a pipeline that is subject to the exclusive jurisdiction of the United States Department of Transportation under 49 C.F.R. Parts 191, 192, 194 and 195.

Section 2.] Applicability. This administrative regulation shall apply to gathering lines installed under permits issued after March 18, 2004 and shall not apply to existing gathering lines unless these lines are identified as being subject to the requirements of Section 4 of this administrative regulation.

Section 2[3]. License. (1) The operator of any gathering line, including an existing gathering line, shall obtain a gathering line operator's license from the division to operate any and all oil or gas gathering lines operated by him, upon the effective date of this administrative regulation. The operator in physical control of any gathering line shall maintain a current license even if the gathering line is shut in or idle. All gathering lines operated by the same operator shall be subject to a single gathering line operator's license. An operator of an existing gathering line shall make application for license within ninety (90) days of the effective date of this administrative regulation.

(2) Each licensee shall annually submit a completed and notarized license renewal form using the "Application for Gathering Line Operator's License", Form OG[ED]-2, on or before the expiration date of his current license. Annual renewal of the gathering line operator's license shall be made on January 1 and due no later than February 15. If there are no substantive changes to the operator information provided in the initial application for license, the license shall be renewed upon receipt of the license fee. [A licensee may also submit the license renewal information and payment through the division's on-line application when the on-line application becomes available.] To qualify for a license or license renewal, the applicant shall be in compliance with applicable laws and shall submit the following items to the division:

(a) An application satisfying the requirements of subsection (3) of this section; and

(b) 1. A \$100 license fee; or

2. A fee of twenty-five (25) dollars for each dwelling, if the application is for a license to operate a gathering line for a gas well used strictly for the purpose of heating a residential dwelling.

(3) Application. The application for a license or a license renewal shall be:

(a) Notarized or meet the requirements for electronic signature if electronically submitted pursuant to KRS Chapter 369;

(b) Filed with the division; and

(c) Contain the following information:

1. The full name under which the operator transacts or intends to transact business under the license and the operator's

correct mailing address. The application shall include the name and address of the principal officers of the partnership, limited liability company, or corporation, including the agent for process;

2. All other information required by the "Gathering for Line Operator's License Application", Form OG[ED]-2, [October 2003]; and

3. Each application for a license shall be signed or submitted with electronic signature as previously described by the operator if the operator is a natural person, by a principal officer if the operator is a partnership, limited liability company, or corporation.

Section 3[4]. Maps of Existing Gathering Lines. Within eighteen (18) months of the effective date of this administrative regulation, each operator of any existing gathering line shall file with the division a map, which outlines the approximate location of the existing gathering line. The gathering line may be noted over an enlarged section of a United States Geological Survey (USGS) 1:24000 topographic map, which may be enlarged to approximately 1"= 400' and be submitted on an 8 1/2 in. x 14 in. sheet. Additional maps may be provided if necessary to fully document the total length of the gathering line. This requirement for the filing of maps may also be satisfied by electronic submission of the maps subject to the division being able to import and view the map files.

Section 4[5]. Permit. Prior to the installation of a gathering line, the operator shall submit a permit application to the division for the installation and operation of the gathering line in the following manner:

(1) Permit by rule for an oil production flow line. An oil production flow line shall be deemed to have a permit by rule upon the issuance of the well drilling permit if the operator satisfies the following conditions:

(a) Notifies the division in the manner prescribed in Section 7 of this administrative regulation upon the successful completion of the well and prior to the installation or disturbance of any surface upon which the oil production flow line shall be installed;

(b) Complies with Sections 9, 10, 11(1), (2), (3), (4), 12 and 14 of this administrative regulation; and

(c) Pays a fee of \$100, in addition to the well permit fee required by KRS 353.590(2) and an additional fifty (50) dollar fee required by KRS 353.745(4) and 805 KAR 1:010[805-KAR 1:200].

(2) Permit by rule for a gas production flow line. A gas production flow line shall be deemed to have a permit by rule upon the issuance of the well drilling permit if the operator satisfies the following conditions:

(a) Notifies the division in the manner prescribed in Section 7 of this administrative regulation upon successful completion of the well and prior to the installation or disturbance of any surface upon which that gathering line shall be installed; and

(b) Pays a fee of \$200, in addition to the well permit fee required by KRS 353.590(2) and an additional fifty (50) dollar fee required by KRS 353.745(4) and 805 KAR 1:010[805-KAR 1:200].

(3) Permit for a gathering line other than an oil production or gas production flow line. The division may issue a permit for the installation and operation of a gathering line other than an oil production or gas production flow line if the operator satisfies the following conditions:

(a) Files an application with the division for a permit for the installation, reclamation, and operation of a gathering line in the manner prescribed by Section 7 of this administrative regulation prior to the installation or disturbance of any surface upon which the[that] gathering line shall be installed; and

(b) Pays a fee of \$500.

Section 5[6]. Transfer of Ownership of a Gathering Line. A successor operator of a gathering line shall notify the division in advance of commencing use or operation of a gathering line. The successor shall assume the obligations of this administrative regulation and relieve the original permittee of responsibility under this administrative regulation with respect to the gathering

line. It shall be the responsibility of the selling operator to require the successor operator to notify the division before use or operation is commenced by the successor and relief of responsibility under this administrative regulation is granted to the original permittee. If an oil production or gas production flow line is involved, the successor shall be deemed to have provided notice to the division upon the successful completion of the well transfer, as required under KRS 353.590(23) [KRS 353.590(6)], for the oil production or gas production flow line applicable to the corresponding well.

Section 6[7]. Permit Requirements. (1) The notification or application for permit for the installation and operation of a gathering line shall be submitted to the division on a completed and notarized[using the] "Notification/Application for a Gathering Line Permit: Installation, Reclamation and Operation Plan", Form OG[ED]-11, along with an attached topographical map depicting the location of the proposed line which shall be in sufficient detail to allow ready identification of adjacent surface features. An operator may also submit the notification or application, map and payment through the division's on-line application subject to the provisions of KRS Chapter 369. The map shall have a legend with:

(a) The names of the gathering line owner and operator and any owners of surface tracts upon which the gathering line is to be installed not otherwise listed on the map;

(b) The scale of the map;

(c) The well name and number, if applicable; and

(d) The lease name, if applicable; and shall depict the following:

1. The approximate locations of property lines, dwellings, environmentally sensitive features and road and stream crossings along the path of the gathering line;

2. The names of the owners of surface tracts upon which the gathering line is to be installed, as identified as the party assessed for the purposes of property taxation in the records of the property valuation administrator of the county in which the land is located, unless listed in the legend; and

3. The approximate acreage to be disturbed along the path of the proposed gathering line.

(e) Subparagraphs 1. through 3. of paragraph (d) shall be noted clearly and legibly on an enlarged section of a U.S. Geological Survey (USGS) 1:24000 topographic map, which may be enlarged to approximately one (1) inch equals 400 feet and be submitted on an eight (8) and one-half (1/2) by fourteen (14) inch sheet. This requirement for the filing of maps may also be satisfied by electronic submission of the maps subject to the division being able to import and view the map files.

(2) In filing the application for the installation and operation of a gathering line with the division, the operator shall state that he has the authority necessary to install and operate the gathering line upon the property which the gathering line will traverse and that he maintains general liability insurance coverage for the[his] gathering line operations. The operator shall include the division as a "certificate holder" on the[his] policy so that the division shall receive advance notice of any cancellation of the operator's general liability insurance.

(3) The operations and reclamation plan required by KRS 353.5901, filed in conjunction with the application for a permit for a well, [located on a tract on which there is a severance of the ownership of the surface and mineral estates,] shall satisfy this administrative regulation's requirements for an operations and reclamation plan applicable to the property upon which the well is drilled.

(4) If the operations and reclamation plan is not subject to KRS 353.5901, the operator shall file a plan which includes a short narrative indicating the following:

(a) Location of all areas to be disturbed in connection with the installation of the gathering line and the proposal to prevent erosion and sedimentation on those areas;

(b) A revegetation plan which includes a listing or description of fertilizers and soil amendments and seed or trees to be planted for each affected area requiring revegetation treatment

and the types and amounts per acre of seed or trees to be planted; and

(c) A proposed plan for the timely reclamation of all disturbed areas.

Section 7[8]. Right-of-Way Agreements. (1) Prior to submitting an application for a permit or prior to any installation or operations on any surface on which a gathering line is proposed other than the property upon which the well is located, the operator shall have obtained the necessary authority, right-of-way or lease agreement from an owner of the property on which the gathering line is to be installed.

(2) Prior to the issuance of a permit for the installation and operation of a gathering line on which the operator has an existing right-of-way, lease or deed, or on land that requires a new right-of-way by the operator, the operator shall certify in the application for the permit that he has met and conferred with, or offered to meet and confer with, the surface owner as to any activity that may disturb the surface.

Section 8[9]. Meeting with Bonded Permittee. Prior to the issuance of a permit for the installation and operation of a gathering line on land which is permitted or bonded under the provisions of KRS Chapter 350, the operator of the gathering shall certify in the application for a permit that the operator has met and conferred with, or offered to meet and confer with, the bonded permittee as to any activity that may disturb the permitted area.

Section 9[10]. Reclamation Plans. Reclamation of all disturbed areas shall be conducted in accordance with the operations and reclamation plan on file with the division. Any amendments to the operations and reclamation plan shall be submitted to and approved by the division prior to commencement of installation or as soon as practical after discovery that reclamation shall be conducted in a manner other than that described in the operations and reclamation plan on file with the division. If the surface is disturbed incidental to the repair of a gathering line after reclamation has occurred under the operations and reclamation plan, the reclamation of the area so disturbed shall be commenced within thirty (30) days of completion of the repair operation, if practical. The operator shall satisfy the following standards for excavation, backfilling and reclamation:

(1) If a gathering line crosses agricultural lands, the operator shall segregate topsoil while trenching, and trenches shall be backfilled so that the soils are returned to their original relative positions and contour, unless waived by the surface owner. This requirement to segregate and backfill topsoil shall not apply to trenches that are twelve (12) inches or less in width.

(2) On agricultural lands and nonagricultural lands, gathering line trenches shall be maintained in order to correct trench subsidence and reasonably minimize erosion. Interim and final reclamation, including revegetation, shall be performed in accordance with the reclamation plan.

Section 10[14]. General Requirements. (1) Burial of a gathering line. The operator shall bury a gathering line or portion thereof that crosses agricultural land or that would otherwise interfere with the use of a preexisting private roadway, if requested to do so by the owner of the surface of the agricultural land or of other land to which access would be affected, prior to the installation of the gathering line to protect it from damage. The gathering line shall be buried to a minimum depth of twenty-four (24) inches, except where solid rock is encountered, in which case the minimum depth of burial shall be twelve (12) inches, if practical. If an underground structure or other geologic or economic condition prevents a gathering line from being buried in accordance with the standards set out above, or if there is an agreement between the surface owner and the operator whereby the minimum standard is waived, the line may be installed at less than the minimum depth or above ground.

(2) A gathering line constructed of plastic pipe shall be

installed below ground level, unless otherwise permitted by subsection (3) of this section, and in accordance with the following:

(a) The operator shall undertake efforts to minimize shear and tensile stresses; and

(b) A tracer line, location device, or suitable conductive wire shall be placed in the trench to facilitate the detection of the gathering line.

(3) A gathering line constructed of plastic pipe may be temporarily installed above ground if:

(a) The operator demonstrates that the cumulative per period of above-ground exposure of the pipe does not exceed the manufacturer's recommended maximum period of exposure or two (2) years, whichever is less;

(b) The pipe either is located so as to minimize the possibility of damage by external forces or is otherwise protected against damage;

(c) The pipe adequately resists exposure to ultraviolet light and high and low temperature; and

(d) The pipe is being used during a production test period not to exceed ninety (90) days.

(4) Line burial at road crossing. Notwithstanding any other provision of this administrative regulation, a gathering line crossing a road shall be buried in accordance with the requirements of the agency having jurisdiction over the road.

(5) Line markers. The operator shall install and maintain line markers over an active buried gathering line in accordance with the following standards in paragraphs (a) through (e).[-:]

(a) At intervals of no greater than 500 feet, corresponding to the 500 foot GPS data requirements described in subsection (8) of this section, except that this requirement shall not apply to lines crossing agricultural lands;

(b) With respect to lines installed after June 25, 2009, on slopes greater than twenty (20) degrees, markers shall be placed at intervals not to exceed 250 feet;

(c) At points where the line changes direction, so that the line location is accurately known;

(d) At both sides of each public or private road crossing and at each railroad crossing; and

(e) Each marker shall contain the word "Warning", "Caution", or "Danger", followed by the words "Petroleum Pipeline" or "Gas Pipeline", whichever is appropriate, in letters at least one (1) inch high with one-quarter (1/4) inch stroke and the name of the operator with a twenty-four (24) hour emergency response telephone number.

(6) Testing of a gathering line. Before placing a gathering line in operation, it shall be tested to ensure that it is capable of maintaining 110 percent of the maximum anticipated operating pressure. The test pressure shall be held a minimum of thirty (30) minutes and a permanent record of the test shall be kept on file by the operator. In conducting the test, the operator shall ensure that reasonable precautions are taken to protect the[his] employees of the operator and the general public. The testing may be conducted using natural gas, compressed air, inert gas or water. Production flow lines operating at less than fifteen (15) psig are exempt from pressure testing requirements.

(7) Patrolling, maintenance and repair. All gathering lines shall be maintained in good operating condition at all times and the operator shall take reasonable precautions to prevent failures, leakage and corrosion by performing the following procedures in paragraphs (a) through (c).[-:]

(a) Perform on-site inspections of a permitted gathering line at least once each calendar year, at intervals not to exceed eighteen (18) months. If an operator discovers any condition that could adversely affect the safe and proper operation of a gathering line, the operator shall correct it within a reasonable time and in accordance with KRS 353.160. However, if the condition presents an immediate hazard to persons or property, the operator shall not operate the affected part of the system until the unsafe condition has been corrected.[-:]

(b) In repairing the gathering line, the operator shall take appropriate action to conduct the repair in a safe manner so as to prevent injury to persons and damage to property.[-: and]

(c) Maintain records of gathering line tests, inspections and leak repair for division inspection, if requested, for at least three (3) years.

(8) As-built requirement. The as-built location of the gathering line shall be depicted with GPS data points spaced every 500 feet, if practical, at points where the gathering line changes direction and at the beginning and termination points of the gathering line. All information regarding the as-built location shall be submitted to the division within twelve months of completion of the gathering line.

(9) Compressor station requirements. All wellhead and field compressors shall be installed and maintained according to the following requirements:

(a) The operator shall maintain a positive suction pressure at all times;

(b) The operator shall install safety devices to ensure the downstream pressure does not exceed the test pressure of the gathering line; and

(c) The operator shall record a GPS location of all compressor station sites and submit that location data to the division.

Section 11[42]. Reporting of Incidents. (1) An operator shall give notice by telephone to the division inspector responsible for the county or area in which a gathering line is installed when a discovery is made that an incident has occurred regarding the installation, reclamation or operation of a gathering line. Reportable incidents shall include:~~[As soon as reasonably practicable following discovery of an incident regarding the installation, reclamation or operation of a gathering line, the operator shall give notice by telephone to the division inspector responsible for the county in which the line is installed or to the division inspector supervisor for the area, of any the following:]~~

(a) Personal injury requiring hospitalization or a fatality;

(b) Either fire or explosion not intentionally set by the operator for purposes of routine maintenance or construction;

(c) The release of a significant volume of gas that would require a protective action being taken by the general public; or

(d) The pollution of any stream, river, lake or reservoir, or other similar body of water, in violation of applicable water quality standards.

(2) ~~The~~[This] requirement for the reporting of incidents shall not release the operator from making any notice required by any other state or federal agency.

(3) Notice made under this section shall include~~[the following information]:~~

(a) Name and address of the operator;

(b) Name and telephone number of the person making the report;

(c) Location of the incident;

(d) Date and time of the incident;

(e) A brief description of the incident;

(f) Number of, and information regarding, personal injuries or fatalities, if any; and

(g) Any other significant facts known by the operator that are relevant to the cause of the incident or extent of the damages.

Section 12[43]. Emergency Response Plans. The operator shall prepare a manual of written procedures for~~[the making of]~~ an emergency response, available to the division upon request, and shall keep ~~the~~[that] manual in a location accessible to employees whose responsibilities include implementation of an emergency response. The operator shall provide training to ~~[those]~~ employees and, in the event of an emergency, review their performance following ~~the~~[an] emergency to determine whether applicable procedures were effectively followed~~[in that emergency]~~. The manual shall be reviewed at least once each calendar year and~~[appropriate]~~ changes made as necessary to ensure that the manual is an effective emergency response tool. The manual shall address the items in subsections (1) through (7) of this section~~[include procedures for the following]~~ in order to facilitate safety if an emergency condition occurs~~[-]~~.

(1) Receiving, identifying, and classifying notices of events

which require immediate response by the operator or notice to fire, police, or other appropriate emergency response entities and communicating this information to appropriate operational personnel for corrective action.

(2) Providing prompt and effective response to each type of emergency, including oil or brine spill, gas release, fire, explosion or natural disaster near or involving a building or adjacent facility.

(3) Dispatching personnel, equipment, and instruments, as needed, to the scene of the emergency.

(4) Taking necessary action, such as emergency shutdown or pressure reduction, to minimize the amount of release from the gathering line in the event of a failure.

(5) Minimizing public exposure to injury and probability of accidental ignition by assisting with evacuation of residents and assisting with the control of traffic on roads and railroads in the affected area, or by taking other appropriate action necessary to protect public safety.

(6) Notifying fire, police, and other appropriate emergency response entities of a gathering line incident or emergency and coordinating with them in devising responses to be made during an emergency. Methods to accomplish this shall include the following:

(a) Including in the emergency response manual a listing of appropriate fire, police, and other health and safety entities, along with their officials' names and emergency telephone numbers;

(b) Establishing and maintaining liaison with fire, police, and other appropriate emergency response entities to determine the responsibility and resources of each government organization that may respond to a gathering line emergency;

(c) Apprising fire, police and other appropriate emergency response entities of the operator's ability to respond to a gathering line emergency;

(d) Identifying the types of gathering line emergencies about which the operator notifies fire, police and other appropriate emergency response entities;~~[and]~~

(e) Determining the manner in which the operator and fire, police and other appropriate emergency response entities can engage in mutual assistance to minimize hazards to life or property;~~and[-]~~

(f) Providing a copy of the emergency response manual to fire, police and other appropriate emergency response entities.

(7) An operator may incorporate the applicable spill prevention, control, and countermeasures~~[-]~~(SPCC) plan into the emergency response manual.

Section 13[44]. Abandonment. (1) Each gathering line abandoned in place, unless otherwise agreed to be removed under a right-of-way or lease agreement, shall be:

~~(a) Disconnected from all sources and supplies of natural gas and petroleum;[-]~~

~~(b) Purged of liquid hydrocarbons;[-]~~

~~(c) Depleted to atmospheric pressure;[-]~~ and

~~(d) Cut off three (3) feet below ground surface, or at the depth of the gathering line, whichever is less, and sealed at the ends.~~

(2) Prior to abandonment, the operator shall contact the division inspector and request a site scanning for naturally occurring radioactive materials to be conducted by the division inspector.

Section 14[45]. Inspections.~~[The commissioner of the department may, by written order or by other means appropriate under the circumstances, designate and authorize representatives to perform duties pursuant to the administrative regulations contained in 805 KAR Chapter 1. Unless the commissioner has made a written order contrary to the terms of this section, personnel authorized by the director shall be the authorized representatives of the department for the purposes of this administrative regulation as follows:]~~

(1) General. In accordance with the provisions of this administrative regulation, the division shall conduct inspections, studies, investigations or make other determinations as it deems

reasonable and necessary to obtain information and evidence which shall ensure that the installation, reclamation and operation of gathering lines are conducted in accordance with the provisions of all applicable statutes and administration regulations, and all terms and conditions of the gathering line permit.

(2) Right of entry and access. Authorized employees of the division shall have unrestricted right of entry to all portions of the gathering line for any purpose associated with their duties pursuant to this administrative regulation, including but not limited to making inspections and delivering documents or information of any kind to persons responsible for or otherwise associated with the gathering line.

(3) Timing and frequency of inspections.

(a) The division shall determine the frequency of its inspections of gathering lines.

(b) Inspections shall ordinarily be conducted at irregular and unscheduled times during normal workdays, but may be conducted at night, on weekends or on holidays if the division deems these inspections necessary to properly monitor compliance with all applicable statutes and administrative regulations and the terms and conditions of the gathering line permit.

(c) The division shall have no obligation to give prior notice that an inspection shall be conducted or to obtain a warrant to do so.

(4) Citizen's request for inspection of a gathering line.

(a) Any citizen may request that the division conduct an inspection of a gathering line by furnishing to the division a signed statement or an oral report followed by a signed statement in which circumstances are set out which give the division reason to believe that a violation, condition or practice in violation of this administrative regulation or a permit condition exists, and setting forth a telephone number and address at which the person making the request can be contacted.

(b) The identity of any person supplying information to the division relating to a possible violation, condition or practice in violation of this administrative regulation or permit condition shall remain confidential with the division if requested by that person, unless disclosure is required by law.

(c) Within a reasonable time, the division shall advise the person making the request for inspection or providing information to the division of the items in subparagraphs 1. and 2. of this paragraph.~~following:~~

1. If no inspection was conducted, an explanation of the reasons for which no inspection was conducted.

2. If an inspection was conducted, a description of the enforcement action taken, if any, or an explanation of why no enforcement action was taken.

(5) Notice of noncompliance. Any authorized representative of the division may issue to the operator a notice of noncompliance and order for remedial measures if, on the basis of an inspection, he finds a violation of this administrative regulation, any permit condition, or any other applicable requirement. The notice of noncompliance shall contain~~the following~~:

(a) The nature of the violation; and

(b) The provision of a period of forty-five (45) days from the date of issuance of the notice for the taking of corrective action or making of an agreement with the division, which may include a schedule for the accomplishment of interim corrective procedures, if appropriate. The director or his authorized representative may extend the time established for the taking of corrective action or for accomplishment of an interim remedial requirement for good cause shown.

Section 15~~[46]~~. Order of Cessation and Immediate Compliance. (1) Issuance.

(a) If the operator to whom a notice of noncompliance is issued fails to comply with the terms of the notice within the time for the taking of corrective action established in the notice of noncompliance or agreement made regarding corrective measures as subsequently extended, the director may issue to the operator an order for cessation and immediate compliance.

(b) The director may issue an order for cessation and

immediate compliance if the director~~[he]~~ finds, on the basis of an inspection performed by any authorized representative, any condition or practice, any violation of this administrative regulation or any violation of a term or condition of the applicable permit ~~that~~which:

1. Is creating or can reasonably be expected to create an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(c) The director may issue an order for the cessation of installation and immediate compliance if he finds, on the basis of an inspection performed by any authorized representative, that gathering line installation is being conducted without a valid gathering line permit in accordance with this administrative regulation.

(2) Effect.

(a) The order for cessation and immediate compliance shall require the cessation of the operation of the gathering line or portion thereof that is the subject of the notice of noncompliance. The order shall also require the operator to whom it is issued to undertake any procedure reasonably deemed necessary to abate the violation, condition, or practice in the most expeditious manner possible, including but not limited to the use of existing or additional personnel and equipment.

(b) The order shall remain in effect until the violation, condition, or practice has been abated and until the order is vacated, modified, or terminated in writing by the director.

(c) The operator shall continue to perform reclamation operations and other activities intended to protect public health, safety and the environment during the period of any cessation order unless the order requires that the reclamation operations and other activities cease.

(3) Modification, extension, and termination.

(a) The director may, by written notice, modify or terminate an order for cessation and immediate compliance issued under this section for good cause and may extend the time for abatement if the failure to abate within the period initially established was not caused by lack of diligence on the part of the operator to whom it was issued.

(b) The director may terminate an order for cessation and immediate compliance, by written notice to the operator to whom the order was issued, if the director determines that all violations, conditions, and practices noted in the notice of noncompliance have been abated. Termination of the order of cessation and immediate compliance shall not affect the right of the division to impose any other applicable sanction authorized by law.

Section 16~~[47]~~. Penalties. An operator in noncompliance with the requirements of this administrative regulation is subject to the penalties established in KRS 353.991.

Section 17~~[48]~~. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application ~~for~~ for Gathering Line Operator's License", Form OG-2, June 2019~~[ED-2, December 2003]~~; and

(b) "Notification/Application for Gathering Line Permit: Installation, Reclamation and Operation Plan", Form OG-11, June 2019~~[ED-11, December 2003]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Oil and Gas, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 10, 2019

FILED WITH LRC: July 11, 2019 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2019 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the

hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone: (502) 782-6720, fax: (502) 564-4245, email: michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes provisions for the installation of gathering lines, reclamation of disturbed areas, and safety requirements of gathering lines as they pertain to oil and gas production operations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements related to gathering lines.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 353.500(2) requires the department to promulgate administrative regulations pertaining to gathering lines, in order to minimize their potential effects on the citizens and the environment of the Commonwealth. This administrative regulation establishes provisions for the installation of gathering lines, reclamation of disturbed areas, and safety requirements of gathering lines as they pertain to oil and gas production operations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by providing requirements for the installation, reclamation, and safety requirements for gathering lines.

(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 deletes the definition section and corrects citations in the administrative regulation. The amendment also restructures some of the sections in the administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to correct information and restructure other sections. The amendment also amends two forms that are incorporated by reference.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 353.540 authorizes the department to promulgate administrative regulations to administer KRS 353.500 to 353.720. The amendment conforms to the authorizing statutes by correcting citations and moving the definitions to the definition administrative regulation.

(d) How the amendment will assist in the effective administration of statutes: These amendments will assist in the effective administration of the statutes by correcting citations and moving the definitions from this administrative regulation into the newly created definition administrative regulation, 805 KAR 1:001.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. There are approximately 1,060 active oil and gas operators in the commonwealth

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will meet the same requirements related to gathering lines.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, entities will be able to have all of the definitions in one location and will also have correct regulatory and statutory citations.

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

(a) Initially: The division will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: The division will not incur any additional costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of general and restricted funds will be used for the implementation of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering was not used. The provisions in this administrative regulation will apply equally to all oil and gas operators.

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 applies almost entirely to the Division of Oil and Gas.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 353.500(2) and 353.540.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The proposed administrative regulation will not generate revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The proposed administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The cabinet's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The cabinet's operating budget will be used to administer this program for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Oil and Gas
(Amendment)

805 KAR 1:200.[Administrative fees and] General information associated with oil and gas permits.

RELATES TO: KRS 349.120 353.550, 353.735-353.747
STATUTORY AUTHORITY: KRS 349.040, 353.540, 353.570, 353.590, 353.745

NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.540 authorizes the department to promulgate administrative regulations to administer KRS 353.500 to 353.720. KRS 353.570 requires a person to obtain a permit prior to drilling, deepening, or reopening a well. KRS 353.590 requires a bond be posted with a permit application. KRS 349.040 requires a person to obtain a permit prior to drilling, deepening, converting, or reopening a well. KRS 349.120 requires a bond be posted with a permit application for coalbed methane wells. KRS 353.745 authorizes the Division of Oil and Gas [Conservation] to charge a fee, not to exceed fifty (50) dollars, to provide funds to meet the requirements of KRS 353.735 to 353.747. This administrative regulation provides general information concerning[the timeframes associated with] the submittal of permit application, bond submittal, directional and inclination surveys, and establishes the fee and details to whom the fee applies and the appropriate time for submittal.

Section 1. (1) General Permit Application Requirements. A person shall not drill, deepen, or reopen an oil or gas well without first obtaining a permit from the division pursuant to KRS 353.570 or KRS 349.040. Each person who intends to engage in oil and gas operations shall file with the division a complete, accurate, and notarized Application for Permit, Form OG-1.

(2) Application review.

(a) The Department shall review the Application for Permit, Form OG-1 for administrative and technical completeness and compliance with:

1. 805 KAR Chapter 1 for all wells; and
2. KRS Chapter 353 for production wells; or
3. KRS Chapter 349 for coalbed methane wells.

(b) If the application is administratively or technically incomplete, the division shall notify the applicant after review of the application of the deficiencies that render the application incomplete.

(c) The applicant shall submit supplemental information to correct the identified deficiencies within thirty (30) days after notification of the deficiencies.

(d) If, after thirty (30) days, the application is still incomplete, the division may return the incomplete application to the applicant with written notification of the reasons for the determination.

(3) Review of violations.

(a) After the application has been determined to be administratively and technically complete, the division shall perform a compliance review of the application and the applicant pursuant to KRS 353.572. The division shall not approve an application for permit if the application or the applicant is not in complete compliance with KRS 353.572.

(b) During the compliance review, the division shall review the readily available compliance information related to the application and the applicant.

(c) The division shall notify the applicant in writing if the application is not approved.

(4) Final determination. Once the division determines that the application is administratively and technically complete and has not found compliance violations, a permit authorization shall be issued.

(5) Bonding requirements.

(a) As part of the permit application required by subsection (1) of this section, the applicant shall submit a bond in an amount required by KRS 353.590(7) for production wells or KRS 349.120 for coalbed methane wells.

(b) Operators that secure a surety bond to satisfy the requirements of this subsection shall comply with the requirements

of 805 KAR 1:050.

Section 2. Directional and Inclination Surveys. The operator of a well drilled in an active mining area or through a workable coal bed that is not in an active mining area shall submit to the division the results of the directional or inclination survey required by KRS 353.739(1) within thirty (30) days from the drilling of the well.

Section 3[2]. Fee Submittal. (1) Each application for an oil or gas permit shall be accompanied by a fee of fifty (50) dollars for each application for an oil or gas permit in addition to the fee required in KRS 353.590(2) or KRS 349.040(3)[any other fee required for these applications].

(2) All required fees shall be submitted to the division[fees required shall accompany the application for wells proposed to be drilled pursuant to the provisions of KRS 353.735 to 353.747] in the form of a personal check, cashier's check, or money order payable to the Kentucky State Treasurer. A permit application shall not be processed unless the application fee has been paid.

(3) All fees shall be for the sole use of the Division of Oil and Gas[Conservation] in the administration of its programs and shall be in addition to money appropriated by the General Assembly for the use of the division[cabinet].

Section 4. Recordkeeping. Within ninety (90) days of completion of the drilling of a well, the operator shall file the "Affidavit of Well Log and Completion Report", form OG-3.

Section 5. Testing Permits. (1) An owner or operator may investigate an abandoned oil or gas production well for the purposes of testing after having submitted:

(a) A completed and notarized application "Testing Permit Application" Form OG-42; and

(b) A twenty-five (25) dollar fee pursuant to KRS 353.730.

(2) The division shall approve a testing permit for a period of up to sixty (60) days. If the well is not tested within the testing period, a new application and fee shall be submitted.

(3) At the conclusion of the testing period, the operator shall submit a completed and notarized "Report of Investigation for Testing Permit" Form OG-43 to the division.

(a) If the operator wishes to assume ownership of the well, a bond shall be filed in accordance with KRS 353.590(7); or

(b) If the applicant does not wish to assume ownership of the well, then the well shall be closed at the surface with a valve or swedge assembly installed on the casing head.

(4) All fees shall be for the sole use of the Division of Oil and Gas in the administration of its programs and shall be in addition to money appropriated by the General Assembly for the use of the cabinet.

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

(a) "Application for Permit", Form OG-1, June 2019;

(b) "Well log and Completion Report", Form OG-3, June 2019;

(c) "Testing Permit Application", Form OG-42, June 2019; and

(d) "Report of Investigation for Testing Permit", Form OG-43, June 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Oil and Gas, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 10, 2019

FILED WITH LRC: July 11, 2019 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2019 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing

is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone: (502) 782-6720, fax: (502) 564-4245, email: michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides general information concerning the submittal of permit application, bond submittal, directional and inclination surveys, and establishes the fee and details to whom the fee applies and the appropriate time for submittal.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide general permitting information.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 353.570 requires an entity to obtain permit before conducting oil or gas drilling operations. This administrative regulation is necessary to establish general permitting information.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing general permitting information for oil and gas operators.

(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 introduce general permitting, bonding, and fee information. The amendment also includes information related to testing permits and recordkeeping.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide general information related to obtaining a permit that was previously not in administrative regulation. The amendment was also necessary to incorporate by reference forms that weren't previously incorporated.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment provides general information related to obtaining a permit which is required by KRS 353.570.

(d) How the amendment will assist in the effective administration of statutes: These amendments will assist in the effective administration of the statutes by providing general information related to permits, bonds, recordkeeping, and testing permits.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. There are approximately 1,060 active oil and gas operators in the commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will meet the same requirements related to permitting information, testing permits, and recordkeeping. This amendment doesn't include new requirements. It simply reorganizes the information into one administrative regulation and provides appropriate statutory references.

(b) In complying with this administrative regulation or

amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs for related to these amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, entities will be able to find general permitting, recordkeeping, and testing permit information in one administrative regulation.

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

(a) Initially: The division will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: The division will not incur any additional costs for the continued implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of general and restricted funds will be used for the implementation of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees. The inclusion of the \$25 testing permit fee was already established in statute but was included in the administrative regulation for convenience of the oil or gas operator seeking a testing permit.

(9) TIERING: Is tiering applied? No, tiering was not used. The provisions in this administrative regulation will apply equally to all oil and gas operators.

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 impact the Division of Oil and Gas.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 349.040, 353.540, 353.570, 353.590, and 353.745.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The proposed administrative regulation will not generate revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The proposed administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The cabinet's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The cabinet's operating budget will be used to administer this program for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

PUBLIC PROTECTION CABINET
Department of Financial Institutions
(Amendment)

808 KAR 1:170. Licensing and registration.

RELATES TO: KRS Chapter 286.4, 286.8-010, 286.8-020, 286.8-030(1), 286.8-032, 286.8-034, 286.8-036, 286.8-060, 286.8-070, 286.8-080, 286.8-090(1), 286.8-255, 286.8-260, 286.8-290, 286.9-010, 286.9-020, 286.9-030, 286.9-040, 286.9-050, 286.9-060, 286.9-071, 286.9-073, 286.9-080

STATUTORY AUTHORITY: KRS 286.4-420, 286.4-430, 286.4-440, 286.4-450(1)(b), 286.4-480, 286.4-610(1), 286.8-032, 286.8-034, 286.8-100, 286.8-140(1), (4), 286.8-255, 286.8-285, 286.9-050, 286.9-060, 286.9-070, 286.9-090(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.4-610(1) authorizes the commissioner to promulgate administrative regulations for the proper conduct of the consumer loan businesses licensed under KRS Chapter 286.4. KRS 286.4-430(1) authorizes the commissioner to prescribe the form of the application for a license under KRS Chapter 286.4. KRS 286.8-140(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8. KRS 286.9-090(1) authorizes the commissioner to adopt reasonable administrative regulations for the enforcement of KRS Chapter 286.9. KRS 286.9-050 and 286.9-060 authorize the commissioner to prescribe the form~~of~~ and materials required to apply~~the filing procedures for an application~~ for a license under KRS Chapter 286.9~~and the information and documents that must be submitted to the commissioner with an application for a license~~. This administrative regulation establishes licensing and registration requirements for consumer loan companies and procedures for using the nationwide mortgage licensing system.

Section 1. Definitions. (1) "Audited financial statement" means a financial statement prepared by a certified public accountant in accordance with generally accepted accounting principles. A financial statement shall include a balance sheet, income statement, statement of cash flows, and all relevant notes.

(2) "Surety bond" means a bond furnished by a surety company authorized to conduct business in Kentucky.

Section 2.~~Licensure as a~~ Consumer Loan Company Licensure. A person applying for licensure as a consumer loan company shall complete and submit:

(1) A completed NMLS Company Form available online at <http://mortgage.nationwidelicencingsystem.org>~~Form CL-1, Application for a Kentucky Consumer Loan License with all required attachments~~;

(2) A completed NMLS Individual Form available online at <http://mortgage.nationwidelicencingsystem.org>;

(3)~~(2)~~ A Form CL-4, State License Confirmation Form completed by each state or jurisdiction in which the person is licensed or registered if the person applying for licensure as a consumer loan company is licensed or registered in any other state or jurisdiction to operate a business making loans of \$15,000 or less at the time of application;

(4)~~(3)~~ The nonrefundable application investigation fee established in KRS 286.4-440(1); and

(5)~~(4)~~ The annual license fee established in KRS 286.4-440(1).

Section 3. Check Cashing and Deferred Deposit Service Business Licensure~~Licensure as a Limited Check Casher~~. (1) Initial Application. A person applying for an initial check cashing or deferred deposit service business~~limited check casher~~ license shall~~complete and~~ submit:

(a) A completed NMLS Company Form available online at <http://mortgage.nationwidelicencingsystem.org>~~Form LCC-1, Application for Limited Check Casher License with all required attachments~~;

(b) A completed NMLS Individual Form available online at <http://mortgage.nationwidelicencingsystem.org> for each control

person designated on the direct owners and executive officers section of the NMLS Company Form;

(c)~~(b)~~ The nonrefundable investigation fee established in KRS 286.9-060(1);

(d)~~(e)~~ Form COMB-1, State License Confirmation Form for Check Cashing~~Casher~~ License or Deferred Deposit Service Business~~Limited Check Casher~~ License, incorporated by reference in 808 KAR 9:050, if the applicant has a license, registration, or claim of exemption related to the financial services industry in any other state;

(e)~~(d)~~ An audited financial statement dated as of the previous year end. If the applicant is a startup company, an initial statement of condition and a proforma income statement shall be submitted instead of the income statement and statement of cash flows;

(f)~~(e)~~ Evidence that the applicant has complied or will comply with all workers' compensation and unemployment compensation laws of Kentucky; and

(g)~~(f)~~ One (1) of the following, which shall be deposited with and made payable to the commissioner:

1. An irrevocable letter of credit in an amount required by KRS 286.9-040(1)(a);

2. An Electronic Surety Bond, available online at <http://mortgage.nationwidelicencingsystem.org>~~original corporate surety bond, submitted on Form COMB-2, Surety Bond for Check Casher License or Limited Check Casher License, incorporated by reference in 808 KAR 9:050~~, in an amount required by KRS 286.9-040(1)(b). The name of the principal insured on the bond shall match exactly the full legal name of the applicant; or

3. Form COMB-3, Escrow Agreement for Check Cashing~~Casher~~ License or Deferred Deposit Service Business~~Limited Check Casher~~ License, incorporated by reference in 808 KAR 9:050, accompanied by:

a. Evidence that the applicant has established an account in a federally insured financial institution in Kentucky and has deposited money of the United States in an amount required by KRS 286.9-040(1)(c); or

b. A savings certificate of a federally insured financial institution in Kentucky established by the applicant that is not available for withdrawal except by direct order of the commissioner in an amount required by KRS 286.9-040(1)(d).

(2) Renewal Application. A licensee applying for renewal of a check cashing~~casher~~ license or deferred deposit service business~~limited check casher~~ license pursuant to KRS 286.9-080(1) shall complete and submit the following on or before December 31~~June 20~~ of each year:

(a) The required updates and attestation ensuring the accuracy of all information in the person's record maintained by the <http://mortgage.nationwidelicencingsystem.org>~~Form COMB-4, Renewal Application for Check Casher License or Limited Check Casher License with all required attachments~~; and

(b) The nonrefundable license fee established in KRS 286.9-080(1).

(3) Reinstatement Application. A licensee applying for reinstatement of a check cashing~~casher~~ license or deferred deposit service business~~limited check casher~~ license pursuant to KRS 286.9-080(2) shall complete and submit the following prior to January 31~~August 1~~ of the year that the renewal application was due:

(a) The required updates and attestation ensuring the accuracy of all information in the person's record maintained by the <http://mortgage.nationwidelicencingsystem.org>~~Form COMB-4, Renewal Application for Check Casher License or Limited Check Casher License with all required attachments~~;

(b) The nonrefundable license fee established in KRS 286.9-080(1); and

(c) The nonrefundable late fee and reinstatement fee established in KRS 286.9-080(2).

Section 4. Licensure as a Mortgage Loan Company or Mortgage Loan Broker. (1) Initial Application. A person applying for licensure as a mortgage loan company or mortgage loan broker shall submit:

(a) A completed NMLS Company Form as available online at

<http://mortgage.nationwidelicensingsystem.org>;

(b) A completed NMLS Individual Form as available online at <http://mortgage.nationwidelicensingsystem.org> for each control person designated on the direct owners and executive officers section of the NMLS Company Form;

(c) An audited financial statement dated the previous year end to the date of submission of the NMLS Company Form. If applicant is a startup company, an initial statement of condition and a proforma income statement shall be submitted instead of the income statement and statement of cash flows;

(d) An Electronic Surety Bond available online at <http://mortgage.nationwidelicensingsystem.org> ~~original bond, submitted on the appropriate form~~ in an amount not less than the amount required by KRS 286.8-060(1). The name of the principal insured on the bond shall match exactly the full legal name of applicant. ~~[1. For a mortgage loan company, Form ML-1, Surety Bond for Mortgage Loan Company; or~~
~~2. For a mortgage loan broker, Form ML-2, Surety Bond for Mortgage Loan Broker;]~~

(e) A certified copy of the following:

1. If a corporation, the Corporate Charter or Articles of Incorporation and Bylaws;

2. If a limited liability company, the Articles of Organization and Operating Agreement; or

3. If a partnership of any form, the Partnership Agreement;

(f) A Certificate of Authority or a Certificate of Good Standing issued by the Kentucky Secretary of State dated not more than sixty (60) days prior to the submission of the NMLS Company Form;

(g) If applicant will be operating in Kentucky under a name other than its legal name, a file-stamped copy of the Certificate of Assumed Business Name issued by the Kentucky Secretary of State;

(h) If required to do so by KRS 286.8-032(6), documentation that a managing principal designated by applicant has successfully completed the educational training set forth in KRS 286.8-032(6);

(i) If the principal office will be located in a residence, a completed Form ML-6, Disclosure of Location at a Residence Form; and

(j) The fees set forth in KRS 286.8-034(1).

(2) Renewal Application.

(a) A person applying for renewal of a mortgage loan company or mortgage loan broker license prior to December 1 shall submit:

1. The required updates and attestation ensuring that all information in the person's record maintained by the nationwide mortgage licensing system operated by the State Regulatory Registry, LLC is correct as available online at <http://mortgage.nationwidelicensingsystem.org>; and

2. The fee set forth in KRS 286.8-034(3).

(b) A person applying for renewal of a mortgage loan company or mortgage loan broker license through reinstatement shall submit all materials required by paragraph (a) of this subsection and the reinstatement fee required by KRS 286.8-034(4).

(3) Change of Address, Name, Control, or Agent for Service.

(a) A licensee changing its address, name, or agent for service of process shall notify the commissioner:

1. At least ten (10) days prior to the change of address or name; and

2. Five (5) days prior to the change of agent for service of process.

(b) A licensee that wants to engage in a transaction resulting in a change of control shall notify the commissioner at least thirty (30) days in advance with the information necessary for the commissioner to determine whether the requirements of KRS Chapter 286.8 will be satisfied upon the change of control. The commissioner shall notify the licensee whether the request is approved or denied within thirty (30) days.

(c) A licensee changing its address, name, control, or agent for service of process shall update this information in Nationwide Mortgage Licensing System (NMLS) within the same time periods set forth in this section.

Section 5. Registration of a Mortgage Loan Company Branch. (1) A mortgage loan company branch shall not be approved unless it is controlled, managed, and supervised by the applicant's principal office.

(2) A person applying for registration of a branch shall submit the following:

(a) A completed NMLS Branch Form as available online at <http://mortgage.nationwidelicensingsystem.org>;

(b) A copy of the lease or deed for the branch;

(c) A completed Form ML-7, Branch Authorization Form;

(d) If the branch will be located in a residence, a Form ML-6, Disclosure of Location at a Residence Form; and

(e) The fee set forth in KRS 286.8-034(1)(b).

(3) A person applying for renewal of a branch registration prior to December 1 shall submit all materials required by Section 4(2)(a) of this administrative regulation.

(4) A person applying for renewal of a branch registration through reinstatement shall submit all materials required by Section 4(2)(a) of this administrative regulation and the reinstatement fee required by KRS 286.8-034(4).

Section 6. Registration of a Mortgage Loan Originator. (1) Initial registration. A person applying for registration as a mortgage loan originator pursuant to KRS 286.8-255(2) shall submit:

(a) A completed NMLS Individual Form as available online at <http://mortgage.nationwidelicensingsystem.org>;

(b) A request to submit a Federal Bureau of Investigation background records check and a credit report to the department;

(c) Certification that applicant has successfully completed all education and testing required by KRS 286.8-255; and

(d) The fee set forth in KRS 286.8-255(2)(b).

(2) Renewal registration.

(a) A person applying for renewal of a mortgage loan originator registration pursuant to KRS 286.8-255(4) shall submit:

1. The required updates and attestation ensuring that all information in the person's record maintained by the nationwide mortgage licensing system operated by the State Regulatory Registry, LLC is correct as available online at <http://mortgage.nationwidelicensingsystem.org>;

2. A request to submit a Federal Bureau of Investigation background records check and a credit report to the department;

3. Certification that applicant has successfully completed all education and testing required by KRS 286.8-255 and 286.8-260; and

4. The fee set forth in KRS 286.8-255(4).

(b) A person applying for renewal of a mortgage loan originator registration through reinstatement shall submit all materials required by paragraph (a) of this subsection and the reinstatement fee required by KRS 286.8-255(5).

(3) The cost of any Federal Bureau of Investigation background records check or credit report required by this section shall be borne by the applicant.

Section 7. Mortgage Loan Originator Bond Requirements. In addition to the requirements set forth in this administrative regulation, an applicant applying for registration, renewal, or renewal through reinstatement as a mortgage loan originator shall provide proof that the mortgage loan originator holds or is covered by a bond. If the mortgage loan originator is procuring his or her own bond, the applicant shall submit an Electronic Surety Bond available online at <http://mortgage.nationwidelicensingsystem.org> ~~[bond shall be submitted on the applicable Surety Bond for Individual Mortgage Loan Originators form and]~~ in an amount determined by annual loan origination as follows:

(1) If the annual loan volume of the applicant is less than \$10,000,000, the surety bond shall be in an amount not less than \$15,000 ~~[and the applicant shall submit Form ML-3, Surety Bond for Individual Mortgage Loan Originators with an Annual Loan Origination Volume of Less than \$10,000,000]; or~~

(2) If the annual loan volume of the applicant is \$10,000,000 or more, the surety bond shall be in an amount not less than \$20,000 ~~[and the applicant shall submit Form ML-4, Surety Bond for Individual Mortgage Loan Originators with an Annual Loan~~

Origination Volume of \$10,000,000 or Greater].

Section 8. Factors Used to Determine Approval or Disapproval of an Application. (1) A mortgage loan originator applicant seeking registration, renewal, or renewal through reinstatement under KRS 286.8-255 shall demonstrate the financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the applicant will operate honestly, fairly, lawfully, and efficiently within the purposes of the subtitle.

(2) Each applicant shall authorize the commissioner to obtain a credit report containing a credit score to aid in making this determination.

(3) The applicant shall have met the requirement of financial responsibility if he or she possessed a credit score of 600 or higher at the time of application. If the applicant possesses a credit score of less than 600, the commissioner may review the applicant's credit report for the following information to make this determination:

(a) Any outstanding judgments, excluding judgments arising solely from medical expenses for the applicant or an immediate family member;

(b) Any outstanding tax liens or other governmental liens;

(c) Any foreclosures occurring within five (5) years of the date of application or renewal;

(d) Any bankruptcies occurring within five (5) years of the date of application or renewal; and

(e) Any delinquent accounts occurring within five (5) years of the date of application or renewal.

(4) The factors of character and general fitness shall be determined by the commissioner after review of all relevant information, including information shown on the applicant's credit report, the applicant's criminal history, and any administrative or civil actions taken against the applicant.

Section 9. Electronic Submission of Filings and Fees through the Nationwide Mortgage Licensing System Operated by the State Regulatory Registry, LLC. (1) A person applying for licensure, registration, renewal, or renewal through reinstatement pursuant to Sections 2, 3, 4, 5, 6, and 7 of this administrative regulation shall electronically submit the following with the State Regulatory Registry, LLC, at <http://www.stateregulatoryregistry.org/NMLS>, as part of the nationwide mortgage licensing system:

(a) All forms, updates, attestations, and requests required by Sections 2, 3, 4, 5, 6, and 7 of this administrative regulation, as applicable;

(b) Fingerprints and any other information or authorizations necessary to obtain the background records checks and credit reports referenced in Section 6 of this administrative regulation; and

(c) All fees referenced in this administrative regulation.

(2) All forms, documentation, fees, or information that are not available for electronic submission directly through the nationwide mortgage licensing system operated by the State Regulatory Registry, LLC shall be submitted directly to the department.

(3) Any fees assessed by the State Regulatory Registry, LLC, to process the electronic submissions referenced in subsection (1) of this section shall be borne by the applicant.

Section 10. Abandoned Applications. If any applicant fails to provide or respond to a request for additional information within ninety (90) days of submission to the department, the application shall be abandoned. Any applicant seeking licensing or registration after its application has been abandoned shall reapply and resubmit all required information.

Section 11. Inactive Status for Members of the Armed Forces.

(1) A member of the Armed Forces who holds a license or registration in good standing under this administrative regulation may request that the commissioner place the license or registration in inactive status during the period of time that the member is mobilized or deployed, and for a period of six (6) months following termination of the mobilization or deployment.

(2) To request inactive status for a license or registration, a person shall complete Form ML-8, Request for Inactive Status Due to Military Service and submit it along with proof of mobilization or deployment to the commissioner for approval.

(3) A person whose license or registration has been placed in inactive status shall not engage in the activity requiring the license or registration under KRS Chapter 286.8.

(4) The fee set forth in KRS 286.8-255(4) shall not accrue against any person whose license or registration is in inactive status.

(5) A person may reactivate an inactive license or registration by submitting a written request to the commissioner and attaching proof of compliance with KRS 286.8-255(10) and 286.8-260, if applicable. Upon receipt of a written request and confirmation of compliance with KRS 286.8-255(10) and 286.8-260, the commissioner shall issue an approval for reactivation.

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

(a) ~~Form CL-1, "Application for a Kentucky Consumer Loan License", updated 03/2015~~

(b) ~~Form CL-4, "State License Confirmation Form", updated 03/2015;~~

(b) ~~(c) Form LCC-1, "Application for Limited Check Casher License", updated 04/2016~~

(d) ~~Form COMB-4, "Renewal Application for Check Casher License or Limited Check Casher License", updated 04/2014;~~

(e) ~~Form ML-1, "Surety Bond for Mortgage Loan Company", updated 03/2015;~~

(f) ~~Form ML-2, "Surety Bond for Mortgage Loan Broker", updated 03/2015;~~

(g) ~~Form ML-3, "Surety Bond for Individual Mortgage Loan Originators with an Annual Loan Origination Volume of Less than \$10,000,000", updated 03/2015;~~

(h) ~~Form ML-4, "Surety Bond for Individual Mortgage Loan Originators with an Annual Loan Origination Volume of \$10,000,000 or Greater", updated 03/2015;~~

(i) ~~Form ML-6, "Disclosure of Location at a Residence Form", updated 03/2015;~~

(c) ~~(j) Form ML-7, "Branch Authorization Form", updated 03/2015; and~~

(d) ~~(k) Form ML-8, "Request for Inactive Status Due to Military Service", updated 03/2015.~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m. This material may also be obtained from the department's Web site at <http://www.kfi.ky.gov>.

CHARLES A. VICE, Commissioner

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: July 12, 2019

FILED WITH LRC: July 12, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:00 a.m. on August 23, 2019 at Kentucky Department of Financial Institutions. 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 is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on August 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Joseph P. Donohue, General Counsel, Department of Financial Institutions, 1025 Capital Center Drive,

Suite 200, Frankfort Kentucky 40601, phone: (502) 5733-390, Fax: (502) 573-8787, Email KDFI.Reg@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joseph P. Donohue

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes regulatory provisions relating to the licensing of entities and individuals within the consumer loan, check cashing, deferred deposit service business, and mortgage lending industries regulated by the Department of Financial Institutions.

(b) The necessity of this administrative regulation: This administrative regulation promotes compliance by clearly informing current and prospective department licensees and registrants of applicable licensing procedures and requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.4-610(1) authorizes the commissioner to promulgate administrative regulations for the proper conduct of the consumer loan businesses licensed under KRS Chapter 286.4. KRS 286.4-430(1) authorizes the commissioner to prescribe the form of the application for a license under KRS Chapter 286.4. KRS 286.9-090(1) authorizes the commissioner to adopt reasonable administrative regulations for the enforcement of KRS Chapter 286.9. KRS 286.9-050 and 286.9-060 authorize the commissioner to prescribe the form of and the filing procedures for an application for a license under KRS Chapter 286.9 and the information and documents that must be submitted to the commissioner with an application for a license. This administrative regulation establishes the required forms, information, documents, and filing procedures for licensees and applicants proceeding pursuant to these statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the required forms, information, documents, and filing procedures for consumer loan, check cashing, deferred deposit service business, and mortgage lending licensees and applicants pursuant to KRS 286.4-430(1), 286.4-430, 286.9-050 and 286.9-060.

(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 proposed amendment implements changes authorized by legislation passed earlier this year authorizing the commissioner to establish a uniform procedure for electronic processing of licensing applications submitted by consumer lending, check cashing, and deferred deposit service businesses. This amendment will transition those licensees from the current manual, paper-system of licensing to the Nationwide Mortgage Licensing System and Registry (NMLS), which is an Internet-based licensing system operated by the State Regulatory Registry, LLC, a wholly-owned operating subsidiary of the Conference of State Bank Supervisors. The use of NMLS in this context will permit the department to: (a) accept license applications made electronically by consumer loan companies and those engaged in the business of cashing checks or accepting deferred deposit transactions for a fee; (b) streamline the application process and reduce paper; (c) collect associated regulatory filing fees on behalf of affected jurisdictions; (d) enable the sharing of information in a protected manner among other regulators using the System; and (e) provide the public with Internet-based access to information on state-regulated licensees in these lines of business.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to improve access and ease of use for prospective and current licensees in conformity with recently updated statutes. The benefits of the electronic licensing system implemented by this amendment include increased uniformity and efficiencies through on-line submission, processing and/or delivery of applications, electronic surety bonds, fees, and examinations; decreased likelihood of data inputting errors; reduced time and effort required in manually tracking licensees; improved capabilities in tracking follow-up action items;

and enhanced opportunities to track outstanding items. Ultimately, the amendment will ease the burden of industry licensing processes and enhance the department's ability to efficiently and effectively oversee the consumer loan, check cashing and deferred deposit industries.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of statutes authorizing the original regulation, in addition to HB 285 and SB 145, which were passed during the 2019 Regular Session of the General Assembly.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will simplify, streamline and expedite the department's work in licensing, registering, and monitoring of consumer loan, check cashing, and deferred deposit service businesses that operate under the state's statutory framework.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the approximately 800 consumer loan, check cashing, and deferred deposit service business entities licensed by the department.

(4) Provide an analysis of how the entities identified in the previous question 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 each of the regulated entities identified in question (3) will have to take to comply with this regulation or amendment: Regulated entities will need to register with, and submit their licensing-related materials to, the NMLS rather than complete paper forms for submission to the department. Paper forms will no longer be accepted.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each entity will be required to pay an annual processing fee to NMLS in an amount of \$100 per company, and an additional \$20 per branch.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will enjoy the convenience of on-line submission and processing of applications and supporting materials, as well as electronic delivery of approvals, licenses, exams, and other materials. This amendment will streamline, expedite and improve processes for applicants, licensees, and department staff.

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

(a) Initially: There will be no initial cost to the department to implement this administrative regulation.

(b) On a continuing basis: There will be no continuing cost to the department to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding will be required 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 will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The proposed amendment to this regulation will impose an additional annual processing fee licensees will have to pay directly to NMLS in an amount of \$100 per company, and an additional \$20 per branch. However, the department believes that the impact of this fee will be significantly offset by the efficiencies and convenience licensees experience through use of the NMLS.

(9) TIERING: Is tiering applied? Tiering was not applied because this amendment will apply to similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 286.4-610(1), 286.4-430(1), 286.8-140(1), 286.9-090(1), 286.9-050, 286.9-060 authorize the existing regulation. Recently enacted bills HB 285 and SB 145 authorize the action to be taken by the proposed amendment.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The proposed amendment will not generate any additional revenue in its first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The proposed amendment will not generate any additional revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no new costs to administer this amended process for the first year; Department staff already responsible for licensing will remain responsible for implementation of the amended process.

(d) How much will it cost to administer this program for subsequent years? There will be no new costs to administer this amended process for subsequent years; Department staff already responsible for licensing will remain responsible for implementation of the amended process.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

**PUBLIC PROTECTION CABINET
Department of Financial Institutions
(Amendment)**

808 KAR 9:050. Licensee change of control.

RELATES TO: KRS 286.9-010, 286.9-020, 286.9-030, 286.9-040, 286.9-050, 286.9-060, 286.9-070, 286.9-071, 286.9-073, 286.9-080, 286.9-104

STATUTORY AUTHORITY: KRS 286.9-050, 286.9-060, 286.9-070, 286.9-090(1), 286.9-104

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.9-090(1) authorizes the commissioner to adopt reasonable administrative regulations for the enforcement of KRS Chapter 286.9. KRS 286.9-050 and 286.9-060 authorize the commissioner to prescribe the form~~of~~ and materials required to apply~~[the filing procedures for an application]~~ for a license under KRS Chapter 286.9~~[and the information and documents that must be submitted to the commissioner with an application for a license]~~. KRS 286.9-070 requires licensees to file a written request for a change of control and to pay the cost incurred by the commissioner in investigating the change of control request. This administrative regulation establishes the required filing procedures for change of control by check cashing licensees.

Section 1. Pursuant to the moratorium on the deferred deposit service business license in KRS 286.9-071, a license issued prior to July 2, 2009, shall be a deferred deposit service business~~[check casher]~~ license.

Section 2. Interpretation of KRS 286.9-030(3). A person shall be deemed principally engaged in the business of cashing checks and not principally engaged in the retail sale of goods or services at any particular location if the location's gross annual check cashing receipts exceed more than fifty (50) percent of the location's annual revenue.

Section 3. Change of Control. A licensee requesting a change of control pursuant to KRS 286.9-070(5) shall submit:

(1) A completed Change of Control form, available online at <http://mortgage.nationwidelicencingsystem.org>~~COMB-6,~~ accompanied by all required attachments;

(2) A nonrefundable investigation fee of \$500, if the person obtaining control of the licensee is not a licensee;

(3) If the person obtaining control of the licensee has a license, registration, or claim of exemption related to the financial services industry in any other state, a Form COMB-1, State License Confirmation Form for Check Cashing~~[Casher]~~ License or Deferred Deposit Service Business~~[Limited-Check-Casher]~~ License for the person obtaining control of the licensee;

(4) An audited financial statement for the person obtaining control of the licensee prepared by a certified public accountant in accordance with generally accepted accounting principles as of the previous year end that includes:

- (a) A balance sheet;
- (b) Income statement;
- (c) Statement of cash flows; and
- (d) All notes.

(5) If the person obtaining control of the licensee is a startup company or new entity, an initial statement of condition and a proforma income statement shall be submitted instead of the income statement and statement of cash flows;

~~[(5)]~~ Evidence that the person obtaining control of the licensee has complied or will comply with all workers' compensation and unemployment compensation laws of Kentucky; and

~~[(6)]~~ One (1) of the following, which shall be deposited with and made payable to the commissioner:

(a) An irrevocable letter of credit in an amount required by KRS 286.9-040(1)(a);

(b) An Electronic Surety Bond available online at <http://mortgage.nationwidelicencingsystem.org>~~[original—corporate surety bond furnished by a surety company authorized to do business in Kentucky]~~. The name of the principal insured on the bond shall match exactly the full legal name of the person obtaining control of the licensee~~—The bond shall be submitted on Form COMB-2, Surety Bond for Check-Casher License or Limited Check-Casher License, in an amount required by KRS 286.9-040(1)(b)]~~;

(c) Evidence that the person obtaining control of the licensee has established an account in a federally insured financial institution in Kentucky and has deposited money of the United States in an amount required by KRS 286.9-040(1)(c), with an escrow agreement submitted on Form COMB-3, Escrow Agreement for Check Cashing~~[Casher]~~ License or Deferred Deposit Service Business~~[Limited-Check-Casher]~~ License; or

(d) A savings certificate of a federally insured financial institution in Kentucky established by the person obtaining control of the licensee that is not available for withdrawal except by direct order of the commissioner in an amount required by KRS 286.9-040(1)(d), with an escrow agreement submitted on Form COMB-3, Escrow Agreement for Check Cashing~~[Casher]~~ License or Deferred Deposit Service Business~~[Limited-Check-Casher]~~ License.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) Form COMB-1, "State License Confirmation Form for

Check Cashing[Casher] License or Deferred Deposit Services Business[Limited Check Cashier] License", July 2019[April 2016];

(b) ~~Form COMB-2, "Surety Bond for Check Cashier License or Limited Check Cashier License", April 2016;~~

(e) ~~FORM Form COMB-3, "Escrow Agreement for Check Cashing~~[Casher] License or Deferred Deposit Services Business License", July 2019[Limited Check Cashier License", April 2016;

(d) ~~Form COMB-6, "Change of Control Request for Check Cashier License or Limited Check Cashier License", April 2016;]~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained from the department's Web site at <http://www.kfi.ky.gov>.

CHARLES A. VICE, Commissioner

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: July 12, 2019

FILED WITH LRC: July 12, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on 10:00 a.m. on August 23, 2019 at Kentucky Department of Financial Institutions. 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 is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on August 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Joseph P. Donohue, General Counsel, 1025 Capital Center Drive, Suite 200, Frankfort Kentucky 40601, Telephone (502) 573-3390, Fax (502) 573-8787, Email: KDFI.Reg@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joseph P. Donohue

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the required forms, information, documents, fees, and filing procedures for licensees and applicants requesting a change of control pursuant to KRS 286.9-070.

(b) The necessity of this administrative regulation: This administrative regulation sets forth necessary guidance relating to required forms, information, documents, fees, and filing procedures for requests for a change of control.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.9-090(1) authorizes the commissioner to adopt reasonable administrative regulations for the enforcement of KRS Chapter 286.9. KRS 286.9-070 requires licensees to file a written request for a change of control and to pay the cost incurred by the commissioner in investigating the request.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs check cashing and deferred deposit business applicants and licensees of applicable requirements and obligations.

(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 proposed amendment implements changes authorized by legislation passed during the 2019 Regular Session of the General Assembly authorizing the commissioner to establish a uniform procedure for electronic processing of licensing-related

materials applicable to check cashing and deferred deposit service businesses. This amendment will transition those licensees from the current hard-copy "change of control forms" and paper surety bonds to electronic online versions of those materials maintained by the Nationwide Mortgage Licensing System and Registry ("NMLS" or "System"), which is an Internet-based licensing system operated by the State Regulatory Registry, LLC, a wholly-owned operating subsidiary of the Conference of State Bank Supervisors. The use of NMLS in this context will permit the Department to: (a) accept Electronic Surety Bonds and "change of control" forms submitted electronically by check cashing and deferred deposit service business licensees; (b) streamline the process of licensing application and oversight; (c) reduce paper; (d) enable the sharing of information in a protected manner among other regulators using the System; and (e) provide the public with Internet-based access to information on state-regulated check cashing and deferred deposit service businesses.

(b) The necessity of the amendment to this administrative regulation: The benefits of the electronic submissions permitted by this amendment include increased uniformity and efficiencies through on-line submission, processing and/or delivery of forms and electronic surety bonds; decreased likelihood of data inputting errors; reduced time and effort required in manually tracking licensees; improved capabilities in tracking follow-up action items. Ultimately, the amendment will ease the burden of industry licensing processes and enhance the Department's ability to efficiently and effectively oversee the check cashing and deferred deposit industry.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of statutes authorizing the original regulation, in addition to SB 145, which was passed in the most recent legislative session and authorized the electronic submission of licensing related materials in the check cashing and deferred deposit industries.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will simplify, streamline and expedite the submission and processing of certain licensing-related materials utilized by check cashing and deferred deposit service businesses that operate under the state's statutory framework.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the 5 check cashing and 431 deferred deposit service business entities licensed by the Department.

(4) Provide an analysis of how the entities identified in the previous question 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 each of the regulated entities have to take to comply with this regulation or amendment: This amendment will require any regulated entity requesting a change of control pursuant to KRS 286.9-075(5) to submit an electronic "change of control" form and security bond through NMLS, rather than submitting the paper form of those documents currently used by the Department.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): While a check cashing or deferred deposit licensee must pay an annual processing fee in an amount of \$100 directly to NMLS in connection with the electronic submission of materials to become licensed as established by concurrent proposed amendments to 808 KAR 1:170, no extra fee is required to process the "change of control forms" and bonds addressed by this proposed amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The on-line submission and processing of "change of control" forms and electronic surety bonds, and the electronic delivery of approvals or other materials implemented by this amendment, will streamline, expedite and improve the overall "change of control" process for licensees.

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

(a) Initially: There will be no initial cost to the Department to implement this administrative regulation.

(b) On a continuing basis: There will be no continuing cost to the Department to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation. No funding will be required 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 will be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied because this amendment will apply to similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 286.9-090(1), 286.9-050, 286.9-060 authorize the existing regulation. Recently enacted SB 145 authorizes the action to be taken by the proposed amendment.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The proposed amendment will not generate any additional revenue in its first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The proposed amendment will not generate any additional revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no new costs to administer this amended process for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no new costs to administer this amended process for subsequent years.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

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

902 KAR 20:370. Operations and services; private duty nursing agencies.

RELATES TO: KRS 2.015, 216B.020, [216B.040, 216B.045,

216B.040, 216B.042, 216B.045-216B.055, 216B.075, 216B.105-216B.131, 216B.990, 311.560(4), 314.011(8);] 314.041, 314.051, 45 C.F.R. Parts 160, 164, 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 administration regulations necessary for the proper administration of the licensure function and establish licensure standards to ensure safe, adequate, and efficient [regulate] health facilities and health services. This administrative regulation establishes minimum licensure requirements for the operation of [] and [nursing] services provided by [] private duty nursing agencies.

Section 1. Definitions. (1) "~~Agency~~" means a private duty nursing agency.

(2) "~~Governing authority~~" or "licensee" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the institution is vested.

(3) "~~License~~" means an authorization issued by the cabinet for the purpose of operating a private duty nursing agency. (4) "~~Licensed practical nurse~~" or "LPN" means a person licensed pursuant to KRS 314.051.

(5) "Private duty nursing agency" means a public or private organization, including any partnership, corporation, or other legal entity, that provides or arranges for the provision of private duty nursing services.

(2) "Private duty nursing services" means the delivery of skilled nursing services as defined by subsection (3) of this section to a patient who has a medically predictable, recurring need for services on a continuous basis rather than part-time or short-term intermittent nursing care.

(3) "Skilled nursing services" means the delivery of nursing care to a patient of a private duty nursing agency that:

(a) Exceeds the level of routine health monitoring;

(b) Is clinically appropriate;

(c) Is subject to:

1. A nursing reassessment no less than every ninety (90) days;

and

2. Frequent changes in the plan of treatment;

(d) Is based on the expectation that the service will improve, restore, or maintain function, or slow the patient's decline of the disease or functional ability; and

(e) Includes skilled interventions provided directly by a licensed nurse. Examples of skilled interventions may include:

1. Bowel and bladder care;

2. Administering medications or oxygen;

3. Treating decubitus ulcers or other types of wound care; or

4. Ventilation care [an entity in the business of providing

licensed nursing care to a patient in his or her home for a continuous block of time, in increments of at least four (4) hours, in which the private duty nursing agency supervises nursing care provided by agency personnel. It shall not include a registered nurse providing nursing services as an independent practitioner.

(6) "~~Registered nurse~~" or "RN" means a person licensed pursuant to KRS 314.041.]

Section 2. Scope. (1) Private duty nursing services shall be:

(a) Ordered and directed by the treating practitioner or specialist after a face-to-face evaluation of the patient;

(b) Provided by:

1. A registered nurse (RN) licensed in accordance with KRS 314.041; or

2. A licensed practical nurse (LPN) licensed in accordance with KRS 314.051; and

(c) Provided to a patient in his or her temporary or permanent place of residence or other community-based setting, including:

1. The patient's home; or

2. Outside of the patient's home, as necessitated by normal life activities.

(2) A private duty nursing agency shall not include:

(a) A registered nurse who provides nursing services as an

independent practitioner; or

(b) An entity that seeks certification under Title XVIII of the Social Security Act.

Section 3. Administration. (1) The licensee shall be legally responsible for:

(a) The operation of the private duty nursing agency; and
~~(b) [Have legal responsibility for the service and for]~~
Compliance with [relevant] federal, state, and local laws and administrative regulations pertaining to the operation of the agency.

(2) The licensee shall:

(a) [law;

(b)] Establish lines of authority;

(b) [and

(c)] Designate an administrator who shall be responsible for the daily operation of the agency;

(c) [:

(2) Policies. The licensee shall] Establish and implement [enforce] written administrative policies covering all aspects of operation, including:

1. [(a)] A description of the agency's organizational structure, staffing, and allocation of responsibility and accountability;

2. [(b) A description of linkages with inpatient facilities and other providers; (c)] Policies and procedures for the evaluation [guidance and control] of personnel performance;

3. [(d)] A narrative describing in detail:

a. [1.] The services offered by the agency; and

b. [2.] Methods and protocols for service delivery; and

3.] Qualifications of personnel involved in the delivery of services [the service];

(d) Establish [(e) A description of the administrative and patient care records and reports; (f)] procedures [for to be followed in] the handling and administration of drugs and biologicals; and

(e) Maintain policies regarding the delivery and supervision of [(g)] patient care that shall:

1. Be [policies] developed by [with the advice of] a group of professional health providers, including at least one (1) [or more] physician and one (1) [or more] registered nurse; and

2. [, and shall] Include the following:

a. [1.] A description of the services provided;

b. [2.] A requirement for a written [nursing care] plan of treatment for each [a] patient who receives private duty nursing services;

c. [3.] Guidelines to ensure coordination of treatment with other [licensed] health facilities and practitioners that deliver services to patients of the agency [care providers servicing a patient];

d. [4.] Guidelines for the medical management of health problems, including [a. the] conditions that require [requiring] medical consultation or patient referral;

e. [and b. Maintenance of health records; 5.] Procedures for the annual review and evaluation of the services provided;

f. [6.] Guidelines for patient and environment assessment; and

g. [7.] Guidelines to ensure that a patient is receiving adequate services for assistance with daily living activities.

Section 4. [(3)] Personnel. (1) Each private duty nursing agency [(a) Medical director. The agency] shall have:

(a) A medical director who is [shall be:]

1. A Kentucky-licensed physician with specialized training and experience in medical services provided by the agency; and

2. Responsible for medical aspects of medical services provided by the agency; and [.]

(b) [The agency shall provide] Adequate staffing to provide for effective patient care [.] in accordance with the terms and conditions of the contract with the patient.

(2) Each private duty nursing agency's [(c) The licensee shall provide] written personnel policies [which] shall be:

(a) [1.] Available to each employee;

(b) [2.] Reviewed on an annual basis; and

(c) [3.] Revised as necessary.

(3) [(d)] There shall be a written job description for each position that [which] shall be reviewed and revised as necessary.

(4) [(e)] There shall be an employee health and infection control program, including tuberculosis screening and [with provisions for tuberculin] testing in accordance with 902 KAR 20:205 [and titers necessary to the nursing service to be performed].

(5) [(f)] The private duty nursing agency [licensee] shall maintain a current personnel record for each employee, including:

(a) [Data maintained shall include:

1. Name, address and Social Security number;

2.] Evidence of each employee's current registration, certification, or licensure, if applicable;

(b) Documentation of the employee's [3. Records of] training and experience;

(c) Evidence of an annual [4. Records of] performance evaluation;

(d) Documentation of compliance with the agency's health and infection control program;

(e) A [5. Current negative tuberculin skin test or chest x-ray for an employee having direct contact with a patient; and

6.] preemployment background check in which the agency shall not employ an individual in a position that involves providing direct services if the individual:

1. Is listed on the:

a. Nurse aide or home health aide abuse registry pursuant to 906 KAR 1:100; or

b. Caregiver misconduct registry pursuant to 922 KAR 5:120;

or

2. Has a conviction of, or a plea of guilty, an Alford plea, or a plea of nolo contendere to:

a. A felony offence that is related to:

(i) Theft;

(ii) Abuse, possession, or sale of illegal drugs;

(iii) Abuse, neglect, or exploitation of a child or an adult; or

(iv) A sexual crime; or

b. A misdemeanor offense related to abuse, neglect, or exploitation of an adult; and

(f) Evidence of orientation and, if needed, on-the-job training related to the employee's job responsibilities [criminal conviction information for private duty nursing agency personnel who provide nursing care to a patient in his or her home].

(6) [(g)] An employee with [of the program who has] direct patient care responsibilities shall have current cardiopulmonary resuscitation (CPR) certification from [either] the American Heart Association, [or the] American Red Cross, or equivalent.

Section 5. Patient Records. (1) Each private duty nursing agency shall maintain a clinical record for each patient that includes:

(a) Pertinent past and current [(h) In-service training. An employee shall participate in ongoing in-service training programs relating to the employee's job activities.

(4) Medical records.

(a) The service shall maintain a medical record for each patient, to include the following:

1.] medical, nursing, and social history [relevant to the service provided], including information obtained [data obtainable] from other providers;

(b) [2.] Name of the referring physician, or other ordering practitioner, if any, acting within the statutory scope of practice;

(c) [3.] Orders of the referring physician, or other ordering practitioner, if any, acting within the statutory scope of practice;

(d) [4.] Description of each contact, including the:

1. [a.] Condition or reason necessitating contact;

2. [b.] Assessment;

3. [c.] Service provided;

4. [d.] Medication and treatment prescribed; and

5. [e.] Disposition made; and

(e) [5.] Documentation of referrals made, including:

1. [a.] Reason for referral;

2. [b.] To whom the patient was referred; and

3. [c.] Information obtained from a referral source.

(2) Ownership.

(a) Medical records shall be the property of the private duty nursing agency.

(b) The original medical record shall not be removed except by court order.

(c) Copies of medical records or portions thereof may be used and disclosed in accordance with the requirements established in this administrative regulation.

(3) Confidentiality and Security: Use and Disclosure.

(a) The agency shall maintain the confidentiality and security of patient 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.

(b) The private duty nursing agency may use and disclose patient 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.

(c) A private duty nursing agency may establish higher levels of confidentiality and security than those required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164. (b) Confidentiality of patient records shall be maintained at all times.

(c) Transfer of records. If the patient moves to another source of care, the agency shall:

1. Establish systematic procedures to assist in continuity of care; and

2. Transfer medical records if requested and upon the agency receiving a release signed by the patient or the patient's agent.]

(d) Retention of records. [1.] After a patient's [the] death or discharge [of an adult patient], the completed medical record shall be placed in an inactive file and:

1. Retained for six (6) [five (5)] years; or

2. [After the death or discharge of a minor patient, the record shall be placed in an inactive file and retained for five (5) years from the date of the event, or] Three (3) years after the patient reaches the age of majority in accordance with KRS 2.015, whichever is longer.

(4) [(e)] The agency shall:

(a) Designate a specific location for the maintenance and storage of the agency's medical records;

(b) [(f) The agency shall] Have provisions for storage of medical records in the event the agency ceases to operate; and

(c) [(g) The licensee shall] Safeguard the record and its content against loss, defacement, or tampering.

Section 6. Private Duty [3.] Nursing Services [Provided by Private Duty Nursing Agencies]. (1) A private duty nursing agency shall develop [Nursing services provided by a private duty nursing agency, if ordered by a physician or other ordering practitioner acting within the statutory scope of practice, shall be provided in accordance with] a plan of treatment for each patient receiving private duty nursing services.

(2) [(a)] The plan of treatment shall be developed in consultation with the:

(a) Prescribing practitioner;

(b) [(i) Agency personnel; (i) and

(c) [the] Patient, patient's family [(j) family] member, or patient's responsible party.

(3) [(b)] The plan of treatment shall be reviewed:

(a) By the ordering practitioner in consultation with:

1. Agency personnel; and

2. The patient, patient's family member, or patient's responsible party; and (i)]

(b) At [such] intervals as the severity of the patient's illness requires [(k)] or at least once every two (2) months.

(4) Services [(2) Each private duty nursing agency service] shall be nonabusive and provided in a manner that [which] ensures the greatest amount of safety and security for the patient.

(5) [(3)] Private duty nursing agency personnel shall ensure that medical waste generated as a result of a service shall be removed from a patient's home and disposed of properly.

Section 7. Licensure. Within ninety (90) days from the effective date of this administrative regulation, the cabinet shall:

(1) Convert any licensed home health agency that is not certified under Title XVIII of the Social Security Act to a licensed private duty nursing agency; and

(2) Not require approval of a new certificate of need to convert an existing home health agency license to a private duty nursing license. [Section 4. Licensing Procedures. (1) Initial licensure.

(a) A private duty nursing agency applying for a license to operate shall return a completed L&R 144 to the Office of Inspector General along with the initial licensing fee of \$134.

(a) The Office of the Inspector General shall conduct an initial licensing inspection pursuant to 902 KAR 20:008.

(2) Relicensure. Prior to the date that the license to operate expires, a private duty nursing agency shall send a completed L&R 144 to the Office of the Inspector General along with the annual relicensure fee of \$134.

Section 5. Incorporation by Reference. (1) "Form L&R 144, Application for a License to Operate a Health Facility or Service, January 2001 edition" is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Inspector General 275 East Main Street, Fifth Floor East, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.]

STEVEN D. DAVIS, Inspector General
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: July 2, 2019

FILED WITH LRC: July 11, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 26, 2019, 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 August 19, 2019, 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 August 31, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. In accordance with 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: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; Phone: 502-564-6746; Fax: 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephanie Brammer-Barnes, email: stephanie.brammer@ky.gov, Phone: 502-564-2888; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes minimum licensure requirements for the operation of and services provided by private duty nursing agencies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.042, which requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, including licensure standards and procedures to ensure safe, adequate, and efficient health services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 by establishing standards for licensed private duty nursing agencies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing standards for licensed private duty nursing agencies.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes the existing administrative regulation as follows:

Updates the definition of "private duty nursing agency" and adds definitions for the terms "private duty nursing services" and "skilled nursing services";

Clarifies that a private duty nursing service is skilled nursing care to a patient who has a medically predictable, recurring need for services on a continuous basis rather than part-time or intermittent nursing care;

Removes the requirement for private duty nursing services to be provided to patients for no less than four (4) hours per visit;

Requires private duty nursing services to be ordered and directed by the treating practitioner or specialist after a face-to-face evaluation of the patient;

Clarifies that a private duty nursing agency must provide services to a patient only in community-based settings such as the patient's temporary or permanent place of residence, including the patient's home or outside the patient's home, as necessitated by normal life activities;

Clarifies that private nursing agencies cannot seek Medicare-certification;

Eliminates the requirement for a description of linkages with inpatient facilities and other providers;

Eliminates the requirement for a description of the agency's methods and protocols for service delivery because such is unnecessary as the Kentucky Board of Nursing establishes nursing guidelines;

Establishes a prohibition against employment if a prospective employee is found on the nurse aide or home health aide abuse registry or caregiver misconduct registry, or has certain criminal convictions;

Requires compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA);

Requires currently licensed home health agencies that are not Medicare-certified to convert to licensure as a private duty nursing agency within ninety (90) days of the effective date of this administrative regulation, thereby ensuring compliance with the definition of "home health agency" which is established by KRS 216.935(2) and requires licensed home health agencies to be Medicare-certified; and

Makes technical changes for compliance with KRS Chapter 13A to improve clarity and flow.

(b) The necessity of the amendment to this administrative regulation: Because home health agencies have historically been designed as a model of care for elderly Medicare beneficiaries and other patients who need only part-time or intermittent nursing care, the home health agency model is not well-suited for the kind of ongoing care required by adults and children with disabilities or patients who otherwise have a medically predictable, recurring need for services on a continuous basis. This amendment is therefore necessary to ensure adequate access to skilled nursing services for patients who need these services to continue living at home. In addition to the delivery of skilled nursing care that is more than part-time or intermittent, private duty nursing agencies are distinguishable from home health agencies as follows:

Private duty nursing agencies are prohibited from obtaining Federal certification under Title XVIII of the Social Security Act while home health agencies are required by state law to be Medicare-certified pursuant to KRS 216.935(2); and

The delivery of skilled nursing services by private duty nursing agencies must be subject to nursing reassessments no less than every ninety (90) days as well as subject to frequent changes in the plan of treatment.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of

KRS 216B.042 by establishing standards for licensed private duty nursing agencies.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by establishing standards for licensed private duty nursing agencies.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts private duty nursing agencies. There are currently fourteen (14) licensed private duty nursing agencies in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensed private duty nursing agencies:

Will no longer be required to provide services for at least four (4) hours per visit;

Must ensure that the care delivered to patients is skilled nursing care as ordered and directed by the treating practitioner or specialist;

Must conduct a nursing reassessment no less than every ninety (90) days;

Must have an administrator responsible for the daily operation of the facility and have a physician medical director;

Must establish and implement written administrative policies covering all aspects of operation;

Must have adequate staffing to provide for effective patient care;

Must ensure that employees with direct patient care responsibilities have current cardiopulmonary resuscitation certification;

Must comply with the preemployment screening requirements;

Must maintain patient records as established by this administrative regulation; and

Must develop a plan of treatment for each patient in consultation with the prescribing practitioner, agency personnel, and patient or patient's responsible party.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The licensure of private duty nursing agencies helps ensure that there is adequate access to skilled nursing services provided to people who require more than part-time or intermittent nursing care, including people with disabilities or individuals who otherwise have a medically predictable, recurring need for skilled services on a continuous basis.

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

(a) Initially: There are no additional costs to the cabinet for implementation of this administrative regulation.

(b) On a continuing basis: There are no additional costs to the cabinet for implementation of this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds and agency monies are used to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all

individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts private duty nursing agencies and the Cabinet for Health and Family Services, Office of Inspector General.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042(1)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any additional revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not general any additional revenue.

(c) How much will it cost to administer this program for the first year? This amendment imposes no additional costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This amendment imposes no additional costs on the administrative body.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Health Care

(Amendment)

902 KAR 20:430. Facilities specifications, operation and services; behavioral health services organizations for mental health treatment.

RELATES TO: KRS 17.500, 198B.260, 200.503(2), 205.510, 210.005(2), (3), 216B.050, 216B.105,~~[309.080]~~ 309.130, 311.860, 314.042, 319.050, 319.056, 319.064, 319C.010, 335.080, 335.100, 335.300, 335.500, 439.3401,~~[42 C.F.R. Part 2;]~~ 45 C.F.R. Parts 160, 164, 20 U.S.C. 1400 et seq., 29 U.S.C. 701 et seq., 42 U.S.C. 1320d-2 – 1320d-8~~;~~ 42 U.S.C. 290ee-3]

STATUTORY AUTHORITY: KRS 216B.042

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. This administrative regulation establishes minimum licensure requirements for the operation of behavioral health services organizations (BHSO) ~~that~~[which] provide behavioral health services necessary to treat, support, and encourage individuals with~~[a substance use disorder,]~~ mental health disorder~~], or co-occurring disorder]~~ to achieve and maintain the highest possible level of health and self-sufficiency.

Section 1. Definitions. (1) "Adult peer support specialist" means an individual who meets the requirements for an adult peer support specialist established by 908 KAR 2:220.

(2) "Behavioral health professional" means:

(a) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc. or the American Osteopathic Board of Neurology and Psychiatry;

(b) A physician licensed in Kentucky to practice medicine or osteopathy in accordance with KRS 311.571;

(c) A psychologist licensed and practicing in accordance with KRS 319.050;

(d) A certified psychologist with autonomous functioning or licensed psychological practitioner practicing in accordance with KRS 319.056;

(e) A clinical social worker licensed and practicing in accordance with KRS 335.100;

(f) An advanced practice registered nurse licensed and practicing in accordance with KRS 314.042;

(g) A physician assistant licensed under KRS 311.840 to 311.862;

(h) A licensed marriage and family therapist as defined by ~~[licensed and practicing in accordance with]~~ KRS 335.300;

(i) A licensed professional clinical counselor as defined by ~~[licensed and practicing in accordance with]~~ KRS 335.500;~~[or]~~

(j) A licensed professional art therapist as defined by KRS 309.130(2); or

(k) A licensed behavior analyst as defined by KRS 319C.010(6).

(3)[(2)] "Behavioral health professional under clinical supervision" means a:

(a) Psychologist certified and practicing in accordance with KRS 319.056;

(b) Licensed psychological associate licensed and practicing in accordance with KRS 319.064;

(c) Marriage and family therapist associate as defined by KRS 335.300(3);

(d) Social worker certified and practicing in accordance with KRS 335.080;

(e) Licensed professional counselor associate as defined by KRS 335.500(4); ~~[or]~~

(f) Licensed professional art therapist associate as defined by KRS 309.130(3); or

(g) Licensed assistant behavioral analyst defined by KRS 319C.010(7).

(4)[(3)] "Behavioral health services organization" means an entity licensed under this administrative regulation to provide behavioral health services as described in Section 5 ~~[6]~~ of this administrative regulation.

(5)[(4)] "Cabinet" means the Cabinet for Health and Family Services.~~[(5) "Certified alcohol and drug counselor" is defined by KRS 309.080(2).]~~

(6) "Child with a serious~~[severe]~~ emotional disability" is defined by KRS 200.503(3).

(7) "Community support associate" means a paraprofessional who meets the application, training, and supervision requirements of 908 KAR 2:250.

(8) "Family peer support specialist" means an individual who meets the requirements for a family peer support specialist established by 908 KAR 2:230.

~~(9) "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).~~

~~(9) "Licensed behavior analyst" is defined by KRS 319C.010(6).~~

~~(10) "Peer support specialist" means a paraprofessional who:~~

~~(a) Meets the application, training, examination, and supervision requirements of 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240; and~~

~~(b) Works under the supervision of one (1) of the following:~~

~~1. Physician;~~

~~2. Psychiatrist;~~

~~3. Licensed psychologist;~~

~~4. Licensed psychological practitioner;~~

~~5. Licensed psychological associate;~~

~~6. Licensed clinical social worker;~~

- 7. Licensed marriage and family therapist;
- 8. Licensed professional clinical counselor;
- 9. Certified social worker;
- 10. Licensed marriage and family therapist associate;
- 11. Licensed professional counselor associate;
- 12. Licensed professional art therapist;
- 13. Licensed professional art therapist associate;
- 14. Advanced practice registered nurse;
- 15. Physician assistant; or
- 16. Certified alcohol and drug counselor.

(14)) "Severe mental illness" means the conditions defined by KRS 210.005(2) and (3).

(10) "Targeted case manager" is defined by 908 KAR 2:260, Section 1(16).

(11) "Telehealth" is defined by KRS 205.510(15).

(12) "Youth peer support specialist" means an individual who meets the requirements for a youth peer support specialist established by 908 KAR 2:240[(12) "Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms resulting from use of a substance which the individual continues to take despite experiencing substance-related problems as a result, including:

- (a) Intoxication;
- (b) Withdrawal; or
- (c) A substance induced mental health disorder].

Section 2. Licensure Application and Fees. (1) An applicant for initial licensure as a behavioral health services organization shall submit to the Office of Inspector General:

- (a) A completed Application for License to Operate a Behavioral Health Services Organization; and
- (b) An accompanying initial licensure fee in the amount of \$750, made payable to the Kentucky State Treasurer.

(2) At least sixty (60) calendar days prior to the date of annual renewal, a behavioral health services organization shall submit to the Office of Inspector General:

- (a) A completed Application for License to Operate a Behavioral Health Services Organization; and
- (b) An annual renewal fee of \$500, made payable to the Kentucky State Treasurer.

(3) A behavioral health services organization:

(a) May provide behavioral health services as described in Section 5[6] of this administrative regulation at extension locations separate from its permanent facility; and

(b) Shall pay a fee in the amount of \$250 per extension, submitted to the Office of Inspector General at the time of initial licensure, renewal, or the addition of a new extension to the organization's license.

(4)(a) Name change. A behavioral health services organization shall:

1. Notify the Office of Inspector General in writing within ten (10) calendar days of the effective date of a change in the organization's name; and

2. Submit a processing fee of twenty-five (25) dollars.

(b) Change of location. A behavioral health services organization shall not change the location where a program is operated until an Application for License to Operate a Behavioral Health Services Organization accompanied by a fee of \$100 is filed with the Office of Inspector General.

(c) Change of ownership.

1. The new owner of a behavioral health services organization shall submit to the Office of Inspector General an Application for License to Operate a Behavioral Health Services Organization accompanied by a fee of \$750 within ten (10) calendar days of the effective date of the ownership change.

2. A change of ownership for a license shall be deemed to occur if more than twenty-five (25) percent of an existing behavioral health services organization or capital stock or voting rights of a corporation is purchased, leased, or otherwise acquired by one (1) person from another.

(5) To obtain approval of initial licensure or renew a license to operate a behavioral health services organization, the licensee shall be in compliance with this administrative regulation and

federal, state, and local laws and regulations pertaining to the operation of the organization.

Section 3. Scope of Operation and Services. (1) A behavioral health services organization shall:

(a) Provide behavioral health services, as described in Section 5[6] of this administrative regulation, to meet client needs; and

(b) Unless an extension is granted pursuant to subsection (2) of this section, become accredited within one (1) year of initial licensure by one (1) of the following:

- 1. Joint Commission;
- 2. Commission on Accreditation of Rehabilitation Facilities;
- 3. Council on Accreditation; or
- 4. A nationally recognized accreditation organization.

(2)(a) If a behavioral health services organization has not obtained accreditation in accordance with subsection (1)(b) of this section within one (1) year of initial licensure, the organization may request a one (1) time only extension to complete the accreditation process.

(b) A request for extension shall:

1. Be submitted in writing to the Office of Inspector General at least sixty (60) days prior to the date of annual renewal;

2. Include evidence that the organization initiated the process of becoming accredited within sixty (60) days of initial licensure and is continuing its efforts to obtain accreditation; and

3. Include an estimated timeframe by which approval of accreditation is anticipated.

(3) The cabinet shall revoke a license if a behavioral health services organization fails to meet one (1) of the following requirements:

(a) Become accredited in accordance with subsection (1)(b) of this section;

(b) Request an extension in accordance with subsection (2) of this section if accreditation has not been obtained within one (1) year of initial licensure; or

(c) Maintain accreditation.

(4) Proof of accreditation shall be provided to the Office of Inspector General upon receiving accreditation and at the time of annual renewal described in Section 2(2) of this administrative regulation.

Section 4. Administration and Operation. (1) Licensee. The licensee shall be legally responsible for:

- (a) The behavioral health services organization;
- (b) The establishment of administrative policy; and
- (c) Ensuring compliance with federal, state, and local laws and regulations pertaining to the operation of the organization.

(2) Executive director. The licensee shall establish lines of authority and designate an executive director who:

(a) May serve in a dual role as the organization's program director described in subsection (5)(a) of this section;

(b) Shall be responsible for the administrative management of the organization, including:

1. The total program of the organization in accordance with the organization's written policies; and

2. Evaluation of the program as it relates to the needs of each client; and

(c) Shall have a master's degree in business administration or a human services field, or a bachelor's degree in a human services field, including:

- 1. Social work;
- 2. Sociology;
- 3. Psychology;
- 4. Guidance and counseling;
- 5. Education;
- 6. Religion;
- 7. Business administration;
- 8. Criminal justice;
- 9. Public administration;
- 10. Child care administration;
- 11. Christian education;
- 12. Divinity;
- 13. Pastoral counseling;

14. Nursing;
15. Public health; or
16. Another human service field related to working with children with ~~serious~~[severe] emotional disabilities or clients with severe mental illness.

(3) An executive director with a master's degree shall have a minimum of two (2) years of prior supervisory experience in a human services program.

(4) An executive director with a bachelor's degree shall have a minimum of two (2) years of prior experience in a human services program plus two (2) years of prior supervisory experience in a human services program.

(5) Personnel. A behavioral health services organization shall employ the following personnel directly or by contract:

(a) A program director who shall be a:

1. Psychiatrist;
2. Physician;
3. Certified or licensed psychologist;
4. Licensed psychological practitioner;
5. Advanced practice registered nurse;
6. Licensed professional clinical counselor;
7. Licensed marriage and family therapist;
8. Licensed professional art therapist;
9. Licensed board certified behavior analyst; or
10. Licensed clinical social worker; and

(b) A sufficient number of personnel to provide behavioral health services, which may include:

1. Behavioral health professionals;
2. Behavioral health professionals under clinical supervision;
3. ~~Targeted~~[Licensed behavior analysts; 4. Licensed assistant behavior analysts; 5.] case managers[as described in subsections (6), (7), and (8) of this section];
- 4.[6.] Peer support specialists; or
- 5.[7.] Certified alcohol and drug counselors; or
- 8.[.] Community support associates.

(6)[A case manager who provides targeted case management services to clients with a substance use disorder shall:

(a) Have a bachelor's degree in a human services field, including:

1. Psychology;
2. Sociology;
3. Social work;
4. Family studies;
5. Human services;
6. Counseling;
7. Nursing; or

8. Another human service degree program related to working with individuals with substance use disorders, mental health disorders, or co-occurring disorders;

(b)1. Have a minimum of one (1) year of full-time employment working directly with adolescents or adults in a human service setting after completion of a bachelor's degree as described in paragraph (a) of this subsection; or

2. Have a master's degree in a human services field as described in paragraph (a) of this subsection;

(c)1. Have successfully completed case management training approved by the Department for Behavioral Health, Developmental and Intellectual Disabilities (DBHDID) in accordance with 908 KAR 2:260 within six (6) months of employment; and

2. Have successfully completed recertification requirements approved by DBHDID in accordance with 908 KAR 2:260 every three (3) years thereafter; and

(d) Be supervised by a behavioral health professional who:

1. Has completed case management training approved by DBHDID in accordance with 908 KAR 2:260; and

2. Has supervisory contact at least two (2) times per month with at least one (1) of the contacts on an individual in person basis.

(7) A case manager who provides targeted case management services to clients with co-occurring mental health or substance use disorders and chronic or complex physical health issues shall:

(a) Have a bachelor's degree in a human services field as described in subsection (6)(a) of this section;

(b)1. After completion of a bachelor's degree, have a minimum of five (5) years of experience providing service coordination or referring clients with complex behavioral health needs and co-occurring disorders or multi-agency involvement to community based services; or

2. After completion of a master's degree in social work, family studies, clinical counseling, psychology, nursing, or another human service degree program related to working with individuals with substance use disorders, mental health disorders, or co-occurring disorders, have a minimum of two (2) years of experience providing service coordination or referring clients with complex behavioral health needs and co-occurring disorders or multi-agency involvement to community based services;

(c)1. Have successfully completed case management training approved by the DBHDID in accordance with 908 KAR 2:260 within six (6) months of employment; and

2. Have successfully completed recertification requirements approved by DBHDID in accordance with 908 KAR 2:260 every three (3) years thereafter; and

(d) For a bachelor's level case manager, be supervised by a behavioral health professional who:

1. Has completed case management training approved by DBHDID in accordance with 908 KAR 2:260; and

2. Has supervisory contact at least three (3) times per month with at least two (2) of the contacts on an individual in person basis.

(8) A case manager who provides targeted case management services to children with a severe emotional disability or clients with a severe mental illness shall:

(a) Have a bachelor's degree in a human services field as described in subsection (6)(a) of this section;

(b)1. Have a minimum of one (1) year of full-time employment working directly with individuals with behavioral health needs after completion of a bachelor's degree in a behavioral science field as described in subsection (6)(a) of this section; or

2. Have a master's degree in a human services field as described in subsection (6)(a) of this section;

(c)1. Have successfully completed case management training approved by DBHDID in accordance with 908 KAR 2:260 within six (6) months of employment; and

2. Have successfully completed recertification requirements approved by DBHDID in accordance with 908 KAR 2:260 every three (3) years thereafter; and

(d) Be supervised by a behavioral health professional who:

1. Has completed case management training approved by DBHDID in accordance with 908 KAR 2:260; and

2. Has supervisory contact at least two (2) times per month with at least one (1) of the contacts on an individual in person basis.

(9) Background checks.

(a) The executive director and all personnel of a behavioral health services organization shall:

1. Have a criminal record check performed upon initial hire through the Administrative Office of the Courts or the Kentucky State Police;[and]

2. Not have a criminal conviction, or plea of guilty, to a:

- a. Sex crime as specified in KRS 17.500;
- b. Violent crime as specified in KRS 439.3401;
- c. Criminal offense against a minor as specified in KRS 17.500;

or

d. Class A felony; and

3. Not be listed on the following:

a. Central registry established by 922 KAR 1:470, if the BHSO provides services to clients under age eighteen (18);

b. Nurse aide or home health aide abuse registry established by 906 KAR 1:100; or

c. Caregiver misconduct registry established by [922 KAR 5:120E and] 922 KAR 5:120.

(b)[A behavioral health services organization may use Kentucky's national background check system established by 906 KAR 1:190 to satisfy the background check requirements of paragraph (a) of this subsection.

(c) A behavioral health services organization shall perform

annual criminal record and registry checks as described in paragraph (a) of this subsection on a random sample of at least twenty-five (25) percent of all personnel.

~~(7)~~~~(40)~~ Policies. The behavioral health services organization shall establish written policies for the administration and operation of the organization which shall be available to all personnel and include:

(a) A description of the organizational structure specifying the responsibility, function, and interrelations of each organizational unit, and the lines of administrative and clinical authority;

(b) The organization's method and procedure for storage, dispensing, and administering a drug or biological agent;

(c) A client grievance procedure as described in subsection ~~(11)~~~~(14)~~ of this section;

(d) The organization's procedure for maintaining the confidentiality of client records in accordance with federal, state, and local statutes and regulations; and

(e) Personnel policy, including:

1. A job description and qualifications for each personnel category;

2. A plan for orientation of personnel to the policies and objectives of the organization and on-the-job training, if necessary; and

3. An annual training program for staff which shall include:

a. Detection and reporting of abuse, neglect, or exploitation;

b. Behavioral management, including de-escalation training;

c. Physical management procedures and techniques; and

d. Emergency and safety procedures.

~~(8)~~~~(14)~~ Personnel record. A personnel record shall be kept on each staff member and shall contain the following items:

(a) Name and address;

(b) Verification of all training and experience, including licensure, certification, registration, or renewals;

(c) Verification of submission to the background check requirements of subsection ~~(6)~~~~(9)~~ of this section;

(d) Annual performance appraisals; and

(e) Employee incident reports.

~~(9)~~~~(12)~~ After hours services.

(a) The behavioral health services organization shall provide, directly or through written agreement with another behavioral health services provider, access to ~~face-to-face~~ emergency services face-to-face or via telehealth twenty-four (24) hours per day, seven (7) days per week.

(b) Emergency services shall include interventions necessary to screen, assess, refer, and treat an individual from the point of the identified emergency or behavioral health crisis to the point of resolution of the emergency or crisis.

~~(10)~~~~(13)~~ Quality assurance and utilization review.

(a) The behavioral health services organization shall have a quality assurance and utilization review program designed to:

1. Enhance treatment and care through the ongoing objective assessment of services provided, including the correction of identified problems; and

2. Provide an effective mechanism for review and evaluation of the service needs of each client.

(b) The need for continuing services shall be evaluated immediately upon a change in a client's service needs or a change in the client's condition to ensure that proper arrangements have been made for:

1. Discharge;

2. Transfer; or

3. Referral to another service provider, if appropriate.

~~(11)~~~~(14)~~ Client grievance policy. The behavioral health services organization shall have written policies and procedures governing client grievances which shall include the following:

(a) Identification of a behavioral health services organization ombudsman;

(b) A process for filing a written client grievance;

(c) An appeals process with time frames for filing and responding to a grievance in writing;

(d) Protection for a client from interference, coercion, discrimination, or reprisal; and

(e) Conspicuous posting of the grievance procedures in a

public area to inform a client of:

1. His or her right to file a grievance;

2. The process for filing a grievance; and

3. The address and telephone number of the behavioral health services organization's and cabinet's ombudsman.

~~Section 5. Services.~~~~[Residential Services for Substance Use Disorders.]~~ ~~(1) If a behavioral health services organization licensed under this administrative regulation provides residential services to clients with a substance use disorder, the organization shall obtain separate licensure as an alcohol and other drug abuse treatment program pursuant to 908 KAR 1:370.~~

~~(2) In addition to meeting the requirements of 908 KAR 1:370 for residential treatment programs, a behavioral health services organization that provides residential services for substance use disorders shall:~~

~~(a) Provide intensive treatment and skills building in a structured and supportive environment;~~

~~(b) Assist the client in abstaining from alcohol or substance use and in entering alcohol or drug addiction recovery;~~

~~(c) Provide services in a twenty-four (24) hour a day, live-in facility that offers a planned and structured regimen of care aimed at treating individuals with addiction or co-occurring mental health and substance use disorders;~~

~~(d) Assist the client in making necessary changes to enable the individual to live drug- or alcohol-free;~~

~~(e) Provide services under the medical direction of a physician; and~~

~~(f) Provide continuous nursing services in which a registered nurse shall be:~~

~~1. On-site during traditional first shift hours, Monday through Friday;~~

~~2. Continuously available by phone after hours; and~~

~~3. On-site as needed in follow-up to telephone consultation after hours.~~

~~Section 6. Services. (1) A behavioral health services organization licensed under this administrative regulation shall obtain separate licensure as an alcohol and other drug abuse treatment program pursuant to 908 KAR 1:370 if the organization provides any of the following outpatient services for the treatment of individuals with a substance use disorder or co-occurring disorder in which substance use disorder is the primary diagnosis:~~

~~(a) Screening;~~

~~(b) Assessment;~~

~~(c) Crisis intervention;~~

~~(d) Mobile crisis services;~~

~~(e) Day treatment;~~

~~(f) Peer support;~~

~~(g) Intensive outpatient program services;~~

~~(h) Individual outpatient therapy;~~

~~(i) Group outpatient therapy;~~

~~(j) Family outpatient therapy;~~

~~(k) Collateral outpatient therapy;~~

~~(l) Screening, brief intervention and referral to treatment; or~~

~~(m) Targeted case management.~~

~~(2) A behavioral health services organization shall provide treatment to meet client needs, including one (1) or more of the following:~~

~~(1)(a) Screening which shall be provided face-to-face or via telehealth by a behavioral health professional or behavioral health professional under clinical supervision, or certified alcohol and drug counselor to determine the:~~

~~(a)[4.] Likelihood that an individual has a mental health, substance use, or co-occurring disorder; and~~

~~(b)[2.] Need for an in-depth assessment;~~

~~(2)(b) Assessment which shall:~~

~~(a)[4.] Be provided face-to-face or via telehealth by a behavioral health professional or behavioral health professional under clinical supervision, licensed behavior analyst, licensed assistant behavior analyst working under the supervision of a licensed behavior analyst, or a certified alcohol and drug counselor who gathers information and engages in a process with~~

the client [–thereby enabling the professional] to:

- 1.[a.] Establish the presence or absence of a mental health[, substance use, or co-occurring] disorder;
- 2.[b.] Determine the client's readiness for change;
- 3.[c.] Identify the client's strengths or problem areas that[which] may affect the treatment and recovery processes; and
- 4.[d.] Engage the client in developing an appropriate treatment relationship;
- (b)[2.] Establish or rule out the existence of a clinical disorder or service need;
- (c)[3.] Include working with the client to develop a plan of care if a clinical disorder or service need is assessed; and
- (d)[4.] Not include psychological or psychiatric evaluations or assessments;
- (3)[(e)] Psychological testing which shall:
 - (a)[1.] Be performed by a licensed psychologist, certified psychologist with autonomous functioning, certified psychologist, licensed psychological associate, or licensed psychological practitioner; and
 - (b)[2.] Include a psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities, and interpretation and written report of testing results;
 - (4)[(d)] Crisis intervention which:
 - (a)[1.] Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to the client or another individual;
 - (b)[2.] Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities;
 - (c)[3.] Shall be provided:
 - 1.[a.] On-site at the behavioral health services organization's facility or office;
 - 2.[b.] As an immediate relief to the presenting problem or threat; and
 - 3.[c.] In a face-to-face, one (1) on one (1) encounter or as a comparable service provided via telehealth;
 - (d)[4.] ~~May include verbal de-escalation, risk assessment, or cognitive therapy~~; 5.] Shall be provided by a:
 - 1.[a.] Behavioral health professional; or
 - 2.[b.] Behavioral health professional under clinical supervision;
 - (e) ~~Certified alcohol and drug counselor~~;
 - (e)[6.] Shall be followed by a referral to noncrisis services, if applicable; and
 - (f)[7.] May include:
 - 1.[a.] Further service prevention planning, including [–(i)] lethal means reduction for suicide risk; or
 - 2.[(ii)] ~~Substance use disorder relapse prevention~~; or b.] Verbal de-escalation, risk assessment, or cognitive therapy;
 - (5)[(e)] Mobile crisis services which shall:
 - (a)[1.] Be available twenty-four (24) hours a day, seven (7) days a week, every day of the year;
 - (b)[2.] Be provided for a duration of less than twenty-four (24) hours;
 - (c)[3.] Not be an overnight service;
 - (d)[4.] Be a multi-disciplinary team based intervention that ensures access to acute mental health[and substance use] services and supports to:
 - 1.[a.] Reduce symptoms or harm; or
 - 2.[b.] Safely transition an individual in an acute crisis to the appropriate, least restrictive level of care;
 - (e)[5.] Involve all services and supports necessary to provide:
 - 1.[a.] Integrated crisis prevention;
 - 2.[b.] Assessment and disposition;
 - 3.[c.] Intervention;
 - 4.[d.] Continuity of care recommendations; and
 - 5.[e.] Follow-up services;
 - (f)[6.] Be provided face-to-face in a home or community setting
 - by[a]:
 1. A[a.] behavioral health professional;
 2. A[b.] behavioral health professional under clinical supervision; or
 3. An adult, family, or youth peer support specialist, as

- appropriate, working under the supervision of a behavioral health professional[e. Certified alcohol and drug counselor]; and
- (g)[7.] Ensure access to a board certified or board-eligible psychiatrist twenty-four (24) hours a day, seven (7) days a week, every day of the year;
 - (6)[(f)] Day treatment which shall:
 - (a)[1.] Be a nonresidential, intensive treatment program designed for children who:
 - 1.[a.] Have a [substance use disorder,] mental health disorder[, or co-occurring disorder];
 - 2.[b.] Are under twenty-one (21) years of age; and
 - 3.[c.] Are at high risk of out-of-home placement due to a behavioral health issue;
 - (b)[2.] Consist of an organized, behavioral health program of treatment and rehabilitative services for[substance use disorder,] mental health disorder[, or a co-occurring disorder];
 - (c)[3.] Have unified policies and procedures that address the organization's philosophy, admission and discharge criteria, admission and discharge process, staff training, and integrated case planning;
 - (d)[4.] Include the following:
 - 1.[a.] Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;
 - 2.[b.] Behavior management and social skill training;
 - 3.[c.] Independent living skills that correlate to the age and development stage of the client; or
 - 4.[d.] Services designed to explore and link with community resources before discharge and to assist the client and family with transition to community services after discharge;
 - (e)[5.] Be provided as follows:
 - 1.[a.] In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);
 - 2.[b.] On school days and during scheduled school breaks;
 - 3.[c.] In coordination with the child's individual educational plan or Section 504 plan if the child has an individual educational plan or Section 504 plan;
 - 4.[d.] By personnel that includes a behavioral health professional, a behavioral health professional under clinical supervision, or a family or youth peer support specialist, as appropriate, and working under the supervision of a behavioral health professional[a certified alcohol and drug counselor or a peer support specialist]; and
 - 5.[e.] According to a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider; and
 - (f)[6.] Not include a therapeutic clinical service that is included in a child's individualized education plan;
 - (7)[(g)] Peer support which shall:
 - (a)[1.] Be provided face-to-face by an adult, family, or youth[a] peer support specialist, as appropriate, working under the supervision of a behavioral health professional;
 - (b)[2.] Be a structured and scheduled nonclinical therapeutic activity with a client or group of clients;
 - (c)[3.] Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills;[and]
 - (d)[4.] Be identified in the client's plan of care developed through a person-centered planning process; and
 - (e) If provided to clients in a group setting, not to exceed eight (8) individuals within any group at a time;
 - (8)[(h)] Intensive outpatient program services which shall:
 - (a)[1.] Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;
 - (b)[2.] Be provided at least:
 1. Three (3) hours per day at least three (3) days per week for adults; or
 2. Six (6) hours per week for adolescents;
 - (c)[3.] Include[the following]:
 - 1.[a.] Individual outpatient therapy, [–b.] group outpatient therapy, or[–c.] family outpatient therapy unless contraindicated;

2.[d.] Crisis intervention; or

3.[e.] Psycho-education that is related to identified goals in the client's treatment plan. If psycho-education is provided, during which the client or client's family member shall be:

a. [(i)] Provided with knowledge regarding the client's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and

b. [(ii)] Taught how to cope with the client's diagnosis or condition in a successful manner;

(e)[4.] Include a treatment plan which shall:

1.[a.] Be individualized; and

2.[b.] Focus on stabilization and transition to a lower level of care;

(f)[5.] Be provided by a behavioral health professional or behavioral health professional under clinical supervision ~~or a certified alcohol and drug counselor~~;

(g)[6.] Include access to a board-certified or board-eligible psychiatrist for consultation;

(h)[7.] Include access to a psychiatrist, other physician, or advanced practice registered nurse for medication prescribing and monitoring; and

(i)[8.] Be provided in a setting with a minimum client-to-staff ratio of ten (10) clients to one (1) staff person;

(9)[(i)] Individual outpatient therapy which shall:

(a)[4.] Be provided to promote the:

1.[a.] Health and wellbeing of the client; and

2. Restoration of a client to his or her best possible functional level;

(b) ~~or b. Recovery from a substance-related disorder;~~

2.] Consist of a:

1.a.[A] Face-to-face, one (1) on one (1) encounter between program staff and with the client; or

b. Telehealth consultation; and

2.[b.-A] Behavioral health therapeutic intervention provided in accordance with the client's plan of care;

(c)[3.] Be aimed at:

1.[a.] Reducing adverse symptoms;

2.[b.] Reducing or eliminating the presenting problem of the client; and

3.[c.] Improving functioning;

(d)[4.] Not exceed three (3) hours per day alone or in combination with any other outpatient therapy unless additional time with the client is medically necessary in accordance with 907 KAR 3:130; and

(e)[5.] Be provided by a behavioral health professional or behavioral health professional under clinical supervision ~~licensed behavior analyst, licensed assistant behavior analyst working under the supervision of a licensed behavior analyst, or a certified alcohol and drug counselor~~;

(10)[(j)] Group outpatient therapy which shall:

(a)[4.] Be provided to promote the:

1.[a.] Health and wellbeing of the client; and

2. Restoration of a client to his or her best possible functional level;

(b) ~~or b. Recovery from a substance-related disorder;~~ 2.] Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the client's plan of care;

(c)[3.] Excluding multi-family group therapy, be provided in a group setting of nonrelated individuals, not to exceed twelve (12) individuals in size. For group outpatient therapy, a nonrelated individual means any individual who is not a spouse, significant other, parent or person with custodial control, child, sibling, stepparent, stepchild, step-brother, step-sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, or grandchild;

(d)[4.] Focus on the psychological needs of the client as evidenced in the client's plan of care;

(e)[5.] Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;

(f)[6.] Not include physical exercise, a recreational activity, an educational activity, or a social activity;

(g)[7.] Not exceed three (3) hours per day alone or in

combination with any other outpatient therapy ~~[per client]~~ unless additional time with the client is medically necessary in accordance with 907 KAR 3:130;

(h)[8.] Ensure that the group has a deliberate focus and defined course of treatment;

(i)[9.] Ensure that the subject of group outpatient therapy is ~~[shall be]~~ related to each client participating in the group; and

(j)[10.] Be provided by a behavioral health professional or behavioral health professional under clinical supervision ~~licensed behavior analyst, licensed assistant behavior analyst working under the supervision of a licensed behavior analyst, or a certified alcohol and drug counselor~~ who shall maintain individual notes regarding each client within the group in the client's record;

(11)[(k)] Family outpatient therapy which shall:

(a)[4.] Consist of a face-to-face behavioral health therapeutic intervention provided face-to-face or via telehealth through scheduled therapeutic visits between the therapist, the client, and at least one (1) member of the client's family;

(b)[2.] Address issues interfering with the relational functioning of the family;

(c)[3.] Seek to improve interpersonal relationships within the client's home environment;

(d)[4.] Be provided to promote the health and wellbeing of the client, including restoration of a client to his or her best possible functional level ~~[or recovery from a substance use disorder]~~;

(e)[5.] Not exceed three (3) hours per day alone or in combination with any other outpatient therapy ~~[per client]~~ unless additional time with the client is medically necessary in accordance with 907 KAR 3:130; and

(f)[6.] Be provided by a behavioral health professional or behavioral health professional under clinical supervision ~~or a certified alcohol and drug counselor~~;

(12)[(l)] Collateral outpatient therapy which shall consist of a face-to-face or telehealth ~~behavioral health~~ consultation:

(a)[4.] With a parent, caregiver, or person who has custodial control of a client under the age of twenty-one (21), household member, legal representative, school personnel, or treating professional;

(b)[2.] Provided by a behavioral health professional or behavioral health professional under clinical supervision ~~licensed behavior analyst, licensed assistant behavior analyst working under the supervision of a licensed behavior analyst, or a certified alcohol and drug counselor~~; and

(c)[3.] Provided upon the written consent of a parent, caregiver, or person who has custodial control of a client under the age of twenty-one (21). Documentation of written consent shall be signed and maintained in the client's record;

(13)[(m)] Service planning which shall be provided face-to-face by a behavioral health professional or behavioral health professional under clinical supervision, either of which shall be of the client's choosing ~~licensed behavior analyst, or licensed assistant behavior analyst working under the supervision of a licensed behavior analyst~~ to:

(a)[4.] Assist ~~the~~ a client in creating an individualized plan for services and developing measurable goals and objectives needed for maximum reduction of the effects of a mental health disorder;

(b)[2.] Restore the a client's functional level to the client's best possible functional level; and

(c)[3.] Develop a service plan which:

1.[a.] Shall be directed and signed by the client; and

2.[b.] May include:

a. [(i)] A mental health advance directive being filed with a local hospital;

b. [(ii)] A crisis plan; or

c. [(iii)] A relapse prevention strategy or plan;

(14)[(n)] Residential services for substance use disorders as described in Section 5 of this administrative regulation;

(o) Screening, brief intervention and referral to treatment for substance use disorders which shall:

1. Be an evidence-based early intervention approach for an individual with non-dependent substance use prior to the need for more extensive or specialized treatment;

2. Consist of:

~~a. Using a standardized screening tool to assess the individual for risky substance use behavior;~~
~~b. Engaging a client who demonstrates risky substance use behavior in a short conversation, providing feedback and advice;~~
~~c. Referring the client to therapy or other services that address substance use if the client is determined to need additional services; and~~
~~3. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, or a certified alcohol and drug counselor;~~
~~(p.) Assertive community treatment for mental health disorders which shall:~~
~~(a)[1-] Include assessment, treatment planning, case management, psychiatric services, [medication prescribing and monitoring,] individual, family, or [and] group therapy, peer support, mobile crisis services, crisis intervention, mental health consultation with other treating professionals who may have information for the purpose of treatment planning and service delivery, family support to improve family relations to reduce conflict and increase the client's autonomy and independent functioning, or [and] basic living skills focused on teaching activities of daily living necessary to maintain independent functioning and community living;~~
~~(b)[2-] Be provided face-to-face by a multidisciplinary team of at least four (4) professionals, including a [psychiatrist,] nurse, case manager, peer support specialist, and any other behavioral health professional or behavioral health professional under clinical supervision; and~~
~~(c)[3-] Have adequate staffing to ensure that no caseload size exceeds ten (10) participants per team member;~~
~~(15)(f) Comprehensive community support services which shall:~~
~~a)[1-] Consist of activities needed to allow an individual with a mental health disorder to live with maximum independence in the community through the use of skills training as identified in the client's treatment plan;~~
~~(b)[2-] Consist of using a variety of psychiatric rehabilitation techniques to:~~
~~1.[a-] Improve daily living skills;~~
~~2.[b-] Improve self-monitoring of symptoms and side effects;~~
~~3.[c-] Improve emotional regulation skills;~~
~~4.[d-] Improve crisis coping skills; and~~
~~5.[e-] Develop and enhance interpersonal skills; and~~
~~(c)[3-] Be provided face-to-face by a:~~
~~1.[a-] Behavioral health professional;~~
~~2.[b-] Behavioral health professional under clinical supervision;~~
~~3.[c-] Community support associate under the supervision of a behavioral health professional; or~~
~~4. Licensed assistant behavioral analyst under the supervision of a licensed behavioral analyst;~~
~~(16)(d. Licensed behavior analyst; or~~
~~e. Licensed assistant behavior analyst working under the supervision of a licensed behavior analyst;~~
~~(f) Therapeutic rehabilitation program for an adult with a severe mental illness or child with a serious [severe] emotional disability which shall:~~
~~(a)[1-] Include face-to-face services designed to maximize the reduction of mental illness or emotional disability and restoration of the client's functional level to the individual's best possible functioning;~~
~~(b) Require the client to be responsible for establishing his or her [2-] Establish the client's] own rehabilitative goals within the person-centered plan of care;~~
~~(c)[3-] Be delivered using a variety of psychiatric rehabilitation techniques focused on:~~
~~1.[a-] Improving daily living skills;~~
~~2.[b-] Self-monitoring of symptoms and side effects;~~
~~3.[c-] Emotional regulation skills;~~
~~4.[d-] Crisis coping skills; and~~
~~5.[e-] Interpersonal skills; and~~
~~(d)[4-] Be provided individually or in a group by a:~~
~~1.[a-] Behavioral health professional, except for a licensed behavioral analyst;~~

~~2.[b-] Behavioral health professional under clinical supervision, except for a licensed assistant behavioral analyst; or~~
~~3.[c-] Peer support specialist under the supervision of a behavioral health professional;~~
~~(17)(e)-(s) Targeted case management services which shall:~~
~~(a)[1-] Include services to [one (1) or more of the following target groups]:~~
~~1.[a-] An adult or a child with substance use disorder; b. An adult or child with co-occurring mental health or substance use disorder and chronic or complex physical health issues; c.] A child with a serious [severe] emotional disability; or~~
~~2.[d-] An adult with severe mental illness;~~
~~(b)[2-] Be provided by a targeted case manager [as described in Section 4(6), (7), or (8) of this administrative regulation]; and~~
~~(c)[3-] Include the following assistance:~~
~~1.[a-] Comprehensive assessment and reassessment of client needs to determine the need for medical, educational, social, or other services. The reassessment shall be conducted annually or more often if needed based on changes in the client's condition;~~
~~2.[b-] Development of a specific care plan which shall be based on information collected during the assessment and revised if needed upon reassessment;~~
~~3.[c-] Referral and related activities, which may include:~~
~~a.[(i)] Scheduling appointments for the client to help the individual obtain needed services; or~~
~~b.[(ii)] Activities that help link the client with medical, social, educational providers, or other programs and services which address identified needs and achieve goals specified in the care plan; and~~
~~4.[d-] Monitoring which shall be face-to-face and occur no less than once every three (3) months to determine that:~~
~~a.[(i)] Services are furnished according to the client's care plan;~~
~~b.[(ii)] Services in the care plan are adequate; and~~
~~c.[(iii)] Changes in the needs or status of the client are reflected in the care plan; and~~
~~5.[e-] Contacts with the client, family members, service providers, or others are conducted as frequently as needed to help the client:~~
~~a.[(i)] Access services;~~
~~b.[(ii)] Identify needs and supports to assist the client in obtaining services; and~~
~~c.[(iii)] Identify changes in the client's needs; or~~
~~(18) Partial hospitalization which:~~
~~(a) Shall be short-term, with an average of four (4) to six (6) weeks;~~
~~(b) Shall be an intensive treatment program for an individual who is experiencing significant impairment to daily functioning due to a mental health disorder;~~
~~(c) May be provided to an adult or a minor;~~
~~(d) Shall be based on an inability of community-based therapies or intensive outpatient services to adequately treat the client;~~
~~(e) Shall consist of:~~
~~1. Individual outpatient therapy;~~
~~2. Group outpatient therapy;~~
~~3. Family outpatient therapy; or~~
~~4. Medication management;~~
~~(f) If provided to minors, shall include an agreement with the local educational authority including those provided through 20 U.S.C. 1400 et seq. or 29 U.S.C. 701 et seq.;~~
~~(g) Shall be provided for at least five (5) hours per day, four (4) days per week, and focused on one (1) primary presenting problem;~~
~~(h) Shall include the following personnel for the purpose of providing medical care, if necessary:~~
~~1. An on-site advanced practice registered nurse, physician assistant, or physician; and~~
~~2. A board-certified or board-eligible psychiatrist available for consultation; and~~
~~(i) Shall provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles. (3) Excluding methadone-based treatment which is restricted to regulation under 908 KAR 1:340, a behavioral health services~~

organization may employ or have an affiliation with a physician or physicians who prescribe FDA-approved drugs for the treatment of opioid addiction in adult patients. The behavioral health services organization shall comply with the following requirements:

(a) Ensure that the physician documents in the patient's record whether the patient is compliant with prescribed dosing as evidenced by the results of:

1. A KASPER report released to the physician pursuant to KRS 218A.202(6)(c); and

2. Drug testing;

(b) Offer individual and group outpatient therapy as a service and document monitoring of compliance with recommended non-medication therapies even if the therapies are provided in another behavioral health setting; and

(c) Ensure that the physician complies with the prescribing and dispensing standards in 201 KAR 9:270 for FDA-approved drugs used for the treatment of opioid addiction.

(4) A narcotic treatment program (NTP) licensed under 908 KAR 1:340 may obtain licensure as a behavioral health services organization if the NTP employs or has an affiliation with a physician or physicians who prescribe FDA-approved drugs other than methadone for the treatment of opioid addiction in adult patients.]

Section 6.[7.] Plan of Care. (1) Each client receiving direct treatment from a behavioral health services organization shall have an individual plan of care signed by a behavioral health professional.

(2) A plan of care shall:

(a) Describe the services to be provided to the client, including the frequency of services;

(b) Contain measurable goals for the client to achieve, including the expected date of achievement for each goal;

(c) Describe the client's functional abilities and limitations, or diagnosis listed in the current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders;

(d) Specify each staff member assigned to work with the client;

(e) Identify methods of involving the client's family or significant others if indicated;

(f) Specify criteria to be met for termination of treatment;

(g) Include any referrals necessary for services not provided directly by the behavioral health services organization; and

(h) The date scheduled for review of the plan.

(3) The client shall participate to the maximum extent feasible in the development of his or her plan of care, and the participation shall be documented in the client's record.

(4)(a) The initial plan of care shall be developed through multidisciplinary team conferences as clinically indicated and at least thirty (30) days following the first ten (10) days of treatment.

(b)1. The plan of care for individuals receiving[~~residential services for substance use disorder or~~ intensive outpatient program services or partial hospitalization] shall be reviewed every thirty (30) days thereafter and updated every sixty (60) days or earlier if clinically indicated.

2. The plan of care for individuals receiving any other outpatient service[services,] as described by Section 5[~~in Section 6(2)(a) through (g) and (i) through (e)~~] of this administrative regulation[.] shall be reviewed and updated every six (6) months thereafter or earlier if clinically indicated.

(c) The plan of care and each review and update shall be signed by the participants in the multidisciplinary team conference that developed it.

(5) A medical service, including a change of medication, a diet restriction, or a restriction on physical activity shall be ordered by a physician or other ordering practitioner acting within the limits of his or her statutory scope of practice.

Section 7.[8.] Client Records. (1) A client record shall be maintained for each individual receiving services.

(2) Each entry shall be current, dated, signed, and indexed according to the service received.

(3) Each client record shall contain:

(a) An identification sheet, including the client's name, address,

age, gender, marital status, expected source of payment, and referral source;

(b) Information on the purpose for seeking a service;

(c) If applicable, consent of appropriate family members or guardians for admission, evaluation, and treatment;

(d) Screening information pertaining to the mental health[or substance use] disorder;

(e) If applicable, a psychosocial history;

(f) If applicable, staff notes on services provided;

(g) If applicable, the client's plan of care;

(h) If applicable, disposition;

(i) If applicable, assigned status;

(j) If applicable, assigned therapists; and

(k) If applicable, a termination study recapitulating findings and events during treatment, clinical impressions, and condition on termination.

(4) Ownership.

(a) Client records shall be the property of the organization.

(b) The original client record shall not be removed from the organization except by court order or subpoena.

(c) Copies of a client record or portions of the record may be used and disclosed. Use and disclosure shall be as established by subsection (6) of this section.

(5) Retention of records. After a client's death or discharge, the completed client record shall be placed in an inactive file and:

(a) Retained for six (6) years; or

(b) If a minor, three (3) years after the client reaches the age of majority under state law, whichever is the longest.

(6) Confidentiality and Security: Use and Disclosure.

(a) The organization shall maintain the confidentiality and security of client records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 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, including 42 U.S.C. 290 ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2].~~

(b) The organization may use and disclose client records. Use and disclosure shall be as established or required by [~~4.]~~ HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164 [~~or 2. 42 U.S.C. 290 ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2].~~

(c) A behavioral health services organization 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[~~or 42 U.S.C. 290 ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2].~~

Section 8.[9.] Client Rights. (1) A behavioral health services organization shall have written policies and procedures to ensure that the rights of a client are protected while receiving one (1) or more services as described in Section 5[6] of this administrative regulation.

(2) A behavioral health services organization shall have written policies and procedures governing client grievances pursuant to Section 4(11)[(14)] of this administrative regulation.

(3) A client shall not be unlawfully discriminated against in determining eligibility for a service.

(4) During a behavioral health services organization's intake procedures, a client shall sign a statement which specifies that the client has the right to:

(a) Give informed consent to receive a service.

1. An adult shall sign an informed consent to receive a service.

2. A parent, caregiver, or person who has custodial control of a child shall sign an informed consent for the child to receive a service;

(b) Have input into his or her plan of care and be informed of the plan's content;

(c) Receive individualized treatment;

(d) File a grievance, recommendation, or opinion regarding the services the client receives;

(e) Give informed written consent regarding participation in a

research study with the exception of a child whose parent or guardian shall give informed written consent;

(f) Confidentiality according to Section 7(6) of this administrative regulation;

(g) Request a written statement of the charge for a service and be informed of the policy for the assessment and payment of fees;

(h) Be informed of the rules of client conduct and responsibilities ~~[, including the consequences for the use of alcohol and other drugs or other infractions that may result in disciplinary action or discharge];~~

(i) Be treated with consideration, respect, and personal dignity;

(j) Review his or her client record in accordance with the organization's policy; and

(k) Receive one (1) free copy of his or her client record.

(5) The statement of client rights as described in subsection (4) of this section shall be:

(a) Provided to the client;

(b) If the client is a minor or incapacitated, provided to the client's parent, guardian, or other legal representative in addition to the client; and

(c) Read to the client or client's parent, guardian, or other legal representative if requested or if either cannot read.

~~(6) A program providing twenty-four (24) hour care shall also specify on the client rights statement that a client has the right to:~~

~~(a) Vote in a political election; and~~

~~(b) Reasonable accommodations to afford privacy in bathing and toileting.~~

(7) If a client is restricted from exercising a client right because it is contraindicated by the client's physical or mental condition, there shall be documentation in the client record of the reason for the restriction and of the explanation given to the client.

Section 9.~~[40.]~~ Physical Environment. (1) Accessibility. A behavioral health services organization shall meet requirements for making buildings and facilities accessible to and usable by individuals with physical disabilities pursuant to KRS 198B.260 and 815 KAR 7:120.

(2) Fire safety. A behavioral health services organization shall be approved by the State Fire Marshal's office prior to initial licensure or if an organization changes location.

(3) Physical location and overall environment.

(a) A behavioral health services organization shall:

1. Comply with building codes, ordinances, and administrative regulations that~~[which]~~ are enforced by city, county, or state jurisdictions;

2. Display a sign that can be viewed by the public that contains the facility name, hours of operation, and a street address;

3. Have a publicly listed telephone number and a dedicated phone number to send and receive faxes with a fax machine that shall be operational twenty-four (24) hours per day;

4. Have a reception and waiting area;

5. Provide a restroom; and

6. Have an administrative area.

(b) The condition of the physical location and the overall environment shall be maintained in such a manner that the safety and well-being of clients, personnel, and visitors are assured.

(4) Prior to occupancy, the facility shall have final approval from appropriate agencies.

Section 10.~~[41.]~~ License Procedures. The behavioral health services organization shall be subject to the provisions of 902 KAR 20:008, Sections 1, 2, 5, 6, and 7.

Section 11.~~[42.]~~ Denial and Revocation. (1) The cabinet shall deny an Application for License to Operate a Behavioral Health Services Organization if:

(a) Any person with ownership interest in the organization has had previous ownership interest in a health care facility that had its license revoked or voluntarily relinquished its license as the result of an investigation or pending disciplinary action;

(b) Any person with ownership interest in the organization has been discontinued from participation in the Medicaid Program due to fraud or abuse of the program; or

(c) The applicant fails after the initial inspection to submit an acceptable plan of correction or fails to submit an acceptable amended plan of correction within the timeframes required by 902 KAR 20:008, Section 2~~(13)~~~~[(5)]~~.

(2) The cabinet shall revoke a license if it finds that:

(a) In accordance with KRS 216B.105(2), there has been a substantial failure by the behavioral health services organization to comply with the provisions of this administrative regulation;

(b) The behavioral health services organization fails to submit an acceptable plan of correction or fails to submit an acceptable amended plan of correction within the timeframes required by 902 KAR 20:008, Section 2~~(13)~~~~[(5)]~~; or

~~(c) [The behavioral health services organization fails to comply with the requirements of Section 6(3) of this administrative regulation if the organization employs or has an affiliation with a physician or physicians who prescribe FDA-approved drugs, excluding methadone, to adults for the treatment of opioid addiction; or~~

~~(d)]~~ The behavioral health services organization is terminated from participation in the Medicaid Program pursuant to 907 KAR 1:671.

(3) The denial or revocation of a behavioral health services organization's license shall be mailed to the applicant or licensee, by certified mail, return receipt requested, or by personal service. Notice of the denial or revocation shall set forth the particular reasons for the action.

(4) The denial or revocation shall become final and conclusive thirty (30) days after notice is given, unless the applicant or licensee, within the thirty (30) day period, files a request in writing for a hearing with the cabinet.

(5) Urgent action to suspend a license.

(a) The cabinet shall take urgent action to suspend a behavioral health services organization's license if the cabinet has probable cause to believe that~~[(1)]~~ the continued operation of the organization would constitute an immediate danger to the health, welfare, or safety of its patients~~[(2)]~~ or 2. A physician employed by or affiliated with the organization may be engaged in the improper or inappropriate prescribing or dispensing of an FDA-approved drug for the treatment of opioid addiction].

(b)1. The behavioral health services organization shall be served with notice of the hearing on the urgent suspension to be held no sooner than twenty (20) days from the delivery of the notice.

2. Notice of the urgent suspension shall set forth the particular reasons for the action.~~[(c)]~~ If the cabinet issues an urgent suspension of the behavioral health services organization's license pursuant to paragraph (a)2 of this subsection, the cabinet shall refer the physician to the Kentucky Board of Medical Licensure and appropriate law enforcement agency.]

(6) Notice of a hearing on an urgent suspension shall be served on the behavioral health services organization by certified mail, return receipt requested, or by personal service.

(7)(a) Within five (5) working days of completion of the hearing, the cabinet's hearing officer shall render a written decision affirming, modifying, or revoking the urgent suspension.

(b) The urgent suspension shall be affirmed if there is substantial evidence of an immediate danger to the public health, safety, or welfare.

(8) The decision rendered under subsection (7) of this section shall be a final order of the agency on the matter, and any party aggrieved by the decision may appeal to circuit court.

(9) If the cabinet issues an urgent suspension, the cabinet shall take action to revoke the behavioral health services organization's license pursuant to subsection (3) of this section if:

(a) The organization fails to attend the expedited hearing; or

(b) The decision rendered under subsection (7) of this section affirms that there is substantial evidence of an immediate danger to the public health, safety, or welfare ~~[(c)]~~ or

~~(c) Referral to the Kentucky Board of Medical Licensure and law enforcement agency in accordance with subsection (5)(c) of this section results in an administrative sanction or criminal conviction against a physician employed by or affiliated with the organization].~~

(10) Pursuant to KRS 216B.050, the cabinet may compel obedience to its lawful orders.

Section 13. Incorporation by Reference. (1) The OIG 20:430, "Application for License to Operate a Behavioral Health Services Organization", July 2019[October 2014] edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN D. DAVIS, Inspector General

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 27, 2019

FILED WITH LRC: June 28, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 26, 2019, 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 August 19, 2019, 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 August 31, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. In accordance with 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: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone: 502-564-6746; fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Stephanie Brammer-Barnes, email: stephanie.brammer@ky.gov, phone: 502-564-2888; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes minimum licensure requirements for the operation of behavioral health services organizations (BHSO) for mental health treatment. The BHSO licensure category was originally created via emergency administrative regulation on July 15, 2014, to enhance access to behavioral health services and address the Kentucky Medicaid Program's efforts to expand the behavioral health network.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the minimum requirements for the licensure of BHSOs that provide services to treat, support, and encourage individuals with mental health disorder to achieve and maintain the highest possible level of health and self-sufficiency.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing standards for licensed BHSOs for mental health treatment.

(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 filed concurrently with the Department for Medicaid Services' behavioral health services regulation, 907 KAR 15:020. Changes to this administrative regulation, 902 KAR 20:430, are as follows: Adds clarifying language to the title of this administrative regulation that aligns with the title of 907 KAR 15:020, thereby emphasizing that this licensure level will be for the treatment of mental health disorder only; Deletes the definition of "peer support specialist" and adds definitions for "adult peer support specialist", "family peer support specialist", and "youth peer support specialist" to Section 1; Adds definitions for "targeted case manager" and "telehealth" to Section 1; Moves "licensed behavioral analyst" under the definition of "behavioral health professional"; Moves "licensed assistant behavioral analyst" under the definition of "behavioral health professional under clinical supervision"; Deletes "certified alcohol and drug counselor" and "substance use disorder" from Section 1 and removes references to these terms throughout the body of this administrative regulation; Amends Section 4 to delete unnecessarily duplicative language related to case managers because the training requirements and qualifications for targeted case managers are established in 908 KAR 2:260; Removes language allowing BHSOs to use the Kentucky National Background Check Program (NBCP) to satisfy the State-level criminal record check requirements. Use of the NBCP was originally included in this administrative regulation by error, prior to receiving additional information from the Federal Bureau of Investigation which clarified that the Kentucky State Police relies upon a federal statute, Section 6201 of the Affordable Care Act, for the submission of fingerprints to the FBI for direct patient access employees in voluntarily participating long-term care settings. Because BHSOs are not included in the statutory definition of a "long-term care facility" or otherwise covered under Section 6201 of the ACA, BHSOs cannot voluntarily participate in the NBCP; Allows for after-hours services to be provided via telehealth; Removes the requirement for a BHSO to be separately licensed as an alcohol and other drug treatment entity (AODE) if the BHSO provides residential or outpatient services to clients with substance use disorder (SUD) or a co-occurring disorder in which SUD is the primary diagnosis. This change aligns with efforts to streamline the licensure process and improve the AODE regulations pursuant to the passage of HB 124 from the 2018 legislative session. Therefore, all requirements related to treatment of SUD have been deleted from this administrative regulation as such is covered under 908 KAR Chapter 1; Allows for screening, assessment, crisis intervention, individual outpatient therapy, family outpatient therapy, and collateral outpatient therapy to be provided via telehealth; Adds partial hospitalization as a service that a BHSO for mental health treatment may provide; and Makes technical changes for clarity.

(b) The necessity of the amendment to this administrative regulation: The passage of HB 124 from the 2018 legislative session required the Cabinet to conduct a comprehensive review of all current state licensure and quality standards applicable to SUD treatment programs as well as develop enhanced standards for treatment and recovery services. Therefore, in addition to the Cabinet's efforts to enhance the AODE standards under 908 KAR Chapter 1, this amendment seeks to streamline the licensure process for greater efficiency by eliminating the requirement for AODE programs to be separately licensed as a BHSO for purposes of Medicaid enrollment. Eliminating the dual licensure requirement will have the effect of transforming the BHSO licensure category so that BHSO services will be for the treatment of mental health disorder only. SUD treatment programs are subject to AODE licensure standards established under 908 KAR Chapter 1 and will be allowed to enroll in Medicaid under the appropriate tier.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216B.042 by establishing standards for licensed behavioral health services organizations for mental health treatment.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the

effective administration of the statutes by establishing standards for licensed behavioral health services organizations for mental health treatment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts licensed behavioral health services organizations. A directory of all currently licensed BHSO programs may be downloaded from the following link: <https://chfs.ky.gov/agencies/os/oig/dhc/Pages/hcf.aspx>.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities interested in applying for licensure as a BHSO for mental health treatment will be required to comply with the standards established by this administrative regulation, including: State Fire Marshall approval of the facility's location prior to initial licensure or a change of location; Accreditation within one (1) year of initial licensure, unless an extension is granted; Implementation of administrative and personnel policies as well as policies that ensure that the rights of clients are protected; Compliance with federal, state, and local laws and administrative regulations pertaining to the operation of the organization; Designation of an executive director who may also serve as the organization's program director if the individual is a behavioral health professional as defined by Section 1 of this administrative regulation; Employment of a sufficient number of personnel to provide behavioral health services; Compliance with abuse registry and criminal background check requirements; Implementation of a process for quality assurance and utilization review; Client records; Implementation of a process for responding to client grievances; and The delivery of one (1) or more of the following outpatient behavioral health services: Screening; Assessment; Psychological testing; Crisis intervention; Mobile crisis services; Day treatment; Peer support; Intensive outpatient program (IOP); Individual outpatient therapy; Group outpatient therapy; Family outpatient therapy; Collateral outpatient therapy; Service planning; Assertive community treatment; Comprehensive community support services; Therapeutic rehabilitation for adults with severe mental illness or children with serious emotional disabilities; Targeted case management services; or Partial hospitalization.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensed behavioral health services organizations may enroll in the Kentucky Medicaid Program for reimbursement of covered behavioral health services provided to Medicaid recipients in need of mental health treatment.

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

(a) Initially: There are no additional costs to the cabinet for implementation of this administrative regulation.

(b) On a continuing basis: There are no additional costs to the cabinet for implementation of this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of this administrative regulation is from licensure fees collected from behavioral health services organizations and state general funds.

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

(8) State whether or not this administrative regulation

established any fees or directly or indirectly increased any fees: This amendment does not increase licensure fees.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts licensed behavioral health services organizations and the Cabinet for Health and Family Services, Office of Inspector General.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042(1)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any additional 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 amendment will not generate any additional revenue.

(c) How much will it cost to administer this program for the first year? This amendment imposes no additional costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This amendment imposes no additional costs on the administrative body.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320d-2 - 1320d-8

2. State compliance standards. KRS 216B.042

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 160, 164, and 42 U.S.C. 1320d-2 – 1320d-8 establish the HIPAA privacy rules to protect individuals' medical records and other personal health information.

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 requirements that are more strict than federal laws or regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Prevention and Quality Improvement (Amendment)

902 KAR 21:020. Kentucky Colon Cancer Screening Program.

RELATES TO: KRS 205.520, [214.090(3),—214.180(1),] 214.540, 214.542, 214.543, 304.17A-257, 42 U.S.C. 9902(2)[-214.544, Chapter 304.17A]

STATUTORY AUTHORITY: KRS 194A.050(1), 214.542(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 214.542(6) requires the Department for Public Health~~[cabinet]~~ to promulgate administrative regulations to implement the Kentucky Colon Cancer Screening Program. This administrative regulation establishes the eligibility criteria, services, and requirements for participation in the colon cancer screening program.

Section 1. Definitions. (1) "Applicant" means an individual desiring services paid in part by the screening program.

(2) "Contractor" means a person or facility that agrees to the terms of participation of the screening program in contract and ensures services are delivered pursuant to the screening program terms.

(3) "Department" is defined by KRS 214.540(1)(a).

(4) "Program" is defined by KRS 214.540(1)(b)~~[means the Department for Public Health or its designated representative.~~

(4) "~~Screening program~~" means the ~~Kentucky Colon Cancer Screening Program administered by the department~~].

Section 2. Eligibility Criteria. (1) In order to receive a service established in Section 3 of this administrative regulation, an applicant shall:

(a) Meet the eligibility for screening pursuant to American Cancer Society Colorectal Cancer Screening Guidelines;

(b) Be a legal resident of Kentucky;

(c) Have an individual income at or below 300 percent of the federal poverty level, established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2); and

(d) If covered by health insurance, have an out-of-pocket maximum that is five (5) percent or more of the individual's annual income.

(2) A service received without prior authorization from the screening program ~~shall~~~~[is not eligible to]~~ be covered.

Section 3. Services. If funding is available, the services to be paid in part by the~~[screening]~~ program shall include colon cancer screening tests and may include:

(1) Referral, examination, and rescreening for individuals for whom further examination or treatment is indicated by the colon cancer screening;

(2) Surveillance; and

(3) Treatment.

Section 4. Contractor Responsibility. A contractor shall:

(1) Complete a KCCSP 101~~[form]~~, Kentucky Colon Cancer Screening Program Eligibility and Enrollment, with the applicant;

(2) Review the completed KCCSP 102~~[form]~~, Kentucky Colon Cancer Screening Program Affidavit;

(3) Determine applicant eligibility pursuant to Section 2 of this administrative regulation;

(4) If the applicant is eligible, provide service or referral for service; and

(5) Report program data into the data collection system pursuant to Section 5 of this administrative regulation.

Section 5. Fees. (1) A nominal fee up to five (5) dollars may be charged for colon cancer screening services as specified by the Department for Public Health.

(2) A contractor shall have approval of the department before charging an applicant fee.

Section 6. Data Collection System. The contractor shall submit to the department:

(1) The total number of colon cancer screening services specified in Section 3 conducted; and

(2) The applicant demographic information as documented on the KCCSP 101 form~~[The department shall establish a data collection system in accordance with KRS 214.542(5)].~~

Section 7[6]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form~~[]~~KCCSP 101, "Kentucky Colon Cancer Screening Program Eligibility and Enrollment", 11/2018~~[2/2017]~~; and

(b) Form~~[]~~KCCSP 102, "Kentucky Colon Cancer Screening Program Affidavit", 11/2018~~[2/2017]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

JEFFREY D. HOWARD, JR., M.D., Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 27, 2019

FILED WITH LRC: July 11, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 26, 2019, 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 August 19, 2019, 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 August 31, 2019. 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: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; Phone: 502-564-6746; Fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Julie Brooks, (502) 564-3970, julied.brooks@ky.gov; or Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the eligibility criteria, services, and requirements for participation in the colon cancer screening program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the Colon Cancer Screening Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 214.540 establishes the colon cancer screening program and KRS 214.542 requires the department to promulgate administrative regulations for the implementation of the colon cancer screening program including eligibility criteria and data collection methodology.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the process for enrolling individuals in the colon cancer screening program and provides the data collection information necessary to monitor the number of individuals screened, including demographic information, the types of screening tests performed, examinations, surveillance, treatments, and rescreening services.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation updates the material incorporated by reference. The previous target age to start colon cancer screening was fifty (50). It is now

recommended the target age to start colon cancer screening be lowered to forty-five (45) when a person is shown to be at an increased or high risk for colon cancer.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure providers enrolling in the Colon Cancer Screening Program are using the most up to date version of the Kentucky Colon Cancer Screening Program Eligibility and Enrollment form (KCCSP 101).

(c) How the amendment conforms to the content of the authorizing statutes: KRS 214.542(6) requires the department to collect data regarding the colon cancer screening program. The updated version of the KCCSP 101 allows for accurate and up to date data collection.

(d) How the amendment will assist in the effective administration of the statutes: By updating the KCCSP 101 to reflect current recommendations for colon cancer screening, this amendment will assist the cabinet in ensuring all data collected conforms to the requirements of KRS 214.542(6).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Uninsured or underinsured individuals age 45 to 50 who are identified as being at increased or high risk for colon cancer will be impacted by this administrative regulation. Currently enrolled healthcare providers, and those seeking enrollment will also be impacted by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: Enrolled healthcare providers will need to be aware of the changes to the KCCSP 101 form to ensure they are using the most up to date version. In addition, they will need to be aware that individuals who are age 45 to 50 who and are identified to be at an increased or high risk for colon cancer can now be enrolled in the screening program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): Participation in the colon cancer screening program is voluntary. Costs are variable and depend upon number of enrolled healthcare providers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Kentucky Colon Cancer Screening Program works to increase the number of colon cancer screenings. Increased screenings can lead to lowered morbidity and mortality from colon cancer, and reduce the costs associated with colon cancer treatments.

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

(a) Initially: This is an ongoing program. The legislature awarded a total of \$500,000 for FY '19 and another \$500,000 for FY '20. Those funds are used to contract with medical providers who can offer the low or no cost screening colonoscopy.

(b) On a continuing basis: Continued funding in the amount of \$500,000 will be needed to sustain the low or no cost colon cancer screening program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general fund dollars and any funding received from public or private awards are used to fund this program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: An increase in fees is not necessary to implement this administrative regulation. Continued funding in the amount of \$500,000 is necessary to continue operating the colon cancer screening program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. A nominal fee not to exceed five (5) dollars is established in this administrative regulation. A contractor shall have approval from the department before charging an applicant a fee.

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation is applicable to all healthcare providers enrolled in the Kentucky Colon Cancer Screening Program and individuals meeting the eligibility requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Colon Cancer Screening Program within the Department for Public Health 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, KRS 214.540, and KRS 214.542.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation does not generate revenue.

(c) How much will it cost to administer this program for the first year? A total of \$1 Million was awarded by the legislature for fiscal years 2019 and 2020. Continued yearly funding in the amount of \$500,000 is needed to sustain this program.

(d) How much will it cost to administer this program for subsequent years? Continued funding in the amount of \$500,000 is needed to sustain this 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 Public Health Division of Public Health Protection and Safety (Amendment)

902 KAR 50:005.[Grade-A] Milk Advisory Committee.

RELATES TO: KRS 217C.010[~~217C.990~~]
STATUTORY AUTHORITY: KRS 194.050(1),
217C.070(2)[~~214.090~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet.~~[The Secretary for Human Resources is directed by] KRS 217C.070 requires the secretary to appoint a~~[Grade-A] Milk Advisory Committee and requires the procedures for selection of advisory nominees to be in accordance with the administrative regulations of the secretary. This administrative regulation establishes procedures for the selection of nominees for appointment to the~~[Grade-A]~~ Milk Advisory Committee~~[in accordance with KRS 217C.070].~~

Section 1. Procedure for the Selection of Nominees. The secretary shall appoint~~[to the Grade A Milk Advisory Committee. The procedure for the selection of nominees for appointment by the Secretary for Human Resources to the Grade A Milk Advisory Committee shall be as follows:]~~

(1)~~[The secretary shall appoint]~~ Three (3) processors or representatives thereof, from nominations received from:
(a) An~~[Any]~~ organization representing~~[Grade-A]~~ processors

in Kentucky, which may nominate two (2) candidates for each of the three (3) positions; or

(b) ~~An[. In addition, any]~~ individual~~[Grade A]~~ processor, who may submit his or her own name for consideration for appointment;~~[.]~~

(2)~~[The secretary shall appoint]~~ Three (3) producers or representatives thereof, from nominations received from:

(a) ~~An[. Any]~~ organization representing~~[Grade A]~~ milk producers in Kentucky, which may nominate two (2) candidates for each position; or

(b) ~~An[. In addition, any]~~ individual~~[Grade A]~~ milk producer, who may submit his or her own name for consideration for appointment; and

(3)~~[. The secretary shall appoint]~~ Two (2) citizens at large to represent consumers, from nominations received from an[. Any] organization that[which] represents consumers in Kentucky, which

(a) May submit two (2) names for each position for consideration for appointment; and

(b)~~[. Nominees]~~ Shall not nominate an individual who is[be] directly connected with the producing, processing, or distribution of dairy products.

Section 2. Purpose and Operating Procedure. ~~[The purpose of the Grade A Milk Committee and its operating procedures are as follows:]~~

(1) The milk advisory committee shall:

(a) ~~Advise[Committee advises]~~ the department on matters pertaining to the Grade A Milk Industry or the milk-for-manufacturing industry, respectively;

(b) ~~Provide[. (2) Committee provides]~~ the department with technical review and comment on proposed new department administrative regulations or amendments to existing administrative regulations; and

(c) ~~Provide[which may be promulgated and which regulate the Grade A Milk Industry.]~~

(3) ~~Committee also provides]~~ the department with other advice and direction as[it feels] necessary.

(2)(a)~~[(4)]~~ Members shall elect the chairperson and vice chairperson of the committee.

(b) The terms of the chairperson and vice chairperson shall be[are] two (2) years unless:

1. Their terms on the committee expire and they are not reappointed;

2. A~~[. or]~~ resignation of the chairperson or vice chairperson occurs;~~[.]~~ or

3.~~[unless]~~ An additional election is called for by a majority vote of the committee members, in which the[. The] chairperson and vice chairperson may be eligible for reelection.

(3) The committee shall meet[(5) Committee meets] at least semiannually and on other occasions:

(a) As ~~[may be]~~ necessary;

(b)~~[.]~~ On call of the chairperson; or

(c) Upon request of the secretary~~[. Cabinet for Human Resources].~~

(4) The meeting place and time shall be[are] announced a minimum of five (5) days prior to a[the] meeting.

(5) A total of five (5) of the eight (8) committee[nine (9) appointed] members shall constitute a quorum.

(6) A[Any] member may call a special meeting with the written endorsement of at least four (4) other committee members.

(7) The chairperson shall preside at all committee meetings and appoint subcommittees.

(8) ~~The~~ vice chairperson shall preside over committee meetings in the absence of the chairperson and serve as chairperson if the position is vacated until a new chairperson is elected by the members.

(9) If the chairperson and vice chairperson are absent from a regular or special meeting of the committee, the committee shall choose[chooses] a committee member to function as chairperson of that meeting.

JEFFREY D. HOWARD, JR., MD, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 17, 2019

FILED WITH LRC: July 11, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 26, 2019, 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 August 19, 2019, 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 August 31, 2019. 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: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; Phone: 502-564-6746; Fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Julie Brooks, (502) 564-3970, julied.brooks@ky.gov; or Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures relating to the milk advisory committee in accordance with KRS 217C.070.

(b) The necessity of this administrative regulation: KRS 217C.070 requires the procedures for the selection of the milk advisory committee members to be in accordance with administrative regulations of the secretary.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 217C.070 by establishing the procedures for the selection of the milk advisory committee nominees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes procedures for selecting nominees for the milk advisory committee and ensures equal representation from milk producers and milk processors on the milk advisory committee.

(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 references to the Grade A Milk Advisory Committee and references a single milk advisory committee.

(b) The necessity of the amendment to this administrative: 2019 Ky. Acts ch. 090 revised KRS 217C.070 by removing the provisions for separate Grade A Milk and Milk-for-Manufacturing Advisory Committees.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment establishes the procedures for the selection of advisory committee nominees for a single milk advisory committee.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: KRS 217C.070 established both a Grade A Milk Advisory Committee, composed of eight (8) appointed members and the Milk-for-Manufacturing Advisory Committee, also composed of eight (8) appointed members. The secretary or designee serves on each committee and the

committees are administered by the Department for Public Health Milk Safety Branch. The amendment to this administrative regulation reduces the total number of milk advisory committee members by eight (8) appointed members and no longer distinguishes between a Grade A Milk Advisory Committee and a Milk-for-Manufacturing Advisory Committee. The secretary or designee will still serve as an ex officio member of the milk advisory committee.

(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: Both the current Grade A Milk Advisory Committee and the Milk-for-Manufacturing Advisory Committee will need to be made aware of the changes to KRS 217C.070. Those individuals currently serving on their respective committee will need to apply for reappointment to the Milk Advisory Committee. The secretary will need to appoint nominees in a manner consistent with KRS 217C.070 and this administrative regulation. The staff of the Milk Safety Branch will need to ensure the newly formed Milk Advisory Committee conducts business in accordance with this administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The elimination of separate advisory committees for Grade A Milk and Milk-for-Manufacturing will result in improved communication between the Milk Safety Branch and the milk advisory committee.

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

(a) Initially: There are no costs to the administrative body associated with this administrative regulation.

(b) On a continuing basis: There are no costs to the administrative body associated with this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Milk Safety Branch operates with approximately \$1 million from the General Fund. There are no costs associated with this amendment.

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

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

(9) TIERING: Is tiering applied? No. This administrative regulation is applicable to the milk advisory committee.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Public Health, Milk Safety Branch administers the milk advisory committee.

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), 217C.070.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation does not generate revenue.

(c) How much will it cost to administer this program for the first year? The Milk Safety program operates with approximately \$1 Million from the General Fund. There is no additional cost in administering this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The entire Milk Safety program operates with approximately \$1 Million from the General Fund. There is no additional cost in administering this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Fiscal Management (Amendment)

907 KAR 10:830. Acute care inpatient hospital reimbursement.

RELATES TO: KRS 13B.140, 142.303, 205.510(16), 205.565, 205.637, 205.638, 205.639, 205.640, 205.641, 216.380, 42 C.F.R. Parts 412, 413, 440.10, 440.140, 447.250-447.280, 42 U.S.C. 1395f(l), 1395ww(d)(5)(F), 1395x(mm), 1396a, 1396b, 1396d, 1396r-4[~~Pub.L. 111-148~~]

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(2), 205.637(3), 205.640(1), 205.641(2), 216.380(12), 42 C.F.R. 447.200, 447.250, 447.252, 447.253, 447.271, 447.272, 42 U.S.C. 1396a, 1396r-4

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 for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the Department for Medicaid Services' reimbursement provisions and requirements for acute care inpatient hospital services provided to a Medicaid recipient who is not enrolled with a managed care organization.

Section 1. Definitions. (1) "Acute care hospital" is defined by KRS 205.639(1).

(2) "Appalachian Regional Hospital System" means a private, not-for-profit hospital chain operating in a Kentucky county that receives coal severance tax proceeds.

(3) "Capital cost" means capital related expenses including insurance, taxes, interest, and depreciation related to plant and equipment.

(4) "CMS" means the Centers for Medicare and Medicaid Services.

(5) "CMS IPPS Pricer Program" means the software program published on the CMS website of <http://www.cms.hhs.gov>, which shows the Medicare rate components and payment rates under the Medicare inpatient prospective payment system for a discharge within a given federal fiscal year.

(6) "Cost outlier" means a claim for which estimated cost exceeds the outlier threshold.

(7) "Critical access hospital" or "CAH" means a hospital:

(a) Meeting the licensure requirements established in 906

KAR 1:110; and

(b) Designated as a critical access hospital by the department.

(8) "Department" means the Department for Medicaid Services or its designated agent.

(9) "Diagnosis code" means a code:

(a) Maintained by the Centers for Medicare and Medicaid Services (CMS) to group and identify a disease, disorder, symptom, or medical sign; and

(b) Used to measure morbidity and mortality.

(10) "Diagnosis related group" or "DRG" means a clinically similar grouping of services that can be expected to consume similar amounts of hospital resources.

(11) "Distinct part unit" means a separate unit within an acute care hospital that meets the qualifications established in 42 C.F.R. 412.25 and is designated as a distinct part unit by the department.

(12) "DRG base payment" means the sum of the operating base payment and capital base payment, calculated as described in Section 2(4)(b) and (c) of this administrative regulation.

(13) "DRG geometric mean length-of-stay" means an average hospital length-of-stay, expressed in days, for each DRG, with the geometric mean calculated by taking the nth (number of values in the set) root of the product of all length-of-stay values within a given DRG.

(14) "Enrollee" means a recipient who is enrolled with a managed care organization.

(15) "Enrollee day" means a day of an inpatient hospital stay of a Medicaid recipient who is enrolled with a managed care organization.

(16) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(17) "Fixed loss cost threshold" means an amount, established annually by CMS, which is combined with the full DRG payment or transfer payment for each DRG to determine the outlier threshold.

(18) "Government entity" means an entity that qualifies as a unit of government for the purposes of 42 U.S.C. 1396b(w)(6)(A).

(19) "Graduate medical education program" means a Medicare-approved education and training program for interns and residents in medicine, osteopathy, dentistry, or podiatry.

(20) "Hospital-acquired condition" means a condition:

(a)1. Associated with a diagnosis code selected by the Secretary of the U.S. Department of Health and Human Services pursuant to 42 U.S.C. 1395ww(d)(4)(D); and

2. Not present upon the recipient's admission to the hospital; and

(b) ~~That~~Which is recognized by the Centers for Medicare and Medicaid Services as a hospital acquired condition.

(21)~~(20)~~ "Indirect medical education costs" means additional costs of serving Medicaid recipients, incurred by teaching hospitals, to provide training and education to interns and residents in graduate medical education programs, which are not reimbursed through direct graduate medical education payments.

(22)~~(24)~~ "Long-term acute care hospital" means a long term care hospital that meets the requirements established in 42 C.F.R. 412.23(e).

(23)~~(22)~~ "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined by~~in~~ 42 C.F.R. 438.2.

(24)~~(23)~~ "Medicaid fee-for-service" means a service associated with a Medicaid recipient who is not enrolled with a managed care organization.

(25)~~(24)~~ "Medicaid fee-for-service covered day" means an inpatient hospital day associated with a Medicaid recipient who is not enrolled with a managed care organization.

(26)~~(25)~~ "Medicaid shortfall" means the difference between a provider's allowable cost of providing services to Medicaid recipients and the amount received in accordance with the payment provisions established in Section 2 of this administrative regulation.

~~[(26) "Medical education costs" means direct and allowable costs that are:~~

~~(a) Associated with an approved intern and resident program; and~~

~~(b) Subject to limits established by Medicare.]~~

(27) "Medically necessary" or "medical necessity" means that a covered benefit shall be provided in accordance with 907 KAR 3:130.

(28) "Medicare-dependent hospital" means a hospital designated as a Medicare dependent hospital by the Centers for Medicare and Medicaid Services.

(29) "Medicare IPPS Final Rule Data Files and Tables" means information related to Medicare hospital reimbursement that is:

(a) Published annually by the Centers for Medicare and Medicaid Services; and

(b) Located online at the Centers for Medicare and Medicaid Services acute inpatient PPS Web site located at: <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/index.html>.

(30) "Medicare operating and capital cost-to-charge ratios" means two (2) hospital-specific calculations:

(a) Completed by Medicare using CMS 2552 cost report information;

(b) In which:

1. Medicare operating costs are divided by total applicable charges to determine a Medicare operating cost-to-charge ratio; and

2. Medicare capital costs are divided by total applicable charges to determine a Medicare capital cost-to-charge ratio; and

(c) That are published annually by CMS in an impact file released with the Medicare IPPS Final Rule Data Files and Tables for a given federal fiscal year.

(31) "Never event" means:

(a) A procedure, service, or hospitalization not reimbursable by Medicare pursuant to CMS Manual System Pub 100-03 Medicare National Coverage Determinations Transmittal 101; or

(b) A hospital-acquired condition.

(32) "Outlier threshold" means the sum of the DRG base payment or transfer payment and the fixed loss cost threshold.

(33) "Pediatric teaching hospital" is defined by~~in~~ KRS 205.565(1).

(34) "Per diem rate" means the per diem rate paid by the department for:

(a) Inpatient care in an in-state psychiatric or rehabilitation hospital;

(b) Inpatient care in a long-term acute care hospital;

(c) Inpatient care in a critical access hospital;~~;~~

(d) Psychiatric, substance use disorder, or rehabilitation services in an in-state acute care hospital which has a distinct part unit; or

(e) A psychiatric or rehabilitation service in an in-state acute care hospital.

(35) "Psychiatric hospital" means a hospital ~~that~~which meets the licensure requirements as established in 902 KAR 20:180.

(36) "Quality improvement organization" or "QIO" means an organization that complies with 42 C.F.R. 475.101.

(37) "Rehabilitation hospital" means a hospital meeting the licensure requirements as established in 902 KAR 20:240.

(38) "Relative weight" means the factor assigned to each Medicare DRG classification that represents the average resources required for a Medicare DRG classification paid under the DRG methodology relative to the average resources required for all DRG discharges paid under the DRG methodology for the same period.

(39) "Resident" means an individual living in Kentucky who is not receiving public assistance in another state.

(40) "Rural hospital" means a hospital located in a rural area pursuant to 42 C.F.R. 412.64(b)(1)(ii)(C).

(41) "Sole community hospital" means a hospital that is currently designated as a sole community hospital by the Centers for Medicare and Medicaid Services.

(42) "State university" means the University of Kentucky or the University of Louisville.

(43) "State university teaching hospital" means:

(a) a hospital that is owned or operated by a state[Kentucky state-supported] university, or a state university-related party organization, as allowed by 42 C.F.R. 413.17, with a state university affiliated graduate medical education program[with a medical school; or

(b) A hospital:

1. ~~In which three (3) or more departments or major divisions of the University of Kentucky or University of Louisville medical school are physically located and which are used as the primary (greater than fifty (50) percent) medical teaching facility for the medical students at the University of Kentucky or the University of Louisville; and~~

2. ~~That does not possess only a residency program or rotation agreement].~~

(44)[(43)] "Transfer payment" means a payment made for a recipient who is transferred to or from another hospital for a service reimbursed on a prospective discharge basis.[(44) "Type III hospital" means an in-state disproportionate share state university teaching hospital, owned or operated by either the University of Kentucky or the University of Louisville Medical School.]

(45) "Universal rate year" means the twelve (12) month period under the prospective payment system, beginning October 1 of each year, for which a payment rate is established for a hospital regardless of the hospital's fiscal year end.

(46) "Urban hospital" means a hospital located in an urban area pursuant to 42 C.F.R. 412.64(b)(1)(ii).

(47) "Urban trauma center hospital" means an acute care hospital that:

(a) Is designated as a Level I Trauma Center by the American College of Surgeons;

(b) Has a Medicaid utilization rate greater than twenty-five (25) percent; and

(c) Has at least fifty (50) percent of its Medicaid population as residents of the county in which the hospital is located.

Section 2. Payment for an Inpatient Acute Care Service in an In-state Acute Care Hospital. (1)(a) The department shall reimburse an in-state acute care hospital for an inpatient acute care service, except for a service not covered pursuant to 907 KAR 10:012, on a fully-prospective per discharge basis.

(b) The department's reimbursement pursuant to this administrative regulation shall approximate ninety-five (95) percent of a hospital's Medicare reimbursement excluding the following Medicare reimbursement components:

1. A Medicare low-volume hospital payment;
2. A Medicare end stage renal disease payment;
3. A Medicare new technology add-on payment;
4. A Medicare routine pass-through payment;
5. A Medicare ancillary pass-through payment;
6. A Medicare value-based purchasing payment or penalty;
7. A Medicare readmission penalty in accordance with paragraph (c) of this subsection;

8. A Medicare hospital-acquired condition penalty in accordance with paragraph (c) of this subsection;

9. Any type of Medicare payment implemented by Medicare after October 1, 2015; or

10. Any type of Medicare payment not described in this administrative regulation.

(c) The department's:

1. Never event and hospital-acquired condition provisions established in Section 3 of this administrative regulation shall apply to acute care inpatient hospital reimbursement under this administrative regulation; and

2. Readmission provisions established in Section 12 of this administrative regulation shall apply to acute care inpatient hospital reimbursement under this administrative regulation.

(2)(a) For an inpatient acute care service, except for a service not covered pursuant to 907 KAR 10:012, in an in-state acute care hospital, the total hospital-specific per discharge

payment shall be the sum of:

1. A DRG base payment; and

2. If applicable, a cost outlier payment.

(b) The resulting payment shall be limited to ninety-five (95) percent of the calculated value.

(c) If applicable, a transplant acquisition fee payment shall be added pursuant to subsection (11)(b) of this section.

(3)(a) The department shall assign a DRG classification to each unique discharge billed by an acute care hospital.

(b)1. The DRG assignment shall be based on the most recent Medicare Severity DRG (MS-DRG) grouping software released by the Centers for Medicare and Medicaid Services beginning with version 32 on October 1, 2015 unless CMS releases version 33 on October 1, 2015.

2. If CMS releases version 33 on October 1, 2015, the department shall make interim payments for dates of service beginning October 1, 2015 based on version 32 and then retroactively adjust claims for dates of service beginning October 1, 2015 using version 33.

3. The grouper version shall be updated in accordance with Section 8 of this administrative regulation.

(c) In assigning a DRG for a claim, the department shall exclude from consideration any secondary diagnosis code associated with a never event.

(4)(a) A DRG base payment shall be the sum of the operating base payment and the capital base payment calculated as described in paragraphs (c) and (d) of this subsection.

(b) All calculations in this subsection shall be subject to special rate-setting provisions for sole community hospitals and Medicare dependent hospitals as described in Sections 5 and 6 of this administrative regulation.

(c)1. The operating base payment shall be determined by multiplying the hospital-specific operating rate by the DRG relative weight.

2. If applicable, the resulting product of subparagraph 1. of this paragraph shall be multiplied by the sum of one (1) and a hospital-specific operating indirect medical education (IME) factor determined in accordance with subparagraph 7₂ of this paragraph.

3. Beginning October 1, 2015, the hospital-specific operating rate referenced in subparagraph 1₂ of this paragraph shall be calculated using inputs from the Federal Fiscal Year 2016 Medicare IPPS Final Rule Data Files and Tables published by CMS as described in subparagraphs 4₂ through 6₂ of this paragraph.

4. The Medicare IPPS standard amount established for operating labor costs shall be multiplied by the wage index associated with the final Core Based Statistical Area (CBSA) assigned to the hospital by Medicare, inclusive of any Section 505 adjustments applied by Medicare.

5. The resulting product of subparagraph 4₂ of this paragraph shall be added to the Medicare IPPS standard amount for non-labor operating costs.

6. The operating rate shall be updated in accordance with Section 8 of this administrative regulation.

7.a. Beginning October 1, 2015, the hospital-specific operating IME factor shall be taken from the Federal Fiscal Year 2016 Medicare Inpatient Prospective Payment System (IPPS) Final Rule Data Files and Tables published by CMS.

b. The operating IME factor shall be updated in accordance with Section 8 of this administrative regulation.

(d)1. The capital base payment shall be determined by multiplying the hospital-specific capital rate by the DRG relative weight.

2. If applicable, the resulting product of subparagraph 1. of this paragraph shall be multiplied by the sum of one (1) and a hospital-specific capital indirect medical education factor determined in accordance with subparagraph 6₂ of this paragraph.

3. Beginning October 1, 2015, the hospital-specific capital rate referenced in subparagraph 1₂ of this paragraph shall be calculated using inputs from the Federal Fiscal Year 2016 Medicare IPPS Final Rule Data Files and Tables published by

CMS as described in subparagraphs 4₁ and 5₁ of this paragraph.

4. The Medicare IPPS standard amount established for capital costs shall be multiplied by the geographic adjustment factor (GAF) associated with the final CBSA assigned to the hospital by Medicare.

5. The capital rate shall be updated in accordance with Section 8 of this administrative regulation.

6.a. Beginning October 1, 2015, the hospital-specific capital IME factor shall be taken from the Medicare Inpatient Prospective Payment System (IPPS) Final Rule Data Files and Tables published by CMS.

b. The capital IME factor shall be updated in accordance with Section 8 of this administrative regulation.

(e)1. Effective during the fiscal year ending on June 30, 2019 pursuant to federal approval, the department shall make an annual IME payment to state university teaching hospitals, in addition to the adjustments specified in paragraphs (c)2. and (d)2. of this subsection, equal to:

a. The total of all operating base payments, as determined under paragraph (c)1. of this subsection, received by the hospital during the previous year multiplied by the sum of one (1) and the adjusted hospital-specific education (IME) factor determined in accordance with subparagraph 2. of this paragraph; plus

b. The total of all capital base payments, as determined under paragraph (d)1. of this subsection, received by the hospital during the previous year multiplied by the sum of one (1) and the adjusted hospital-specific education (IME) factor determined in accordance with subparagraph 2. of this paragraph; plus

c. The total of all inpatient hospital payments received from managed care organizations in the previous year multiplied by the sum of one (1) and the adjusted hospital-specific education (IME) factor determined in accordance with clause b. of this subparagraph; minus

d. The amount of IME adjustments to the operating base rate received during the previous year pursuant to paragraph (c)2. of this subsection; minus

e. The amount of IME adjustments to the capital base rate received during the previous year pursuant to paragraph (d)2. of this subsection; minus

f. The amount of IME adjustments received from managed care organizations during the previous year.

2. The adjusted hospital-specific operating IME factor shall be calculated pursuant to 42 C.F.R. 412.105(d), except that there shall be no caps on the number of full-time equivalent residents included in the formula.

(5)(a) The department shall make a cost outlier payment for an approved discharge meeting the Medicaid criteria for a cost outlier for each DRG as established in paragraphs (b) to (e) of this subsection.

(b) A cost outlier shall be subject to QIO review and approval.

(c) A discharge shall qualify for a cost outlier payment if its estimated cost exceeds the DRG's outlier threshold.

(d)1. The department shall calculate the estimated cost of a discharge:

a. For purposes of comparing the discharge cost to the outlier threshold; and

b. By multiplying the sum of the hospital-specific Medicare operating and capital-related cost-to-charge ratios by the Medicaid allowed charges.

2.a. A Medicare operating and capital-related cost-to-charge ratio shall be extracted from the Federal Fiscal Year 2016 Medicare IPPS Final Rule Data Files and Tables published by CMS.

b. The Medicare operating and capital cost-to-charge ratios shall be updated in accordance with Section 8 of this administrative regulation.

(e)1. The department shall calculate an outlier threshold as the sum of a hospital's DRG base payment or transfer payment and the fixed loss cost threshold.

2.a. Beginning October 1, 2015, the fixed loss cost threshold shall equal the Medicare fixed loss cost threshold established for Federal Fiscal Year 2016.

b. The fixed loss cost threshold shall be updated in

accordance with Section 8 of this administrative regulation.

(f)1. For specialized burn DRGs as established by Medicare, a cost outlier payment shall equal ninety (90) percent of the amount by which estimated costs exceed a discharge's outlier threshold.

2. For all other DRGs, a cost outlier payment shall equal eighty (80) percent of the amount by which estimated costs exceed a discharge's outlier threshold.

(6)(a) The department shall establish DRG relative weights obtained from the Medicare IPPS Final Rule Data Files and Tables corresponding to the grouper version in effect under subsection (3) of this section.

(b) Relative weights shall be revised to match the grouping software version for updates in accordance with Section 8 of this administrative regulation.

(7) The department shall separately reimburse for a mother's stay and a newborn's stay based on the DRGs assigned to the mother's stay and the newborn's stay.

(8)(a) If a patient is transferred to or from another hospital, the department shall make a transfer payment to the transferring hospital if the initial admission and the transfer are determined to be medically necessary.

(b) For a service reimbursed on a prospective discharge basis, the department shall calculate the transfer payment amount based on the average daily rate of the transferring hospital's payment for each covered day the patient remains in that hospital, plus one (1) day, up to 100 percent of the allowable per discharge reimbursement amount.

(c)1. The department shall calculate an average daily discharge rate by dividing the DRG base payment by the Medicare geometric mean length-of-stay for a patient's DRG classification.

2. The Medicare geometric length-of-stay shall be obtained from the Medicare IPPS Final Rule Data Files and Tables corresponding to the grouper version in effect under subsection (3) of this section.

3. The geometric length-of-stay values shall be revised to match the grouping software version for updates in accordance with Section 8 of this administrative regulation.

(d) Total reimbursement to the transferring hospital shall be the transfer payment amount and, if applicable, a cost outlier payment amount, limited to ninety-five (95) percent of the amount calculated for each.

(e) For a hospital receiving a transferred patient, the department shall reimburse the standard DRG payment established in subsection (2) of this section.

(9)(a) The department shall reimburse a transferring hospital for a transfer from an acute care hospital to a qualifying post-acute care facility for selected DRGs in accordance with paragraphs (b) through (d) of this subsection as a post-acute care transfer.

(b) The following shall qualify as a post-acute care setting:

1. A skilled nursing facility;
2. A cancer or children's hospital;
3. A home health agency;
4. A rehabilitation hospital or rehabilitation distinct part unit located within an acute care hospital;
5. A long-term acute care hospital; or
6. A psychiatric hospital or psychiatric distinct part unit located within an acute care hospital.

(c) A DRG eligible for a post-acute care transfer payment shall be in accordance with 42 U.S.C. 1395ww(d)(5)(4)(J).

(d)1. The department shall pay each transferring hospital an average daily rate for each day of a stay.

2. A transfer-related payment shall not exceed the full DRG payment that would have been made if the patient had been discharged without being transferred.

3. A DRG identified by CMS as being eligible for special payment shall receive fifty (50) percent of the full DRG payment plus the average daily rate for the first day of the stay and fifty (50) percent of the average daily rate for the remaining days of the stay up to the full DRG base payment.

4. A DRG that is referenced in paragraph (b) of this subsection and not referenced in subparagraph 2. of this paragraph shall receive twice the average daily rate for the first day of the stay and the average daily rate for each following day of the stay prior to the transfer.

5. Total reimbursement to the transferring hospital shall be the transfer payment amount and, if applicable, a cost outlier payment amount, limited to ninety-five (95) percent of the amount calculated for each.

(e)1. The average daily rate shall be the base DRG payment allowed divided by the Medicare geometric mean length-of-stay for a patient's DRG classification.

2. The Medicare geometric mean length-of-stay shall be determined and updated in accordance with subsection (8)(c) of this section.

(10) The department shall reimburse a receiving hospital for a transfer to a rehabilitation or psychiatric distinct part unit the facility-specific distinct part unit per diem rate, in accordance with 907 KAR 10:815, for each day the patient remains in the distinct part unit.

(11)(a) The department shall reimburse for an organ transplant on a prospective per discharge method according to the recipient's DRG classification.

(b)1. The department's organ transplant reimbursement shall include an interim reimbursement followed by a final reimbursement.

2. The final reimbursement shall:

a. Include a cost settlement process based on the Medicare 2552 cost report form; and

b. Be designed to reimburse hospitals for ninety-five (95) percent of organ acquisition costs.

3.a. An interim organ acquisition payment shall be made using a fixed-rate add-on to the standard DRG payment using the rates established in subclauses (i), (ii), (iii), (iv), and (v) of this clause:

(i) Kidney Acquisition - \$65,000;

(ii) Liver Acquisition - \$55,000;

(iii) Heart Acquisition - \$70,000;

(iv) Lung Acquisition - \$65,000; or

(v) Pancreas Acquisition - \$40,000.

b. Upon receipt of a hospital's as-filed Medicare cost report, the department shall calculate a tentative settlement at ninety-five (95) percent of costs for organ acquisition costs utilizing worksheet D-4 of the CMS 2552 cost report for each organ specified in clause a. of this subparagraph.

c. Upon receipt of a hospital's finalized Medicare cost report, the department shall calculate a final reimbursement, which shall be a cost settlement at ninety-five (95) percent of costs for organ acquisition costs utilizing worksheet D-4 of the CMS 2552 cost report for each organ specified in clause a. of this subparagraph.

d. The final cost settlement shall reflect any cost report adjustments made by CMS.

Section 3. Never Events. (1) For each diagnosis on a claim, a hospital shall specify on the claim whether the diagnosis was present upon the individual's admission to the hospital.

(2) In assigning a DRG for a claim, the department shall exclude from the DRG assignment consideration of any secondary diagnosis code associated with a hospital-acquired condition.

(3) A hospital shall not seek payment for treatment for or related to a never event through:

(a) A recipient;

(b) The Cabinet for Health and Family Services for a child in the custody of the cabinet; or

(c) The Department for Juvenile Justice for a child in the custody of the Department for Juvenile Justice.

(4) A recipient, the Cabinet for Health and Family Services, or the Department for Juvenile Justice shall not be liable for treatment for or related to a never event.

Section 4. Preadmission Services for an Inpatient Acute Care Service. A preadmission service provided within three (3)

calendar days immediately preceding an inpatient admission reimbursable under the prospective per discharge reimbursement methodology shall:

(1) Be included with the related inpatient billing and shall not be billed separately as an outpatient service; and

(2) Exclude a service furnished by a home health agency, a skilled nursing facility, or hospice, unless it is a diagnostic service related to an inpatient admission or an outpatient maintenance dialysis service.

Section 5. Reimbursement for Sole Community Hospitals. An operating rate for sole community hospitals shall be calculated as described in subsections (1) and (2) of this section.

(1)(a) For each sole community hospital, the department shall utilize the hospital's hospital-specific (HSP) rate calculated by Medicare.

(b) The HSP rate shall be extracted from the Federal Fiscal Year 2016 Medicare IPPS Final Rule Data Files and Tables.

(c) Effective October 1, 2016 and for subsequent years on October 1, the HSP rate shall be updated in accordance with Section 8 of this administrative regulation.

(2)(a) The department shall compare the rate referenced in subsection (1) of this section with the operating rate calculated in Section 2(4)(c) of this administrative regulation.

(b) The higher of the two (2) rates compared in paragraph (a) of this subsection shall be utilized as the operating rate for sole community hospitals.

Section 6. Reimbursement for Medicare Dependent Hospitals. (1)(a) For a Medicare-dependent hospital, the department shall utilize the hospital's hospital-specific (HSP) rate calculated by Medicare.

(b) The HSP rate shall be extracted from the Federal Fiscal Year 2016 Medicare IPPS Final Rule Data Files and Tables.

(c) Effective October 1, 2016 and for subsequent years on October 1, the HSP rate shall be updated in accordance with Section 8 of this administrative regulation.

(2)(a) The department shall compare the rate referenced in subsection (1) of this section with the operating rate calculated in Section 2(4)(c) of this administrative regulation.

(b) If the Section 2(4)(c) rate is higher, it shall be utilized as the hospital's operating rate for the period.

(c)1. If the rate referenced in subsection (1) of this section is higher, the department shall calculate the arithmetic difference between the two (2) rates.

2. The difference shall be multiplied by seventy-five (75) percent.

3. The resulting product shall be added to the Section 2(4)(c) rate to determine the hospital's operating rate for the period.

(d) If CMS terminates the Medicare-dependent hospital program, a hospital that is a Medicare-dependent hospital at the time that CMS terminates the program shall receive operating rates as calculated in Section 2(4)(c) of this administrative regulation.

Section 7. Direct Graduate Medical Education Costs at In-state Hospitals with [Medicare-approved] Graduate Medical Education Programs. (1) If federal financial participation for direct graduate medical education (DGME) costs is not provided to the department, the department shall not reimburse eligible in-state hospitals for direct graduate medical education costs.

(2) If federal financial participation for direct graduate medical education costs is provided to the department, the department shall provide a base DGME payment to in-state hospitals[reimburse] for the direct costs of a graduate medical education program approved by Medicare as established in this subsection.

(a) A base DGME payment shall be made:

1. Separately from the per discharge and per diem payment methodologies; and

2. On an annual basis corresponding to the hospital's fiscal year.

(b) The department shall determine an annual base DGME payment amount for a hospital as established in subparagraphs 1₂ through 4₂ of this paragraph.

1. Total direct graduate medical education costs shall be obtained from a facility's as-filed CMS 2552 cost report, worksheet E-4, line 25.

2.a. The facility's Medicaid utilization shall be calculated by dividing Medicaid fee-for-service covered days during the cost report period, as reported by the Medicaid Management Information System, by total inpatient hospital days, as reported on worksheet E-4, line 27 of the CMS 2552 cost report.

b. The resulting Medicaid utilization factor shall be rounded to six (6) decimals.

3. The total graduate medical education costs referenced in subparagraph 1₂ of this paragraph shall be multiplied by the Medicaid utilization factor calculated in subparagraph 2₂ of this paragraph to determine the total graduate medical education costs related to the fee-for-service Medicaid program.

4. Medicaid program graduate medical education costs shall then be multiplied by ninety-five (95) percent to determine the annual base DGME payment amount.

(3) Effective during the fiscal year ending on June 30, 2019 pursuant to federal approval, the department shall provide a supplemental direct graduate medical education (supplemental DGME) payment for the direct costs of graduate medical education incurred by eligible in-state hospitals as established in paragraph (a) of this subsection.

(a) In-state hospitals eligible for supplemental DGME shall include:

1. Those hospitals receiving direct graduate medical education payments from the department as of April 1, 2019; and

2. Any hospital that sponsors a graduate medical education program affiliated with a state university on or after April 1, 2019.

(b) A supplemental DGME payment shall be made:

1. Separately from the per discharge and per diem payment methodologies;

2. In addition to any base DGME payment made pursuant to subsection (2) of this section; and

3. On an annual basis corresponding to the hospital's fiscal year.

(c) The annual supplemental DGME payment shall be calculated by the department by subtracting any base DGME payments made by the department pursuant to subsection (2) of this section and any DGME payments received from Medicaid managed care organizations from the total DGME amount determined under paragraph (d) of this subsection.

(d) The total DGME amount shall equal the product of:

1. Total DGME costs, obtained from Worksheet B, Part 1, Lines 21 and 22; and

2. The hospital's Medicaid utilization, calculated by dividing the total number of Medicaid inpatient days, including both fee for service and managed care days, by total inpatient days.

(e) Only the portion of the supplemental DGME payment associated with Medicaid fee for service days shall count towards the upper payment limit described in Section 18 of this administrative regulation.

Section 8. Reimbursement Updating Procedures. (1)(a) The department shall annually update the Medicare grouper software to the most current version used by the Medicare program. The annual update shall be effective October 1 of each year, except as provided in paragraph (b) of this subsection.

(b) If Medicare does not release a new grouper version effective October 1 of a given year:

1. The current grouper effective prior to October 1 shall remain in effect until a new grouper is released; and

2. When the new grouper is released by Medicare, the department shall update the Medicare grouper software to the most current version used by the Medicare program.

(c) The department shall not update the Medicare grouper software more than once per federal fiscal year, which shall be October 1 through September 30 of the following year.

(2) At the time of the grouper update referenced in

subsection (1) of this section, all DRG relative weights and geometric length-of-stay values shall be updated to match the most recent relative weights and geometric length-of-stay values effective for the Medicare program.

(3)(a) Annually, on October 1, all values obtained from the Medicare IPPS Final Rule Data Files and Tables shall be updated to reflect the most current Medicare IPPS final rule in effect.

(b)1. Within thirty (30) days after the Centers for Medicare and Medicaid Services publishes the Medicare IPPS Final Rule Data Files and Tables for a given year, the department shall send a notice to each hospital containing the hospital's data from the Medicare IPPS Final Rule Data Files and Tables to be used by the department to establish diagnosis related group rates on October 1.

2. The notice referenced in subparagraph 1₂ of this paragraph shall request that the hospital:

a. Review the information; and

b. If the hospital discovers that the data in the notice sent by the department does not match the data published by the Centers for Medicare and Medicaid Services, notify the department of the discrepancy prior to October 1.

(4) All Medicare IPPS final rule values utilized in this administrative regulation shall be updated to reflect any correction notices issued by CMS, if applicable.

(5) Except for an appeal in accordance with Section 22 of this administrative regulation, the department shall make no other adjustment.

Section 9. Universal Rate Year. (1) A universal rate year shall be established as October 1 of one (1) year through September 30 of the following year.

(2) A hospital shall not be required to change its fiscal year to conform with a universal rate year.

Section 10. Cost Reporting Requirements. (1)(a) An in-state hospital participating in the Medicaid Program shall submit to the department, in accordance with the requirements in this section:

1. A copy of each Medicare cost report it submits to CMS;

2. An electronic cost report file (ECR);

3. The Supplemental Medicaid Schedule KMAP-1;

4. The Supplemental Medicaid Schedule KMAP-4; and

5. The Supplemental Medicaid Schedule KMAP-6.

(b) A document listed in paragraph (a) of this subsection shall be submitted:

1. For the fiscal year used by the hospital; and

2. Within five (5) months after the close of the hospital's fiscal year.

(c) Except as provided in subparagraph 1₂ or 2₂ of this paragraph, the department shall not grant a cost report submittal extension.

1. If an extension has been granted by Medicare, the cost report shall be submitted simultaneously with the submittal of the Medicare cost report.[;-or]

2. If a catastrophic circumstance exists, for example flood, fire, or other equivalent occurrence, the department shall grant a thirty (30) day extension.

(2) If a cost report submittal date lapses and no extension has been granted, the department shall immediately suspend all payments to the hospital until a complete cost report is received.

(3) A cost report submitted by a hospital to the department shall be subject to audit and review.

(4) An in-state hospital shall submit to the department a final Medicare-audited cost report upon completion by the Medicare intermediary along with an electronic cost report file (ECR).

Section 11. Unallowable Costs. (1) The following shall not be allowable costs for Medicaid reimbursement:

(a) A cost associated with a political contribution;

(b) A cost associated with a legal fee for an unsuccessful lawsuit against the Cabinet for Health and Family Services. A legal fee relating to a lawsuit against the Cabinet for Health and Family Services shall only be included as a reimbursable cost in

the period in which the suit is settled after a final decision has been made that the lawsuit is successful or if otherwise agreed to by the parties involved or ordered by the court; and

(c) A cost for travel and associated expenses outside the Commonwealth of Kentucky for the purpose of a convention, meeting, assembly, conference, or a related activity, subject to the limitations of subparagraphs 1. and 2. of this paragraph.

1. A cost for a training or educational purpose outside the Commonwealth of Kentucky shall be allowable.

2. If a meeting is not solely educational, the cost, excluding transportation, shall be allowable if an educational or training component is included.

(2) A hospital shall identify an unallowable cost on a Supplemental Medicaid Schedule KMAP-1.

(3) A Supplemental Medicaid Schedule KMAP-1 shall be completed and submitted to the department with an annual cost report.

Section 12. Readmissions. (1) An unplanned inpatient admission within fourteen (14) calendar days of discharge for the same diagnosis shall be considered a readmission and reviewed by the QIO.

(2) Reimbursement for an unplanned readmission with the same diagnosis shall be included in an initial admission payment and shall not be billed separately.

Section 13. Reimbursement for Out-of-State Hospitals. (1) The department shall reimburse an acute care out-of-state hospital for inpatient care on a fully prospective per discharge basis except for the following hospitals:

(a) A children's hospital located in a Metropolitan Statistical Area as defined by the United States Office of Management and Budget whose boundaries overlap Kentucky and a bordering state; and

(b) Vanderbilt Medical Center.

(2) For an inpatient acute care service, except for a service not covered pursuant to 907 KAR 10:012, in an out-of-state acute care hospital the total hospital-specific per discharge payment shall be calculated in the same manner as an in-state hospital as described in Section 2(2) of this administrative regulation with modifications to rates used as described in subsections (3) through (7) of this section.

(3) The DRG payment parameters listed in this subsection shall be modified for out-of-state hospitals not specifically excluded in subsection (1) of this section.

(a) The operating rate used in the calculation of the operating base payment described in Section 2(4)(c)1. of this administrative regulation shall equal the average of all in-state acute care hospital operating rates calculated in accordance with Section 2(4)(c) of this administrative regulation multiplied by eighty (80) percent, excluding any adjustments made for:

1. Sole community hospitals pursuant to Section 5 of this administrative regulation; or

2. Medicare-dependent hospitals pursuant to Section 6 of this administrative regulation.

(b) The capital rate used in the calculation of the capital base payment described in Section 2(4)(c)1. of this administrative regulation shall equal the average of all in-state acute care hospital capital rates calculated in accordance with Section 2(4)(c) of this administrative regulation multiplied by eighty (80) percent.

(c) The DRG relative weights used in the calculation of the operating base payment described in Section 2(4)(c)1. of this administrative regulation and the calculation of the capital base payment described in Section 2(4)(c)1. of this administrative regulation shall be reduced by twenty (20) percent.

(d) The following provisions shall not be applied:

1. Medicare indirect medical education cost or reimbursement;

2. Organ acquisition cost settlements;

3. Disproportionate share hospital distributions; and

4. Any adjustment mandated for in-state hospitals pursuant to KRS 205.638.

(e) The Medicare operating and capital cost-to-charge ratios used to estimate the cost of each discharge, for purposes of comparing the estimated cost of each discharge to the outlier threshold, shall be determined by calculating the arithmetic mean of all in-state cost-to-charge ratios established in accordance with Section 2(5)(d) of this administrative regulation.

(4) The department shall reimburse for inpatient acute care provided by an out-of-state children's hospital located in a Metropolitan Statistical Area as defined by the United States Office of Management and Budget and whose boundaries overlap Kentucky and a bordering state, and except for Vanderbilt Medical Center, the average operating rate and average capital rate paid to in-state children's hospitals.

(5) The department shall reimburse for inpatient care provided by Vanderbilt Medical Center using the hospital-specific Medicare base rate extracted from the CMS IPPS Pricer Program in effect at the time that the care was provided multiplied by eighty-five (85) percent.

(6) The out-of-state hospitals referenced in subsections (4) and (5) of this section shall not be eligible to receive indirect medical education reimbursement, organ acquisition cost settlements, or disproportionate share hospital payments.

(7)(a) The department shall reimburse a hospital referenced in subsection (4) or (5) of this section a cost outlier payment for an approved discharge meeting Medicaid criteria for a cost outlier for each Medicare DRG.

(b) A cost outlier shall be subject to quality improvement organization review and approval.

(c) The department shall determine the cost outlier threshold for an out-of-state claim regarding a hospital referenced in subsection (4) or (5) of this section using the same method used to determine the cost outlier threshold for an in-state claim.

Section 14. Supplemental Payments. (1) Payment of a supplemental payment established in this section shall be contingent upon the department's receipt of corresponding federal financial participation.

(2) If federal financial participation is not provided to the department for a supplemental payment, the department shall not make the supplemental payment.

(3) In accordance with subsections (1) and (2) of this section, the department shall:

(a) In addition to a payment based on a rate developed under Section 2 of this administrative regulation, make quarterly supplemental payments to:

1. A hospital that qualifies as an in-state non-state owned pediatric teaching hospital in an amount:

a. Equal to the sum of the hospital's Medicaid shortfall for Medicaid fee-for-service recipients under the age of eighteen (18) plus an additional \$250,000 (\$1,000,000 annually); and

b. Prospectively determined by the department with an end of the year settlement based on actual patient days of Medicaid fee-for-service recipients under the age of eighteen (18);

2. A hospital that qualifies as a pediatric teaching hospital and additionally meets the criteria of a state university teaching hospital[Type III hospital] in an amount:

a. Equal to the difference between payments made in accordance with Sections 2 and 7 of this administrative regulation and the amount allowable under 42 C.F.R. 447.272, not to exceed the payment limit as specified in 42 C.F.R. 447.271;

b. That is prospectively determined subject to a year-end reconciliation; and

c. Based on the state matching contribution made available for this purpose by a facility that qualifies under this paragraph; and

3. A hospital that qualifies as an urban trauma center hospital in an amount:

a. Based on the state matching contribution made available for this purpose by a government entity on behalf of a facility that qualifies under this paragraph;

b. Based upon a hospital's proportion of Medicaid patient days to total Medicaid patient days for all hospitals that qualify

under this paragraph;

c. That is prospectively determined with an end of the year settlement; and

d. That is consistent with the requirements of 42 C.F.R. 447.271;

(b) Make quarterly supplemental payments to the Appalachian Regional Hospital system:

1. In an amount that is equal to the lesser of:

a. The difference between what the department pays for inpatient services pursuant to Sections 2 and 7 of this administrative regulation and what Medicare would pay for inpatient services to Medicaid eligible individuals; or

b. \$7.5 million per year in aggregate;

2. For a service provided on or after July 1, 2005; and

3. Subject to the availability of coal severance funds, in addition to being subject to the availability of federal financial participation, which supply the state's share to be matched with federal funds; and

(c) Base a quarterly payment to a hospital in the Appalachian Regional Hospital System on its Medicaid claim volume in comparison to the Medicaid claim volume of each hospital within the Appalachian Regional Hospital System.

(4) An overpayment made to a hospital under this section shall be recovered by subtracting the overpayment amount from a succeeding year's payment to be made to the hospital.

(5) For the purpose of this section, Medicaid patient days shall not include enrollee days.

(6) A payment made under this section shall not duplicate a payment made via 907 KAR 10:820.

(7) A payment made in accordance with this section shall be in compliance with the limitations established in 42 C.F.R. 447.272.

Section 15. Certified Public Expenditures. (1)(a) The department shall reimburse an in-state public government-owned or operated hospital the full cost of a Medicaid fee-for-service inpatient service provided during a given state fiscal year via a certified public expenditure (CPE) contingent upon approval by the Centers for Medicare and Medicaid Services (CMS).

(b) A payment referenced in paragraph (a) of this subsection shall be limited to the federal match portion of the hospital's uncompensated care cost for inpatient Medicaid fee-for-service recipients.

(2) To determine the amount of costs eligible for a CPE, a hospital's allowed charges shall be multiplied by cost-center specific cost-to-charge ratios from the hospital's 2552 cost report.

(3) The department shall verify whether or not a given CPE is allowable as a Medicaid cost.

(4)(a) Subsequent to a cost report being submitted to the department and finalized, a CPE shall be reconciled with the actual costs reported to determine the actual CPE for the period.

(b) If any difference between actual cost and submitted costs remains, the department shall reconcile any difference with the provider.

Section 16. Access to Subcontractor's Records. If a hospital has a contract with a subcontractor for services costing or valued at \$10,000 or more over a twelve (12) month period:

(1) The contract shall contain a provision granting the department access:

(a) To the subcontractor's financial information; and

(b) In accordance with 907 KAR 1:672; and

(2) Access shall be granted to the department for a subcontract between the subcontractor and an organization related to the subcontractor.

Section 17. New Provider, Change of Ownership, or Merged Facility. (1)(a) The department shall reimburse a new acute care hospital based on the Medicare IPPS Final Rule Data Files and Tables inputs described in this administrative regulation in effect at the time of the hospital's enrollment with the Medicaid program.

(b) If applicable rate information does not exist in the Medicare IPPS Final Rule Data Files and Tables for a given period for an in-state acute care hospital, the department shall use, for the in-state acute care hospital, the average of all in-state acute care hospitals for the operating rate, capital rate, and outlier cost-to-charge ratio, excluding any adjustments made for sole community hospitals or Medicare dependent hospitals.

(2) If a hospital undergoes a change of ownership, the new owner shall continue to be reimbursed at the rate in effect at the time of the change of ownership.

Section 18. Department reimbursement for inpatient hospital care shall not exceed the upper payment limit established in 42 C.F.R. 447.271 or 447.272.

Section 19. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse in accordance with this administrative regulation for a service covered pursuant to:

(1) 907 KAR 10:012; and

(2) This administrative regulation.

Section 20. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

Section 21. Matters Subject to an Appeal. A hospital may appeal whether the Medicare data specific to the hospital that was extracted by the department in establishing the hospital's reimbursement was the correct data.

Section 22. Appeal Process. (1) An appeal shall comply with the requirements and provisions established in this section.

(2)(a) A request for a review of an appealable issue shall be received by the department within sixty (60) calendar days of the date of receipt by the provider of the department's notice of rates set under this administrative regulation.

(b) The request referenced in paragraph (a) of this subsection shall:

1. Be sent to the Office of the Commissioner, Department for Medicaid Services, Cabinet for Health and Family Services, 275 East Main Street, 6th Floor, Frankfort, Kentucky 40621-0002; and

2. Contain the specific issues to be reviewed with all supporting documentation necessary for the departmental review.

(3)(a) The department shall review the material referenced in subsection (2) of this section and notify the provider of the review results within thirty (30) days of its receipt except as established in paragraph (b) of this subsection.

(b) If the provider requests a review of a non-appealable issue under this administrative regulation, the department shall:

1. Not review the request; and

2. Notify the provider that the review is outside of the scope of this section.

(4)(a) A provider may appeal the result of the department's review, except for a notification that the review is outside the scope of this section, by sending a request for an administrative hearing to the Office of the Ombudsman and Administrative Review ~~[Division for Administrative Hearings (DAH)]~~ within thirty (30) days of receipt of the department's notification of its review decision.

(b) A provider shall not appeal a notification that a review is outside of the scope of this section.

(5)(a) An administrative hearing shall be conducted in accordance with KRS Chapter 13B.

(b) Pursuant to KRS 13B.030, the secretary of the Cabinet for Health and Family Services delegates to the Cabinet for Health and Family Services, Office of the Ombudsman and

~~Administrative Review~~[Division for Administrative Hearings (DAH)] the authority to conduct administrative hearings under this administrative regulation.

(c) A notice of the administrative hearing shall comply with KRS 13B.050.

(d) The administrative hearing shall be held in Frankfort, Kentucky no later than ninety (90) calendar days from the date the request for the administrative hearing is received by the Office of the Ombudsman and Administrative Review[DAH].

(e) The administrative hearing date may be extended beyond the ninety (90) calendar days by:

1. A mutual agreement by the provider and the department; or

2. A continuance granted by the hearing officer.

(f)1. If the prehearing conference is requested, it shall be held at least thirty (30) calendar days in advance of the hearing date.

2. Conduct of the prehearing conference shall comply with KRS 13B.070.

(g) If a provider does not appear at the hearing on the scheduled date, the hearing officer may find the provider in default pursuant to KRS 13B.050(3)(h).

(h) A hearing request shall be withdrawn only under the following circumstances:

1. The hearing officer receives a written statement from a provider stating that the request is withdrawn; or

2. A provider makes a statement on the record at the hearing that the provider is withdrawing the request for the hearing.

(i) Documentary evidence to be used at the hearing shall be made available in accordance with KRS 13B.090.

(j) The hearing officer shall:

1. Preside over the hearing; and

2. Conduct the hearing in accordance with KRS 13B.080 and 13B.090.

(k) The provider shall have the burden of proof concerning the appealable issues under this administrative regulation.

(l)1. The hearing officer shall issue a recommended order in accordance with KRS 13B.110.

2. An extension of time for completing the recommended order shall comply with the requirements of KRS 13B.110(2) and (3).

(m)1. A final order shall be entered in accordance with KRS 13B.120.

2. The cabinet shall maintain an official record of the hearing in compliance with KRS 13B.130.

3. In the correspondence transmitting the final order, clear reference shall be made to the availability of judicial review pursuant to KRS 13B.140, 13B.150, and 13B.160.

~~Section 23. [Effective Date. This administrative regulation shall become effective on October 1, 2015.~~

~~Section 24.]~~ Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Supplemental Medicaid Schedule KMAP-1"; 2013;

(b) "Supplemental Medicaid Schedule KMAP-4"; 2013;

(c) "Supplemental Medicaid Schedule KMAP-6"; 2013; and

(d) "CMS Manual System Pub 100-03 Medicare National Coverage Determinations Transmittal 101", June 12, 2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law:

(a) At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at <https://chfs.ky.gov/agencies/dms/Pages/regsmaterials.aspx> [<http://www.chfs.ky.gov/dms/incorporated.htm>].

CAROL H. STECKEL, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 17, 2019

FILED WITH LRC: June 19, 2019 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall, if requested, be held on August 26, 2019, 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 August 19, 2019, 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 August 31, 2019. 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: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; Phone: 502-564-6746; Fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services (DMS) reimbursement provisions and requirements for care provided by inpatient acute care hospitals to Medicaid recipients who are not enrolled with a managed care organization. Managed care organizations are not required to reimburse in the same manner as DMS for services provided by an inpatient acute care hospital.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS's reimbursement provisions and requirements for care provided by inpatient acute care hospitals to Medicaid recipients who are not enrolled with a managed care organization.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing a reimbursement model for care provided by inpatient acute care hospitals to Medicaid that will be able to pay claims following international adoption of ICD-10.

(d) How this administrative regulation currently assists or shall assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing a reimbursement model for care provided by inpatient acute care hospitals to Medicaid.

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

(a) How the amendment shall change this existing administrative regulation: The amendments change the administrative regulation by implementing changes to the graduate medical education and indirect medical education reimbursement programs. The amendments establish a new methodology for calculating an indirect medical education payment that will be directed to certain hospitals. A new supplemental direct graduate medical education payment is also established and implemented to clarify which hospitals are eligible for supplemental DGME, and how the payments shall be made and calculated.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to implement new payment methodologies for certain hospitals. The enhanced payment methodology will enable hospitals to sustain and enhance services provided to Medicaid beneficiaries.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of

the authorizing statutes by securing and strengthening the hospital network providing care to some of the most vulnerable Kentucky residents, which includes Medicaid beneficiaries.

(d) How the amendment shall assist in the effective administration of the statutes: The amendments assist in the effective administration of the statutes by complying with federal and state mandates, and by implementing approved state plan amendments.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The amendment applies to all inpatient acute care hospitals. Currently, there are approximately sixty-five (65) acute care hospitals participating in the Kentucky Medicaid program. Two (2) state university hospitals and hospitals with which the state university teaching hospitals have affiliation agreements for graduate medical education will be directly affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) shall 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) shall have to take to comply with this administrative regulation or amendment. Hospitals will continue to need to annually submit cost report related documents to DMS.

(b) In complying with this administrative regulation or amendment, how much shall it cost each of the entities identified in question (3): This amendment imposes no cost on the regulated entities.

(c) As a result of compliance, what benefits shall accrue to the entities identified in question (3): Acute care inpatient hospitals will benefit from being able to potentially receive increased reimbursement for graduate medical education and indirect medical education programs.

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

(a) Initially: DMS anticipates no additional costs to the department to implement this administrative regulation as the state matching funds are being provided by the state university teaching hospitals.

(b) On a continuing basis: DMS anticipates no additional costs to the department to implement this administrative regulation as the state matching funds are being provided by the state university teaching hospitals.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching funds.

(7) Provide an assessment of whether an increase in fees or funding shall be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding shall be necessary to implement the amendment to this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is applied in that different reimbursement methodologies are utilized in relation to different hospital type. In addition in-state and out-of-state hospitals receive different reimbursement. However, the amendment applies equally to all regulated entities within each hospital type.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(30) and 42 C.F.R.447.205.

2. State compliance standards. KRS 205.520(3) states, "to qualify for federal funds the secretary for health and family

services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Medicaid reimbursement for services is required to be consistent with efficiency, economy and quality of care and be sufficient to attract enough providers to assure access to services. 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "... provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area." 42 C.F.R. 447.205 mandates that the state provide public notice of reimbursement changes.

4. Shall this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment does not impose stricter than federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The policy is not stricter than the federal standard.

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) shall be impacted by this administrative regulation? The Department for Medicaid Services (DMS) shall be impacted by the amendment.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(2), and 42 U.S.C. 1396a(a)(30).

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 shall this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS anticipates that these amendments will generate no additional revenue in the first year.

(b) How much revenue shall this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS anticipates that this administrative regulation will generate no additional revenue in the second year.

(c) How much shall it cost to administer this program for the first year? The amendment does not result in additional costs to the Department for Medicaid Services for the first year.

(d) How much shall it cost to administer this program for subsequent years? The amendment does not result in additional costs to the Department for Medicaid Services for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(Amendment)

907 KAR 15:005. Definitions for 907 KAR Chapter 15.

RELATES TO: KRS 194A.025(3), 205.510(11), 205.8451, 309.080, 309.130(2), (3), 311.840(3), 314.011(5), (7), 319.053, 319.056, 319.064, 319C.010(6), (7), 335.080, 335.100, 335.300(2), (3), 335.500(3), (4), 42 C.F.R. 400.203, 438.2, 441.540, 29 U.S.C. 794

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.6311, 42 U.S.C. 1396a

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the definitions for 907 KAR Chapter 15.

Section 1. Definitions. (1) "Adult peer support specialist" means an individual who meets the requirements for an adult peer support specialist established in 908 KAR 2:220.

(2) "Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7).

(3) "Approved behavioral health ~~practitioner~~[services provider]" means an independently licensed[a] practitioner who is:

- (a) A physician;
- (b) A psychiatrist;
- (c) An advanced practice registered nurse;
- (d) A physician assistant;
- (e) A licensed psychologist;
- (f) A licensed psychological practitioner;
- (g) A certified psychologist with autonomous functioning;
- (h) A licensed clinical social worker;
- (i) A licensed professional clinical counselor;
- (j) A licensed marriage and family therapist;
- (k) ~~A licensed psychological associate working under the supervision of a board-approved licensed psychologist;~~
- (l) ~~A certified psychologist working under the supervision of a board-approved licensed psychologist;~~
- (m) ~~A marriage and family therapy associate working under the supervision of a billing supervisor;~~
- (n) ~~A certified social worker working under the supervision of a billing supervisor;~~
- (o) ~~A licensed professional counselor associate working under the supervision of a billing supervisor;~~
- (p) ~~A licensed professional art therapist;~~
- (q) ~~A licensed professional art therapist associate working under the supervision of a billing supervisor;~~
- (r) ~~A licensed clinical alcohol and drug counselor; or~~
- (s) ~~A licensed clinical alcohol and drug counselor associate working under the supervision of a billing supervisor;~~
- (t) ~~A certified alcohol and drug counselor working under the supervision of a billing supervisor;~~
- (u) ~~A licensed behavior analyst; or~~
- (v) ~~A licensed assistant behavior analyst working under the supervision of a billing supervisor.~~

(4) "Approved behavioral health practitioner under supervision" means an individual under billing supervision of an approved behavioral health practitioner who is:

- (a) 1. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
- 2. A certified psychologist working under the supervision of a board-approved licensed psychologist;
- 3. A marriage and family therapy associate;
- 4. A certified social worker;
- 5. A licensed professional counselor associate;
- 6. A licensed professional art therapist associate;
- 7. A licensed clinical alcohol and drug counselor associate;

- 8. A certified alcohol and drug counselor; or
- 9. A licensed assistant behavior analyst; and
- (b) Employed by or under contract with the same billing provider as the billing supervisor.

(5) "ASAM Criteria" means the most recent edition of "The ASAM Criteria, Treatment Criteria for Addictive, Substance-Related, and Co-Occurring Conditions" published by the American Society of Addiction Medicine.

(6) "Behavioral health multi-specialty group" means a group of more than one (1) individually licensed behavioral health practitioners of varying practitioner types who form a business entity to:

- (a) Render behavioral health services; and
- (b) Bill the Medicaid Program for services rendered to Medicaid recipients.

~~(7) [(5) "Behavioral health practitioner under supervision" means an individual who is:~~

- ~~(a) 1. A licensed psychological associate;~~
- ~~2. A licensed professional counselor associate;~~
- ~~3. A licensed clinical alcohol and drug counselor associate;~~
- ~~4. A certified social worker;~~
- ~~5. A marriage and family therapy associate;~~
- ~~6. A licensed professional art therapist associate;~~
- ~~7. A licensed assistant behavior analyst;~~
- ~~8. A certified psychologist; or~~
- ~~9. A certified alcohol and drug counselor; and~~
- ~~(b) Employed by or under contract with the same billing provider as the billing supervisor.~~

(6) "Behavioral health provider group" means a group of more than one (1) individually licensed behavioral health practitioners of the same practitioner type who form a business entity to:

- (a) Render behavioral health services; and
- (b) Bill the Medicaid Program for services rendered to Medicaid recipients.

(8) ~~(7)~~ "Behavioral health services organization" means an entity that is licensed as a behavioral health services organization pursuant to:

- (a) 902 KAR 20:430 for a behavioral health services organization tier I (BHSO I);
- (b) 908 KAR 3:170 and 908 KAR 3:174 for a behavioral health services organization tier II (BHSO II); or
- (c) 908 KAR 3:170 and 908 KAR 3:172 for a behavioral health services organization tier III (BHSO III).

~~(9) [(8)]~~ "Billing provider" means the individual~~[who]~~, group of individual providers ~~[that]~~, or organization that:

- (a) Is authorized to bill the department or a managed care organization for a service; and
- (b) Is eligible to be reimbursed by the department or a managed care organization for a service.

(10) ~~(9)~~ "Billing supervisor" means an individual who is:

- ~~(a) 1. A physician;~~
- ~~2. A psychiatrist;~~
- ~~3. An advanced practice registered nurse;~~
- ~~4. A physician assistant;~~
- ~~5. A licensed clinical alcohol and drug counselor;~~
- ~~6. [5.] A licensed psychologist;~~
- ~~7. [6.] A licensed clinical social worker;~~
- ~~8. [7.] A licensed professional clinical counselor;~~
- ~~9. [8.] A licensed psychological practitioner;~~
- ~~10. [9.] A certified psychologist with autonomous functioning;~~
- ~~11. [40.] A licensed marriage and family therapist;~~
- ~~12. [44.] A licensed professional art therapist; or~~
- ~~13. [42.] A licensed behavior analyst; and~~
- (b) Employed by or under contract with the same billing provider as the behavioral health practitioner under supervision who renders services under the supervision of the billing supervisor.

(11) ~~(10)~~ "Certified alcohol and drug counselor" is defined by KRS 309.080(2).

(12) ~~(14)~~ "Certified psychologist" means an individual who is a certified psychologist pursuant to KRS 319.056.

(13) ~~(12)~~ "Certified psychologist with autonomous functioning" means an individual who is a certified psychologist with

autonomous functioning pursuant to KRS 319.056.

(14)(13) "Certified social worker" means an individual who meets the requirements established in KRS 335.080.

(15)(14) "Chemical dependency treatment center" means an entity that is licensed as a chemical dependency treatment center pursuant to 902 KAR 20:160.

(16)(15) "Community support associate" means a paraprofessional who meets the application, training, and supervision requirements of 908 KAR 2:250.

(17) "Co-occurring disorder" means a mental health and substance use disorder.

(18)(16) "Department" means the Department for Medicaid Services or its designee.

(19)(17) "Electronic signature" is defined by KRS 369.102(8).

(20)(18) "Enrollee" means a recipient who is enrolled with a managed care organization.

(21)(19) "Face-to-face" means occurring:

(a) in person; or

(b) If authorized by 907 KAR 3:170, via a real-time, electronic communication that involves two (2) way interactive video and audio communication].

(22)(20) "Family peer support specialist" means an individual who meets the requirements for a Kentucky family peer support specialist established in 908 KAR 2:230.

(23)(21) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(24)(22) "Healthcare common procedure coding system" or "HCPCS" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services (CMS) that represents procedures or items.

(25)(23) "Kentucky-specific Medicare Physician Fee Schedule" means the list or process by which current reimbursement rates for physician services are established or published by the department in accordance with 907 KAR 3:040, Section 3].

(26)(24) "Level I psychiatric residential treatment facility" means an entity that is licensed as a Level I psychiatric residential treatment facility pursuant to 902 KAR 20:320.

(27)(25) "Level II psychiatric residential treatment facility" means an entity that is licensed as a Level II psychiatric residential treatment facility pursuant to 902 KAR 20:320.

(28)(26) "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).

(29)(27) "Licensed behavior analyst" is defined by KRS 319C.010(6).

(30)(28) "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(4).

(31)(29) "Licensed clinical alcohol and drug counselor associate" is defined by KRS 309.080(5).

(32)(30) "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.

(33)(31) "Licensed marriage and family therapist" is defined by KRS 335.300(2).

(34)(32) "Licensed professional art therapist" is defined by KRS 309.130(2).

(35)(33) "Licensed professional art therapist associate" is defined by KRS 309.130(3).

(36)(34) "Licensed professional clinical counselor" is defined by KRS 335.500(3).

(37)(35) "Licensed professional counselor associate" is defined by KRS 335.500(4).

(38)(36) "Licensed psychological associate" means an individual who meets the requirements established in KRS 319.064.

(39)(37) "Licensed psychological practitioner" means an individual who meets the requirements established in KRS 319.053.

(40)(38) "Licensed psychologist" means an individual who currently possesses a licensed psychologist license in accordance with KRS 319.010(6).

(41)(39) "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to

serve as a managed care organization as defined by 42 C.F.R. 438.2.

(42)(40) "Marriage and family therapy associate" is defined by KRS 335.300(3).

(43)(41) "Medicaid-covered service" means a service covered by the department as established in Title 907 of the Kentucky Administrative Regulations.

(44)(42) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(45) "Medication assisted treatment" means the treatment of a substance use disorder with approved medications in combination with counseling, behavioral therapies, and other supports.

(46)(43) "Physician" is defined by KRS 205.510(11).

(47)(44) "Physician assistant" is defined by KRS 311.840(3).

(48) "Practitioner working under supervision" means:

(a) An approved behavioral health practitioner under supervision;

(b) A registered behavioral health technician;

(c) A community support associate; or

(d) A peer support specialist.

(49)(45) "Provider" is defined by KRS 205.8451(7).

(50)(46) "Provider abuse" is defined by KRS 205.8451(8).

(51)(47) "Psychiatric hospital" means an entity licensed as a psychiatric hospital pursuant to 902 KAR 20:180.

(52)(48) "Recipient" is defined by KRS 205.8451(9).

(53)(49) "Recipient abuse" is defined by KRS 205.8451(10).

(54)(50) "Recipient's representative" means:

(a) For a recipient who is authorized by Kentucky law to provide written consent, an individual acting on behalf of, and with written consent from, the recipient; or

(b) A legal guardian.

(55)(51) "Registered alcohol and drug peer support specialist" is defined by KRS 309.080(8).

(56) "Registered behavioral technician" means an individual who meets the following requirements provided by the Behavior Analyst Certification Board:

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

(b) Have a high school diploma or its equivalent;

(c) Complete a training program approved by the Behavior Analyst Certification Board conducted by Behavior Analyst Certification Board certificants;

(d) Pass the Registered Behavior Technician Competency Assessment administered by a Behavior Analyst Certification Board certificant; and

(e) Pass the Registered Behavior Technician exam provided by the Behavior Analyst Certification Board.

(57)(52) "Registered nurse" is defined by KRS 314.011(5).

(58)(53) "Residential crisis stabilization unit" means an entity that is licensed as a residential crisis stabilization unit pursuant to 902 KAR 20:440.

(59)(54) "Section 504 plan" means a plan developed:

(a) Under the auspices of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 (Section 504); and

(b) To ensure that a child who has a disability identified under the law and is attending an elementary or secondary educational institution receives accommodations to ensure the child's academic success and access to the learning environment.

(60) "Telehealth" is defined by KRS 205.510(15).

(61) "Withdrawal management" means a set of interventions aimed at managing acute intoxication and withdrawal based on the severity of the illness and co-occurring conditions identified through a comprehensive biopsychosocial assessment with linkage to addiction management services, and incorporated into a recipient's care as needed throughout the appropriate levels of care.

(62)(55) "Youth peer support specialist" means an individual who meets the requirements established for a Kentucky youth peer support specialist established in 908 KAR 2:240.

CAROL H. STECKEL, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 3, 2019

FILED WITH LRC: June 28, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 26, 2019, 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 August 19, 2019, 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 August 31, 2019. 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: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone: 502-564-6746; fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonthant.scott@ky.gov; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the definitions for administrative regulations located in 907 KAR Chapter 15. Chapter 15 contains Medicaid administrative regulations regarding behavioral health services (treatment of mental health disorders as well as of substance use disorders) provided by independently enrolled behavioral health professionals, behavioral health service organizations, behavioral health provider groups, behavioral health multi-specialty groups, chemical dependency treatment centers, and residential crisis stabilization units.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the definitions for administrative regulations located in 907 KAR Chapter 15. Chapter 15 contains Medicaid administrative regulations regarding behavioral health services (treatment of mental health disorders as well as of substance use disorders) provided by independently enrolled behavioral health professionals, behavioral health service organizations, behavioral health provider groups, behavioral health multi-specialty groups, chemical dependency treatment centers, and residential crisis stabilization units. Medicaid programs are federally-mandated to cover behavioral health services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the definitions for administrative regulations located in 907 KAR Chapter 15.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing the definitions for administrative regulations located in 907 KAR Chapter 15.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation add definitions for the following: "approved behavioral health professional under supervision", "ASAM Criteria", "co-occurring disorder", "medication assisted treatment", "practitioner working under supervision", "registered behavior technician", "telehealth", and "withdrawal management". Definitions for "approved behavioral health practitioner", "behavioral health services organization", and "face-to-face" have been expanded to reflect changes to 907 KAR 15:010, 15:020, and a new administrative

regulation 907 KAR 15:022.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to clarify and expand terms used throughout 907 KAR Chapter 15. Amendments are being instituted in various places of 907 KAR Chapter 15 in order to implement 2018's HB 124 and an SUD 1115 Waiver for Kentucky HEALTH. The new terms also will assist in consolidating the length of certain administrative regulations in 907 KAR Chapter 15.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to the content of the authorizing statutes by clarifying and expanding terms used throughout 907 KAR Chapter 15.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist in the effective administration of the authorizing statutes by clarifying and expanding terms used throughout 907 KAR Chapter 15.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The following Medicaid-enrolled providers will be affected by this administrative regulation: individual Medicaid- behavioral health providers, behavioral health provider groups and multi-specialty groups, behavioral health services organizations, chemical dependency treatment centers, and residential crisis stabilization units. There are currently over 2,200 such individuals or entities enrolled in the Medicaid program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: As appropriate, providers may need to refer to this administrative regulation to clarify terms used in other administrative regulations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Providers and provider groups will not incur additional costs as a result of the changes to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Providers and provider groups will benefit due to the additional clarity provided by the amendments and new definitions included in this updated administrative regulation.

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

(a) Initially: No cost is necessary to implement the amendments to this administrative regulation.

(b) On a continuing basis: No cost is necessary to implement the amendments to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and state matching funds comprised of general fund and restricted fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding are necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor directly or indirectly increases any fees.

(9) Tiering: Is tiering applied? Tiering is applied to the extent that behavioral health services organizations are now separated depending on whether services are provided for only mental health, outpatient substance use disorder, or residential substance use disorder services. However, within each tier of services the requirements apply equally to all providers.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate to define terms in an administrative regulation.

2. State compliance standards. KRS 194A.030(2) states, "The Department for Medicaid Services shall serve as the single state agency in the Commonwealth to administer Title XIX of the Federal Social Security Act." KRS 205.6311 requires the Department for Medicaid Services to "promulgate administrative regulations. .. to expand the behavioral health network to allow providers to provide services within their licensure category."

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate to define terms in an administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.6311, 42 U.S.C. 1396a.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The department anticipates that these amendments will generate no new 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 department projects that these amendments will generate no new revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The department projects no additional costs in order to implement this administrative regulation in the first year.

(d) How much will it cost to administer this program for subsequent years? The department projects no additional costs in order to implement this administrative regulation in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(Amendment)

907 KAR 15:010. Coverage provisions and requirements regarding behavioral health services provided by individual approved behavioral health practitioners[providers], behavioral health provider groups, and behavioral health multi-specialty groups.

RELATES TO: KRS 205.520, Chapter 319, 369.101-369.120,

42 C.F.R. Part 2, 431.17, 45 C.F.R. Parts 160, 164, 20 U.S.C. 1400 et seq., 29 U.S.C. 701 et seq., 42 U.S.C. 290ee-3, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23), 12101 et seq., 1320d-2 - 1320d-8

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6311

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program behavioral health services provided by certain licensed individual behavioral health professionals who are independently enrolled in the Medicaid Program, practitioners working for or under the supervision of the individual behavioral health providers, and individual behavioral health professionals and practitioners under supervision working in behavioral health provider groups or in behavioral health multi-specialty groups.

Section 1. General Coverage Requirements. (1) For the department to reimburse for a service covered under this administrative regulation, the service shall:

(a) Be medically necessary;

(b) Meet the coverage requirements established in Section 3 of this administrative regulation;

(c) Be provided to a recipient by:

1. An individual approved behavioral health practitioner[provider] who:

a. Is enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

b. Except as established in Section 2(1) of this administrative regulation, currently participates in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; and

c. Is an approved behavioral health practitioner[~~]:~~

(i) A physician;

(ii) A psychiatrist;

(iii) An advanced practice registered nurse;

(iv) A physician assistant;

(v) A licensed psychologist;

(vi) A licensed psychological practitioner;

(vii) A certified psychologist with autonomous functioning;

(viii) A licensed clinical social worker;

(ix) A licensed professional clinical counselor;

(x) A licensed marriage and family therapist;

(xi) A licensed professional art therapist;

(xii) A licensed clinical alcohol and drug counselor; or

(xiii) A licensed behavior analyst;

2. ~~An[Any of the] individual approved behavioral health practitioner[professionals listed in subparagraph 1.c. of this paragraph]~~ who is working for:

a. A behavioral health provider group that is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; or

b. A behavioral health multi-specialty group that is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;

3. An approved[A] behavioral health practitioner under supervision working for:

a. An individual approved behavioral health practitioner[professional listed in subparagraph 1.c. of this paragraph] who is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative

regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;

b. A behavioral health provider group that is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; or

c. A behavioral health multi-specialty group that is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;

4. ~~[A certified psychologist working under the supervision of a board-approved licensed psychologist who is:~~

~~a. (i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and~~

~~(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;~~

~~b. Working for a behavioral health provider group that is:~~

~~(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and~~

~~(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; or~~

~~c. Working for a behavioral health multi-specialty group that is:~~

~~(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and~~

~~(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; or~~

5. An adult peer support specialist, family peer support specialist, youth peer support specialist, or registered alcohol and drug peer support specialist working for:

a. ~~[Any of the individual behavioral health professionals listed in subparagraph 1.c. of this paragraph who is:~~

~~(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and~~

~~(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;~~

~~b. A behavioral health provider group that is:~~

~~(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and~~

~~(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; or~~

~~b. [c.] A behavioral health multi-specialty group that is:~~

~~(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and~~

~~(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; or~~

5. A community support associate working for a behavioral health multi-specialty group that is:

a. Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

b. Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; and

(d) Be billed to the department by the:

1. Individual approved behavioral health practitioner~~[provider]~~ who provided the service or under whose supervision the service was rendered in accordance with Section 3 of this administrative regulation;

2. Behavioral health provider group on behalf of which the service was rendered in accordance with Section 3 of this administrative regulation; or

3. Behavioral health multi-specialty group on behalf of which the service was rendered in accordance with Section 3 of this administrative regulation.

(2)(a) ~~Direct~~~~[Face-to-face]~~ contact between a provider or practitioner and a recipient shall be required for each service except for:

1. Collateral outpatient therapy for a child under the age of twenty-one (21) years if the collateral outpatient therapy is in the child's plan of care;

2. A family outpatient therapy service in which the corresponding current procedural terminology code establishes that the recipient is not present;

3. A psychological testing service comprised of interpreting or explaining results of an examination or data to family members or others in which the corresponding current procedural terminology code establishes that the recipient is not present; or

4. A service planning activity in which the corresponding current procedural terminology code establishes that the recipient is not present.

(b) A service that does not meet the requirement in paragraph (a) of this subsection shall not be covered.

(3) A billable unit of service shall be actual time spent delivering a service in an~~[a face-to-face]~~ encounter.

(4) A service shall be:

(a) Stated in a recipient's plan of care; and

(b) Provided in accordance with a recipient's plan of care.

(5)~~(a)~~ A provider shall establish a plan of care for each recipient receiving services from the provider.

~~(b)~~ A plan of care shall:

1. Describe the services to be provided to the client, including the frequency of services;

2. Contain measurable goals for the client to achieve, including the expected date of achievement for each goal;

3. Describe the client's functional abilities and limitations, or diagnosis listed in the current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders;

4. Specify each staff member assigned to work with the client;

5. Identify methods of involving the client's family or significant others if indicated;

6. Specify criteria to be met for termination of treatment;

7. Include any referrals necessary for services not provided directly by that provider; and

8. Include the date scheduled for review of the plan.

(c) A separate plan of care shall be established for each recipient receiving services for substance use disorder treatment in accordance with the plan of care requirements established in 908 KAR 1:370, Section 19.

Section 2. Provider Participation. (1) In accordance with 907 KAR 17:015, Section 3(3), a provider of a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

(2) A provider shall:

(a) Agree to provide services in compliance with federal and state laws regardless of age, sex, race, creed, religion, national origin, handicap, or disability; and

(b) Comply with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments to the Act.

(3) A behavioral health multi-specialty group that is providing services for substance use disorder or co-occurring disorders shall possess an alcohol and other drug entity license pursuant to 908 KAR 3:170 and 908 KAR 3:174.

(4)(a) A physician providing behavioral health services in a behavioral health multi-specialty group shall possess a psychiatric or addictionology specialty.

(b) An advanced practice registered nurse providing services in a behavioral health multi-specialty group shall possess a psychiatric or addictionology specialty.

(c) A physician assistant providing behavioral health services in a behavioral health multi-specialty group shall have a contractual relationship with a supervising physician with psychiatric or addictionology specialty.

Section 3. Covered Services. (1) Except as specified in the requirements stated for a given service, the services covered may be provided for a:

(a) Mental health disorder;
 (b) Substance use disorder; or
 (c) Co-occurring mental health and substance use disorders.
 (2)[The following] Services shall be covered under this administrative regulation in accordance with the requirements established in this section[:

(a) A screening provided by:
 1. A licensed psychologist;
 2. A licensed professional clinical counselor;
 3. A licensed clinical social worker;
 4. A licensed marriage and family therapist;
 5. A physician;
 6. A psychiatrist;
 7. An advanced practice registered nurse;
 8. A physician assistant;
 9. A licensed psychological practitioner;
 10. A certified psychologist with autonomous functioning;
 11. A licensed clinical and alcohol drug counselor;
 12. A licensed professional art therapist; or
 13. A behavioral health practitioner under supervision except for a licensed assistant behavior analyst;

(b) An assessment provided by:
 1. A licensed psychologist;
 2. A licensed professional clinical counselor;
 3. A licensed clinical social worker;
 4. A licensed marriage and family therapist;
 5. A physician;
 6. A psychiatrist;
 7. An advanced practice registered nurse;
 8. A physician assistant;
 9. A licensed psychological practitioner;
 10. A certified psychologist with autonomous functioning;
 11. A licensed behavior analyst;
 12. A licensed clinical alcohol and drug counselor;
 13. A licensed professional art therapist; or
 14. A behavioral health practitioner under supervision;

(c) Psychological testing provided by:
 1. A licensed psychologist;
 2. A licensed psychological practitioner;
 3. A licensed psychological associate;
 4. A certified psychologist with autonomous functioning; or
 5. A certified psychologist;

(d) Service planning provided by:
 1. A licensed psychologist;
 2. A licensed professional clinical counselor;
 3. A licensed clinical social worker;
 4. A licensed marriage and family therapist;
 5. A physician;
 6. A psychiatrist;
 7. An advanced practice registered nurse;
 8. A physician assistant;
 9. A licensed psychological practitioner;
 10. A certified psychologist with autonomous functioning;
 11. A licensed professional art therapist;
 12. A licensed behavior analyst; or
 13. A behavioral health practitioner under supervision except

for a:
 a. Certified alcohol and drug counselor; or
 b. Licensed clinical alcohol and drug counselor associate;
 (e) Individual outpatient therapy, group outpatient therapy, collateral outpatient therapy, or crisis intervention services provided by:

1. A licensed psychologist;
 2. A licensed professional clinical counselor;
 3. A licensed clinical social worker;
 4. A licensed marriage and family therapist;
 5. A physician;
 6. A psychiatrist;
 7. An advanced practice registered nurse;
 8. A physician assistant;
 9. A licensed psychological practitioner;
 10. A certified psychologist with autonomous functioning;
 11. A licensed professional art therapist;

12. A licensed behavior analyst;
 13. A licensed clinical alcohol and drug counselor; or
 14. A behavioral health practitioner under supervision;
 (f) Family outpatient therapy provided by:
 1. A licensed psychologist;
 2. A licensed professional clinical counselor;
 3. A licensed clinical social worker;
 4. A licensed marriage and family therapist;
 5. A physician;
 6. A psychiatrist;
 7. An advanced practice registered nurse;
 8. A physician assistant;
 9. A licensed psychological practitioner;
 10. A certified psychologist with autonomous functioning;
 11. A licensed professional art therapist;
 12. A licensed clinical alcohol and drug counselor; or
 13. A behavioral health practitioner under supervision except for a licensed assistant behavior analyst;

(g) A screening, brief intervention, and referral to treatment for a substance use disorder or SBIRT provided by:

1. A licensed psychologist;
 2. A licensed professional clinical counselor;
 3. A licensed clinical social worker;
 4. A licensed marriage and family therapist;
 5. A physician;
 6. A psychiatrist;
 7. An advanced practice registered nurse;
 8. A physician assistant;
 9. A licensed psychological practitioner;
 10. A certified psychologist with autonomous functioning;
 11. A licensed professional art therapist;
 12. A licensed clinical alcohol and drug counselor; or
 13. A behavioral health practitioner under supervision except for a licensed assistant behavior analyst;

(h) Day treatment provided by:
 1. A licensed psychologist;
 2. A licensed professional clinical counselor;
 3. A licensed clinical social worker;
 4. A licensed marriage and family therapist;
 5. A physician;
 6. A psychiatrist;
 7. An advanced practice registered nurse;
 8. A physician assistant;
 9. A licensed psychological practitioner;
 10. A certified psychologist with autonomous functioning;
 11. A licensed professional art therapist;
 12. A licensed behavior analyst;
 13. A behavioral health practitioner under supervision;
 14. An adult peer support specialist, family peer support specialist, or youth peer support specialist working under the supervision of an approved behavioral health services provider;
 15. A registered alcohol and drug peer support specialist working under the supervision of an approved behavioral health services provider; or

16. A licensed clinical alcohol and drug counselor;
 (i) Comprehensive community support services provided by:

1. A licensed psychologist;
 2. A licensed professional clinical counselor;
 3. A licensed clinical social worker;
 4. A licensed marriage and family therapist;
 5. A physician;
 6. A psychiatrist;
 7. An advanced practice registered nurse;
 8. A physician assistant;
 9. A licensed psychological practitioner;
 10. A certified psychologist with autonomous functioning;
 11. A licensed professional art therapist;
 12. A licensed behavior analyst; or
 13. A behavioral health practitioner under supervision except

for a:
 a. Certified alcohol and drug counselor; or
 b. Licensed clinical alcohol and drug counselor associate;
 (j) Peer support, except as established in subsection (3)(a) of

this section, provided by:

1. An adult peer support specialist working under the supervision of an approved behavioral health service provider;
2. A youth peer support specialist working under the supervision of an approved behavioral health service provider;
3. A family peer support specialist working under the supervision of an approved behavioral health services provider; or
4. A registered alcohol and drug peer support specialist working under the supervision of an approved behavioral health services provider;

(k) Intensive outpatient program services, except as established in subsection (3)(b) of this section, provided by:

1. A licensed psychologist;
2. A licensed professional clinical counselor;
3. A licensed clinical social worker;
4. A licensed marriage and family therapist;
5. A physician;
6. A psychiatrist;
7. An advanced practice registered nurse;
8. A physician assistant;
9. A licensed psychological practitioner;
10. A behavioral health practitioner under supervision, except

for a licensed assistant behavioral analyst;

11. A licensed professional art therapist; or
12. A licensed clinical alcohol and drug counselor; or

(l) Therapeutic rehabilitation program services provided by:

1. A licensed psychologist;
2. A licensed professional clinical counselor;
3. A licensed clinical social worker;
4. A licensed marriage and family therapist;
5. A physician;
6. A psychiatrist;
7. An advanced practice registered nurse;
8. A physician assistant;
9. A licensed psychological practitioner;
10. A certified psychologist with autonomous functioning;
11. A licensed professional art therapist;
12. A behavioral health practitioner under supervision except

for a:

- a. Certified alcohol and drug counselor;
- b. Licensed clinical alcohol and drug counselor associate; or
- c. Licensed assistant behavior analyst; or
13. An adult peer support specialist, family peer support specialist, or youth peer support specialist working under the supervision of an approved behavioral health services provider.

(3)(a) Peer support shall only be covered if provided by a behavioral health:

1. Provider group; or
2. Multi-specialty group.

(b) Intensive outpatient program services shall only be covered if provided by a behavioral health:

1. Provider group; or
2. Multi-specialty group].

(3)[(4)](a) A screening shall:

1. Determine the likelihood that an individual has a mental health disorder, substance use disorder, or co-occurring disorders;
2. Not establish the presence or specific type of disorder;[and]
3. Establish the need for an in-depth assessment;

4. Be provided face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170;

5. Be provided by:

- a. An approved behavioral health practitioner; or
- b. An approved behavioral health practitioner under supervision.

(b) An assessment shall:

1. Include gathering information and engaging in a process with the individual that enables the provider to:
 - a. Establish the presence or absence of a mental health disorder, substance use disorder, or co-occurring disorders;
 - b. Determine the individual's readiness for change;
 - c. Identify the individual's strengths or problem areas that may affect the treatment and recovery processes; and
 - d. Engage the individual in developing an appropriate

treatment relationship;

2. Establish or rule out the existence of a clinical disorder or service need;

3. Include working with the individual to develop a treatment and service plan;[and]

4. Not include psychological or psychiatric evaluations or assessments;

5. Be provided face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170;

6. If being made for the treatment of a substance use disorder, utilize a multidimensional assessment tool that complies with the most current edition of the ASAM Criteria to determine the most appropriate level of care; and

7. Be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision, except for a certified alcohol and drug counselor.

(c) Psychological testing shall:

1. Include:

- a. A psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities; and
- b. Interpretation and a written report of testing results; [and]

2. Be performed by an individual who has met the requirements of KRS Chapter 319 related to the necessary credentials to perform psychological testing;

3. Be provided face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170; and

4. Be provided by:

a. A licensed psychologist;

b. A licensed psychological practitioner;

c. A licensed psychological associate;

d. A certified psychologist with autonomous functioning; or

e. A certified psychologist.

(d) Crisis intervention:

1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to:

- a. The recipient; or
- b. Another individual;

2. Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities for individuals;

3. Shall be provided:

- a. On-site at the provider's office;
- b. As an immediate relief to the presenting problem or threat; and

c. In a face-to-face, one-on-one encounter between the provider and the recipient, including via telehealth as appropriate pursuant to 907 KAR 3:170;

4. May include:

a. Further service prevention planning including:

- (i) Lethal means reduction for suicide risk; or
- (ii) Substance use disorder relapse prevention; or
- b. Verbal de-escalation, risk assessment, or cognitive therapy;

[and]

5. Shall be followed by a referral to noncrisis services if applicable; and

6. Shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(e)1. Service planning shall:

a. Involve assisting a recipient in creating an individualized plan for services and developing measurable goals and objectives needed for maximum reduction of a mental health disorder, substance use disorder, or co-occurring disorders;

b. Involve restoring a recipient's functional level to the recipient's best possible functional level; and

c. Be performed using a person-centered planning process.

2. A service plan:

- a. Shall be directed and signed by the recipient;
- b. Shall include practitioners of the recipient's choosing; and
- c. May include:

(i) A mental health advance directive being filed with a local hospital;

(ii) A crisis plan; or

(iii) A relapse prevention strategy or plan.

3. Service planning shall be provided face-to-face.

4. Service planning shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision, except for a certified alcohol and drug counselor.

(f) Individual outpatient therapy shall:

1. Be provided to promote the:

a. Health and well-being of the recipient; and

b. Restoration of a recipient to their best possible functional level[Recipient's recovery] from a substance use disorder, mental health disorder, or co-occurring mental health and substance use disorders;

2. Consist of:

a. A face-to-face, one-on-one encounter between the provider and recipient, including via telehealth if appropriate pursuant to 907 KAR 3:170; and

b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified plan of care;

3. Be aimed at:

a. Reducing adverse symptoms;

b. Reducing or eliminating the presenting problem of the recipient; and

c. Improving functioning;~~[and]~~

4. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary; and

5. Be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision, except for a certified alcohol and drug counselor.

(g)1. Family outpatient therapy shall consist of a face-to-face or appropriate telehealth, pursuant to 907 KAR 3:170, behavioral health therapeutic intervention provided:

a. Through scheduled therapeutic visits between the therapist and the recipient and at least one (1) member of the recipient's family; and

b. To address issues interfering with the relational functioning of the family and to improve interpersonal relationships within the recipient's home environment.

2. A family outpatient therapy session shall be billed as one (1) service regardless of the number of individuals (including multiple members from one (1) family) who participate in the session.

3. Family outpatient therapy shall:

a. Be provided to promote the:

(i) Health and wellbeing of the recipient; and

(ii) Restoration of a recipient to their best possible functional level[Recipient's recovery] from a substance use disorder, mental health disorder, or co-occurring related disorders;~~[and]~~

b. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per individual unless additional time is medically necessary.

4. Family outpatient therapy shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision, except for a certified alcohol and drug counselor.

(h)1. Group outpatient therapy shall:

a. Be a behavioral health therapeutic intervention provided in accordance with a recipient's identified plan of care;

b. Be provided to promote the:

(i) Health and well-being of the recipient; and

(ii) Restoration of a recipient to their best possible functional level[Recipient's recovery] from a substance use disorder, mental health disorder, or co-occurring mental health and substance use disorders;

c. Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the recipient's identified plan of care;

d. Be provided to a recipient in a group setting:

(i) Of nonrelated individuals except for multi-family group

therapy; and

(ii) Not to exceed twelve (12) individuals in size;

e. Focus on the psychological needs of the recipients as evidenced in each recipient's plan of care;

f. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;

g. Not include physical exercise, a recreational activity, an educational activity, or a social activity; and

h. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary.

2. The group shall have a:

a. Deliberate focus; and

b. Defined course of treatment.

3. The subject of group outpatient therapy shall be related to each recipient participating in the group.

4. The provider shall keep individual notes regarding each recipient within the group and within each recipient's health record.

5. Group outpatient therapy shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision, except for a certified alcohol and drug counselor.

(i)1. Collateral outpatient therapy shall:

a. Consist of a face-to-face or appropriate telehealth, pursuant to 907 KAR 3:170, behavioral health consultation:

(i) With a parent or caregiver of a recipient, household member of a recipient, legal representative of a recipient, school personnel, treating professional, or other person with custodial control or supervision of the recipient; and

(ii) That is provided in accordance with the recipient's plan of care; and

b. Not be reimbursable if the therapy is for a recipient who is at least twenty-one (21) years of age.

2. Consent to discuss a recipient's treatment with any person other than a parent or legal guardian shall be signed and filed in the recipient's health record.

3. Collateral outpatient therapy shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision, except for a certified alcohol and drug counselor.

(j) Screening, brief intervention, and referral to treatment for a substance use disorder shall:

1. Be an evidence-based early intervention approach for an individual with non-dependent substance use to provide an effective strategy for intervention prior to the need for more extensive or specialized treatment; ~~[and]~~

2. Consist of:

a. Using a standardized screening tool to assess an individual for risky substance use behavior;

b. Engaging a recipient who demonstrates risky substance use behavior in a short conversation and providing feedback and advice to the recipient; and

c. Referring a recipient to additional mental health disorder, substance use disorder, or co-occurring disorders services if the recipient is determined to need other additional services to address the recipient's substance use;

3. Be provided face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170; and

4. Be provided by:

a. An approved behavioral health practitioner, except for a licensed behavior analyst; or

b. An approved behavioral health practitioner under supervision, except for a licensed assistant behavior analyst.

(k)1. Day treatment shall be a nonresidential, intensive treatment program designed for a child under the age of twenty-one (21) years who has:

a. A mental health disorder, substance use disorder, or co-occurring ~~[mental health and substance use]~~ disorders; and

b. A high risk of out-of-home placement due to a behavioral health issue.

2. Day treatment shall:

a. Consist of an organized, behavioral health program of

treatment and rehabilitative services;

b. Include:

(i) Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;

(ii) Behavior management and social skills training;

(iii) Independent living skills that correlate to the age and development stage of the recipient; or

(iv) Services designed to explore and link with community resources before discharge and to assist the recipient and family with transition to community services after discharge; and

c. Be provided:

(i) In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);

(ii) On school days and during scheduled breaks;

(iii) In coordination with the recipient's individualized education program[~~individual educational plan~~] if the recipient has an individualized education program[~~individual educational plan~~];

(iv) Under the supervision of an approved behavioral health practitioner[~~services provider~~];[~~and~~]

(v) With a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider; and

(vi) Face-to-face.

3. To provide day treatment services, a provider shall have:

a. The capacity to employ staff authorized to provide day treatment services in accordance with this section and to coordinate the provision of services among team members; and

b. Knowledge of substance use disorders, mental health disorders, and co-occurring disorders.

4. Day treatment shall not include a therapeutic clinical service that is included in a child's individualized education program[~~plan~~].

5. Day treatment shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision, except for a certified alcohol and drug counselor.

6. Day treatment support services conducted by a behavioral health multi-specialty group or a behavioral health provider group by an individual working under the supervision of an approved behavioral health practitioner may be provided by:

a. A registered alcohol and drug peer support specialist;

b. An adult peer support specialist;

c. A family peer support specialist; or

d. A youth peer support specialist.

(l)1. Comprehensive community support services shall:

a. Be activities necessary to allow an individual to live with maximum independence in the community;

b. Be intended to ensure successful community living through the utilization of skills training as identified in the recipient's plan of care; and

c. Consist of using a variety of psychiatric or behavioral rehabilitation techniques to:

(i) Improve emotional regulation skills;

(ii) Improve crisis coping skills;

(iii) Develop and enhance interpersonal skills;

(iv) Improve daily living skills; and

(v) Improve self-monitoring of symptoms and side effects.

2. To provide comprehensive community support services, a provider shall:

a. Have the capacity to employ staff authorized pursuant to 908 KAR 2:250 to provide comprehensive community support services [~~in accordance with subsection (2)(i) of this section~~] and to coordinate the provision of services among team members; and

b. Meet the requirements for comprehensive community support services established in 908 KAR 2:250.

3. Comprehensive community support services shall be provided face-to-face.

4. Comprehensive community support services shall be provided by:

a. An approved behavioral health practitioner, except for a licensed clinical alcohol and drug counselor; or

b. An approved behavioral health practitioner under

supervision, except for a:

(i) Certified alcohol and drug counselor; or

(ii) Licensed clinical alcohol and drug counselor associate.

5. Support services for comprehensive community support services conducted by a behavioral health multi-specialty group or a behavioral health provider group by an individual working under the supervision of an approved behavioral health practitioner may be provided by:

a. A community support associate; or

b. A registered behavioral technician under the supervision of a licensed behavioral analyst.

(m)1. Peer support services shall:

a. Be emotional support that is provided by:

(i) An individual who has been trained and certified in accordance with 908 KAR 2:220 and who is experiencing or has experienced a mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders to a recipient by sharing a similar mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders in order to bring about a desired social or personal change;

(ii) A parent or other family member who has been trained and certified in accordance with 908 KAR 2:230 of a child having or who has had a mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders to a parent or family member of a child sharing a similar mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders in order to bring about a desired social or personal change;

(iii) An individual[~~A family member~~] who has been trained and certified in accordance with 908 KAR 2:240 and identified as having experienced as a child or youth an emotional, social, or behavioral disorder that is defined in the current version of the Diagnostic and Statistical Manual for Mental Disorders[2:230 of a child having or who has had a mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders to a parent or family member of a child sharing a similar mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders in order to bring about a desired social or personal change]; or

(iv) A registered alcohol and drug peer support specialist who is experiencing or has experienced a substance use disorder to a recipient by sharing a similar substance use disorder in order to bring about a desired social or personal change;

b. Be an evidence-based practice;

c. Be structured and scheduled nonclinical therapeutic activities with an individual recipient or a group of recipients;

d. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient;

e. Except for the engagement into substance use disorder treatment conducted through emergency department bridge clinics, be coordinated within the context of a comprehensive, individualized plan of care developed through a person-centered planning process;

f. Be identified in each recipient's plan of care; [~~and~~]

g. Be designed to directly contribute to the recipient's individualized goals as specified in the recipient's plan of care; and

h. Be provided face-to-face.

2. To provide peer support services, a provider shall:

a. Have demonstrated:

(i) The capacity to provide peer support services for the behavioral health population being served including the age range of the population being served; and

(ii) Experience in serving individuals with behavioral health disorders;

b. Employ:

(i) Adult peer support specialists, family peer support specialists, or youth peer support specialists who are qualified to provide peer support services in accordance with 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240; or

(ii) Registered alcohol and drug peer support specialists;[~~and~~]

c. Use an approved behavioral health practitioner[~~services~~]

provider] to supervise adult peer support specialists, family peer support specialists, or youth peer support specialists; and

d. Require that:

(i) Individuals providing peer support services to recipients provide no more than one hundred and twenty (120) units per week of direct recipient contact; and

(ii) Peer support services provided to recipients in a group setting not exceed eight (8) individuals within any group at one time.

3. Peer support shall only be covered if provided by a behavioral health:

a. Provider group; or

b. Multi-specialty group.

(n)1. Intensive outpatient program services shall:

a. Be an alternative to or transition from a higher level of care[inpatient hospitalization or partial hospitalization] for a mental health or substance use disorder, or co-occurring disorders;

b. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is significantly more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;

c. For an intensive outpatient program providing services for SUD treatment, meet the service criteria including components for support systems, staffing, and therapies outlined in the most current edition of The ASAM Criteria for intensive outpatient level of care services;

d. Be provided face-to-face;

e. Be provided at least three (3) hours per day at least three (3) days per week for adults;

f. Be provided at least six (6) hours per week for adolescents; and

g.[d.] Include:

(i) Individual outpatient therapy;

(ii) Group outpatient therapy;

(iii) Family outpatient therapy unless contraindicated;

(iv) Crisis intervention; or

(v) Psycho-education, related to identified goals in the recipient's treatment plan.

2. During psycho-education the recipient or recipient's family member shall be:

a. Provided with knowledge regarding the recipient's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and

b. Taught how to cope with the recipient's diagnosis or condition in a successful manner.

3. An intensive outpatient program services treatment plan shall:

a. Be individualized; and

b. Focus on stabilization and transition to a lesser level of care.

4. To provide intensive outpatient program services, a provider shall:

a. Be employed by a behavioral health multi-specialty group or behavioral health provider group; and

b. Have:

(i) Access to a board-certified or board-eligible psychiatrist for consultation;

(ii) Access to a psychiatrist, other physician, or advanced practice registered nurse for medication management;

(iii) The capacity to provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles;

(iv) The capacity to employ staff authorized to provide intensive outpatient program services in accordance with this section and to coordinate the provision of services among team members;

(v) The capacity to provide the full range of intensive outpatient program services as stated in this paragraph;

(vi) Demonstrated experience in serving individuals with behavioral health disorders;

(vii) The administrative capacity to ensure quality of services;

(viii) A financial management system that provides documentation of services and costs; and

(ix) The capacity to document and maintain individual case records.

5. Intensive outpatient program services shall be provided in a setting with a minimum recipient-to-staff ratio of ten (10) to one (1).

6. Intensive outpatient program services shall be provided by:

a. An approved behavioral health practitioner, except for a licensed behavior analyst; or

b. An approved behavioral health practitioner under supervision, except for a licensed assistant behavior analyst.

7. Intensive outpatient program services shall only be covered if provided by a behavioral health:

a. Provider group; or

b. Multi-specialty group.

(o)1. Therapeutic rehabilitation program services shall be:

a. Face-to-face, on-site, psychiatric rehabilitation and supports for an individual with a severe and persistent mental illness or an[A rehabilitative service for an:

(i) Adult with a severe mental illness; or

(ii)] individual under the age of twenty-one (21) years who has a severe emotional disability; and

b. Designed to maximize the reduction of a mental health disorder and the restoration of the individual's functional level to the individual's best possible functional level.

2. A recipient in a therapeutic rehabilitation program shall establish the recipient's own rehabilitation goals within the plan of care.

3. A therapeutic rehabilitation program shall:

a. Be delivered using a variety of psychiatric rehabilitation techniques;

b. Focus on:

(i) Improving daily living skills;

(ii) Self-monitoring of symptoms and side effects;

(iii) Emotional regulation skills;

(iv) Crisis coping skills; and

(v) Interpersonal skills; and

c. Be delivered individually or in a group.

4. Therapeutic rehabilitation programs shall include:

a. An individualized plan of care identifying measurable goals and objectives, including a discharge and relapse prevention plan; and

b. Coordination of services the individual may be receiving and referral to other necessary support services as needed.

5. Program staffing for a therapeutic rehabilitation program shall include:

a. Licensed clinical supervision, consultation, and support to direct care staff; and

b. Direct care staff to provide scheduled therapeutic activities, training, and support.

6. Therapeutic rehabilitation services shall be provided by:

a. An approved behavioral health practitioner, except for a:

(i) Licensed behavior analyst; or

(ii) Licensed clinical alcohol and drug counselor; or

b. An approved behavioral health practitioner under supervision, except for a:

(i) Licensed assistant behavior analyst;

(ii) Certified alcohol and drug counselor; or

(iii) Licensed clinical alcohol and drug counselor associate.

7. If not provided by an allowed practitioner pursuant to clause 6. of this subparagraph, support services for therapeutic rehabilitation services shall be conducted by a provider:

a. Working under the supervision of an approved behavioral health practitioner; and

b. Who is:

(i) An adult peer support specialist;

(ii) A family peer support specialist; or

(iii) A youth peer support specialist.

(p)1. Withdrawal management services shall:

a. Be provided face-to-face for recipients with a substance use disorder or co-occurring disorder and incorporated into a recipient's care along the continuum of care as needed;

b. Meet service criteria in accordance with the most current version of the ASAM Criteria for withdrawal management levels in an outpatient setting;

c. Be provided by:

(i) A behavioral health multi-specialty group;

(ii) A behavioral health provider group; or
 (iii) An approved behavioral health practitioner or behavioral health practitioner under supervision with oversight by a physician, advanced practice registered nurse, or physician assistant; and
 d. If provided in an outpatient setting, comply with 908 KAR 1:374, Section 2.

2.a. A recipient who is receiving withdrawal management services shall meet the most current edition of diagnostic criteria for substance withdrawal management as established by the most recent version of the Diagnostic and Statistical Manual of Mental Disorders.

3. Withdrawal management services in an outpatient setting shall be provided by:

- a. A physician;
- b. A psychiatrist;
- c. A physician assistant;
- d. An advanced practice registered nurse; or

e. An approved behavioral health practitioner or behavioral health practitioner under supervision with oversight by a physician, advanced practice registered nurse, or physician assistant.

(q)1. Medication assisted treatment services shall be provided by an authorized prescribing provider who:

- a. Is:
 - (i) A physician;
 - (ii) An advanced practice registered nurse; or
 - (iii) A psychiatrist;

b. Meets standards established pursuant to 201 KAR 9:270 or 201 KAR 20:065;

c. Maintains a current waiver under 21 U.S.C. 823(g)(2) to prescribe buprenorphine products; and

d. Has experience and knowledge in addiction medicine.

2. Medication assisted treatment supporting behavioral health services shall:

a. Be co-located within the same practicing site as the practitioner who maintains a current waiver under 21 U.S.C. 823(g)(2) to prescribe buprenorphine products or via telehealth as appropriate pursuant to 907 KAR 3:170; or

b. Have agreements in place for linkage to appropriate behavioral health treatment providers who specialize in substance use disorders and are knowledgeable in biopsychosocial dimensions of alcohol and other substance use disorders, such as:

- (i) A licensed behavioral health services organization;
- (ii) A multi-specialty group;
- (iii) A provider group; or
- (iv) An individual behavioral health practitioner.

3. Medication assisted treatment may be provided in a provider group or multi-specialty group operating in accordance with 908 KAR 1:374, Section 7.

4. A medication assisted treatment program shall:

a. Assess the need for treatment including:

(i) A full patient history to determine the severity of the patient's substance use disorder; and

(ii) Identifying and addressing any underlying or co-occurring diseases or conditions, as necessary;

b. Educate the patient about how the medication works, including:

- (i) The associated risks and benefits; and
- (ii) Overdose prevention;

c. Evaluate the need for medically managed withdrawal from substances;

d. Refer patients for higher levels of care if necessary; and

e. Obtain informed consent prior to integrating pharmacologic or nonpharmacologic therapies.

(4)(a) Limited laboratory services shall be reimbursable in accordance with 907 KAR 1:028 when provided by a behavioral health provider group or behavioral health multi-specialty group if:

1. The behavioral health provider group or behavioral health multi-specialty group has the appropriate CLIA certificate to perform laboratory testing pursuant to 907 KAR 1:028; and

2. The services are prescribed by a physician, advanced practice registered nurse, or physician assistant who has a contractual relationship with the behavioral health provider group or behavioral health multi-specialty group.

(b) Partial limited laboratory services may be administered, as appropriate, by:

1. An approved behavioral health practitioner; or

2. An approved behavioral health practitioner under supervision. [(5) The extent and type of a screening shall depend upon the problem of the individual seeking or being referred for services.

(6) A diagnosis or clinic impression shall be made using terminology established in the most current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders.

(7) The department shall not reimburse for a service billed by or on behalf of an entity or individual who is not a billing provider.]

Section 4. Additional Limits and Noncovered Services or Activities. (1) The following services or activities shall not be covered under this administrative regulation:

(a) A service provided to:

1. A resident of:

- a. A nursing facility; or
- b. An intermediate care facility for individuals with an intellectual disability;
- 2. An inmate of a federal, local, or state:
 - a. Jail;
 - b. Detention center; or
 - c. Prison; or

3. An individual with an intellectual disability without documentation of an additional psychiatric diagnosis;

(b) Psychiatric or psychological testing for another agency, including a court or school, that does not result in the individual receiving psychiatric intervention or behavioral health therapy from the provider;

(c) A consultation or educational service provided to a recipient or to others;

(d) Collateral therapy for an individual aged twenty-one (21) years or older;

(e) A telephone call, an email, a text message, or other electronic contact that does not meet the requirements stated in the definition of "face-to-face", unless the electronic contact is appropriate as a comparable telehealth service pursuant to 907 KAR 3:170;

(f) Travel time;

(g) A field trip;

(h) A recreational activity;

(i) A social activity; or

(j) A physical exercise activity group.

(2)(a) A consultation by one (1) provider or professional with another shall not be covered under this administrative regulation except regarding collateral outpatient therapy as specified in Section 3(3)[(4)](i) of this administrative regulation.

(b) A third party contract shall not be covered under this administrative regulation.

(3)(a) Except as established in paragraph (b) of this subsection, unless a diagnosis is made and documented in the recipient's medical record within three (3) visits, the service shall not be covered.

(b) The requirement established in paragraph (a) of this subsection shall not apply to:

- 1. Crisis intervention;
- 2. A screening;[or]
- 3. An assessment; or
- 4. Peer support services for the engagement into substance use disorder treatment within an emergency department bridge clinic.

(4) The department shall not reimburse for both a screening and an SBIRT (screening, brief intervention, and referral to treatment for a substance use disorder) provided to a recipient on the same date of service.

(5) A billing supervisor arrangement between a billing supervisor and a behavioral health practitioner under supervision shall not:

(a) Violate the clinical supervision rules or policies of the respective professional licensure boards governing the billing

supervisor and the behavioral health practitioner under supervision; or

(b) Substitute for the clinical supervision rules or policies of the respective professional licensure boards governing the billing supervisor and the behavioral health practitioner under supervision.

Section 5. Duplication of Service Prohibited. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider, of any program in which the service is covered, during the same time period.

(2) For example, if a recipient is receiving a behavioral health service from an individual behavioral health provider, the department shall not reimburse for the same service provided to the same recipient during the same time period by a behavioral health services organization.

Section 6. Records Maintenance, Documentation, Protection, and Security. (1) An individual provider, a behavioral health provider group, or a behavioral health multi-specialty group shall maintain a current health record for each recipient.

(2)[(a)] A health record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.~~[(b) The individual who provided the service shall date and sign the health record within forty-eight (48) hours of the date that the individual provided the service.]~~

(3) A health record shall:

(a) Include:

1. An identification and intake record including:

- a. Name;
- b. Social Security number;
- c. Date of intake;
- d. Home (legal) address;
- e. Health insurance information;
- f. If applicable, the referral source's name and address;
- g. Primary care physician's name and address;
- h. The reason the individual is seeking help including the presenting problem and diagnosis;

i. Any physical health diagnosis, if a physical health diagnosis exists for the individual, and information regarding:

(i) Where the individual is receiving treatment for the physical health diagnosis; and

(ii) The physical health provider's name; and

j. The name of the informant and any other information deemed necessary by the provider to comply with the requirements of:

- (i) This administrative regulation;
- (ii) The provider's licensure board, if applicable;
- (iii) State law; or
- (iv) Federal law;

2. Documentation of the:

- a. Screening;
- b. Assessment;
- c. Disposition if a disposition was performed; and
- d. Six (6) month review of a recipient's plan of care each time a six (6) month review occurs, and as needed;

3. A complete history including mental status and previous treatment;

4. An identification sheet;

5. A consent for treatment sheet that is accurately signed and dated; and

6. The individual's stated purpose for seeking services; and

(b) Be:

1. Maintained in an organized central file;

2. Furnished upon request to the:

a. Cabinet for Health and Family Services; or

b. For an enrollee, managed care organization in which the recipient is enrolled or has been enrolled in the past;

3. Made available for inspection and copying by:

a. Cabinet for Health and Family Services' personnel; or

b. Personnel of the managed care organization in which the recipient is enrolled if applicable;

4. Readily accessible; and

5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient if the recipient received services beyond a screening.

(4) Documentation of a screening shall include:

(a) Information relative to the individual's stated request for services; and

(b) Other stated personal or health concerns if other concerns are stated.

(5)(a) A behavioral health practitioner's service notes regarding a recipient shall:

1. Be made within forty-eight (48) hours of each service visit; ~~and~~

2. Indicate if the service was provided face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170; and

3. Describe the:

a. Recipient's symptoms or behavior, reaction to treatment, and attitude;

b. Behavioral health practitioner's intervention;

c. Changes in the plan of care if changes are made; and

d. Need for continued treatment if deemed necessary.

(b)1. Any edit to notes shall:

a. Clearly display the changes; and

b. Be initialed and dated by the person who edited the notes.

2. Notes shall not be erased or illegibly marked out.

(c)1. Notes recorded by a practitioner working under supervision shall be co-signed and dated by the supervising professional within thirty (30) days of each service visit.

2. If services are provided by a ~~behavioral health~~ practitioner working under supervision, there shall be a monthly supervisory note recorded by the supervising~~[supervision]~~ professional reflecting consultations with the practitioner working under supervision concerning the:

a. Case; and

b. Supervising professional's evaluation of the services being provided to the recipient.

(6) Immediately following a screening of a recipient, the behavioral health practitioner who performed the screening shall perform a disposition related to:

(a) A provisional diagnosis;

(b) A referral for further consultation and disposition, if applicable; or

(c)1. If applicable, termination of services and referral to an outside source for further services; or

2. If applicable, termination of services without a referral to further services.

(7)(a) A recipient's plan of care shall be reviewed at least once every six (6) months, or as needed earlier than six (6) months.

(b) Any change to a recipient's plan of care shall be documented, signed, and dated by the rendering practitioner and by the recipient or recipient's representative.

(8)(a) Notes regarding services to a recipient shall:

1. Be organized in chronological order;

2. Be dated;

3. Be titled to indicate the service rendered;

4. State a starting and ending time for the service; and

5. Be recorded and signed by the rendering behavioral health practitioner and include the practitioner's professional title (for example, licensed clinical social worker).

(b) Initials, typed signatures, or stamped signatures shall not be accepted.

(c) Telephone contacts, family collateral contacts not coverable under this administrative regulation, or other non-reimbursable contacts shall:

1. Be recorded in the notes; and

2. Not be reimbursable.

(9) A termination summary shall:

(a) Be required, upon termination of services, for each recipient who received at least three (3) service visits; and

(b) Contain a summary of the significant findings and events during the course of treatment including the:

1. Final assessment regarding the progress of the individual toward reaching goals and objectives established in the individual's

plan of care;

2. Final diagnosis of clinical impression; and
3. Individual's condition upon termination and disposition.

(c) A health record relating to an individual who terminated from receiving services shall be fully completed within ten (10) days following termination.

(10) If an individual's case is reopened within ninety (90) days of terminating services for the same or related issue, a reference to the prior case history with a note regarding the interval period shall be acceptable.

(11)(a) Except as established in paragraph (b) of this subsection, if a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring provider shall, within ten (10) business days of the transfer or referral, transfer the recipient's health record in a manner that complies with the records' use and disclosure requirements as established in or required by:

- 1.a. The Health Insurance Portability and Accountability Act;
- b. 42 U.S.C. 1320d-2 to 1320d-8; and
- c. 45 C.F.R. Parts 160 and 164; or
- 2.a. 42 U.S.C. 290ee-3; and
- b. 42 C.F.R. Part 2.

(b) If a recipient is transferred or referred to a residential crisis stabilization unit, a psychiatric hospital, a psychiatric distinct part unit in an acute care hospital, or an acute care hospital for care or treatment, the transferring provider shall, within forty-eight (48) hours of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

- 1.a. The Health Insurance Portability and Accountability Act;
- b. 42 U.S.C. 1320d-2 to 1320d-8; and
- c. 45 C.F.R. Parts 160 and 164; or
- 2.a. 42 U.S.C. 290ee-3; and
- b. 42 C.F.R. Part 2.

(12)(a) If an individual behavioral health practitioner[s]provider[s], a behavioral health provider group's, or a behavioral health multi-specialty group's Medicaid Program participation status changes as a result of voluntarily terminating from the Medicaid Program, involuntarily terminating from the Medicaid Program, or a licensure suspension, the health records of the individual behavioral health practitioner[provider], behavioral health provider group, or behavioral health multi-specialty group shall:

1. Remain the property of the individual behavioral health practitioner[provider], behavioral health provider group, or behavioral health multi-specialty group; and
2. Be subject to the retention requirements established in subsection (13) of this section.

(b)1. If an individual behavioral health practitioner[provider] dies, the health records maintained by the individual behavioral health practitioner[provider] shall remain the property of the individual behavioral health practitioner[provider].

2. An individual behavioral health practitioner[provider] shall have a written plan addressing how to maintain health records following the provider's death in a manner that complies with the retention requirements established in subsection (13) of this section.

(13)(a) Except as established in paragraph (b) or (c) of this subsection, an individual behavioral health practitioner[provider], a behavioral health provider group, or a behavioral health specialty group shall maintain a health record regarding a recipient for at least five (5) years from the date of the service or until any audit dispute or issue is resolved beyond five (5) years.

(b) After a recipient's death or discharge from services, an individual behavioral health practitioner[provider], a behavioral health provider group, or a behavioral health multi-specialty group shall maintain the recipient's record for the longest of the following periods:

1. Five (5) years unless the recipient is a minor; or
2. If the recipient is a minor, three (3) years after the recipient reaches the age of majority under state law.

(c) If the Secretary of the United States Department of Health and Human Services requires a longer document retention period

than the period referenced in paragraph (a) of this subsection[section], pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(14)(a) An individual behavioral health practitioner[provider], a behavioral health provider group, or a behavioral health multi-specialty group shall comply with 45 C.F.R. Part[Chapter] 164.

(b) All information contained in a health record shall:

1. Be treated as confidential;
2. Not be disclosed to an unauthorized individual; and
3. Be disclosed to an authorized representative of:
 - a. The department;
 - b. Federal government; or
 - c. For an enrollee, the managed care organization in which the enrollee is enrolled.

(c)1. Upon request, an individual behavioral health practitioner[provider], a behavioral health provider group, or a behavioral health multi-specialty group shall provide to an authorized representative of the department, federal government, or managed care organization if applicable, information requested to substantiate:

- a. Staff notes detailing a service that was rendered;
- b. The professional who rendered a service; and
- c. The type of service rendered and any other requested information necessary to determine, on an individual basis, whether the service is reimbursable by the department or the managed care organization, if applicable.

2. Failure to provide information referenced in subparagraph 1. of this paragraph shall result in denial of payment for any service associated with the requested information.

Section 7. Medicaid Program Participation Compliance. (1) An individual behavioral health practitioner[provider], a behavioral health provider group, or a behavioral health multi-specialty group shall comply with:

- (a) 907 KAR 1:671;
- (b) 907 KAR 1:672; and
- (c) All applicable state and federal laws.

(2)(a) If an individual behavioral health practitioner[provider], a behavioral health provider group, or a behavioral health multi-specialty group receives any duplicate payment or overpayment from the department, regardless of reason, the individual behavioral health practitioner[provider],[a] behavioral health provider group, or behavioral health multi-specialty group shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection[section] may be:

1. Interpreted to be fraud or abuse; and
2. Prosecuted in accordance with applicable federal or state law.

(3)(a) When the department makes payment for a covered service and the individual behavioral health practitioner[provider],[a] behavioral health provider group, or behavioral health multi-specialty group accepts the payment:

1. The payment shall be considered payment in full;
2. A bill for the same service shall not be given to the recipient; and

3. Payment from the recipient for the same service shall not be accepted by the individual behavioral health practitioner[provider], a behavioral health provider group, or behavioral health multi-specialty group.

(b)1. An individual behavioral health practitioner[provider], a behavioral health provider group, or a behavioral health multi-specialty group may bill a recipient for a service that is not covered by the Kentucky Medicaid Program if the:

- a. Recipient requests the service; and
- b. Individual behavioral health practitioner[provider],[a] behavioral health provider group, or behavioral health multi-specialty group makes the recipient aware in advance of providing the service that the:
 - (i) Recipient is liable for the payment; and
 - (ii) Department is not covering the service.

2. If a recipient makes payment for a service in accordance with subparagraph 1. of this paragraph, the:

a. Individual behavioral health practitioner[provider], [a] behavioral health provider group, or behavioral health multi-specialty group shall not bill the department for the service; and

b. Department shall not:

(i) Be liable for any part of the payment associated with the service; and

(ii) Make any payment to the individual behavioral health practitioner[provider], [a] behavioral health provider group, or behavioral health multi-specialty group regarding the service.

(4)(a) An individual behavioral health practitioner[provider], a behavioral health provider group, or a behavioral health multi-specialty group shall attest by the individual behavioral health practitioner's[provider's] signature or signature of an individual on behalf of a behavioral health provider group or behavioral health multi-specialty group that any claim associated with a service is valid and submitted in good faith.

(b) Any claim and substantiating record associated with a service shall be subject to audit by the:

1. Department or its designee;
2. Cabinet for Health and Family Services, Office of Inspector General or its designee;
3. Kentucky Office of Attorney General or its designee;
4. Kentucky Office of the Auditor for Public Accounts or its designee; or
5. United States General Accounting Office or its designee.

(c) If an individual behavioral health practitioner[provider], a behavioral health provider group, or a behavioral health multi-specialty group receives a request from the department to provide a claim, related information, related documentation, or record for auditing purposes, the individual behavioral health practitioner[provider], [a] behavioral health provider group, or behavioral health multi-specialty group shall provide the requested information to the department within the timeframe requested by the department.

(d)1. All services provided shall be subject to review for recipient or provider abuse.

2. Willful abuse by an individual behavioral health practitioner[provider], a behavioral health provider group, or a behavioral health multi-specialty group shall result in the suspension or termination of the individual behavioral health practitioner[provider], [a] behavioral health provider group, or behavioral health multi-specialty group from Medicaid Program participation.

(5)(a) If an individual behavioral health practitioner[provider], a behavioral health provider group, or a behavioral health multi-specialty group renders a Medicaid-covered service to a recipient, regardless of if the service is billed through the individual behavioral health practitioner's[provider's], behavioral health provider group's, or behavioral health multi-specialty group's Medicaid provider number or any other entity or individual including a non-Medicaid provider, the recipient shall not be charged or billed for the service.

(b) The department shall terminate from Medicaid Program participation an individual behavioral health practitioner[provider], a behavioral health provider group, or a behavioral health multi-specialty group that:

1. Charges or bills a recipient for a Medicaid-covered service; or
2. Participates in an arrangement in which an entity or individual bills a recipient for a Medicaid-covered service rendered by the individual behavioral health practitioner[provider], [a] behavioral health provider group, or behavioral health multi-specialty group.

Section 8. Third Party Liability. An individual behavioral health practitioner[provider], a behavioral health provider group, or a behavioral health multi-specialty group shall comply with KRS 205.622.

Section 9. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) An individual behavioral health practitioner[provider], a behavioral health provider group, or a behavioral health multi-specialty group that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the practitioner's[provider's] employees, officers, agents, or contractors;
2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;
2. Attest to the signature's authenticity; and
3. Include a statement indicating that the individual has been notified of his responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the individual behavioral health practitioner's[provider's], behavioral health provider group's, or behavioral health multi-specialty group's electronic signature policy;
2. The signed consent form; and
3. The original filed signature.

Section 10. Auditing Authority. The department shall have the authority to audit any:

- (1) Claim;
- (2) Medical record; or
- (3) Documentation associated with any claim or medical record.

Section 11. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the coverage; and
- (2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 12. Appeals. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

CAROL H. STECKEL, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 11, 2019

FILED WITH LRC: June 28, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 26, 2019, 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 August 19, 2019, 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 August 31, 2019. 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: Chase Coffey, Executive Administrative

Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone: 502-564-6746; fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program behavioral health services provided by individual behavioral health providers, behavioral health provider groups, and behavioral health multi-specialty groups.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish the requirements for Medicaid Program behavioral health services provided by individual behavioral health providers, behavioral health provider groups, and behavioral health multi-specialty groups. These providers are a critical component of Medicaid Program substance use disorder and mental health disorder treatment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by providing Medicaid recipients access to mental health disorder and substance use disorder treatment from individual behavioral health professional practices.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by providing Medicaid recipients access to mental health disorder and substance use disorder treatment from individual behavioral health professional practices.

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

(a) How the amendment will change this existing administrative regulation: The amendments are being promulgated to establish substance use disorder (SUD) treatment guidelines as appropriate to existing services. The amendment changes this administrative regulation by using a defined term to refer to all providers. The amended regulation also allows community support associates to provide services within a behavioral health multi-specialty group, and establishes additional standards for a plan of care. The regulation also requires a behavioral health multi-specialty group that is providing services for substance use disorder treatment to possess an alcohol and other drug entity license, and requires physicians and advance practice registered nurses providing behavioral health services within a behavioral health multi-specialty group to have a psychiatry specialty. In addition, physician assistants are required to have a contractual relationship with a supervising physician with a psychiatry specialty in order to provide behavioral health services within a behavioral health multi-specialty group. The amendment also makes organizational changes by deleting language that listed the service and appropriate provider, this information has now been consolidated and included with the subsection that addresses covered services. Additional changes to the covered services subsection include: requiring an assessment for substance use disorder (SUD) utilize an ASAM Criteria compliant multidimensional assessment tool, clarifying which services may be provided face-to-face or via telehealth, and clarifying how day treatment support services and comprehensive community support services may be provided. In addition, amendments will allow for peer support services to include engagement into SUD treatment within emergency department bridge clinics. Peer support services are also amended to protect peer support specialists by limiting them to 120 units per week of direct recipient contact, and prohibiting peer support services in a group setting from exceeding 8 individuals within any group at one time. Intensive outpatient programs providing services for SUD treatment are now required to meet the most current edition of The ASAM Criteria for intensive outpatient level of care. Therapeutic

rehabilitation services are also amended to include additional requirements relating to plans of care, coordination of services, program staffing, and support services. New services and complying requirements that are included in this administrative regulation include withdrawal management services, and medication assisted treatment services requirements. A new subsection allows for certain laboratory services to be reimbursable if provided within a behavioral health multi-specialty group that has an appropriate clinical laboratory improvement amendments (CLIA) certificate.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to implement a SUD 1115 Waiver that is part of the Kentucky HEALTH 1115 Waiver and conforming state plan amendments.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by implementing an approved 1115 Waiver and conforming state plan amendments.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by enhancing Medicaid recipient access to behavioral health services and implementing the approved 1115 Waiver and state plan amendments.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Medicaid recipients who qualify for behavioral health services will be affected by this administrative regulation. There are approximately 2,170 individual behavioral health providers, behavioral health provider groups, and behavioral health multi-specialty groups enrolled in the Medicaid Program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. The amendment expands the authorized behavioral health professional base to include community support associates.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Community support associates will be allowed to bill for services provided to Medicaid recipients.

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

(a) Initially: The department anticipates no additional costs in the implementation of this amendment.

(b) On a continuing basis: The department anticipates no additional costs in the implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is not applied as the requirements apply to all providers.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal

mandate. 42 U.S.C. 1396a(a)(10)(B) and 42 U.S.C. 1396a(a)(30)(A).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect." KRS 205.6311 requires the Department for Medicaid Services to "promulgate administrative regulations. .. to expand the behavioral health network to allow providers to provide services within their licensure category."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area. Medicaid reimbursement for services is required to be consistent with efficiency, economy and quality of care and be sufficient to attract enough providers to assure access to services. 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "...provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter than federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment to this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.6311, 42 U.S.C. 1396a(a)(10)(B), and 42 U.S.C. 1396a(a)(30)(A).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not expected to generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment is not expected to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? DMS does not expect any additional costs in administering these amendments during the first year.

(d) How much will it cost to administer this program for subsequent years? DMS does not expect any additional costs in administering these amendments during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(Amendment)

907 KAR 15:015. Reimbursement provisions and requirements for behavioral health services provided by individual approved behavioral health practitioners[providers], behavioral health provider groups, or behavioral health multi-specialty groups.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 1396a(a)(23), 1396a(a)(30)(A)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6311

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the reimbursement provisions and requirements regarding Medicaid Program behavioral health services provided by ~~certain—licensed~~ individual approved behavioral health practitioners[professionals] who are independently enrolled in the Medicaid Program, practitioners working for or under the supervision of the individual approved behavioral health practitioners [professionals], and approved[individual] behavioral health [professionals—and] practitioners under supervision working in behavioral health provider groups or in behavioral health multi-specialty groups, to Medicaid recipients who are not enrolled with a managed care organization.

Section 1. General Requirements. For the department to reimburse for a service covered under this administrative regulation, the service shall be:

(1) Covered in accordance with 907 KAR 15:010; and

(2) Billed to the department by an individual approved behavioral health practitioner[provider], behavioral health provider group, or behavioral health multi-specialty group recognized as a Medicaid Program provider in accordance with 907 KAR 15:010.

Section 2. Reimbursement. (1) One (1) unit of service shall be:

(a) Fifteen (15) minutes in length unless a different unit of service exists for the service in the corresponding:

1. Current procedural terminology code; or

2. Healthcare common procedure coding system code; or

(b) The unit amount identified in the corresponding:

1. Current procedural terminology code if an amount is identified in the current procedural terminology code; or

2. Healthcare common procedure coding system code if an amount is identified in the healthcare common procedure coding system code.

(2) Except as provided by subsection (3) of this section, the rate per unit for a covered service shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or

2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare

Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; [or]
2. A licensed psychologist; or
3. A physician assistant;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;
2. Licensed clinical social worker;
3. Licensed psychological practitioner;
4. Certified psychologist with autonomous functioning;
5. Licensed marriage and family therapist;
6. Licensed professional art therapist;
7. Licensed behavior analyst; or
8. Licensed clinical alcohol and drug counselor;

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate;
2. Licensed professional counselor associate;
3. Licensed psychological associate;
4. Certified social worker;
5. ~~Physician assistant;~~
6. ~~Licensed professional art therapist associate;~~
7. ~~Licensed assistant behavior analyst;~~
8. ~~Certified psychologist; or~~
9. ~~Licensed clinical alcohol and drug counselor associate;~~

or

(e) Thirty-seven and five-tenths (37.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a certified alcohol and drug counselor.

(3) ~~Reimbursement for the following services~~ shall be as established on the Kentucky Medicaid Behavioral Health and Substance Abuse Services Outpatient (Non-facility) Fee Schedule and this administrative regulation for those services that are eligible to be provided by each individual approved behavioral health practitioner, behavioral health provider group, or behavioral health multi-specialty group as established pursuant to 907 KAR 15:010:

~~(a) Screening, brief intervention, and referral to treatment (SBIRT);~~

- ~~(b) Service planning;~~
- ~~(c) Day treatment;~~
- ~~(d) Comprehensive community support services;~~
- ~~(e) Peer support services;~~
- ~~(f) Intensive outpatient program services; or~~
- ~~(g) Therapeutic rehabilitation program services.~~

(4)(a) The department shall use the current version of the Kentucky-specific Medicare Physician Fee Schedule for reimbursement purposes.

(b) For example, if the Kentucky-specific Medicare Physician Fee Schedule currently published and used by the Centers for Medicare and Medicaid Services for the Medicare Program is:

1. An interim version, the department shall use the interim version until the final version has been published; or
2. The final version, the department shall use the final version.

(5) The department shall not reimburse for a service billed by or on behalf of an entity or individual that is not a billing provider.

Section 3. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse in accordance with this administrative regulation for a service covered pursuant to:

- (1) 907 KAR 15:010; and
- (2) This administrative regulation.

Section 4. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the reimbursement; and
- (2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

Section 5. Incorporation by Reference. (1) "Kentucky Medicaid Behavioral Health and Substance Abuse Services Outpatient (Non-Facility) Fee Schedule", July 2019~~[June 2016]~~, is incorporated by reference.

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

(a) The Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at <https://chfs.ky.gov/agencies/dms/Pages/regsmaterials.aspx> [<http://www.chfs.ky.gov/dms/incorporated.htm>]. 907 KAR 15:015

CAROL H. STECKEL, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 3, 2019

FILED WITH LRC: June 28, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 26, 2019, 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 August 19, 2019, 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 August 31, 2019. 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: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone: 502-564-6746; Fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonthanth.scott@ky.gov; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement provisions and requirements regarding Medicaid Program behavioral health services provided by individual behavioral health professionals enrolled in the Medicaid Program.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish the reimbursement provisions for Medicaid Program behavioral health services provided by individual behavioral health professionals. These providers are a critical component of Medicaid Program substance use disorder (SUD) and mental health disorder treatment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid reimbursement for behavioral health services provided by individual behavioral health providers, behavioral health provider groups, and behavioral health multi-specialty groups.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing Medicaid reimbursement for behavioral health services provided by individual behavioral health providers, behavioral health provider groups, and behavioral health multi-specialty groups.

(2) If this is an amendment to an existing administrative

regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendments to the administrative regulation incorporate other changes made to 907 KAR Chapter 15. This administrative regulation in particular increases physician assistant's reimbursement to 63.75% of the Medicare Physician Fee Schedule. In addition, the fee schedule is updated, and the regulatory reference to the fee schedule is more accurately a reference to all appropriate covered services provided by each type of provider.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to ensure that reimbursement is available for SUD and co-occurring disorders. In addition, the amendments help to implement a SUD 1115 Waiver and HB 124 from the 2018 Regular Session.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to the content of the authorizing statutes by complying with federal mandates, and enhancing and ensuring Medicaid recipients' access to behavioral health services, including SUD services and co-occurring disorders provided in an AODE. In addition, the amendments help to implement a SUD 1115 Waiver and HB 124 from the 2018 Regular Session.

(d) How the amendment will assist in the effective administration of the statutes: The amendments assist in the effective administration of the statutes by complying with federal mandates, and enhancing and ensuring Medicaid recipients' access to behavioral health services, including SUD services and co-occurring disorders provided in an alcohol and other drug entity (AODE) facility. In addition, the amendments help to implement a SUD 1115 Waiver and HB 124 from the 2018 Regular Session.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Physician assistants will be able to receive a higher reimbursement for the services they provide.

(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. Physician assistants will need to continue billing for reimbursement for the services they provide.

(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 expected.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). A higher reimbursement rate for physician assistants will be available as a result of these changes.

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

(a) Initially: The department does not anticipate any additional costs on an initial basis.

(b) On a continuing basis: The department does not anticipate any additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX, and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Yes, tiering is applied because reimbursements are tiered to the level of the provider/practitioner based on the provider/practitioner's education and experience.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(10)(B) and 42 U.S.C. 1396a(a)(30)(A).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect." KRS 205.6311 requires the Department for Medicaid Services to "promulgate administrative regulations. ... to expand the behavioral health network to allow providers to provide services within their licensure category."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area. Medicaid reimbursement for services is required to be consistent with efficiency, economy and quality of care and be sufficient to attract enough providers to assure access to services. 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "...provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements than federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment to this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.6311, 42 U.S.C. 1396a.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not expected to generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment is not expected to generate revenue for

state or local government.

(c) How much will it cost to administer this program for the first year? DMS does not expect any additional costs in administering these amendments during the first year.

(d) How much will it cost to administer this program for subsequent years? DMS does not expect any additional costs in administering these amendments during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(Amendment)

907 KAR 15:020. Coverage provisions and requirements regarding services provided by behavioral health services organizations for mental health treatment.

RELATES TO: KRS 205.520, 20 U.S.C. 1400 et seq., 29 U.S.C. 701 et seq., 42 U.S.C. 290 ee-3, 1320d-2 to 1320d-8, 1396a(a)(10)(B), [42 U.S.C.] 1396a(a)(23), 42 C.F.R. Part 2, 431.17, 45 C.F.R. Parts 160, 164

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program behavioral health services provided by tier I behavioral health services organizations.

Section 1. General Coverage Requirements. (1) For the department to reimburse for a service covered under this administrative regulation, the service shall be:

(a) Medically necessary; and

(b) Provided:

1. To a recipient; and

2. By a behavioral health services organization that meets the provider participation requirements established in Section 2 of this administrative regulation.

(2)(a) Direct contact between a practitioner and a recipient shall be required for each service except for:

1. Collateral outpatient therapy for a child under the age of twenty-one (21) years if the collateral outpatient therapy is in the child's plan of care;

2. A family outpatient service in which the corresponding current procedural terminology code establishes that the recipient is not present; or

3. A psychological testing service comprised of interpreting or explaining results of an examination or data to family members or other kin if the corresponding current procedural terminology code establishes that the recipient is not present.

(b) A service that does not meet the requirement in paragraph (a) of this subsection shall not be covered.

(3) A billable unit of service shall be actual time spent delivering a service in an [a face-to-face] encounter.

(4) A service shall be:

(a) Stated in the recipient's plan of care; and

(b) Provided in accordance with the recipient's plan of care.

(5)(a) A behavioral health services organization shall establish a plan of care for each recipient receiving services from the behavioral health services organization.

(b) A plan of care shall meet the plan of care requirements established in 902 KAR 20:430.

Section 2. Provider Participation. (1) To be eligible to provide services under this administrative regulation, a behavioral health services organization shall:

(a) Be currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

(b) ~~[Except as established in subsection (2) of this section,]~~ Be currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; and

(c) Have:

1. For each service it provides, the capacity to provide the full range of the service as established in this administrative regulation;

2. Documented~~[Demonstrated]~~ experience in serving individuals with behavioral health disorders;

3. The administrative capacity to ensure quality of services;

4. A financial management system that provides documentation of services and costs; and

5. The capacity to document and maintain individual case records.

~~(2)[In accordance with 907 KAR 17:015, Section 3(3), a behavioral health services organization which provides a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.~~

~~(3)] A behavioral health services organization shall:~~

~~(a) Agree to provide services in compliance with federal and state laws regardless of age, sex, race, creed, religion, national origin, handicap, or disability;[and]~~

~~(b) Comply with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments to the Act; and~~

~~(c) Provide, directly or through written agreement with another behavioral health services provider, access to face-to-face or telehealth, as appropriate pursuant to 907 KAR 3:170, emergency services twenty-four (24) hours per day, seven (7) days per week.~~

~~(3) A BHSO I shall:~~

~~(a) Not receive reimbursement for services provided for outpatient or residential substance use disorder treatment;~~

~~(b) Provide services in accordance with its licensure, 902 KAR 20:430, and Section 3 of this administrative regulation for mental health treatment; and~~

~~(c) Possess accreditation within one (1) year of initial enrollment by one (1) of the following:~~

~~1. The Joint Commission;~~

~~2. The Commission on Accreditation of Rehabilitation Facilities;~~

~~3. The Council on Accreditation; or~~

~~4. A nationally recognized accreditation organization.~~

Section 3. Covered Services. (1) The following providers shall not be eligible to provide services under this administrative regulation for a BHSO I:

(a) A licensed clinical alcohol and drug counselor (LCADC);

(b) A licensed clinical alcohol and drug counselor associate (LCADCA);

(c) A certified alcohol and drug counselor (CADC); or

(d) A substance use disorder peer support specialist.

(2) A physician providing behavioral health services in a BHSO I shall possess a psychiatric specialty.

(3) An advanced practice registered nurse providing behavioral health services in a BHSO I shall possess a psychiatric specialty.

(4) A physician assistant providing behavioral health services in a BHSO I shall have a contractual relationship with a supervising physician who has a psychiatric specialty.

(5) Except as specified in the requirements stated for a given service, the services covered may be provided for a[:

(a)] mental health disorder[;

(b) Substance use disorder; or

(c) Co-occurring mental health and substance use disorders].

(6)[(2)] The[following] services established in this subsection shall be covered under this administrative regulation in accordance with the[corresponding following] requirements established in this section.[:]

(a) [A screening, crisis intervention, or intensive outpatient program service provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner;
 3. A licensed clinical social worker;
 4. A licensed professional clinical counselor;
 5. A licensed professional art therapist;
 6. A licensed marriage and family therapist;
 7. A physician;
 8. A psychiatrist;
 9. An advanced practice registered nurse; or
 10. A behavioral health practitioner under supervision except for a licensed assistant behavior analyst;
 (b) An assessment provided by:
 1. A licensed psychologist;
 2. A licensed psychological practitioner;
 3. A licensed clinical social worker;
 4. A licensed professional clinical counselor;
 5. A licensed professional art therapist;
 6. A licensed marriage and family therapist;
 7. A physician;
 8. A psychiatrist;
 9. An advanced practice registered nurse;
 10. A licensed behavior analyst; or
 11. A behavioral health practitioner under supervision;
 (c) Psychological testing provided by:
 1. A licensed psychologist;
 2. A licensed psychological associate working under the supervision of a licensed psychologist; or
 3. A licensed psychological practitioner;
 (d) Day treatment, mobile crisis services, or residential services for substance use disorders provided by:
 1. A licensed psychologist;
 2. A licensed psychological practitioner;
 3. A licensed clinical social worker;
 4. A licensed professional clinical counselor;
 5. A licensed professional art therapist;
 6. A licensed marriage and family therapist;
 7. A physician;
 8. A psychiatrist;
 9. An advanced practice registered nurse;
 10. A behavioral health practitioner under supervision except for a licensed assistant behavior analyst; or
 11. A peer support specialist working under the supervision of:
 a. An approved behavioral health services provider; or
 b. A certified alcohol and drug counselor;
 (e) Peer support provided by a peer support specialist working under the supervision of:
 1. An approved behavioral health services provider; or
 2. A certified alcohol and drug counselor;
 (f) Individual outpatient therapy, group outpatient therapy, or collateral outpatient therapy provided by:
 1. A licensed psychologist;
 2. A licensed psychological practitioner;
 3. A licensed clinical social worker;
 4. A licensed professional clinical counselor;
 5. A licensed professional art therapist;
 6. A licensed marriage and family therapist;
 7. A physician;
 8. A psychiatrist;
 9. An advanced practice registered nurse;
 10. A licensed behavior analyst; or
 11. A behavioral health practitioner under supervision;
 (g) Family outpatient therapy provided by:
 1. A licensed psychologist;
 2. A licensed psychological practitioner;
 3. A licensed clinical social worker;
 4. A licensed professional clinical counselor;
 5. A licensed professional art therapist;
 6. A licensed marriage and family therapist;
 7. A physician;
 8. A psychiatrist;
 9. An advanced practice registered nurse; or
 10. A behavioral health practitioner under supervision except for a licensed assistant behavior analyst;
 (h) Service planning provided by:

1. A licensed psychologist;
 2. A licensed psychological practitioner;
 3. A licensed clinical social worker;
 4. A licensed professional clinical counselor;
 5. A licensed professional art therapist;
 6. A licensed marriage and family therapist;
 7. A physician;
 8. A psychiatrist;
 9. An advanced practice registered nurse;
 10. A licensed behavior analyst; or
 11. A behavioral health practitioner under supervision except for a certified alcohol and drug counselor;
 (i) A screening, brief intervention, and referral to treatment for a substance use disorder or SBIRT provided by:
 1. A licensed psychologist;
 2. A licensed psychological practitioner;
 3. A licensed clinical social worker;
 4. A licensed professional clinical counselor;
 5. A licensed professional art therapist;
 6. A licensed marriage and family therapist;
 7. A physician;
 8. A psychiatrist;
 9. An advanced practice registered nurse; or
 10. A behavioral health practitioner under supervision except for a licensed assistant behavior analyst;
 (j) Assertive community treatment provided by:
 1. A licensed psychologist;
 2. A licensed psychological practitioner;
 3. A licensed clinical social worker;
 4. A licensed professional clinical counselor;
 5. A licensed professional art therapist;
 6. A licensed marriage and family therapist;
 7. A physician;
 8. A psychiatrist;
 9. An advanced practice registered nurse;
 10. A behavioral health practitioner under supervision except for a:
 a. Licensed assistant behavior analyst; or
 b. Certified alcohol and drug counselor;
 11. A peer support specialist working under the supervision of an approved behavioral health services provider; or
 12. A community support associate;
 (k) Comprehensive community support services provided by:
 1. A licensed psychologist;
 2. A licensed psychological practitioner;
 3. A licensed clinical social worker;
 4. A licensed professional clinical counselor;
 5. A licensed professional art therapist;
 6. A licensed marriage and family therapist;
 7. A physician;
 8. A psychiatrist;
 9. An advanced practice registered nurse;
 10. A licensed behavior analyst;
 11. A behavioral health practitioner under supervision except for a certified alcohol and drug counselor; or
 12. A community support associate; or
 (l) Therapeutic rehabilitation program services provided by:
 1. A licensed psychologist;
 2. A licensed psychological practitioner;
 3. A licensed clinical social worker;
 4. A licensed professional clinical counselor;
 5. A licensed professional art therapist;
 6. A licensed marriage and family therapist;
 7. A physician;
 8. A psychiatrist;
 9. An advanced practice registered nurse;
 10. A behavioral health practitioner under supervision except for a:
 a. Licensed assistant behavior analyst; or
 b. Certified alcohol and drug counselor; or
 11. A peer support specialist working under the supervision of an approved behavioral health services provider.
 (3)(a)] A screening shall:

1. ~~Determine~~~~[Be the determination of]~~ the likelihood that an individual has a mental health disorder, substance use disorder, or co-occurring disorders;

2. Not establish the presence or specific type of disorder;~~[and]~~

3. Establish the need for an in-depth assessment;

4. Be face-to-face or via telehealth, as appropriate pursuant to 907 KAR 3:170; and

5. Be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(b) An assessment shall:

1. Include gathering information and engaging in a process with the individual that enables the practitioner to:

a. Establish the presence or absence of a mental health disorder~~[- substance use disorder, or co-occurring disorders];~~

b. Determine the individual's readiness for change;

c. Identify the individual's strengths or problem areas that may affect the treatment and recovery processes; and

d. Engage the individual in developing an appropriate treatment relationship;

2. Establish or rule out the existence of a clinical disorder or service need;

3. Include working with the individual to develop a plan of care; ~~[and]~~

4. Not include psychological or psychiatric evaluations or assessments;

5. Be face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170; and

6. Be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(c)1. Psychological testing shall include:

a.~~[1.]~~ A psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities; and

b.~~[2.]~~ Interpretation and a written report of testing results.

2. Psychological testing shall be provided face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170.

3. Psychological testing shall be provided by:

a. A licensed psychologist;

b. A certified psychologist with autonomous functioning;

c. A licensed psychological practitioner;

d. A certified psychologist under supervision; or

e. A licensed psychological associate under supervision.

(d) Crisis intervention:

1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to:

a. The recipient; or

b. Another individual;

2. Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities for individuals;

3. Shall be provided:

a. On-site at the behavioral health services organization's office;

b. As an immediate relief to the presenting problem or threat; and

c. In a face-to-face, one (1) on one (1) encounter between the provider and the recipient or as a comparable service provided via telehealth as appropriate pursuant to 907 KAR 3:170;

4. Shall be followed by a referral to non-crisis services if applicable; ~~[and]~~

5. May include:

a. Further service prevention planning including:

(i) ~~lethal means reduction for suicide risk; or~~

(ii) ~~Substance use disorder relapse prevention;~~ or

b. Verbal de-escalation, risk assessment, or cognitive therapy;

and

6. Shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under

supervision.

(e) Mobile crisis services shall:

1. Be available twenty-four (24) hours a day, seven (7) days a week, every day of the year;

2. Be provided for a duration of less than twenty-four (24) hours;

3. Not be an overnight service;

4. Be provided via face-to-face contact or telehealth, as appropriate pursuant to 907 KAR 3:170, by a multi-disciplinary team based intervention in a home or community setting that ensures access to mental health ~~[and substance use disorder]~~ services and supports to:

a.~~[(i)]~~ Reduce symptoms or harm; or

b.~~[(ii)]~~ Safely transition an individual in an acute crisis to the appropriate least restrictive level of care;

5. Involve all services and supports necessary to provide:

a. Integrated crisis prevention;

b. Assessment and disposition;

c. Intervention;

d. Continuity of care recommendations; and

e. Follow-up services; ~~[and]~~

6. Be provided face-to-face in a home or community setting;

7. Include access to a board-certified or board-eligible psychiatrist twenty-four (24) hours a day, seven (7) days a week, every day of the year; and

8. Be provided by:

a. An approved behavioral health practitioner;

b. An approved behavioral health practitioner under supervision; or

c. A peer support specialist who:

(i) Is under the supervision of an approved behavioral health practitioner; and

(ii) Provides support services under this paragraph.

(f)1. Day treatment shall be a non-residential, intensive treatment program for a child under the age of twenty-one (21) years who has:

a. A mental health disorder~~[- substance use disorder, or co-occurring mental health and substance use disorders];~~ and

b. A high risk of out-of-home placement due to a behavioral health issue.

2. Day treatment shall:

a. Consist of an organized, behavioral health program of treatment and rehabilitative services;

b. Include:

(i) Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;

(ii) Behavior management and social skills training;

(iii) Independent living skills that correlate to the age and developmental stage of the recipient; or

(iv) Services designed to explore and link with community resources before discharge and to assist the recipient and family with transition to community services after discharge; and

c. Be provided:

(i) In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);

(ii) On school days and during scheduled school breaks;

(iii) In coordination with the recipient's individualized education program~~[educational plan]~~ or Section 504 plan if the recipient has an individualized education program~~[educational plan]~~ or Section 504 plan;

(iv) Under the supervision of an approved~~[a licensed or certified]~~ behavioral health practitioner or an approved~~[a]~~ behavioral health practitioner~~[working]~~ under~~[clinical]~~ supervision; ~~[and]~~

(v) With a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider; and

(vi) Face-to-face.

3. To provide day treatment services, a behavioral health services organization shall have:

a. The capacity to employ staff authorized to provide day

treatment services in accordance with this section and to coordinate the provision of services among team members; and

b. Knowledge of mental health~~[substance use]~~ disorders.

4. Day treatment shall not include a therapeutic clinical service that is included in a child's individualized education program~~[plan]~~ or Section 504 plan.

5.a. Day treatment shall be provided by:

(i) An approved behavioral health practitioner; or

(ii) An approved behavioral health practitioner under supervision.

b. A peer support specialist working under the supervision of an approved behavioral health practitioner may provide support services under this paragraph.

(g)1. Peer support services shall:

a. Be emotional support that is provided by:

(i) An individual who has been trained and certified in accordance with 908 KAR 2:220 and who is experiencing or has experienced a mental health disorder~~[- substance use disorder, or co-occurring mental health and substance use disorders]~~ to a recipient by sharing a similar mental health disorder~~[- substance use disorder, or co-occurring mental health and substance use disorders]~~ in order to bring about a desired social or personal change;

(ii) A parent or other family member, who has been trained and certified in accordance with 908 KAR 2:230, of a child having or who has had a mental health disorder~~[- substance use, or co-occurring mental health and substance use disorders]~~ to a parent or family member of a child sharing a similar mental health disorder~~[- substance use, or co-occurring mental health and substance use disorders]~~ in order to bring about a desired social or personal change; or

(iii) An individual~~[A family member]~~, who has been trained and certified in accordance with 908 KAR 2:240 and identified as experiencing as a child or youth an emotional, social, or behavioral disorder that is defined in the current version of the Diagnostic and Statistical Manual for Mental Disorders~~2:230, of a child having or who has had a mental health, substance use, or co-occurring mental health and substance use disorders to a parent or family member of a child sharing a similar mental health, substance use, or co-occurring mental health and substance use disorders in order to bring about a desired social or personal change]~~;

b. Be an evidence-based practice;

c. Be structured and scheduled non-clinical therapeutic activities with an individual recipient or a group of recipients;

d. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient;

e. Be coordinated within the context of a comprehensive, individualized plan of care developed through a person-centered planning process;

f. Be identified in each recipient's plan of care;~~[and]~~

g. Be designed to directly contribute to the recipient's individualized goals as specified in the recipient's plan of care;~~and~~

h. Be provided face-to-face.

2. To provide peer support services, a behavioral health services organization shall:

a. Have demonstrated:

(i) The capacity to provide peer support services for the behavioral health population being served including the age range of the population being served; and

(ii) Experience in serving individuals with behavioral health disorders;

b. Employ peer support specialists who are qualified to provide peer support services in accordance with 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240;

c. Use an approved behavioral health practitioner~~[services provider or certified alcohol and drug counselor]~~ to supervise peer support specialists;

d. Have the capacity to coordinate the provision of services among team members;~~[and]~~

e. Have the capacity to provide on-going continuing education and technical assistance to peer support specialists;

f. Require individuals providing peer support services to

recipients to provide no more than 120 units per week of direct recipient contact; and

g. Require peer support services provided to recipients in a group setting not exceed eight (8) individuals within any group at a time.

(h)1. Intensive outpatient program services shall:

a. Be an alternative to or transition from a higher level of care~~[inpatient hospitalization or partial hospitalization]~~ for a mental health disorder~~[- substance use disorder, or co-occurring disorders]~~;

b. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is significantly more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;

c. Be provided at least three (3) hours per day at least three (3) days per week for adults~~;~~~~[and]~~

d. Be provided at least six (6) hours per week for adolescents;

e. Include:

(i) Individual outpatient therapy, group outpatient therapy, or family outpatient therapy unless contraindicated;

(ii) Crisis intervention; or

(iii) Psycho-education related to identified goals in the recipient's treatment plan; and

f. Be provided face-to-face.

2. During psycho-education, the recipient or recipient's family member shall be:

a. Provided with knowledge regarding the recipient's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and

b. Taught how to cope with the recipient's diagnosis or condition in a successful manner.

3. An intensive outpatient program services treatment plan shall:

a. Be individualized; and

b. Focus on stabilization and transition to a lesser level of care.

4. To provide intensive outpatient program services, a behavioral health services organization shall have:

a. Access to a board-certified or board-eligible psychiatrist for consultation;

b. Access to a psychiatrist, physician, or advanced practiced registered nurse for medication prescribing and monitoring;

c. Adequate staffing to ensure a minimum recipient-to-staff ratio of ten (10) recipients to one (1) staff person;

d. The capacity to provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles; and

e. The capacity to employ staff authorized to provide intensive outpatient program services in accordance with this section and to coordinate the provision of services among team members.

5. Intensive outpatient program services shall be provided by:

a. An approved behavioral health practitioner, except for a licensed behavior analyst; or

b. An approved behavioral health practitioner under supervision, except for a licensed assistant behavior analyst.

(i) Individual outpatient therapy shall:

1. Be provided to promote the:

a. Health and wellbeing of the individual; and

b. Restoration of a recipient to the recipient's best possible functional level~~[Recovery]~~ from a~~[substance use disorder,]~~ mental health disorder~~[- or co-occurring mental health and substance use disorders]~~;

2. Consist of:

a. A face-to-face, one (1) on one (1) encounter between the provider and recipient or provided via telehealth as appropriate pursuant to 907 KAR 3:170; and

b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified plan of care;

3. Be aimed at:

a. Reducing adverse symptoms;

b. Reducing or eliminating the presenting problem of the recipient; and

c. Improving functioning; ~~[and]~~

4. Not exceed three (3) hours per day, alone or in combination

with any other outpatient therapy per recipient, unless additional time is medically necessary; and

5. Be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(j)1. Group outpatient therapy shall:

a. Be a behavioral health therapeutic intervention provided in accordance with a recipient's identified plan of care;

b. Be provided to promote the:

(i) Health and wellbeing of the individual; and

(ii) Restoration of a recipient to the recipient's best possible functional level[Recovery] from a[substance use disorder,] mental health disorder[, or co-occurring mental health and substance use disorders];

c. Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the recipient's identified plan of care;

d. Be provided to a recipient in a group setting:

(i) Of nonrelated individuals except for multi-family group therapy; and

(ii) Not to exceed twelve (12) individuals in size;

e. Focus on the psychological needs of the recipients as evidenced in each recipient's plan of care;

f. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;

g. Not include physical exercise, a recreational activity, an educational activity, or a social activity; and

h. Not exceed three (3) hours per day, alone or in combination with any other outpatient therapy, per recipient unless additional time is medically necessary.

2. The group shall have a:

a. Deliberate focus; and

b. Defined course of treatment.

3. The subject of group outpatient therapy shall relate to each recipient participating in the group.

4. The provider shall keep individual notes regarding each recipient within the group and within each recipient's health record.

5. Group outpatient therapy shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(k)1. Family outpatient therapy shall consist of a face-to-face behavioral health therapeutic intervention or occur via telehealth as appropriate pursuant to 907 KAR 3:170, provided:

a. Through scheduled therapeutic visits between the therapist and the recipient and at least one (1) member of the recipient's family; and

b. To address issues interfering with the relational functioning of the family and to improve interpersonal relationships within the recipient's home environment.

2. A family outpatient therapy session shall be billed as one (1) service regardless of the number of individuals (including multiple members from one (1) family) who participate in the session.

3. Family outpatient therapy shall:

a. Be provided to promote the:

(i) Health and wellbeing of the individual; or

(ii) Restoration of a recipient to the recipient's best possible functional level[Recovery] from a[substance use disorder,] mental health disorder[, or co-occurring mental health and substance use disorders]; and

b. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient[individual] unless additional time is medically necessary.

4. Family outpatient therapy shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(l)1. Collateral outpatient therapy shall:

a. Consist of a face-to-face behavioral health consultation or occur via telehealth as appropriate pursuant to 907 KAR 3:170:

(i) With a parent or caregiver of a recipient, household member

of a recipient, legal representative of a recipient, school personnel, treating professional, or other person with custodial control or supervision of the recipient; and

(ii) That is provided in accordance with the recipient's plan of care; and

b. Not be reimbursable if the therapy is for a recipient who is at least twenty-one (21) years of age; and

c. ~~Not exceed three (3) hours per day per individual unless additional time is medically necessary].~~

2. Written consent by a parent or custodial guardian to discuss a recipient's treatment with any person other than a parent or legal guardian shall be signed and filed in the recipient's health record.

3. Collateral outpatient therapy shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(m)1. Service planning shall:

a. Involve assisting a recipient in creating an individualized plan for services and developing measurable goals and objectives needed for maximum reduction of the effects of a mental health disorder;

b. Involve restoring a recipient's functional level to the recipient's best possible functional level;~~and]~~

c. Be performed using a person-centered planning process; and

d. Be provided face-to-face.

2. A service plan:

a. Shall be directed and signed by the recipient;

b. Shall include practitioners of the recipient's choosing; and

c. May include:

(i) A mental health advance directive being filed with a local hospital;

(ii) A crisis plan; or

(iii) A relapse prevention strategy or plan.

3. Service planning shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(n)[4. Residential services for substance use disorders shall:

a. ~~Be provided in a twenty-four (24) hour per day unit that is a live-in facility that offers a planned and structured regimen of care aimed to treat individuals with addiction or co-occurring mental health and substance use disorders;~~

b. ~~Be short or long term to provide intensive treatment and skills building in a structured and supportive environment;~~

c. ~~Assist an individual in abstaining from alcohol or substance use and in entering alcohol or drug addiction recovery;~~

d. ~~Assist a recipient in making necessary changes in the recipient's life to enable the recipient to live drug- or alcohol-free;~~

e. ~~Be provided under the medical direction of a physician;~~

f. ~~Provide continuous nursing services in which a registered nurse shall be:~~

(i) ~~On-site during traditional first shift hours, Monday through Friday;~~

(ii) ~~Continuously available by phone after hours; and~~

(iii) ~~On-site as needed in follow-up to telephone consultation after hours;~~

g. ~~Be based on individual need and may include:~~

(i) ~~A screening;~~

(ii) ~~An assessment;~~

(iii) ~~Service planning;~~

(iv) ~~Individual outpatient therapy;~~

(v) ~~Group outpatient therapy;~~

(vi) ~~Family outpatient therapy; or~~

(vii) ~~Peer support; and~~

h. ~~Be provided in accordance with 908 KAR 1:370.~~

2.a. ~~Except as established in clause b of this subparagraph, the physical structure in which residential services for substance use disorders is provided shall:~~

(i) ~~Have between nine (9) and sixteen (16) beds; and~~

(ii) ~~Not be part of multiple units comprising one (1) facility with more than sixteen (16) beds in aggregate.~~

b. ~~If every recipient receiving services in the physical structure~~

is under the age of twenty-one (21) years or over the age of sixty-five (65) years, the limit of sixteen (16) beds established in clause a of this subparagraph shall not apply.

3. A short-term length-of-stay for residential services for substance use disorders:

- a. Shall be less than thirty (30) days in duration;
- b. Shall include planned clinical program activities constituting at least fifteen (15) hours per week of structured professionally-directed treatment activities to:
 - (i) Stabilize a recipient's substance use disorder; and
 - (ii) Help the recipient develop and apply recovery skills; and
- c. May include the services listed in subparagraph 1.g. of this paragraph.

4. A long-term length-of-stay for residential services for substance use disorders:

- a. Shall be between thirty (30) days and ninety (90) days in duration;
- b. Shall include planned clinical program activities constituting at least forty (40) hours per week of structured professionally-directed treatment activities to:
 - (i) Stabilize a recipient's substance use disorder; and
 - (ii) Help the recipient develop and apply recovery skills; and
- c. May include the services listed in subparagraph 1.g. of this paragraph.

5. Residential services for substance use disorders shall not include:

- a. Room and board;
- b. Educational services;
- c. Vocational services;
- d. Job training services;
- e. Habilitation services;
- f. Services to an inmate in a public institution pursuant to 42 C.F.R. 435.1010;
- g. Services to an individual residing in an institution for mental diseases pursuant to 42 C.F.R. 435.1010;
- h. Recreational activities;
- i. Social activities; or
- j. Services required to be covered elsewhere in the Medicaid state plan.

6. To provide residential services for substance use disorders, a behavioral health services organization shall:

- a. Have the capacity to employ staff authorized to provide services in accordance with this section and to coordinate the provision of services among team members; and
- b. Be licensed as a non-medical and non-hospital based alcohol and other drug abuse treatment program in accordance with 908 KAR 1:370.

(c) Screening, brief intervention, and referral to treatment for a substance use disorder shall:

- 1. Be an evidence-based early intervention approach for an individual with non-dependent substance use to provide an effective strategy for intervention prior to the need for more extensive or specialized treatment; and

2. Consist of:

- a. Using a standardized screening tool to assess an individual for risky substance use behavior;
- b. Engaging a recipient, who demonstrates risky substance use behavior, in a short conversation and providing feedback and advice; and
- c. Referring a recipient to additional mental health disorder, substance use disorder, or co-occurring disorders services if the recipient is determined to need additional services to address substance use.

(p)1. Assertive community treatment shall:

- a. Be an evidence-based psychiatric rehabilitation practice that[which] provides a comprehensive approach to service delivery for individuals with a serious mental illness;[and]

b. Include:

- (i) Assessment;
- (ii) Treatment planning;
- (iii) Case management;
- (iv) Psychiatric services;
- (v)[Medication prescribing and monitoring;

- (vi)] Individual outpatient therapy;
- (vi)](vii)] Family outpatient therapy;
- (vii)](viii)] Group outpatient therapy;
- (viii)](ix)] Mobile crisis services;
- (ix)](x)] Crisis intervention;
- (x)](xi)] Mental health consultation; or
- (xi)](xii)] Family support and basic living skills; and
- c. Be provided face-to-face.

2.a. Mental health consultation shall involve brief, collateral interactions with other treating professionals who may have information for the purpose of treatment planning and service delivery.

b. Family support shall involve the assertive community treatment team's working with the recipient's natural support systems to improve family relations in order to:

- (i) Reduce conflict; and
- (ii) Increase the recipient's autonomy and independent functioning.

c. Basic living skills shall be rehabilitative services focused on teaching activities of daily living necessary to maintain independent functioning and community living.

3. To provide assertive community treatment services, a behavioral health services organization shall:

a. Employ at least one (1) team of multidisciplinary professionals:

- (i) Led by an approved behavioral health services practitioner[provider]; and
- (ii) Comprised of at least four (4) full-time equivalents including a prescriber, a nurse, an approved behavioral health services practitioner[provider], or a case manager[, or a co-occurring disorder specialist];

b. Have adequate staffing to ensure that a[an] team's caseload size shall not[exceeds] ten (10) participants per team member (for example, if the team includes five (5) individuals, the caseload for the team shall not exceed fifty (50) recipients);

c. Have the capacity to:

- (i) Employ staff authorized to provide assertive community treatment services in accordance with this paragraph;
 - (ii) Coordinate the provision of services among team members;
 - (iii) Provide the full range of assertive community treatment services as stated in this paragraph; and
 - (iv) Document and maintain individual case records; and
- d. Demonstrate experience in serving individuals with persistent and serious mental illness who have difficulty living independently in the community.

4. Assertive community treatment shall be provided by:

- a. An approved behavioral health practitioner; or
- b. An approved behavioral health practitioner under supervision.

5.a. A peer support specialist under the supervision of an approved behavioral health practitioner may provide support services under this paragraph.

b. A community support associate under supervision of an approved behavioral health practitioner may provide support services under this paragraph.

(o)](q)1. Comprehensive community support services shall:

- a. Be activities necessary to allow an individual to live with maximum independence in the community;
- b. Be intended to ensure successful community living through the utilization of skills training as identified in the recipient's plan of care;[and]
- c. Consist of using a variety of psychiatric rehabilitation techniques to:

- (i) Improve daily living skills;
- (ii) Improve self-monitoring of symptoms and side effects;
- (iii) Improve emotional regulation skills;
- (iv) Improve crisis coping skills; and
- (v) Develop and enhance interpersonal skills; and
- d. Be provided face-to-face.

2. To provide comprehensive community support services, a behavioral health services organization shall:

- a. Have the capacity to employ staff authorized pursuant to 908 KAR 2:250 to provide comprehensive community support

services[~~in accordance with subsection (2)(k) of this section~~] and to coordinate the provision of services among team members; and

b. Meet the requirements for comprehensive community support services established in 908 KAR 2:250.

3. Comprehensive community support services shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

4.a. A community support associate under supervision of an approved behavioral health practitioner may provide support services under this paragraph.

b. A registered behavioral technician under the supervision of a licensed behavior analyst may provide support services under this paragraph.

~~(p)(#)~~1. Therapeutic rehabilitation program services shall be:

a. A rehabilitative service for an:

(i) Adult with a serious mental illness; or

(ii) Individual under the age of twenty-one (21) years who has a serious emotional disability;[and]

b. Designed to maximize the reduction of the effects of a mental health disorder and the restoration of the individual's functional level to the individual's best possible functional level; and

c. Provided face-to-face.

2. A recipient in a therapeutic rehabilitation program shall establish the recipient's own rehabilitation goals within the person-centered service plan.

3. A therapeutic rehabilitation program shall:

a. Provide face-to-face, on-site psychiatric rehabilitation and supports;

b. Be delivered using a variety of psychiatric rehabilitation techniques;

c.~~[b.]~~ Focus on:

(i) Improving daily living skills;

(ii) Self-monitoring of symptoms and side effects;

(iii) Emotional regulation skills;

(iv) Crisis coping skill; and

(v) Interpersonal skills; [and]

d.~~[c.]~~ Be delivered individually or in a group; and

e. Include:

(i) An individualized plan of care identifying measurable goals and objectives including discharge and relapse prevention planning;

(ii) Coordination of services the individual may be receiving; and

(iii) Referral to other necessary service supports as needed.

4. Therapeutic rehabilitation staffing shall include:

a. Licensed clinical supervision, consultation, and support to direct care staff; and

b. Direct care staff to provide scheduled therapeutic activities, training, and support for Medicaid recipients.

5. Therapeutic rehabilitation program services shall be provided by:

a. An approved behavioral health practitioner, except for a licensed behavior analyst; or

b. An approved behavioral health practitioner under supervision, except for a licensed assistant behavior analyst.

6. A peer support specialist working under the supervision of an approved behavioral health practitioner may provide support services under this paragraph.

(q)1. Partial hospitalization services shall be:

a. Short-term with an average of four (4) to six (6) weeks;

b. Less than twenty-four (24)-hours each day; and

c. An intensive treatment program for an individual who is experiencing significant impairment to daily functioning due to a mental health disorder.

2. Partial hospitalization may be provided to an adult or a minor.

3. Admission criteria for partial hospitalization shall be based on an inability of community-based therapies or intensive outpatient services to adequately treat the recipient.

4. A partial hospitalization program shall consist of:

a. Individual outpatient therapy;

b. Group outpatient therapy;

c. Family outpatient therapy; or

d. Medication management.

5. The department shall not reimburse for educational, vocational, or job training services provided as part of partial hospitalization.

6. An outpatient behavioral health services organization's partial hospitalization program shall have an agreement with the local educational authority to come into the program to provide all educational components and instruction that are not Medicaid billable or reimbursable.

7. Partial hospitalization shall be:

a. Provided for at least four (4) hours per day; and

b. Focused on one (1) primary presenting problem.

8. A partial hospitalization program operated by a behavioral health services organization shall:

a. Include the following personnel for the purpose of providing medical care:

(i) An advanced practice registered nurse, a physician assistant, or a physician available on site; and

(ii) A board-certified or board-eligible psychiatrist available for consultation; and

b. Have the capacity to:

(i) Provide services utilizing a recognized intervention protocol based on nationally accepted

treatment principles;

(ii) Employ required practitioners and coordinate service provision among rendering practitioners; and

(iii) Provide the full range of services included in the scope of partial hospitalization established in this paragraph.

9. Partial hospitalization services shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision; (4) The extent and type of a screening shall depend upon the problem of the individual seeking or being referred for services.

~~(5) A diagnosis or clinical impression shall be made using terminology established in the most current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders.~~

~~(6) The department shall not reimburse for a service billed by or on behalf of an entity or individual who is not a billing provider.]~~

Section 4. Additional Limits and Non-covered Services or Activities. (1)(a) Except as established in paragraph (b) of this subsection, unless a diagnosis is made and documented in the recipient's medical record within three (3) visits, the service shall not be covered.

(b) The requirement established in paragraph (a) of this subsection shall not apply to:

1. Mobile crisis services;

2. Crisis intervention;

3. A screening; or

4. An assessment.

~~(2)[For a recipient who is receiving residential services for substance use disorders, the following shall not be billed or reimbursed for the same date of service for the recipient:~~

~~(a) A screening;~~

~~(b) An assessment;~~

~~(c) Service planning;~~

~~(d) A psychiatric service;~~

~~(e) Individual outpatient therapy;~~

~~(f) Group outpatient therapy;~~

~~(g) Family outpatient therapy; or~~

~~(h) Peer support services.~~

~~(3)] For a recipient who is receiving assertive community treatment, the following shall not be billed or reimbursed for the same date of service for the recipient:~~

~~(a) An assessment;~~

~~(b) Case management;~~

~~(c) Individual outpatient therapy;~~

~~(d) Group outpatient therapy;~~

- (e) Peer support services; or
- (f) Mobile crisis services.

~~(3) [(4)]~~ The department shall not reimburse for both a screening provided pursuant to this administrative regulation and a screening, brief intervention and referral to treatment (SBIRT) ~~an SBIRT~~ provided pursuant to 907 KAR 15:022 to a recipient on the same date of service.

~~(4) [(5)]~~ The following services or activities shall not be covered under this administrative regulation:

- (a) A service provided to:
 - 1. A resident of:
 - a. A nursing facility; or
 - b. An intermediate care facility for individuals with an intellectual disability;
 - 2. An inmate of a federal, local, or state:
 - a. Jail;
 - b. Detention center; or
 - c. Prison; or
 - 3. An individual with an intellectual disability without documentation of an additional psychiatric diagnosis;

(b) Psychiatric or psychological testing for another agency, including a court or school, that does not result in the individual receiving psychiatric intervention or behavioral health therapy from the behavioral health services organization;

(c) A consultation or educational service provided to a recipient or to others;

(d) A telephone call, an email, a text message, or other electronic contact that does not meet the requirements stated in the definition of "face-to-face" established in 907 KAR 15:005, Section 1(21). Contact prohibited under subparagraph 1. of this paragraph may be permissible if it is conducted in the course of a telehealth service permitted pursuant to 907 KAR 3:170 or this administrative regulation, as applicable ~~[(44)]~~;

- (e) Travel time;
- (f) A field trip;
- (g) A recreational activity;
- (h) A social activity; or
- (i) A physical exercise activity group.

~~(5) [(6)]~~ (a) A consultation by one (1) provider or professional with another shall not be covered under this administrative regulation except as established in Section 3 ~~(6) [(3)]~~ ~~(l) 1.~~ of this administrative regulation.

(b) A third party contract shall not be covered under this administrative regulation.

~~(6) [(7)]~~ A billing supervisor arrangement between a billing supervisor and an approved ~~a~~ behavioral health practitioner under supervision shall not violate the supervision rules or policies of the respective professional licensure boards governing the billing supervisor and the approved behavioral health practitioner under supervision.

Section 5. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider, of any program in which the service is covered, during the same time period.

(2) For example, if a recipient is receiving a behavioral health service from an independent behavioral health provider, the department shall not reimburse for the same service provided to the same recipient during the same time period by a behavioral health services organization.

Section 6. Records Maintenance, Documentation, Protection, and Security. (1) A behavioral health services organization shall maintain a current health record for each recipient.

~~(2) [(a)]~~ A health record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service. ~~[(b) The individual who provided the service shall date and sign the health record on the date that the individual provided the service except as established in subsection (5)(a) of this section.]~~

(3) A health record shall:

- (a) Include:
 - 1. An identification and intake record including:

- a. Name;
- b. Social Security number;
- c. Date of intake;
- d. Home (legal) address;
- e. Health insurance or Medicaid information;
- f. Referral source and address of referral source;
- g. Primary care physician and address;
- h. The reason the individual is seeking help including the presenting problem and diagnosis;
- i. Any physical health diagnosis, if a physical health diagnosis exists for the individual, and information regarding:
 - (i) Where the individual is receiving treatment for the physical health diagnosis; and
 - (ii) The physical health provider; and

j. The name of the informant and any other information deemed necessary by the behavioral health services organization to comply with the requirements of:

- (i) This administrative regulation;
- (ii) The behavioral health services organization's licensure board;

(iii) State law; or

(iv) Federal law;

2. Documentation of the:

- a. Screening;
- b. Assessment if an assessment was performed; and
- c. Disposition if a disposition was performed;
- 3. A complete history including mental status and previous treatment;
- 4. An identification sheet;
- 5. A consent for treatment sheet that is accurately signed and dated; and
- 6. The individual's stated purpose for seeking services; and

(b) Be:

- 1. Maintained in an organized central file;
- 2. Furnished to the:
 - a. Cabinet for Health and Family Services upon request; or
 - b. Managed care organization in which the recipient is enrolled upon request if the recipient is enrolled with a managed care organization;

3. Made available for inspection and copying by:

- a. Cabinet for Health and Family Services' personnel; or
- b. Personnel of the managed care organization in which the recipient is enrolled if the recipient is enrolled with a managed care organization;

4. Readily accessible; and

5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient if the recipient received services beyond a screening.

(4) Documentation of a screening shall include:

(a) Information relative to the individual's stated request for services; and

(b) Other stated personal or health concerns if other concerns are stated.

(5)(a) A behavioral health services organization's service note ~~[notes]~~ regarding a recipient shall:

1. Be made within forty-eight (48) hours of each service visit; ~~and~~

2. Indicate if the service was provided face-to-face or via telehealth; and

3. Describe the:

- a. Recipient's symptoms or behavior, reaction to treatment, and attitude;
- b. Therapist's intervention;
- c. Changes in the plan of care if changes are made; and
- d. Need for continued treatment if continued treatment is needed.

(b) 1. Any edit to notes shall:

- a. Clearly display the changes; and
- b. Be initialed and dated by the person who edited the notes.

2. Notes shall not be erased or illegibly marked out.

(c) 1. Notes recorded by an approved ~~a~~ behavioral health practitioner ~~[working]~~ under supervision shall be co-signed and dated by the supervising professional within thirty (30) days.

2. If services are provided by an approved[a] behavioral health practitioner [working] under supervision, there shall be a monthly supervisory note recorded by the supervising professional reflecting consultations with the approved behavioral health practitioner [working] under supervision concerning the:

- a. Case; and
- b. Supervising professional's evaluation of the services being provided to the recipient.

(6) Immediately following a screening of a recipient, the practitioner shall perform a disposition related to:

- (a) A provisional diagnosis;
- (b) A referral for further consultation and disposition, if applicable; or

(c)1. If applicable, termination of services and referral to an outside source for further services; or

2. If applicable, termination of services without a referral to further services.

(7) Any change to a recipient's plan of care shall be documented, signed, and dated by the rendering practitioner and by the recipient or recipient's representative.

(8)(a) Notes regarding services to a recipient shall:

1. Be organized in chronological order;
2. Be dated;
3. Be titled to indicate the service rendered;
4. State a starting and ending time for the service; and
5. Be recorded and signed by the rendering practitioner and include the professional title (for example, licensed clinical social worker) of the provider.

(b) Initials, typed signatures, or stamped signatures shall not be accepted.

(c) Telephone contacts, family collateral contacts not covered under this administrative regulation, or other non-reimbursable contacts shall:

1. Be recorded in the notes; and
2. Not be reimbursable.

(9)(a) A termination summary shall:

1. Be required, upon termination of services, for each recipient who received at least three (3) service visits; and
2. Contain a summary of the significant findings and events during the course of treatment including the:

a. Final assessment regarding the progress of the individual toward reaching goals and objectives established in the individual's plan of care;

- b. Final diagnosis of clinical impression; and
- c. Individual's condition upon termination and disposition.

(b) A health record relating to an individual who terminated from receiving services shall be fully completed within ten (10) days following termination.

(10) If an individual's case is reopened within ninety (90) days of terminating services for the same or related issue, a reference to the prior case history with a note regarding the interval period shall be acceptable.

(11)(a) Except as established in paragraph (b) of this subsection, if a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring behavioral health services organization shall, within ten (10) business days of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

- 1.a. The Health Insurance Portability and Accountability Act;
- b. 42 U.S.C. 1320d-2 to 1320d-8; and
- c. 45 C.F.R. Parts 160 and 164; or
- 2.a. 42 U.S.C. 290 ee-3; and
- b. 42 C.F.R. Part 2.

(b) If a recipient is transferred or referred to a residential crisis stabilization unit, a psychiatric hospital, a psychiatric distinct part unit in an acute care hospital, or an acute care hospital for care or treatment, the transferring behavioral health services organization shall, within forty-eight (48) hours of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

- 1.a. The Health Insurance Portability and Accountability Act;
- b. 42 U.S.C. 1320d-2 to 1320d-8; and

c. 45 C.F.R. Parts 160 and 164; or

2.a. 42 U.S.C. 290 ee-3; and

b. 42 C.F.R. Part 2.

(12)(a) If a behavioral health services organization's Medicaid Program participation status changes as a result of voluntarily terminating from the Medicaid Program, involuntarily terminating from the Medicaid Program, a licensure suspension, or death of an owner or deaths of owners, the health records of the behavioral health services organization shall:

1. Remain the property of the behavioral health services organization; and
2. Be subject to the retention requirements established in subsection (13) of this section.

(b) A behavioral health services organization shall have a written plan addressing how to maintain health records in the event of death of an owner or deaths of owners.

(13)(a) Except as established in paragraph (b) or (c) of this subsection, a behavioral health services organization shall maintain a case record regarding a recipient for at least six (6) years from the date of the service or until any audit dispute or issue is resolved beyond six (6) years.

(b) After a recipient's death or discharge from services, a provider shall maintain the recipient's record for the longest of the following periods:

1. Six (6) years unless the recipient is a minor; or
2. If the recipient is a minor, three (3) years after the recipient reaches the age of majority under state law.

(c) If the Secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this subsection[section], pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(14)(a) A behavioral health services organization shall comply with 45 C.F.R. Part 164.

(b) All information contained in a health record shall:

1. Be treated as confidential;
2. Not be disclosed to an unauthorized individual; and
3. Be disclosed to an authorized representative of:
 - a. The department; or
 - b. Federal government.

(c)1. Upon request, a behavioral health services organization shall provide to an authorized representative of the department or federal government information requested to substantiate:

- a. Staff notes detailing a service that was rendered;
- b. The professional who rendered a service; and
- c. The type of service rendered and any other requested information necessary to determine, on an individual basis, whether the service is reimbursable by the department.

2. Failure to provide information required by subparagraph 1_ of this paragraph shall result in denial of payment for any service associated with the requested information.

Section 7. Medicaid Program Participation Compliance. (1) A behavioral health services organization shall comply with:

- (a) 907 KAR 1:671;
- (b) 907 KAR 1:672; and
- (c) All applicable state and federal laws.

(2)(a) If a behavioral health services organization receives any duplicate payment or overpayment from the department, regardless of reason, the behavioral health services organization shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection[section] may be:

1. Interpreted to be fraud or abuse; and
2. Prosecuted in accordance with applicable federal or state law.

(3)(a) When the department makes payment for a covered service and the behavioral health services organization accepts the payment:

1. The payment shall be considered payment in full;
2. A bill for the same service shall not be given to the recipient; and
3. Payment from the recipient for the same service shall not be

accepted by the behavioral health services organization.

(b)1. A behavioral health services organization may bill a recipient for a service that is not covered by the Kentucky Medicaid Program if the:

a. Recipient requests the service; and

b. Behavioral health services organization makes the recipient aware in advance of providing the service that the:

(i) Recipient is liable for the payment; and

(ii) Department is not covering the service.

2. If a recipient makes payment for a service in accordance with subparagraph 1., of this paragraph, the:

a. Behavioral health services organization shall not bill the department for the service; and

b. Department shall not:

(i) Be liable for any part of the payment associated with the service; and

(ii) Make any payment to the behavioral health services organization regarding the service.

(4)(a) A behavioral health services organization shall attest by the behavioral health services organization's staff's or representative's signature that any claim associated with a service is valid and submitted in good faith.

(b) Any claim and substantiating record associated with a service shall be subject to audit by the:

1. Department or its designee;

2. Cabinet for Health and Family Services, Office of Inspector General, or its designee;

3. Kentucky Office of Attorney General or its designee;

4. Kentucky Office of the Auditor for Public Accounts or its designee; or

5. United States General Accounting Office or its designee.

(c) If a behavioral health services organization receives a request from the department to provide a claim, related information, related documentation, or record for auditing purposes, the behavioral health services organization shall provide the requested information to the department within the timeframe requested by the department.

(d)1. All services provided shall be subject to review for recipient or provider abuse.

2. Willful abuse by a behavioral health services organization shall result in the suspension or termination of the behavioral health services organization from Medicaid Program participation.

Section 8. Third Party Liability. A behavioral health services organization shall comply with KRS 205.622.

Section 9. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A behavioral health services organization that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the behavioral health services organization's employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the behavioral health services organization's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.

Section 10. Auditing Authority. The department shall have the

authority to audit any:

(1) Claim;

(2) Medical record; or

(3) Documentation associated with any claim or medical record.

Section 11. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 12. Appeals. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

CAROL H. STECKEL, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 17, 2019

FILED WITH LRC: June 28, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 26, 2019, 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 August 19, 2019, 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 August 31, 2019. 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: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone: 502-564-6746; fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program behavioral health services provided by Tier I behavioral health services organizations (BHSO I). A BHSO I is an entity that provides treatment for mental health and is licensed and regulated by the Office of Inspector General in accordance with 902 KAR 20:430. The array of services includes a screening; an assessment; psychological testing; crisis intervention; mobile crisis services; day treatment; peer support; intensive outpatient program services; individual outpatient therapy; group outpatient therapy; family outpatient therapy; collateral outpatient therapy; service planning; partial hospitalization; assertive community treatment; comprehensive community support services; and therapeutic rehabilitation program services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS

205.6311, which mandates that Kentucky's Medicaid Program "expand the behavioral health network to allow providers to provide services within their licensure category."

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by expanding "the behavioral health network to allow providers to provide services within their licensure category."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by expanding "the behavioral health network to allow providers to provide services within their licensure category."

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

(a) How the amendment will change this existing administrative regulation: The amendments include establishing the first tier, of what will be a 3-tiered division of BHSO services. The new tiers will divide BHSO services provided for non-substance use disorder (SUD) treatment services, outpatient SUD treatment services, and residential SUD treatment services. Each tier will require different licensure. The amendments to the administrative regulation require that a BHSO I only provide mental health treatment, and not SUD treatment. Accreditation is now required within one year of initial enrollment. In addition, certain types of providers and support staff are not allowed to practice within a BHSO I. The amendments also better refer to the defined terms of an "approved behavioral health practitioner" or an "approved behavioral health practitioner under supervision", and these terms now include certain additional practitioners. The amendments also require physicians and advance practice registered nurses providing behavioral health services within a BHSO I to have a psychiatric specialty. Physician assistants are now required to have a contractual relationship with a supervising physician with a psychiatric specialty in order to provide behavioral health services within a BHSO I. The amendments further clarify that face-to-face contact between the provider and recipient is not required for family therapy which involves informing family members (in the absence of the recipient) regarding the recipient's psychological testing and service planning. The amendments further clarify that the three (3) hour per day limit regarding individual outpatient therapy, group outpatient therapy, and family outpatient therapy applies to each service or any combination of the therapies in aggregate. The amendments also make organizational changes by deleting language that listed the service and appropriate provider, this information has now been consolidated and included with the subsection that addresses covered services.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to increase treatment licensure and quality standards as a part of a cabinet-wide process mandated by HB 124 of the 2018 Regular Session. Additional clarifications relating to face-to-face contact for family therapy, psychological testing, and service planning were necessary to reflect that these services may be conducted without the recipient present. Clarifying that the three (3) hour limit regarding individual outpatient therapy, group outpatient therapy, and family outpatient therapy is an aggregate as well as individual service limit is necessary for clarity.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to the content of the authorizing statutes by enhancing and ensuring that licensure standards and SUD treatment meet a standard established by HB 124 of the 2018 Regular Session, in addition, the amendments help meet recipient demand as well as conforms to the content of KRS 205.6311(2).

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist in the effective administration of the authorizing statutes by implementing part of a tiering process of BHSOs according to the licensure and type of services provided, and by enabling additional practitioners throughout the new tiers to provide

services to help meet recipient demand. In addition, the amendments will assist with conforming to the content of KRS 205.6311(2).

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are currently 134 entities licensed as behavioral health services organizations that will be affected by this administrative regulation. Medicaid recipients in need of substance use treatment, mental health treatment, or treatment for a co-occurring disorder will also be affected by the amendment. There are currently 1.4 million individuals enrolled in the Medicaid program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Providers that plan to provide non-SUD treatment will need to only attain or retain BHSO licensure. In addition, BHSOs will need to ensure that the appropriate services are provided by the appropriate provider.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Entities that only provide non-SUD treatment services will only need to attain or retain BHSO licensure.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Medicaid recipients in need of mental health treatment that does not include SUD treatment will have access to a broad range of mental health treatment. Facilities may provide many services with no need for dual licensure due to these changes. Currently there are 1.4 million Kentuckians receiving Medicaid services.

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

(a) Initially: DMS does not anticipate additional costs as a result of the amendments to this administrative regulation.

(b) On a continuing basis: DMS does not anticipate additional costs as a result of the amendments to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 1302(b)(1)(E) of the Affordable Care Act, 42 U.S.C. 1396a(a)(10)(B), and 42 U.S.C. 1396a(a)(23).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Substance use disorder services are federally

mandated for Medicaid programs. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment." 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." Medicaid recipients enrolled with a managed care organization may be restricted to providers within the managed care organization's provider network. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope as available to other individuals (non-Medicaid.) Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter than federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment to this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not expected to generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment is not expected to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? DMS does not expect any additional costs in administering these amendments during the first year.

(d) How much will it cost to administer this program for subsequent years? DMS does not expect any additional costs in administering these amendments during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Policy and Operations (Amendment)

907 KAR 15:025. Reimbursement provisions and requirements regarding behavioral health services provided by behavioral health services organizations.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23), 18022(b)(1)(E)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the reimbursement provisions and requirements regarding Medicaid Program behavioral health services provided by behavioral health services organizations to Medicaid recipients who are not enrolled with a managed care organization.

Section 1. General Requirements. For the department to reimburse for a service covered under this administrative regulation, the service shall:

(1) Meet the requirements established in 907 KAR 15:020 or 907 KAR 15:022; and

(2) Be covered in accordance with 907 KAR 15:020 or 907 KAR 15:022.

Section 2. Reimbursement. (1) One (1) unit of service shall be:

(a) Fifteen (15) minutes in length; or

(b) The unit amount identified in the corresponding:

1. Current procedural terminology code; or

2. Healthcare common procedure coding system code.

(2) The rates for covered services established pursuant to 907 KAR 15:020 and provided within a BHSO ~~[(The rate per unit for a screening or for crisis intervention)]~~ shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or

2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; ~~[or]~~

2. A licensed psychologist; or

3. A physician assistant;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;

2. Licensed clinical social worker;

3. Licensed psychological practitioner;

4. Licensed marriage and family therapist; ~~[or]~~

5. Licensed professional art therapist; ~~[or]~~

6. Certified psychologist with autonomous functioning; or

7. Licensed behavior analyst;

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a billing supervisor;

2. Licensed professional counselor associate working under the supervision of a billing supervisor;

3. Licensed psychological associate working under the supervision of a billing supervisor;

4. Certified social worker working under the supervision of a billing supervisor;

5. Certified psychologist ~~[Physician assistant working under the supervision of a billing supervisor]; or~~

6. Licensed professional art therapist associate working under the supervision of a billing supervisor[; or

7. Certified alcohol and drug counselor working under the supervision of a billing supervisor].

(3) The rates for covered services established pursuant to 907 KAR 15:022 and provided within a BHSO II[The rate per unit for an assessment] shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or
2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse;[or]
2. A licensed psychologist; or
3. A physician assistant;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;
2. Licensed clinical social worker;
3. Licensed psychological practitioner;
4. Licensed marriage and family therapist;[or]
5. Licensed professional art therapist;[or]
6. Certified psychologist with autonomous functioning; or
7. Licensed clinical alcohol and drug counselor;

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a billing supervisor;
2. Licensed professional counselor associate working under the supervision of a billing supervisor;
3. Licensed psychological associate working under the supervision of a billing supervisor;
4. Certified social worker working under the supervision of a billing supervisor;
5. Certified psychologist[Physician assistant working under the supervision of a billing supervisor];
6. Licensed professional art therapist associate working under the supervision of a billing supervisor; or
7. Licensed clinical alcohol and drug counselor associate; or
- (e) Thirty-seven and five-tenths (37.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a certified alcohol and drug counselor[Licensed assistant behavior analyst working under the supervision of a billing supervisor; or
8. Certified alcohol and drug counselor working under the supervision of a billing supervisor].

(4) The rates for covered services established pursuant to 907 KAR 15:022 and provided within a BHSO III shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or
2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse;
2. A licensed psychologist; or
3. A physician assistant;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;
2. Licensed clinical social worker;
3. Licensed psychological practitioner;
4. Licensed marriage and family therapist;
5. Licensed professional art therapist;
6. Certified psychologist with autonomous functioning; or
7. Licensed clinical alcohol and drug counselor;

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a billing supervisor;

2. Licensed professional counselor associate working under the supervision of a billing supervisor;

3. Licensed psychological associate working under the supervision of a billing supervisor;

4. Certified social worker working under the supervision of a billing supervisor;

5. Certified psychologist;

6. Licensed professional art therapist associate working under the supervision of a billing supervisor; or

7. Licensed clinical alcohol and drug counselor associate; or

(e) Thirty-seven and five-tenths (37.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a certified alcohol and drug counselor[The rate per unit for psychological testing shall be:

(a) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a licensed psychologist;

(b) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a licensed psychological practitioner; or

(c) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a licensed psychological associate working under the supervision of a licensed psychologist.

(5) The rate per unit for individual outpatient therapy, group outpatient therapy, or collateral outpatient therapy shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or
2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; or
2. A licensed psychologist;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;
2. Licensed clinical social worker;
3. Licensed psychological practitioner;
4. Licensed marriage and family therapist;
5. Licensed professional art therapist; or
6. Licensed behavior analyst; or

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a billing supervisor;
2. Licensed professional counselor associate working under the supervision of a billing supervisor;
3. Licensed psychological associate working under the supervision of a billing supervisor;
4. Certified social worker working under the supervision of a billing supervisor;
5. Physician assistant working under the supervision of a billing supervisor;
6. Licensed professional art therapist associate working under the supervision of a billing supervisor;
7. Licensed assistant behavior analyst working under the supervision of a billing supervisor; or
8. Certified alcohol and drug counselor working under the supervision of a billing supervisor.

(6) The rate per unit for family outpatient therapy shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or
2. Psychiatrist;
- (b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; or

2. A licensed psychologist;
(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;
2. Licensed clinical social worker;
3. Licensed psychological practitioner;
4. Licensed marriage and family therapist; or
5. Licensed professional art therapist; or

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a billing supervisor;
2. Licensed professional counselor associate working under the supervision of a billing supervisor;
3. Licensed psychological associate working under the supervision of a billing supervisor;
4. Certified social worker working under the supervision of a billing supervisor;
5. Physician assistant working under the supervision of a billing supervisor;
6. Licensed professional art therapist associate working under the supervision of a billing supervisor; or
7. Certified alcohol and drug counselor working under the supervision of a billing supervisor.

(5)(a)(7) Reimbursement for services provided by a BHSO [the following services] shall be as established on the Kentucky Medicaid Behavioral Health and Substance Abuse Services Outpatient (Non-Facility) [BHSO Non-Medicare Services] Fee Schedule and this administrative regulation for those services that are eligible to be provided within a BHSO I as established pursuant to 907 KAR 15:020.

(b) Reimbursement for services provided by a BHSO II shall be as established on the Kentucky Medicaid Behavioral Health and Substance Abuse Services Outpatient (Non-Facility) Fee Schedule and this administrative regulation for those services that are eligible to be provided within a BHSO II as established pursuant to 907 KAR 15:022.

(c) Reimbursement for services provided by a BHSO III shall be as established on the Kentucky Medicaid Behavioral Health and Substance Abuse Services Facility Fee Schedule and this administrative regulation for those services that are eligible to be provided within a BHSO III as established pursuant to 907 KAR 15:022[.

- (a) Mobile crisis services;
- (b) Day treatment;
- (c) Peer support services;
- (d) Parent or family peer support services;
- (e) Intensive outpatient program services;
- (f) Service planning;
- (g) Residential services for substance use disorders;
- (h) Screening, brief intervention, and referral to treatment;
- (i) Assertive community treatment;
- (j) Comprehensive community support services; or
- (k) Therapeutic rehabilitation services].

(6)(8)(a) The department shall use the current version of the Kentucky-specific Medicare Physician Fee Schedule for reimbursement purposes.

(b) For example, if the Kentucky-specific Medicare Physician Fee Schedule currently published and used by the Centers for Medicare and Medicaid Services for the Medicare Program is:

1. An interim version, the department shall use the interim version until the final version has been published; or
2. A final version, the department shall use the final version.

(7)(9) The department shall not reimburse for a service billed by or on behalf of an entity or individual that is not a billing provider.

Section 3. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

- (2) For example, if a recipient is receiving a behavioral health

service from an independent behavioral health provider, the department shall not reimburse for the same service provided to the same recipient during the same time period by a behavioral health services organization.

Section 4. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse in accordance with this administrative regulation for a service covered pursuant to:

- (1)(a) 907 KAR 15:020; or
- (b) 907 KAR 15:022; and
- (2) This administrative regulation.

Section 5. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the reimbursement; and
- (2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

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

(a) "Kentucky Medicaid Behavioral Health and Substance Abuse Services Outpatient (Non-Facility) Fee Schedule", July 2019; and

(b) "Kentucky Medicaid Behavioral Health and Substance Abuse Services Facility Fee Schedule", July 2019["BHSO Non-Medicare Services Fee Schedule", July 2014, is incorporated by reference].

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

(a) The Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at <http://www.chfs.ky.gov/agencies/dms/Pages/regsmaterials.aspx> [<http://www.chfs.ky.gov/dms/incorporated.htm>].

CAROL H. STECKEL, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 6, 2019

FILED WITH LRC: June 28, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 26, 2019, 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 August 19, 2019, 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 August 31, 2019. 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: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone: 502-564-6746; fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Chase Coffey

- (1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement provisions and requirements regarding Medicaid Program behavioral health services provided by each tier of behavioral health services organizations (BHSOs).

(b) The necessity of this administrative regulation: This administrative regulation is necessary - to comply with federal mandates. 42 U.S.C. 18022(b)(1)(E) mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment" for all recipients. 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the provider base (to include behavioral health services organizations) will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area. In addition, this administrative regulation implements the SUD 1115 Waiver, which is part of the Kentucky HEALTH 1115 waiver.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by complying with federal mandates, and enhancing and ensuring Medicaid recipients' access to behavioral health services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by complying with federal mandates, and enhancing and ensuring Medicaid recipients' access to behavioral health services.

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

(a) How the amendment will change this existing administrative regulation: The amendments to the administrative regulation incorporate changes made to 907 KAR Chapter 15. The BHSO administrative regulation has been divided into two administrative regulations to prevent entities operating as Alcohol and Other Drug Entities (AODEs) from needing to acquire dual licensure. This regulation was amended to conform to the promulgation of a new 907 KAR 15:022 which relates to enhanced SUD outpatient and residential services. The regulation is further amended to establish reimbursement between the 3 newly established tiers of BHSO. In addition, physician assistant's reimbursement has been increased to 63.75% of the Medicare Physician Fee Schedule, and licensed clinical alcohol and drug counselors and associates have been included in the array of allowed providers within a BHSO. Finally, a previous fee schedule has been removed, and two new fee schedules have been referenced to cover all services in each BHSO Tier.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to ensure that reimbursement is available for SUD and co-occurring disorders. In addition, the amendments help to implement a SUD 1115 Waiver and HB 124 from the 2018 Regular Session.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to the content of the authorizing statutes by complying with federal mandates, and enhancing and ensuring Medicaid recipients' access to behavioral health services, including SUD services and co-occurring disorders provided in an AODE. In addition, the amendments help to implement a SUD 1115 Waiver and HB 124 from the 2018 Regular Session.

(d) How the amendment will assist in the effective administration of the statutes: The amendments assist in the

effective administration of the statutes by complying with federal mandates, and enhancing and ensuring Medicaid recipients' access to behavioral health services, including SUD services and co-occurring disorders provided in an AODE. In addition, the amendments help to implement a SUD 1115 Waiver and HB 124 from the 2018 Regular Session.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The following behavioral health professionals who are authorized to provide services in a behavioral health services organization will be affected: physician assistants and licensed clinical alcohol and drug counselors and associates. In addition, BHSOs that wish to operate as a BHSO II or BHSO III will be eligible for reimbursement. Finally, Medicaid recipients who qualify for behavioral health services will also be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Entities that qualify as behavioral health services organizations and who wish to provide services to Medicaid recipients will need to enroll with the Medicaid Program as prescribed in the Medicaid provider enrollment regulation (complete an application and submit it to DMS) and sign agreements with managed care organizations if the individual wishes to provide services to Medicaid recipients who are enrolled with a managed care organization.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The entities referenced in paragraph (a) could experience administrative costs associated with enrolling with the Medicaid Program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The entities referenced in paragraph (a) will benefit by receiving Medicaid Program reimbursement. Behavioral health professionals authorized to provide services in a behavioral health services organization will benefit by having more employment opportunities in Kentucky. Medicaid recipients in need of behavioral health services will benefit from an expanded base of providers from which to receive these services.

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

(a) Initially: The department does not anticipate any additional costs on an initial basis.

(b) On a continuing basis: The department does not anticipate any additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 18022(b)(1)(E), 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23), and 42 U.S.C. 1396a(a)(30)(A).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Substance use disorder services are federally mandated for Medicaid programs. 42 U.S.C. 18022(b)(1)(E) mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment." 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." Medicaid recipients enrolled with a managed care organization may be restricted to providers within the managed care organization's provider network. The Centers for Medicare and Medicaid Services (CMS) – the federal agency which oversees and provides the federal funding for Kentucky's Medicaid Program – has expressed to the Department for Medicaid Services (DMS) the need for DMS to expand its substance use disorder provider base to comport with the freedom of choice of provider requirement. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope as available to other individuals (non-Medicaid.) Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area. Similarly, 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "...provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter than federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment to this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation authorizes the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not expected to generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment is not expected to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? DMS does not expect any additional costs in administering these amendments during the first year.

(d) How much will it cost to administer this program for subsequent years? DMS does not expect any additional costs in administering these amendments during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (Amendment)

922 KAR 1:320. Service appeals.

RELATES TO: KRS 2.015, Chapter 13B, 23A.010, 194A.005, 194A.030(11), 199.011(4), (9), 199.555(2), 199.557, 209.020(4), (5), 209A.020(4), (5), 600.020(9), (28), (46), 605.090(1)(b), (6), 610.110(6)(d), 620.020(1), 620.140(1)(e), 620.142, 620.157, 620.180(2)(a)1, 620.230, 620.363, 45 C.F.R. 205.10, 1355.21(b), 1355.30(p), 42 U.S.C. 601(a)(1), 621(1)-(4), 629, 670, 671(a)(23), 673, 675, 1397

STATUTORY AUTHORITY: KRS 13B.170(1), 194A.010(2), 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) designates the Cabinet for Health and Family Services as the primary state agency responsible for leadership in protecting and promoting the well-being of Kentuckians through the delivery of quality human services. KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds, including 45 C.F.R. 205.10, made applicable to titles IV-B and IV-E programs by references in 45 C.F.R. 1355.21(b) and 1355.30(p). KRS 13B.170(1) authorizes promulgating administrative regulations necessary to carry out the provisions of KRS Chapter 13B. This administrative regulation establishes procedures related to appeals and complaints for benefits and services under 922 KAR Chapters 1 and 5.

Section 1. Definitions. (1) "Adoption assistance" means a payment under:

(a) KRS 199.555(2) and 922 KAR 1:050; or

(b) KRS 199.557 and 922 KAR 1:060.

(2) "Adult" is defined by KRS 209.020(4).

(3) "Caretaker relative" means a relative with whom a child is, or will be, placed by the cabinet.

(4) "Case permanency plan" is defined by KRS 620.020(1) and described in KRS 620.230 for a child placed in the custody of the cabinet by an order of commitment[outside the home].

(4) [(5)] "Case plan" means a plan described in 922 KAR 1:430 for a child who is not placed in the custody of the cabinet by an order of commitment[remains in the home].

(5) [(6)] "Case planning conference" means a meeting in which a case plan or a case permanency plan is developed or modified in accordance with KRS 620.180(2)(a)1.

(6) [(7)] "Child" means:

(a) A child defined by KRS 199.011(4) and 600.020(9);

(b) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6) or 620.140(1)(e) [(d)]; or

(c) A person under age twenty-one (21) who meets the exceptions to the age of majority in accordance with KRS 2.015.

~~(7) [(8)]~~ "Child welfare services" means benefits or services on behalf of a child meeting a purpose of 42 U.S.C. 601(a)(1), 621(1)-(4), 629, 670, or 1397.

~~(8) [(9)]~~ "Commissioner" means the Commissioner of the Department for Community Based Services or designee.

~~(9) [(40)]~~ "Contract agency" means a business or organization that offers child welfare, adult, or domestic violence services to the public through a contract or agreement with the cabinet.

~~(10) [(44)]~~ "Fictive kin" is defined by KRS 199.011(9) and 600.020(28).

~~(11) [(42)]~~ "General adult services" means a voluntary preventive~~preventative~~ service in accordance with 922 KAR 5:090.

~~(12) [(43)]~~ "Good cause" means justification for failure to carry forward with a legal obligation related to an appeal in accordance with Section 6(7) of this administrative regulation.

~~(13) [(44)]~~ "Kinship caregiver" means a qualified caretaker relative of a child with whom the child is placed ~~[by the cabinet]~~ as an alternative to foster care in accordance with 922 KAR 1:130.

~~(14) [(45)]~~ "Parent" is defined by KRS 600.020(46) and 42 U.S.C. 675(2) for child welfare benefits and services.

~~(15) [(46)]~~ "Protective services" is defined by KRS 209.020(5).

~~(16)~~ "Relative" means an individual related to a child by blood, marriage, or adoption.

Section 2. Right to Appeal. (1) A parent may request review of the following through an administrative hearing:

(a) Denial, reduction, modification, suspension, or termination of child welfare services provided by the cabinet;

(b) Closure of a child protective services case in accordance with:

1. 922 KAR 1:330, Section 12; or

2. 922 KAR 1:430, Section 4; ~~or~~

(c) Failure by the cabinet to:

1. Respond with reasonable promptness to a request for child welfare services provided by the cabinet;

2. Complete a case plan or case permanency plan;

3. Provide or refer for services as specified in the case plan or case permanency plan; or

4. Meet a mandated timeframe for child protective services specified in 922 KAR 1:330; or

(d) In accordance with KRS 620.157.

(2) A foster parent approved by the department in accordance with 922 KAR 1:350 or an adoptive parent may request review of the following through an administrative hearing:

(a) Failure by the cabinet to:

1. Process reimbursement to the home with reasonable promptness;

2. Provide information required by KRS 605.090(1)(b) and (6);

3. Advise an adoptive parent of the availability of adoption assistance in accordance with 922 KAR 1:050 or 922 KAR 1:060; or

4. Provide an adoptive parent with known relevant facts regarding the:

a. Child;

b. Child's background prior to finalization of the adoption; and

c. Child's biological family;

(b) Determination of ineligibility for adoption assistance upon execution of an adoptive placement agreement under 922 KAR 1:050 or 922 KAR 1:060;

(c) Denial of a request for a change in payment level due to a change in circumstances of an adoptive parent or child when the adoption assistance agreement is renewed under 922 KAR 1:050 or 922 KAR 1:060; or

(d) Closure of a foster or adoptive home under 922 KAR 1:350 unless a provision of Section 3(1)(f), (g), (h), ~~[(e)]~~ (i), or (j) of this administrative regulation applies.

(3) An approved and available adoptive parent outside the

jurisdiction with responsibility for handling the case of an adoptive child may request an administrative hearing for the cabinet's denial or delay in placement of the child for adoption pursuant to 42 U.S.C. 671(a)(23).

(4)(a) A kinship caregiver may request an administrative hearing pursuant to 922 KAR 1:130, Section 19.

(b) Pursuant to 922 KAR 1:130, Section 19(2), a kinship caregiver who is dissatisfied with an action or inaction on the part of the cabinet relating to financial assistance under the Kinship Care Program may request an administrative hearing under the provisions of 921 KAR 2:055.

(5) An applicant determined by the cabinet to be ineligible for a tuition waiver may request an administrative hearing pursuant to 922 KAR 1:450, Section 3.

(6) An applicant determined by the cabinet to be ineligible for an educational and training voucher may request an administrative hearing pursuant to 922 KAR 1:500, Section 5.

(7) An adult may request review of the following through an administrative hearing:

(a) The cabinet's denial of general adult services or protective services to an adult identified as a victim of abuse, neglect, or exploitation; or

(b) Failure by the cabinet to respond with reasonable promptness to a request for:

1. General adult services; or

2. Protective services for an adult.

(8) A non-parent relative or fictive kin caregiver who received physical custody of a child through a child abuse, neglect, or dependency action may appeal:

(a) In accordance with 922 KAR 1:565, Section 7; or

(b) A denial, reduction, modification, suspension, or termination of child welfare services unless a provision of Section 3(1)(f), (g), (h), (i), (j), or (n) of this administrative regulation applies.

(9) An individual aggrieved by an action of the cabinet may request an administrative hearing for a matter by which a Kentucky Revised Statute or 922 KAR Chapters 1 and 5 expressly permits the appeal of a cabinet action or alleged act.

~~(10) [(9)]~~ A parent or an adult aggrieved by an action of the cabinet may request review of the following through an administrative hearing:

(a) A cabinet denial, reduction, suspension, or termination of services or federally-funded benefits, payments, or financial assistance to which an individual may be entitled under 922 KAR Chapters 1 and 5; or

(b) A cabinet failure to act with reasonable promptness to a request for a federally-funded benefit, payment, or financial assistance to which an individual may be entitled under 922 KAR Chapters 1 and 5.

Section 3. Matters Not Appealable through an Administrative Hearing. (1) The following shall not be subject to review through an administrative hearing:

(a) A matter in which a court:

1. Has previously made a judicial determination or issued an order on the same issue being appealed; or

2. Is currently engaged in legal proceedings regarding the same issue being appealed;

(b) A final administrative decision made by the cabinet or cabinet's designee as a result of a previous appeal on the same issue;

(c) An appeal that has been abandoned by an appellant who failed to demonstrate good cause for failure to go forward;

(d) Failure to submit a written request for appeal within the time frame established by Section 6(4)(b) of this administrative regulation;

(e) A decision to deny:

1. Approval of an individual seeking to provide foster or adoptive services or respite care in accordance with 922 KAR 1:350 or 922 KAR 1:310; or

2. A caretaker relative approval as a kinship caregiver if the:

a. Caretaker relative fails to meet the provisions of 922 KAR 1:130, Section 5; or

b. Child is ineligible in accordance with 922 KAR 1:130,

Section 9;

(f) The cabinet's fitness determination of a relative or fictive kin in accordance with 922 KAR 1:565, Section 3[3]. A caretaker relative's or fictive kin's ineligibility for reimbursement in accordance with 922 KAR 1:140, Section 3(8); or

4. Approval of an individual seeking to be a relative or fictive kin placement if the individual fails to meet provisions of 922 KAR 1:140, Section 3(6);

(g)(f) Removal of a foster child from a foster or adoptive home or respite care provider if the foster or adoptive home parent, respite care provider, or another individual residing in the home has been found by the cabinet to have abused, neglected, or exploited a child and the:

1. Foster or adoptive home parent, respite care provider, or other individual waived the right to appeal the substantiated incident; or

2. Substantiated incident was upheld after:

a. An administrative hearing; or

b. Judicial review;

(h)(g) Removal of a child from a foster home, relative caregiver, or fictive kin caregiver for the purpose of:

1. Achieving a permanency goal described by 922 KAR 1:140;

or

2. Uniting or reuniting the child with a sibling at the next placement;

(i)(h) Closure of a foster or adoptive home if the cabinet has not placed a child in the home within the previous two (2) years;

(j)(i) Closure of a relative, fictive kin, foster, or adoptive home according to the terms of the contract between the cabinet and the relative, fictive kin, foster, or adoptive home;

(k)(j) A situation where state or federal law requires adjustment of a payment or grant, except if a payment or grant computation is incorrect;

(l)(k) The per diem rate of reimbursement paid to a foster home parent; or

(m) (A)(j) decision to not recommend a foster home parent in accordance with 922 KAR 1:350, Section 6(9), for enrollment in specialized training as a medically complex foster parent or care plus foster parent; or

(n) A request for foster care maintenance payment on behalf of a child who was not in the cabinet's legal custody during the period of time for which the payment is requested.

(2) A complaint of discrimination may be filed with the cabinet's Office of Human Resource Management in accordance with 920 KAR 1:090.

Section 4. Service Complaints. (1) If a matter is not subject to review through an administrative hearing, a parent, caretaker relative or, kinship caregiver, fictive kin caregiver, foster or adoptive parent approved by the department in accordance with 922 KAR 1:350, or an adult may:

(a) Attempt to resolve the issue by submitting a written complaint to the service region administrator or designee within thirty (30) calendar days after the date of the cabinet action or alleged act; or

(b) Contact the cabinet's Office of the Ombudsman and Administrative Review if the matter was not previously reviewed:

1. By that office; or

2. Pursuant to paragraph (a) of this subsection.

(2) A child who is in the custody of the cabinet, or a child who has aged out of the cabinet's custody within the previous twelve (12) months may file a complaint through the Office of the Ombudsman and Administrative Review for any of the following:

(a) Denial, reduction, modification, suspension, or termination of child welfare services provided by the cabinet;

(b) Closure of a child protective services case in accordance with:

1. 922 KAR 1:330, Section 12; or

2. 922 KAR 1:430, Section 4; or

(c) Failure by the cabinet to:

1. Respond with reasonable promptness to a request for child welfare services provided by the cabinet;

2. Complete a case plan or case permanency plan;

3. Provide or refer for services as specified in the case plan or case permanency plan; or

4. Meet a mandated timeframe for child protective services specified in 922 KAR 1:330; or

5. Demonstrate diligence in the protection and preservation of a foster child's right in accordance with KRS 620.363.

(3) A child described in subsection (2) of this section may file a complaint or a request for the commissioner's review in accordance with subsection (5) of this section with assistance from the child's authorized representative.

(4)(a) The service region administrator, administrator's designee, or the cabinet's Office of the Ombudsman and Administrative Review shall provide a written response to the complainant within thirty (30) calendar days of receipt of a written complaint not subject to review through an administrative hearing.

(b) The service region administrator or the ombudsman may grant an extension to the response timeframe given in paragraph (a) of this subsection if:

1. Extenuating circumstances prolong the review of the complaint; and

2. Notice of the extension is provided to the complainant.

(5)(a) A parent, caretaker relative or, kinship caregiver, fictive kin caregiver, foster or adoptive parent approved by the department in accordance with 922 KAR 1:350, a child described in subsection (2) of this section, or an adult dissatisfied with a written response rendered by the service region administrator, administrator's designee, or the Office of the Ombudsman and Administrative Review may request that the commissioner review the complaint and the written response.

(b) A request for review shall be submitted in writing to the commissioner within ten (10) calendar days of receipt of the written response provided in accordance with subsection (4) of this section.

(c) Upon completion of the review, the commissioner shall render a written determination regarding the complaint within thirty (30) calendar days unless:

1. Extenuating circumstances prolong the review of the complaint; and

2. The commissioner notifies the complainant of the need for an extension to the timeframe specified in this paragraph.

(d) The department shall abide by the commissioner's written determination.

(6) The department shall compile data regarding service complaints to:

(a) Fulfill federal and state reporting requirements; and

(b) Use for program development and evaluation.

Section 5. Other Appeals. (1) An individual who has been found by the cabinet to have abused or neglected a child may appeal the cabinet's finding through an administrative hearing in accordance with 922 KAR 1:480.

(2) An individual aggrieved by a cabinet action or inaction under 922 KAR Chapter 2 may appeal the action or inaction in accordance with 922 KAR 2:260.

Section 6. Request for Appeal. (1) The cabinet shall provide a copy of the DPP-154, Protection and Permanency Service Appeal Request, to an individual:

(a) At each case planning conference;

(b) Upon denial, reduction, modification, suspension, or termination by the cabinet of:

1. Child welfare services provided by the cabinet;

2. General adult services or protective services, if notification does not present a risk of harm to the victim;

3. Adoption assistance; or

4. Other federally-funded program benefit described in 922 KAR Chapter 1 or 5; or

(c) Upon determination that a student is not eligible for a tuition waiver or education and training voucher.

(2) At least ten (10) calendar days prior to the denial, reduction, modification, suspension, or termination of a benefit or services, the cabinet shall hand-deliver or mail the DPP-154A, Protection and Permanency Notice of Intended Action.

(3) The cabinet may take emergency action under KRS 13B.125.

(4) A request for appeal shall:

(a) Be written by the appellant, with the assistance of the cabinet or contract agency if the appellant is unable to comply without assistance;

(b) Be submitted to the cabinet no later than thirty (30) calendar days from the date:

1. That the notice provided in accordance with subsection (2) of this section was issued; or

2. Of the occurrence of the disputed action;

(c) Describe the:

1. Cabinet action in dispute; or

2. Alleged act;

(d) Specify:

1. The reason the appellant disputes the cabinet's action;

2. Name of each cabinet staff person involved with the disputed action, if known; and

3. Date of the cabinet action or alleged act in dispute; and

(e) Include the notice provided in accordance with subsection (2) of this section, if available.

(5)(a) Upon receipt of a written request for appeal, the cabinet shall determine whether the matter is subject to review through an administrative hearing.

(b) If the matter is not subject to review, the cabinet shall inform the individual in writing that the:

1. Matter is not appealable; and

2. Resolution of the matter may be pursued through the service complaint process described in Section 4 or 10 of this administrative regulation.

(6) If the cabinet receives a written request for appeal within ten (10) calendar days from the date the notice provided in accordance with subsection (2) of this section was issued or the date of the disputed action and the matter is appealable, the cabinet shall continue to provide federally-funded assistance in accordance with 45 C.F.R. 205.10(a)(6) pending the out-come of the appeal.

(7) The cabinet shall not dismiss a request for appeal if an appellant demonstrates good cause. Justification may include:

(a) An appellant's inability to comprehend the cabinet's written statement describing appeal rights; or

(b) A cabinet-sanctioned determination that the appellant or the appellant's legal representative is not at fault for failure to:

1. Submit a written request for appeal; or

2. Participate in a proceeding related to an administrative hearing.

Section 7. Administrative Hearing. Each administrative hearing conducted by the cabinet or designee shall comply with KRS Chapter 13B.

Section 8. Recommended Order. (1) A copy of the recommended order shall be sent simultaneously to:

(a) Each party to the administrative hearing;

(b) The commissioner of the Department for Community Based Services; and

(c) The secretary of the Cabinet for Health and Family Services or designee.

(2) If a party to a hearing disagrees with the recommended order, the party may file a written exception as provided in KRS 13B.110(4) with the secretary, which shall:

(a) Be filed within fifteen (15) calendar days of the date the recommended order was mailed;

(b) Be based on facts and evidence presented at the hearing;

(c) Not refer to evidence that was not introduced at the hearing; and

(d) Be sent to each party involved in the hearing.

Section 9. Final Order. (1) The secretary of the Cabinet for Health and Family Services or designee shall issue a final order in accordance with KRS 13B.120.

(2)(a) Unless waived by an appellant, final administrative action shall be taken within ninety (90) calendar days from the date

of the request for an administrative hearing as required by 45 C.F.R. 205.10.

(b) If the appellant waives the ninety (90) calendar day requirement specified in paragraph (a) of this subsection, the hearing officer shall notify all parties to the hearing when final administrative action will be taken.

(3) An aggrieved party may petition for judicial review in accordance with:

(a) KRS 13B.140 to 13B.160; or

(b) KRS 23A.010.

Section 10. Contract Agencies. (1) A contract agency shall offer a complaint process consistent with:

(a) Section 4 of this administrative regulation; or

(b) Provisions of the contract or agreement between the contract agency and the cabinet, if the provisions are different from Section 4 of this administrative regulation.

(2)(a) An individual dissatisfied with a final written response rendered by a contract agency regarding a complaint may request that the commissioner review the complaint and the contract agency's written response.

(b) A request for review shall be submitted to the commissioner within ten (10) calendar days of the contract agency's written response.

(c) Upon completion of the review, the commissioner shall render a written determination regarding the complaint within thirty (30) calendar days unless:

1. Extenuating circumstances prolong the review of the complaint; and

2. The commissioner notifies the client of the need for an extension to the timeframe specified in this paragraph.

(d) The contract agency shall abide by the commissioner's written determination.

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

(a) "DPP-154, Protection and Permanency Service Appeal Request", 11/09; and

(b) "DPP-154A, Protection and Permanency Notice of Intended Action", 11/09.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ERIC T. CLARK, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 27, 2019

FILED WITH LRC: June 28, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 26, 2019, 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 August 19, 2019, 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 August 31, 2019. 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: Chase Coffey, 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: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Laura Begin, Phone (502) 564-3703, Email: Laura.Begin@ky.gov; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures related to appeals and complaints for benefits and services under Title 922 KAR Chapters 1 and 5.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish appeals and complaint procedures for benefits and services under Title 922 KAR Chapters 1 and 5.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing appeals and complaint procedures for benefits and services under Title 922 KAR Chapters 1 and 5.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing procedures related to appeals and complaints for services and benefits under Title 922 Chapters 1 and 5.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation aligns appeals and complaint procedures with 2019 Ky. Acts ch. 073 and 033, House Bills 2 and 158 from the 2019 Regular Session respectively, and makes other technical corrections in accordance with KRS Chapter 13A. More specifically, the amendment incorporates the new service array for relative and fictive kin caregivers, new service and notice provision to foster parents, and the foster child bill of rights.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to align appeals and complaint procedures with the implementation deadline of legislation enacted during the 2019 Regular Session, and to protect the health, safety, and welfare of vulnerable children, families, and adults served through the ability to appeal and submit complaint regarding cabinet provision of services and benefits under Title 922 KAR Chapters 1 and 5.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its alignment of appeals and complaint procedures with recently enacted state law applicable to services and benefits under Title 922 KAR Chapters 1 and 5.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its congruency with recently enacted state law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individuals receiving child welfare or adult services are entities impacted by this administrative regulation, which governs appeals and complaints for Title 922 KAR Chapters 1 and 5. In State Fiscal Year 2018, the cabinet investigated nearly 34,000 reports of suspected adult maltreatment or self-neglect, and 55,000 reports of suspected child maltreatment. As of March 3, 2019, there were 9,786 children in out-of-home care.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no new action required of regulated entities; rather, the basis for appeals and complaints have been clarified in accordance with recently enacted state laws.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in

question (3): There is no new or additional cost imposed upon regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Appeal and complaint procedures for vulnerable children, families, and adults will be congruent with recently enacted state laws, thereby better ensuring the access to quality service provision and entitlements.

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

(a) Initially: Initial implementation costs to the administering agency will be within existing appropriations. Any fluctuation in the number of service appeals as a result of this administrative regulation cannot be projected at this time.

(b) On a continuing basis: Ongoing implementation of the administrative regulation will be within existing appropriations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Social Services Block Grant, funds through Title IV-E of the Social Security Act, and General Funds are utilized to support 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: An increase in fees or funding is not necessary at this time to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied. 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. 205.10, 1355.21(b), 1355.30(p), 42 U.S.C. 601(a)(1), 621(1)-(4), 629, 670-675, 1397

2. State compliance standards. KRS 13B.170(1), 194A.010(2), 194A.050(1)

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 205.10, 1355.21(b), 1355.30(p), 42 U.S.C. 601(a)(1), 621(1)-(4), 629, 670-675, 1397

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by 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 is impacted by this administrative regulation. Local or quasi-governmental entities may be impacted if those entities serve as a contractor of the department.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13B.170(1), 194A.010(2), 194A.050(1), 45 C.F.R. 205.10, 1355.21(b), 1355.30(p), 42 U.S.C. 601(a)(1), 621(1)-(4), 629, 670-675, 1397

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue for state or local government; rather, it serves to conform state programming with mandates of federal funding.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation does not generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? Any new administrative function associated with this administrative regulation will be absorbed within existing appropriations.

(d) How much will it cost to administer this program for subsequent years? Any new administrative function associated with this administrative regulation will be absorbed within existing appropriations.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amendment)**

922 KAR 1:560. Putative father registry and operating procedures.

RELATES TO: KRS 194A.060, 199.011, 199.480, 199.505, 199.990, 620.020(13)[~~620.020(14)~~], 625.065

STATUTORY AUTHORITY: KRS 194A.050(1), 199.472, 199.503(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary ~~of~~^{for} the Cabinet for Health and Family Services to promulgate, administer, and enforce administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 199.472(1) requires the cabinet to promulgate administrative regulations that establish criteria to be followed for the adoption of children. ~~[Ky. Acts ch. 159, Section 28(3), codified as]~~KRS 199.503(3)[~~;~~] requires~~[that]~~ the cabinet to establish a putative father registry and promulgate administrative regulations to administer the registry. This administrative regulation establishes the putative father registry and operating procedures.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 199.011(3).

(2) "Child-placing agency" is defined by KRS 199.011(6).

(3) "Department" is defined by KRS 199.011(7).

(4) "Putative father" is defined by KRS 199.503(2).

(5) "Reasonable efforts" is defined by KRS 620.020(13) [~~620.020(14)~~].

Section 2. Registry Standards. (1) The cabinet shall establish and maintain a putative father registry in accordance with KRS 199.503, 199.505, and 199.990.

(2) Information received and recorded by the cabinet shall be kept confidential in accordance with KRS 194A.060 and 199.503(11).

(3) An adoption involving a foreign-born child, initiated out-of-state, or obtained through a public agency shall not be subject to this administrative regulation pursuant to KRS 199.505(7).

Section 3. Submission of Registration. (1) A putative father shall request registration on the putative father registry by completing the DPP-1304, Putative Father Registration Form.

(2) A putative father shall submit a DPP-1304 to the cabinet by:

(a) Mail to the Department for Community Based Services,

attention: Putative Father Registry, 275 East Main Street, mail-stop 3C-E, Frankfort, Kentucky 40621;

(b) Electronic submission through the online registration system located on the department's website once the online function is available; or

(c) Electronic mail to putativefather@ky.gov.

(3) A putative father shall provide the following information on the DPP-1304 prior to the cabinet accepting and processing a registration request:

(a) The putative father's full name;

(b) The putative father's date of birth;

(c) The putative father's place of birth;

(d) The putative father's place of residence;

(e) An address where the putative father may be served with notice of a petition for termination of parental rights or adoption;

(f) The first and last name of the birth mother;

(g) The birth mother's date of birth, if known;

(h) The birth mother's place of birth, if known;

(i) The birth mother's place of residence, if known;

(j) The birth mother's mailing address, if known;

(k) The child's name, if known;

(l) The child's date of birth, if known; and

(m) The child's place of birth, if known.

(4) A putative father shall sign the DPP-1304 verifying that the information in his registration is accurate subject to penalty in accordance with KRS 199.990.

(5) A putative father who is registered shall submit an amended DPP-1304 each time information about the father changes in accordance with KRS 199.503(4)(b)2.

(6) The cabinet shall not accept and shall attempt to return a DPP-1304 that:

(a) Does not contain the information required by subsection (3) [(2)] of this section; or

(b) Is not accepted in accordance with subsection (8) [(7)] of this section.

(7) The cabinet shall:

(a) Accept a DPP-1304 that contains information required by subsection (3) [(2)] of this section and is submitted within the timeframe specified in subsection (8) [(7)] of this section; and

(b) Provide the putative father with a copy of his registration, including:

1. A registration number; and

2. The date the registration was processed and made effective by the cabinet.

(8) The cabinet shall not accept a registration request that is electronically submitted, electronically mailed, or postmarked more than twenty-one (21) [thirty (30)] days after the birth of the child subject to the registration in accordance with KRS 199.480(1)(b)2. and 625.065(1)(b).

Section 4. Search of the Putative Father Registry. (1) An individual or entity authorized by KRS 199.503(8) or 199.505, to receive a certified copy of a putative father's registration shall:

(a) Complete the DPP-1305, Putative Father Registry Search Request;

(b) Include a copy of the birth mother's consent or adoption petition with the DPP-1305; and

(c) Submit the DPP-1305 to the cabinet in accordance with Section 3(2)(a) through (c) of this administration regulation.

(2) Unless the entity requesting a certified copy of a putative father's registration is a court, a DPP-1305 shall include a twenty-five (25) dollar fee in accordance with KRS 199.503(10), paid by:

(a) Certified or cashier's check or money order made payable to the Kentucky State Treasurer if the DPP-1305 is mailed to the cabinet;

(b) A prepaid account established with the cabinet; or

(c) Credit or debit card through the online registration system once the function becomes available.

(3) Upon submission of a completed DPP-1305 in accordance with this section, KRS

199.503 and 199.505, the cabinet shall issue a DPP-1302, Kentucky Putative Father Registry Affidavit of Diligent Search.

(4) The cabinet may request at any time a search of the

putative father registry to establish:

- (a) Reasonable efforts in a child protective services case in accordance with 922 KAR 1:330; or
- (b) Permanency services in accordance with 922 KAR 1:140.
- (5) Pursuant to KRS 199.505, a search of the putative father registry shall not be required for a public agency adoption in accordance with 922 KAR 1:100.

Section 5. Registration Revocation. (1) A putative father registrant may revoke his registration at any time using the DPP-1304.

- (2) The cabinet shall revoke a registration that is found to have been filed with error or false information.
- (3) The cabinet shall provide notice of:
 - (a) Revocation of a registration; and
 - (b) Appeal rights in accordance with 922 KAR 1:320 if the revocation is performed by the cabinet in accordance with subsection (2) of this section.

Section 6. Notice by a Mother. (1) A mother may notify the cabinet of a potential putative father by completing, at a minimum, Part 1 of the DPP-1303, Birth Mother Notification of Putative Father, and submitting it to the cabinet in accordance with Section 3(2)(a) through (c) of this administrative regulation.

(2) Upon receipt of a completed DPP-1303, the cabinet shall provide the putative father with information regarding the putative father registry by:

- (a) Mail to his mailing address; or
- (b) Delivery to his place of residence.

(3) The cabinet shall take no action on a DPP-1303 that is received after a putative father's ability to register has expired in accordance with Section 3(8)(3(7)) of this administrative regulation.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "DPP-1302, Kentucky Putative Father Registry Affidavit of Diligent Search", 7/19/9/48];
- (b) "DPP-1303, Birth Mother Notification of Putative Father", 7/19/9/48];
- (c) "DPP-1304, Putative Father Registration Form", 9/18; and
- (d) "DPP-1305, Putative Father Registry Search Request", 7/19/9/48];

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ERIC T. CLARK, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 27, 2019

FILED WITH LRC: July 11, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 26, 2019, 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 August 19, 2019, 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 August 31, 2019. 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: Chase Coffey, Executive Administrative

Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; Phone: 502-564-6746; Fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Laura Begin, Phone: (502) 564-3703, Email: Laura.Begin@ky.gov; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the putative father registry and operating procedures required by KRS 199.503(3).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the putative father registry and operating procedures required by KRS 199.503(3), codified in the 2018 Regular Session.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 199.503(3) requires the cabinet to establish a putative father registry and promulgate administrative regulations to administer the registry in accordance with the statute. This administrative regulation establishes the registry and operating procedures.

(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 the putative father registry and operating procedures.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation is being amended for consistency with House Bill (HB) 158, passed in the 2019 Regular Session. Sections 3 and 5 of HB 158, codified in KRS 199.480 and 625.065 respectively, change the period of time a putative father has to register with the putative father registry from thirty (30) days to twenty-one (21) days after the birth of the child. This change is being reflected in the forms incorporated into this administrative regulation. The space for a notary to sign is also being added to the DPP-1302. The amendment clarifies that an adoption involving a foreign-born child, initiated out-of-state, or obtained through a public agency shall not be subject to this administrative regulation, pursuant to Section 6 of HB 158, codified in KRS 199.505(7).

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to conform with legislation passed in the 2019 Regular Session.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 199.503(3) requires the cabinet to establish a putative father registry and promulgate administrative regulations to administer the registry. Timeframes critical to the operating procedures of the putative father registry were amended through legislation passed in the 2019 Regular Session. This amendment conforms to the amended timeframes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is necessary for consistency with passed legislation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Men who may potentially become fathers or who have a child who is 21 days old or less and wish to be registered in the putative father registry are affected by this administrative regulation. This registry was recently created in 2018; therefore, only 13 men have registered so far and the number of people to be affected by this administrative regulation is still 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: Putative fathers who wish to be registered will have to do so within 21 days after the birth of a child instead of 30 days after the birth of a child.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to putative fathers to register. Authorized entities or individuals, other than a court, will be required to pay a twenty-five (25) dollar fee for a search of the registry. There is no cost associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There is no benefit to putative fathers, but the amendment could speed the adoption of a child for whom a putative father has not registered.

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

(a) Initially: The cabinet projected staffing and technology costs for the set-up and maintenance of the registry to be approximately \$700,000 for the first year, but there is no cost associated with this amendment.

(b) On a continuing basis: The cabinet projects the staffing and technology costs to maintain the registry will be approximately \$350,000 in subsequent years, but there is no cost associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A fee is authorized in KRS 199.503 to offset costs of the registry. State General Fund dollars support additional agency costs above and beyond the collection of fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There are no costs or fees associated with this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes a fee for a search of the putative father registry in accordance with KRS 199.503(10). There are no costs or fees associated with this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation will be implemented in a like manner statewide.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Department for Community Based Services, and the courts are impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.472, 199.503

(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? KRS 199.503(10) establishes a fee for putative father registry searches; however, the cabinet is unable to project at this time the revenue that may be generated from said fee. The fee is authorized in order to offset costs of the registry.

(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? KRS 199.503(10) establishes a fee for putative father registry searches; however, the cabinet is unable to project at this time the revenue that may be generated from said fee. The fee is authorized in order to offset costs of the registry.

(c) How much will it cost to administer this program for the first year? The cabinet projected that staffing and technology costs for the registry would be approximately \$700,000 for the first year. This amendment has no associated costs.

(d) How much will it cost to administer this program for subsequent years? The cabinet projects the staffing and

technology costs to maintain the registry will be approximately \$350,000 in subsequent years. This amendment has no associated 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 Community Based Services Division of Protection and Permanency (Amended)

922 KAR 1:565. Service array for a relative or fictive kin caregiver.

RELATES TO: KRS 2.015, 45.237-45.241, 156.496, 194A.005(1), 194A.050(1), 199.011, 199.462, 199.470-199.590, 205.211, Chapter 387, 403.270-403.355, 405.024, 527.100, 527.110, 600.020, 605.120, 605.130(7), 605.150(1), 610.110, 620.020(1), 620.090, 620.140, 620.142, 620.170, 42 U.S.C. 600-619, 671, 673, 675, D.O. v. Glisson, 847 F.3d 374 (6th Cir. 2017), cert. denied, 17-17, 2017 WL 2869916 (U.S. Oct. 10, 2017)

STATUTORY AUTHORITY: KRS 194A.050(1), [605.120(6)], 605.130(7), 605.150(1), 620.142(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 605.150(1) allows the cabinet to promulgate administrative regulations to implement provisions of the chapter, including KRS 605.130(7), which authorizes the cabinet to perform such other services as may be deemed necessary for the protection of children. KRS 620.142(5)[605.120(6)] requires the cabinet to promulgate administrative regulations developing custodial, permanency, and service options that shall be available to a relative or fictive kin caregiver[governing programming and other relative-caregiver and fictive-kin services that support a safe, developmentally appropriate, and more permanent placement with a qualified relative or fictive kin caregiver for a child who would be placed in another out-of-home placement as authorized by KRS 605.120(5)]. This administrative regulation establishes the service array available to[for] a relative or fictive kin caregiver pursuant to KRS 620.142(1)[to the extent funds are available].

Section 1. Definitions. (1) "Absent parent search" means cabinet-initiated efforts to locate a biological or legal parent, or a relative.

(2) "Cabinet" is defined by KRS 194A.005(1), 199.011(3), and 600.020(7).

(3) "Case permanency plan" is defined by KRS 620.020(1).

(4) "Child" means a:

(a) Child defined by KRS 199.011(4) and 600.020(9);

(b) Person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6) or 620.140(1)(e); or

(c) A person under age twenty-one (21) who meets the exceptions to the age of majority in accordance with KRS 2.015.

(5) "Child Care Assistance Program" or "CCAP" means Kentucky's child care subsidy program providing families who meet the eligibility requirements with the financial resources to find and afford quality child care, as established in 922 KAR 2:160.

(6) "Child who is a candidate for foster care" is defined by 42 U.S.C. 675(13).

(7) "Fictive kin" is defined by KRS 199.011(9) and 600.020(28).

(8) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky's Temporary Assistance for Needy Families

(TANF) money payment program for a child who is deprived of parental support or care, as established in 921 KAR 2:006.

(9) "Parent" is defined by 42 U.S.C. 675(2).

(10) "Relative" means an individual related to a child by blood, marriage, or adoption.

Section 2. Identification of a Relative or Fictive Kin. (1) If a relative or fictive kin placement is in the best interest of a child upon removal from the child's home of origin, the cabinet shall:

(a) Use an absent parent search in accordance with 922 KAR 1:140, Section 3, to locate a relative;[or]

(b) Discuss a prospective relative or fictive kin placement with the:

1. Child's parent; and

2. Child based upon the age and development of the child; or

(c) Require the parent or other person exercising custodial control or supervision to provide a list of possible persons to be considered pursuant to KRS 620.140(1)(c).

(2) Cabinet staff shall make reasonable attempts to:

(a) Contact the relative or fictive kin; and

(b) Assess the relative's or fictive kin's fitness to serve as a placement resource for the child in accordance with Section 3 of this administrative regulation.

(3) The cabinet shall:

(a) Disclose legal and service options available to a prospective relative or fictive kin:

1. Who is being assessed as a placement resource; and

2. Prior to the time a child is placed in the relative's or fictive kin's home; and

(b) Obtain written acknowledgement of the disclosure of legal and service options from the relative or fictive kin.

Section 3. Fitness of the Relative or Fictive Kin. (1) To support a child's health, safety, and wellbeing in placement with a relative or fictive kin caregiver, based upon the legal option selected by the relative or fictive kin, the cabinet shall:

(a) Complete a safety check and review with consideration given to the relative's or fictive kin's:

1. Willingness and ability to:

a. Protect the child from abuse or neglect;

b. Participate in the child's case permanency plan;

c. Access:

(i) Transportation;

(ii) Telephone;

(iii) Medical and dental services;

(iv) First aid supplies; and

(v) School;

d. Provide full-time care;

e. Provide for the child's sleeping and eating;

f. Maintain adequate heat and ventilation in the home;

g. Use active smoke detectors in the home; and

h. Assure the child's inaccessibility to:

(i) Medication unless an exception consistent with 922 KAR 1:350, Section 3(12), applies;

(ii) Alcoholic beverages;

(iii) Poisonous materials;

(iv) Firearms or ammunition in accordance with KRS 527.100 and 527.110;

(v) Unsupervised contact with the birth parent, if prohibited; and

(vi) Cleaning materials unless the materials are age or developmentally appropriate for the child or the child is supervised; and

2. Understanding of the impact that familial abuse, neglect, or substance abuse may have on a child and the child's extended family; and

3. Fitness in accordance with 922 KAR 1:490; or

(b) Conduct a home study and background checks in accordance with 922 KAR 1:350 and 922 KAR 1:490 in consideration of the relative or fictive kin as a prospective foster or adoptive home.

(2) A relative or fictive kin caregiver who seeks approval as a foster or adoptive parent shall meet the training requirements

established in 922 KAR 1:495.

(3) The cabinet shall:

(a) Document in the case file that the fictive kin has completed training on the prevention and recognition of pediatric abusive head trauma in accordance with KRS 199.462; and

(b) Provide information to the relative or fictive kin on how to recognize and report child abuse and neglect.

(4) To the extent funds are available, the cabinet shall make available to a relative or fictive kin caregiver training:

(a) For foster parents, adoptive parents, and respite care providers in accordance with 922 KAR 1:495; and

(b) Developed to address the needs of relative and fictive kin caregivers, including management of the relationship with the child's parent.

(5) A relative's or fictive kin's decision to pursue approval as a foster parent shall not guarantee the cabinet's approval.

Section 4. Relative Placement Support Benefit. (1) To the extent that funds are available, the cabinet shall provide, if requested, a one (1) time relative placement support benefit:

(a) To facilitate the cabinet's placement of a child with a nonparental relative as an alternative to the child's placement in foster care;

(b) If a court of competent jurisdiction has granted temporary custody of the child to the relative or the cabinet due to:

1. Child abuse or neglect by the child's biological or adoptive parent; or

2. The death of both parents;

(c) That will provide for a child's immediate needs, such as:

1. Clothing;

2. School supplies;

3. Additional furniture; or

4. A deposit for a larger apartment; and

(d) That is equal to or does not exceed the amount for the appropriate number of eligible children as follows:

Number of Eligible Children	Payment Amount
1	\$350
2	\$700
3	\$1,050
4	\$1,400
5	\$1,750
6 or more	\$2,100

(2)(a) The relative placement support benefit shall be issued by check or electronic fund transfer directly to:

1. The relative with whom the child is placed; or

2. A vendor providing the needed service or item listed in subsection (1)(c) of this section.

(b) Before the provision of the relative placement support benefit, the relative or the vendor shall provide tax status and contact information for accounting of the benefit's disbursement.

(3) In accordance with Kentucky's Title IV-A Temporary Assistance for Needy Families Block Grant state plan, the cabinet shall prioritize a child for the relative placement support benefit if the child is:

(a) Placed with a relative whose household income is at or below 200 percent of the federal poverty level as determined annually by the U.S. Department of Health and Human Services; or

(b) Determined eligible for K-TAP pursuant to 921 KAR 2:006 and 921 KAR 2:016.

(4) A relative shall not be eligible for an initial allowance as a foster parent if the relative receives the relative placement support benefit.

Section 5. Legal Options. (1) The following legal options shall be available to a prospective relative or fictive kin caregiver:

(a) Family-arranged care through:

1. A prevention plan in accordance with 922 KAR 1:330;

2. An affidavit to make health care treatment and school-related decisions for the child in accordance with KRS 405.024; or

3. A power of attorney for temporary delegation of parental rights and responsibilities in accordance with KRS 403.352 and 403.353;

(b) Court-ordered custody to the relative or fictive kin caregiver

VOLUME 46, NUMBER 2– AUGUST 1, 2019

in accordance with KRS 403.270-403.355, 620.090, or 620.140(1)(c);

(c) Court-ordered custody to the cabinet in accordance with KRS 620.090, 620.140(1)(c), or 620.170;

(d) Adoption in accordance with KRS 199.470-199.590 or 922 KAR 1:100; or

(e) Guardianship in accordance with KRS Chapter 387.

(2) Considerations in assessing the legal options for a relative or fictive kin caregiver shall include:

(a) The likelihood of the child's reunification with the child's home of origin, including the child's permanency goal in accordance with 922 KAR 1:140;

(b) The relationship that the relative or fictive kin caregiver has with the child's home of origin or parent;

(c) The ability of the relative or fictive kin caregiver to:

1. Manage parental visitation; and

2. Ensure the child's safety;

(d) The relative or fictive kin caregiver's financial situation and need for additional resources to support the safety, permanency, and wellbeing of the child;

(e) The level of involvement and types of services that will be needed from the cabinet to the caregiver and the child to ensure the safety, permanency, and wellbeing of the child; and

(f) The level of support and types of services that will be needed if:

1. The caregiver assumes legal responsibility for the child; or

2. Reunification with the child's home of origin is not possible for the child.

(3) Permanency services for a child in the custody of the cabinet shall be in accordance with 922 KAR 1:140.

Section 6. Service Options. (1) The array of monetary supports on behalf of a child placed with a relative or fictive kin caregiver shall include:

(a) The Relative Placement Support Benefit in accordance with Section 4 of this administrative regulation;

(b) CCAP in accordance with 922 KAR 2:160;

(c) Child support if application is made or intergovernmental process applies in accordance with 921 KAR 1:380;

(d) K-TAP if an application is made in accordance with 921 KAR 2:006 and 921 KAR 2:016;

(e) The Kinship Care Program in accordance with 922 KAR 1:130;

(f) Health benefits for the child:

1. In accordance with 907 KAR 20:005; or

2. If application is made in accordance with 907 KAR 20:015, 907 KAR 4:020, or 907 KAR 4:030;

(g) Foster care per diem in accordance with:

1.a. 922 KAR 1:350; or

b. D.O. v. Glisson, 847 F.3d 374 (6th Cir. 2017), cert. denied, 17-17, 2017 WL 2869916 (U.S. Oct. 10, 2017); and

2. The terms and conditions specified in the individual agreement between the cabinet and the foster parent;

(h) Adoption assistance in accordance with 922 KAR 1:050 or 922 KAR 1:060;

(i) To the extent funds are available, post-permanency services, including:

1. Subsidized guardianship under 42 U.S.C. 671 and 673 once the benefit is available; or

2. Post-adoption placement stabilization services in accordance with 922 KAR 1:530; or

(j) The Supplemental Nutrition Assistance Program if application is made in accordance with 921[922] KAR 3:030.

(2) To the extent funds are available, effective October 1, 2019, the cabinet shall provide prevention and family services and programs in accordance with 42 U.S.C. 671(e) to a child who is a candidate for foster care, including:

(a) Mental health and substance abuse prevention and treatment services; or

(b) In-home parent skill-based programs.

(3) To the extent funds are available, the cabinet or its designee shall provide the following services for a relative or fictive kin caregiver:

(a) A hotline;

(b) Online portal;

(c) Crisis intervention;

(d) Support group;

(e) Advocacy;

(f) Community education; and

(g) Referral to community resource or provider, such as:

1. Family Resource and Youth Service Centers established in accordance with KRS 156.496;

2. The Health Access Nurturing Development Services (HANDS) Program in accordance with 902 KAR 4:120;

3. The Special Supplemental Nutrition Program for Women, Infants, and Children or "WIC program" in accordance with 902 KAR Chapter 18;

4. Kentucky's Early Intervention Program, First Steps, in accordance with 902 KAR Chapter 30;

5. Mental health programming; or

6. Caregiver programming made available through the Department for Aging and Independent Living or its designee.

(4) The cabinet shall recover the amount of an improper payment pursuant to KRS 45.237-45.241 and 205.211, including assistance paid pending the outcome of a hearing, from the claimant-payee.

Section 7. Complaint and Service Appeals. (1) A relative or fictive kin caregiver may submit a service complaint or an appeal concerning a protection and permanency service in accordance with 922 KAR 1:320.

(2) An appeal concerning CCAP shall be made in accordance with 921 KAR 2:055, 922 KAR 2:020, or 922 KAR 2:260.

(3) An appeal regarding K-TAP shall be made in accordance with 921 KAR 2:055.

(4) An appeal concerning the Supplemental Nutrition Assistance Program shall be made in accordance with 921 KAR 3:060 or 921 KAR 3:070.

ERIC T. CLARK, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: July 2, 2019

FILED WITH LRC: July 11, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 26, 2019, 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 August 19, 2019, 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 August 31, 2019. 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: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; Phone: 502-564-6746; Fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Laura Begin, Phone: (502) 564-3703, Email: Laura.Begin@ky.gov; or Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the service array for a relative or fictive kin caregiver.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the service array for a relative or fictive kin caregiver required by KRS 620.142(1), codified in the 2019 Regular Session.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 620.142(5) requires the cabinet to promulgate administrative regulations developing custodial, permanency, and service options that shall be available to a relative or fictive kin caregiver. This administrative regulation conforms to the content of the authorizing statutes through its establishment of the service array for a relative or fictive kin caregiver.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes through its establishment of a service array for a relative or fictive kin caregiver.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation is being amended for consistency with House Bills 2 and 446 that were passed in the 2019 Regular Session, codified in KRS 620.142 and 620.140, respectively. KRS 620.142(5) requires the cabinet to promulgate administrative regulations developing custodial, permanency, and service options that shall be available to a relative or fictive kin caregiver and this language is included in this amendment. The amendment also includes that the cabinet shall require the parent or other person exercising custodial control or supervision to provide a list of possible persons to be considered, pursuant to KRS 620.140(1)(c), if a relative or fictive kin placement is in the best interest of a child upon removal from the child's home of origin.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to conform with legislation passed in the 2019 Regular Session.

(c) How the amendment conforms to the content of the authorizing statutes: House Bill 2 (Regular Session 2019) was codified in KRS 620.142(5) to require the cabinet to promulgate administrative regulations developing custodial, permanency, and service options that shall be available to a relative or fictive kin caregiver. This administrative regulation establishes the service array available to a relative or fictive kin caregiver.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is necessary for consistency with passed legislation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department for Community Based Services values the use of relative and fictive kin placements for children who cannot remain safely in their homes of origin due to abuse, neglect, or dependency. While the department does not have data on the number of relative and fictive kin placements made over the years, the Annie E. Casey-Child Welfare Strategies Group estimated that for every six (6) children who enter foster care, there are ten (10) children who are placed with relatives or fictive kin. As of the May 5, 2019, Statewide Foster Care FACTS, there were 1,095 children in the cabinet's custody who were placed with relative or fictive kin.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no new action required on the part of affected entities. This administrative regulation establishes the service array for relative or fictive kin caregivers from which they can select the legal arrangements of the child's placement and services provided through the department.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no new cost to affected entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit from the establishment of legal and service options from which the relative or fictive kin caregiver can select based upon their preferences, unique circumstances, and the needs of the child. This amendment is necessary for consistency with passed legislation from the 2019 Regular Session.

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

(a) Initially: Service provision will be made within available funding. This amendment has no additional cost associated.

(b) On a continuing basis: New programming, such as the subsidized guardianship option under Title IV-E of the Social Security Act; programmatic expansion; and program growth may necessitate additional budget request(s) in future years for the ongoing costs of this program. Additional funding opportunities in support of services to relative and fictive kin caregivers have also been made available through Title IV-E of the Social Security Act, as amended by the Family First Prevention Services Act of 2018 (Pub.L. 115-123). However, this amendment has no additional cost associated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding for this administrative regulation include federal funds from the Temporary Assistance for Needy Families Block grant, the Social Services Block Grant, Title IV-E of the Social Security Act; agency or restricted funds derived from Medicaid; and state funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 600-619, 671, 673, 675

2. State compliance standards. KRS 194A.050(1), 605.130(7), 605.150(1), 620.142(5)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 600-619, 671, 673, 675

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation will not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services and government-supported programming for relative and fictive kin caregivers will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 605.130(7), 605.150(1), 620.142(5), 42 U.S.C. 600-619, 671, 673, 675

(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 is not anticipated to generate any revenues, though it may help the state qualify for additional federal reimbursement in support of state programming.

(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 anticipated to generate any revenues, though it may help qualify the state for additional federal reimbursement in support of state programming.

(c) How much will it cost to administer this program for the first year? The department anticipates an \$18 million impact in benefit issuances resulting from the *D.O. v. Glisson*, 847 F.3d 374 (6th Cir. 2017), cert. denied, 17-17, 2017 WL 2869916 (U.S. Oct. 10, 2017) in State Fiscal Year 2019. Other service provision will be made within available funding. The department has received Kinship Navigator funding to support staff training and an online portal for relative and fictive kin caregivers. This amendment has no cost associated.

(d) How much will it cost to administer this program for subsequent years? New programming, such as the subsidized guardianship option under Title IV-E of the Social Security Act; programmatic expansion; and program growth may necessitate additional budget request(s) in future years to maintain this program. Additional funding opportunities in support of services to relative and fictive kin caregivers have also been made available through Title IV-E of the Social Security Act, as amended by the Family First Prevention Services Act of 2018 (Pub.L. 115-123). This amendment has no cost associated.

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

**FINANCE AND ADMINISTRATION CABINET
Teachers' Retirement System
(New Administrative Regulation)**

102 KAR 1:032. Bona fide retirement.

RELATES TO: KRS 161.420(5), 161.540(2), KRS 161.605, 161.677, 161.700(4); 26 U.S.C. 401(a), 414(h); 26 C.F.R. 1.401-1, 1.401(a)-1

STATUTORY AUTHORITY: KRS 161.310, KRS 161.716

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310 requires the Board of Trustees of Teachers' Retirement System (TRS) to promulgate administrative regulations for the administration of funds of the retirement system. KRS 161.716 requires the board to promulgate administrative regulations as are necessary to remove any conflicts with federal law. TRS is a qualified plan under Section 401(a) et seq. of the Internal Revenue Code. As a qualified plan, member contributions are "picked-up" contributions under IRC Section 414(h) and made to TRS on a tax-deferred basis. This administrative regulation establishes guidelines to help ensure that a bona fide retirement has occurred under federal law before a member returns to employment with a TRS-participating employer. This administrative regulation is necessary to help maintain compliance with federal tax law and the qualified status of TRS under IRC Section 401(a) et seq.

Section 1. Definitions. (1) "Bona fide retirement" means a complete cessation of all employment relationships between the member and any participating employer, regardless of whether the position is one that participates in TRS. Furthermore, there shall be no prearranged agreement prior to retirement between the member and any participating employer that the member will be reemployed or otherwise return to work for the employer in any capacity.

(2) "Break in service" means the period of time required under KRS 161.605(7)(a)-(b) during which the member must have a complete separation from service before becoming reemployed with any participating employer. The period of time established for the break in service shall be measured from the member's retirement date to the member's reemployment date.

(3) "Participating employer" means an employer that participates in TRS pursuant to KRS 161.220(4).

(4) "Reemployed" and "Reemployment," unless indicated otherwise in this administrative regulation, shall mean employment as defined by KRS 161.220(12) following retirement with a participating employer. For purposes of this administrative regulation, reemployed and reemployment shall include both paid and unpaid employment. Reemployed and Reemployment include full-time, part-time, temporary, seasonal, voluntary, and hourly employment.

(5) "Reemployment date" means the first date that the member is reemployed after their retirement date.

(6) "Retirement date" means the member's most recent effective retirement date with TRS.

Section 2. (1) A retired member may not be reemployed unless he or she has first experienced a bona fide retirement with the appropriate break in service prior to reemployment. Failure to do so shall void the member's retirement and require the return of all benefits with interest as provided under KRS 161.605(7)(c). This requirement applies to all members and participating employers.

Section 3. A retired member shall not be reemployed by a participating employer, unless prior to reemployment both the member and the participating employer have certified that there was no prearranged agreement prior to retirement between the member and the employer that the member would be reemployed. This requirement applies to both reemployment in positions that participate in TRS and those that do not.

Section 4. The member and participating employer from which the member has retired shall complete and file with TRS Form 10-

C prior to reemployment of that retired member. A participating employer shall complete and file Form 30-E with TRS prior to reemployment of any retired member who is returning to work in a position that the employer deems to be a position that is not required to contribute to TRS.

Section 5. Incorporation by Reference. (1) Form 10-C, "Reemployment Certification", 06/17/2019; and

(2) Form 30-E, "Employment Limitations Exemption Request", 06/17/2019.

(3) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

RON SANDERS, Chairperson

APPROVED BY AGENCY: June 17, 2019

FILED WITH LRC: July 12, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 28, 2019, at 9:00 a.m. at the offices of the retirement system at 479 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 21, 2019, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation until the end of the calendar day on August 31, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Robert B. Barnes, Deputy Executive Secretary of Operations and General Counsel, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199, email Beau.Barnes@trs.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert B. Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: Ensures that a bona fide retirement has occurred prior to paying retirement benefits.

(b) The necessity of this administrative regulation: Maintains compliance with federal tax law so that TRS will continue to be a qualified plan under which member contributions are tax-deferred.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.716 requires TRS to adopt regulations to remove conflicts with federal law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Will provide more specific requirements for a bona fide retirement that must occur before the payment of benefits can be made.

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

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All retiring members will be required to

meet the requirements of this regulation. Typically, 1,200 to 1,400 members retire each 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 comply with this administrative regulation or amendment: Retiring members and re-employing employers will be required to certify that there was no pre-arranged agreement for the member to return to work for the employer. Members will have to adhere to separation from service requirements with any participating employer, regardless of whether or not the position participates in TRS. Breaks in service will run from date of retirement rather than last day of paid employment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Members will not risk the disqualification of TRS as a qualified plan under which their contributions are made on a tax-deferred basis.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid by trust and 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: There is no increase in fees or funding required.

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

(9) TIERING: Is tiering applied? Tiering is not applied, as all members are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Teachers' Retirement System school districts, the five universities that participate in TRS, and other TRS participating employers.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.310, 161.716; 26 U.S.C. 401(a), 414(h); 26 C.F.R. 1.401-1, 1.401(a).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? There is no additional cost to TRS.

(d) How much will it cost to administer this program for subsequent years? There is no additional cost to TRS.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation:

FINANCE AND ADMINISTRATION CABINET Department of Revenue Office of Sales and Excise Taxes (New Administrative Regulation)

103 KAR 41:220. Applications, stamp orders, returns, reports, and statements to be filed electronically -- waiver.

RELATES TO: KRS 138.135, 138.143, 138.146, 138.195
STATUTORY AUTHORITY: KRS 131.130, [(4), (3);] 131.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of all tax laws of this state. This administrative regulation requires electronic filing for applications, reports, returns, and related statements for cigarettes and tobacco products in accordance with KRS 138.135, 138.143, 138.146, and 138.195.

Section 1. For the purpose of facilitating the administration of the taxes it administers, the department may require any license application, cigarette tax stamp order, tax return, report, or statement to be electronically filed. Pursuant to KRS 131.250, the following information shall be filed electronically as directed by the department for periods beginning on or after January 1, 2020:

(1) Manufacturer reports required under the provisions of KRS 138.135;

(2) Floor stock returns required under the provisions of KRS 138.143;

(3) Purchases of tax evidence required under the provisions of KRS 138.146; and

(4) Licenses, monthly reports, and returns required under the provisions of KRS 138.195.

Section 2. Waiver. A person required to electronically file under the provisions of this administrative regulation may apply for a waiver from this requirement by submitting a request for consideration to the department according to the provisions of KRS 131.250.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: July 12, 2019

FILED WITH LRC: July 12, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2019 at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation requires electronic filing for applications, reports, returns, and related statements for cigarettes and tobacco products in accordance with KRS 138.135, 138.143, 138.146 and 138.195.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide taxpayers with guidance to file electronically and utilize the new e-file program. This will substantially increase compliance. It will also aid in compliance with the Tobacco Master Settlement Agreement and allow for more efficient use of the Department's resources.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed regulatory language conforms with KRS 13A, 131.130, 131.131, and 131.250.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed regulation mandates the use of electronic filing and provides a mechanism for the taxpayer to request a waiver of the requirement.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 200+ tobacco licensed businesses and tobacco manufacturers will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities will now have to file required documents electronically online and will need internet access and compatible computer hardware to comply. Many licensees are currently filing electronically and have already taken steps necessary to comply with this regulation. Others will have the option to seek a waiver of the electronic filing requirement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There may be a minimal cost to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Faster and easier compliance with the Department of Revenue. Anyone who accesses the regulation will benefit from the information contained therein. Entities will be able to streamline their tobacco reporting and licensing requirements and provide entities with a more efficient filing process.

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

(a) Initially: There is no expected cost to implement the regulation. Current staff and budgeted funding will absorb the implementation of this administrative regulation.

(b) On a continuing basis: There is no cost expected on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce 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 additional funding or increase in fees is needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the

administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed language will be applied equally to all entities impacted 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 Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and KRS 131.131.

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? No revenues are expected to be generated by the provisions of this administrative regulation. This language establishes the electronic filing guidelines for tobacco licensed businesses and manufacturers.

(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 costs will be incurred in the first year of this regulation being in effect. Any costs will be incurred as normal operating expenditures of the Department of Revenue.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be 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 (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET Kentucky Real Estate Authority Kentucky Real Estate Commission (Repealer)

201 KAR 11:002. Repeal of 201 KAR 11:030, 201 KAR 11:045, 201 KAR 11:062, 201 KAR 11:090, 201 KAR 11:095, 201 KAR 11:100, 201 KAR 11:110, 201 KAR 11:115, 201 KAR 11:135, 201 KAR 11:145, 201 KAR 11:147, 201 KAR 11:175, 201 KAR 11:180, 201 KAR 11:195, 201 KAR 11:215, 201 KAR 11:225, 201 KAR 11:230, 201 KAR 11:232, 201 KAR 11:235, 201 KAR 11:240, 201 KAR 11:245, 201 KAR 11:250, 201 KAR 11:300, 201 KAR 11:350, 201 KAR 11:400, 201 KAR 11:410, 201 KAR 11:430, 201 KAR 11:440, 201 KAR 11:450, and 201 KAR 11:460.

RELATES TO: KRS 324.282

STATUTORY AUTHORITY: KRS 324.282, 324.281(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.281(5) and KRS 324.282 authorize the Real Estate Commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS Chapter 324. This administrative regulation repeals 201 KAR 11:030, 201 KAR 11:147, 201 KAR 11:215, 201 KAR 11:225, 201 KAR 11:230 and 201 KAR 11:430 because the necessary substantive provisions of those administrative regulations have been incorporated into another administrative regulation concerning the licensing for improved efficiency and ease of use.

VOLUME 46, NUMBER 2– AUGUST 1, 2019

This administrative regulation repeals 201 KAR 11:175, 201 KAR 11:232, 201 KAR 11:235, 201 KAR 11:240, and 201 KAR 11:460 because the necessary substantive provisions of those administrative regulations have been incorporated into another administrative regulation concerning education providers for improved efficiency and ease of use. This administrative regulation repeals 201 KAR 11:450 because the necessary substantive provisions of that administrative regulation has been divided between two other previously mentioned administrative regulation amendments concerning licensing and education providers. This administrative regulation repeals 201 KAR 11:045, 201 KAR 11:090, 201 KAR 11:095, 201 KAR 11:100, 201 KAR 11:062, 201 KAR 11:110, 201 KAR 11:115, 201 KAR 11:410, 201 KAR 11:250, 201 KAR 11:300, 201 KAR 11:350, 201 KAR 11:400, and 201 KAR 11:145 because the necessary substantive provisions of those administrative regulations have been incorporated into a singular administrative regulation concerning the licensee standards of conduct for improved efficiency and ease of use. This administrative regulation repeals 201 KAR 11:195 and 201 KAR 11:135 because the necessary substantive provisions of those administrative regulations have been incorporated into another administrative regulation concerning licensee complaints and discipline for improved efficiency and ease of use. This administrative regulation repeals 201 KAR 11:180, 201 KAR 11:245, 201 KAR 11:440, as the provisions in these administrative regulations were either duplicative or contrary to statute or imposed more restrictive burdens than KRS Chapter 324.

Section 1. The following administrative regulations are hereby repealed:

- (1) 201 KAR 11:030, License cancellation; reasons for;
- (2) 201 KAR 11:045, Written offers to be submitted to owner-client, agreements to provide brokerage services, licensee duties;
- (3) 201 KAR 11:062, Retention of brokers' records;
- (4) 201 KAR 11:090, Instruments prepared by broker; disposition;
- (5) 201 KAR 11:095, Closing statements;
- (6) 201 KAR 11:100, Exclusive listing contract; continuation;
- (7) 201 KAR 11:110, Exclusive authority retained by original broker;
- (8) 201 KAR 11:115, Auction obligations;
- (9) 201 KAR 11:135, Standards for filing a sworn statement;
- (10) 201 KAR 11:145, Salesman's duties when terminating affiliation with broker;
- (11) 201 KAR 11:147, Procedure for license retention when sales associate released by broker;
- (12) 201 KAR 11:175, Instructor approval procedures and guidelines;
- (13) 201 KAR 11:180, Promotion of out-of-state property and time-shares, registration and prerequisites.
- (14) 201 KAR 11:195, Informal Settlement Procedures;
- (15) 201 KAR 11:215, License recognition; application requirements;
- (16) 201 KAR 11:225, License renewal - annual requirements and change request procedures;
- (17) 201 KAR 11:230, Continuing education requirements.
- (18) 201 KAR 11:232, Continuing education provider requirements;
- (19) 201 KAR 11:235, Post-license education requirements;
- (20) 201 KAR 11:240, Distance education requirements;
- (21) 201 KAR 11:245, Property management procedures and guidelines.
- (22) 201 KAR 11:250, Listing and purchase contracts and other agreements entered into by licensees; provisions required; Seller-Initiated Relisting Request Disclosure Form;
- (23) 201 KAR 11:300, Use of facsimile and electronic mail transmissions; electronic storage;
- (24) 201 KAR 11:350, Seller's Disclosure of Property Conditions Form;
- (25) 201 KAR 11:400, Agency disclosure requirements;
- (26) 201 KAR 11:410, Broker duties pursuant to designated agency;
- (27) 201 KAR 11:430, Procedure for criminal records

background check - disciplinary action against licensees for acts committed before or during the application process;

(28) 201 KAR 11:440, Personal assistant duties.

(29) 201 KAR 11:450, Broker management course; and

(30) 201 KAR 11:460, Minimum rating requirements for instructors.

LOIS ANN DISPONETT, Chair

H.E. CORDER II, Executive Director

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: July 15, 2019

FILED WITH LRC: July 15, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2019 at 10:00 a.m. Eastern Time at the Kentucky Real Estate Commission, 656 Chamberlain Ave., Suite B, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this Department in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on August 31, 2019. 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: Alex D. Gaddis, Deputy General Counsel, Kentucky Real Estate Authority, 656 Chamberlin Ave., Suite B, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-1538 email: Alex.Gaddis@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alex D. Gaddis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 201 KAR 11:030, 201 KAR 11:147, 201 KAR 11:215, 201 KAR 11:225, and 201 KAR 11:430 because the necessary substantive provisions of those administrative regulations have been incorporated into another administrative regulation concerning the licensing for improved efficiency and ease of use. This administrative regulation repeals 201 KAR 11:175, 201 KAR 11:232, 201 KAR 11:235, 201 KAR 11:240, and 201 KAR 11:460 because the necessary substantive provisions of those administrative regulations have been incorporated into another administrative regulation concerning education providers for improved efficiency and ease of use. This administrative regulation repeals 201 KAR 11:450 because the necessary substantive provisions of that administrative regulation has been divided between two other previously mentioned administrative regulation amendments concerning licensing and education providers. This administrative regulation repeals 201 KAR 11:045, 201 KAR 11:090, 201 KAR 11:095, 201 KAR 11:100, 201 KAR 11:062, 201 KAR 11:110, 201 KAR 11:115, 201 KAR 11:410, 201 KAR 11:250, 201 KAR 11:300, 201 KAR 11:350, 201 KAR 11:400, and 201 KAR 11:145 because the necessary substantive provisions of those administrative regulations have been incorporated into a singular administrative regulation concerning the licensee standards of conduct for improved efficiency and ease of use. This administrative regulation repeals 201 KAR 11:195 and 201 KAR 11:135 because the necessary substantive provisions of those administrative regulations have been incorporated into another administrative regulation concerning licensee complaints and discipline for improved efficiency and ease of use.

(b) The necessity of this administrative regulation: This administrative regulation repealer is necessary to modernize and simplify the Real Estate Commission's regulatory scheme by reviewing and consolidating administrative regulations concerning

the same subject matter.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324.281(5) and KRS 324.282 authorize the Real Estate Commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS Chapter 324. Repeal of the administrative regulations proposed in this repealer will modernize and simplify the Real Estate Commission's regulatory scheme by reviewing and consolidating administrative regulations concerning the same subject matter.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This repealer, along with the concurrent amendments to the remaining 11 administrative regulations will greatly simplify the administration of the Real Estate Commission and compliance for all licensees.

(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 repealer.

(b) The necessity of the amendment to this administrative regulation: This is a repealer.

(c) How the amendment conforms to the content of the authorizing statutes: This is a repealer.

(d) How the amendment will assist in the effective administration of the statutes: This is a repealer.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation repealer will affect all of the Real Estate Commission's current licensees, as well as prospective license applicants. Additionally, this administrative regulation repealer will affect all of the Real Estate Commission's current prelicensing, post licensing, and continuing education providers. Lastly, this administrative regulation repealer will affect the general public to the extent they interact with licensed real estate professionals.

(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: Licensees and education providers will have to become familiar with the revised regulatory scheme. The general public will not have to take any action to comply with the proposed repeal.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to current or prospective licensees, and there will be no cost to the general public. Current and prospective education providers may experience minor costs associated with updating their educational materials to reflect the new regulatory scheme.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of this administrative regulation repealer, compliance will be easier because the simplified regulatory scheme.

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

(a) Initially: There will be no initial cost to implement this administrative regulation repealer.

(b) On a continuing basis: There will be no continuing costs associated with implementing this administrative regulation repealer.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary to implement and enforce this administrative regulation repealer.

(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 increased fees or funding are necessary to implement this administrative regulation repealer.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increased any fees: This administrative regulation repealer does not establish any fees, and it does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation repealer applies equally to all regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments or school districts) will be impacted by this administrative regulation? The Kentucky Real Estate Commission will be impacted by this administrative regulation. Also, local real estate boards may 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 324.282 requires the Real Estate Commission to promulgate administrative regulations.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation repealer will not generate revenue for state or local government in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation repealer will not generate revenue for state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? There is no cost associated with administering this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with administering this administrative regulation for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: This administrative regulation repealer is not expected to have a fiscal impact.

GENERAL GOVERNMENT

Kentucky Board of Veterinary Examiners (Repealer)

201 KAR 16:011. Repeal of 201 KAR 16:010, 201 KAR 16:015, 201 KAR 16:020, 201 KAR 16:030, 201 KAR 16:040, 201 KAR 16:050, 201 KAR 16:060, 201 KAR 16:080, 201 KAR 16:090, 201 KAR 16:100, 201 KAR 16:110.

RELATES TO: KRS 321

STATUTORY AUTHORITY: KRS 321.235(3), 321.351(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.175, 321.181, 321.190, 321.193, 321.195, 321.201, 321.207, 321.211, 321.221, 321.351, 321.353, 321.360, 321.441, 321.443, and 321.990 each authorizes the Kentucky Board of Veterinary Examiners to establish and determine the rules and administrative regulations for veterinary medicine in Kentucky. This administrative regulation repeals 201 KAR 16:010, 201 KAR 16:015, 201 KAR 16:020, 201 KAR 16:030, 201 KAR 16:040, 201 KAR 16:050, 201 KAR 16:060, 201 KAR 16:080, 201 KAR 16:090, 201 KAR 16:100, 201 KAR 16:110 because new administrative regulations have been filed to replace the ones listed in this repealer.

Section 1. The following administrative regulations hereby

repealed:

- (1) 201 KAR 16:010 Code of ethical conduct;
- (2) 201 KAR 16:015 Fees;
- (3) 201 KAR 16:020 Approved veterinary colleges;
- (4) 201 KAR 16:030 License, renewal notice;
- (5) 201 KAR 16:040 Approved programs for veterinary technicians and veterinary technologists;
- (6) 201 KAR 16:050 Continuing education;
- (7) 201 KAR 16:060 Complaint processing procedures;
- (8) 201 KAR 16:080 Certified animal control agencies;
- (9) 201 KAR 16:090 Certification as an animal euthanasia specialist;
- (10) 201 KAR 16:100 Examination; and
- (11) 201 KAR 16:110 Prescription and dispensation of drugs for animal use.

STEVEN J. WILLIS, DVM Chair

APPROVED BY AGENCY: June 14, 2019

FILED WITH LRC: July 12, 2019 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2019 at 1:00 p.m., at the Kentucky Department of Agriculture, 109 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 prior to the end of the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. 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) 782-0282, 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 administrative regulation repeals the administrative regulations for the practice of veterinary medicine in Kentucky, which are being replaced by new filings.

(b) The necessity of this administrative regulation: This administrative regulation repeals the administrative regulations for the practice of veterinary medicine in Kentucky, which are being replaced by new filings. This repeal is needed as to eliminate any conflicts with new filings.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This repealer filing conforms to the statutes by eliminating older administrative regulation versions at the same time new filings are being made.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This repealer will assist by eliminating administrative regulations that are being replaced with new filings, which will make clear to readers which filings are applicable in the future.

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

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

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

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

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

(3) List the type and number of individuals, businesses,

organizations, or state and local governments affected by this administrative regulation: The Kentucky Board of Veterinarian Examiners, 2392 veterinary licenses, 421 veterinary technician licenses, 57 animal control agency certificate holders, 196 animal euthanasia specialist certificate holders.

(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 KBVE will need to do nothing to comply with the repealer.

(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 on behalf of the KBVE, and the readers of the filings in the future.

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

(a) Initially: No costs.

(b) On a continuing basis: No costs.

(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 repealer.

(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 Board of Veterinary Examiners.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

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

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

**GENERAL GOVERNMENT CABINET
Kentucky Board of Veterinary Examiners
(New Administrative Regulation)**

201 KAR 16:200. Code of ethical conduct for veterinarians.

RELATES TO: KRS 321.351(1)(g)

STATUTORY AUTHORITY: KRS 321.235(3), 321.351(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.351 provides for the suspension or revocation of a license, imposition of probationary conditions or an administrative fine, or the issuance of a written reprimand for any violation of the code of ethical conduct promulgated by the board. This administrative regulation sets forth certain standards which shall constitute a code of ethical conduct for each licensed veterinarian.

Section 1. A veterinarian shall not engage in fraud, deceit, or misrepresentation in the practice of veterinary medicine.

Section 2. A veterinarian shall bill accurately and truthfully for services rendered.

Section 3. A veterinarian shall not engage in false, misleading, or deceptive advertising.

Section 4. A veterinarian shall not issue a certificate of veterinary inspection (CVI) unless the veterinarian has personal knowledge through appropriate examination. A veterinarian shall not issue a CVI unless he or she has complied with all entry requirements of the jurisdiction of destination.

Section 5. A veterinarian shall not represent to the public that he or she is a board certified specialist in any specialty of veterinary medicine unless that veterinarian has been certified by an entity approved by the American Veterinary Medical Association (AVMA) and has submitted the certification for filing with the board.

Section 6. A veterinarian's conduct shall conform to the currently accepted standards in the practice of veterinary medicine.

Section 7. A veterinarian shall maintain adequate equipment to treat patients that he or she is called upon to treat in the practice of veterinary medicine.

Section 8. A veterinarian shall maintain his or her service premises and equipment in a clean and sanitary condition.

Section 9. A veterinarian shall take sufficient time and conduct the appropriate tests necessary to diagnose the condition of the patient.

Section 10. A veterinarian shall not neglect a patient under his or her care.

Section 11. A veterinarian shall not physically abuse an animal under his or her care.

Section 12. Except as provided in this Section of this administrative regulation, after a veterinarian begins treatment, he or she shall complete the treatment unless it is terminated by the client. A veterinarian shall have the right to refuse to accept as a patient an animal that is not currently vaccinated; to refuse to render veterinary services for a person who verbally or physically abused the veterinarian or the veterinarian's employee; and to refuse to render veterinary services for a person who is unable to pay or has an outstanding account.

Section 13. A veterinarian shall not practice veterinary medicine in a manner that endangers the health of a patient or endangers the health, safety, or welfare of the public.

Section 14. A veterinarian shall not practice veterinary medicine if his or her ability to practice with reasonable skill and safety is adversely affected by reason of use of alcohol, drugs, narcotics, chemicals, or other substances.

Section 15. A veterinarian shall not overutilize his or her practice. A practice shall be deemed to be overutilized if it exceeds the needs of the patient, considering the patient's history and subjective symptoms; the veterinarian's objective findings, the veterinarian's reasonable clinical judgment, and other information relevant to the practice of veterinary medicine.

Section 16. A veterinarian shall not aid or abet any person in the unlawful practice of veterinary medicine.

Section 17. A veterinarian shall ascertain, before hiring, whether a person who may be hired as a veterinarian has a license to practice veterinary medicine in the Commonwealth and shall be responsible for ensuring that the employee's license remains current.

Section 18. A veterinarian shall not permit a veterinary technician or veterinary assistant to diagnose, prescribe medical treatment, or perform surgical procedures other than the castrating and dehorning of food animals.

Section 19. A veterinarian shall create adequate records to document the veterinarian's examination and treatment of his or her patients.

Section 20. A veterinarian shall retain records of his or her examination and treatment of each patient for a period of at least five (5) years from the most recent examination of the patient.

Section 21. A veterinarian shall provide copies of the veterinarian's examination and treatment of a patient upon the request of the client, the client's designee, or another veterinarian engaged by the client to examine or treat the patient.

Section 22. A veterinarian shall not sell, or offer for sale, prescription medications, including controlled substances, at any place other than in his or her office, clinic, hospital, or mobile unit; or in another place where he or she is treating patients.

Section 23. Except as provided in this Section of this administrative regulation, a veterinarian shall prescribe, dispense, sell, or offer for sale, prescription medications only for his or her own patients. A veterinarian may dispense a non-controlled substance medication for a client that was prescribed by another veterinarian who has established a veterinarian-client-patient relationship.

Section 24. A veterinarian shall comply with the requirements of 201 KAR 16:300.

Section 25. A veterinarian shall not write testimonials as to the virtue of medications, remedies, or foods except to report the results of properly controlled, unbiased experiments, or clinical studies.

Section 26. A veterinarian shall post at his or her facility, and make available over the telephone or on a website, the veterinarian's policy regarding the hours, emergency coverage, and other similar provisions for the operation of the facility.

Section 27. A veterinarian shall maintain a confidential relationship with his or her clients, except as otherwise provided by law, or required by considerations related to public health or animal health.

Section 28. A veterinarian shall obtain the consent of the patient's owner (or the owner's agent) before administering general anesthesia or performing any surgical procedure unless

circumstances qualifying as an emergency do not permit obtaining the consent.

Section 29. A veterinarian shall attempt to obtain the consent of a patient's owner (or the owner's agent) in writing, if feasible, before euthanizing a patient or transporting a patient to another facility. If it is not feasible to obtain consent in writing, the veterinarian shall obtain oral consent from the patient's owner (or the owner's agent) and document the consent in the medical record.

Section 30. A veterinarian shall make reasonable efforts to obtain the consent of the owner (or the owner's agent) before disposing of any patient which dies while in the veterinarian's care. Any patient disposal shall be done according to all applicable health and safety laws and regulations.

Section 31. A veterinarian shall, where possible, preserve the body of any patient which dies while in the veterinarian's care while its owner (or the owner's agent) is away, except as otherwise provided by law.

Section 32. A veterinarian shall not abuse or take advantage of the confidence of the client.

Section 33. A veterinarian shall not enter into a business transaction with a client in which the veterinarian and his or her client have differing interests:

- (1) If the client reasonably expects the veterinarian to exercise his or her professional judgment for the protection of the client;
- (2) If the veterinarian has not fully disclosed his or her interest in the transaction; or
- (3) If the client has not given his or her informed consent to the transaction.

Section 34. If a veterinarian performed an inspection of an animal on behalf of a person that the veterinarian knew (or reasonably should have known) planned to sell that animal within sixty (60) days from the date of inspection, then the veterinarian shall not perform an inspection of that animal on behalf of any person that the veterinarian knows (or reasonably should know) is a potential buyer of the animal without first disclosing to the potential buyer the fact and circumstances of the veterinarian's previous inspection of the animal. (The creation, review, or analysis of a radiograph shall constitute an "inspection" for the purposes of this Section.)

Section 35. An applicant for a license shall be truthful in his or her representations to the board.

Section 36. A veterinarian shall comply with the board's request to appear before the board, to provide information to the board, or to make his or her premises available for inspection by the board.

Section 37. A veterinarian shall comply with restrictions on his or her practice of veterinary medicine imposed by the board.

Section 38. A veterinarian shall promptly notify the board of a change to his or her legal name.

Section 39. A veterinarian shall promptly notify the board of a change to his or her permanent address or mailing address.

Section 40. A veterinarian shall notify the board, within thirty (30) days, of the occurrence of the following events:

- (1) Disciplinary action, revocation, suspension, or, or the voluntary surrender of his or her license to practice veterinary medicine in another jurisdiction;
- (2) The suspension, revocation, or voluntary surrender of his or her United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) Accreditation;

(3) The suspension, revocation, or voluntary surrender of his or her federal Drug Enforcement Administration (DEA) registration;

(4) The suspension, revocation, or voluntary surrender of his or her state controlled substances license; or

(5) The conviction, in any jurisdiction, of any felony or misdemeanor other than a minor traffic violation.

Section 41. A veterinarian shall not refuse treatment of a patient on the basis of the client's race, color, sex, gender identity, age, religion, national origin, or disability.

Section 42. A veterinarian shall conduct professional activities in conformity with all federal, state, and municipal laws, ordinances, or regulations.

Section 43. A veterinarian shall not verbally abuse or harass, nor physically threaten or assault a client, an employee, a board member, or any agent of the board.

STEVEN J. WILLS, DVM Chair

APPROVED BY AGENCY: June 14, 2019

FILED WITH LRC: June 19, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2019 at 1:00 p.m., at the Kentucky Department of Agriculture, 109 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 prior to the end of the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. 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 establishes the code of ethical conduct for veterinarians.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the ethical code of conduct as required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.351 specifically requires the KVME to create an ethics code.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by clearly expressing the ethical code that veterinarians have created and expect of others. This filing makes the ethical code easy to read for members of the general public as well.

(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: 2392 veterinary licensed in the Commonwealth.

(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: Veterinarians will be required to follow each of the provisions of the code created by their peers.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communication of the definitions.

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

(a) Initially: No costs are anticipated for the implementation of the ethical code.

(b) On a continuing basis: No costs are anticipated for the ethical code, outside of enforcement costs of violations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation does not establish fees. Fees for the KBVE come from license and certification fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fees related to the ethical code are necessary at this time.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.351

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated from this filing.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years? KDA staff time will be required for record keeping. Costs will be very minimal.

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 or negligible.

Other Explanation:

GENERAL GOVERNMENT CABINET Kentucky Board of Veterinary Examiners (New Administrative Regulation)

201 KAR 16:210. Fees for veterinarians.

RELATES TO: KRS 321.193, 321.211, 321.240

STATUTORY AUTHORITY: KRS 321.193, 321.211, 321.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.240(5) requires the board to promulgate administrative regulations as it may deem necessary and proper to effectively carry out and enforce the provisions of KRS Chapter 321, including regulations to establish authorized fees. This administrative regulation establishes those fees for veterinarians.

Section 1. Payment and Submission of Fees. (1) Fees shall be paid by check or money order, or, when available, online payment by debit or credit card. Checks and money orders shall be made payable to the Kentucky State Treasurer.

(2) All fees shall be nonrefundable.

Section 2. Application Fees for Veterinarians. (1) The application fee for a veterinarian shall be \$100 dollars.

(2) The fee shall be attached to the completed Application for Licensure as a Veterinarian form as found in 201 KAR 16:400 or online equivalent form, including all required attachments.

Section 3. Examination Fees for Veterinarians. (1) The fee for the North American Veterinary Licensing Examination (NAVLE) shall be paid directly to the International Council for Veterinary Assessment (ICVA) or its designee.

(2) The fee for the Kentucky State Board Examination shall be \$100 paid directly to the board.

(3) The fee for an applicant to obtain board approval to retake the NAVLE shall be fifty (50) dollars paid directly to the board and attached to the Application for Retake of the NAVLE form as found in 201 KAR 16:400 or online equivalent form.

Section 4. Renewal fees for Veterinarians. The following fees shall be paid in connection with licensure renewals:

(1) Except as provided for in subsections (a) and (b) of this section, the biennial renewal fee for licensure as a veterinarian in active status shall be \$200 if the Renewal Application for Veterinarians form as found in 201 KAR 16:400 or online equivalent form is complete, including all required attachments, continuing education credits, and fee payment, and the complete package submitted to the board for review and approval not later than September 30.

(a) For veterinarians who are initially licensed in the second year of the biennium between October 1 and March 31, the licensure renewal fee shall be reduced to \$100 dollars during a licensee's first licensure cycle. The late fee for renewal, if applicable, shall not be reduced or waived without board authorization.

(b) For veterinarians who are initially licensed in the second year of the biennium between April 1 and September 30, the licensure renewal fee shall be waived during a licensee's first licensure cycle.

(2) During the grace period established by KRS 321.211, a licensed veterinarian who failed to meet the September 30 renewal deadline may continue to function as though licensed until a late renewal application is submitted to the board. The late fee for biennial renewal shall be \$100 in addition to the renewal fee as described in Section 4(1), Section 4(2), and Section 6 of this administrative regulation. The veterinarian shall submit the complete renewal form, including all required attachments, continuing education hours, and fee payment, to the board between October 1 and November 30 during the last year of the biennium.

(3) A veterinarian's license shall expire if no renewal application package and all attachments, and late fee if applicable, is paid to the board by November 30.

Section 5. Reinstatement Fees for Veterinarians. (1) Except as provided for in Section 6 of this administrative regulation, if not more than five (5) years have elapsed since the last date of license expiration pursuant to KRS 321.211(3), a veterinarian may pay a reinstatement fee of \$400 and submit a complete Reinstatement Application for Veterinarians form as found in 201 KAR 16:400 or online equivalent form is complete, including all required attachments, to the board for reinstatement of his or her license. A veterinarian may not apply for a new license during this five (5)-year window; a reinstatement application is required.

(2) If more than five (5) years have elapsed since the last date of license expiration, a veterinarian must apply as a new applicant to obtain a license in Kentucky.

Section 6. Inactive Status of License. (1) A veterinarian may opt to renew his or her license with status of "inactive" during the renewal period by completing the Renewal Application for Veterinarians form as found in 201 KAR 16:400 or online equivalent form, or at any point during the biennium by completing a Licensure Status Change Request form as found in 201 KAR 16:400 or online equivalent form. Licensees with an inactive status shall not practice the profession of veterinary medicine in Kentucky until the license status is approved by the board to return to active status.

(2) Renewal of an inactive veterinary license.

(a) The biennial renewal fee for inactive veterinarian licensure status shall be \$100 per renewal biennium.

(b) The late fees established in Section 4(2) of this administrative regulation shall apply to licenses in an inactive status that was not renewed by September 30 of the biennium.

(c) No continuing education is required while veterinarian's license is in inactive status.

(d) A license in an inactive status that is not renewed by November 30 shall be deemed to be expired.

(3) Reinstatement of inactive veterinarian license status to active status.

(a) A veterinarian licensee in inactive status may reinstate his or her license to active status at any time by completing and submitting a reinstatement application or designating the status change on a renewal form during the open renewal period, paying a reinstatement fee of \$200, and complying with the provisions established in 201 KAR 16:240 and 16:280.

(b) At the time of reinstatement, an inactive licensee shall be required to comply with continuing education requirements established in 201 KAR 16:290.

Section 7. Retirement of a Veterinary License. (1) A veterinarian may request to retire his or her license at any time. The one (1)-time fee for this service is \$150, which must be attached to a Licensure Status Change Request form as found in 201 KAR 16:400 provided by the board or online equivalent form, or the renewal form provided by the board. Once a license is retired it cannot be reactivated. If a veterinarian holds a retired license and wishes to practice again, he or she must apply to the board for a new license to practice veterinary medicine in Kentucky.

STEVEN J. WILLS, DVM, Chair

APPROVED BY AGENCY: June 14, 2019

FILED WITH LRC: June 19, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2019 at 1:00 p.m., at the Kentucky Department of Agriculture, 109 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 prior to the end of the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. 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 establishes the fee for persons seeking a veterinary license.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the fee that the KBVE board approves for veterinarian licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.193, 321.211, 321.240 each require the board to set a fee for veterinary licenses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by clearly expressing what fee has been approved by the KBVE board.

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

(a) How the amendment will change this existing administrative regulation: 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: 2392 veterinary licenses.

(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 have paid the fee prior to licensure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this is a prerequisite for application.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communication of the fees.

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

(a) Initially: The KBVE expects costs for their operations to be approximately \$230,000 in the near term.

(b) On a continuing basis: The KBVE expects costs for their operations to exceed \$230,000 after the implementation of their revised administrative regulations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees for the KBVE come from license and certification fees established in this filing and the other fee filings.

(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 increases are anticipated by the KBVE.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Fees are established directly.

(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 KBVE

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.193, 321.211, 321.240

(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 filing will generate approximately \$250,000.

(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 filing will generate approximately \$250,000.

(c) How much will it cost to administer this program for the first year? The KBVE estimates expenditures of approximately \$230,000 or more in the near term.

(d) How much will it cost to administer this program for subsequent years? The KBVE estimates expenditures of approximately \$230,000 or more in the near term, with major expenses anticipated for computer systems and other needed items.

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

Revenues (+/-): \$250,000

Expenditures (+/-): \$230,000

Other Explanation: Additional expenses are anticipated by the KBVE.

GENERAL GOVERNMENT CABINET Kentucky Board of Veterinary Examiners (New Administrative Regulation)

201 KAR 16:212. Fees for veterinary technicians.

RELATES TO: KRS 321.240, 321.441

STATUTORY AUTHORITY: KRS 321.240, 321.441

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.240(5) requires the board to promulgate administrative regulations as it may deem necessary and proper to effectively carry out and enforce the provisions of KRS Chapter 321, including regulations to establish authorized fees. This administrative regulation establishes those fees for veterinary technicians.

Section 1. Payment and Submission of Fees. (1) Fees shall be paid by check or money order, or, when available, online payment by debit or credit card. Checks and money orders shall be made payable to the Kentucky State Treasurer.

(2) All fees shall be nonrefundable.

Section 2. Application Fees for Veterinary Technicians. (1) The application fee for a veterinary technician shall be twenty-five (25) dollars.

(2) The fee shall be attached to the completed Application for Licensure as a Veterinary Technician form as found in 201 KAR 16:400 or online equivalent form, including all required attachments.

Section 3. Examination fees for Veterinary Technicians. (1) The fee for the Veterinary Technician National Exam (VTNE) shall be paid directly to the American Association of Veterinary State Boards (AAVSB) or its designee.

Section 4. Renewal Fees for Veterinary Technicians. The following fees shall be paid in connection with licensure renewals for veterinary technicians:

(1) Except as provided for in subsection (a), the annual renewal fee for licensure as a veterinary technician in active status shall be thirty (30) dollars if the Renewal Application for Veterinary Technicians form as found in 201 KAR 16:400 or online equivalent form is complete, including all required attachments, continuing education credits, and fee payment, to the board not later than September 30.

(a) For a veterinary technician who was initially licensed less than 120 days prior to the September 30 renewal deadline, the licensure renewal fee shall be waived during a licensee's first licensure cycle.

(2) During the grace period established by KRS 321.211, the licensed veterinary technician who failed to meet the September 30 renewal deadline may continue to function as though licensed until a late renewal application is submitted to the board. The late fee for annual renewal shall be fifteen (15) dollars in addition to the renewal fee as described in Section 4(1) of this administrative regulation. The veterinary technician shall submit the complete renewal form, including all required attachments, continuing education credits, and fee payment, to the board between October 1 and November 30.

(3) A veterinary technician's license shall expire if no renewal application package and all attachments, and late fee if applicable, is paid to the board by November 30.

Section 5. Reinstatement Fees for Veterinary Technicians.

(1) Except as provided for in Section 5(3) of this administrative regulation, if not more than five (5) years have elapsed since the last date of license expiration pursuant to KRS 321.211(3), a veterinary technician may pay a reinstatement fee of seventy-five (75) dollars and submit a complete Reinstatement Application for Veterinary Technicians form as found in 201 KAR 16:400 or online equivalent form, including all required attachments, to the board for reinstatement of his or her license. A veterinary technician may not apply for a new license during this five (5)-year window; a reinstatement application is required.

(2) If more than five (5) years have elapsed since the last date of license expiration, a veterinary technician must apply as a new applicant to obtain a license in Kentucky.

Section 6. Inactive Status of a License. (1) A veterinary technician may opt to renew his or her license with status of "inactive" during the renewal period by completing Renewal Application for Veterinary Technicians form as found in 201 KAR 16:400 or online equivalent form, or at any point during the annual cycle by completing the Licensure Status Change Request form as found in 201 KAR 16:400 or online equivalent form. Licensees with an inactive status shall not practice the as a veterinary technician in Kentucky until the license status is approved by the board to move back to active status.

(2) Renewal of an inactive veterinary technician license.

(a) The annual renewal fee for inactive veterinary technician licensure status shall be twenty (20) dollars per renewal period.

(b) The late fees established in Section 4(2) of this administrative regulation shall apply to licenses not renewed annually by September 30.

(c) No continuing education is required while a veterinary technician's license is in inactive status.

(d) A license in an inactive status that is not renewed by November 30 shall be deemed to be expired.

(3) Reinstatement of inactive veterinary technician license status to active status.

(a) A licensed veterinary technician in inactive status may reinstate his or her license to active status by completing and submitting a reinstatement application, paying a reinstatement fee of twenty-five (25) dollars, and complying with the provisions established in 201 KAR 16:240 and 16:280.

(b) At the time of reinstatement, an inactive licensee shall still be required to comply with continuing education requirements

established in 201 KAR 16:290.

Section 7. Retirement of License. (1) A veterinary technician may request to retire his or her license at any time. The one (1)-time fee for this service is fifty (50) dollars, which must be attached to a Licensure Status Change Request form as found in 201 KAR 16:400 provided by the board or online equivalent form, or the renewal form provided by the board. Once a license is retired, it cannot be reactivated. If a veterinary technician holds a retired license and wishes to practice again, he or she must apply to the board for a new license to practice the profession of a veterinary technician in Kentucky.

STEVEN J. WILLIS, DVM, Chair

APPROVED BY AGENCY: June 14, 2019

FILED WITH LRC: June 19, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2019 at 1:00 p.m., at the Kentucky Department of Agriculture, 109 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 prior to the end of the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. 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 establishes the fee for persons seeking a veterinary technician license.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the fee that the KBVE board approves for veterinarian technician licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.241 requires the board to set a fee for veterinary licenses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by clearly expressing what fee has been approved by the KBVE board.

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

(a) How the amendment will change this existing administrative regulation: 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: 421 veterinary technician licenses.

(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 have paid the fee prior to licensure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this is a prerequisite for application.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communication of the fees.

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

(a) Initially: The KBVE expects costs for their operations to be approximately \$230,000 in the near term.

(b) On a continuing basis: The KBVE expects costs for their operations to exceed \$230,000 after the implementation of their revised administrative regulations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees for the KBVE come from license and certification fees established in this filing and the other fee filings.

(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 increases are anticipated by the KBVE.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Fees are established directly.

(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 KBVE

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.193, 321.211, 321.240

(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 filing will generate approximately \$14,000.

(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 filing will generate approximately \$14,000.

(c) How much will it cost to administer this program for the first year? The KBVE estimates expenditures of approximately \$230,000 or more in the near term.

(d) How much will it cost to administer this program for subsequent years? The KBVE estimates expenditures of approximately \$230,000 or more in the near term, with major expenses anticipated for computer systems and other needed items.

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

Revenues (+/-): \$14,000

Expenditures (+/-): \$230,000

Other Explanation: Additional expenses are anticipated by the KBVE.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Veterinary Examiners
(New Administrative Regulation)**

201 KAR 16:214. Fees for animal control agencies and animal euthanasia specialists.

RELATES TO: KRS 321.207

STATUTORY AUTHORITY: KRS 321.207

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.207(1) authorizes the board to permit qualified animal control agencies in Kentucky to apply for a registration certificate from the federal Drug Enforcement Administration (DEA). KRS 321.207(3) authorizes the board to certify animal control agencies to perform euthanasia services for animals. KRS 321.207(4) authorizes the board to issue certificates to those persons who are deemed to be qualified to work as animal euthanasia specialists.

Section 1. Payment and Submission of Fees. (1) Fees shall be paid by check or money order, or, when available, online payment by debit or credit card. Checks and money orders shall be made payable to the Kentucky State Treasurer.

(2) All fees shall be nonrefundable.

Section 2. Application Fees. (1) The application fee for issuance of a certificate authorizing restricted controlled substance registration with the Drug Enforcement Administration (DEA) to an animal control agency shall be fifty (50) dollars. The fee shall be attached to the completed Application for Certification as an Animal Control Agency form as found in 201 KAR 16:400 or online equivalent form, including all required attachments.

(2) The application fee for issuance of a certificate to a certified animal euthanasia specialist shall be fifty (50) dollars. The fee shall be attached to the completed Application for Certification as an Animal Euthanasia Specialist form as found in 201 KAR 16:400 or online equivalent form, including all required attachments.

Section 3. Renewal Fees for Animal Control Agencies. (1) A certified animal control agency shall annually, on or before March 1, pay to the board a renewal fee of fifty (50) dollars for the renewal of the certificate. The animal control agency shall submit the complete Renewal Application for Animal Control Agencies form as found in 201 KAR 16:400 or online equivalent form, including all required attachments, and fee payment to the board.

(2) A sixty (60) day grace period shall be allowed after March 1, during which time the animal control agency may continue to function as though certified until a late renewal application is submitted to the board. The late fee for renewal shall be ten (10) dollars in addition to the renewal fee as described in Section 3(1) of this administrative regulation. The animal control agency shall submit the complete renewal form, including all required attachments, and fee payment, to the board between March 2 and April 30 of the annual renewal period. The late fee for renewal, if applicable, shall not be reduced or waived without board authorization.

(3) An animal control agency restricted controlled substance registration certificate shall expire if no renewal package, and late fee if applicable, is paid to the board annually by April 30.

(4) If not more than five (5) years have elapsed since the last date of certificate expiration, an animal control agency that has an expired restricted controlled substance registration certificate may be reinstated upon the submission of a completed Reinstatement Application for Animal Control Agencies form as found in 201 KAR 16:400 or online equivalent form, including all attachments, and the payment of a reinstatement fee of seventy-five (75) dollars. An animal control agency may not apply for a new certificate during this five-year window; a reinstatement application is required.

(5) If more than five (5) years have elapsed since the last date of certificate expiration, an animal control agency must reapply to obtain a certificate authorizing restricted controlled substance registration with the DEA.

Section 4. Renewal Fees for Animal Euthanasia Specialists.

(1) A certified animal euthanasia specialist shall annually, on or before March 1, pay to the board a renewal fee of fifty (50) dollars for the renewal of the certificate. The animal euthanasia specialist shall submit the complete Renewal Application for Animal Euthanasia Specialists form as found in 201 KAR 16:400 or online equivalent form, including all required attachments, and fee payment to the board.

(2) A sixty (60) day grace period shall be allowed after March 1, during which time the certified animal euthanasia specialist may continue to function as though certified until a late renewal application is submitted to the board. The late fee for renewal shall be ten (10) dollars in addition to the renewal fee as described in Section 4(1) of this administrative regulation. The animal euthanasia specialist shall submit the complete renewal form, including all required attachments and fee payments, to the board between March 2 and April 30 of the renewal period. The late fee for renewal, if applicable, shall not be reduced without board authorization.

(3) The renewal fee for the first renewal shall be waived for a certificate received within 120 days prior to the renewal date.

(4) If not more than five (5) years have elapsed since the last date of license expiration, an animal euthanasia certificate that has expired may be reinstated upon the submission of a completed Reinstatement Application for Animal Euthanasia Specialists form as found in 201 KAR 16:400 or online equivalent form, including all attachments, and the payment of a reinstatement fee of seventy-five (75) dollars. An animal euthanasia specialist may not apply for a new certificate during this five (5) year window; a reinstatement application is required.

(5) If more than five (5) years have elapsed since the last date of license expiration, an individual must reapply to obtain a certificate as an animal euthanasia specialist in Kentucky.

Section 5. Inactive Status for Animal Euthanasia Specialists. A certified animal euthanasia specialist may opt to renew a certificate with a status of inactive at any time by indicating so on the renewal form or on a completed Licensure Status Change Request form as found in 201 KAR 16:400 or online equivalent form. (1) There is no fee for inactive status for a certified animal euthanasia specialist.

(2) When a certified animal euthanasia specialist's employment with a certified animal control agency ends, his or her license shall be moved to inactive status for a period not to exceed five (5) years.

(a) During the five (5) year period, the animal euthanasia specialist may apply to reinstate the certificate to active status by completing a reinstatement application.

(b) After five (5) years, the individual must reapply for certification as an animal euthanasia specialist.

(3) A certified animal euthanasia specialist may convert his or her certificate from inactive to active status at any time when he or she is employed with a certified animal control agency by completing and submitting a reinstatement application, paying a fifty (50) dollar reinstatement fee, and complying with the provisions established in 201 KAR 16:025.

STEVEN J. WILLS, DVM, Chair

APPROVED BY AGENCY: June 14, 2019

FILED WITH LRC: June 19, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2019 at 1:00 p.m., at the Kentucky Department of Agriculture, 109 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 prior to the end of the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. 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 establishes the fee for persons seeking an animal control agency certificate or animal euthanasia specialist certificate.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the fee that the KBVE board approves for animal control agency certificates or animal euthanasia specialist certificates.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.207 requires the board to set a fee for animal control agency certificates or animal euthanasia specialist certificates.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by clearly expressing what fee has been approved by the KBVE board.

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

(a) How the amendment will change this existing administrative regulation: 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: 57 animal control agency certificates, and 196 animal euthanasia specialist certificates.

(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 have paid the fee prior to licensure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this is a prerequisite for application.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communication of the fees.

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

(a) Initially: The KBVE expects costs for their operations to be approximately \$230,000 in the near term.

(b) On a continuing basis: The KBVE expects costs for their operations to exceed \$230,000 after the implementation of their revised administrative regulations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees for the KBVE come from license and certification fees established in this filing and the other fee filings.

(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 increases are anticipated by the KBVE.

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

Fees are established directly.

(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 KBVE

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.193, 321.211, 321.240

(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 filing will generate approximately \$15,000.

(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 filing will generate approximately \$15,000.

(c) How much will it cost to administer this program for the first year? The KBVE estimates expenditures of approximately \$230,000 or more in the near term.

(d) How much will it cost to administer this program for subsequent years? The KBVE estimates expenditures of approximately \$230,000 or more in the near term, with major expenses anticipated for computer systems and other needed items.

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

Revenues (+/-): \$15,000

Expenditures (+/-): \$230,000

Other Explanation: Additional expenses are anticipated by the KBVE.

GENERAL GOVERNMENT CABINET Kentucky Board of Veterinary Examiners (New Administrative Regulation)

201 KAR 16:216. Fees – other fees.

RELATES TO: KRS 321.240, 321.201

STATUTORY AUTHORITY: KRS 321.240, 321.201

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.240 authorizes the board to promulgate administrative regulations as it may deem necessary and proper to effectively carry out and enforce the provisions of KRS Chapter 321, including regulations to establish authorized fees. This administrative regulation establishes fees for various services provided by the board. KRS 321.201 authorizes the board to issue a special permit for the practice of veterinary medicine and to require a fee for such permits. This administrative regulation establishes the fee for a special permit.

Section 1. Payment and Submission of Fees. (1) Fees shall be paid by check or money order, or, when available, online payment by debit or credit card. Checks and money orders shall be made payable to the Kentucky State Treasurer.

(2) All fees shall be nonrefundable.

Section 2. Fees for Special Permits. (1) The fee for a special permit issued by the board pursuant to KRS 321.201 shall be fifty (50) dollars. The fee shall be attached to either the Application for Licensure as a Veterinarian form or the Application for Retake of the NAVLE form as found in 201 KAR 16:400 or online equivalent form.

VOLUME 46, NUMBER 2– AUGUST 1, 2019

Section 3. Fees for License Verification Letters and Letters of Good Standing. (1) The fee for a license verification letter or a letter of good standing is ten (10) dollars. The fee shall be attached to a Request for Licensure Verification form as found in 201 KAR 16:400 or online equivalent form. Upon receipt of the request and payment, the board will issue the requested letter and complete any forms required by regulatory bodies in other states.

Section 4. Fees for Mailing Lists. (1) The fee for a request to obtain a copy of the mailing list of the board's licensees is fifteen (15) dollars. The fee shall be attached to a Request for Mailing List form as found in 201 KAR 16:400 or online equivalent form. Upon the receipt of the request and payment, the board will send a current licensee mailing list to the requesting party.

Section 5. Fees for Duplicate Wall Certificates. (1) The fee for a duplicate wall certificate, including the board's seal, is ten (10) dollars.

Section 6. Fees for Processing Payments. (1) The board shall have authority to require a reasonable service charge for processing payments submitted online or in paper form. Such fees shall be calculated as a percentage of the underlying fee pursuant to the board's current contracted rate for payment processing services.

STEVEN J. WILLS, DVM, Chair

APPROVED BY AGENCY: June 14, 2019

FILED WITH LRC: June

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2019 at 1:00 p.m., at the Kentucky Department of Agriculture, 109 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 prior to the end of the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. 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 establishes the fees for specific KBVE services as outlined in the filing.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the fee that the KBVE board approves for the various other services that are not specifically related to licensure and renewal.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.240, 321.201, and the balance of that chapter allow the KBVE broad regulatory authority. The KBVE provides additional services that it wishes to capture a portion of the expenses thereof through this filing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by clearly expressing what fee has been approved by the KBVE board.

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

(a) How the amendment will change this existing administrative regulation: 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: 2392 veterinary licenses, 421 veterinary technician licenses, 57 animal control agency certificate holders, 196 animal euthanasia specialist certificate holders.

(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: Persons will be required to have paid the fee prior to the specific service being performed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this is a prerequisite for a specific service.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communication of the fees.

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

(a) Initially: The KBVE expects costs for their operations to be approximately \$230,000 in the near term.

(b) On a continuing basis: The KBVE expects costs for their operations to exceed \$230,000 after the implementation of their revised administrative regulations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees for the KBVE come from license and certification fees established in this filing and the other fee filings.

(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 increases are anticipated by the KBVE.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Fees are established directly.

(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 KBVE

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.193, 321.211, 321.240

(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 filing will generate approximately \$15,000.

(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 filing will generate approximately \$15,000.

(c) How much will it cost to administer this program for the first year? The KBVE estimates expenditures of approximately \$230,000 or more in the near term.

(d) How much will it cost to administer this program for subsequent years? The KBVE estimates expenditures of approximately \$230,000 or more in the near term, with major expenses anticipated for computer systems and other needed items.

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

Revenues (+/-): \$15,000

Expenditures (+/-): \$230,000

Other Explanation: Additional expenses are anticipated by the KBVE.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Veterinary Examiners
(New Administrative Regulation)**

201 KAR 16:220. Approved veterinary colleges; approved programs for veterinary technicians.

RELATES TO: KRS 321.193, KRS 321.441

STATUTORY AUTHORITY: KRS 321.193, KRS 321.441

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.190 requires persons engaging in the practice of veterinary medicine in the Commonwealth to be licensed by the board. KRS 321.190 sets forth the requirements for licensure as a veterinarian. KRS 321.441 provides for the qualification, licensing, and use of veterinary technicians. One (1) of the requirements for veterinarians is the receipt of a degree from a veterinary college approved by the board, and one (1) of the requirements for veterinary technicians is the receipt of a degree from a program approved by the board. This administrative regulation sets forth the veterinary colleges and veterinary technician programs approved by the board.

Section 1. Approved Veterinary Colleges. The board hereby approves any degree from a veterinary college which held full accreditation, limited accreditation, or approval by the American Veterinary Medical Association (AVMA) Council on Education on the date when the applicant received a degree from the veterinary college.

Section 2. Licensure of Veterinarians who Graduated from Non-approved Schools. If an applicant for a veterinarian license does not possess a degree from a veterinary college within the scope set forth in Section 1 of this administrative regulation, the applicant shall be eligible for licensure after successfully completing the program and receiving certification from the Educational Commission for Foreign Veterinary Graduates (ECFVG) of the American Veterinary Medical Association (AVMA), or the Program for the Assessment of Veterinary Education Equivalence (PAVE) of the American Association of Veterinary State Boards (AAVSB).

Section 3. Approved Veterinary Technician Programs. The board hereby approves any veterinary technician program, or veterinary technologist program, or veterinary nurse program, which held full accreditation, limited accreditation, or approval by the American Veterinary Medical Association (AVMA) Council on Education on the date when the applicant received a degree from the institution.

Section 4. Licensure of Veterinary Technicians who Graduated from Non-approved Schools or Non-veterinary Technician Programs. If an applicant for a veterinary technician license does not possess a degree from a veterinary technician program within the scope set forth in Section 3 of this administrative regulation, the candidate shall be eligible to qualify for licensure and board approval by:

(1) Following graduation, submitting an official copy of final transcripts from the college of study, and any other requested documentation, for the board's review and determination of approval; and

(2) Successfully completing the board approved program, receiving certification for passing the Veterinary Technician National Exam (VTNE) developed and administered by the AAVSB, and successfully completing all application requirements for licensure.

STEVEN J. WILLS, DVM, Chair

APPROVED BY AGENCY: June 14, 2019

FILED WITH LRC: June 19, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2019 at 1:00 p.m., at the Kentucky Department of Agriculture, 109 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 prior to the end of the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. 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 establishes the approved veterinary colleges, and veterinary technician programs for persons seeking a veterinary license or veterinary technician license.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the degrees and trainings that the KBVE board approves as a requirement for licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.193 and 321.441 each require the board to approve a degree or program for each applicant for veterinary and veterinary technician licenses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by clearly expressing what degrees and programs have been approved by the KBVE board.

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

(a) How the amendment will change this existing administrative regulation: 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: 2392 veterinary licenses, 421 veterinary technician licenses, and future applicants.

(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 have a degree or training in a program that has KBVE approval as outlined

in this filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this is a prerequisite for application.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communication of the approved requirements.

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

(a) Initially: No costs are anticipated.

(b) On a continuing basis: No costs are anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation does not establish fees. Fees for the KBVE come from license and certification fees.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.193, 321.441

(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 from this filing.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years? Staff time will be required for record keeping. Costs will be very minimal.

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 or negligible.

Other Explanation:

GENERAL GOVERNMENT CABINET Kentucky Board of Veterinary Examiners (New Administrative Regulation)

201 KAR 16:230. Examination requirements for veterinarians and veterinary technicians.

RELATES TO: KRS 321.193, 321.441

STATUTORY AUTHORITY: KRS 321.193, 321.441

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.193 provides that the examinations required for licensure shall be approved by the board. This administrative regulation identifies the examinations that are required for licensure by the board.

Section 1. (1) The examination required for licensure by the board as a veterinarian shall be the successful completion of the North American Veterinary Licensing Examination (NAVLE).

(2) Candidates shall apply to the board for verification of eligibility to take the NAVLE.

(3) Candidates seeking to take the NAVLE shall apply directly to the International Council for Veterinary Assessment (ICVA) or current administrator of the NAVLE for admission to the examination.

(4) Applicants for veterinarian licensure to the board shall request and pay a fee directly to the ICVA, its designee, the American Association of Veterinary State Boards (AAVSB), or current official records custodian, to have test scores sent directly to the board. Unofficial copies of scores from applicants or other sources will not be accepted.

(5) Candidates for the NAVLE who do not receive a passing score must apply to the board to retake the NAVLE on the Application for Retake of the NAVLE form as found in 201 KAR 16:400 or online equivalent form.

(6) In addition to achieving a passing score on the NAVLE, applicants for licensure shall be required to achieve a score of seventy-five (75) percent or higher on the Kentucky State Board Examination which shall cover the specific requirements of KRS Chapter 321 and the administrative regulations promulgated pursuant thereto.

(7) The board shall recognize passing scores on the National Board Examination (NBE) and the Clinical Competency Test (CCT) in lieu of a NAVLE score report if the applicant for licensure completed both examinations before May, 2000.

(8) Graduates of veterinary schools or programs not approved by the American Veterinary Medical Association (AVMA) must also submit proof of successful completion of one of the following programs:

(a) The Educational Commission for Foreign Veterinary Graduates (ECFVG) program offered by the AVMA; or

(b) The Program for the Assessment of Veterinary Education Equivalence (PAVE) program offered by the American Association of Veterinary State Boards (AAVSB).

Section 2. (1) The examination required for licensure by the board as a veterinary technician shall be the successful completion of the Veterinary Technician National Exam (VTNE).

(2) Candidates seeking to take the VTNE shall apply directly to the AAVSB or current administrator of the VTNE for verification of eligibility and admission to the examination.

(3) Applicants for veterinary technician licensure to the board shall request and pay a fee directly to the AAVSB, PSI Services, one of their designees, or to the current official records custodian to have test scores sent directly to the board. Copies of scores from applicants or other sources will not be accepted.

STEVEN J. WILLS, DVM, Chair

APPROVED BY AGENCY: June 14, 2019

FILED WITH LRC: June 19, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2019 at 1:00 p.m., at the Kentucky Department of Agriculture, 109 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 prior to the end of the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. 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 establishes the examination requirements for persons seeking a veterinary license or veterinary technician license.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the examinations and passing scores that the KBVE board approves as a requirement for licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.193 and 321.441 each require the board to approve a degree or program for each applicant for veterinary and veterinary technician licenses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by clearly expressing what examinations have been approved by the KBVE board.

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

(a) How the amendment will change this existing administrative regulation: 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: 2392 veterinary licenses, 421 veterinary technician licenses, and future applicants.

(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 have passed an examination that has KBVE approval as outlined in this filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this is a prerequisite for application.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communication of the approved requirements.

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

(a) Initially: No costs are anticipated.

(b) On a continuing basis: No costs are anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation does not establish fees. Fees for the KBVE come from license and certification fees.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.193, KRS 321.441

(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 from this filing.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years? Staff time will be required for record keeping. Costs will be very minimal.

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 or negligible.

Other Explanation:

GENERAL GOVERNMENT CABINET Kentucky Board of Veterinary Examiners (New Administrative Regulation)

201 KAR 16:240. Application requirements for veterinarians and veterinary technicians.

RELATES TO: KRS 321.193, 321.221, 321.441

STATUTORY AUTHORITY: KRS 321.235, 321.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.193 and 321.221 provides for application requirements for veterinarians. KRS 321.441 sets forth the requirements for licensure as a veterinary technician. This administrative regulation sets forth application requirements for veterinarians and veterinary technicians applying for licensure from the board.

Section 1. New application to the board for licensure as a veterinarian shall include the following components:

(1) A completed application on an Application for Licensure as a Veterinarian form as found in 201 KAR 16:400 or online equivalent form provided by the board, including all required attachments;

(2) A current color photograph of the applicant not smaller than two (2)-inches by two (2)-inches, or a color copy of the applicant's current valid driver's license or passport with photo;

(3) An official copy of final transcripts, or a copy of the applicant's diploma from the issuing school;

(4) A complete national background check from a board approved background check provider, which may include a copy of the applicant's fingerprints captured at a board approved office for the purpose of a national background check;

(5) A copy of any court documents, settlement agreements, or other documents requested by the board in support of the application; and

(6) An official copy of an applicant's score report showing results for either:

(a) The North American Veterinary Licensing Exam (NAVLE), or

(b) The National Board Examination (NBE) and the Clinical Competency Test (CCT), if completed prior to May 31, 2000.

The score report shall be sent directly to the board from the International Council for Veterinary Assessment (ICVA), the

VOLUME 46, NUMBER 2– AUGUST 1, 2019

American Association of Veterinary State Boards (AAVSB), other board recognized testing body, or official records custodian.

(7) Payment for the application fee required by 201 KAR 16:210.

(8) In addition to the requirements listed in Section 1(1) – Section 1(7) of this administrative regulation, requirements for endorsement applications include,

(a) Licensure verifications from all jurisdictions in which an applicant once held or currently holds a license as a veterinarian; and

(b) A current credential report from the American Association of Veterinary State Boards (AAVSB).

(9) In addition to the requirements listed in Section 1(1) – Section 1(7) of this administrative regulation, requirements for foreign graduate applications include,

(a) Licensure verifications from all jurisdictions in which an applicant once held or currently holds a license as a veterinarian;

(b) A current credential report from the American Association of Veterinary State Boards (AAVSB), and

(c) An official score report showing results for either:

1. The Educational Commission for Foreign Veterinary Graduates (ECFVG) Program of the American Veterinary Medical Association (AVMA), or

2. The Program for the Assessment of Veterinary Education Equivalence (PAVE) of the AAVSB. The score report shall be sent directly to the board from the testing organization, its designee or current official records custodian.

Section 2. Reinstatement applications to the board for licensure as a veterinarian shall include the following components:

(1) A completed application on a Reinstatement Application for Veterinarians form as found in 201 KAR 16:400 or online equivalent form provided by the board, including all required attachments;

(2) A complete national background check from a board approved background check provider, which may include a copy of the applicant's fingerprints captured at a board approved office for the purpose of a national background check;

(3) A copy of any court documents, settlement agreements, or other documents requested by the board in support of the application;

(4) Licensure verifications from all jurisdictions in which an applicant once held or currently holds a license as a veterinarian;

(5) A current credential report from the American Association of Veterinary State Boards (AAVSB);

(6) Proof of a minimum of thirty (30) board approved continuing education credits during the twenty-four (24) months immediately prior to the date of application; and

(7) Payment for the reinstatement application fee pursuant to 201 KAR 16:210.

Section 3. A veterinary license holder of the board shall be required to renew his or her license pursuant to 201 KAR 16:270.

Section 4. New applications to the board for licensure as a veterinary technician shall include the following components:

(1) A completed application on an Application for Licensure as a Veterinary Technician form as found in 201 KAR 16:400 or online equivalent form provided by the board, including all required attachments;

(2) A current color photograph of the applicant not smaller than two (2)-inches by two (2)-inches, or color copy of the applicant's current valid driver's license or passport with photo;

(3) An official copy of final transcripts, or copy of the applicant's diploma from the issuing school;

(4) A complete national background check from a board approved background check provider, which may include a copy of the applicant's fingerprints captured at a board approved office for the purpose of a national background check;

(5) A copy of any court documents, settlement agreements, or other documents requested by the board in support of the application.

(6) An official copy of an applicant's test scores from PSI

Services, the American Association of Veterinary State Boards (AAVSB), or other official records custodian;

(7) Payment for the application fee pursuant to 201 KAR 16:212; and

(8) In addition to the requirements listed in Section 3(1) – Section 3(7) of this administrative regulation, requirements for endorsement applications include licensure verifications from all jurisdictions in which an applicant once held or currently holds a license as a veterinary technician.

Section 5. Reinstatement applications to the board for licensure as a veterinary technician shall include the following components:

(1) A completed application on a Reinstatement Application for Veterinary Technicians form as found in 201 KAR 16:400 or online equivalent form provided by the board, including all required attachments;

(2) A complete national background check from a board approved background check provider, which may include a copy of the applicant's fingerprints captured at a board approved office for the purpose of a national background check;

(3) A copy of any court documents, settlement agreements, or other documents requested by the board in support of the application;

(4) Proof of a minimum of six (6) board approved continuing education credits during the twelve (12) months immediately prior to the date of application.

(5) Licensure verifications from all jurisdictions in which the applicant once held or currently holds a license as a veterinary technician;

(6) A current credential report from the American Association of Veterinary State Boards (AAVSB); and

(7) Payment for the application fee pursuant to 201 KAR 16:212.

Section 6. A veterinary technician license holder of the board shall be required to renew his or her license pursuant to 201 KAR 16:270.

Section 7. Veterinarian and veterinary technician license holders may apply to the board for a change in licensure status. Such requests shall include the following components:

(1) A completed application on a Licensure Status Change Request form as found in 201 KAR 16:400 or online equivalent form provided by the board, including all required attachments;

(2) Payment for the application fee pursuant to 201 KAR 16:210 for veterinarians or 201 KAR 16:212 for veterinary technicians.

Section 8. The board is authorized to conduct a national background check on each applicant for licensure. The board has the power to impose additional requirements as a condition of licensure or deny licensure following the board's review of findings from a national background check.

STEVEN J. WILLS, DVM, Chair

APPROVED BY AGENCY: June 14, 2019

FILED WITH LRC: June 19, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2019 at 1:00 p.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 prior to the end of the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. 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 establishes the application requirements for persons seeking a veterinary license or veterinary technician license.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the application material that the KBVE board approves as a requirement for licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.193, 321.221 and 321.441 each require the board to approve a degree or program for each applicant for veterinary and veterinary technician licenses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by clearly expressing what application requirements are created by the KBVE board.

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

(a) How the amendment will change this existing administrative regulation: 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: 2392 veterinary licenses, 421 veterinary technician licenses, and future applicants.

(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 application materials as outlined in this filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this is a prerequisite for application.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communication of the approved requirements.

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

(a) Initially: No costs are anticipated.

(b) On a continuing basis: No costs are anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation does not establish fees. Fees for the KBVE come from license and certification fees.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.193, 321.221, 321.441

(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 from this filing.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? Staff time for record keeping.

(d) How much will it cost to administer this program for subsequent years? Staff time will be required for record keeping. Costs will be very minimal.

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 or negligible.

Other Explanation:

GENERAL GOVERNMENT CABINET Kentucky Board of Veterinary Examiners (New Administrative Regulation)

201 KAR 16:250. Authorization for animal control agencies to apply for a restricted controlled substances certificate from DEA.

RELATES TO: KRS 321.207

STATUTORY AUTHORITY: KRS 321.207(2), 321.235(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.207 permits the board to authorize an animal control agency to apply for a registration certificate by the federal Drug Enforcement Administration (DEA) to euthanize animals. KRS 321.207 requires the applicant agency to comply with administrative regulations that establish standards for the proper storage and handling of the drugs the board has authorized for use, and other provisions that may be necessary to ensure that the drugs are used safely and solely for the purpose of euthanizing animals. This administrative regulation establishes the certification requirements, standards for proper drug storage, and drugs that may be used by certified animal control agencies and the certified animal euthanasia specialists they employ.

Section 1. General Requirements. (1) The applicant animal control agency shall apply to the board for authorization as defined by KRS 321.207.

(2) A complete application to the board shall include the following components:

(a) A completed Application for Certification as an Animal Control Agency form as found in 201 KAR 16:400 or online equivalent form as provided by the board, including all required attachments;

(b) Identification of the agency designated onsite manager;

(c) A complete national background check on the agency designated onsite manager from a board approved background check provider, which may include a copy of the applicant's fingerprints captured at a board approved office for the purpose of a national background check;

(d) A complete and current list of all individuals performing

euthanasia activities at the animal control facility; and

(e) Payment of the fee in accordance with 201 KAR 16:214.

(3) Prior to the board's issuance of the certificate of authorization, the applicant shall undergo an inspection of the facility by the board inspector or other designee of the board.

(4) Following board application approval, the applicant shall apply to DEA for registration as a practitioner and designate "animal shelter" on the appropriate DEA form.

(5) A certified animal control agency shall submit to inspection by a board representative at any time, with or without advanced notice.

(6) A certified animal control agency shall designate an onsite manager of the shelter. The agency shall notify the board in writing within ten (10) days of any change in the onsite manager of the shelter.

(7) Animal control agency certificate renewal requirements.

(a) An animal control agency shall renew the board certification annually in accordance with 201 KAR 16:272.

(b) Failure to renew the certificate for an animal control agency shall result in the following actions by the board:

1. The animal control agency certificate shall be moved to expired status;

2. All certified animal euthanasia specialists under the employment of the formerly certified animal control agency shall be moved to inactive status; and

3. The DEA shall be notified of the lapse in certification.

4. An animal control agency shall have five (5) years to reinstate their certificate, after which the agency must apply for a new certificate in accordance with this administrative regulation and 201 KAR 16:272.

Section 2. Approved Drugs. A certified animal control agency shall be restricted to the purchase of sodium pentobarbital and sodium pentobarbital with lidocaine for the purpose of euthanizing animals. DEA's Schedule II order forms (titled "DEA-222") shall be used for each purchase of sodium pentobarbital or sodium pentobarbital with lidocaine.

Section 3. Records. (1) A certified animal control agency shall maintain records of purchases and administration of sodium pentobarbital and sodium pentobarbital with lidocaine for a period of not less than two (2) years.

(2) Records of administration shall include, at a minimum, the following information:

(a) The date of use;

(b) Identification of the animal;

(c) The amount of the drug used;

(d) The signature of the person administering the drug;

(e) The signature of the onsite manager certifying the accuracy of the administration of sodium pentobarbital and sodium pentobarbital with lidocaine not less than once per month; and

(f) The signature of the onsite manager certifying to the accuracy of the records.

(3) Records of purchases of sodium pentobarbital and sodium pentobarbital with lidocaine shall be maintained in a separate file from the records of administration of such substances.

(4) The records of purchases and administration records are subject to audit by representatives of the DEA or authorized designees of the board to determine adequacy, accuracy, and validity of the recordkeeping.

(5) The records of purchases and administration shall be maintained at the location of the agency.

Section 4. Storage. (1) Sodium pentobarbital and sodium pentobarbital with lidocaine shall be stored in a securely locked cabinet within a locked storage room or other enclosure at the certified animal control agency.

(2) Schedule II order forms shall be stored in a securely locked cabinet within a locked storage room or other enclosure at the certified animal control agency.

Section 5. Disposal of Needles and Medical Waste. All needles generated in the process of euthanizing animals shall be disposed

of pursuant to KRS 217.177(6).

Section 6. Disciplinary Action. An animal control agency and its employees shall be subject to disciplinary action pursuant to KRS 321.235(7) and KRS 321.351 for a violations of state or federal statutes or administrative regulations.

STEVEN J. WILLS, DVM, Chair

APPROVED BY AGENCY: June 14, 2019

FILED WITH LRC: June 19, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2019 at 1:00 p.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 prior to the end of the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. 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 establishes the application requirements for animal control agencies seeking to use restricted controlled substances.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the application material that the KBVE board approves as a requirement for licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.207 requires the board to create qualifications for authorization of applicant to seek DEA approval for use of restricted controlled substances.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by clearly expressing what application requirements are created by the KBVE board.

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

(a) How the amendment will change this existing administrative regulation: 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: 57 animal control agencies and 196 animal euthanasia specialists, and future applicants.

(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 application materials as outlined in this filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this is a prerequisite for application.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communication of the approved requirements.

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

(a) Initially: No costs are anticipated.

(b) On a continuing basis: No costs are anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation does not establish fees. Fees for the KBVE come from license and certification fees.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.207

(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 from this filing.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? This is not a new program.

(d) How much will it cost to administer this program for subsequent years? Staff time will be required for record keeping. Costs will be very minimal.

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 or negligible.

Other Explanation:

GENERAL GOVERNMENT CABINET Department of Agriculture Kentucky Board of Veterinary Examiners (New Administrative Regulation)

201 KAR 16:260. Certification as an animal euthanasia specialist.

RELATES TO: KRS 321.207

STATUTORY AUTHORITY: KRS 321.235

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.207(3) requires the board to issue a certificate to a person who meets the qualifications of an animal euthanasia specialist and is approved by the board for a certificate. This administrative regulation establishes the qualifications for certification as an

animal euthanasia specialist and the duties of an animal euthanasia specialist.

Section 1. In order to be eligible for certification as a certified animal euthanasia specialist an applicant shall:

(1) Be twenty-one (21) years of age;

(2) Be of good moral character;

(3) Not have been convicted of, or entered an "Alford" plea or plea of nolo contendere to, irrespective of an order granting probation or suspending imposition of any sentence imposed following the conviction or entry of such plea, one (1) or more of the following in the last ten (10) years:

(a) A felony;

(b) An act involving moral turpitude or gross immorality; or

(c) A violation of any law, rule, or administrative regulation of this state, any other state, or the federal government which involves the use or trafficking of illegal substances;

(4) Have received a high school diploma or GED;

(5) Paid the initial certification fee as specified in 201 KAR 16:214;

(6) Be employed by a board certified animal control agency; and

(7) Complete a board approved sixteen (16) hour euthanasia specialist training course as set forth in Section 2 of this administrative regulation within ten (10) years prior to application.

Section 2. Euthanasia Specialist Training Course Curriculum.

(1) The curriculum for the sixteen (16) hour euthanasia specialist course shall provide information on the following subjects:

(a) Pharmacology, proper administration, and storage of euthanasia solutions that shall consist of a minimum of eight (8) hours;

(b) Federal and state laws regulating the storage and accountability for euthanasia solutions;

(c) Euthanasia specialist stress management;

(d) Proper animal handling with emphasis on easing the trauma and stress to the animal; and

(e) Disposal of euthanized animals.

(2) A training course for a euthanasia specialist shall be reviewed and approved by the board prior to presentation. A provider of a euthanasia specialist training shall submit the following information:

(a) A published course or similar description;

(b) Names and qualifications of current instructors;

(c) A copy of the program agenda indicating hours of education, coffee, and lunch breaks;

(d) A copy of the full program curriculum; and

(e) A copy of an official certificate of completion from the sponsoring agency.

Section 3. An application to the board for licensure as a certified animal euthanasia specialist shall include the following components:

(1) A completed application on an Application for Certification as an Animal Euthanasia Specialist form as found in 201 KAR 16:400 or online equivalent form provided by the board, including all required attachments;

(2) An official copy of final transcripts or a copy of the applicant's diploma from high school or highest level of education attained or G.E.D. certificate;

(3) A copy of a certificate of completion from a board approved 16-hour euthanasia training course;

(4) A complete national background check from a board approved background check provider, which may include a copy of the applicant's fingerprints captured at a board approved office for the purpose of a national background check; and

(5) Payment for the application fee pursuant to 201 KAR 16:214.

Section 4. An individual with an expired animal euthanasia specialist certificate may reinstate their certificate. Reinstatement applications seeking board approval for certification as an animal euthanasia specialist shall include the following components:

(1) A completed application on a Reinstatement Application for Animal Euthanasia Specialists form as found in 201 KAR 16:400 or online equivalent form provided by the board, including all required attachments;

(2) A complete national background check from a board approved background check provider, which may include a copy of the applicant's fingerprints captured at a board approved office for the purpose of a national background check; and

(3) Payment for the application fee pursuant to 201 KAR 16:214.

Section 5. An application to the board for approval for a change in licensure status shall include the following components:

(1) A completed application on a Licensure Status Change Request or online equivalent form provided by the board, including all required attachments; and

(2) Payment for the application fee pursuant to 201 KAR 16:214.

Section 6. The board is authorized to conduct a national background check on each applicant for licensure. The board has the power to impose additional requirements as a condition of licensure or deny licensure following the board's review of findings from a background check.

Section 7. Employment and Termination. (1) A person may function as a certified animal euthanasia specialist only while he or she remains employed by a certified animal control agency in Kentucky.

(2) Upon termination of employment with a certified animal control agency, a certified animal euthanasia specialist's certificate status shall automatically be moved by the board from an active to inactive status. The certified individual shall not perform animal euthanasia until he or she has obtained employment with a certified animal control agency, and applied to the board and been approved to move the certificate back into active status.

Section 8. Duties of a Certified Animal Euthanasia Specialist. The duties of certified animal euthanasia specialist shall include the following:

- (1) Preparing animals for euthanasia;
- (2) Carefully and accurately recording dosages, administration, and drug waste;
- (3) Ordering supplies and drugs;
- (4) Maintaining the security of all controlled substances and drugs in accordance with 201 KAR 16:250;
- (5) Reporting to the board any infraction of KRS Chapter 321 or the administrative regulations promulgated thereunder;
- (6) Humanely euthanizing animals;
- (7) Disposing of the bodies in a manner consistent with KRS 257.160;
- (8) Maintaining his or her certification;
- (9) Reporting to the board any change of address within thirty (30) days; and
- (10) Providing a written response to a grievance or inquiry from the board within twenty (20) days of receipt.

Section 9. Approved Methods of Euthanasia. (1) A certified animal euthanasia specialist shall perform euthanasia by means of lethal injection on an animal by use of sodium pentobarbital or sodium pentobarbital with lidocaine, in a manufactured dosage form, whose only indication is for euthanizing animals.

(2) When using a lethal solution to perform euthanasia on an animal, a certified animal euthanasia specialist shall use the appropriate solution in accordance with the following methods and in the following order of preference:

- (a) Intravenous injection by hypodermic needle;
- (b) Intraperitoneal injection by hypodermic needle;
- (c) Intracardial injection by hypodermic needle, but only on a sedated or unconscious animal;
- (d) Solution or powder added to food.

Section 10. Disciplinary Action. A certified animal euthanasia

specialist shall be subject to disciplinary action pursuant to KRS 321.235(7) and 321.351 for violations of state or federal statutes or regulations.

STEVEN J. WILLS, DVM, Chair

APPROVED BY AGENCY: June 14, 2019

FILED WITH LRC: June 19, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2019 at 1:00 p.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 prior to the end of the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. 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 establishes the application requirements for animal euthanasia specialists.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the application material that the KBVE board approves as a requirement for licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.207 requires the board to create qualifications for authorization of applicant to seek board approval as an animal euthanasia specialists.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by clearly expressing what application requirements are created by the KBVE board.

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

(a) How the amendment will change this existing administrative regulation: 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: 57 animal control agencies and 196 animal euthanasia specialists, and future applicants.

(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 application materials as outlined in this filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this is a

perquisite for application.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communication of the approved requirements.

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

(a) Initially: No costs are anticipated.

(b) On a continuing basis: No costs are anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation does not establish fees. Fees for the KBVE come from license and certification fees.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.207

(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 from this filing.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? Staff time will be required for record keeping.

(d) How much will it cost to administer this program for subsequent years? Staff time will be required for record keeping. Costs will be very minimal.

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 or negligible.

Other Explanation:

GENERAL GOVERNMENT CABINET Kentucky Board of Veterinary Examiners (New Administrative Regulation)

201 KAR 16:270. License renewal for veterinarians and veterinary technicians; renewal notice.

RELATES TO: KRS 321.193, 321.211, 321.441

STATUTORY AUTHORITY: KRS 321.235, 321.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.193, 321.221, and 321.441 require the board to issue a license or registration to all persons successfully passing the examination and being qualified to engage in the practice of veterinary medicine or as a veterinary technician in the Commonwealth. KRS 321.211 and 321.441 provide for the renewal of the license or registration. This administrative regulation requires a renewal notice to all licensed veterinarians and veterinary technicians and requires all licensed veterinarians and veterinary technicians to complete the

renewal application and return it, along with the renewal fee to the board. It further requires all licensed veterinarians and veterinary technicians to keep the board apprised of the legal name and current address of the licensee.

Section 1. (1) The board shall, not later than August 31 of each even-numbered year, email or mail to each licensed veterinarian a biannual renewal notice.

(2) The board shall, not later than August 31 of each year, email or mail to each licensed veterinary technician an annual renewal notice.

(3) The renewal application shall be completed by the licensee and returned to the board, including all required attachments and, if required by the board, proof of course completion of the required continuing education.

(4) Timely receipt of renewal application.

(a) Renewals bearing a postmark, or, in the case of online renewal, a timestamp, of September 30 or earlier shall be considered received on time.

(b) Renewals bearing a postmark, or, in the case of online renewal, a timestamp, between October 1 and November 30 shall be considered late and therefore incur a late fee pursuant to 201 KAR 16:210.

(5)(a) The renewal fee shall be attached to the completed renewal form when it is returned to the board.

(b) The renewal fee shall be paid in accordance with 201 KAR 16:210 for veterinarians and 201 KAR 16:212 for veterinary technicians.

Section 2. (1) Every licensed veterinarian shall list his or her continuing education hours received pursuant to 201 KAR 16:290 on the Renewal Application for Veterinarians form as found in 201 KAR 16:400 or online equivalent form provided by the board, including all required attachments, and if required, proof of attendance or completion of training to the board.

(2) Every licensed veterinary technician shall list his or her continuing education hours received pursuant to 201 KAR 16:290 on the Renewal Application for Veterinary Technicians form as found in 201 KAR 16:400 or online equivalent form provided by the board, including all required attachments, and if required by the board, proof of course completion of the required continuing education.

(3)(a) The board shall not renew the license of any person who fails to appropriately document the required hours of continuing education.

(b) The veterinarian license shall expire and subsequently be terminated as prescribed by KRS 321.211.

(c) The veterinary technician license shall expire and subsequently be terminated as prescribed by KRS 321.441.

Section 3. The board shall not be held responsible or liable for lost renewal notices, or renewal notices not received, or not received on time. (1) Regardless of cause, the board has no obligation to refund money to a licensee who fails to renew in a timely manner pursuant to Section 1(4) of this administrative regulation.

(2) If a licensee fails to renew by the grace period deadline, the license shall expire. The former licensee has not more than five (5) years from the date of expiration to apply for reinstatement of the license in accordance with 201 KAR 16:240. A reinstatement application is required during this period; an application for a new license will not be accepted until five (5) years after the date of expiration.

Section 4. Every licensed veterinarian or veterinary technician shall file his or her legal name and proper and current mailing address with the board at its principal office and shall within thirty (30) days notify the board of any changes of his or her legal name or mailing address.

STEVEN J. WILLS, DVM, Chair

APPROVED BY AGENCY: June 14, 2019

FILED WITH LRC: June 19, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2019 at 1:00 p.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 prior to the end of the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. 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 establishes the requirements for persons seeking to renew a veterinary license or veterinary technician license.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the material that the KBVE board approves as a requirement for licensure renewal.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.193, 321.221 and 321.441 each require the board to approve materials needed for veterinary and veterinary technician license renewals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by clearly expressing what renewal requirements are created by the KBVE board.

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

(a) How the amendment will change this existing administrative regulation: 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: 2392 veterinary licenses, 421 veterinary technician licenses.

(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 renewal materials as outlined in this filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this is a prerequisite for renewal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communication of the approved requirements.

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

(a) Initially: Costs of review and administration.

(b) On a continuing basis: Costs of review and administration.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation does not establish fees. Fees for the KBVE come from license and certification fees that are established in 201 KAR 210.

(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 necessary at this time.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established. 201 KAR 210 establishes the renewal fees.

(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 KBVE

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.193, KRS 321.221, KRS 321.441

(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 from this filing.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? Staff time for record keeping.

(d) How much will it cost to administer this program for subsequent years? Staff time will be required for record keeping. Costs will be very minimal.

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 or negligible.

Other Explanation:

GENERAL GOVERNMENT CABINET Kentucky Board of Veterinary Examiners (New Administrative Regulation)

201 KAR 16:272. License renewal for registered animal control agencies and animal euthanasia specialists; renewal notice.

RELATES TO: KRS 321.207

STATUTORY AUTHORITY: KRS 321.207, 321.235

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.207 requires the board to issue a certificate or registration to all agencies being qualified to register with the U.S. Drug Enforcement Administration (DEA) to purchase, possess, and use board authorized controlled substances, and to all persons qualified to engage in the practice of animal euthanasia in the Commonwealth. This administrative regulation requires a renewal notice to all registered animal control agencies and animal euthanasia specialists and requires all registered animal control agencies and animal euthanasia specialists to complete the renewal application and return it, along with the renewal fee to the board. It further requires all registered animal control agencies and animal euthanasia specialists to keep the board apprised of the legal name and current address of the licensee.

Section 1. (1) The board shall, not later than February 1 of each year, email or mail to each registered animal control agencies and animal euthanasia specialists a renewal notice.

(2) The renewal application shall be completed by the certified entity and returned to the board, including all required attachments and fees.

(3) Timely receipt of renewal application.

(a) Renewals bearing a postmark, or, in the case of online renewal, a timestamp, of March 1 or earlier shall be considered received on time.

(b) Renewals bearing a postmark, or, in the case of online renewal, a timestamp, between March 2 and April 30 shall be considered late and therefore incur a late fee pursuant to 201 KAR 16:214.

(5) The renewal fee shall be attached to the completed renewal form when it is returned to the board.

(a) For certified animal control agencies, the renewal form is the Renewal Application for Animal Control Agencies form as found in 201 KAR 16:400 or online equivalent form provided by the board, including all required attachments.

(b) For certified animal euthanasia specialists, the renewal form is the Renewal Application for Animal Euthanasia Specialists form as found in 201 KAR 16:400 or online equivalent form provided by the board, including all required attachments.

(6) The renewal fee shall be paid in accordance with 201 KAR 16:214.

Section 2. The board shall not be held responsible or liable for lost renewal notices, or renewal notices not received, or not received on time. (1) Regardless of cause, the board has no obligation to refund money to a certificate holder who fails to renew in a timely manner pursuant to Section 1(3) of this administrative regulation.

(2) If a certificate holder fails to renew by the grace period deadline, the certificate shall expire. The former certificate holder has not more than five (5) years from the date of expiration to apply for reinstatement of the license in accordance with 201 KAR 16:250 and 201 KAR 16:260.

Section 3. Current contact information must be on file with the board. (1)(a) Every certified animal control agency shall file his or her proper and current mailing address with the board at its principal office and shall within thirty (30) days notify the board of any changes of his or her mailing address.

(b) Every certified animal control agency shall file an update with the board to notify the board of any changes to the designated onsite manager tasked with management of controlled substances and the euthanasia program pursuant to 201 KAR 16:250, or of any changes of his or her legal name.

(c) The certified animal control agency shall submit a complete national background check on the new agency designated onsite manager from a board approved background check provider, which may include a copy of the applicant's fingerprints captured at a board approved office for the purpose of a national background check. The results shall be submitted to the board within thirty (30) days of designating a new onsite manager.

(2) Every certified animal euthanasia specialist shall file his or her legal name and proper and current mailing address with the board at its principal office and shall within thirty (30) days notify the board of any changes of his or her legal name or mailing address.

STEVEN J. WILLS, DVM, Chair

APPROVED BY AGENCY: June 14, 2019

FILED WITH LRC: June 19, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2019 at 1:00 p.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 prior to the end of the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. 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 establishes the requirements for persons seeking to renew a veterinary license or veterinary technician license.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the material that the KBVE board approves as a requirement for licensure renewal.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.193, 321.221 and 321.441 each require the board to approve materials needed for veterinary and veterinary technician license renewals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by clearly expressing what renewal requirements are created by the KBVE board.

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

(a) How the amendment will change this existing administrative regulation: 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: 2392 veterinary licenses, 421 veterinary technician licenses.

(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 renewal materials as outlined in this filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this is a prerequisite for renewal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communication of the approved requirements.

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

(a) Initially: Costs of review and administration.

(b) On a continuing basis: Costs of review and administration.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation does not establish fees. Fees for the KBVE come from license and certification fees that are established in 201 KAR 210.

(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 necessary at this time.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established. 201 KAR 210 establishes the renewal fees.

(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 KBVE

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.193, 321.221, KRS 321.441

(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 from this filing.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? Staff time for record keeping.

(d) How much will it cost to administer this program for subsequent years? Staff time will be required for record keeping. Costs will be very minimal.

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 or negligible.

Other Explanation:

General GOVERNMENT CABINET Kentucky Board of Veterinary Examiners (New Administrative Regulation)

201 KAR 16:280. License, inactive and retired statuses.

RELATES TO: KRS 321.211

STATUTORY AUTHORITY: KRS 321.235, 321.440

NECESSITY, FUNDATION, AND CONFORMITY: KRS 321.441 provides for the establishment of conditions under which retired or inactive licenses may be renewed. This administrative regulation sets forth those conditions.

Section 1. Inactive License Status for Veterinarians and Veterinary Technicians. (1) A veterinarian or veterinary technician licensee of the board with a license in active status may request inactive licensure status by:

(a) Submitting a completed application Licensure Status Change Request form as found in 201 KAR 16:400 or online equivalent form provided by the board, including all required attachments; or

(b) Designating his or her intent to convert to inactive status on the appropriate renewal form for that license type during a renewal period.

(2) A licensee whose license is designated with an inactive status shall pay a renewal fee during each license cycle in accordance with 201 KAR 16:210 or KAR 16:212, as appropriate.

(3) No continuing education credits are required for licensees in inactive status.

(4) A licensee whose license is in an inactive status shall request reinstatement to an active license status by:

(a) Submitting a completed reinstatement application on a form

provided by the board, including all required attachments, or designating intent to reinstate to active status on the appropriate renewal form for that license type during a renewal period;

(b) Providing proof of continuing education in accordance with 201 KAR 16:290; and

(c) Providing a complete national background check from a board approved background check provider, which may include a copy of the applicant's fingerprints captured at a board approved office for the purpose of a national background check.

(5) There shall be no time limit on the number of years a veterinarian's license or veterinary technician's license may remain in an inactive status.

(6) A licensee whose license is in an inactive status shall not practice his or her profession in any capacity within the Commonwealth as long as the license remains in inactive status.

Section 2. Inactive License Status for Animal Euthanasia Specialists. (1) A certified animal euthanasia specialist with a certificate in active status may request inactive licensure status by:

(a) Submitting a completed application Licensure Status Change Request form as found in 201 KAR 16:400 or online equivalent form provided by the board, including all required attachments; or

(b) Designating his or her intent to convert to inactive status on the appropriate renewal form for that certificate type during a renewal period.

(2) A certified animal euthanasia specialist with a certificate in active status may be moved to inactive licensure status by the board if:

(a) His or her employment is severed with the animal control agency of record with the certificate holder's file; or

(b) The animal control agency employing the animal euthanasia specialist fails to renew its certificate in a timely manner.

(3) A certified animal euthanasia specialist whose certificate is designated with a status of inactive shall not pay a renewal fee.

(4) A certified animal euthanasia specialist whose certificate is in an inactive status shall request reinstatement to an active certificate status by:

(a) Submitting a completed reinstatement application on a form provided by the board, including all required attachments, or designating his or her intent to reinstate to active status on the appropriate renewal form for that certificate type during a renewal period; and

(b) Providing a complete national background check from a board approved background check provider, which may include a copy of the applicant's fingerprints captured at a board approved office for the purpose of a national background check.

(5) A certified animal euthanasia specialist whose certificate is in an inactive status due to a board action can have their certificate reinstated to active status by an action of the board following the reinstatement of the certified animal control agency where the animal euthanasia specialist is employed.

(6) An animal euthanasia specialist certificate in inactive status shall expire after five (5) years.

(7) A certificate holder whose license is in an inactive status shall not practice his or her profession in any capacity within the Commonwealth as long as the certificate remains in inactive status.

Section 3. Retired License Status. (1) A licensee of the board may request retired status by:

(a) Submitting a completed application Licensure Status Change Request form as found in 201 KAR 16:400 or online equivalent form provided by the board, including all required attachments; or

(b) Designating his or her intent to convert to retired status on the appropriate renewal form for that license type during a renewal period.

(2) A licensee whose license is designated in a retired status shall pay a one-time fee in accordance with 201 KAR 16:210 or 201 KAR 16:212, as appropriate.

(3) Once a license has been designated in a retired status, the

license cannot be reinstated.

(a) The board shall not authorize a person whose license is in a retired status to reinstate his or her license.

(b) A person whose license is in a retired status who desires to practice again must complete and submit a new application for licensure to the board in accordance with 201 KAR 16:240.

(4) A person whose license is a retired status shall not be able to practice his or her profession in any capacity within the Commonwealth unless he or she holds a new, separate license issued by the board.

STEVEN J. WILLS, DVM, Chair

APPROVED BY AGENCY: June 14, 2019

FILED WITH LRC: June 19, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2019 at 1:00 p.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 prior to the end of the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. 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 establishes the requirements for persons with a veterinary license or veterinary technician license that seek retirement or inactive status for that license.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the KBVE board procedure for licensure retirement or inactive status.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.221 requires the board to create a procedure for licensure retirement or inactive status.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by clearly expressing what requirements by the KBVE board for licensure retirement or inactive status.

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

(a) How the amendment will change this existing administrative regulation: 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: 2392 veterinary licenses, 421 veterinary technician licenses.

(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 application materials as outlined in this filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this is a prerequisite for application.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communication of the approved requirements.

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

(a) Initially: No costs are anticipated.

(b) On a continuing basis: No costs are anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation does not establish fees. Fees for the KBVE come from license and certification fees.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.193, 321.221, 321.441

(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 from this filing.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? Staff time for record keeping.

(d) How much will it cost to administer this program for subsequent years? Staff time will be required for record keeping. Costs will be very minimal.

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 or negligible.

Other Explanation.

GENERAL GOVERNMENT CABINET Kentucky Board of Veterinary Examiners (New Administrative Regulation)

201 KAR 16:290. Continuing education.

RELATES TO: KRS 321.211(7), 321.221, 321.235(6), 321.441(2)

STATUTORY AUTHORITY: KRS 321.211(7), 321.235(1), (3), (5), (6), (7), 321.441(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS

321.211(7) authorizes the board to require a person applying for renewal or reinstatement to show evidence of completion of continuing education. This administrative regulation establishes the requirements for continuing education hours relating to the practice of veterinary medicine.

Section 1. Continuing education requirements for license renewal. (1) A veterinarian shall complete biennially thirty (30) hours of continuing education to be eligible for renewal of his or her license. At least twenty (20) of the thirty (30) hours shall be directly related to the practice of veterinary medicine. No more than ten (10) of the thirty (30) hours shall pertain to practice management or other topics that are not directly related to the practice of veterinary medicine.

(2) A veterinary technician shall annually complete six (6) hours of continuing education to be eligible for renewal of his or her license.

(3) In addition to attendance at a conference, lecture, or seminar, a veterinarian or veterinary technician may complete the hours of continuing education required for renewal by the completion of audio or video recordings or electronic, computer, or interactive material prepared or approved by any of the organizations established in Section 2(1) and (2) of this administrative regulation. There is no limit to the number of online hours a licensee may apply to his or her renewal.

(4) Continuing education shall be earned from October 1 of each renewal period until September 30 at the end of the period, or until November 30 at the end of the grace period with the addition of a late fee.

(5) A veterinarian applying for renewal after completing his or her initial term of licensure after graduating from a veterinary college may complete a reduced number of hours of continuing education to be eligible for renewal as established in this subsection:

(a) A veterinarian completing his or her initial term of licensure who graduated from a veterinary college during the first year of the preceding biennium shall complete fifteen (15) hours of continuing education to be eligible for renewal. This paragraph shall not apply to applicants for licensure by endorsement under KRS 321.221.

(b) Continuing education requirements shall be waived for a veterinarian completing his or her initial term of licensure who graduated during the second year of the preceding biennium. This paragraph shall not apply to applicants for licensure by endorsement under KRS 321.221.

(6) A veterinarian or veterinary technician may submit a written request to the board for approval of a fellowship, internship, or residency in lieu of the continuing education hours required for license renewal. Continuing education requirements shall be waived when the written request has been approved by the board. The request must include a letter of verification from a representative of the organization providing the fellowship, internship, or residency opportunity; must be printed on the organization's letterhead; and must provide a description of the position itself, a summary of assigned tasks, and the anticipated or completed beginning and ending dates of the position.

(7) Continuing education requirements for reinstatement applications:

(a) For veterinarians, thirty (30) hours in a twenty four (24) month period prior to the date of application; and

(b) For veterinary technicians, six (6) hours in a twelve (12) month period prior to the date of application.

Section 2. Approved Continuing Education Courses. (1) The board hereby approves the following continuing education courses:

(a) All scientific programs of all organizations of the American Veterinary Medical Association (AVMA), its constituent organizations, and its recognized specialty groups and accredited veterinary medical institutions whose meetings impart educational material directly relating to veterinary medicine;

(b) Programs approved by the Registry of Approved Continuing Education (RACE) of the American Association of Veterinary State Boards (AAVSB);

(c) Accreditation modules offered by the United States

Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS), and

(d) All programs approved by the board pursuant to subsection (2) of this section.

(2) By a majority vote, the board may approve programs that are deemed to impart knowledge directly relating to the practice of veterinary medicine, including but not limited to the utilization and application of new techniques, scientific and clinical advances, and the achievement of research to assure expansive and comprehensive care to the public.

Section 3. Continuing Education Documentation Requirements.

(1) A licensee shall:

(a) Secure documentation of completed attendance at a course, detailing the hours earned;

(b) Submit on the Renewal Application for Veterinarians form or Renewal Application for Veterinary Technicians form as found in 201 KAR 16:400 or online equivalent forms provided by the board, as appropriate, the name, dates, and identifying information for each course he or she attended;

(c) Retain copies of continuing education documentation for a period of four (4) years from the date of licensure renewal.

(2) The board may require an applicant or licensee to submit copies of documentation of his or her attendance at continuing education courses.

Section 4. Continuing Education Requirement Waivers. (1) The board may, in individual cases involving medical disability or illness, grant waivers of the continuing education requirements or extensions of time within which to fulfill the same or make the required reports.

(a) A written request for an extension or waiver of continuing education requirements for medical disability or illness reasons waiver or extension of time shall be submitted by the licensee. The board may require a signed document from a physician or other health care provider to verify the licensee's claimed disability or illness.

(b) A waiver of the minimum continuing education requirements or an extension of time within which to fulfill the requirements shall not be granted by the board for a period of time exceeding one (1) calendar year.

(c) If the medical disability or illness upon which a waiver or extension has been granted persists beyond the period of the waiver or extension, the licensee shall have the option to apply for another extension.

(2) The board shall grant a waiver to a licensee who is unable to meet the continuing education requirements of this administrative regulation because of obligations arising from military duty.

(a) A licensee engaged in active military duty and deployed outside the United States for more than eight (8) months shall not be required to complete the continuing education requirement for licensure periods during which that status exists.

(b) A licensee who is called to active duty in the armed forces shall not be required to complete the continuing education requirement for licensure periods during which that status exists.

(c) The licensee requesting an extension or waiver pursuant to this subsection shall submit with his or her renewal or reinstatement paperwork, the appropriate military assignment form, deployment orders, or a statement from the licensee's unit commander confirming the call-up or deployment.

STEVEN J. WILLS, DVM, Chair

APPROVED BY AGENCY: June 14, 2019

FILED WITH LRC: June 19, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2019 at 1:00 p.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 prior to the end of the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. 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 establishes the continuing education requirements for persons seeking a veterinary license or veterinary technician license renewal or reinstatement.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the continuing education material that the KBVE board approves as a requirement for licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.211 and 321.441 each require the board to approve continuing education for for veterinary and veterinary technician licenses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by clearly expressing what continuing education requirements are created by the KBVE board.

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

(a) How the amendment will change this existing administrative regulation: 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: 2392 veterinary licenses, 421 veterinary technician licenses.

(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 application materials as outlined in this filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this is a prerequisite for application.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communication of the approved requirements.

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

(a) Initially: No costs are anticipated.

(b) On a continuing basis: No costs are anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation does not establish fees. Fees for the KBVE come from license and certification fees.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.221, KRS 321.441

(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 from this filing.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? Staff time for record keeping.

(d) How much will it cost to administer this program for subsequent years? Staff time will be required for record keeping. Costs will be very minimal.

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 or negligible.

Other Explanation:

GENERAL GOVERNMENT CABINET Kentucky Board of Veterinary Examiners (New Administrative Regulation)

201 KAR 16:300. Prescription and dispensation of drugs for animal use.

RELATES TO: KRS 321.181(5)(b)

STATUTORY AUTHORITY: KRS 321.235(3), 321.240(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.181(5)(b) provides that the practice of veterinary medicine includes the prescribing, administering, or dispensing of drugs and medications for veterinary purposes. KRS 321.235(3) and 321.240(5) authorize the board to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 321. This administrative regulation establishes a procedure for the prescription and dispensation of drugs by licensed veterinarians for use in animals.

Section 1. Definitions. (1) "Legend drug" means veterinary prescription drug.

(2) "Prescription" means an order from a veterinarian to a pharmacist or another veterinarian authorizing the dispensing of a veterinary prescription drug to a client for use on or in a patient;

(3) "Veterinary drug" means:

(a) A drug for animal use recognized in the official United States Pharmacopoeia or official National Formulary of the United States;

(b) A drug intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals;

(c) A drug, other than feed, medicated feed, or a growth promoting implant intended to affect the structure or function of the body of an animal; or

(d) A drug intended for use as a component of a drug in paragraph (a), (b), or (c).

(4) "Veterinary prescription drug" means:

(a) A drug that is not safe for animal use without a veterinarian using or ordering the use of the product, and that is required by federal law to bear the following statement: "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian";

(b) A drug that is required by state law to be dispensed only on order or prescription of a licensed veterinarian;

(c) The extra-label use of an over-the-counter animal drug or human drug; and

(d) A medicament compounded by mixing two (2) or more legally-obtained over-the-counter or prescription drugs.

Section 2. Prescribing and Dispensing. (1) A veterinary prescription shall include all of the following:

(a) The name and address of the veterinarian and, if the prescription is a written order, the signature of the veterinarian;

(b) The name and address of the client;

(c) The species and identity of the patient for which the prescription is issued;

(d) The name, strength, and quantity of the drug prescribed;

(e) The date on which the prescription is issued;

(f) The directions for administering the drug;

(g) If the patient is a food producing animal, the withdrawal time for the veterinary drug;

(h) If the prescription authorizes extra-label use, the manner in which the client may use the drug;

(i) Any cautionary statements required by law; and

(j) Number of refills allowed, not to exceed the limitations set forth in Section 6(2) of this administrative regulation.

(2) A veterinarian shall not prescribe for or dispense to a client a veterinary prescription drug or a drug for extra-label use without first personally examining the patient unless a veterinary-client-patient relationship already exists between the prescribing veterinarian, client and patient, and the veterinarian determines that the client has sufficient knowledge to administer the drug properly.

(3) A veterinarian shall not prescribe or dispense a veterinary prescription drug to a client unless the veterinarian indicates in the appropriate records described in Section 4 of this administrative regulation, within seventy-two (72) hours after the prescription is issued or the drug is dispensed, that the prescription has been issued or that the drug has been dispensed.

(4) A veterinarian shall not prescribe a drug to a client for extra-label use on a patient unless all of the following apply:

(a) The veterinary-client-patient relationship exists between the veterinarian, client, and patient and the veterinarian has made a careful medical diagnosis of the condition of the patient within the context of that veterinarian-client-patient relationship;

(b) The veterinarian determines that there is no drug that is marketed specifically to treat the patient's diagnosed condition, or determines that all of the drugs that are marketed for that purpose are clinically ineffective;

(c) The veterinarian recommends procedures to ensure that the identity of the patient(s) receiving the drug can be readily ascertained in the future; and

(d) If the patient is a food producing animal, the veterinarian prescribes a sufficient time period for drug withdrawal before the food from the patient may be marketed.

(5) A veterinarian shall not transmit a prescription electronically unless the client approves the transmission and the prescription is transmitted to a pharmacist or veterinarian designated by the client.

(6) A veterinarian shall not refuse to write an otherwise appropriate prescription for a patient solely because the prescription may be filled at an establishment other than the veterinarian's own clinic or pharmacy.

Section 3. Labeling. (1) A veterinarian shall not dispense a

drug that has been prepared, mixed, formulated, or packaged by the veterinarian unless the veterinarian affixes to the container in which the drug is dispensed a label containing all of the information specified in Section 2(1) of this administrative regulation, except the address of the client.

(2) A veterinarian shall not dispense a veterinary prescription drug that has been prepackaged by its manufacturer for dispensing unless the veterinarian affixes to the container in which the drug is dispensed a label containing all of the information specified in Section 2(1) of this administrative regulation, except the address of the client.

(3) A veterinarian may dispense a veterinary over-the-counter drug without affixing any information to the container in which the drug is dispensed if a label that has been affixed to the container by its manufacturer provides adequate information for its use.

Section 4. Prescription Records. (1) A veterinarian shall maintain complete records of each veterinary prescription drug that the veterinarian receives, prescribes, dispenses or administers, and of each prescription issued by the veterinarian that authorizes extra-label use.

(2) Records of each veterinary prescription drug shall include the name of each veterinary prescription drug that is received, the name and address of the person from whom the drug is received, and the date and quantity received, the name and address of the person to whom the drug is dispensed, and the date and quantity dispensed and, if the veterinarian prescribes or administers the drug, the information specified in Section 2(1) of this administrative regulation.

(3) Records of each prescription authorizing extra-label use shall include the information specified in Section 2(1) of this administrative regulation.

(4) A veterinarian shall maintain records of each veterinary prescription drug for at least five (5) years after the date on which the veterinarian prescribes, dispenses or administers the drug or extra-label use.

Section 5. (1) A veterinarian may refuse to write a prescription for controlled substances or a prescription for any medication that, in the veterinarian's medical judgment, is not appropriate for the patient's medical care.

(2) A veterinarian may refuse to write a prescription if it is not directly requested by a client with whom there is, in the veterinarian's opinion, a current and existing veterinarian-patient-client relationship.

(3) A prescription shall be construed to include any manner of authorization for filling a prescription, including verbal or electronic communication.

(4) The veterinarian may delegate to an office employee the authority to communicate a refill of a legend drug to the pharmacy on behalf of the veterinarian pursuant to written protocol established prior to the delegation of that authority.

Section 6. (1) A veterinarian shall ensure that federal legend drugs and veterinary prescription drugs are maintained, logged, administered, prescribed, dispensed, and destroyed in compliance with state and federal laws.

(2) A veterinarian shall not prescribe or dispense a quantity of drug that is greater than that the amount required for six (6) months of treatment for an animal, herd, or flock.

(3) To prescribe, sell, distribute, or dispense any drug requiring a prescription for use in the context of an animal, herd, or flock, a veterinarian shall first do all of the following:

(a) Perform an appropriate history and physical examination;

(b) Make a diagnosis based upon the history, physical examination, and pertinent diagnostic and laboratory tests;

(c) Formulate a therapeutic plan, and discuss it with the animal's owner (or the owner's agent) or guardian, along with the basis for it and the risks and benefits of various treatments options, a part of which might be a prescription drug; and

(d) Ensure availability of the veterinarian or the veterinarian's staff for appropriate follow-up care.

Section 7. (1) A veterinarian may dispense a prescription drug only if the prescribing veterinarian has established a veterinarian-client-patient relationship.

(2) If the dispensing veterinarian does not have a veterinarian-client-patient relationship, a licensed veterinary technician or a veterinary assistant may assist in the delivery of a veterinary drug, legend drug, or veterinary prescription drug only while he or she is under the direct supervision of the veterinarian who is his or her employer.

(3) If the dispensing veterinarian does have a veterinarian-client-patient relationship, a licensed veterinary technician or veterinary assistant may assist in the delivery of a veterinary drug, legend drug, or veterinary prescription drug while he or she is under the indirect supervision of the veterinarian who is his or her employer.

(4) If a licensed veterinary technician or veterinary assistant acts under the provisions of this section, it shall be the responsibility of the licensed veterinarian to ensure that the requirements of this administrative regulation are met.

Section 8. Enforcement. Except as provided in this section of this administrative regulation, if the board has reason to believe that a person is violating or has violated this administrative regulation, the board may:

(1) Inspect the premises on which the person possesses, prescribes, dispenses, labels or administers veterinary drugs;

(2) Inspect relevant records, equipment, materials, containers, or facilities;

(3) Collect samples of veterinary drugs found on the premises; and

(4) Conduct any other investigative activities necessary to open a case and issue a determination and, if necessary, hold hearings and enact discipline on the individual.

STEVEN J. WILLIS, DVM, Chair

APPROVED BY AGENCY: June 14, 2019

FILED WITH LRC: June 19, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2019 at 1:00 p.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 prior to the end of the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. 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 establishes the requirements for persons with a veterinary license for prescription and dispensation of drugs for animal use.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the KBVE board requirements for prescription and dispensation of drugs for animal use.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.235 and 321.240 each require the board to create requirements for prescription and dispensation of drugs for animal use. This filing fulfills that requirement.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by clearly expressing what requirements are created by the KBVE board for prescription and dispensation of drugs for animal use.

(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: 2392 veterinary licenses

(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 application materials as outlined in this filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this is a prerequisite for application.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communication of the approved requirements.

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

(a) Initially: No costs are anticipated.

(b) On a continuing basis: No costs are anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation does not establish fees. Fees for the KBVE come from license and certification fees.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.235, KRS 321.240

(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 from this filing.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? Staff time for record keeping.

(d) How much will it cost to administer this program for subsequent years? Staff time will be required for record keeping. Costs will be very minimal.

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 or negligible.

Other Explanation:

**GENERAL GOVERNMENT CABINET
Kentucky Board of Veterinary Examiners
(New Administrative Regulation)**

201 KAR 16:310. Procedures for grievances, investigations, and administrative charges.

RELATES TO: KRS 321.235(2), 321.351, 321.360

STATUTORY AUTHORITY: KRS 321.235(2), (3), 321.240(5), 321.351, 321.360

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.235(2) authorizes the board to investigate an allegation of a practice which violates the provisions of KRS Chapter 321. This administrative regulation establishes the procedures for handling grievances, investigations, and administrative charges.

Section 1. Intake of Grievances. (1) A complaint, grievance, or other allegation of misconduct (collectively, "grievance") which might constitute a violation of KRS Chapter 321 or 201 KAR Chapter 16 may be submitted by any individual, organization, or entity. The board may submit a grievance on its own initiative based on information in its possession that the board believes is sufficiently credible to justify a request for a response from the licensee (or other individual named in the grievance).

(2) The grievance shall be in writing on a Grievance Form and, if appropriate, an Authorization for the Release of Medical Records form as found in 201 KAR 16:400 provided by the board, and shall include the complaining party's name, address, telephone number, and signature. Electronic signatures shall be accepted.

(3) The board's chair, or the chair's designee, shall perform an initial screen of any grievance that was submitted without identifying the complaining party. The initial screen shall require the chair, or the chair's designee, to determine whether the grievance contains sufficient details or other indicators of credibility to justify a request for a response from the licensee (or other individual named in the grievance). If sufficient details or other indicators of credibility are lacking, then the grievance shall be discarded without further action.

(4) The board shall send a copy of the grievance to the licensee (or other individual named in the grievance) along with a request for a response. The response shall be required within twenty (20) days from the date of when the board sent a copy of the written grievance. Failure to respond in writing within twenty (20) days may constitute a violation of the Code of Ethical Conduct.

Section 2. Initial Review of Grievances. (1) After the time period for the licensee's (or named individual's) response has elapsed, at the next scheduled board meeting the Complaints Screening Committee shall consider the grievance, the response if one was received, and other relevant information that is available to the Committee.

(2) The Complaints Screening Committee shall determine if an investigation is warranted after reviewing the information that is available. An investigation shall be warranted if the committee determines, based on upon a totality of the circumstances, that a reasonable probability exists that the grievance has merit.

(3) If, in the opinion of the board, a grievance does not warrant an investigation, then the board shall notify the complaining party and the respondent that the grievance is being dismissed without investigation.

(4) The dismissal of a grievance without an investigation shall

constitute a final action of the board. Following such a dismissal, the grievance, the response from the individual named in the grievance, and correspondence which is intended to give notice of the dismissal shall be subject to disclosure pursuant to the Kentucky Open Records Act.

(5) If, in the opinion of the board, a grievance warrants an investigation, then the board shall open an investigation into the matter.

Section 3. Investigations. (1) The Complaints Screening Committee shall have the authority to direct an investigation and shall exercise those powers possessed by the board in regard to investigations as provided by KRS 321.235.

(2) The Complaints Screening Committee shall have the authority to request the participation of any person in an investigation. The refusal or failure of any board licensee or certificate holder to participate when requested, or to provide information and documents requested by the committee within the requested timeframe, shall be considered a violation of 201 KAR 16:200.

(3) Investigative reports shall be reviewed at a meeting of the committee.

Section 4. Reports and Recommendations Following Investigation. (1) If the board determines that the results of an investigation do not warrant the issuance of an administrative charge against the individual named in the grievance, then the board shall notify the complaining party and the individual that the grievance is being dismissed without further action.

(2) The dismissal of a grievance following an investigation shall constitute a final action of the board. Following such a dismissal, the grievance, the response from the individual named in the grievance, correspondence which is intended to give notice of the dismissal, and any other documents obtained or generated during the investigation (other than those documents that are subject to a legitimate claim of privilege or otherwise exempt from disclosure by law) shall be subject to disclosure pursuant to the Kentucky Open Records Act.

(3) If the board determines that the results of an investigation warrant the issuance of an administrative charge against a licensee, then the board shall cause an administrative charge to be prepared.

(4) If the board determines that the results of an investigation warrant proceedings against a person who is not a licensee, then the board shall cause a civil action to be prepared for filing in the Franklin Circuit Court or other court of competent jurisdiction.

Section 5. Administrative Charges. (1) The administrative charge shall:

(a) Be signed and dated by a member of the board or the board's authorized representative;

(b) Be designated with an administrative charge number;

(c) Set forth:

1. The board's jurisdiction in regard to the subject matter of the administrative charge; and

2. In numerical paragraphs, sufficient information to apprise the named licensee or individual of the general nature of the charges.

(d) A licensee's written response shall be due within thirty (30) days after the issuance of the administrative charge. Failure to respond within that time period may be taken by the board as an admission of the charges.

(2) Each notice shall be issued in accordance with KRS 13B.050.

Section 6. Proceedings Following the Issuance of an Administrative Charge. (1) The board shall arrange for the appointment of a hearing officer in accordance with KRS 13B.030 and 13B.040.

(2) The board's legal counsel shall act as the prosecuting attorney in regard to any disciplinary proceeding unless the board appoints a special prosecuting attorney.

(3) The board may appoint a representative of the Attorney General's office or another attorney to act as advisory counsel to

the board in regard to any deliberations of the board following the issuance of an administrative charge.

(4) The provisions of KRS Chapter 13B shall govern the conduct of the proceeding.

STEVEN J. WILLS, DVM, Chair

APPROVED BY AGENCY: June 14, 2019

FILED WITH LRC: June 19, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2019 at 1:00 p.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 prior to the end of the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. 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 establishes the procedures for persons holding a board license or certificate for instances of a grievances, investigations and administrative charges.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the procedure that the KBVE board will follow for grievances, investigations and administrative charges.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.235, 321.351 and 321.360 each require the board to approve a procedure for grievances, investigations and administrative charges.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by clearly expressing what requirements are created by the KBVE board for grievances, investigations and administrative charges.

(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: 2392 veterinary licenses, 421 veterinary technician licenses, 57 animal control agency certificate holders, 196 animal euthanasia specialist certificate holders.

(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

application materials as outlined in this filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this is a prerequisite for application.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communication of the approved requirements.

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

(a) Initially: No costs are anticipated.

(b) On a continuing basis: No costs are anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation does not establish fees. Fees for the KBVE come from license and certification fees.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.235, 321.351, 321.360

(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 from this filing.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? Staff time for record keeping.

(d) How much will it cost to administer this program for subsequent years? Staff time will be required for record keeping. Costs will be very minimal.

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 or negligible.

Other Explanation:

GENERAL GOVERNMENT CABINET Kentucky Board of Veterinary Examiners (New Administrative Regulation)

201 KAR 16:400. Material Incorporated by Reference.

RELATES TO: KRS 321.235, 321.351, 321.360

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 321 authorizes the KBVE to promulgate administrative regulations to prescribe rules for veterinary medicine in the Commonwealth of Kentucky. This administrative regulation incorporates the materials and forms used in the in 201 KAR Chapter 16.

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

material is incorporated by reference:

- (a) "Application for Certification as an Animal Control Agency," 2019;
- (b) "Application for Certification as an Animal Euthanasia Specialist," 2019;
- (c) "Application for Licensure as a Veterinarian," 2019;
- (d) "Application for Licensure as a Veterinary Technician," 2019;
- (e) "Application for Retake of the NAVLE," 2019;
- (f) "Authorization for the Release of Medical Records," 2019;
- (g) "Grievance Form," 2019;
- (h) "Licensure Status Change Request," 2019;
- (i) "Reinstatement Application for Animal Control Agencies," 2019;
- (j) "Reinstatement Application for Animal Euthanasia Specialists," 2019;
- (k) "Reinstatement Application for Veterinarians," 2019;
- (l) "Reinstatement Application for Veterinary Technicians," 2019;
- (m) "Renewal Application for Animal Control Agencies," 2019;
- (n) "Renewal Application for Animal Euthanasia Specialists," 2019;
- (o) "Renewal Application for Veterinarians," 2019;
- (p) "Renewal Application for Veterinary Technicians," 2019.
- (q) "Request for Continuing Education Approval," 2019;
- (r) "Request for Licensure Verification," 2019;
- (s) "Request for Name or Address Change," 2019; and
- (t) "Request for Mailing List," 2019;

(2) These materials may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. These materials may also be obtained at www.kybve.com.

Steven J. Wills, DVM, Chair

APPROVED BY AGENCY: June 14, 2019

FILED WITH LRC: June 19, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2019 at 1:00 p.m., at the Kentucky Department of Agriculture, 109 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 prior to the end of the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. 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 establishes the materials incorporated by reference for the KBVE.
- (b) The necessity of this administrative regulation: This regulation is necessary to establish the materials incorporated by reference for the KBVE.
- (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321 charged the KBVE with regulation of veterinary medicine. This filing establishes the materials incorporated by reference for the KBVE that are necessary to do that function.
- (d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by clearly expressing what forms are used by the KBVE.

(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: 2392 veterinary licenses, 421 veterinary technician licenses, 57 animal control agency certificate holders, 196 animal euthanasia specialist certificate holders.

(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: Persons interacting with the KBVE will be required to use the forms in this filing.
- (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this is a prerequisite for KBVE interaction.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communication of the approved requirements.

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

- (a) Initially: No costs are anticipated.
- (b) On a continuing basis: No costs are anticipated.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation does not establish fees. Fees for the KBVE come from license and certification fees.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fees are necessary at this time.
- (8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established.
- (9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.

(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 from this filing.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first

year? Staff time for record keeping.

(d) How much will it cost to administer this program for subsequent years? Staff time will be required for record keeping. Costs will be very minimal.

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 or negligible.

Other Explanation:

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(New Administrative Regulation)**

301 KAR 1:185. Pay lakes.

RELATES TO: KRS 150.470, 150.990

STATUTORY AUTHORITY: KRS 150.025(1)(h), 150.175(24), 150.660

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)(h) authorizes the department to promulgate administrative regulations reasonably necessary to carry out the purposes of KRS Chapter 150. KRS 150.175(24) establishes a pay lake license that authorizes the holder to operate privately-owned impounded waters for fishing purposes for which a fee is charged. KRS 150.660 authorizes a person to establish a pay lake subject to the approval of the Commissioner of the department. This administrative regulation establishes the requirements for pay lake operators.

Section 1. Definitions. (1) "Pay lake" means a privately-owned, impounded body of water where a daily fee is charged to fish, and is open to the public.

(2) "Pay lake operator" means a person who holds a valid pay lake license, as established in 301 KAR 3:022.

(3) "Trophy catfish" means a:

(a) Blue or flathead catfish that is a minimum of thirty-five (35) inches in length; or

(b) Channel catfish that is a minimum of twenty-eight (28) inches in length.

Section 2. Pay Lake License and Signage. (1) A person shall not operate a pay lake without a valid pay lake license.

(2) A pay lake license shall be transferable, but only for the same pay lake, except that no license may be transferred while an enforcement action is pending.

(3) A pay lake operator shall post clearly visible signage stating:

(a) The water body of origin of stocked catfish and any associated consumption advisories, if applicable; and

(b) Fish handling policies if catch and release fishing is offered.

Section 3. Documentation and Fish Stocking Requirements. (1) A pay lake shall not accept catfish that have been gifted to them.

(2) A pay lake shall save all receipts for three (3) years from the date of purchase, for each fish order received, and include the information established in paragraphs (a) through (c) of this subsection.

(a) The name, address, and telephone number of:

1. The hatchery, if obtained from a hatchery; or

2. The commercial fisherman and driver who provided the fish, if obtained from public waters.

(b) Purchase dates;

(c) The following details of fish by species, except catfish shall be recorded with separate entries for trophy and non-trophy catfish of each species, which includes the:

1. Estimated number of fish;

2. Poundage; and

3. Waterbody of origin.

(3) A pay lake may stock trophy catfish from public waters up to 750 pounds per surface acre of water per stocking, with a

maximum annual limit of up to 2,250 pounds per surface acre of water per calendar year.

Section 4. Non-conforming Pay Lakes. Any lake not meeting the definition of a pay lake, as established in Section 1 of this administrative regulation, shall not qualify for a pay lake license, except that any non-conforming pay lake that was previously licensed as a pay lake for all license years 2008 through 2018 inclusive, shall be permitted to renew a pay lake license until the pay lake operator does not purchase a pay lake license for one (1) annual license period or the pay lake license is revoked as established in Section 6 of this administrative regulation. Notwithstanding any other provision, non-conforming pay lake licenses are non-transferable, and shall not be renewed after the 2054-2055 license year.

Section 5. Pay Lakes With Trophy Catfish From Public Waters. (1) There shall be a maximum of thirty-five (35) pay lakes with trophy catfish originating from public waters in any pay lake license year.

(2) If there are more than thirty-five (35) licensed pay lakes, as established in subsection (1) of this section, at the effective date of this administrative regulation, each licensed pay lake shall be permitted to renew a pay lake license until the pay lake operator does not purchase a pay lake license for one (1) annual license period.

(3) If at the end of a pay lake license year, less than thirty-five (35) pay lake licenses were issued, as established in subsection (1) of this section, then the department shall issue pay lake licenses on a first-come, first-served basis beginning on the first work day of the next license year.

Section 6. Pay Lake License Revocation. (1) A pay lake operator who violates this administrative regulation or is convicted or enters a guilty plea to any state or federal fish or game violation shall have his or her pay lake license revoked for a period of three (3) months for a first offense, one (1) year for a second offense, and two (2) years for a third or subsequent offense, except any revocation of non-conforming pay lake licenses shall be permanent.

(2) A pay lake operator whose pay lake license is denied, revoked, or suspended may request an administrative hearing as established in KRS Chapter 13B.

(3) A request for a hearing shall be in writing and postmarked or delivered in person to the department no later than thirty (30) days after notification of the denial or revocation.

(4) Upon receipt of the request for a hearing, the department shall proceed as established in KRS Chapter 13B.

(5) The hearing officer's recommended order shall be considered by the Commissioner and the Commissioner shall issue a final order as established in KRS Chapter 13B. Approved by the Fish and Wildlife Commission

RICH STORM, Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY: July 15, 2019

FILED WITH LRC: July 15, 2019 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 26, 2019 at 1:00 p.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 August 31, 2019. Send written notification of intent to attend the public hearing or written

comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jessica Tyler, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, email: fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jessica Tyler

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for pay lake operators, including signage, documentation, and stocking restrictions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide oversight on the pay lake industry and ensure that overharvest of trophy catfish originating from public waters is prevented.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1)(h) authorizes the department to promulgate administrative regulations reasonably necessary to carry out the purposes of KRS Chapter 150. KRS 150.175(24) establishes a pay lake license that authorizes the holder to operate privately-owned impounded waters for fishing purposes for which a fee is charged. KRS 150.660 authorizes a person to establish a pay lake subject to the approval of the commissioner of the department.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing requirements and limits for pay lake operators.

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

(a) How the amendment will change this existing administrative regulation: N/A.

(b) The necessity of the amendment to this administrative regulation: N/A.

(c) How the amendment conforms to the authorizing statutes: N/A.

(d) How the amendment will assist in the effective administration of the statutes: N/A.

(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: All pay lake operators and anglers fishing pay lakes will be affected. It is unknown how many pay lake operators and anglers will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Pay lake operators will now be required to keep fish stocking records for fish reared at private hatcheries and those originating from public waters. Pay lake operators will also have to provide signage stating origin of fish, consumption advisories (if any), and fish handling policies for catch-and-release fishing. The number of trophy catfish stocked from public waters will also be limited to 750 pounds per surface acre per stocking, with a maximum of 2,250 pounds per surface acre of water per calendar year. Anglers fishing pay lakes will have to follow posted fish handling policies when catch-and-release fishing. Finally, there will be a limit of 35 pay lakes allowed to offer trophy catfish fishing for fish originating from public waters.

(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 minimal costs to create required signage. There will be no other costs associated with this administrative regulation. However, there will be additional costs associated with fee increases to pay lake licenses established in 301 KAR 3:022. Proposed pay lake license fees associated with

301 KAR 3:022 will be dependent on whether pay lakes receive catfish reared at private hatcheries or originating from public waters. For those receiving all catfish reared at private hatcheries, the license fee will be \$250 for the first two pond acres, plus \$50 for each additional acre. For those receiving all or a portion of catfish originating from public waters, the license fee will be \$600 for the first two pond acres, plus \$50 for each additional acre.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anglers fishing pay lakes will now be aware of any fish consumption advisories for fish they harvest. Pay lakes should now have better survival of trophy catfish in their ponds that offer catch-and-release fishing. Pay lake operators will also be able to provide the department with fish stocking information that will support their efforts in trophy catfish conservation in public waters.

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

(a) Initially: In order to provide oversight of the pay lake industry and to monitor catfish usage from public waters, it will require approximately \$30,000 for two seasonal Fish and Wildlife Technician I positions to monitor and review data provided by the pay lakes initially.

(b) On a continuing basis: Pay lake monitoring will continue each year at an approximate cost of \$30,000 annually.

(6) What is the source of the funding to be used for 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. Pay lake license fees were recently established in 301 KAR 3:022 (see (4)(b)) above.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: See (4)(b) above.

(9) TIERING: Is tiering applied? Yes. Tiering is applied because there are two tiers of requirements in this administrative regulation and for fees established in 301 KAR 3:022. One tier is for pay lake operators who stock fish obtained from private hatcheries only, and one tier is for pay lake operators who stock some or all of their fish from public waters.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department's Divisions of Fisheries and Law Enforcement will be impacted.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 150.025 (1)(h), 150.175 (24), and 150.660.

(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 from this administrative regulation in the first year; however it is unknown how much revenue will be generated pursuant to fees associated with 301 KAR 3:022 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 revenue will be generated by this administrative regulation during subsequent years; however it is unknown how much revenue will be generated pursuant to fees associated with 301 KAR 3:022 during subsequent years.

(c) How much will it cost to administer this program for the first year? It will require approximately \$30,000 for two seasonal Fish and Wildlife Technician I positions to monitor and review data provided by the pay lakes in the first year.

(d) How much will it cost to administer this program for subsequent years? It will require approximately \$30,000 for two seasonal Fish and Wildlife Technician I positions to monitor and review data provided by the pay lakes for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET
Department of Agriculture
Office of the Commissioner
(Repealer)**

302 KAR 34:011. Repeal of 302 KAR 34:010, 302 KAR 34:020, 302 KAR 34:030, 302 KAR 34:040, 302 KAR 34:050, 302 KAR 34:060.

RELATES TO: KRS CHAPTER 247

STATUTORY AUTHORITY: KRS 251.610, 251.640, 251.700, 251.451, KRS 251.720, 251.680, 251.430, 251.600, 251.440, 251.480, 251.490, KRS 251.500, KRS 251.990

NECESSITY, FUNCTION, AND CONFORMITY: KRS 251.610, KRS 251.640, KRS 251.700, KRS 251.451, KRS 251.720, KRS 251.680, KRS 251.430, KRS 251.600, KRS 251.440, KRS 251.480, KRS 251.490, KRS 251.500, KRS 251.990 each authorizes the commissioner to establish and determine the rules and administrative regulations for Kentucky grain dealers and the Kentucky grain indemnity program. This administrative regulation repeals 302 KAR 34:010, 302 KAR 34:020, 302 KAR 34:030, 302 KAR 34:040, 302 KAR 34:050, and 302 KAR 34:060 because the authorizing statutes have been revised by the General Assembly in 2019 and new administrative regulations are needed and will be filed once those provisions go into effect.

Section 1. The following administrative regulations hereby repealed:

(1) 302 KAR 34:010. Definitions;

(2) 302 KAR 34:020. Bonding requirements;

(3) 302 KAR 34:030. License and records required for each location;

(4) 302 KAR 34:040. Receivership of grain of insolvent dealers and warehousemen;

(5) 302 KAR 34:050. Grain dealer licensing of federal warehouses, and

(6) 302 KAR 34:060. Criteria for maintaining license under forward pricing contracts.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: June 26, 2019

FILED WITH LRC: June 26, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2019 at 1:00 p.m., at the Kentucky Department of Agriculture, 109 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 prior to the end of the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. 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) 782-0282, 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 administrative regulation repeals the administrative regulations for grain dealers and the grain insurance fund in Kentucky.

(b) The necessity of this administrative regulation: The authorizing statutes were changed in the 2019 General Assembly session, thus the necessity for these administrative regulations no longer exist.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 251.610, KRS 251.640, KRS 251.700, KRS 251.451, KRS 251.720, KRS 251.680, KRS 251.430, KRS 251.600, KRS 251.440, KRS 251.480, KRS 251.490, KRS 251.500, KRS 251.990 each set forth the requirements for the Commissioner to regulate the dealing or grain, including filing administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This repealer will assist by eliminating a non-required administrative regulation, helping the KDA comply with the intent of the General Assembly.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Agriculture, as well as 95 grain dealers and 55 grain warehouses.

(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 KDA will need to do nothing to comply with the repealer.

(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 on behalf of the KDA, and statutory compliance.

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

(a) Initially: No costs.

(b) On a continuing basis: No costs.

(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 repealer.

(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 251.610, KRS 251.640, KRS 251.700, KRS 251.451, KRS 251.720, KRS 251.680, KRS 251.430, KRS 251.600, KRS 251.440, KRS 251.480, KRS 251.490, KRS 251.500, KRS 251.990

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

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

**GENERAL GOVERNMENT CABINET
Department of Agriculture
Office of the Commissioner
(Repealer)**

302 KAR 35:011. Repeal of 302 KAR 35:020, 302 KAR 35:030, 302 KAR 34:040, 302 KAR 35:050, 302 KAR 35:060, 302 KAR 35:070.

RELATES TO: KRS CHAPTER 247

STATUTORY AUTHORITY: KRS 251.610, KRS 251.640, KRS 251.700, KRS 251.451, KRS 251.720, KRS 251.680, KRS 251.430, KRS 251.600, KRS 251.440, KRS 251.480, KRS 251.490, KRS 251.500, KRS 251.990

NECESSITY, FUNCTION, AND CONFORMITY: KRS 251.610, KRS 251.640, KRS 251.700, KRS 251.451, KRS 251.720, KRS 251.680, KRS 251.430, KRS 251.600, KRS 251.440, KRS 251.480, KRS 251.490, KRS 251.500, KRS 251.990 each authorizes the commissioner to establish and determine the rules and administrative regulations for Kentucky grain dealers and the Kentucky grain indemnity program. This administrative regulation repeals 302 KAR 35:020, 302 KAR 35:030, 302 KAR 35:040, 302 KAR 35:050, 302 KAR 35:060, and 302 KAR 35:070 because the authorizing statutes have been revised by the General Assembly in 2019 and new administrative regulations are needed and will be filed once those provisions go into effect.

Section 1. The following administrative regulations hereby repealed:

- (1) 302 KAR 35:020 License required for each location.
- (2) 302 KAR 35:030 Records.
- (3) 302 KAR 35:040 Inspection.
- (4) 302 KAR 35:050 Inventory shortage.
- (5) 302 KAR 35:060 Contracts, and
- (6) 302 KAR 35:070 Bookkeeping.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: June 26, 2019

FILED WITH LRC: June 26, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2019 at 1:00 p.m., at the Kentucky Department of Agriculture, 109 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 prior to the end of the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. 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) 782-0282, 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 administrative regulation repeals the administrative regulations for grain storage in Kentucky.

(b) The necessity of this administrative regulation: The authorizing statutes were changed in the 2019 General Assembly session, thus the necessity for these administrative regulations no longer exist.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 251.610, 251.640, 251.700, 251.451, 251.720, 251.680, 251.430, 251.600, 251.440, 251.480, 251.490, 251.500, 251.990 each set forth the requirements for the Commissioner to regulate grain storage, including filing administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This repealer will assist by eliminating a non-required administrative regulation, helping the KDA comply with the intent of the General Assembly.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Agriculture, as well as 55 grain warehouses.

(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 KDA will need to do nothing to comply with the repealer.

(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 on behalf of the KDA, and statutory compliance.

(5) Provide an estimate of how much it will cost the

administrative body to implement this administrative regulation:

(a) Initially: No costs.

(b) On a continuing basis: No costs.

(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 repealer.

(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 251.610, 251.640, 251.700, 251.451, 251.720, 251.680, 251.430, 251.600, 251.440, 251.480, 251.490, 251.500, 251.990

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

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

GENERAL GOVERNMENT CABINET Department of Agriculture Office of the Commissioner (Repealer)

302 KAR 36:011. Repeal of 302 KAR 36:010.

RELATES TO: KRS CHAPTER 247

STATUTORY AUTHORITY: KRS 251.610, KRS 251.640, KRS 251.700, KRS 251.451, KRS 251.720, KRS 251.680, KRS 251.430, KRS 251.600, KRS 251.440, KRS 251.480, KRS 251.490, KRS 251.500, KRS 251.990

NECESSITY, FUNCTION, AND CONFORMITY: KRS 251.610, KRS 251.640, KRS 251.700, KRS 251.451, KRS 251.720, KRS 251.680, KRS 251.430, KRS 251.600, KRS 251.440, KRS 251.480, KRS 251.490, KRS 251.500, KRS 251.990 each authorizes the commissioner to establish and determine the rules and administrative regulations for Kentucky

grain dealers and the Kentucky grain indemnity program. This administrative regulation repeals 302 KAR 36:010 because the authorizing statutes have been revised by the General Assembly in 2019 and new administrative regulations are needed and will be filed once those provisions go into effect.

Section 1. The following administrative regulations hereby repealed:

(1) 302 KAR 36:010 Disputed claims to bond, certificate of deposit and irrevocable letter of credit proceeds.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: June 27, 2019

FILED WITH LRC: June 27, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2019 at 1:00 p.m., at the Kentucky Department of Agriculture, 109 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 prior to the end of the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. 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) 782-0282, 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 administrative regulation repeals the administrative regulations for grain storage in Kentucky.

(b) The necessity of this administrative regulation: The authorizing statutes were changed in the 2019 General Assembly session, thus the necessity for these administrative regulations no longer exist.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 251.610, KRS 251.640, KRS 251.700, KRS 251.451, KRS 251.720, KRS 251.680, KRS 251.430, KRS 251.600, KRS 251.440, KRS 251.480, KRS 251.490, KRS 251.500, KRS 251.990 each set forth the requirements for the Commissioner to regulate grain storage, including filing administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This repealer will assist by eliminating a non-required administrative regulation, helping the KDA comply with the intent of the General Assembly.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Agriculture, as well as 55 grain warehouses.

(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 KDA will need to do nothing to comply with the repealer.

(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 on behalf of the KDA, and statutory compliance.

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

(a) Initially: No costs.

(b) On a continuing basis: No costs.

(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 repealer.

(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 251.610, KRS 251.640, KRS 251.700, KRS 251.451, KRS 251.720, KRS 251.680, KRS 251.430, KRS 251.600, KRS 251.440, KRS 251.480, KRS 251.490, KRS 251.500, KRS 251.990

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

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

401 KAR 6:211. Repeal of 401 KAR 6:200.

RELATES TO: KRS 223.170, 223.180, 223.190, 223.210, 224.10-110

STATUTORY AUTHORITY: KRS 223.200, 224.10-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 authorizes the Secretary of the Cabinet to promulgate administrative regulations for the regulation and control of the purification of water for public and semipublic use. This administrative regulation is being repealed because the materials incorporated by reference are no longer relevant, and the administrative regulation does not comply with KRS 13A.224 and 13A.2251.

Section 1. 401 KAR 6:200. Documents incorporated by reference relative to public and semipublic water supplies and swimming pools, is hereby repealed.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 9, 2019

FILED WITH LRC: July 11, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, August 22, 2019 at 6:00 p.m. Eastern Standard Time at the Department for Environmental Protection, Training Room B, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. 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: Carole J. Catalfo, Internal Policy Analyst, RPPS., Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, Phone (502) 564-3410, Fax (502) 564-9003, Email: water@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 401 KAR 6:200 Documents incorporated by reference relative to public and semipublic water supplies and swimming pools.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal 401 KAR 6:200 which refers to documents that are no longer relevant, and does not comply with KRS Chapter 13A.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-110 authorizes the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use. This authority is implemented through regulations contained in 401 KAR Chapter 8.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will repeal 401 KAR 6:200 which refers to documents that are no longer relevant.

(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 repeal of, rather than an amendment to, an existing regulation.

(b) The necessity of the amendment to this administrative regulation: This is a repeal of, rather than an amendment to, an existing regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This is a repeal of, rather than an amendment to, an existing regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a repeal of, rather than an amendment to, an existing regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation repeals 401 KAR 6:200 which refers to documents that are no longer relevant.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This repeal will not require any additional or different action by regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This repeal will not impose any new costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This repeal will prevent confusion regarding the administrative regulations that apply to water purification for public and semipublic use.

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

(a) Initially: This repeal will have no impact on costs.

(b) On a continuing basis: This repeal will have no impact on costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This repeal will have no impact on funding for implementation or enforcement.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied to this repealer 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? This administrative regulation formerly applied to public and semipublic water systems. Some units of state or local governments own a public water system.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-110.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This repeal will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent

years? This repeal will not generate revenue.

(c) How much will it cost to administer this program for the first year? This repeal will not result in additional costs.

(d) How much will it cost to administer this program for subsequent years? This repeal will not result in additional costs.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: This repeal will not generate revenue or result in additional costs.

ENERGY AND ENVIRONMENT CABINET

Department for Natural Resources

Division of Oil and Gas

(New Administrative Regulation)

805 KAR 1:001. Definitions for 805 KAR Chapter 1.

RELATES TO: KRS 353.500 through 353.730

STATUTORY AUTHORITY: KRS 353.500

NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.500

authorizes the department to promulgate administrative regulations to regulate the all aspects of oil and gas wells in the Commonwealth. This administrative regulation defines terms used in 805 KAR Chapter 1.

Section 1. Definitions. (1) "Abandoned" is defined by KRS 353.510(12).

(2) "Abnormal pressure" means a reservoir pressure that exceeds the hydrostatic pressure of fresh water extending from the reservoir to the surface.

(3) "Annulus" means the space between two (2) strings of casing or between a string of casing and the bore hole wall.

(4) "Best management practices" or "BMPs" is defined by KRS 353.510(28).

(5) "Blow-out preventer" or "BOP" means a device installed on the first and largest diameter casing cemented in a well or installed on the intermediate casing. The device is used to prevent the uncontrolled flow of a well at the surface during drilling or workover operations.

(6) "Casing or casing string" means steel tubes or pipes installed in a well.

(7) "Cement" is defined by KRS 353.010(4).

(8) "Commission" is defined by KRS 353.510(4).

(9) "Correlative rights" is defined by KRS 353.510(6).

(10) "Deep well" is defined by KRS 353.510(16).

(11) "Deepening" means the drilling deeper of any existing well where new drilling is to proceed past the depth at which the initial drilling of the well ceased.

(12) "Directional survey" is defined by KRS 353.010(8).

(13) "Director" is defined by KRS 353.510(3).

(14) "Division" means the Division of Oil and Gas.

(15) "Drilling unit" is defined by KRS 353.510(19).

(16) "Eligible well" is defined by KRS 353.510(47).

(17) "Environmentally sensitive feature" means a stream, spring, sinkhole, wetland, state or national park, wilderness area, or wildlife refuge.

(18) "Existing gathering line" means any gathering line installed and not abandoned or taken out of service prior to March 18, 2004.

(19) "Field" is defined by KRS 353.510(10).

(20) "Final reclamation" means the date on which the operator has completed drilling operations at the well site, has plugged the well, and has performed all obligations described in the operations and reclamation plan.

(21) "GPS" means the collection method of acquiring location data using the Global Positioning System that is:

(a)1. Reported as latitude and longitude in degrees and decimal degrees;

2. Captured in three (3) meter accuracy for stationary location data, such as line markers; and

3. Submitted as waypoints and track logs for the gathering line location;

(b) Recorded in the datum of WGS84; and

(c) Submitted as ArcView shape file or as an ASCII file is submitted electronically.

(22) "Gas" is defined by KRS 353.510(8).

(23) "Gas production flow line" means:

(a) The segment of a gathering line running from a well to the point of interconnection with another gathering line or production compressor; or

(b) If a well produces both oil and gas, the line from a well.

(24) "Gas storage operator" is any corporation, partnership, or individual who is engaged in the work of preparing to inject, or who injects gas into, or who stores gas in, or removes gas from, a gas storage reservoir, and who owns the right to do so, including but not limited to those engaged in transporting and delivering such gas in public service.

(25) "Gas storage reservoirs" are special geologic and geometric elements of underground strata which are or can be so arranged and situated as to be recognized as useful for the retention, injection, storage and recovery of gas therefrom on a commercial service level.

(26) "Gathering line" means any pipeline that is installed or used for the purpose of transporting produced water, crude oil, or natural gas from a well or production facility; or produced water to a well or production facility to the point of interconnection with another gathering line, an existing storage facility or a transmission or main line, including all lines between interconnections, except those lines or portions thereof subject to the exclusive jurisdiction of the U.S. Department of Transportation under 49 C.F.R. Parts 191, 192, 194, and 195.

(27) "Horizontal well" is defined by KRS 353.510(25).

(28) "Intermediate casing" means one or more strings of pipes installed in a well in addition to the surface casing in which each string is smaller in diameter than the previous.

(29) "Intersection length" means the horizontal distance between the point at which the well penetrates the top of the intended formation and the end point within that formation.

(30) "KYEM" means the state Kentucky Emergency Management office under authority of the Department of Military Affairs in Frankfort, Kentucky, with regional offices throughout the Commonwealth.

(31) "Long casing string" means the last casing installed in a well to be used for production or injection purposes.

(32) "Mcf" means 1,000 cubic feet of natural gas.

(33) "Measured depth" means the total length of the vertical and horizontal leg of the actual wellbore.

(34) "NFPA" means the National Fire Protection Association.

(35) "Net gas sales" means the amount of metered or prorated gas sold into the line of first purchase and may be different from produced gas, due to line loss and compressor usage.

(36) "Oil" is defined by KRS 353.510(7).

(37) "Oil production flow line" means:

(a) A gathering line running from a well or wells to a tank battery for production treatment and storage; or

(b) If an injection well, the line from the tank battery to an injection system and then to a wellhead.

(38) "Operating a well" means to reenter, reopen, deepen, drill, inject into, produce, attempt to produce, or work over, any well.

(39) "Operator" is defined by KRS 353.510(17).

(40) "Overriding royalty interest owner" means a person other than a royalty owner, with a right to a percentage share of production or the value derived from production that is:

(a) Free of all costs of drilling and production; and

(b) Created by the lessee or working interest owner and paid by the lessee or working interest owner.

(41) "Person" is defined by KRS 353.510(5).

(42) "Pool" is defined by KRS 353.510(9).

(43) "Prevailing royalty" is defined by KRS 353.510(27).

(44) "Produced gas" means the amount of produced gas metered or prorated at the well head on a monthly basis.

(45) "Production compressor" means a compressor installed on a gathering line and used to regulate gas pressure to enhance

delivery.

(46) "Purchaser number" means the number assigned by the purchasing company to the lease or well for accounting and payment purposes.

(47) "Royalty owner" is defined by KRS 353.510(18).

(48) "Shallow well" is defined by KRS 353.510(15).

(49) "Surface casing" means the first and largest diameter casing installed in a well and its primary uses are to stabilize the borehole and to protect the fresh water zones.

(50) "TENORM" is defined by KRS 211.862(13), and is subject to the exemption established in KRS 211.863(5).

(51) "Tank battery" means any aboveground storage tank or interconnected grouping of tanks maintained in conjunction with the production and storage of crude oil or produced water.

(52) "Topographic spot" means the act of locating a well on a United States Geological Survey 1:24,000 Topographic Map and scaling that well location on the map to determine its Carter Coordinate location.

(53) "Transmission line" means a pipeline that is subject to the exclusive jurisdiction of the United States Department of Transportation under 49 C.F.R. Parts 191, 192, 194 and 195.

(54) "True vertical depth" means the depth of the well from any point in the well being measured to the surface of the ground above the point being measured.

(55) "Underground gas storage" is the utilization of subsurface strata and associated facilities for storing and withdrawing gas held in place for the primary purposes of conservation, fuller utilization of pipeline facilities, and more effective and beneficial service of gas to the public.

(56) "Unit" is defined by KRS 353.010(18).

(57) "Vertical well" is defined by KRS 353.510(26).

(58) "Well" is defined by KRS 353.510(14).

(59) "Well operator" is any person who proposes to or does locate, drill, operate or abandon any well.

(60) "Wellsite boundary" means the area of disturbance by an operator, excluding access roads, to drill an oil or gas well.

(61) "Wildcat well" means any deep vertical or horizontal well that is drilled:

(a) With the intent of discovering or producing hydrocarbons from a formation or formations not previously productive of oil or gas well within 10,000 feet of its location; or

(b) Under proven geological conditions that, even though located within 10,000 feet from the nearest deep well previously productive of oil or gas, will not, if completed successfully, produce from a previously productive pool.

(62) "Working interest owner" means an operator with the obligation to bear all or a proportionate share of the costs and expenses of unit operation.

(63) "Zone" means a layer of strata capable of producing or receiving fluids.805 KAR 1:001 approved for filing.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 10, 2019

FILED WITH LRC: July 11, 2019 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2019 at 5:00 P.M. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator,

VOLUME 46, NUMBER 2– AUGUST 1, 2019

300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email: michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines terms used in 805 KAR Chapter 1.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to defined terms used in 805 KAR Chapter 1.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 353.500 authorizes the department to promulgate administrative regulations to regulate all aspects of oil and gas wells in the Commonwealth. This administrative regulation conforms to the authorizing statutes by defining terms necessary to correctly interpret the administrative regulations in 805 KAR Chapter 1.

(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 defining terms necessary to correctly interpret the administrative regulations in 805 KAR Chapter 1.

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

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. There are approximately 1,060 active oil and gas operators in the commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will need to use the terms defined in this administrative regulation to correctly interpret the administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs for using the terms defined in this administrative regulation. The terms defined in this administrative regulation are simply moved from other administrative regulations in this chapter.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, entities will have a central location to find defined terms.

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

(a) Initially: The division will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: The division will not incur any additional costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of general and restricted funds will be used for the implementation of this administrative regulation.

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

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, tiering was not used. The terms defined in this administrative regulation will apply equally to all oil and gas operator.

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 applies almost entirely to the Division of Oil and Gas.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 353.500 through 353.730.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The proposed administrative regulation will not generate revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The proposed administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The cabinet's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The cabinet's operating budget will be used to administer this program for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Oil and Gas (Repealer)

805 KAR 9:011. Repeal of 805 KAR Chapter 9.

RELATES TO: KRS 349.035, 349.040, 349.075, 349.110, 349.015, 349.120, 349.155

STATUTORY AUTHORITY: KRS 349.115

NECESSITY, FUNCTION, AND CONFORMITY: KRS 349.115 provides the Department for Natural Resources the authority to promulgate administrative regulations related to coalbed methane. This administrative regulation repeals 805 KAR Chapter 9. The administrative regulations in 805 KAR Chapter 9 were established as administrative regulations related to drilling for coalbed methane. The administrative regulations correspond closely to the administrative regulations in 805 KAR Chapter 1. In an effort to place drilling information in one chapter of Title 805 the department is proposing to repeal 805 KAR Chapter 9 administrative regulations and insert the relevant coalbed methane information into the corresponding administrative regulations in 805 KAR Chapter 1.

Section 1. The following administrative regulations are hereby repealed:

- (1) 805 KAR 9:010, Protection of fresh water zones;
- (2) 805 KAR 9:020, Well location plat, preparation, form and contents;
- (3) 805 KAR 9:030, Surety Bonds; requirements, cancellation;
- (4) 805 KAR 9:050, Gas storage reservoirs; drilling, plugging in vicinity;
- (5) 805 KAR 9:060, Operating or deepening existing coal bed methane wells and drilling deeper than the permitted depth;
- (6) 805 KAR 9:070, Directional and horizontal wells;
- (7) 805 KAR 9:080, Contents of the operations and reclamation proposal; form on which the proposal is filed;
- (8) 805 KAR 9:090, Production reporting.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 10, 2019

FILED WITH LRC: July 11, 2019 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2019 at 5:00 P.M. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone: (502) 782-6720, fax: (502) 564-4245, email: michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 805 KAR Chapter 9, except for one administrative regulation, which will be recodified into 805 KAR Chapter 1.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to repeal 805 KAR Chapter 9. This information is being merged into 805 KAR Chapter 1.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 349.115 provides the Department for Natural Resources the authority to promulgate administrative regulations related to coalbed methane. This repealer will repeal the coalbed methane administrative regulations in 805 KAR Chapter 9.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation repeals the administrative regulations in 805 KAR Chapter 9. The coalbed methane information is being moved into the 805 KAR Chapter 1 administrative regulations. The coalbed methane administrative regulations were very similar to the 805 KAR Chapter 1 administrative regulations.

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

(a) How the amendment will change this existing administrative regulation: The amendment repeals the regulation pertaining to the Commonwealth's coalbed methane program because the pertinent requirements are being moved into 805 KAR Chapter 1.

(b) The necessity of the amendment to this administrative regulation: The repeal is necessary because the information in 805 KAR Chapter 9 is being moved to 805 KAR Chapter 1.

(c) How the amendment conforms to the content of the

authorizing statutes: The amendment conforms to the statute by repealing the administrative regulations pertaining to the Commonwealth's coalbed methane program and moving the pertinent requirements into 805 KAR Chapter 1.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will repeal the requirements pertaining to the Commonwealth's coalbed methane program and moved them into the 805 KAR Chapter 1.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 1,060 active oil and gas operators in the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action will need to be taken to comply with this repealer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs associated with this repealer. The requirements related to coalbed methane have not changed but have simply been merged into the appropriate administrative regulation in 805 KAR Chapter 1.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities will benefit by having all of the information related to oil and gas operations in one chapter.

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

(a) Initially: There are no costs associated with the repeal of this administrative regulation.

(b) On a continuing basis: There are no costs associated with the repeal of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding source is required to repeal these administrative regulations.

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

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

(9) TIERING: Is tiering applied? No, this is a repeal of an administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Oil and Gas.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 349.115.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This repeal will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This repeal will not generate revenue.

(c) How much will it cost to administer this program for the first year? This repeal will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years? This repeal will not cost the agency additional funding.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Repealer)

902 KAR 50:003. Repeal of 902 KAR 50:002.

RELATES TO: KRS 217C.070

STATUTORY AUTHORITY: KRS 194A.050(1), 217C.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217C.070(1) requires the cabinet to appoint a milk advisory committee. This administrative regulation repeals 902 KAR 50:002 as 2019 Ky. Acts ch. 090 deleted the provision for a separate Milk for Manufacturing Advisory Committee from KRS 217C.070.

Section 1. 902 KAR 50:002, Milk for Manufacturing Advisory Committee, is hereby repealed.

JEFFREY D. HOWARD, JR., MD, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 17, 2019

FILED WITH LRC: July 11, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 26, 2019, 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 August 19, 2019, 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 August 31, 2019. 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: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Julie Brooks, (502) 564-3970, julied.brooks@ky.gov, or Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: In accordance with KRS 13A.310(3)(a), this administrative regulation repeals 902 KAR 50:002.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to repeal 902 KAR 50:002, as Senate Bill 167 deleted a separate milk for manufacturing advisory committee from KRS 217C.070.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms

with KRS 13A.310 by repealing an obsolete administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The repeal of 902 KAR 50:002 is consistent with Governor Bevin's Red Tape Reduction initiative to repeal obsolete administrative regulations. This administrative regulation is in accordance with KRS 13A.310(3)(a).

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: A separate milk for manufacturing advisory committee is no longer necessary. Affected entities may need to apply for reappointment to the milk advisory committee.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals currently appointed to the Milk-for-Manufacturing Advisory Committee will need to be aware of the changes in the milk advisory committee structure and may need to reapply for appointment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The elimination of separate advisory committees for Grade A Milk and Milk-for-Manufacturing will result in improved communication between the Milk Safety Branch and the milk advisory committee.

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

(a) Initially: There are no costs to the administrative body associated with this administrative regulation.

(b) On a continuing basis: There are no costs to the administrative body associated with this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Milk Safety Branch operates with approximately \$1 million from the General Fund. There are no costs associated with this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. No fees are associated with this administrative regulation.

(9) TIERING: Is tiering applied? No. Tiering is not applicable as this administrative regulation repeals 902 KAR 50:002.

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 repeal of 902 KAR 50:002 impacts only the Department for Public Health, Milk Safety Branch.

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), 217C.070, 2019 Ky. Acts ch. 090.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation does not generate revenue.

(c) How much will it cost to administer this program for the first year? There are no costs to the administrative body associated with this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There are no costs to the administrative body associated with this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Audits and Investigations

(New Administrative Regulation)

902 KAR 55:120. Disposal of prescription controlled substances.

RELATES TO: 21 C.F.R. Part 1317

STATUTORY AUTHORITY: KRS 218A.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.250 requires the Cabinet for Health and Family Services to promulgate administrative regulations for carrying out the provisions of KRS Chapter 218A. This administrative regulation establishes safe, secure, and responsible methods for the disposal of unused or unwanted prescription controlled substances by long-term care facilities and other cabinet-licensed facilities with custodial control of patient-owned controlled substance medications.

Section 1. Methods of Disposal. A long-term care facility or other cabinet-licensed facility with custodial control of patient-owned controlled substance medications shall:

(1) Dispose of all expired, abandoned, or otherwise unwanted controlled substances in accordance with 21 C.F.R. Part 1317; and

(2) Develop and implement written policies and procedures for the disposal of controlled substances. Disposal methods shall include:

(a) On-site destruction that renders the controlled substance unrecoverable and beyond reclamation so that the medication cannot be diverted; or

(b) Transfer of the controlled substance to an authorized collection receptacle maintained by a:

1. Law enforcement agency; or

2. Pharmacy.

Section 2. Procedures for Disposal. (1) If a patient's controlled substance medication has expired, been abandoned, or is otherwise unwanted, either the facility's responsible person or the director of nursing and a witness who is employed by the facility shall perform and document:

(a) Removal of the patient's controlled substances from the medication cart or storage area;

(b) Transfer of the medications to a separate secure storage area; and

(c) Use of a disposal method established by Section 1(2) of this administrative regulation no later than thirty (30) days from the date the patient's controlled substances are removed from the medication cart or storage area.

(2) The facility shall maintain a readily retrievable record of controlled substances removed from the medication cart or other area of storage. The record shall:

(a) Be maintained for a minimum of eighteen (18) months from the date of disposal;

(b) Be made available upon request by the cabinet for purposes of inspection; and

(c) Contain the following information:

1. Amount of controlled substances destroyed on-site or transferred to a collection receptacle;

2. Disposal method;

3. Date of disposal;

4. Patient name;

5. Drug name;

6. Drug strength; and

7. Name of the responsible person or director of nursing and witness responsible for the transfer and disposal of the medications.

(3) Controlled substances shall not be destroyed by flushing into a sewage treatment system unless disposal by flushing is permitted by:

(a) Instructions on the label;

(b) The patient information leaflet with the medication; or

(c) The U.S. Food and Drug Administration's (FDA) flush list posted on the FDA webpage: <https://www.fda.gov/media/85219/download>.

(4) The cabinet shall take adverse action against a facility's license in accordance with 902 KAR 20:008, Section 8, or 908 KAR 1:370, Section 20, if the cabinet finds that there has been a substantial failure by the facility to comply with the provisions of this administrative regulation.

STEVEN D. DAVIS, Inspector General

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: July 2, 2019

FILED WITH LRC: July 11, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 26, 2019, 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 August 19, 2019, 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 August 31, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. In accordance with 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: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; Phone: 502-564-6746; Fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Stephanie Brammer-Barnes, email: stephanie.brammer@ky.gov, Phone: 502-564-288; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: The Cabinet for Health and Family Services, in collaboration with the Office of Drug

Control Policy, is promulgating this new administrative regulation to establish safe, secure, and responsible methods for the disposal of unused or unwanted prescription controlled substances by long-term care facilities and other cabinet-licensed facilities with custodial control of patient-owned controlled substance medications.

(b) The necessity of this administrative regulation: In accordance with 21 C.F.R. Part 1317, this administrative regulation is necessary to establish prompt, safe, and effective disposal methods while providing effective controls against the diversion of prescription controlled substances.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 218A.250 by establishing responsible methods for the disposal of unused or unwanted prescription controlled substances.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing responsible methods for the disposal of unused or unwanted prescription controlled substances.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts long-term care facilities and other cabinet-licensed facilities with custodial control of patient-owned controlled substance medications. There are currently 316 long-term care facilities.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Facilities with custodial control of patient-owned controlled substance medications must dispose of expired, abandoned, or otherwise unwanted controlled substances in accordance with 21 C.F.R. Part 1317. Accordingly, facilities must comply with the two (2) person integrity requirement for disposal, ensure that on-site destruction renders the controlled substance unrecoverable and beyond reclamation so that the medication cannot be diverted, and ensure compliance with recordkeeping requirements. Controlled substances must not be destroyed by flushing into a sewage treatment system unless disposal by flushing is permitted by instructions on the label, the patient information leaflet with the medication, or the U.S. Food and Drug Administration's flush list. Substantial failure to comply with this administrative regulation shall result in adverse action against a facility's license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): In an effort to curtail prescription drug abuse, this administrative regulation establishes safe, secure, and responsible methods for the disposal of unused or unwanted controlled substance medications.

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

(a) Initially: There are no additional costs to the cabinet for implementation of this administrative regulation.

(b) On a continuing basis: There are no additional costs to the

cabinet for implementation of this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds and agency monies will be used to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Cabinet for Health and Family Services, Office of Inspector General. This administrative regulation also impacts long-term care facilities and other cabinet-licensed facilities with custodial control of patient-owned prescription controlled substances.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.250, 21 C.F.R. Part 1317

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any additional revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any additional revenue.

(c) How much will it cost to administer this program for the first year? This administrative regulation imposes no additional costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation imposes no additional costs on the administrative body.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 21 C.F.R. Part 1317

(2) State compliance standards. KRS 218A.250

(3) Minimum or uniform standards contained in the federal mandate. 21 C.F.R. Part 1317 sets forth the rules for the delivery, collection, and destruction of damaged, expired, returned, recalled, unused, or otherwise unwanted controlled substances that are lawfully possessed by registrants (subpart A) and non-registrants (subpart B). The purpose of such rules is to provide prompt, safe, and effective disposal methods while providing effective controls against the disposal methods while providing effective controls against the diversion of controlled substances.

(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 requirements that are more strict than federal laws or regulations.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(New Administrative Regulation)

907 KAR 15:022. Coverage provisions and requirements regarding services provided by behavioral health services organizations for substance use disorder treatment and co-occurring disorders.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 1396a(a)(23), 12101

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program behavioral health services provided by tier II and III behavioral health services organizations.

Section 1. General Coverage Requirements. (1) For the department to reimburse for a service covered under this administrative regulation, the service shall be:

(a) Medically necessary; and

(b) Provided:

1. To a recipient; and

2. By a behavioral health services organization that meets the provider participation requirements established in Section 2 of this administrative regulation.

(2)(a) Direct contact between a practitioner and a recipient shall be required for each service except for:

1. Collateral outpatient therapy for a child under the age of twenty-one (21) years if the collateral outpatient therapy is in the child's plan of care;

2. A family outpatient service in which the corresponding current procedural terminology code establishes that the recipient is not present; or

3. A psychological testing service comprised of interpreting or explaining results of an examination or data to family members or other kin if the corresponding current procedural terminology code establishes that the recipient is not present.

(b) A service that does not meet the requirement in paragraph (a) of this subsection shall not be covered.

(3) A billable unit of service shall be actual time spent delivering a service in an encounter.

(4) A service shall be:

(a) Stated in the recipient's plan of care; and

(b) Provided in accordance with the recipient's plan of care.

(5)(a) A behavioral health services organization shall establish a plan of care for each recipient receiving services from the behavioral health services organization.

(b) A plan of care shall meet the plan of care requirements established in 908 KAR 1:370, Section 19.

Section 2. Provider Participation. (1) To be eligible to provide services under this administrative regulation, a behavioral health services organization shall:

(a) Be currently enrolled in the Kentucky Medicaid Program in

accordance with 907 KAR 1:672;

(b)[~~Except as established in subsection (2) of this section,~~] Be currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; and

(c) Have:

1. For each service it provides, the capacity to provide the full range of the service as established in this administrative regulation;

2. Documented experience in serving individuals with substance use disorders;

3. The administrative capacity to ensure quality of services;

4. A financial management system that provides documentation of services and costs; and

5. The capacity to document and maintain individual case records.

(2) A behavioral health services organization shall:

(a) Agree to provide services in compliance with federal and state laws regardless of age, sex, race, creed, religion, national origin, handicap, or disability;

(b) Comply with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments to the Act; and

(c) Provide, directly or through written agreement with another behavioral health services provider, access to face-to-face or telehealth, as appropriate pursuant to 907 KAR 3:170, emergency services twenty-four (24) hours per day, seven (7) days per week.

(3)(a) Each behavioral health services organization II (BHSO II) shall provide services in accordance with 908 KAR 1:374 and this administrative regulation for outpatient substance use disorder services and co-occurring disorders.

(b) Each behavioral health services organization III (BHSO III) shall provide services in accordance with 908 KAR 1:372 and this administrative regulation for residential substance use disorder services and co-occurring disorders.

(4) A BHSO II shall:

(a) Possess an outpatient alcohol and other drug treatment entity (AODE) license issued pursuant to 908 KAR 1:370 and 908 KAR 1:374;

(b) Possess accreditation within one (1) year of initial enrollment by one (1) of the following:

1. The Joint Commission;

2. The Commission on Accreditation of Rehabilitation Facilities;

3. The Council on Accreditation; or

4. A nationally recognized accreditation organization; and

(c) Be authorized to provide outpatient substance use disorder treatment services authorized by Section 3 of this administrative regulation to treat substance use disorders and co-occurring disorders by the appropriate provider.

(5) A BHSO III shall:

(a) Possess a residential alcohol and other drug treatment entity (AODE) license issued pursuant to 908 KAR 1:370 and 908 KAR 1:372;

(b) Possess accreditation within one (1) year of initial enrollment by one (1) of the following:

1. The Joint Commission;

2. The Commission on Accreditation of Rehabilitation Facilities;

3. The Council on Accreditation; or

4. A nationally recognized accreditation organization; and

(c) Be authorized to provide residential substance use disorder treatment services authorized by Section 3 of this administrative regulation to treat substance use disorders and co-occurring disorders by the appropriate provider.

Section 3. Covered Services. (1)(a) A physician providing services in a BHSO II shall possess:

1. A psychiatric specialty; or

2. An addictionology specialty.

(b) An advanced practice registered nurse providing services in a BHSO II shall possess:

1. A psychiatric specialty; or

2. An addictionology specialty.

(c) A physician assistant providing behavioral health services in a BHSO II shall have a contractual relationship with a supervising physician with:

1. A psychiatric specialty; or

2. An addictionology specialty.

(2) Reimbursement shall not be available for services performed within a BHSO II by a:

- Licensed behavior analyst;
- Licensed assistant behavior analyst;
- Registered behavioral technician; or
- Community support associate.

(3) A BHSO III shall provide services on a residential basis to treat a beneficiary's substance use disorder.

(4)(a) A physician providing services in a BHSO III shall possess:

1. A psychiatric specialty; or
2. An addictionology specialty.

(b) An advanced practice registered nurse providing services in a BHSO III shall possess:

1. A psychiatric specialty; or
2. An addictionology specialty.

(c) A physician assistant providing behavioral health services in a BHSO III shall have a contractual relationship with a supervising physician with:

1. A psychiatric specialty; or
2. An addictionology specialty.

(5) Reimbursement shall not be available for services performed within a BHSO III by a:

- Licensed behavior analyst;
- Licensed assistant behavior analyst;
- Registered behavioral technician; or
- Community support associate.

(6) Except as specified in the requirements stated for a given service, the services covered may be provided for:

- A substance use disorder; or
- Co-occurring disorders if provided in accordance with Section 2 of this administrative regulation.

(7) The services established in this subsection shall be covered under this administrative regulation in accordance with the requirements established in this subsection.

(a) A screening shall:

1. Determine the likelihood that an individual has a mental health disorder, substance use disorder, or co-occurring disorders;
2. Not establish the presence or specific type of disorder;
3. Establish the need for an in-depth assessment;
4. Be face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170; and
5. In a BHSO II, be provided by:
 - An approved behavioral health practitioner, as limited by subsections (2) and (5) of this section; or
 - An approved behavioral health practitioner under supervision, as limited by subsections (2) and (5) of this section.

(b) An assessment shall:

1. Include gathering information and engaging in a process with the individual that enables the practitioner to:
 - Establish the presence or absence of a substance use disorder or co-occurring disorders;
 - Determine the individual's readiness for change;
 - Identify the individual's strengths or problem areas that may affect the treatment and recovery processes; and
 - Engage the individual in developing an appropriate treatment relationship;
2. Establish or rule out the existence of a clinical disorder or service need;
3. Include working with the individual to develop a plan of care;
4. Not include a psychological or psychiatric evaluation or assessment;
5. If being made for the treatment of a substance use disorder, utilize a multidimensional assessment that complies with the most current edition of The ASAM Criteria to determine the most appropriate level of care;
6. Be face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170; and
7. Be provided by:
 - An approved behavioral health practitioner, as limited by subsections (2) and (5) of this section; or
 - An approved behavioral health practitioner under

supervision, except for a certified alcohol and drug counselor, and as limited by subsections (2) and (5) of this section.

(c) Psychological testing shall:

1. Include a psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities;
2. Include an interpretation and a written report of testing results;
3. Be face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170; and
4. Be provided by:
 - A licensed psychologist;
 - A certified psychologist with autonomous functioning;
 - A licensed psychological practitioner;
 - A certified psychologist under supervision; or
 - A licensed psychological associate under supervision.

(d) Crisis intervention:

1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to:
 - The recipient; or
 - Another individual;
2. Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities for individuals;
3. Shall be provided:
 - On-site at the behavioral health services organization's office;
 - As an immediate relief to the presenting problem or threat; and
 - In a face-to-face, one (1) on one (1) encounter between the provider and the recipient, including via telehealth if appropriate pursuant to 907 KAR 3:170;
4. Shall be followed by a referral to non-crisis services if applicable;
5. May include:
 - Further service prevention planning including:
 - Lethal means reduction for suicide risk; or
 - Substance use disorder relapse prevention; or
 - Verbal de-escalation, risk assessment, or cognitive therapy;

and

6. Shall be provided by:
 - An approved behavioral health practitioner, as limited by subsections (2) and (5) of this section; or
 - An approved behavioral health practitioner under supervision, as limited by subsections (2) and (5) of this section.

(e) Mobile crisis services shall:

1. Be available twenty-four (24) hours a day, seven (7) days a week, every day of the year;
2. Be provided for a duration of less than twenty-four (24) hours;
3. Not be an overnight service;
4. Be a face-to-face or telehealth, as appropriate pursuant to 907 KAR 3:170, multi-disciplinary team based intervention in a home or community setting that ensures access to substance use disorder and co-occurring disorder services and supports to:
 - Reduce symptoms or harm; or
 - Safely transition an individual in an acute crisis to the appropriate least restrictive level of care;
5. Involve all services and supports necessary to provide:
 - Integrated crisis prevention;
 - Assessment and disposition;
 - Intervention;
 - Continuity of care recommendations; and
 - Follow-up services;
6. Include access to a board-certified or board-eligible psychiatrist twenty-four (24) hours a day, seven (7) days a week, every day of the year; and
7. Be provided by:
 - An approved behavioral health practitioner, as limited by subsections (2) and (5) of this section;
 - An approved behavioral health practitioner under supervision, except for a certified alcohol and drug counselor, and as limited by subsections (2) and (5) of this section; or

c. A peer support specialist who:

- (i) Is under the supervision of an approved behavioral health practitioner; and
- (ii) Provides support services for a mobile crisis service.

(f)1. Day treatment shall be a non-residential, intensive treatment program for a child under the age of twenty-one (21) years who has:

- a. A substance use disorder or co-occurring disorders; and
- b. A high risk of out-of-home placement due to a behavioral health issue.

2. Day treatment shall:

- a. Be face-to-face;
- b. Consist of an organized, behavioral health program of treatment and rehabilitative services;
- c. Include:
 - (i) Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;
 - (ii) Behavior management and social skills training;
 - (iii) Independent living skills that correlate to the age and developmental stage of the recipient; or
 - (iv) Services designed to explore and link with community resources before discharge and to assist the recipient and family with transition to community services after discharge; and
- d. Be provided:
 - (i) In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);
 - (ii) On school days and during scheduled school breaks;
 - (iii) In coordination with the recipient's individualized education program or Section 504 plan if the recipient has an individualized education program or Section 504 plan;
 - (iv) Under the supervision of an approved behavioral health practitioner or an approved behavioral health practitioner under supervision, as limited by subsections (2) and (5) of this section; and
 - (v) With a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider.

3. To provide day treatment services, a behavioral health services organization shall have:

- a. The capacity to employ staff authorized to provide day treatment services in accordance with this section and to coordinate the provision of services among team members; and
- b. Knowledge of substance use disorders and co-occurring disorders.

4. Day treatment shall not include a therapeutic clinical service that is included in a child's individualized education program or Section 504 plan.

5. Day treatment shall be provided by:

- a. An approved behavioral health practitioner, as limited by subsections (2) and (5) of this section; or
- b. An approved behavioral health practitioner under supervision, except for a certified alcohol and drug counselor, and as limited by subsections (2) and (5) of this section.

6. Day treatment support services conducted by a provider working under the supervision of an approved behavioral health practitioner may be provided by:

- a. A registered alcohol and drug peer support specialist;
- b. An adult peer support specialist;
- c. A family peer support specialist; or
- d. A youth peer support specialist.

(g)1. Peer support services shall:

- a. Be emotional support that is provided by:
 - (i) An individual who has been trained and certified in accordance with 908 KAR 2:220 and who is experiencing or has experienced a substance use disorder or co-occurring disorders to a recipient by sharing a similar substance use disorder or co-occurring disorders in order to bring about a desired social or personal change;
 - (ii) A parent or other family member, who has been trained and certified in accordance with 908 KAR 2:230, of a child having or who has had a substance use or co-occurring disorders to a parent

or family member of a child sharing a similar substance use or co-occurring disorders in order to bring about a desired social or personal change;

(iii) An individual who has been trained and certified in accordance with 908 KAR 2:240 and identified as experiencing a substance use disorder or co-occurring disorders, as defined in the current version of the Diagnostic and Statistical Manual for Mental Disorders; or

(iv) A registered alcohol and drug peer support specialist who has been trained and certified in accordance with KRS 309.0831 and is a self-identified consumer of substance use disorder services who provides emotional support to others with substance use disorders to achieve a desired social or personal change;

b. Be an evidence-based practice;

c. Be structured and scheduled non-clinical therapeutic activities with an individual recipient or a group of recipients;

d. Be provided face-to-face;

e. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient;

f. Except for the engagement into substance use disorder treatment through an emergency department bridge clinic, be coordinated within the context of a comprehensive, individualized plan of care developed through a person-centered planning process;

g. Be identified in each recipient's plan of care; and

h. Be designed to directly contribute to the recipient's individualized goals as specified in the recipient's plan of care.

2. To provide peer support services, a behavioral health services organization shall:

a. Have demonstrated:

(i) The capacity to provide peer support services for the behavioral health population being served including the age range of the population being served; and

(ii) Experience in serving individuals with behavioral health disorders;

b. Employ peer support specialists who are qualified to provide peer support services in accordance with 908 KAR 2:220, 908 KAR 2:230, 908 KAR 2:240, or KRS 309.0831;

c. Use an approved behavioral health practitioner to supervise peer support specialists;

d. Have the capacity to coordinate the provision of services among team members;

e. Have the capacity to provide on-going continuing education and technical assistance to peer support specialists;

f. Require individuals providing peer support services to recipients provide no more than 120 units per week of direct recipient contact; and

g. Require peer support services provided to recipients in a group setting not exceed eight (8) individuals within any group at one (1) time.

(h)1. Intensive outpatient program services shall:

a. Be an alternative to or transition from a higher level of care for a substance use disorder or co-occurring disorders;

b. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is significantly more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;

c. Meet the service criteria, including the components for support systems, staffing, and therapies outlined in the most current edition of The ASAM Criteria for intensive outpatient level of care services;

d. Be provided face-to-face;

e. Be provided at least three (3) hours per day at least three (3) days per week for adults;

f. Be provided at least six (6) hours per week for adolescents; and

g. Include:

(i) Individual outpatient therapy, group outpatient therapy, or family outpatient therapy unless contraindicated;

(ii) Crisis intervention; or

(iii) Psycho-education related to identified goals in the recipient's treatment plan.

2. During psycho-education, the recipient or recipient's family member shall be:

- Provided with knowledge regarding the recipient's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and
- Taught how to cope with the recipient's diagnosis or condition in a successful manner.

3. An intensive outpatient program services treatment plan shall:

- Be individualized; and
- Focus on stabilization and transition to a lesser level of care.

4. To provide intensive outpatient program services, a behavioral health services organization shall have:

- Access to a board-certified or board-eligible psychiatrist for consultation;
- Access to a psychiatrist, physician, or advanced practiced registered nurse for medication prescribing and monitoring;
- Adequate staffing to ensure a minimum recipient-to-staff ratio of ten (10) recipients to one (1) staff person;
- The capacity to provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles; and
- The capacity to employ staff authorized to provide intensive outpatient program services in accordance with this section and to coordinate the provision of services among team members.

5. Intensive outpatient program services shall be provided by:

- An approved behavioral health practitioner, as limited by subsections (2) and (5) of this section; or
- An approved behavioral health practitioner under supervision, as limited by subsections (2) and (5) of this section.

(i) Individual outpatient therapy shall:

- Be provided to promote the:
 - Health and wellbeing of the individual; and
 - Restoration of a recipient to their best possible functional level from a substance use disorder or co-occurring disorders;
- Consist of:
 - A face-to-face encounter or via telehealth as appropriate pursuant to 907 KAR 3:170 that is a one (1) on one (1) encounter between the provider and recipient; and
 - A behavioral health therapeutic intervention provided in accordance with the recipient's identified plan of care;
- Be aimed at:
 - Reducing adverse symptoms;
 - Reducing or eliminating the presenting problem of the recipient; and
 - Improving functioning;
- Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary; and
- Be provided by:
 - An approved behavioral health practitioner, as limited by subsections (2) and (5) of this section; or
 - An approved behavioral health practitioner under supervision, except for a certified alcohol and drug counselor, and as limited by subsections (2) and (5) of this section.

(j)1. Group outpatient therapy shall:

- Be a behavioral health therapeutic intervention provided in accordance with a recipient's identified plan of care;
- Be provided to promote the:
 - Health and wellbeing of the individual; and
 - Restoration of a recipient to their best possible functional level from a substance use disorder or co-occurring disorders;
- Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the recipient's identified plan of care;
- Be provided to a recipient in a group setting:
 - Of nonrelated individuals except for multi-family group therapy; and
 - Not to exceed twelve (12) individuals in size;
- Focus on the psychological needs of the recipients as evidenced in each recipient's plan of care;
- Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal

judgment;

- Not include physical exercise, a recreational activity, an educational activity, or a social activity; and
- Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary.

2. The group shall have a:

- Deliberate focus; and
- Defined course of treatment.

3. The subject of group outpatient therapy shall relate to each recipient participating in the group.

4. The provider shall keep individual notes regarding each recipient within the group and within each recipient's health record.

5. Group outpatient therapy shall be provided by:

- An approved behavioral health practitioner, as limited by subsections (2) and (5) of this section; or
- An approved behavioral health practitioner under supervision, except for a certified alcohol and drug counselor, and as limited by subsections (2) and (5) of this section.

(k)1. Family outpatient therapy shall consist of a face-to-face or appropriate telehealth, pursuant to 907 KAR 3:170, behavioral health therapeutic intervention provided:

- Through scheduled therapeutic visits between the therapist and the recipient and at least one (1) member of the recipient's family; and
- To address issues interfering with the relational functioning of the family and to improve interpersonal relationships within the recipient's home environment.

2. A family outpatient therapy session shall be billed as one (1) service regardless of the number of individuals (including multiple members from one (1) family) who participate in the session.

3. Family outpatient therapy shall:

- Be provided to promote the:
 - Health and wellbeing of the individual; or
 - Restoration of a recipient to their best possible functional level from a substance use disorder or co-occurring disorders; and
- Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary.

4. Family outpatient therapy shall be provided by:

- An approved behavioral health practitioner; or
- An approved behavioral health practitioner under supervision, except for a certified alcohol and drug counselor.

(l)1. Collateral outpatient therapy shall:

- Consist of a face-to-face or appropriate telehealth, provided pursuant to 907 KAR 3:170, behavioral health consultation:
 - With a parent or caregiver of a recipient, household member of a recipient, legal representative of a recipient, school personnel, treating professional, or other person with custodial control or supervision of the recipient; and
 - That is provided in accordance with the recipient's plan of care; and
- Not be reimbursable if the therapy is for a recipient who is at least twenty-one (21) years of age.

2. Written consent by a parent or custodial guardian to discuss a recipient's treatment with any person other than a parent or legal guardian shall be signed and filed in the recipient's health record.

3. Collateral outpatient therapy shall be provided by:

- An approved behavioral health practitioner, as limited by subsections (2) and (5) of this section; or
- An approved behavioral health practitioner under supervision, except for a certified alcohol and drug counselor, and as limited by subsections (2) and (5) of this section.

(m)1. Service planning shall:

- Be provided face-to-face;
- Involve assisting a recipient in creating an individualized plan for services and developing measurable goals and objectives needed for maximum reduction of the effects of a substance use disorder or co-occurring disorders;
- Involve restoring a recipient's functional level to the recipient's best possible functional level; and
- Be performed using a person-centered planning process.

2. A service plan:

- a. Shall be directed and signed by the recipient;
- b. Shall include practitioners of the recipient's choosing; and
- c. May include:
 - (i) A mental health advance directive being filed with a local hospital;
 - (ii) A crisis plan; or
 - (iii) A relapse prevention strategy or plan.
- 3. Service planning shall be provided by:
 - a. An approved behavioral health practitioner, as limited by subsections (2) and (5) of this section; or
 - b. An approved behavioral health practitioner under supervision, except for a certified alcohol and drug counselor, and as limited by subsections (2) and (5) of this section.
- (n)1. Residential services for substance use disorders shall:
 - a. Be provided in a twenty-four (24) hour per day unit that is a live-in facility that offers a planned and structured regimen of care aimed to treat individuals with addiction or co-occurring disorders;
 - b. Provide intensive treatment and skills building in a structured and supportive environment;
 - c. Assist an individual in abstaining from alcohol or substance use and in entering alcohol or drug addiction recovery;
 - d. Assist a recipient in making necessary changes in the recipient's life to enable the recipient to live drug- or alcohol-free;
 - e. Be provided under the medical direction of a physician;
 - f. Provide continuous nursing services in which a registered nurse shall be:
 - (i) On-site during traditional first shift hours, Monday through Friday;
 - (ii) Continuously available by phone after hours; and
 - (iii) On-site as needed in follow-up to telephone consultation after hours;
 - g. Be provided following an assessment of an individual and a determination that the individual meets the dimensional admission criteria for approval of residential level of care placement in accordance with the most current edition of The ASAM Criteria; and
 - h. Be based on individual need and shall include clinical activities to help the recipient develop and apply recovery skills.
- 2. Residential services may include:
 - a. A screening;
 - b. An assessment;
 - c. Service planning;
 - d. Individual outpatient therapy;
 - e. Group outpatient therapy;
 - f. Family outpatient therapy;
 - g. Peer support;
 - h. Withdrawal management; or
 - i. Medication assisted treatment.
- 3. For recipients in residential substance use treatment, care coordination shall include at minimum:
 - a. If the recipient chooses medication assisted treatment, facilitation of medication assisted treatment off-site of the BHSO III, if not offered on-site;
 - b. Referral to appropriate community services;
 - c. Facilitation of medical and behavioral health follow ups; and
 - d. Linking the recipient to the appropriate level of substance use treatment within the continuum to provide ongoing supports.
- 4. Residential services shall be provided in accordance with 908 KAR 1:370 and 908 KAR 1:372.
- 5. Length-of-stay for residential services for substance use disorders shall be person-centered and according to an individually designed plan of care that is consistent with this administrative regulation and the licensure of the facility and practitioner.
- 6.a. Except as established in clause b. of this subparagraph, the physical structure in which residential services for substance use disorders is provided shall:
 - (i) Have between nine (9) and sixteen (16) beds; and
 - (ii) Not be part of multiple units comprising one (1) facility with more than sixteen (16) beds in aggregate.
- b. If every recipient receiving services in the physical structure is under the age of twenty-one (21) years or over the age of sixty-five (65) years, the limit of sixteen (16) beds established in clause a. of this subparagraph shall not apply.

- 7. Residential services for substance use disorders shall not include:
 - a. Room and board;
 - b. Educational services;
 - c. Vocational services;
 - d. Job training services;
 - e. Habilitation services;
 - f. Services to an inmate in a public institution pursuant to 42 C.F.R. 435.1010;
 - g. Services to an individual residing in an institution for mental diseases pursuant to 42 C.F.R. 435.1010;
 - h. Recreational activities;
 - i. Social activities; or
 - j. Services required to be covered elsewhere in the Medicaid state plan.
- 8. To provide residential services for substance use disorders, a behavioral health services organization shall:
 - a. Have the capacity to employ staff authorized to provide services in accordance with this section and to coordinate the provision of services among team members; and
 - b. Be licensed as a non-medical and non-hospital based alcohol and other drug abuse treatment entity in accordance with 908 KAR 1:370 and 908 KAR 1:372.
- 9. A BHSO III may provide residential services for substance use disorders, if provided by:
 - a. An approved behavioral health practitioner, as limited by subsections (2) and (5) of this section; or
 - b. An approved behavioral health practitioner under supervision, as limited by subsections (2) and (5) of this section.
- 10. Support services for residential services for substance use disorders may be provided by a peer support specialist under the supervision of an approved behavioral health practitioner.
- (o)1. Screening, brief intervention, and referral to treatment for a substance use disorder shall:
 - a. Be provided face-to-face;
 - b. Be an evidence-based early intervention approach for an individual with non-dependent substance use to provide an effective strategy for intervention prior to the need for more extensive or specialized treatment; and
 - c. Consist of:
 - (i) Using a standardized screening tool to assess an individual for risky substance use behavior;
 - (ii) Engaging a recipient, who demonstrates risky substance use behavior, in a short conversation and providing feedback and advice; and
 - (iii) Referring a recipient to additional substance use disorder or co-occurring disorder services if the recipient is determined to need additional services to address substance use.
- 2. A screening and brief intervention that does not meet criteria for referral to treatment may be subject to coverage by the department.
- 3. A screening, brief intervention, and referral to treatment for a substance use disorder shall be provided by:
 - a. An approved behavioral health practitioner, as limited by subsections (2) and (5) of this section; or
 - b. An approved behavioral health practitioner under supervision, as limited by subsections (2) and (5) of this section.
- (p)1. Withdrawal management services shall:
 - a. Be provided face-to-face for recipients with a substance use disorder or co-occurring disorders;
 - b. Be incorporated into a recipient's care as appropriate according to the continuum of care described in the most current version of The ASAM Criteria;
 - c. Be in accordance with the most current version of The ASAM Criteria for withdrawal management levels in an outpatient setting;
 - d. If provided in an outpatient setting, comply with 908 KAR 1:374, Section 2; and
 - e. If provided in a substance use disorder residential program, comply with 908 KAR 1:372, Section 2.
- 2. A recipient who is receiving withdrawal management services shall:
 - a. Meet the most current edition of diagnostic criteria for

substance withdrawal management found in the Diagnostic and Statistical Manual of Mental Disorders; and

b. Meet the current dimensional admissions criteria for withdrawal management level of care as found in The ASAM Criteria.

3. Withdrawal management services shall be provided by:

- a. A physician;
- b. A psychiatrist;
- c. A physician assistant;
- d. An advanced practice registered nurse; or

e. Any other approved behavioral health practitioner with oversight by a physician, advanced practice registered nurse, or a physician assistant, as limited by subsections (2) and (5) of this section.

(q)1. Medication assisted treatment services shall be provided by an authorized prescribing provider who:

a.(i) Is a physician licensed to practice medicine under KRS Chapter 311; or

(ii) Is an advanced practice registered nurse (APRN);

b. Meets standards in accordance with 201 KAR 9:270 or 201 KAR 20:065;

c. Maintains a current waiver under 21 U.S.C. 823(g)(2) to prescribe buprenorphine products; and

d. Has experience and knowledge in addiction medicine.

2. Medication assisted treatment with behavioral health therapies shall:

a. Be co-located within the same practicing site or via telehealth as appropriate according to 907 KAR 3:170 as the practitioner with a waiver pursuant to subparagraph 1.c. of this paragraph; or

b. Be conducted with agreements in place for linkage to appropriate behavioral health treatment providers who specialize in substance use disorders and are knowledgeable in biopsychosocial dimensions of alcohol or other substance use disorder, such as:

(i) An approved behavioral health practitioner, as limited by subsections (2) and (5) of this section; or

(ii) A multi-specialty group or behavioral health provider group pursuant to 907 KAR 15:010.

3. Medication assisted treatment may be provided in:

a. An outpatient behavioral health setting, including in a narcotic treatment program for substance use disorder treatment with methadone operating in accordance with 908 KAR 1:374, Section 7; or

b. A residential treatment program for substance use disorders. If a residential treatment program for substance use disorders does not offer medication assisted treatment on-site, care coordination shall be provided to facilitate medication assisted treatment off-site if necessary by recipient choice.

4. A medication assisted treatment program shall:

a. Assess the need for treatment including:

(i) A full patient history to determine the severity of the patient's substance use disorder; and (ii) Identifying and addressing any underlying or co-occurring diseases or conditions, as necessary;

b. Educate the patient about how the medication works, including:

(i) The associated risks and benefits; and

(ii) Overdose prevention;

c. Evaluate the need for medically managed withdrawal from substances;

d. Refer patients for higher levels of care if necessary; and

e. Obtain informed consent prior to integrating pharmacologic or nonpharmacologic therapies.

5. Medication assisted treatment shall be provided by:

a. A physician;

b. A psychiatrist; or

c. An advanced practice registered nurse.

6.a. Notwithstanding any other provision of 907 KAR Chapter 15 to the contrary, temporary licensure shall be permissible for a certified alcohol and drug counselor practicing within a narcotic treatment program.

b. A temporarily certified alcohol and drug counselor practicing within a narcotic treatment program shall be under the direct

supervision of a licensed clinical alcohol and drug counselor.

c. A temporarily certified alcohol and drug counselor pursuant to this subparagraph shall provide only the following services:

(i) Individual counseling;

(ii) Group counseling; and

(iii) Targeted case management pursuant to 907 KAR 15:040 and 907 KAR 15:050.

d.(i) The provisions of this subparagraph shall no longer be operational two (2) years after this administrative regulation becomes effective.

(ii) After the two (2) year period has lapsed, an individual performing temporarily licensed certified alcohol and drug counselor duties as specified in clause c. of this subparagraph shall possess an appropriate license to perform those duties.

(r)1. Partial hospitalization services shall be:

a. Short-term with an average of four (4) to six (6) weeks,

b. Less than twenty-four (24) hours each day; and

c. An intensive treatment program for an individual who is experiencing significant impairment to daily functioning due to a substance use disorder or co-occurring disorders.

2. Partial hospitalization may be provided to an adult or a minor.

3. Admission criteria for partial hospitalization shall be based on an inability of community-based therapies or intensive outpatient services to adequately treat the recipient.

4. A partial hospitalization program shall meet the service criteria, including the components for support systems, staffing, and therapies outlined in the most current edition of The ASAM Criteria for partial hospitalization level of care services.

5. A partial hospitalization program shall consist of:

a. Individual outpatient therapy;

b. Group outpatient therapy;

c. Family outpatient therapy; or

d. Medication management.

6. The department shall not reimburse for educational, vocational, or job training services provided as part of partial hospitalization.

7.a. A behavioral health services organization's partial hospitalization program shall have an agreement with the local educational authority to come into the program to provide all educational components and instruction that are not Medicaid billable or reimbursable.

b. Services in a Medicaid eligible child's individualized education program shall be coverable under Medicaid.

8. Partial hospitalization shall be:

a. Provided for at least four (4) hours per day; and

b. Focused on one (1) primary presenting problem.

9. A partial hospitalization program operated by a behavioral health services organization shall:

a. Include the following personnel for the purpose of providing medical care:

(i) An advanced practice registered nurse, a physician assistant, or a physician available on site; and

(ii) A board-certified or board-eligible psychiatrist available for consultation; and

b. Have the capacity to:

(i) Provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles;

(ii) Employ required practitioners and coordinate service provision among rendering practitioners; and

(iii) Provide the full range of services included in the scope of partial hospitalization established in this paragraph.

(8)(a) Limited laboratory services shall be reimbursable in accordance with 907 KAR 1:028 if provided by a BHSO II or a BHSO III if:

1. The BHSO II or BHSO III has the appropriate CLIA certificate to perform laboratory testing pursuant to 907 KAR 1:028; and

2. The services are prescribed by a physician, advanced practice registered nurse, or physician assistant who has a contractual relationship with the BHSO II or BHSO III.

(b) Limited laboratory services shall be administered, as

appropriate, by:

1. An approved behavioral health practitioner, as limited by subsections (2) and (5) of this section; or
2. An approved behavioral health practitioner under supervision, as limited by subsections (2) and (5) of this section.

Section 4. Additional Limits and Non-covered Services or Activities. (1)(a) Except as established in paragraph (b) of this subsection, unless a diagnosis is made and documented in the recipient's medical record within three (3) visits, the service shall not be covered.

(b) The requirement established in paragraph (a) of this subsection shall not apply to:

1. Mobile crisis services;
2. Crisis intervention;
3. A screening;
4. An assessment; or
5. Peer support services for the engagement into substance use disorder treatment within an emergency department bridge clinic.

(2) For a recipient who is receiving residential services for a substance use disorder, the following shall not be billed or reimbursed for the same date of service for the recipient:

- (a) A screening;
- (b) An assessment;
- (c) Service planning;
- (d) A psychiatric service;
- (e) Individual outpatient therapy;
- (f) Group outpatient therapy;
- (g) Family outpatient therapy; or
- (h) Peer support services.

(3) For a recipient who is receiving assertive community treatment for non-substance use disorder treatment pursuant to 907 KAR 15:020, the following shall not be billed or reimbursed for the same date of service for the recipient:

- (a) An assessment;
- (b) Case management;
- (c) Individual outpatient therapy;
- (d) Group outpatient therapy;
- (e) Peer support services; or
- (f) Mobile crisis services.

(4) The department shall not reimburse for both a screening and a screening, brief intervention, and referral to treatment provided to a recipient on the same date of service.

(5) The following services or activities shall not be covered under this administrative regulation:

- (a) A service provided to:
 1. A resident of:
 - a. A nursing facility; or
 - b. An intermediate care facility for individuals with an intellectual disability;
 2. An inmate of a federal, local, or state:
 - a. Jail;
 - b. Detention center; or
 - c. Prison; or
 3. An individual with an intellectual disability without documentation of an additional psychiatric diagnosis;
 - (b) Psychiatric or psychological testing for another agency, including a court or school, that does not result in the individual receiving psychiatric intervention or behavioral health therapy from the behavioral health services organization;
 - (c) A consultation or educational service provided to a recipient or to others;
 - (d) A telephone call, an email, a text message, or other electronic contact that is not "face-to-face", unless permitted as a telehealth service pursuant to 907 KAR 3:170 and this administrative regulation;
 - (e) Travel time;
 - (f) A field trip;
 - (g) A recreational activity;
 - (h) A social activity; or
 - (i) A physical exercise activity group.
- (6)(a) A consultation by one (1) provider or professional with

another shall not be covered under this administrative regulation except as established in Section 3(7)(l)1. of this administrative regulation.

(b) A third party contract shall not be covered under this administrative regulation.

(7) A billing supervisor arrangement between a billing supervisor and an approved behavioral health practitioner under supervision shall not violate the supervision rules or policies of the respective professional licensure boards governing the billing supervisor and the approved behavioral health practitioner under supervision.

Section 5. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider, of any program in which the service is covered, during the same time period.

(2) For example, if a recipient is receiving a behavioral health service from an independent behavioral health provider, the department shall not reimburse for the same service provided to the same recipient during the same time period by a behavioral health services organization.

Section 6. Records Maintenance, Documentation, Protection, and Security. (1) A behavioral health services organization shall maintain a current health record for each recipient.

(2) A health record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.

(3) A health record shall:

(a) Include:

1. An identification and intake record including:

- a. Name;
- b. Social Security number;
- c. Date of intake;
- d. Home (legal) address;
- e. Health insurance or Medicaid information;
- f. Referral source and address of referral source;
- g. Primary care physician and address;
- h. The reason the individual is seeking help including the presenting problem and diagnosis;

i. Any physical health diagnosis, if a physical health diagnosis exists for the individual, and information regarding:

(i) Where the individual is receiving treatment for the physical health diagnosis; and

(ii) The physical health provider; and

j. The name of the informant and any other information deemed necessary by the behavioral health services organization to comply with the requirements of:

(i) This administrative regulation;

(ii) The behavioral health services organization's licensure board;

(iii) State law; or

(iv) Federal law;

2. Documentation of the:

- a. Screening;
 - b. Assessment if an assessment was performed; and
 - c. Disposition if a disposition was performed;
3. A complete history including mental status and previous treatment;

4. An identification sheet;

5. A consent for treatment sheet that is accurately signed and dated; and

6. The individual's stated purpose for seeking services; and

(b) Be:

1. Maintained in an organized central file;

2. Furnished to the:

- a. Cabinet for Health and Family Services upon request; or
- b. Managed care organization in which the recipient is enrolled upon request if the recipient is enrolled with a managed care organization;

3. Made available for inspection and copying by:

- a. Cabinet for Health and Family Services' personnel; or
- b. Personnel of the managed care organization in which the

recipient is enrolled if the recipient is enrolled with a managed care organization;

4. Readily accessible; and

5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient if the recipient received services beyond a screening.

(4) Documentation of a screening shall include:

(a) Information relative to the individual's stated request for services; and

(b) Other stated personal or health concerns if other concerns are stated.

(5)(a) A behavioral health services organization's service notes regarding a recipient shall:

1. Be made within forty-eight (48) hours of each service visit;

2. Indicate if the service was provided face-to-face or via telehealth; and

3. Describe the:

a. Recipient's symptoms or behavior, reaction to treatment, and attitude;

b. Therapist's intervention;

c. Changes in the plan of care if changes are made; and

d. Need for continued treatment if continued treatment is needed.

(b)1. Any edit to notes shall:

a. Clearly display the changes; and

b. Be initialed and dated by the person who edited the notes.

2. Notes shall not be erased or illegibly marked out.

(c)1. Notes recorded by an approved behavioral health practitioner under supervision shall be co-signed and dated by the supervising professional within thirty (30) days.

2. If services are provided by an approved behavioral health practitioner under supervision, there shall be a monthly supervisory note recorded by the supervising professional reflecting consultations with the approved behavioral health practitioner under supervision concerning the:

a. Case; and

b. Supervising professional's evaluation of the services being provided to the recipient.

(6) Immediately following a screening of a recipient, the practitioner shall perform a disposition related to:

(a) A provisional diagnosis;

(b) A referral for further consultation and disposition, if applicable; or

(c)1. If applicable, termination of services and referral to an outside source for further services; or

2. If applicable, termination of services without a referral to further services.

(7) Any change to a recipient's plan of care shall be documented, signed, and dated by the rendering practitioner and by the recipient or recipient's representative.

(8)(a) Notes regarding services to a recipient shall:

1. Be organized in chronological order;

2. Be dated;

3. Be titled to indicate the service rendered;

4. State a starting and ending time for the service; and

5. Be recorded and signed by the rendering practitioner and include the professional title (for example, licensed clinical social worker) of the provider.

(b) Initials, typed signatures, or stamped signatures shall not be accepted.

(c) Telephone contacts, family collateral contacts not covered under this administrative regulation, or other non-reimbursable contacts shall:

1. Be recorded in the notes; and

2. Not be reimbursable.

(9)(a) A termination summary shall:

1. Be required, upon termination of services, for each recipient who received at least three (3) service visits; and

2. Contain a summary of the significant findings and events during the course of treatment including the:

a. Final assessment regarding the progress of the individual toward reaching goals and objectives established in the individual's plan of care;

b. Final diagnosis of clinical impression; and

c. Individual's condition upon termination and disposition.

(b) A health record relating to an individual who terminated from receiving services shall be fully completed within ten (10) days following termination.

(10) If an individual's case is reopened within ninety (90) days of terminating services for the same or related issue, a reference to the prior case history with a note regarding the interval period shall be acceptable.

(11)(a) Except as established in paragraph (b) of this subsection, if a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring behavioral health services organization shall, within ten (10) business days of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

1.a. The Health Insurance Portability and Accountability Act;

b. 42 U.S.C. 1320d-2 to 1320d-8; and

c. 45 C.F.R. Parts 160 and 164; or

2.a. 42 U.S.C. 290 ee-3; and

b. 42 C.F.R. Part 2.

(b) If a recipient is transferred or referred to a residential crisis stabilization unit, a psychiatric hospital, a psychiatric distinct part unit in an acute care hospital, or an acute care hospital for care or treatment, the transferring behavioral health services organization shall, within forty-eight (48) hours of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

1.a. The Health Insurance Portability and Accountability Act;

b. 42 U.S.C. 1320d-2 to 1320d-8; and

c. 45 C.F.R. Parts 160 and 164; or

2.a. 42 U.S.C. 290 ee-3; and

b. 42 C.F.R. Part 2.

(12)(a) If a behavioral health services organization's Medicaid Program participation status changes as a result of voluntarily terminating from the Medicaid Program, involuntarily terminating from the Medicaid Program, a licensure suspension, or death of an owner or deaths of owners, the health records of the behavioral health services organization shall:

1. Remain the property of the behavioral health services organization; and

2. Be subject to the retention requirements established in subsection (13) of this section.

(b) A behavioral health services organization shall have a written plan addressing how to maintain health records in the event of death of an owner or deaths of owners.

(13)(a) Except as established in paragraph (b) or (c) of this subsection, a behavioral health services organization shall maintain a case record regarding a recipient for at least six (6) years from the date of the service or until any audit dispute or issue is resolved beyond six (6) years.

(b) After a recipient's death or discharge from services, a provider shall maintain the recipient's record for the longest of the following periods:

1. Six (6) years unless the recipient is a minor; or

2. If the recipient is a minor, three (3) years after the recipient reaches the age of majority under state law.

(c) If the Secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this subsection, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(14)(a) A behavioral health services organization shall comply with 45 C.F.R. Part 164.

(b) All information contained in a health record shall:

1. Be treated as confidential;

2. Not be disclosed to an unauthorized individual; and

3. Be disclosed to an authorized representative of:

a. The department; or

b. Federal government.

(c)1. Upon request, a behavioral health services organization shall provide to an authorized representative of the department or federal government information requested to substantiate:

- a. Staff notes detailing a service that was rendered;
 - b. The professional who rendered a service; and
 - c. The type of service rendered and any other requested information necessary to determine, on an individual basis, whether the service is reimbursable by the department.
2. Failure to provide information required by subparagraph 1. of this paragraph shall result in denial of payment for any service associated with the requested information.

Section 8. Medicaid Program Participation Compliance. (1) A behavioral health services organization shall comply with:

- (a) 907 KAR 1:671;
 - (b) 907 KAR 1:672; and
 - (c) All applicable state and federal laws.
- (2)(a) If a behavioral health services organization receives any duplicate payment or overpayment from the department, regardless of reason, the behavioral health services organization shall return the payment to the department.
- (b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:
1. Interpreted to be fraud or abuse; and
 2. Prosecuted in accordance with applicable federal or state law.
- (3)(a) When the department makes payment for a covered service and the behavioral health services organization accepts the payment:
1. The payment shall be considered payment in full;
 2. A bill for the same service shall not be given to the recipient; and
 3. Payment from the recipient for the same service shall not be accepted by the behavioral health services organization.
- (b)1. A behavioral health services organization may bill a recipient for a service that is not covered by the Kentucky Medicaid Program if the:
- a. Recipient requests the service; and
 - b. Behavioral health services organization makes the recipient aware in advance of providing the service that the:
 - (i) Recipient is liable for the payment; and
 - (ii) Department is not covering the service.
2. If a recipient makes payment for a service in accordance with subparagraph 1. of this paragraph, the:
- a. Behavioral health services organization shall not bill the department for the service; and
 - b. Department shall not:
 - (i) Be liable for any part of the payment associated with the service; and
 - (ii) Make any payment to the behavioral health services organization regarding the service.
- (4)(a) A behavioral health services organization shall attest by the behavioral health services organization's staff's or representative's signature that any claim associated with a service is valid and submitted in good faith.
- (b) Any claim and substantiating record associated with a service shall be subject to audit by the:
1. Department or its designee;
 2. Cabinet for Health and Family Services, Office of Inspector General, or its designee;
 3. Kentucky Office of Attorney General or its designee;
 4. Kentucky Office of the Auditor for Public Accounts or its designee; or
 5. United States General Accounting Office or its designee.
- (c) If a behavioral health services organization receives a request from the department to provide a claim, related information, related documentation, or record for auditing purposes, the behavioral health services organization shall provide the requested information to the department within the timeframe requested by the department.
- (d)1. All services provided shall be subject to review for recipient or provider abuse.
2. Willful abuse by a behavioral health services organization shall result in the suspension or termination of the behavioral health services organization from Medicaid Program participation.

Section 9. Third Party Liability. A behavioral health services organization shall comply with KRS 205.622.

Section 10. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A behavioral health services organization that chooses to use electronic signatures shall:

- (a) Develop and implement a written security policy that shall:
 1. Be adhered to by each of the behavioral health services organization's employees, officers, agents, or contractors;
 2. Identify each electronic signature for which an individual has access; and
 3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;
- (b) Develop a consent form that shall:
 1. Be completed and executed by each individual using an electronic signature;
 2. Attest to the signature's authenticity; and
 3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and
- (c) Provide the department, immediately upon request, with:
 1. A copy of the behavioral health services organization's electronic signature policy;
 2. The signed consent form; and
 3. The original filed signature.

Section 11. Auditing Authority. The department shall have the authority to audit any:

- (1) Claim;
- (2) Medical record; or
- (3) Documentation associated with any claim or medical record.

Section 12. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the coverage; and
- (2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 13. Appeals. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

CAROL H. STECKEL, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: June 12, 2019

FILED WITH LRC: June 28, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 26, 2019, 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 August 19, 2019, 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 August 31, 2019. 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: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone: 502-564-6746; fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonthant.scott@ky.gov; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program behavioral health services provided by behavioral health services organizations (BHSOs) that focus on substance use disorder treatment. The specific tiers of BHSO referenced within this administrative regulation will focus on outpatient substance use disorder services (BHSO II) and residential substance use disorder services (BHSO III). The licensure for BHSO IIs and IIIs will be determined by the AODE licensure administrative regulations pursuant to 908 KAR 3:170, 3:172, and 3:174. A BHSO is an entity that provides treatment for mental health and substance use disorders and is licensed and regulated by the Office of Inspector General in accordance with 902 KAR 20:430. The array of services includes a screening, an assessment, psychological testing, crisis intervention, mobile crisis services, medication assisted treatment, day treatment, peer support, intensive outpatient program services, individual outpatient therapy, group outpatient therapy, family outpatient therapy, collateral outpatient therapy, partial hospitalization, service planning, and residential services for substance use disorders. In addition, this administrative regulation allows for Medicaid reimbursement for SUD treatment that includes methadone.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 205.6311, which mandates that Kentucky's Medicaid Program "expand the behavioral health network to allow providers to provide services within their licensure category." In addition, this administrative regulation will assist with the implementation of an approved SUD 1115 Waiver that is part of the Kentucky HEALTH 1115 Waiver.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by expanding "the behavioral health network to allow providers to provide services within their licensure category."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation will assist in the effective administration of the authorizing statutes by tiering BHSOs according to the licensure and type of services provided. In addition, new practitioners are included throughout the tiers to provide services to help meet recipient demand. Finally, the provisions will assist with conforming to the content of KRS 205.6311(2).

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Entities licensed as alcohol or other drug treatment entities and as behavioral health services organizations will be affected by this administrative regulation as a need for dual

licensure will be removed. Medicaid recipients in need of substance use treatment, mental health treatment, or treatment for co-occurring disorders will also be affected by this administrative regulation. Currently, there are 1.4 million Medicaid members. DMS anticipates that up to seven (7) percent of the Medicaid population could seek OUD treatment.

(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. Providers that plan to provide SUD or co-occurring disorder treatment services in a BHSO setting will need to attain AODE inpatient or outpatient licensure and ensure that the appropriate services are provided by the appropriate provider within each tier of facility. There are currently 11 narcotic treatment programs enrolled in Kentucky as Medicaid providers. There are currently 134 enrolled BHSOs.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Entities will need to qualify for and attain AODE inpatient or outpatient licensure as appropriate.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). This administrative regulation will allow access to a full continuum of care for substance use disorder services. Any Medicaid recipient in need of substance use disorder services will have access to SUD services that are provided by a facility with appropriate licensure. Currently there are 1.4 million Kentuckians receiving Medicaid services.

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

(a) Initially: DMS currently performs many of the functions in this administrative regulation. DMS will be expanding coverage of methadone as a part of this administrative regulation. DMS may cover as many as 4,000 Medicaid eligible members. Methadone coverage may cost as much as \$8000 per year per member, however, this will not be a hydraulic price increase because at least ninety-five (95) percent of the impacted individuals are within managed care.

(b) On a continuing basis: DMS anticipates that methadone coverage will continue for certain Medicaid members at a cost of \$8000 per year per member. DMS may cover as many as 4,000 Medicaid eligible members. Methadone coverage may cost as much as \$8000 per year per member, however, this will not be a hydraulic price increase because at least ninety-five (95) percent of the impacted individuals are within managed care.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is applied in that established types of services are now grouped by licensure and whether the service is for substance use disorder or mental health treatment. However, the requirements within each tier of service are applied equally to all entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 18022(b)(1)(E), 42 U.S.C. 1396a(a)(10)(B), and 42 U.S.C. 1396a(a)(23).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Substance use disorder services are federally mandated for Medicaid programs. 42 U.S.C. 18022(b)(1)(E) mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment." 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." Medicaid recipients enrolled with a managed care organization may be restricted to providers within the managed care organization's provider network. The Centers for Medicare and Medicaid Services (CMS) – the federal agency that oversees and provides the federal funding for Kentucky's Medicaid Program – has expressed to the Department for Medicaid Services (DMS) the need for DMS to expand its substance use disorder provider base to comport with the freedom of choice of provider requirement. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope as available to other individuals (non-Medicaid). Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter than federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by this new administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3).

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 new administrative regulation is not expected to generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The new administrative regulation is not expected to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? DMS will be expanding coverage of methadone as a part of this administrative regulation. DMS may cover as many as 4,000

Medicaid eligible members. Methadone coverage may cost as much as \$8000 per year per member, however, this will not be a hydraulic price increase because at least ninety-five (95) percent of the impacted individuals are within managed care. Furthermore, DMS does not expect any additional costs in administering this new administrative regulation during the first year due to program enhancements and IT infrastructure upgrades.

(d) How much will it cost to administer this program for subsequent years? DMS will be expanding coverage of methadone as a part of this administrative regulation. DMS may cover as many as 4,000 Medicaid eligible members. Methadone coverage may cost as much as \$8000 per year per member, however, this will not be a hydraulic price increase because at least ninety-five (95) percent of the impacted individuals are within managed care. Furthermore, DMS does not expect any additional costs in administering this new administrative regulation during subsequent years due to program enhancements and IT infrastructure upgrades.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of July 10, 2019

Call to Order and Roll Call

The July meeting of the Administrative Regulation Review Subcommittee was held on Wednesday, July 11, 2019 at 10:00 a.m. In Room 149 of the Capitol Annex. Representative Hale, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the June 2019 were approved.

Present were:

Members: Senators Perry Clark, Alice Forgy Kerr, and Stephen West. Representatives David Hale, Deanna Frazier, Marylou Marzian, and Tommy Turner.

LRC Staff: Sarah Amburgey, Stacy Auterson, Emily Caudill, Betsy Cupp, Ange Darnell, Emily Harkenrider, Karen Howard, and Carrie Klaber.

Guests: Kathryn Gabhart, Executive Branch Ethics Commission; Rosemary Holbrook, Alaina Myers, Personnel Cabinet; Todd Renner, Department of Revenue; Anthony Gray, Larry Hadley, Board of Pharmacy; Marc Manley, Kenneth Urlarge, Board of Licensure for Long Term Administrators; Cindy Castle, Carson Kerr, Board of Ophthalmic Dispensers; Nathan Goldman, Board of Nursing; Tony Cotto, Board of Podiatry; Rick Hessig, Board of Private Investigators; Mike Denney, Michelle Sullivan, Kentucky Lottery, Phillip Dietz, John Wood, Board of Emergency Medical Services; Steven Fields, Chris Garland, John Hast, Karen Waldrop, Department of Fish and Wildlife Resources; Clint Quarles, Department of Agriculture; Bert Gibbons, Michael Mullins, John Small, Department for Natural Resources; Patrick O'Connor, Leah Spears, Eric Stone, Department of Insurance; Ben Bellamy, Gwen Pinson, Karen Wilson, Public Service Commission; Heather Becker, H.E. Corder, Ronald Kirby, Board of Auctioneers; Erica Brakefield, Jan Bright, Julie Brooks, Jessica Davenport, Andy Waters, Department for Public Health; Stephanie Brammer-Barnes, Allen Brenzel, Kara Daniel, Department for Behavioral Health, Developmental and Intellectual Disabilities; Erika Bauford, Sarah Cooper, Bryan Hubbard, Department for Community Based Services; Curt Duff, James Morris, and David Sinclair.

The Administrative Regulation Review Subcommittee met on Wednesday, July 10, 2019, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

FINANCE AND ADMINISTRATION CABINET: Executive Branch Ethics Commission

9 KAR 1:010 & E. Statement of financial disclosure. Katie Gabhart, executive director, represented the commission.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2 and 4 to delete outdated language; and (2) to amend Sections 1 through 4 and material incorporated by reference to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

9 KAR 1:040 & E. Executive agency lobbyist, employer or executive agency lobbyist, and real party in interest registration and expenditure statements; financial transactions and termination forms; and enforcement.

A motion was made and seconded to approve the following amendments: to amend the TITLE and Sections 1, 2, and 4 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PERSONNEL CABINET: Personnel Cabinet, Classified

101 KAR 2:180. Employee performance evaluation system. Rosemary Holbrook, general counsel, and Alaina Myers, deputy commissioner of human resources, represented the cabinet.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph 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.

101 KAR 2:190. Employee performance management system. A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Income Tax; General Administration

103 KAR 15:061. Repeal of 103 KAR 15:060. Todd Renner, executive director, Office of Tax Policy and Regulation, represented the department.

Income Tax; Individual

103 KAR 17:121. Repeal of 103 KAR 17:120.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 2:010. Schools approved by the board. Anthony Gray, general counsel, and Larry Hadley, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 2:090. Reference material and prescription equipment.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 2:100. Security and control of drugs and prescriptions.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 2 to change "personal supervision" to "supervision" for consistency with KRS 329.010(27). Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 2:116. Substitution of drugs, biologics and biosimilar products.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 2:225. Special limited pharmacy permit – medical gas.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph 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.

201 KAR 2:240. Special limited pharmacy permit – charitable.

In response to questions by Representative Marzian, Mr. Hadley stated that special limited pharmacy permits for charities included, for example, free clinics with a pharmacy component. The permit was renewed yearly, and charity events were held at various intervals during the year.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 2:270. Expungement.

A motion was made and seconded to approve the following amendments: to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 2:340. Special limited pharmacy permit – clinical practice.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3 and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Licensure for Long-Term Care Administrators

201 KAR 6:030. Temporary permits. Marc Manley, board counsel, and Kenneth Urlage, board vice chair, represented the board.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 6:040. Renewal, reinstatement, and reactivation of license.

In response to a question by Representative Marzian, Mr. Manley stated that provisions regarding disciplinary action information sharing were precipitated by a specific incident in which a licensee who was the subject of a complaint left Kentucky and allowed Kentucky licensure to expire. When the licensee applied for licensure in another state, the board was unable to share pertinent information with that state because final action on the complaint or adjudication on the merits had not proceeded. Changes to this administrative regulation allowed a record of a complaint to be shared if another state requested the information. There was reciprocity in that Kentucky could also request similar information from other states.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Section 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Ophthalmic Dispensers

201 KAR 13:040. Licensing. Cindy Castle, chair, and Carson Kerr, board counsel, represented the board.

In response to a question by Representative Marzian, Mr. Kerr stated that comments during the public comment period

related primarily to the addition of the ABO-NCLE practical examination.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 4, 5, and 8 to comply with the drafting requirements of KRS Chapter 13A; (2) to update the Application for Ophthalmic Dispenser or Apprentice License for consistency with this administrative regulation in referring to the required examinations; and (3) to amend Section 2 to clarify that an applicant shall: (a) pass both the ABO Basic Examination and the NCLE Basic Examination; and (b) pass either the NCSORB National Practical Examination, or both the ABO Practical and the NCLE practical examination. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 13:050. Apprentices.

201 KAR 13:055. Continuing education requirements.

In response to a question by Representative Marzian, Mr. Kerr stated that continuing education changes primarily included clarifying the definition for “in-person contact hours.”

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 6 through 11 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 13:060. Military service; reciprocity; endorsement.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Nursing

201 KAR 20:370. Applications for licensure. Nathan Goldman, general counsel, represented the board.

A motion was made and seconded to approve the following amendment: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

201 KAR 20:506. Nurse licensure compact.

Board of Podiatry

201 KAR 25:090. Prescribing and dispensing controlled substances. Tony Cotto, executive advisor, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 5 to: (a) add an exception for admittance to a long-term care facility licensed under KRS Chapter 216B; and (b) delete the reference to KRS 218A.205. Without objection, and with agreement of the agency, the amendments were approved.

Board of Private Investigators

201 KAR 41:020. Application for licensure. Rick Hessig, chair, and Marc Manley, board counsel, represented the board.

201 KAR 41:030. Examination.

A motion was made and seconded to approve the following amendment: to amend Section 1 to delete language, “at least twice annually,” which was duplicative of the language established in KRS 329A.025(2)(c). Without objection, and with agreement of the agency, the amendment was approved.

201 KAR 41:040. Fees.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 1, 6, 9, and 10 to comply with the drafting requirements of KRS Chapter 13A. Without

VOLUME 46, NUMBER 2– AUGUST 1, 2019

objection, and with agreement of the agency, the amendments were approved.

201 KAR 41:060. Renewal and reinstatement procedures.

201 KAR 41:065. Inactive status.

A motion was made and seconded to approve the following amendments: to amend Section 1 to: (1) require the written request to the board for inactive licensure status to be prior to the time of renewal; and (2) comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 41:070. Continuing professional education requirements.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 3 through 7, 10, and 11 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 10 to: (a) clarify waiver provisions; and (b) include undue hardship or similar extenuating circumstances that precludes the licensee's completion of the requirements. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 41:080. Complaint procedure.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

KENTUCKY LOTTERY CORPORATION

202 KAR 3:010. Code of ethics. Mike Denney, assistant general counsel, and Michele Sullivan, vice president of human resources, represented the corporation.

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM: Board of Emergency Medical Services

202 KAR 7:560. Ground vehicle staff. Philip Dietz, chair; Michael Poynter, executive director; and John Wood, attorney, represented the board.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

301 KAR 2:221. Waterfowl seasons and limits. Steven Fields, staff attorney; Chris Garland, acting director, Wildlife Division; John Hast, bear program coordinator; and Karen Waldrop, deputy commissioner, represented the department.

301 KAR 2:222. Waterfowl hunting requirements on public land.

301 KAR 2:300. Black bear seasons and requirements.

In response to a question by Representative Marzian, Ms. Waldrop stated that the male quota had been removed for bears. Reporting for the purposes of quota tracking was conducted via call-in after 9 p.m. This administrative regulation also adjusted bear zones.

In response to questions by Co-Chair Hale, Ms. Waldrop stated that the quota tracking system was updated daily. Mr. Hast stated that Kentucky was nearly reaching the quotas. Ms. Waldrop stated that the department expected bear harvesting to increase.

GENERAL GOVERNMENT CABINET: Department of Agriculture: Division of Regulation and Inspection: Amusement Rides

302 KAR 16:010. Business identification number required. Clint Quarles, attorney, represented the division.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; 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.

302 KAR 16:020. Inspection and operation of amusement rides or amusement attractions.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 3 to reduce from \$600 to \$500, the re-inspection fee for wooden roller coasters. Without objection, and with the agreement of the agency, the amendments were approved.

302 KAR 16:040. Correction of safety violations and right to re-inspection.

A motion was made and seconded to approve the following amendments: to amend the TITLE and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 16:070. Reports of injuries involving amusement rides and amusement attractions.

302 KAR 16:091. Rides and attractions not included in the definition of amusement ride or attraction.

302 KAR 16:101. Operate amusement ride or device defined.

302 KAR 16:111. Violations, civil penalties, revocations, and suspensions of business identification number.

In response to a question by Co-Chair Hale, Mr. Quarles stated that changing from eighteen (18) to sixteen (16), the operator age threshold that would constitute a violation, was for consistency with commensurate statutory changes.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Sections 1 and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 16:121. Inflatable rides or attractions.

In response to questions by Co-Chair Hale, Mr. Quarles stated that private inflatable rides or attractions, such as those for school functions, were regulated and inspected at least once unless a problem occurred, which would result in re-inspection. The device was inflated and anchored to the ground for the purposes of inspection. The serial numbers of the inflatables were recorded, and the blower units received the inspection seal.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Sections 3 through 5 to comply with the drafting requirements of KRS Chapter 13A.

302 KAR 16:131. Maintenance and repair of amusement ride or attractions.

A motion was made and seconded to approve the following amendments: to amend the TITLE; 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.

Regulation and Inspection; Tobacco Sales

302 KAR 78:021. Repeal of 302 KAR 78:020.

Animal Control Officers

302 KAR 101:010. Training requirements for Kentucky Animal Control Officers.

A motion was made and seconded to approve the following amendments: to amend the TITLE; 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.

ENERGY AND ENVIRONMENT CABINET: Department for Natural Resources: Division of Mine Safety: Mining Safety Standards

805 KAR 3:110. Employees' personal protection. Bert Gibbons, assistant director; Michael Mullins, regulation coordinator; and John Small, commissioner, represented the division.

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.

PUBLIC PROTECTION CABINET: Department of Insurance: Insurance Fraud

806 KAR 47:010. Fraud prevention. Patrick O'Connor, deputy commissioner; Leah Spears, executive advisor; and Eric Stone, investigator supervisor, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 4, 5, and 7 and material incorporated by reference to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 47:021. Repeal of 806 KAR 47:020 and 806 KAR 47:030.

ENERGY AND ENVIRONMENT CABINET: Public Service Commission: Utilities

807 KAR 005:056. Fuel adjustment clause. Ben Bellamy, staff attorney; Gwen Pinson, executive director; and Karen Wilson, executive advisor, represented the commission. David Sinclair, vice president, Energy Supply and Analysis, represented LG&E and KU Energy in opposition to this administrative regulation.

In response to questions by Co-Chair West, Ms. Pinson stated that the Public Service Commission (PSC) was in the process of reviewing all of its administrative regulations as part of the Red Tape Reduction Initiative. This administrative regulation was initially promulgated in 1982 and was a priority for amendment as a result of House Resolution 144 from the 2019 Regular Session of the General Assembly, which urged PSC to consider all costs, including fossil fuel-related economic impacts for the purposes of analyzing coal purchases. Among other changes, the major shift was to Section 3(5), which was revised to exempt coal severance taxes in determining the reasonableness of fuel costs. This administrative regulation also made hearings discretionary, rather than mandatory, in order to limit costs from unnecessary hearings. If the attorney general wished to have a hearing or if the public requested a hearing or a hearing was in the public interest, the hearing would be held. Additionally, the public was always able to submit comments pertaining to an ongoing PSC case.

In response to a question by Co-Chair Hale, Mr. Sinclair stated that nonprofit regulated utilities were only authorized to recover actual fuel costs. In 2018, LG&E and KU Energy purchased approximately sixty (60) percent of coal used to generate electricity from Kentucky coal producers. The proposed revision to the fuel adjustment clause would change how PSC reviewed fuel procurement decisions from being based on the actual full price paid to the price less any coal severance tax. Customers would still pay the full cost of fuel, including coal severance tax; therefore, the proposed administrative regulation might cause higher consumer costs. The extra cost amount was uncertain; however, estimates could be between ten (10) and twenty (20) million dollars annually, depending on how coal bidding strategies changed. The proposed administrative regulation could be challenged on constitutional grounds, which could result in lengthy and costly litigation, further increasing costs for consumers.

The potential benefits to coal producers, employees, and communities were not quantified and might be greater or less than increased costs to consumers.

In response to questions by Co-Chair Hale, Ms. Pinson stated that the cost impact was expected to be minimal. Estimates from Mr. Sinclair were calculated based on an unlikely, worst-case scenario. One (1) commenter during the public comment period stated that the economic benefits of the possible increase outweighed the risks. There could be a consumer cost increase, but it was expected to be very minimal, such as seventy-five (75) cents per year. Numerous utilities submitted public comments during the public comment period.

In response to questions by Co-Chair West, Ms. Pinson stated that worst-case estimates were based on an overall four and five tenths (4.5) percent coal cost increase. PSC did not know if out-of-state coal providers were already "padding" prices. It seemed unlikely that Kentucky coal producers would "pad" prices because it would be in their interests to submit competitive bids. While PSC had not done an independent economic analysis, the Economic Development Cabinet had data regarding job and wage impacts. PSC hoped that any increased costs would be offset by rate-payer base increases resulting from economic growth.

Co-Chairs West and Hale stated that this was a very important administrative regulation. Cost containment for consumers was important, as was economic growth.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 1 to clarify that standards for suspension of rate schedules shall be based on the severity and history of nonconformity; and (3) to amend Section 3 to: (a) clarify that standards for suspension of fuel adjustment clauses shall be based on the severity and history of unreasonable fuel charges; and (b) delete language that could have been interpreted as limiting the scope of coal severance taxes. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Real Estate Authority: Kentucky Board of Auctioneers

831 KAR 1:010. Licensing fees and applications. Heather Becker, general counsel; H. E. Corder, executive director; and Ron Kirby, board member, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 2, 4, 5, and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 8 to incorporate by reference the License Renewal Form. Without objection, and with agreement of the agency, the amendments were approved.

831 KAR 1:020. Standards of conduct and complaints.

831 KAR 1:030. Education requirements.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3 to clarify that proof of a high school diploma or equivalent is required, unless waived pursuant to KRS 330.060(1)(b); and (2) to amend Sections 3, 4, and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Maternal and Child Health

902 KAR 4:030. Newborn screening program. Jan Bright, branch manager; Julie Brooks, regulation coordinator; and Andrew Waters, assistant division director, represented the department.

902 KAR 4:035. Cost reimbursement for specialized food products.

State and Local Confinement Facilities

902 KAR 9:010. Environmental health. Erica Brakefield, section supervisor; Jessica Davenport, program evaluator; and Julie Brooks, regulation coordinator, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to add the definition for "tempered water"; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 12, 14, 16, and 17 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Food and Cosmetics

902 KAR 45:120. Inspection and permit fees for recreational vehicle communities, youth camps, and private water supplies. Erica Brakefield, section supervisor; Jessica Davenport, program evaluator; and Julie Brooks, regulation coordinator, represented the department.

Department for Behavioral Health, Developmental and Intellectual Disabilities: Division of Behavioral Health: Substance Abuse

908 KAR 1:341. Repeal of 908 KAR 001:340. Stephanie Brammer – Barnes, regulation coordinator; Dr. Allen Brenzel, medical director; and Kara Daniel, division director, represented the division.

In response to a question by Co-Chair West, Ms. Daniel stated that the changes represented in these administrative regulations stemmed from the cabinet's efforts to implement House Bill 124 from the 2018 Regular Session of the General Assembly, which required the cabinet to perform a comprehensive review of standards for substance abuse treatment facilities statewide. The department worked with Medicaid, the cabinet's Office of Inspector General, and the Office of Drug Control Policy to develop these revised standards. These changes updated requirements, streamlined licensure, incorporated national standards, and made revisions for the purposes of improving quality of patient care.

908 KAR 1:370. Licensure procedures, fees, and general requirements for nonhospital-based alcohol and other drug treatment entities.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3 to make conforming changes stemming from a deletion made in the Amended After Comments version that removed differing survey requirements between accredited and non-accredited AODEs; and (2) to amend Section 18 to clarify a provision concerning the biopsychosocial assessment. Without objection, and with agreement of the agency, the amendments were approved.

908 KAR 1:372. Licensure of residential alcohol and other drug treatment entities.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3 to state that the food requirements apply only to a facility that prepares meals on-site for a client and do not apply to a facility where clients prepare their own meals on-site or are otherwise responsible for their meals; (2) to amend Section 5 to specify that a residential transitional living program shall ensure that each client participates for a minimum of five (5) hours per week in counseling and planned clinical program activities, with counseling comprising at least two (2) hours; and (3) to amend Section 8 to: (a) require all residential AODE programs to have at least one (1) shower or tub per fifteen (15) clients; and (b) to make a technical correction. Without objection, and with agreement of the agency, the amendments were approved.

Substance Abuse

908 KAR 1:374. Licensure of nonhospital-based outpatient alcohol and other drug treatment entities.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 1 through 8 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2)

to amend Section 7 to establish waiver criteria; and (3) to amend Section 4 to clarify that if clients prepare their own meals on-site or are otherwise responsible for their meals, a food service permit shall not be required. Without objection, and with agreement of the agency, the amendments were approved.

Department for Income Support: Division of Child Support Enforcement: Family Support

921 KAR 1:380. Child support enforcement program application and intergovernmental process. Bryan Hubbard, commissioner, represented the division.

A motion was made and seconded to approve the following amendments: to amend Section 2 to comply with the formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Community Based Services: Child Welfare

922 KAR 1:510. Authorization for disclosure of protection and permanency records. Erika Bauford, section supervisor, and Sarah Cooper, staff assistant, represented the department.

A motion was made and seconded to approve the following amendments: to amend Section 4 to revise the authorization form to: (1) include the agency's mailing address; and (2) require form completion and submission within ten (10) days. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred or removed from the July 10, 2019, subcommittee agenda:

STATE BOARD OF ELECTIONS: Forms and Procedures

31 KAR 4:120. Additional and emergency precinct officers.

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Income Tax; General Administration

103 KAR 15:050. Filing dates and extensions.

Office of Financial Management: State Investment Commission

200 KAR 14:201. Repeal of 200 KAR 14:200.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 2:095. Pharmacist interns.

201 KAR 2:165. Transfer of prescription information.

201 KAR 2:310. Compounding for a veterinarian's office or institutional administration for veterinary use.

Board of Dentistry

201 KAR 8:581. Charity dental practices.

Board of Social Work

201 KAR 23:150. Complaint procedure, disciplinary action, and reconsideration.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Water: Water Quality

401 KAR 5:010. Operation of wastewater systems by certified operators.

Water Quality Certification

401 KAR 8:030. Water treatment plant and water distribution system classification and staffing.

401 KAR 8:050. Drinking water program fees.

Certified Operators

401 KAR 11:001. Definitions for 401 KAR Chapter 11.

401 KAR 11:030. Wastewater treatment and collection system operators; classification and qualifications.

VOLUME 46, NUMBER 2– AUGUST 1, 2019

401 KAR 11:040. Water treatment and distribution system operators; classification and qualifications.

401 KAR 11:050. Operator and training provider certification.

401 KAR 11:060. Operator and training provider certification fees.

Department for Natural Resources: Division of Mine Permits: Bond and Insurance Requirements

405 KAR 10:001. Definitions for 405 KAR Chapter 10.

405 KAR 10:015. General bonding provisions.

JUSTICE AND PUBLIC SAFETY CABINET: Asset Forfeiture

500 KAR 9:011. Repeal of 500 KAR 9:010, 500 KAR 9:020, 500 KAR 9:030, and 500 KAR 9:040.

Motorcycle Safety Education Commission: Motorcycle Safety

500 KAR 15:010 & E. Motorcycle safety education program.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Driver Licensing: Administration

601 KAR 2:030 & E. Ignition interlock.

PUBLIC PROTECTION CABINET: Department of Insurance: Agents, Consultants, Solicitors, and Adjustors

806 KAR 9:001. Prelicensing courses of study.

806 KAR 9:020. False or deceptive names, titles, prohibited.

806 KAR 9:030. Adjuster licensing restrictions.

Agents, Consultants, Solicitors, and Adjustors

806 KAR 9:061. Repeal of 806 KAR 9:060.

806 KAR 9:070. Examinations.

806 KAR 9:110. Agent's rights after contract termination.

806 KAR 9:190. Disclosure requirements for financial institutions authorized to engage in insurance agency activities.

806 KAR 9:200. Volume of insurance agent exchange of business.

806 KAR 9:310. Life settlement licenses.

806 KAR 9:321. Repeal of 806 KAR 9:320.

806 KAR 9:341. Repeal of 806 KAR 9:341.

806 KAR 9:350. Recognition of financial planning certification and designation for receipt of fees and commissions.

Life Insurance and Annuity Contracts

806 KAR 15:081. Repeal of 806 KAR 15:080.

LABOR CABINET: Department of Financial Institutions: Administration

808 KAR 1:180. Use of special restricted funds.

CABINET FOR HEALTH AND FAMILY SERVICES: Division of Epidemiology and Health Planning: Communicable Diseases

902 KAR 2:070. Rabies control.

Public Accommodations

902 KAR 7:010. Hotel and motel code.

Division of Public Health Protection and Safety: Mobile Homes and Recreational Vehicles Parks; Facilities Standards

902 KAR 15:010. Manufactured and mobile homes.

Office of Inspector General: Division of Healthcare: Health Services and Facilities

902 KAR 20:036. Operation and services; personal care homes.

Food and Cosmetics

902 KAR 45:065. Tattooing.

Food and Cosmetics

902 KAR 45:070. Body piercing and ear piercing.

902 KAR 45:075. Tanning facilities.

Department of Medicaid Services: Division of Policy and Operations: Medicaid Services

907 KAR 1:604 & E. Recipient cost-sharing.

Department for Aging and Independent Living: Division of Guardianship: Guardianship

910 KAR 2:020. Referral process for adult guardianship.

Department for Aging and Independent Living: Division of Guardianship: Guardianship

910 KAR 2:040. Service provisions for adult guardianship.

Department for Community Based Services: Division of Protection and Permanency: Child Welfare

922 KAR 1:310 & E. Standards for child-placing agencies.

Child Welfare

922 KAR 1:350 & E. Requirements for public child welfare agency foster parents, adoptive parents, and respite care providers.

922 KAR 1:470. Central registry.

922 KAR 1:495 & E. Training requirements for foster parents, adoptive parents, and respite care providers for children in the custody of the cabinet.

The subcommittee adjourned at 11:10 a.m. The date, time, and room for the August subcommittee are pending.

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.

**INTERIM JOINT COMMITTEE ON ECONOMIC DEVELOPMENT
AND WORKFORCE INVESTMENT
Meeting of June 7, 2019**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Economic Development and Workforce Investment for its meeting of June 06, 2019, having been referred to the Committee on June 05, 2019, pursuant to KRS 13A.290(6):

803 KAR 002:180

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the June 06, 2019 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON HEALTH, WELFARE, AND
FAMILY SERVICES
Meeting of July 19, 2019**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health, Welfare, and Family Services for its meeting of July 19, 2019, having been referred to the Committee on July 3, 2019, pursuant to KRS 13A.290(6):

201 KAR 022:135
902 KAR 020:111
902 KAR 050:101
902 KAR 050:110
911 KAR 001:010
911 KAR 001:020
911 KAR 001:060
911 KAR 001:071

The following administrative regulations were deferred pursuant to KRS 13A.300:

911 KAR 1:010

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the July 19, 2019 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Unless otherwise noted, information contained in these indexes relates only to administrative regulations printed in this, the 46th year of the *Administrative Register of Kentucky*, from July 2019 through June 2020.

Locator Index - Effective Dates

B - 2

The Locator Index lists all administrative regulations published during this *Register* year. It also lists the page number on which each regulation is published, the effective date of the regulation after it has completed the review process, and other actions that may affect the regulation. NOTE: Regulations listed under REGISTER YEAR 45 are regulations that were originally published in last year's issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the *Register* year ended.

KRS Index

B - 9

A cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each regulation submitted for publication during this *Register* year.

Certifications Index

B - 16

A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this *Register* year. Additionally, this index includes information regarding regulations that had letters that stated a regulation shall be amended within 18 months.

Technical Amendment Index

B - 19

A list of administrative regulations that have had technical, non-substantive amendments made during this *Register* year. 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). Because these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the *Administrative Register of Kentucky*; however, they are usually available for a short time on the Legislative Research Commission's Web site.

Subject Index

B - 20

A general index of administrative regulations published during this *Register* year, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	45 Ky.R. Page No.	Effective Date	Regulation Number	45 Ky.R. Page No.	Effective Date
REGISTER YEAR 45					
The administrative regulations listed under VOLUME 44 are those administrative regulations that were originally published in Volume 44 (last year's) issues of the <i>Administrative Register of Kentucky</i> but had not yet gone into effect when the <i>2018 Kentucky Administrative Regulations Service</i> was published.					
SYMBOL KEY:			102 KAR 1:060		
* Statement of Consideration not filed by deadline			Amended	2404	
** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))			As Amended	3398	7-5-2019
*** Withdrawn before being printed in Register			103 KAR 15:050		
IJC Interim Joint Committee			Amended	3445	
(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.			103 KAR 15:061(r)	3594	
			103 KAR 17:121(r)	3595	
			200 KAR 3:020	2528	
			Am Comments	3190	See 46 Ky.R.
			200 KAR 14:201(r)	3596	
			201 KAR 1:290	2802	
			As Amended	3399	7-5-2019
			201 KAR 1:300		
			Amended	2964	
			As Amended	3401	7-5-2019
			201 KAR 1:310	2804	
			As Amended	3403	7-5-2019
			201 KAR 2:010		
			Amended	3447	See 46 Ky.R.
			201 KAR 2:090		
			Amended	3449	See 46 Ky.R.
			201 KAR 2:095		
			Amended	3450	
			201 KAR 2:100		
			Amended	3451	See 46 Ky.R.
			201 KAR 2:116		
			Amended	3453	See 46 Ky.R.
			201 KAR 2:165		
			Amended	3454	
			201 KAR 2:225		
			Amended	3456	See 46 Ky.R.
			201 KAR 2:240		
			Amended	3458	See 46 Ky.R.
			201 KAR 2:270		
			Amended	3460	See 46 Ky.R.
			201 KAR 2:310		
			Amended	3461	
			201 KAR 2:340		
			Amended	3462	See 46 Ky.R.
			201 KAR 6:030		
			Amended	3464	See 46 Ky.R.
			201 KAR 6:040		
			Amended	3466	See 46 Ky.R.
			201 KAR 8:581		
			Amended	3244	
			201 KAR 13:040		
			Amended	3246	See 46 Ky.R.
			201 KAR 13:050		
			Amended	3249	
			201 KAR 13:055		
			Amended	3251	See 46 Ky.R.
			201 KAR 13:060		
			Amended	3253	See 46 Ky.R.
			201 KAR 20:370		
			Amended	3469	See 46 Ky.R.
			201 KAR 20:506		
			Amended	3471	
			201 KAR 22:135		
			Amended	3258	7-19-2019
			201 KAR 23:150	1459	
			Withdrawn		7-30-2019
			201 KAR 25:062(r)	3597	
			Withdrawn		7-2-2019
			201 KAR 25:090		
			Amended	3472	See 46 Ky.R.
EMERGENCY ADMINISTRATIVE REGULATIONS:					
(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)					
9 KAR 1:010E	3382	5-15-2019			
9 KAR 1:040E	3383	5-15-2019			
200 KAR 3:020E	2304	1-4-2019			
500 KAR 15:010E	3011	4-5-2019			
601 KAR 2:030E	2310	1-8-2019			
803 KAR 25:270E	2316	12-27-2018			
907 KAR 1:604E	3015	3-15-2019			
921 KAR 2:015E	2322	12-28-2018			
Replaced	3232	7-5-2019			
921 KAR 2:055E	1501	11-1-2018			
922 KAR 1:310E	3019	4-1-2019			
922 KAR 1:350E	3033	4-1-2019			
922 KAR 1:495E	3042	4-1-2019			
ORDINARY ADMINISTRATIVE REGULATIONS:					
9 KAR 1:010					
Amended	3439	See 46 Ky.R.			
9 KAR 1:040					
Amended	3440	See 46 Ky.R.			
11 KAR 5:145					
Amended	3239				
16 KAR 3:010					
Repealed	2801	7-5-2019			
16 KAR 3:011(r)	2801				
As Amended	3387	7-5-2019			
16 KAR 3:020					
Repealed	2801	7-5-2019			
16 KAR 3:030					
Repealed	2801	7-5-2019			
16 KAR 3:040					
Repealed	2801	7-5-2019			
16 KAR 3:050					
Repealed	2801	7-5-2019			
16 KAR 3:090	2250				
As Amended	3387	7-5-2019			
16 KAR 8:030					
Amended	3240	See 46 Ky.R.			
31 KAR 4:120					
Amended	2152				
101 KAR 2:034					
Amended	2955				
As Amended	3390	7-5-2019			
101 KAR 2:180					
Amended	3443	See 46 Ky.R.			
101 KAR 2:190	3592	See 46 Ky.R.			
101 KAR 3:045					
Amended	2960				
As Amended	3394	7-5-2019			

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	43 Ky.R. Page No.	Effective Date	Regulation Number	43 Ky.R. Page No.	Effective Date
201 KAR 41:020			401 KAR 8:050		
Amended	3475		Amended	3519	
201 KAR 41:030			401 KAR 11:001		
Amended	3477	See 46 Ky.R.	Amended	3522	
201 KAR 41:040			401 KAR 11:030		
Amended	3478	See 46 Ky.R.	Amended	3524	
201 KAR 41:060			401 KAR 11:040		
Amended	3480		Amended	3527	
201 KAR 41:065			401 KAR 11:050		
Amended	3482	See 46 Ky.R.	Amended	3531	
201 KAR 41:070			401 KAR 11:060		
Amended	3483	See 46 Ky.R.	Amended	3535	
201 KAR 41:080			405 KAR 10:001		
Amended	3486	See 46 Ky.R.	Amended	2979	See 46 Ky.R.
201 KAR 46:010			405 KAR 10:015		
Amended	2967		Amended	2982	
As Amended	3403	7-5-2019	500 KAR 9:011(r)	3354	
201 KAR 46:020			500 KAR 15:010	3355	
Amended	2970	7-5-2019	601 KAR 2:030		
201 KAR 46:030			Amended	2464	
Amended	2971	7-5-2019	704 KAR 3:303		
201 KAR 46:040			Amended	2987	
Amended	2972	7-5-2019	As Amended	3410	7-5-2019
201 KAR 46:045			704 KAR 8:060	2810	
Amended	2975	7-5-2019	Am Comments	3193	
201 KAR 46:081			As Amended	3410	7-5-2019
Amended	2976	7-5-2019	803 KAR 2:180		
202 KAR 3:010			Amended	2989	6-7-2019
Amended	3259		803 KAR 25:270	2534	
202 KAR 7:520			Am Comments	2928	See 46 Ky.R.
Amended	2760		804 KAR 7:020		
As Amended	3405	7-5-2019	Amended	3262	See 46 Ky.R.
202 KAR 7:560			804 KAR 7:031(r)	3360	
Amended	3489	See 46 Ky.R.	805 KAR 3:100		
202 KAR 7:575			Amended	2991	
As Amended	3409	7-5-2019	As Amended	3410	7-5-2019
301 KAR 2:030			805 KAR 3:110		
Amended	3260	See 46 Ky.R.	Amended	3538	See 46 Ky.R.
301 KAR 2:221			806 KAR 9:001		
Amended	3491		Amended	3264	
301 KAR 2:222			806 KAR 9:020		
Amended	3493		Amended	3265	
301 KAR 2:300			806 KAR 9:030		
Amended	3498		Amended	3539	
301 KAR 3:090			806 KAR 9:061(r)	3361	
Repealed	2996	7-5-2019	806 KAR 9:070		
301 KAR 3:091(r)	2996	7-5-2019	Amended	3267	
302 KAR 16:010			806 KAR 9:110		
Amended	3502	See 46 Ky.R.	Amended	3541	
302 KAR 16:020			806 KAR 9:190		
Amended	3503	See 46 Ky.R.	Amended	3542	
302 KAR 16:040			806 KAR 9:200		
Amended	3504	See 46 Ky.R.	Amended	3543	
302 KAR 16:070			806 KAR 9:310		
Amended	3506		Amended	3269	
302 KAR 16:091			806 KAR 9:321(r)	3362	
Amended	3507		806 KAR 9:341(r)	3600	
302 KAR 16:101			806 KAR 9:350		
Amended	3509		Amended	3545	
302 KAR 16:111			806 KAR 10:030		
Amended	3510	See 46 Ky.R.	Amended	1824	
302 KAR 16:121			Am Comments	2716	
Amended	3511	See 46 Ky.R.	As Amended	3411	7-5-2019
302 KAR 16:131			806 KAR 10:051(r)	3363	
Amended	3513	See 46 Ky.R.	806 KAR 15:081(r)	3601	
302 KAR 78:021(r)	3598		806 KAR 47:010		
302 KAR 101:010	3599	See 46 Ky.R.	Amended	2993	See 46 Ky.R.
401 KAR 5:010			806 KAR 47:021(r)	2997	
Amended	3514		807 KAR 5:056		
401 KAR 8:030			Amended	3272	See 46 Ky.R.
Amended	3516		808 KAR 1:180	2266	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	43 Ky.R. Page No.	Effective Date	Regulation Number	43 Ky.R. Page No.	Effective Date
815 KAR 7:120			Amended	2796	
Amended	3274		907 KAR 005:005		
815 KAR 007:125			Amended	2496	
Amended	3277		As Amended	3412	7-5-2019
831 KAR 001:010			908 KAR 001:341(r)	2538	
Amended	3546	See 46 Ky.R.	908 KAR 001:370		
831 KAR 001:020			Amended	2500	
Amended	3549		Am Comments	3195	See 46 Ky.R.
831 KAR 001:030			908 KAR 001:372	2539	
Amended	3551	See 46 Ky.R.	Am Comments	3215	See 46 Ky.R.
902 KAR 002:070			908 KAR 001:374	2546	
Amended	3279		Am Comments	3222	See 46 Ky.R.
902 KAR 004:030			910 KAR 002:020		
Amended	3553		Amended	3322	
902 KAR 004:035			910 KAR 002:040		
Amended	3557		Amended	3573	
902 KAR 007:010			911 KAR 001:010	2814	
Amended	3560		Am Comments	3425	7-19-2019
902 KAR 009:010			911 KAR 001:020	2819	
Amended	3564	See 46 Ky.R.	Am Comments	3430	7-19-2019
902 KAR 015:010			911 KAR 1:060	2823	
Amended	3281		Am Comments	3434	7-19-2019
902 KAR 020:036			911 KAR 001:070		
Amended	3286		Repealed	2828	7-19-2019
902 KAR 020:111			911 KAR 001:071(r)	2828	7-19-2019
Amended	2781		911 KAR 001:080		
Am Comments	3416		Repealed	2828	7-19-2019
902 KAR 045:065			921 KAR 1:380		
Amended	3294		Amended	3583	See 46 Ky.R.
902 KAR 045:070			921 KAR 002:015		
Amended	3304		Amended	2520	
902 KAR 045:075			Am Comments	3232	7-5-2019
Amended	3314		922 KAR 001:310		
902 KAR 045:110			Amended	3326	
Amended	3568		922 KAR 001:350		
Withdrawn		6-28-2019	Amended	3340	
902 KAR 045:120			922 KAR 001:470		
Amended	3571		Amended	3587	
902 KAR 050:100			922 KAR 001:495		
Repealed	3364	7-19-2019	Amended	3350	
902 KAR 050:101(r)	3364	7-19-2019	922 KAR 001:510		
902 KAR 050:110			Amended	3589	See 46 Ky.R.
Amended	3316	7-19-2019			
907 KAR 001:022					
Amended	2784				
Am Comments	3419				
907 KAR 1:330					
Amended	2790				
907 KAR 001:340					
Amended	2793				
907 KAR 001:441	2813				
907 KAR 001:604					
Amended	3318				
907 KAR 001:755					

SYMBOL KEY:

- * Statement of Consideration not filed by deadline
- ** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
- *** Withdrawn before being printed in Register
- 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.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	45 Ky.R. Page No.	Effective Date	Regulation Number	45 Ky.R. Page No.	Effective Date
REGISTER YEAR 46					
EMERGENCY ADMINISTRATIVE REGULATIONS			Amended	60	
(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.)			103 KAR 016:400	286	
			103 KAR 025:131		
			Amended	570	
105 KAR 001:390E	6	6-12-2019	103 KAR 026:010		
301 KAR 001:152E	9	5-24-2019	Amended	67	
401 KAR 006:001E	311	7-11-2019	103 KAR 026:070		
401 KAR 006:310E	313	7-11-2019	Amended	571	
401 KAR 006:320E	323	7-11-2019	103 KAR 026:090		
401 KAR 006:350E	327	7-11-2019	Amended	574	
803 KAR 25:271E	333	6-21-2019	103 KAR 027:140		
902 KAR 20:430E	336	6-28-2019	Amended	69	
902 KAR 045:090E	12	6-14-2019	103 KAR 027:180		
907 KAR 003:170E	18	6-14-2019	Amended	577	
907 KAR 10:830E	347	6-19-2019	103 KAR 028:010		
907 KAR 15:005E	356	6-28-2019	Amended	578	
907 KAR 15:010E	359	6-28-2019	103 KAR 030:170		
907 KAR 15:015E	371	6-28-2019	Amended	581	
907 KAR 15:020E	374	6-28-2019	103 KAR 030:261(r)	289	
907 KAR 15:022E	385	6-28-2019	103 KAR 031:030		
907 KAR 015:025E	396	6-28-2019	Amended	70	
922 KAR 001:320E	400	6-28-2019	103 KAR 031:111		
			Amended	72	
			103 KAR 041:220	779	
			105 KAR 001:200		
			Amended	74	
			105 KAR 1:390		
			Amended	76	
009 KAR 001:010		See 45 Ky.R.	200 KAR 003:020		See 45 Ky.R.
As Amended	405		As Amended	28	
009 KAR 001:040		See 45 Ky.R.	201 KAR 002:010		See 45 Ky.R.
As Amended	405		As Amended	410	
013 KAR 001:020			201 KAR 002:090		See 45 Ky.R.
Amended	550		As Amended	410	
016 KAR 008:030		See 45 Ky.R.	201 KAR 002:100		See 45 Ky.R.
As Amended	26		As Amended	411	
032 KAR 001:061(r)	281		201 KAR 002:116		See 45 Ky.R.
101 KAR 002:102			As Amended	412	
Amended	558		201 KAR 002:225		See 45 Ky.R.
101 KAR 2:180		See 45 Ky.R.	As Amended	412	
As Amended	407		201 KAR 002:240		See 45 Ky.R.
101 KAR 2:190		See 45 Ky.R.	As Amended	413	
As Amended	409		201 KAR 002:270		See 45 Ky.R.
101 KAR 002:230			As Amended	414	
Amended	44		201 KAR 002:340		See 45 Ky.R.
101 KAR 003:015			As Amended	414	
Amended	564		201 KAR 006:030		See 45 Ky.R.
102 KAR 001:032	778		As Amended	415	
103 KAR 001:010			201 KAR 006:040		See 45 Ky.R.
Amended	46		As Amended	416	
103 KAR 001:060			201 KAR 008:540		
Amended	48		Amended	80	
103 KAR 002:005			201 KAR 011:002(r)	780	
Amended	50		201 KAR 011:011		
Withdrawn		7-24-2019	Amended	83	
103 KAR 002:030			201 KAR 011:105		
Amended	51		Amended	86	
103 KAR 005:151(r)	282		201 KAR 011:121		
103 KAR 005:160			Amended	582	
Amended	53		201 KAR 011:170		
103 KAR 007:031(r)	283		Amended	588	
103 KAR 008:011(r)	284		201 KAR 011:190		
103 KAR 008:141(r)	285		Amended	596	
103 KAR 008:110			201 KAR 011:210		
Amended	54		Amended	599	
103 KAR 008:130			201 KAR 011:220		
Amended	55		Amended	606	
103 KAR 016:200			201 KAR 011:461(r)	290	
Amended	57				
103 KAR 016:250					

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	45 Ky.R. Page No.	Effective Date	Regulation Number	45 Ky.R. Page No.	Effective Date
201 KAR 012:030 Amended	608		201 KAR 041:080 As Amended	427	See 45 Ky.R.
201 KAR 013:040 As Amended	417	See 45 Ky.R.	202 KAR 006:010 Amended	131	
201 KAR 013:055 As Amended	419	See 45 Ky.R.	202 KAR 006:020 Amended	133	
201 KAR 013:060 As Amended	420	See 45 Ky.R.	202 KAR 006:030 Amended	136	
201 KAR 015:010 Amended	89		202 KAR 006:050 Amended	138	
201 KAR 015:015 Amended	90		202 KAR 006:060 Amended	140	
201 KAR 015:030 Amended	91		202 KAR 006:070 Amended	141	
201 KAR 015:040 Amended	93		202 KAR 006:080 Amended	143	
201 KAR 015:050 Amended	95		202 KAR 006:090 Amended	145	
201 KAR 015:080 Amended	99		202 KAR 006:100 Amended	147	
201 KAR 015:110 Amended	100		202 KAR 007:560 As Amended	428	
201 KAR 015:120 Amended	104		301 KAR 001:152 Amended	150	
201 KAR 015:125	292		301 KAR 001:185	813	
201 KAR 16:011(r)	782		301 KAR 001:201 Amended	612	
201 KAR 16:200	784		301 KAR 001:410 Amended	617	
201 KAR 16:210	786		301 KAR 002:030 As Amended	32	See 45 Ky.R.
201 KAR 16:212	788		301 KAR 002:185 Amended	620	
201 KAR 16:214	790		301 KAR 004:090 Amended	152	
201 KAR 16:216	791		302 KAR 016:010 As Amended	430	See 45 Ky.R.
201 KAR 16:220	793		302 KAR 016:020 As Amended	430	See 45 Ky.R.
201 KAR 16:230	794		302 KAR 016:040 As Amended	431	See 45 Ky.R.
201 KAR 16:240	795		302 KAR 016:111 As Amended	432	See 45 Ky.R.
201 KAR 16:250	797		302 KAR 016:121 As Amended	433	See 45 Ky.R.
201 KAR 16:260	799		302 KAR 016:131 As Amended	433	See 45 Ky.R.
201 KAR 16:270	801		302 KAR 34:011(r)	815	
201 KAR 16:272	802		302 KAR 35:011(r)	816	
201 KAR 16:280	804		302 KAR 36:011(r)	817	
201 KAR 16:290	805		302 KAR 75:130 Amended	622	
201 KAR 16:300	807		302 KAR 76:100 Amended	623	
201 KAR 16:310	810		302 KAR 80:010 Amended	625	
201 KAR 16:400	811		302 KAR 81:010 Amended	626	
201 KAR 020:370 As Amended	420	See 45 Ky.R.	302 KAR 101:010 As Amended	433	See 45 Ky.R.
201 KAR 025:090 As Amended	421	See 45 Ky.R.	401 KAR 006:001 Amended	628	
201 KAR 030:010 Amended	105		401 KAR 006:211(r)	818	
201 KAR 030:021(r)	293		401 KAR 006:310 Amended	631	
201 KAR 030:040 Amended	107		401 KAR 006:320 Amended	640	
201 KAR 030:070 Amended	110		401 KAR 006:350 Amended	645	
201 KAR 030:110 Amended	112		401 KAR 010:001		
201 KAR 030:130 Amended	115				
201 KAR 030:190 Amended	119				
201 KAR 030:330 Amended	127				
201 KAR 041:030 As Amended	423	See 45 Ky.R.			
201 KAR 041:040 As Amended	424	See 45 Ky.R.			
201 KAR 041:065 As Amended	425	See 45 Ky.R.			
201 KAR 041:070 As Amended	425	See 45 Ky.R.			

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	45 Ky.R. Page No.	Effective Date	Regulation Number	45 Ky.R. Page No.	Effective Date
Amended	154		805 KAR 001:190		
401 KAR 010:026			Amended	691	
Amended	158		805 KAR 001:200		
401 KAR 010:029			Amended	697	
Amended	199		805 KAR 003:110		See 45 Ky.R.
401 KAR 010:030			As Amended	434	
Amended	202		805 KAR 009:011(r)	821	
401 KAR 010:031			806 KAR 003:240	296	
Amended	222		806 KAR 013:120		
401 KAR 058:005			Amended	262	
Amended	230		806 KAR 047:010		See 45 Ky.R.
401 KAR 051:010			Am Comments	39	
Amended	651		As Amended	434	
405 KAR 010:001		See 45 Ky.R.	807 KAR 005:056		See 45 Ky.R.
Am Comments	36		Am Comments	41	
501 KAR 006:060			As Amended	435	
Amended	655		808 KAR 001:170		
501 KAR 006:110			Amended	699	
Amended	234		808 KAR 009:050		
501 KAR 006:140			Amended	703	
Amended	657		831 KAR 001:010		See 45 Ky.R.
501 KAR 006:160			As Amended	436	
Amended	236		831 KAR 001:030		See 45 Ky.R.
505 KAR 001:160			As Amended	437	
Amended	659		902 KAR 002:070		See 45 Ky.R.
601 KAR 009:130			Am Comments	476	
Amended	237		902 KAR 009:010		See 45 Ky.R.
601 KAR 013:090			As Amended	439	
Amended	241		902 KAR 015:010		See 45 Ky.R.
601 KAR 013:100			Am Comments	478	
Amended	244		902 KAR 020:036		See 45 Ky.R.
603 KAR 005:150			Am Comments	484	
Amended	248		902 KAR 020:370		
701 KAR 005:090			Amended	705	
Amended	249		902 KAR 20:430		
702 KAR 003:130			Amended	709	
Amended	252		902 KAR 21:020		
702 KAR 007:065			Amended	719	
Amended	254		902 KAR 045:065		See 45 Ky.R.
787 KAR 003:010			Am Comments	492	
Recodified from 803 KAR 1:010		6-14-2019	902 KAR 045:070		See 45 Ky.R.
Amended	258		Am Comments	502	
803 KAR 001:010			902 KAR 45:090		
Recodified as 787 KAR 3:010		6-14-2019	Amended	264	
803 KAR 025:270		See 45 Ky.R.	902 KAR 050:003(r)	823	
As Amended	33		902 KAR 050:005		
804 KAR 007:020		See 45 Ky.R.	Amended		
As Amended	34	7-1-2019	902 KAR 055:070		
804 KAR 010:040	295		Amended	270	
805 KAR 001:001	819		902 KAR 055:120	824	
805 KAR 001:020			907 KAR 001:604		See 45 Ky.R.
Amended	660		Am Comments	512	
805 KAR 001:030			907 KAR 003:170		
Amended	663		Amended	273	
805 KAR 001:050			907 KAR 10:830		
Amended	665		Amended	723	
805 KAR 001:060			907 KAR 15:005		
Amended	667		Amended	733	
805 KAR 001:080			907 KAR 15:010		
Amended	670		Amended	736	
805 KAR 001:110			907 KAR 15:015		
Amended	674		Amended	748	
805 KAR 001:120			907 KAR 15:020		
Amended	681		Amended	751	
805 KAR 001:140			907 KAR 15:022	826	
Amended	682		907 KAR 15:025		
805 KAR 001:170			Amended	762	
Amended	685		908 KAR 001:370		See 45 Ky.R.
805 KAR 001:180			As Amended	441	
Amended	689		908 KAR 001:372		See 45 Ky.R.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	45 Ky.R. Page No.	Effective Date	Regulation Number	45 Ky.R. Page No.	Effective Date
As Amended	459		922 KAR 001:560		
908 KAR 001:374		See 45 Ky.R.	Amended	771	
As Amended	464		922 KAR 001:565		
910 KAR 002:020		See 45 Ky.R.	Amended	773	
Am Comments	516				
921 KAR 001:380					
As Amended	472				
922 KAR 001:310		See 45 Ky.R.			
Am Comments	521				
922 KAR 001:320					
Amended	766				
922 KAR 001:350		See 45 Ky.R.			
Am Comments	535				
922 KAR 001:495		See 45 Ky.R.			
Am Comments	545				
922 KAR 001:510		See 45 Ky.R.			
As Amended	475				

SYMBOL KEY:

- * Statement of Consideration not filed by deadline
- ** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
- *** Withdrawn before being printed in Register
- 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.

KRS INDEX

KRS SECTION	REGULATION	KRS SECTION	REGULATION
2.013	201 KAR 011:210		202 KAR 006:090
2.015	902 KAR 020:370	65.7635	202 KAR 006:080
	922 KAR 001:320		202 KAR 006:090
	922 KAR 001:565	65.7636	202 KAR 006:080
13B	922 KAR 001:320	65.7639	202 KAR 006:080
13B.005-13B.170	013 KAR 001:020		202 KAR 006:090
13B.140	907 KAR 010:830	65.7643	202 KAR 006:070
15A.065	505 KAR 001:160		202 KAR 006:080
15A.067	505 KAR 001:160		202 KAR 006:090
16.576	105 KAR 001:200	66.480	702 KAR 003:130
16.577	105 KAR 001:200	78.510	105 KAR 001:390
16.645	105 KAR 001:200	78.545	105 KAR 001:200
17.500	902 KAR 020:430	118.035	101 KAR 002:102
18A.020	101 KAR 002:102		101 KAR 003:015
	101 KAR 003:015	121.015	032 KAR 001:061
18A.030	101 KAR 002:102	121.180	032 KAR 001:061
	101 KAR 002:230	131.010	103 KAR 001:010
	101 KAR 003:015	131.030	103 KAR 001:010
18A.095	101 KAR 002:102	131.081	103 KAR 001:010
18A.110	101 KAR 002:102	131.110	103 KAR 001:010
	101 KAR 002:230	131.130	103 KAR 002:030
	101 KAR 003:015	131.155	103 KAR 001:060
18A.140	101 KAR 002:102	131.180	103 KAR 001:010
	101 KAR 003:015	132.020	103 KAR 008:130
18A.145	101 KAR 002:102		103 KAR 008:141
	101 KAR 003:015	132.200	103 KAR 008:130
18A.195	101 KAR 002:102		103 KAR 008:141
	101 KAR 003:015	132.285	103 KAR 007:031
18A.990	101 KAR 002:102	132.370	103 KAR 005:151
	101 KAR 003:015		103 KAR 005:160
23A.010	922 KAR 001:320	132.530	103 KAR 007:031
43.010	601 KAR 009:130	136.181	103 KAR 008:011
45.149	601 KAR 009:130	136.182	103 KAR 008:011
45.237 - 45.241	922 KAR 001:565	138.135	103 KAR 041:220
45A	702 KAR 003:130	138.143	103 KAR 041:220
49.220	103 KAR 001:010	138.146	103 KAR 041:220
49.250	103 KAR 001:010	138.195	103 KAR 041:220
61.373	101 KAR 003:015	139.010	103 KAR 026:010
61.394	101 KAR 002:102		103 KAR 026:090
	101 KAR 003:015		103 KAR 027:140
61.410	702 KAR 003:130		103 KAR 027:180
61.505	105 KAR 001:390		103 KAR 028:010
61.510	105 KAR 001:390		103 KAR 030:170
61.590	105 KAR 001:200		103 KAR 031:030
	105 KAR 001:390		103 KAR 031:111
61.595	105 KAR 001:200	139.200	103 KAR 026:010
61.623	105 KAR 001:200		103 KAR 026:090
61.637	105 KAR 001:200		103 KAR 028:010
	105 KAR 001:390		103 KAR 030:261
61.673	101 KAR 002:102		103 KAR 031:111
61.680	105 KAR 001:200	139.210	103 KAR 026:070
61.705	105 KAR 001:200	139.240	103 KAR 026:070
61.805 – 61.850	702 KAR 007:065		103 KAR 027:180
65.7621	202 KAR 006:070		103 KAR 031:030
	202 KAR 006:080	139.250	103 KAR 031:030
	202 KAR 006:090	139.260	103 KAR 026:070
65.7621 – 65.7643	202 KAR 006:010		103 KAR 026:090
	202 KAR 006:020		103 KAR 027:180
	202 KAR 006:030		103 KAR 028:010
	202 KAR 006:050		103 KAR 030:261
	202 KAR 006:060		103 KAR 031:030
	202 KAR 006:100		103 KAR 031:111
65.7627	202 KAR 006:070	139.270	103 KAR 026:070
	202 KAR 006:080		103 KAR 030:261
	202 KAR 006:090		103 KAR 031:111
65.7629	202 KAR 006:070	139.280	103 KAR 031:111
	202 KAR 006:080	139.290	103 KAR 026:090
	202 KAR 006:090		103 KAR 031:111
65.7631	202 KAR 006:070	139.300	103 KAR 031:111
	202 KAR 006:080	139.310	103 KAR 026:070

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	103 KAR 030:261	150.175	301 KAR 001:152
139.330	103 KAR 030:261		301 KAR 001:201
139.340	103 KAR 026:070		301 KAR 001:410
139.430	103 KAR 031:111		301 KAR 004:090
139.440	103 KAR 031:111	150.180	301 KAR 004:090
139.470	103 KAR 027:180	150.183	301 KAR 004:090
	103 KAR 028:010	150.235	301 KAR 001:410
	103 KAR 030:170	150.305	301 KAR 004:090
139.480	103 KAR 026:090	150.330	301 KAR 004:090
	103 KAR 028:010	150.340	301 KAR 001:201
	103 KAR 030:261	150.370	301 KAR 004:090
139.482	103 KAR 028:010	150.411	301 KAR 004:090
139.485	103 KAR 027:180	150.445	301 KAR 001:152
139.495	103 KAR 028:010		301 KAR 001:410
139.540	103 KAR 030:261	150.450	301 KAR 001:152
	103 KAR 031:030	150.470	301 KAR 001:185
139.550	103 KAR 030:261	150.620	301 KAR 001:201
	103 KAR 031:030		301 KAR 001:410
139.590	103 KAR 025:131	150.722	301 KAR 004:090
	103 KAR 031:030	150.990	301 KAR 001:152
139.660	103 KAR 031:030		301 KAR 001:185
139.710	103 KAR 026:070		301 KAR 001:201
	103 KAR 031:030		301 KAR 001:410
139.720	103 KAR 027:180		301 KAR 002:185
	103 KAR 031:030		301 KAR 004:090
139.730	103 KAR 026:070	156.029	702 KAR 003:130
139.760	103 KAR 031:111	156.070	702 KAR 007:065
139.980	103 KAR 025:131	156.076	702 KAR 003:130
139.990	103 KAR 025:131	156.160	702 KAR 003:130
	103 KAR 031:111	156.200	702 KAR 003:130
140.100	103 KAR 002:005	156.290	702 KAR 003:130
141.011	103 KAR 016:250	156.496	922 KAR 001:565
141.120	103 KAR 016:400	160	702 KAR 003:130
141.121	103 KAR 016:400	160.380	702 KAR 007:065
141.200	103 KAR 016:200	160.445	702 KAR 007:065
	103 KAR 016:250	161.420	102 KAR 001:032
141.201	103 KAR 016:250	161.540	102 KAR 001:032
141.202	103 KAR 016:250		702 KAR 003:130
	103 KAR 016:400	161.560	702 KAR 003:130
142.303	907 KAR 010:830	161.605	102 KAR 001:032
146.200 – 146.360	401 KAR 010:001	161.677	102 KAR 001:032
	401 KAR 010:026	161.700	102 KAR 001:032
	401 KAR 010:029	161.770	701 KAR 005:090
	401 KAR 010:030	161.790	701 KAR 005:090
	401 KAR 010:031	164.020	013 KAR 001:020
146.410 – 146.535	401 KAR 010:001	164.945	013 KAR 001:020
	401 KAR 010:026	164.946	013 KAR 001:020
	401 KAR 010:029	164.947	013 KAR 001:020
	401 KAR 010:030	164.992	013 KAR 001:020
	401 KAR 010:031	165A.320	013 KAR 001:020
146.550 – 146.570	401 KAR 010:001	176.050	603 KAR 005:150
	401 KAR 010:026	176.430	401 KAR 010:030
	401 KAR 010:029	177.047	603 KAR 005:150
	401 KAR 010:030	177.103	603 KAR 005:150
	401 KAR 010:031	177.106	603 KAR 005:150
146.600 – 146.619	401 KAR 010:001	186.010	601 KAR 009:130
	401 KAR 010:026	186.050	601 KAR 009:130
	401 KAR 010:029	186.053	601 KAR 009:130
	401 KAR 010:030	186.162	601 KAR 009:130
	401 KAR 010:031	186.172	601 KAR 009:130
146.990	401 KAR 010:001	186.174	601 KAR 009:130
	401 KAR 010:026	186.411	601 KAR 013:090
	401 KAR 010:029		601 KAR 013:100
	401 KAR 010:030	186.440	601 KAR 013:100
	401 KAR 010:031	186.444	601 KAR 013:090
150.010	301 KAR 001:152		601 KAR 013:100
	301 KAR 001:201	186.570	601 KAR 013:090
	301 KAR 001:410		601 KAR 013:100
	301 KAR 002:185	186A.060	601 KAR 009:130
	301 KAR 004:090	186A.070	601 KAR 009:130
150.015	301 KAR 002:185	186A.120	601 KAR 009:130
150.170	301 KAR 001:152	194A.005	922 KAR 001:320
	301 KAR 001:201		922 KAR 001:565
	301 KAR 001:410	194A.025	907 KAR 015:005

KRS SECTION	REGULATION	KRS SECTION	REGULATION
194A.030	922 KAR 001:320		401 KAR 006:310
194A.050	902 KAR 045:065		401 KAR 006:320
	902 KAR 045:070		401 KAR 006:350
	922 KAR 001:565	223.170	401 KAR 006:211
194A.060	907 KAR 003:170	223.180	401 KAR 006:211
	922 KAR 001:560	223.190	401 KAR 006:211
194A.125	907 KAR 003:170	223.991	401 KAR 006:001
196	501 KAR 006:060		401 KAR 006:310
	501 KAR 006:110		401 KAR 006:320
	501 KAR 006:140		401 KAR 006:350
197	501 KAR 006:060	223.210	401 KAR 006:211
	501 KAR 006:110	224.01-300	103 KAR 030:261
	501 KAR 006:140	224.1-310	103 KAR 030:261
198B.260	902 KAR 020:430	224.1-010	401 KAR 010:001
199.011	922 KAR 001:320		401 KAR 010:026
	922 KAR 001:560		401 KAR 010:029
	922 KAR 001:565		401 KAR 010:030
199.462	922 KAR 001:565		401 KAR 010:031
199.470 - 199.590	922 KAR 001:565	224.1-400	401 KAR 010:001
199.480	922 KAR 001:560		401 KAR 010:026
199.505	922 KAR 001:560		401 KAR 010:029
199.555	922 KAR 001:320		401 KAR 010:030
199.557	922 KAR 001:320		401 KAR 010:031
199.990	922 KAR 001:560	224.1-405	401 KAR 006:350
200.080-120	505 KAR 001:160	224.10-010	401 KAR 006:320
200.503	902 KAR 020:430	224.10-100	401 KAR 006:320
205.211	922 KAR 001:565		401 KAR 058:005
205.510	902 KAR 020:430	224.10-110	401 KAR 006:211
	907 KAR 003:170	224.10-410 - 224.10-470	401 KAR 006:320
	907 KAR 010:830	224.16-050	401 KAR 010:001
	907 KAR 015:005		401 KAR 010:026
205.520	902 KAR 021:020		401 KAR 010:029
	907 KAR 015:010		401 KAR 010:030
	907 KAR 015:015		401 KAR 010:031
	907 KAR 015:020	224.16-070	401 KAR 010:001
	907 KAR 015:022		401 KAR 010:026
	907 KAR 015:025		401 KAR 010:029
205.559	907 KAR 003:170		401 KAR 010:030
205.560	907 KAR 003:170		401 KAR 010:031
205.565	907 KAR 010:830	224.20-100	401 KAR 051:010
205.637	907 KAR 010:830		401 KAR 058:005
205.638	907 KAR 010:830	224.20-110	401 KAR 051:010
205.639	907 KAR 010:830		401 KAR 058:005
205.640	907 KAR 010:830	224.20-120	401 KAR 051:010
205.641	907 KAR 010:830		401 KAR 058:005
205.8451	907 KAR 015:005	224.20-300	401 KAR 058:005
209.020	922 KAR 001:320	224.20-310	401 KAR 058:005
209A.020	922 KAR 001:320	224.20-320	401 KAR 058:005
210.005	902 KAR 020:430	224.43-010 - 224.43-815	401 KAR 006:350
211.005	902 KAR 045:065	224.46-012 - 224.46-870	401 KAR 006:350
	902 KAR 045:070	224.60-100 - 224.60-160	401 KAR 006:350
211.015	902 KAR 045:065	224.70-100 – 224.70-140	401 KAR 010:001
	902 KAR 045:070		401 KAR 010:026
211.025	902 KAR 045:065		401 KAR 010:029
	902 KAR 045:070		401 KAR 010:030
211.760	902 KAR 045:065		401 KAR 010:031
211.892	805 KAR 001:060	224.71-100 – 224.71-145	401 KAR 010:001
211.893	805 KAR 001:060		401 KAR 010:026
214.540	902 KAR 021:020		401 KAR 010:029
214.542	902 KAR 021:020		401 KAR 010:030
214.543	902 KAR 021:020		401 KAR 010:031
216.380	907 KAR 010:830	224.73-100 – 224.30-120	401 KAR 010:001
216B.020	902 KAR 020:370		401 KAR 010:026
216B.050	902 KAR 020:430		401 KAR 010:029
216B.105	902 KAR 020:430		401 KAR 010:030
217.005 – 217.215	902 KAR 045:090		401 KAR 010:031
217.290	902 KAR 045:090	224.99-010	401 KAR 058:005
217.992	902 KAR 045:090	241.067	804 KAR 010:040
217B.555	902 KAR 045:090	241.069	804 KAR 010:040
217B.990	902 KAR 045:090	241.021	804 KAR 010:040
217C.010	902 KAR 050:005	247	302 KAR 034:011
217C.070	902 KAR 050:003		302 KAR 035:011
218A.205	201 KAR 008:540		302 KAR 036:011
223.400-223.460	401 KAR 006:001	278	807 KAR 005:056

KRS SECTION	REGULATION	KRS SECTION	REGULATION
286.4	808 KAR 001:170	317A.050	201 KAR 012:030
286.8-010	808 KAR 001:170	317A.060	201 KAR 012:030
286.8-020	808 KAR 001:170	319	907 KAR 015:010
286.8-030	808 KAR 001:170	319.050	902 KAR 020:430
286.8-032	808 KAR 001:170	319.053	907 KAR 015:005
286.8-034	808 KAR 001:170	319.056	902 KAR 020:430
286.8-036	808 KAR 001:170		907 KAR 015:005
286.8-060	808 KAR 001:170	319.064	902 KAR 020:430
286.8-070	808 KAR 001:170		907 KAR 015:005
286.8-080	808 KAR 001:170	319C.010	902 KAR 020:430
286.8-090	808 KAR 001:170		907 KAR 015:005
286.8-255	808 KAR 001:170	321	201 KAR 016:011
286.8-260	808 KAR 001:170	321.193	201 KAR 016:210
286.8-290	808 KAR 001:170		201 KAR 016:220
286.9-010	808 KAR 001:170		201 KAR 016:230
	808 KAR 009:050		201 KAR 016:240
286.9-020	808 KAR 001:170		201 KAR 016:270
	808 KAR 009:050	321.201	201 KAR 016:216
286.9-030	808 KAR 001:170	321.207	201 KAR 016:214
	808 KAR 009:050		201 KAR 016:250
286.9-040	808 KAR 001:170		201 KAR 016:260
	808 KAR 009:050		201 KAR 016:272
286.9-050	808 KAR 001:170	321.211	201 KAR 016:210
	808 KAR 009:050		201 KAR 016:270
286.9-060	808 KAR 001:170		201 KAR 016:280
	808 KAR 009:050		201 KAR 016:290
286.9-070	808 KAR 009:050	321.221	201 KAR 016:240
286.9-071	808 KAR 001:170		201 KAR 016:290
	808 KAR 009:050	321.235	201 KAR 016:290
286.9-073	808 KAR 001:170		201 KAR 016:310
	808 KAR 009:050		201 KAR 016:400
286.9-080	808 KAR 001:170	321.240	201 KAR 016:210
	808 KAR 009:050		201 KAR 016:212
286.9-104	808 KAR 009:050		201 KAR 016:216
304.2-140	806 KAR 047:010	321.351	201 KAR 016:200
304.13-057	806 KAR 013:120		201 KAR 016:310
304.13-167	806 KAR 013:120		201 KAR 016:400
304.13-400 – 304.13-420	806 KAR 013:120	321.360	201 KAR 016:310
304.17A-257	902 KAR 021:020		201 KAR 016:400
304.47-010	806 KAR 047:010	321.441	201 KAR 016:212
304.47-020	806 KAR 047:010		201 KAR 016:220
304.47-040	806 KAR 047:010		201 KAR 016:230
304.47-050	806 KAR 047:010		201 KAR 016:240
304.47-080	806 KAR 047:010		201 KAR 016:270
309.080	907 KAR 015:005		201 KAR 016:290
309.130	902 KAR 020:430	321.181	201 KAR 016:300
	907 KAR 015:005	322	401 KAR 006:320
311.840	907 KAR 015:005	322A	401 KAR 006:320
311.860	902 KAR 020:430	324.010	201 KAR 011:011
313.060	201 KAR 008:540		201 KAR 011:121
313.085	201 KAR 008:540		201 KAR 011:170
314.011	907 KAR 015:005		201 KAR 011:210
314.041	902 KAR 020:370		201 KAR 011:220
314.042	902 KAR 020:430	324.020	201 KAR 011:210
314.051	902 KAR 020:370		201 KAR 011:220
316	201 KAR 015:010	324.040	201 KAR 011:210
316.010	201 KAR 015:110	324.045	201 KAR 011:190
316.030	201 KAR 015:040		201 KAR 011:210
	201 KAR 015:050	324.046	201 KAR 011:011
	201 KAR 015:110		201 KAR 011:170
316.125	201 KAR 015:030		201 KAR 011:190
	201 KAR 015:110		201 KAR 011:210
316.127	201 KAR 015:110	324.085	201 KAR 011:170
316.130	201 KAR 015:030		201 KAR 011:210
	201 KAR 015:110	324.090	201 KAR 011:170
316.132	201 KAR 015:030		201 KAR 011:210
316.140	201 KAR 015:030	324.111	201 KAR 011:011
	201 KAR 015:120		201 KAR 011:121
316.150	201 KAR 015:080	324.121	201 KAR 011:121
316.165	201 KAR 015:125	324.117	201 KAR 011:011
316.170	201 KAR 015:015		201 KAR 011:105
316.210	201 KAR 015:015	324.141	201 KAR 011:210
316.260	201 KAR 015:110	324.150	201 KAR 011:190
317A.020	201 KAR 012:030	324.151	201 KAR 011:190

KRS SECTION	REGULATION	KRS SECTION	REGULATION
324.160	201 KAR 011:011		805 KAR 009:011
	201 KAR 011:105	349.075	805 KAR 001:140
	201 KAR 011:121		805 KAR 009:011
	201 KAR 011:170	349.335	805 KAR 001:080
	201 KAR 011:190	349.045	805 KAR 001:020
	201 KAR 011:210	349.105	805 KAR 001:170
324.170	201 KAR 011:190	349.110	805 KAR 001:020
324.200	201 KAR 011:190		805 KAR 009:011
324.281	201 KAR 011:121	349.115	805 KAR 001:030
	201 KAR 011:170	349.120	805 KAR 001:050
	201 KAR 011:190		805 KAR 001:140
	201 KAR 011:210		805 KAR 001:170
324.282	201 KAR 011:002		805 KAR 001:200
	201 KAR 011:105		805 KAR 009:011
324.287	201 KAR 011:210	349.155	805 KAR 001:140
324.310	201 KAR 011:121		805 KAR 001:170
	201 KAR 011:210		805 KAR 009:011
324.330	201 KAR 011:210	350	405 KAR 010:001
324.360	201 KAR 011:121	353.050	805 KAR 001:140
324.395	201 KAR 011:220	353.060	805 KAR 001:140
324.410	201 KAR 011:011	353.120	805 KAR 001:060
324.420	201 KAR 011:011	353.160	805 KAR 001:190
324.990	201 KAR 011:210	353.170	805 KAR 001:060
324A	201 KAR 030:010	353.180	805 KAR 001:060
324A.020	201 KAR 030:190		805 KAR 001:110
324A.015	201 KAR 030:021		805 KAR 001:140
	201 KAR 030:040		805 KAR 001:170
324A.020	201 KAR 030:070	353.500	805 KAR 001:080
	201 KAR 030:110		805 KAR 001:190
324A.030	201 KAR 030:190	353.500 - 353.730	805 KAR 001:001
	201 KAR 030:330	353.510	805 KAR 001:110
324A.035	201 KAR 030:040		805 KAR 001:140
	201 KAR 030:110		805 KAR 001:170
	201 KAR 030:130	353.520	805 KAR 001:020
	201 KAR 030:190		805 KAR 001:080
	201 KAR 030:330		805 KAR 001:110
324A.040	201 KAR 030:110		805 KAR 001:120
	201 KAR 030:190		805 KAR 001:140
324A.045	201 KAR 030:110		805 KAR 001:170
	201 KAR 030:190	353.540	805 KAR 001:080
324A.047	201 KAR 030:110	353.550	805 KAR 001:030
324A.050	201 KAR 030:040		805 KAR 001:060
	201 KAR 030:070		805 KAR 001:080
324A.052	201 KAR 030:070		805 KAR 001:110
	201 KAR 030:190		805 KAR 001:180
324A.065	201 KAR 030:110		805 KAR 001:200
	201 KAR 030:190	353.560	805 KAR 001:080
324A.075	201 KAR 030:190	353.561 - 353.564	805 KAR 001:140
324A.152	201 KAR 030:330		805 KAR 001:170
324A.154	201 KAR 030:330	353.570	805 KAR 001:110
324A.155	201 KAR 030:330	353.590	805 KAR 001:030
324A.163	201 KAR 030:330		805 KAR 001:050
335.080	902 KAR 020:430		805 KAR 001:110
	907 KAR 015:005		805 KAR 001:140
335.100	902 KAR 020:430		805 KAR 001:170
	907 KAR 015:005		805 KAR 001:190
335.300	902 KAR 020:430	353.5901	805 KAR 001:140
	907 KAR 015:005		805 KAR 001:170
335.500	902 KAR 020:430		805 KAR 001:190
	907 KAR 015:005	353.592	805 KAR 001:140
342.020	803 KAR 025:271E		805 KAR 001:170
342.035	803 KAR 025:271E	353.595	805 KAR 001:170
342.640	702 KAR 003:130	353.597	805 KAR 001:170
342.0011	803 KAR 025:271E	353.610	805 KAR 001:140
343	787 KAR 003:010	353.651	805 KAR 001:140
344.030	101 KAR 002:102		805 KAR 001:170
	101 KAR 003:015	353.652	805 KAR 001:140
349.015	805 KAR 001:030		805 KAR 001:170
	805 KAR 001:140	353.6601 - 353.6606	805 KAR 001:140
	805 KAR 001:170		805 KAR 001:170
	805 KAR 009:011	353.730	805 KAR 001:140
349.035	805 KAR 001:140		805 KAR 001:170
	805 KAR 009:011	353.735 - 353.747	805 KAR 001:200
349.040	805 KAR 001:140	353.737	805 KAR 001:030

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	805 KAR 001:140		902 KAR 055:120
	805 KAR 001:170	24 C.F.R.	201 KAR 011:121
353.745	805 KAR 001:190	26 C.F.R.	102 KAR 001:032
353.990	805 KAR 001:060		105 KAR 001:390
353.991	805 KAR 001:140	28 C.F.R.	201 KAR 011:210
	805 KAR 001:170		902 KAR 045:065
	805 KAR 001:190		902 KAR 045:070
353.992	805 KAR 001:110	29 C.F.R.	101 KAR 002:102
363.410	302 KAR 081:010		101 KAR 003:015
363.510	302 KAR 075:130		902 KAR 045:065
	302 KAR 076:100		902 KAR 045:070
	302 KAR 080:010	30 C.F.R.	405 KAR 010:001
	302 KAR 081:010	40 C.F.R.	401 KAR 010:001
363.610	302 KAR 081:010		401 KAR 010:029
363.710	302 KAR 076:100		401 KAR 051:010
363.720	302 KAR 075:130		401 KAR 058:005
363.730	302 KAR 075:130		405 KAR 010:001
363.770	302 KAR 076:100		805 KAR 001:110
363.780	302 KAR 076:100		805 KAR 001:190
363.800	302 KAR 076:100	42 C.F.R.	907 KAR 003:170
369.101 - 369.120	907 KAR 015:010		907 KAR 010:830
369.102	601 KAR 009:130		907 KAR 015:005
369.107	601 KAR 009:130		907 KAR 015:010
383.085	902 KAR 045:065		907 KAR 015:020
	902 KAR 045:070	44 C.F.R.	201 KAR 011:121
387	922 KAR 001:565	45 C.F.R.	902 KAR 020:370
387.010	902 KAR 045:065		902 KAR 020:430
	902 KAR 045:070		907 KAR 015:010
403.270 - 403.355	922 KAR 001:565		907 KAR 015:020
405.024	922 KAR 001:565		922 KAR 001:320
422.317	201 KAR 008:540	49 C.F.R.	805 KAR 001:190
	907 KAR 003:170	9 U.S.C.	202 KAR 006:010
424	805 KAR 001:140		202 KAR 006:050
424.260	702 KAR 003:130		202 KAR 006:080
434.840 – 434.860	907 KAR 003:170		202 KAR 006:090
439	501 KAR 006:060	12 U.S.C.	201 KAR 030:010
	501 KAR 006:110		201 KAR 030:040
	501 KAR 006:140		201 KAR 030:110
	501 KAR 006:160		201 KAR 030:130
439.3401	902 KAR 020:430	15 U.S.C.	201 KAR 030:190
527.100	922 KAR 001:565	18 U.S.C.	201 KAR 030:330
527.110	922 KAR 001:565	20 U.S.C.	501 KAR 006:160
600.020	922 KAR 001:320		013 KAR 001:020
	922 KAR 001:565		702 KAR 007:065
600 - 645	505 KAR 001:160		902 KAR 020:430
605.090	922 KAR 001:320		907 KAR 015:010
605.120	922 KAR 001:565		907 KAR 015:020
605.130	922 KAR 001:565	21 U.S.C.	902 KAR 045:090
605.150	922 KAR 001:565	26 U.S.C.	102 KAR 001:032
610.110	922 KAR 001:320		105 KAR 001:390
	922 KAR 001:565	29 U.S.C.	101 KAR 002:102
620.020	922 KAR 001:320		101 KAR 003:015
	922 KAR 001:560		201 KAR 015:110
	922 KAR 001:565		902 KAR 020:430
620.090	922 KAR 001:565		907 KAR 015:005
620.140	922 KAR 001:320		907 KAR 015:010
	922 KAR 001:565		907 KAR 015:020
620.142	922 KAR 001:320	30 U.S.C.	401 KAR 010:030
	922 KAR 001:565	33 U.S.C.	401 KAR 010:029
620.157	922 KAR 001:320	42 U.S.C.	201 KAR 008:540
620.170	922 KAR 001:565		202 KAR 006:050
620.180	922 KAR 001:320		401 KAR 051:010
620.230	922 KAR 001:320		805 KAR 001:110
620.363	922 KAR 001:320		902 KAR 020:370
625.065	922 KAR 001:560		902 KAR 020:430
			902 KAR 021:020
			907 KAR 010:830
2019 RS HB220	806 KAR 003:240		907 KAR 015:010
7 C.F.R.	405 KAR 010:001		907 KAR 015:015
12 C.F.R.	201 KAR 030:040		907 KAR 015:020
	201 KAR 030:190		907 KAR 015:022
	201 KAR 030:330		907 KAR 015:025
16 C.F.R.	201 KAR 015:110		922 KAR 001:320
21 C.F.R.	902 KAR 045:090		922 KAR 001:565

KRS SECTION	REGULATION	KRS SECTION	REGULATION
47 U.S.C.	202 KAR 006:010		
	202 KAR 006:020		
	202 KAR 006:030		
	202 KAR 006:050		
	202 KAR 006:060		
	202 KAR 006:070		
	202 KAR 006:080		
	202 KAR 006:090		
	202 KAR 006:100		

CERTIFICATION LETTER SUMMARIES

The certification process is established in KRS 13A.3104. If the certification letter states the regulation shall be amended, the administrative body shall file an amendment to the regulation within 18 months of the date the certification letter was filed. If the certification letter states that the regulation shall remain in effect without amendment, the last effective date of the regulation is changed to the date the regulations compiler received the letter.

* KRS 13A.010(6) - "Effective" means that an administrative regulation has completed the legislative review process established by KRS 13A.290, 13A.330, and 13A.331.

Regulation Number	Last 13A Review Effective Date*	Letter Filed Date	Action
012 KAR 001:120	08-24-1994	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 001:125	08-24-1994	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 001:130	08-24-1994	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 001:160	08-24-1994	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 001:170	08-24-1994	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 001:175	08-24-1994	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:080	09-28-1994	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:090	09-28-1994	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:100	09-28-1994	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:110	09-28-1994	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:120	11-13-1984	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:130	09-28-1994	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:140	09-28-1994	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:160	09-28-1994	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:170	04-12-2000	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:010	03-19-2001	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:020	03-19-2001	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:030	03-19-2001	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:040	03-19-2001	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:050	03-19-2001	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:060	03-19-2001	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:070	03-19-2001	06-06-2019	To be amended, filing deadline 12-10-20
103 KAR 001:070	02-03-2006	06-07-2019	Remain in Effect without Amendment
103 KAR 001:092	02-02-2007	06-07-2019	Remain in Effect without Amendment
103 KAR 001:150	01-05-2009	06-07-2019	Remain in Effect without Amendment
103 KAR 002:020	05-04-2007	06-07-2019	Remain in Effect without Amendment
103 KAR 005:180	05-07-2010	06-07-2019	Remain in Effect without Amendment
103 KAR 005:190	04-02-2010	06-07-2019	Remain in Effect without Amendment
103 KAR 005:220	03-08-2013	06-07-2019	Remain in Effect without Amendment
103 KAR 005:230	04-06-2018	06-07-2019	Remain in Effect without Amendment
103 KAR 027:030	12-11-1974	06-07-2019	Remain in Effect without Amendment
103 KAR 027:040	01-08-1975	06-07-2019	Remain in Effect without Amendment
103 KAR 027:240	05-04-2007	06-07-2019	Remain in Effect without Amendment
103 KAR 028:020	01-08-1975	06-07-2019	Remain in Effect without Amendment
103 KAR 028:051	02-02-2018	06-07-2019	Remain in Effect without Amendment
103 KAR 028:130	01-08-1975	06-07-2019	Remain in Effect without Amendment
103 KAR 030:160	01-08-1975	06-07-2019	Remain in Effect without Amendment
103 KAR 030:235	02-02-2018	06-07-2019	Remain in Effect without Amendment
103 KAR 030:280	05-04-2007	06-07-2019	Remain in Effect without Amendment
103 KAR 031:011	11-21-1990	06-07-2019	Remain in Effect without Amendment
103 KAR 031:050	01-05-2018	06-07-2019	Remain in Effect without Amendment
103 KAR 031:102	02-02-2018	06-07-2019	Remain in Effect without Amendment
103 KAR 031:170	02-02-2018	06-07-2019	Remain in Effect without Amendment
103 KAR 031:190	01-05-2018	06-07-2019	Remain in Effect without Amendment
102 KAR 001:010	03-12-1975	07-03-2019	Remain in Effect without Amendment
102 KAR 001:030	08-31-2007	07-03-2019	Remain in Effect without Amendment
102 KAR 001:038	08-31-2007	07-03-2019	Remain in Effect without Amendment
102 KAR 001:039	03-12-1975	07-03-2019	Remain in Effect without Amendment
102 KAR 001:045	12-01-1976	07-03-2019	Remain in Effect without Amendment
102 KAR 001:050	04-05-1991	07-03-2019	Remain in Effect without Amendment
102 KAR 001:057	08-13-2003	07-03-2019	Remain in Effect without Amendment
102 KAR 001:060	05-06-2016	07-03-2019	Remain in Effect without Amendment
102 KAR 001:070	12-01-2017	07-03-2019	Remain in Effect without Amendment
102 KAR 001:100	08-13-2003	07-03-2019	Remain in Effect without Amendment
102 KAR 001:105	06-05-2009	07-03-2019	Remain in Effect without Amendment
102 KAR 001:110	08-13-2003	07-03-2019	Remain in Effect without Amendment
102 KAR 001:130	04-05-1991	07-03-2019	Remain in Effect without Amendment
102 KAR 001:140	04-05-1991	07-03-2019	Remain in Effect without Amendment
102 KAR 001:145	03-12-1975	07-03-2019	Remain in Effect without Amendment
102 KAR 001:150	03-18-2004	07-03-2019	Remain in Effect without Amendment

CERTIFICATION LETTER SUMMARIES

102 KAR 001:155	08-06-1980	07-03-2019	Remain in Effect without Amendment
102 KAR 001:163	05-31-2009	07-03-2019	Remain in Effect without Amendment
102 KAR 001:165	11-04-2016	07-03-2019	Remain in Effect without Amendment
102 KAR 001:168	05-31-2019	07-03-2019	Remain in Effect without Amendment
102 KAR 001:170	06-05-2009	07-03-2019	Remain in Effect without Amendment
102 KAR 001:175	05-06-2011	07-03-2019	Remain in Effect without Amendment
102 KAR 001:178	06-03-2011	07-03-2019	Remain in Effect without Amendment
102 KAR 001:180	04-05-1991	07-03-2019	Remain in Effect without Amendment
102 KAR 001:185	08-13-2003	07-03-2019	Remain in Effect without Amendment
102 KAR 001:195	04-05-1991	07-03-2019	Remain in Effect without Amendment
102 KAR 001:210	04-05-1991	07-03-2019	Remain in Effect without Amendment
102 KAR 001:220	01-23-2004	07-03-2019	Remain in Effect without Amendment
102 KAR 001:225	02-01-2013	07-03-2019	Remain in Effect without Amendment
102 KAR 001:230	05-03-2013	07-03-2019	Remain in Effect without Amendment
102 KAR 001:240	06-05-2009	07-03-2019	Remain in Effect without Amendment
102 KAR 001:245	03-01-2011	07-03-2019	Remain in Effect without Amendment
102 KAR 001:250	05-16-2002	07-03-2019	Remain in Effect without Amendment
102 KAR 001:270	07-07-2014	07-03-2019	Remain in Effect without Amendment
102 KAR 001:280	02-03-2003	07-03-2019	Remain in Effect without Amendment
102 KAR 001:290	11-04-2016	07-03-2019	Remain in Effect without Amendment
102 KAR 001:300	04-03-2009	07-03-2019	Remain in Effect without Amendment
102 KAR 001:310	03-08-2013	07-03-2019	Remain in Effect without Amendment
102 KAR 001:320	05-31-2019	07-03-2019	Remain in Effect without Amendment
102 KAR 001:330	11-08-2010	07-03-2019	Remain in Effect without Amendment
102 KAR 001:340	03-08-2013	07-03-2019	Remain in Effect without Amendment
102 KAR 001:350	05-31-2013	07-03-2019	Remain in Effect without Amendment
102 KAR 002:010	12-01-1976	07-03-2019	Remain in Effect without Amendment
102 KAR 002:025	06-02-1976	07-03-2019	Remain in Effect without Amendment
702 KAR 003:100	01-14-2002	06-28-2019	Remain in Effect without Amendment
702 KAR 003:110	11-17-2000	06-28-2019	Remain in Effect without Amendment
702 KAR 003:120	11-01-1999	06-28-2019	Remain in Effect without Amendment
702 KAR 003:220	11-08-1991	06-28-2019	Remain in Effect without Amendment
702 KAR 005:030	01-16-2003	06-28-2019	Remain in Effect without Amendment
702 KAR 005:110	01-03-2011	06-28-2019	Remain in Effect without Amendment
702 KAR 006:110	10-07-2011	06-28-2019	Remain in Effect without Amendment
703 KAR 005:140	07-13-2012	06-28-2019	Remain in Effect without Amendment
705 KAR 002:140	11-17-2000	06-28-2019	Remain in Effect without Amendment
707 KAR 001:002	12-07-2007	06-28-2019	Remain in Effect without Amendment
707 KAR 001:310	11-05-2007	06-28-2019	Remain in Effect without Amendment
707 KAR 001:340	11-05-2007	06-28-2019	Remain in Effect without Amendment
770 KAR 001:010	02-07-1992	06-21-2019	Remain in Effect without Amendment
770 KAR 001:020	02-07-1992	06-21-2019	Remain in Effect without Amendment
770 KAR 001:030	02-07-1992	06-21-2019	Remain in Effect without Amendment
770 KAR 001:040	02-07-1992	06-21-2019	Remain in Effect without Amendment
770 KAR 001:050	02-07-1992	06-21-2019	Remain in Effect without Amendment
770 KAR 001:060	02-07-1992	06-21-2019	Remain in Effect without Amendment
770 KAR 001:070	10-31-2003	06-21-2019	Remain in Effect without Amendment
772 KAR 001:010	09-03-1998	07-01-2019	Remain in Effect without Amendment
772 KAR 001:020	09-03-1998	07-01-2019	Remain in Effect without Amendment
772 KAR 001:030	09-03-1998	07-01-2019	Remain in Effect without Amendment
772 KAR 001:040	09-03-1998	07-01-2019	Remain in Effect without Amendment
772 KAR 001:050	09-03-1998	07-01-2019	Remain in Effect without Amendment
772 KAR 001:060	09-03-1998	07-01-2019	Remain in Effect without Amendment
772 KAR 001:070	09-03-1998	07-01-2019	Remain in Effect without Amendment
780 KAR 002:040	05-01-2009	06-28-2019	Remain in Effect without Amendment
780 KAR 002:060	05-01-2009	06-28-2019	Remain in Effect without Amendment
780 KAR 002:140	05-01-2009	06-28-2019	Remain in Effect without Amendment
780 KAR 003:050	05-01-2009	06-28-2019	Remain in Effect without Amendment
780 KAR 003:120	05-01-2009	06-28-2019	Remain in Effect without Amendment
780 KAR 003:130	05-01-2009	06-28-2019	Remain in Effect without Amendment
780 KAR 003:140	05-01-2009	06-28-2019	Remain in Effect without Amendment
780 KAR 007:010	05-01-2009	06-28-2019	Remain in Effect without Amendment
201 KAR 008:540	02-01-2013	04-18-2019	To be amended. Amendment filed 06-14-19.
201 KAR 008:581	05-06-2011	04-08-2019	To be amended. Amendment filed 04-15-19.
201 KAR 023:020	03-04-2011	06-21-2019	Remain in Effect without Amendment
201 KAR 023:050	12-07-2011	06-21-2019	To be amended, filing deadline 12-21-20
201 KAR 023:060	10-13-1997	06-21-2019	Remain in Effect without Amendment
201 KAR 023:080	09-11-2000	06-21-2019	Remain in Effect without Amendment
201 KAR 023:120	01-04-1986	06-21-2019	Remain in Effect without Amendment

CERTIFICATION LETTER SUMMARIES

201 KAR 023:140	10-13-1997	06-21-2019	Remain in Effect without Amendment
401 KAR 058:005	07-07-1998	07-30-2018	To be amended. Amendment filed 06-14-19.
902 KAR 008:130	08-19-1998	06-11-2019	Remain in Effect without Amendment
902 KAR 008:150	10-16-2002	06-11-2019	Remain in Effect without Amendment
902 KAR 008:160	08-17-2011	06-11-2019	Remain in Effect without Amendment
020 KAR 001:010	09-12-1994	06-07-2019	Remain in Effect without Amendment
020 KAR 001:020	10-12-1994	06-07-2019	Remain in Effect without Amendment
020 KAR 001:030	10-12-1994	06-07-2019	Remain in Effect without Amendment
020 KAR 001:040	03-18-2004	06-07-2019	Remain in Effect without Amendment
020 KAR 001:050	10-12-1994	06-07-2019	Remain in Effect without Amendment
020 KAR 001:060	10-12-1994	06-07-2019	Remain in Effect without Amendment
020 KAR 001:070	11-15-1999	06-07-2019	Remain in Effect without Amendment
020 KAR 001:080	10-06-2006	06-07-2019	Remain in Effect without Amendment
020 KAR 001:090	03-18-2004	06-07-2019	Remain in Effect without Amendment
020 KAR 001:100	03-18-2004	06-07-2019	Remain in Effect without Amendment
045 KAR 001:060	11-12-1992	06-10-2019	Remain in Effect without Amendment
045 KAR 001:080	02-08-1995	06-10-2019	Remain in Effect without Amendment
105 KAR 001:130	07-29-2009	06-28-2019	Remain in Effect without Amendment
105 KAR 001:150	07-17-2003	06-28-2019	Remain in Effect without Amendment
105 KAR 001:160	10-03-2008	06-28-2019	Remain in Effect without Amendment
105 KAR 001:170	10-03-2008	06-28-2019	Remain in Effect without Amendment
105 KAR 001:190	09-28-2011	06-11-2019	Remain in Effect without Amendment
105 KAR 001:220	10-03-2008	06-11-2019	Remain in Effect without Amendment
105 KAR 001:260	12-21-2000	06-11-2019	Remain in Effect without Amendment
105 KAR 001:400	10-24-2012	06-11-2019	Remain in Effect without Amendment
105 KAR 001:430	10-24-2012	06-28-2019	Remain in Effect without Amendment
105 KAR 001:440	01-06-2012	06-11-2019	Remain in Effect without Amendment

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: Copies of the technical amendments are usually posted on the Legislative Research Commission Web site for a short time before they are finalized. Regulations are available for viewing on the Legislative Research Commission Web site at <https://legislature.ky.gov/law/kar/pages/default.aspx>.

‡ - A technical change was made to this administrative regulation during the promulgation process, pursuant to KRS 13A.320(1)(e).

Regulation Number	Date Corrected	Regulation Number	Date Corrected
----------------------	-------------------	----------------------	-------------------

SUBJECT INDEX

AGING AND INDEPENDENT LIVING

Guardianship

- Referral process for adult guardianship; 910 KAR 002:020
- Service provisions for adult guardianship; 910 KAR 002:040

AGRICULTURE

Amusement Rides

- Amusement rides or attractions, business ID; 302 KAR 016:010
- Correction of safety violations, right to re-inspection; 302 KAR 016:040
- Inflatables; 302 KAR 016:121
- Inspection and operation; 302 KAR 016:020
- Maintenance and repair; 302 KAR 016:131
- Operate amusement ride or device defined; 302 KAR 016:101
- Injury reports; 302 KAR 016:070
- Other rides or attractions; 302 KAR 016:091
- Violations, civil penalties, revocations, and suspensions of business identification number; 302 KAR 016:111

Bond and Grain Fund Distribution

- Repeal of 302 KAR 036:010; 302 KAR 036:011

Grain Storage

- Repeal of 302 KAR 035:020, 302 KAR 035:030, 302 KAR 035:040, 302 KAR 035:050, 302 KAR 035:060, and 302 KAR 035:070; 302 KAR 035:011

Kentucky Grain Insurance and Grain Dealers

- Repeal of 302 KAR 034:010, 302 KAR 034:020, 302 KAR 034:030, 302 KAR 034:040, 302 KAR 034:050 and 302 KAR 034:060; 302 KAR 034:011

Regulation and Inspection; Commercial Weighing and Measuring Devices

- Technical requirements for devices; 302 KAR 081:010

Regulation and Inspection; Method of Sale

- Method of sale; 302 KAR 076:100

Regulation and Inspection; Packaging and Labeling

- Packaging and labeling; 302 KAR 075:130

Regulation and Inspection; Scanner

- Examination procedure for price verification; 302 KAR 080:010

AIR QUALITY

Asbestos

- Accreditation of asbestos professionals; 401 KAR 058:005

ALCOHOLIC BEVERAGE CONTROL

Local Administrators

- Retail package licenses in excess of statutory default quotas; 804 KAR 010:040

AUCTIONEERS

Education requirements; 831 KAR 001:030

Licensing fees and applications; 831 KAR 001:010

Standards of conduct and complaints; 831 KAR 001:020

BEHAVIORAL HEALTH, DEVELOPMENTAL AND INTELLECTUAL DISABILITIES

Substance Abuse

Licensure:

- Nonhospital-based alcohol and other drug treatment entities; 908 KAR 001:370
- Nonhospital-based outpatient alcohol and other drug treatment entities; 908 KAR 001:374
- Residential alcohol and other drug treatment entities; 908 KAR 001:372

- Repeal of 908 KAR 001:340; 908 KAR 001:341

BOARDS AND COMMISSIONS

See also Occupations and Professions

See listing below for specific subject headings:

Accountancy; 201 KAR Chapter 001

Boxing and Wrestling Commission; 201 KAR Chapter 027

Cosmetology; 201 KAR Chapter 012

Chiropractic Examiners; 201 KAR Chapter 021

Dentistry; 201 KAR Chapter 008

Licensure for Long-Term Care Administrators; 201 KAR Chapter

006

Licensure for Marriage and Family Therapists; 201 KAR Chapter 032

Medical Imaging and Radiation Therapy; 201 KAR Chapter 047

Medical Licensure; 201 KAR Chapter 009

Nursing; 201 KAR Chapter 020

Occupational Therapy; 201 KAR Chapter 028

Ophthalmic Dispensers; 201 KAR Chapter 013

Optometric Examiners; 201 KAR Chapter 005

Pharmacy; 201 KAR Chapter 002

Physical Therapy; 201 KAR Chapter 022

Podiatry; 201 KAR Chapter 025

Private Investigators; Chapter 041

Psychology; 201 KAR Chapter 026

Real Estate Appraisers Board; 201 KAR Chapter 030

Real Estate Commission; 201 KAR Chapter 011

Social Work; 201 KAR Chapter 023

Veterinary Examiners; 201 KAR Chapter 016

COMMUNITY & TECHNICAL COLLEGE SYSTEM

Ground vehicle staff; 202 KAR 007:560

COMMUNITY BASED SERVICES

Child Welfare

Central registry; 922 KAR 001:470

Child-placing agencies, standards; 922 KAR 001:310

Disclosure of protection and permanency records; 922 KAR 001:510

Putative father registry and operating procedures; 922 KAR 001:560

Public child welfare agency foster parents, adoptive parents, and respite care providers; 922 KAR 001:350

Service array for a relative or fictive kin caregiver; 922 KAR 001:565

Training requirements for foster parents, adoptive parents, and respite care providers for children in the custody of the cabinet; 922 KAR 001:495

Family Support

Child Support Enforcement Program application and intergovernmental process; 921 KAR 001:380

CORRECTIONS

Office of the Secretary

Bell County Forestry Camp; 501 KAR 006:140

Correctional Industries; 501 KAR 006:160

Northpoint Training Center; 501 KAR 006:060

Roederer Correctional Complex; 501 KAR 006:110

COSMETOLOGY

Licensing, permits, and examinations; 201 KAR 012:030

DENTISTRY

Practices and prescription writing; 201 KAR 008:540

EDUCATION

Office of Chief State School Officer

Teacher disciplinary hearings; 701 KAR 005:090

Office of Employment and Training

Apprenticeship programs, registration of; 787 KAR 003:010

School Administration and Finance

Internal accounting; 702 KAR 003:130

School Terms, Attendance, and Operation

Agent designation to manage middle and high school interscholastic athletics; 702 KAR 007:065

EDUCATION AND WORKFORCE DEVELOPMENT

For Education, see listings below:

Board of Education; KAR Titles 701 & 702

Education Professional Standards Board; KAR Title 16

Education; KAR Title 704 (See Education)

Higher Education Assistance Authority; KAR Title 11

Workforce Development; KAR Title 787

For Workforce Development, see listings below:

SUBJECT INDEX

Workplace Standards; *KAR Title 803*

ELECTIONS

Forms and Procedures

Additional and emergency; 031 KAR 004:120

Reports and Forms

Repeal of 032 KAR 001:060; 032 KAR 001:061

EMBALMERS AND FUNERAL DIRECTORS

Apprenticeship and supervision requirements; 201 KAR 015:050

Complaints; 201 KAR 015:080

Examination; 201 KAR 015:040

Definitions; 201 KAR 015:010

Fees; 201 KAR 015:030

Funeral establishment criteria; 201 KAR 015:110

Licenses from other states; 201 KAR 015:120

Per Diem compensation of board members; 201 KAR 015:015

Surface Transportation Permit; 201 KAR 015:125

ENERGY AND ENVIRONMENT CABINET

Environmental Protection, *KAR Title 401*

Kentucky Nature Preserves, *KAR Titles 400, 418*

Natural Resources; *KAR Title 405*

Public Service Commission, *KAR Title 807*

ENVIRONMENTAL PROTECTION

Air Quality; *401 KAR Chapter 58*

Water Quality; *401 KAR Chapters 5, 8, and 11*

EXECUTIVE BRANCH ETHICS COMMISSION

Executive agency lobbyist, employer of executive agency lobbyist, and real party in interest registration and expenditure statements; financial transactions and termination forms; and enforcement; 009 KAR 001:040

Financial disclosure statement; 009 KAR 001:010

FACILITIES AND SUPPORT SERVICES

State-Owned Buildings and Grounds

Use of State-Owned facilities and grounds; 200 KAR 003:020

FINANCIAL INSTITUTIONS

Administration

Licensing and registration; 808 KAR 001:170

Check Cashing

Licensee change of control; 808 KAR 009:050

FISH AND WILDLIFE

Fish

Asian carp; 301 KAR 001:152

Pay lakes; 301 KAR 001:185

Nontraditional fishing methods; 301 KAR 001:410

Traditional fishing methods; 301 KAR 001:201

Game

Black bear seasons and requirements; 300 KAR 002:300

Hunter education; 301 KAR 002:185

Waterfowl seasons and limits; 301 KAR 002:221

Waterfowl hunting requirements on public land; 301 KAR 002:222

Wildlife

Taxidermy and the buying and selling of inedible wildlife parts; 301 KAR 004:090

FOOD STAMPS

Now called Supplemental Nutrition Assistance Program

See Community Based Services; 921 KAR Chapter 3

HEALTH AND FAMILY SERVICES

See listing below for specific subject headings:

Aging and Independent Living; *KAR Title 910*

Behavioral Health, Developmental and Intellectual Disabilities; *KAR Title 908*

Community Based Services; *KAR Title 921*

Inspector General (Health); *KAR Title 900, 902, 906*

Medicaid Services; *KAR Title 895 and 907*

Office for Children with Special Health Care Needs; *KAR Title 911*

HOMELAND SECURITY

911 Services Board

Definitions for 202 KAR Chapter 006; 202 KAR 006:010

CMRS provider cost recovery; 202 KAR 006:020

CMRS surcharge remittance and reporting; 202 KAR 006:080

Confidential and proprietary information; 202 KAR 006:030

Permitted uses by PSAPs and CMRS funds; 202 KAR 006:090

PSAP:

Certification; 202 KAR 006:050

Phase II certification; 202 KAR 006:100

Pro data fund disbursement; 202 KAR 006:060

Workload fund disbursement; 202 KAR 006:070

INSURANCE

Agents, Consultants, Solicitors, and Adjusters

Adjuster licensing restrictions; 806 KAR 009:030

Agent's rights after contract termination; 806 KAR 009:110

Disclosure requirements for financial institutions authorized to engage in insurance agency activities; 806 KAR 009:190

Examinations; 806 KAR 009:070

False or deceptive names, titles, prohibited; 806 KAR 009:020

Life settlement licenses; 806 KAR 009:310

Prelicensing courses of study; 806 KAR 009:001

Recognition of financial planning certification and designation for receipt of fees and commissions; 806 KAR 009:350

Repeal of 806 KAR 009:060; 806 KAR 009:061

Repeal of 806 KAR 009:320; 806 KAR 009:321

Repeal of 806 KAR 009:341; 806 KAR 009:341

Volume of insurance agent exchange of business; 806 KAR 009:200

Authorization of Insurers and General Requirements

Corporate Governance Annual Disclosure Insurance Fraud; 806 KAR 003:240

Fraud prevention; 806 KAR 047:010

Repeal of 806 KAR 047:020 and 806 KAR 047:030. Kinds of Insurance; Limits of Risk; Reinsurance; 806 KAR 047:021

Life Insurance and Annuity Contracts

Repeal of 806 KAR 015:080; 806 KAR 015:081

Rates and Rating Organizations

Workers' compensation deductible policies; 806 KAR 013:120

INSPECTOR GENERAL (HEALTH)

Controlled Substances

Prescription disposal; 902 KAR 055:120

Health Services and Facilities

Operation and services:

Behavioral health services organizations for mental health treatment; 902 KAR 020:430

Personal care homes; 902 KAR 020:036

Private duty nursing agencies; 902 KAR 020:370

JUSTICE AND PUBLIC SAFETY

Asset Forfeiture

Repeal of 500 KAR 009:010, 500 KAR 009:020, 500 KAR 009:030, and 500 KAR 009:040; 500 KAR 009:011

Corrections, *KAR Title 501*

Juvenile Justice; *KAR Title 505*

Motorcycle Safety Education Commission

Motorcycle Safety Education Program; 500 KAR 015:010

JUVENILE JUSTICE

Child Welfare

Department of Juvenile Justice Policy and Procedures Manual: juvenile sexual offender treatment program; 505 KAR 001:160

LABOR

See listing below for specific subject headings:

Occupational Safety and Health Review Commission; 803 KAR Chapter 050

Workplace Standards; *KAR Title 803*

SUBJECT INDEX

Workers' Claims; *803 KAR Chapter 025*

Workers' Compensation Funding Commission, *803 KAR Chapter 030*

LICENSURE FOR LONG-TERM CARE ADMINISTRATORS

Renewal, reinstatement, and reactivation of license; 201 KAR 006:040

Temporary permits; 201 KAR 006:030

KENTUCKY LOTTERY CORPORATION

Code of ethics; 202 KAR 003:010

MEDICAID SERVICES

Behavioral Health

Coverage of services provided by:

Individual approved practitioners, behavioral health provider groups, and behavioral health multi-specialty groups; 907 KAR 015:010

Organizations for:

Mental health treatment; 907 KAR 015:020

Substance use disorder treatment and co-occurring disorders; 907 KAR 015:022

Definitions for 907 KAR Chapter 015; 907 KAR 015:005

Reimbursement for services provided by:

Individual approved behavioral health practitioners, behavioral health provider groups or behavioral health multi-specialty groups; 907 KAR 015:015

Organizations; 907 KAR 015:025

Hospital Service Coverage and Reimbursement

Acute care inpatient hospital reimbursement; 907 KAR 010:830

Payments and Services

Telehealth service coverage and reimbursements; 907 KAR 003:170

MINE SAFETY

Mining Safety Standards

Employees' personal protection; 805 KAR 003:110

NATURAL RESOURCES

Coal Bed Methane; *805 KAR Chapter 009*

Forestry, *KAR Title 402*

Mining

Permits; *KAR Title 405*

Mine Safety; *805 KAR Chapters 003, 007 & 008*

Natural Resources; *805 KAR Chapter 003*

Oil and Gas; *805 KAR Chapter 001*

NURSING

Applications for licensure; 201 KAR 020:370

Nurse licensure compact; 201 KAR 020:506

OIL AND GAS

Bonds, requirements, cancellation; 805 KAR 001:050

Definitions for 805 KAR Chapter 001; 805 KAR 001:001

Directional and horizontal wells; 805 KAR 001:140

Fresh water zones, protection of; 805 KAR 001:020

Gas storage reservoirs; drilling, plugging in vicinity; 805 KAR 001:080

Gathering lines; 805 KAR 001:190

Operating or deepening existing wells and drilling deeper than the permitted depth; 805 KAR 001:120

Operations and reclamation plan, contents; 805 KAR 001:170

Permits, general information; 805 KAR 001:200

Plugging wells; 805 KAR 001:060

Production reporting; 805 KAR 001:180

Underground injection control; 805 KAR 001:110

Well location and as-drilled location plat, preparation, form and contents; 805 KAR 001:030

Sanctions and Penalties

Repeal of 805 KAR Chapter 009; 805 KAR 009:011

OPHTHALMIC DISPENSERS

Apprentices; 201 KAR 013:050

Continuing education requirements; 201 KAR 013:055

Licensing; 201 KAR 013:040

Military service; reciprocity; endorsement; 201 KAR 013:060

PERSONNEL CABINET

Classified

Leave general requirements; 101 KAR 002:102

Compensation; 101 KAR 002:034

Employee performance evaluation system; 101 KAR 002:180

Employee performance management system; 101 KAR 002:190

Kentucky Employee Mediation and Workplace Resolution Programs; 101 KAR 002:230

Personnel Cabinet, Unclassified

Leave requirements; 103 KAR 003:015

PHARMACY

Compounding for a veterinarian's office or institutional administration for veterinary use; 201 KAR 002:310

Expungement; 201 KAR 002:270

Pharmacist interns; 201 KAR 002:095

Reference material and prescription equipment; 201 KAR 002:090

Schools approved by the board; 201 KAR 002:010

Security and control of drugs and prescriptions; 201 KAR 002:100

Special limited pharmacy permit:

Charitable; 201 KAR 002:240

Clinical practice; 201 KAR 002:340

Medical gas; 201 KAR 002:225

Substitution of drugs, biologics and biosimilar products; 201 KAR 002:116

Transfer of prescription information; 201 KAR 002:165

PODIATRY

Controlled substances; 201 KAR 025:090

POST SECONDARY EDUCATION

Nonpublic Colleges

Private College licensing; 013 KAR 001:020

PUBLIC HEALTH

Controlled Substances

Emergency medication kits in long-term care facilities; 902 KAR 055:070.

Epidemiology and Health Planning

Rabies control; 902 KAR 002:070

Food and Cosmetics

Home-based processors and farmers market home-based microprocessors; 902 KAR 045:090

Piercing; 902 KAR 045:070

Private water supplies; 902 KAR 045:120

Recreational vehicle communities, youth camps, and private water supplies; 902 KAR 045:120

Tattooing; 902 KAR 045:065

Training facilities; 902 KAR 045:075

Youth camps; 902 KAR 045:120

Maternal and Child Health

Reimbursement, specialized food products; 902 KAR 004:035

Newborn screening program; 902 KAR 004:030

Milk and Products

Advisory Committee; 902 KAR 050:005

Repeal of 902 KAR 050:002; 902 KAR 050:003

Mobile Homes and Recreational Vehicles Parks; Facilities

Standards

Manufactured and mobile homes; 902 KAR 015:010

Programs for the Underserved

Colon Screening Program; 902 KAR 021:020

Public Accommodations

Hotel and motel code; 902 KAR 007:010

State and Local Confinement Facilities

Environmental health; 902 KAR 009:010

PUBLIC PROTECTION CABINET

See listing below for specific subject headings:

Alcoholic Beverage Control; *KAR Title 804*

SUBJECT INDEX

Professional Licensing; *KAR Title 830*
Secondary Metals Recyclers; *830 KAR Chapter 1*
Charitable Gaming; *KAR Title 820*
Claims Commission; *KAR Title 107*
Financial Institutions; *KAR Title 808*
Horse Racing Commission, *KAR Title 810*
Housing, Buildings and Construction; *KAR Title 815*
Insurance; *KAR Title 806*

PRIVATE INVESTIGATORS

Application for licensure; 201 KAR 041:020
Compliant procedure; 201 KAR 041:080
Continuing education requirements; 201 KAR 041:070
Examination; 201 KAR 041:030
Fees; 201 KAR 041:040
Inactive status; 201 KAR 041:060
Renewal and reinstatement procedures; 201 KAR 041:065

REAL ESTATE AUTHORITY

Auctioneers (*See Auctioneers, Kentucky Board of*)

REAL ESTATE APPRAISERS BOARD

Appraiser roster and fees; 201 KAR 030:110
Certification and licensing requirements; 201 KAR 030:190
Definitions for 201 KAR Chapter 030; 201 KAR 030:010
Education provider, instructor, and course; 201 KAR 030:130
Grievances; 201 KAR 030:070
Professional standards of practice and conduct; 201 KAR 030:040
Repeal of 201 KAR 030:020, 201 KAR 030:030, 201 KAR 030:050, 201 KAR 030:060, 201 KAR 030:120, 201 KAR 030:125, 201 KAR 030:150, 201 KAR 030:160, 201 KAR 030:170, 201 KAR 030:180, 201 KAR 030:200, 201 KAR 030:310, 201 KAR 030:315, 201 KAR 030:360, 201 KAR 030:375, and 201 KAR 030:380.
Registration and supervision of appraisal management companies; 201 KAR 030:330

REAL ESTATE AUTHORITY

Real Estate Commission

Complaints; discipline; administrative hearings; 201 KAR 011:190
Education provider requirements; 201 KAR 011:170
Errors and omissions insurance requirements; 201 KAR 011:220
Licensing, education, and testing; 201 KAR 011:210
Repeal of 201 KAR 011:030, 201 KAR 011:045, 201 KAR 011:062, 201 KAR 011:090, 201 KAR 011:095, 201 KAR 011:100, 201 KAR 011:110, 201 KAR 011:115, 201 KAR 011:135, 201 KAR 011:145, 201 KAR 011:147, 201 KAR 011:175, 201 KAR 011:180, 201 KAR 011:195, 201 KAR 011:215, 201 KAR 011:225, 201 KAR 011:230, 201 KAR 011:232, 201 KAR 011:235, 201 KAR 011:240, 201 KAR 011:245, 201 KAR 011:250, 201 KAR 011:300, 201 KAR 011:350, 201 KAR 011:400, 201 KAR 011:410, 201 KAR 011:440, 201 KAR 011:450, and 201 KAR 011:460; 201 KAR 011:002
Standards of professional conduct; 201 KAR 011:121

REAL ESTATE COMMISSION

Advertising; 201 KAR 011:105
Definitions for 201 KAR Chapter 011; 201 KAR 011:011
Repeal of 201 KAR 011:420; 201 KAR 011:461

RETIREMENT SYSTEMS

General Rules

Retirement procedures and forms; 105 KAR 001:200
Employment after retirement; 105 KAR 001:390

REVENUE

Ad Valorem Tax, Administration

Property valuation administrator office employees: payment of leave upon separation; 103 KAR 005:160
Repeal of 103 KAR 005:150; 103 KAR 005:151

Ad Valorem Tax; Local Assessment

Repeal of 103 KAR 007:030; 103 KAR 007:031

Ad Valorem Tax; State Assessment

Ad valorem taxation of machinery actually engaged in the manufacturing of coal, crushed stone, sand, gravel and hot asphalt; 103 KAR 008:130

Apportioned vehicles; 103 KAR 008:110

Electronic fund transfer; 103 KAR 001:060

General administration; 103 KAR 008:141

Repeal of 103 KAR 008:010; 103 KAR 008:011

Repeal of 103 KAR 008:140 and 103 KAR 008:150

Protests; 103 KAR 001:010

Income Tax; Individual

Repeal of 103 KAR 017:120; 103 KAR 017:121

Income Tax; Corporations

Combined unitary income tax return; 103 KAR 016:400

Consolidated income tax return; 103 KAR 016:200

Net operating loss computation and deduction; 103 KAR 016:250

Income Tax; General Administration

Filing dates and extensions; 103 KAR 015:050

Repeal of 103 KAR 015:060; 103 KAR 015:061

Inheritance Tax

Life expectancy table; 103 KAR 002:005

Policies and circulars relating to inheritance tax; 103 KAR 002:030

Sales and Use Tax; Administration and Accounting

Direct pay authorization; 103 KAR 031:030

Sales and purchases for resale; 103 KAR 031:111

Sales and Use Tax; General Exemptions

Containers, wrapping, packing materials; 103 KAR 030:170

Repeal of 103 KAR 030:260; 103 KAR 030:261

Sales and Use Tax; Miscellaneous Retailer Occupations

Publishers of newspapers, magazines and periodicals; 103 KAR 027:140

Vending machines; 103 KAR 027:180

Sales and Use Tax; Miscellaneous Retail Transactions

Admissions; 103 KAR 028:010

Sales and Use Tax; Registration and Collection

Current month accelerated payment of sales and use taxes by larger taxpayers; 103 KAR 025:131

Sales and Use Tax; Service and Professional Occupations

Contractors; 103 KAR 026:070

Nontaxable service enterprises; 103 KAR 026:010

Veterinarians and pet care providers; 103 KAR 026:090

Selective Excise Tax; Cigarettes

Applications, stamp orders, returns, reports, and statements to be filed electronically – waiver; 103 KAR 041:220

TRANSPORTATION

Vehicle Regulation; *KAR Title 601 (See Vehicle Regulation)*

Motorcycle Safety Education Commission

See Justice and Public Safety

SOCIAL WORK

Complaint procedure, disciplinary action, and reconsideration; 201 KAR 023:150

UTILITIES

See Public Service Commission; KAR Title 807

TEACHERS' RETIREMENT SYSTEM

General Rules

Bona Fide Retirement; 102 KAR 001:032

TRANSPORTATION

Driver Improvement

Medical Review Board; basis for examination, evaluation, tests; 601 KAR 013:090

Medical standards for operators of motor vehicles; 601 KAR 013:100

Motor Vehicle Tax

Motor vehicle registration; 601 KAR 009:130

Traffic

SUBJECT INDEX

Encroachment permits; 603 KAR 005:150

VEHICLE REGULATION

Motor Carriers

Ignition interlock; 601 KAR 2:030

Water well; 401 KAR 006:35

Repeal of 401 KAR 006:200; 401 KAR 006:211

WORKERS' CLAIMS

Pharmaceutical formulary; 803 KAR 025:271E

VETERINARY EXAMINERS

Application requirements: veterinarians and veterinary technicians; 201 KAR 016:240

Colleges and approved programs; 201 KAR 016:220

Animal control agencies: restricted controlled substances certificate; 201 KAR 016:250

Code of ethical conduct for veterinarians; 201 KAR 016:20

Continuing education; 201 KAR 016:290

Drugs: prescription and dispensation; 201 KAR 016:300

Euthanasia specialist;

Certification; 201 KAR 016:260

License renewal; 201 KAR 016:270

Examination requirements for veterinarians and veterinary technicians; 201 KAR 016:230

Fees for animal control agencies and animal euthanasia specialists; 201 KAR 016:214

Fees:

Animal control agencies; 201 KAR 016:214

Euthanasia specialists; 201 KAR 016:214

Other; 201 KAR 016:216

Veterinarians; 201 KAR 016:210

Veterinary technicians; 201 KAR 016:212

Grievances, investigations, and administrative charges; 201 KAR 016:310

License renewal:

Animal control agencies; 201 KAR 016:272

Euthanasia specialistst; 201 KAR 016:272

Veterinarians; 201 KAR 016:270

Veterinary technicians; 201 KAR 016:270

License, inactive and retired statuses; 201 KAR 016:280

Material Incorporated by Reference; 201 KAR 016:400

Repeal of 201 KAR 016:010, 201 KAR 016:015, 201 KAR 016:020, 201 KAR 016:030, 201 KAR 016:040, 201 KAR 016:050, 201 KAR 016:060, 201 KAR 016:080, 201 KAR 016:090, 201 KAR 016:100, and 201 KAR 016:110; 201 KAR 016:011

WATER QUALITY

Attainment and Maintenance of the National Ambient Air Quality Standards

Attainment status designations; 401 KAR 051:010

Certified Operators

Definitions for 401 KAR Chapter 011; 401 KAR 011:001

Provider certification; 401 KAR 011:050

Provider certification fees; 401 KAR 011:060

Wastewater treatment and collection system operators; classification and qualifications; 401 KAR 011:030

Water treatment and distribution system operators; classification and qualifications; 401 KAR 011:040

Water Quality

Operation of wastewater systems by certified operators; 401 KAR 005:010

Water Quality Certification

Drinking water program fees; 401 KAR 008:050

Water treatment plant and water distribution system classification and staffing; 401 KAR 008:030

Water Quality Standards

Antidegradation policy implementation methodology; 401 KAR 010:030

Definitions for 401 KAR Chapter 010; 401 KAR 010:001

Designation of uses of surface waters; 401 KAR 010:026

General provisions; 401 KAR 010:029

Surface water standards; 401 KAR 010:031

Water Wells

Certification of drillers and driller assistants; 401 KAR 006:320

Definitions for 401 KAR Chapter 006; 401 KAR 006:001

Construction practices and standards:

Water supply well; 401 KAR 006:310