



ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, February 15, 2021.

MEETING NOTICES

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet on March 8, 2021, at 10:00 a.m. in room 149 Capitol Annex.

ARRS Tentative Agenda - 1723 [Online agenda updated as needed](#)

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

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**Administrative Regulation Review Subcommittee
TENTATIVE Meeting Agenda
Monday, March 8, 2021 at 10 a.m.
Annex Room 149**



**1. CALL TO ORDER AND ROLL CALL
2. REGULATIONS FOR COMMITTEE REVIEW**

BOARDS AND COMMISSIONS

Board of Pharmacy

201 KAR 002:380. Board authorized protocols.

201 KAR 002:410E. Ordering and administering vaccinations. ("E" expires 08-20-2021)

Board of Physical Therapy

201 KAR 022:170. Physical Therapy Compact Commission.

Board of Social Work

201 KAR 023:070. Qualifying education and clinical practice experience under supervision. (Amended After Comments)

201 KAR 023:150. Complaint procedure, disciplinary action, and reconsideration.

Board of Real Estate Appraisers Board

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

201 KAR 030:190. Certification and licensing requirements.

Board of Licensed Diabetes Educators

201 KAR 045:130. Continuing education. (Deferred from February)

TOURISM, ARTS, AND HERITAGE CABINET

Department of Fish and Wildlife Resources

Game

301 KAR 002:221 & E. Waterfowl seasons and limits. ("E" expires 07-27-2021) (Deferred from February)

GENERAL GOVERNMENT CABINET

Department of Agriculture

Agriculture Tax Credits

302 KAR 004:010. Renewable Chemical Production Program.

Livestock, Poultry, and Fish

302 KAR 022:150. Cervids.

ENERGY AND ENVIRONMENT CABINET

Department for Environmental Protection

New Source Performance Standards

401 KAR 060:005. 40 C.F.R. Part 60 standards of performance for new stationary sources.

Existing Source Standards

401 KAR 061:036. Emission guidelines and compliance times for municipal solid waste (MSW) landfills.

General Standards of Performance

401 KAR 063:002. 40 C.F.R. Part 63 national emission standards for hazardous pollutants.

JUSTICE AND PUBLIC SAFETY CABINET

Department of Corrections

Office of the Secretary

501 KAR 006:080 & E. Department of Corrections manuals. ("E" expires 07-30-2021) (Amended After Comments)

TRANSPORTATION CABINET

Department of Vehicle Regulation

Motor Carriers

601 KAR 001:113. Transportation Network Company. (Deferred from February)

Administration

601 KAR 002:231. Repeal of 601 KAR 002:030. (Deferred from October)

601 KAR 002:232 & E. Kentucky Ignition Interlock Program. ("E" expires 04-25-2021) (Not Amended After Comments) (Deferred from December)

Certification of Title

601 KAR 023:030. Motor vehicle speed title process exceptions. (Deferred from February)

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Department of Education

Pupil Transportation

702 KAR 005:080. Bus drivers' qualifications, responsibilities, and training.

Academic Standards

704 KAR 008:110. Kentucky Academic Standards for World Language.

LABOR CABINET

Department of Workplace Standards

Occupational Safety and Health

803 KAR 002:010. Board procedures. (Deferred from February)
803 KAR 002:021. Identification, classification and regulation of potential occupational carcinogens.
803 KAR 002:050. Scope.
803 KAR 002:080. Advance notice of inspections.
803 KAR 002:090. Compliant inspections.
803 KAR 002:096. Repeal of 803 KAR 002:095 and 803 KAR 002:430.
803 KAR 002:100. Imminent danger.
803 KAR 002:115. Penalties.
803 KAR 002:240. Time for filing discrimination complaint.
803 KAR 002:314. Machinery and machine guarding.
803 KAR 002:413. Helicopters, hoists, elevators, and conveyers.
803 KAR 002:420. Blasting and use of explosives.

Department of Workers' Claims

803 KAR 025:300. Mediation Program.

Department of Insurance

Agents, Consultants, Solicitors, and Adjustors

806 KAR 009:025. Licensing process. (Amended After Comments) (Deferred from February)
806 KAR 009:360. Pharmacy benefit manager license. (Not Amended After Comments) (Deferred from January)

Trade Practices and Frauds

806 KAR 012:120. Suitability in annuity transactions. (Amended After Comments) (Deferred from February)

ENERGY AND ENVIRONMENT CABINET

Public Service Commission

Utilities

807 KAR 005:056. Fuel adjustment clause.

PUBLIC PROTECTION CABINET

Horse Racing Commission

General

810 KAR 002:020. Thoroughbred and flat racing officials. (Deferred from February)

Flat and Steeplechase Racing

810 KAR 004:010. Horses. (Deferred from February)
810 KAR 004:030. Entries, subscriptions, and declarations. (Not Amended After Comments)

Medication Guidelines

810 KAR 008:060. Post-race sampling and testing procedures. (Deferred from February)

Department of Housing, Buildings and Construction

Plumbing

815 KAR 020:150. Inspections and tests. (Deferred from January)

CABINET FOR HEALTH AND FAMILY SERVICES

Office of the Secretary

Medical Review Panels

900 KAR 011:011. Repeal of 900 KAR 011:010. (Deferred from February)

Department for Public Health

Sanitation

902 KAR 010:010. Public restrooms. (Deferred from February)
902 KAR 010:110. Issuance of on-site sewage disposal system permits. (Deferred from February)
902 KAR 010:131. Repeal of 902 KAR 010:060 and 902 KAR 010:130. (Deferred from February)
902 KAR 010:140. On-site sewage disposal system installer certification program standards. (Deferred from February)
902 KAR 010:150. Domestic septage disposal site approval procedures. (Deferred from February)
902 KAR 010:160. Domestic septage disposal site operation. (Deferred from February)
902 KAR 010:170. Septic tank servicing. (Deferred from February)

Office of Inspector General

Health Services and Facilities

902 KAR 020:160 & E. Chemical dependency treatment services and facility specifications. ("E" expires 08-10-2021) (Amended After Comments)
902 KAR 020:440 & E. Facilities specifications, operation and services; residential crisis stabilization units. ("E" expires 08-10-2021) (Amended After Comments)

Food and Cosmetics

902 KAR 045:160. Kentucky food and cosmetic processing, packaging, storage, and distribution operations.

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902 KAR 045:190. Hemp-derived cannabidiol products and labeling requirements. (Amended After Comments)

Radon

902 KAR 095:040. Radon Contractor Registration Program.

Department for Medicaid Services

Behavioral Health

907 KAR 015:070 & E. Coverage provisions and requirements regarding services provided by residential crisis stabilization units. ("E" expires 08-10-2021) (Amended After Comments)

907 KAR 015:080 & E. Coverage provisions and requirements regarding chemical dependency treatment center services. ("E" expires 08-10-2021) (Amended After Comments)

Department for Behavioral Health, Developmental and Intellectual Disabilities

Mental Health

908 KAR 002:270. Community behavioral health training. (Deferred from February)

Department for Community Based Services

Supplemental Nutrition Assistance Program

921 KAR 003:010. Definitions.

921 KAR 003:045. Issuance procedures.

Daycare

922 KAR 002:120. Child-care center health and safety standards. (Amended After Comments)

922 KAR 002:230. Director's Credential. (Deferred from February)

922 KAR 002:240. Kentucky Early Care and Education Trainer's Credential and training approval. (Deferred from February)

922 KAR 002:250. Commonwealth Child Care Credential. (Deferred from February)

922 KAR 002:410E. Enhanced requirements for certified and licensed child care and limited duration child care programs as result of a declared state of emergency. ("E" expires 09-06-2021)

3. REGULATIONS REMOVED FROM MARCH'S AGENDA

DEPARTMENT OF AGRICULTURE

Regulation and Inspection; Motor Fuel

302 KAR 079:011. Motor fuel quality testing and inspection program. (Comments Received; SOC ext. due 03-15-2021)

302 KAR 079:012. Motor fuel quality standards and specifications. (Comments Received; SOC ext. due 03-15-2021)

LABOR CABINET

Department of Workers' Claims

803 KAR 025:091. Workers' compensation hospital fee schedule. (Amended After Comments) (Deferred from February)

803 KAR 025:092. Workers' compensation pharmacy fee schedule. (Comments Received; SOC ext. due 03-15-2021)

803 KAR 025:170. Filing of claims information with the Office of Workers' Claims. (Deferred from February)

803 KAR 025:175. Filing of insurance coverage and notice of policy change or termination. (Deferred from February)

803 KAR 025:185. Procedure for E-mail notification of cancellation or removal of location of specific workers' compensation coverage. (Deferred from February)

PUBLIC PROTECTION CABINET

Horse Racing Commission

Thoroughbred Racing

810 KAR 001:001. Definitions for 810 KAR Chapter 001. (Deferred from December) (Withdrawn by Agency)

810 KAR 001:011. Pari-mutuel wagering. (Deferred from December) (Withdrawn by Agency)

810 KAR 001:120. Exotic wagering. (Deferred from December) (Withdrawn by Agency)

Harness Racing

811 KAR 001:005. Definitions. (Deferred from December) (Withdrawn by Agency)

811 KAR 001:125. Pari-mutuel wagering. (Deferred from December) (Withdrawn by Agency)

811 KAR 001:250. Exotic wagering. (Deferred from December) (Withdrawn by Agency)

Quarter Horse, Paint Horse, Appaloosa, and Arabian Racing

811 KAR 002:010. Definitions. (Deferred from December) (Withdrawn by Agency)

811 KAR 002:060. Pari-mutuel wagering. (Deferred from December) (Withdrawn by Agency)

811 KAR 002:160. Exotic wagering. (Deferred from December) (Withdrawn by Agency)

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community Based Services

Supplemental Nutrition Assistance Program

921 KAR 003:035. Certification process. (Amended After Comments) (Deferred from January)

ADMINISTRATIVE REGULATION REVIEW PROCEDURE
Overview for Regulations Filed AFTER noon, July 15, 2019
(See KRS Chapter 13A for specific provisions)

Filing and Publication

Administrative bodies shall file all proposed administrative regulations with the Regulations Compiler. Filed regulations shall include public hearing and comment period information; a regulatory impact analysis and tiering statement; a fiscal note on state and local government; and, if applicable, a federal mandate comparison and any required incorporated material. 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 a proposed administrative regulation, which shall be held between the 21st and the last workday of the month following the month of publication. Written comments shall also be accepted until the end of the calendar month in which the public hearing was scheduled.

Information about the public comment period shall include: the place, time, and date of the hearing; the manner in which a person may submit written comments or a notification to attend the hearing; a statement specifying that unless a notification to attend the hearing is received no later than 5 workdays prior to the hearing date, the hearing may be cancelled; the deadline for submitting written comments; and the name, position, and contact information of the person to whom notifications and written comments shall be sent.

Public comment periods are at least two months long. For other regulations with open comment periods, please also see last month's *Administrative Register of Kentucky*.

The administrative body shall notify the Compiler, by letter, whether the hearing was held or cancelled and whether or not 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 close of the public comment period.

Review Procedure

After the public hearing and public comment period processes are completed, the administrative regulation will be tentatively scheduled for review at the next meeting of the Administrative Regulation Review Subcommittee. 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. If a quorum is present, unless the administrative regulation is deferred or found deficient, the administrative regulation shall be considered in effect upon adjournment of the appropriate jurisdictional committee meets or 90 days after being referred by LRC, whichever occurs first.

STANDARD ADMINISTRATIVE REGULATION REVIEW PROCEDURE
Overview for Regulations Filed under Senate Bill 2, 2021 Regular Session
(See KRS Chapter 13A for specific provisions)

Filing and Publication

Administrative bodies shall file all proposed administrative regulations with the Regulations Compiler. Filed regulations shall include public hearing and comment period information; a regulatory impact analysis and tiering statement; a fiscal note on state and local government; and, if applicable, a federal mandate comparison and any required incorporated material. Administrative regulations received by the deadline established in KRS 13A.050 shall be published in the Administrative Register. Emergency administrative regulations become effective upon filing.

Public Hearing and Public Comment Period

The administrative body shall schedule a public hearing on a proposed administrative regulation. The public hearing is held between the 21st and the last workday of the month in which the public comment period ends. Information about the public comment period shall include: the place, time, and date of the hearing; the manner in which a person may submit written comments or a notification to attend the hearing; a statement specifying that unless a notification to attend the hearing is received no later than 5 workdays prior to the hearing date, the hearing may be cancelled; the deadline for submitting written comments; and the name, position, and contact information of the person to whom notifications and written comments shall be sent.

Public comment periods for ordinary regulations end on the last day of the month following publication; whereas, public comment periods for emergency regulations run through the last day of the month in which the regulation was published. For other ordinary regulations with open comment periods, please also see last month's *Administrative Register of Kentucky*.

The administrative body shall notify the Compiler whether the hearing was held or cancelled and whether or not 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 close of the public comment period.

Review Procedure

After the public hearing and public comment period processes are completed, the administrative regulation will be tentatively scheduled for review at the next meeting of the Administrative Regulation Review Subcommittee. After review by the subcommittee, the regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. If a quorum is present, unless the regulation is deferred or found deficient, an ordinary regulation shall be considered in effect upon adjournment of the appropriate jurisdictional committee or 90 days after being referred by LRC, whichever occurs first.

EMERGENCY ADMINISTRATIVE REGULATIONS

Pursuant to KRS 13A.190, emergency regulations are scheduled to expire 270 days after the date filed; however, the 270 days may be extended by one month, if comments were received. Emergency regulations expire after 270 days (or 270 days plus the number of days an accompanying ordinary is extended) or upon replacement by an ordinary regulation, whichever occurs first. Expiration dates may be impacted by KRS Chapter 39A, as amended by [Senate Bill 1](#) during the 2021 Regular Session, and by KRS Chapters 13A and 214, as amended by [Senate Bill 2](#) during the 2021 Regular Session.

STATEMENT OF EMERGENCY
101 KAR 2:095E

This emergency administrative regulation is necessary to dovetail with concurrent amendments to 200 KAR 2:006, Employees' reimbursement for travel. This administrative regulation is being promulgated pursuant to KRS 13A.190(1)(a)2. to prevent a loss of state funds tied to travel between an employee's residence, official work station, and alternate work stations. An ordinary administrative regulation is not sufficient because the effective date of the ordinary regulation would not be coordinated with the changes to 200 KAR 2:006. Further, during the COVID-19 pandemic, state employees demonstrated the ability to work effectively from locations other than their official work stations. That flexibility for the employees and their employing agencies needs to continue uninterrupted. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
GERINA D. WHETHERS, Secretary

PERSONNEL CABINET
(Emergency Amendment)

101 KAR 2:095E. Classified service general requirements.

EFFECTIVE: January 29, 2021

RELATES TO: KRS 18A.030(2), 18A.110, 26 U.S.C. 501(c)(3)

STATUTORY AUTHORITY: KRS 18A.030, 18A.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110 requires the Secretary of Personnel to promulgate comprehensive administrative regulations for the classified service. This administrative regulation establishes requirements for the classified service and governs the maintenance of employee and other records and reports in the cabinet and other conditions of employment.

Section 1. Definitions. (1) "Charitable federation" means a legally constituted grouping, made up of or supporting at least ten (10) health and human welfare organizations, all of which:

(a) Qualify as exempt voluntary charitable organizations pursuant to 26 U.S.C. 501(c)(3); and

(b) Have a substantial Kentucky presence.

(2) "Designated nonprofit agency" means an organization with proof of tax-exempt status pursuant to 26 U.S.C. 501(c)(3) written in on a pledge card by a state employee as a choice to receive contributions.

(3) "State employee" means a person, including an elected public official, who is employed by a department, board, agency, or branch of state government, except one (1) relating to a state college or university.

(4) "Substantial Kentucky presence" means a facility, staffed by professionals or volunteers, available to provide its services and open at least fifteen (15) hours a week and with a regional or statewide presence that meets the requirements of Section 2(2) of this administrative regulation.

Section 2. Requirements for the Kentucky Employees Charitable Campaign. (1) General Purpose. The purpose of the Kentucky Employees Charitable Campaign shall be to:

(a) Provide an opportunity for employees to contribute to eligible Kentucky organizations through the state's payroll deduction process;

(b) Ensure accountability for participants in regard to the funds

raised;

(c) Encourage the involvement of state employees as responsible citizens;

(d) Give recognition to state employee volunteers; and

(e) Minimize workplace disruption and administrative costs to Kentucky taxpayers by allowing only one (1) statewide payroll deduction charitable solicitation per year.

(2) An organization shall be considered to have a substantial Kentucky presence if the requirements established in this subsection are met.

(a) Services shall be available to state employees in the local community.

(b) Services shall directly benefit human beings whether children, youth, adults, the aged, the ill and infirm, or the mentally or physically disabled.

(c) Services shall consist of:

1. Care, research, education, or prevention in the fields of human health or social adjustment and rehabilitation;

2. Relief for victims of natural disasters and other emergencies;

or

3. Assistance to those who are impoverished and in need of food, shelter, clothing, and basic human welfare services.

(3) The secretary shall approve a charitable organization for participation in the campaign if the charitable organization demonstrates:

(a) Proof of tax exempt status pursuant to 26 U.S.C. 501(c)(3);

(b) Proof of current registration and compliance with the reporting requirements of the Secretary of State and the Office of the Attorney General;

(c) Proof of financial responsibility, including:

1. Adoption of a detailed annual budget;

2. Use of generally accepted accounting principles and procedures;

3. The board of directors' approval for deviations from the approved budget; and

4. An annual financial audit;

(d) Proof of direction by an active volunteer board of directors, which shall meet regularly and whose members shall serve without compensation;

(e) A written nondiscrimination policy;

(f) Public disclosure of fundraising administrative costs with a statement demonstrating that, if fund and administrative expenses are in excess of twenty-five (25) percent of total support and revenue, actual expenses for those purposes are reasonable under all the circumstances in its case; and

(g) Publication of an annual report available to the general public, which includes a full description of the organization's Kentucky activities including fundraising activities.

(4) A charitable federation may apply on behalf of all their member organizations if both the federation and all federation members meet the criteria established in subsection (3) of this section.

(5) Authority of the Secretary of Personnel.

(a) The Secretary of Personnel shall have the full authority over the procedures and policies relating to the operation of the Kentucky Employees Charitable Campaign.

(b) The secretary shall designate a group of state employees to compose the Kentucky Employees Charitable Campaign Committee to make recommendations on related matters.

(c) The committee shall be composed of a cross-section of state employees, involving the large cabinets and small agencies.

(d) The chair of the committee shall be appointed by the secretary.

(6) Functions of the committee. The committee shall make recommendations on the following:

(a) Designation of a campaign administrator.

1. The campaign administrator shall serve for a minimum period of two (2) years.

2. The campaign administrator shall be charged to manage and administer the charitable fund campaign for the Commonwealth, subject to the direction and control of the Secretary of Personnel. The campaign administrator shall have statewide workplace campaign experience and have the necessary staff and volunteer support to administer the Kentucky Employees Charitable Campaign;

(b) Establishment of minimum amount, based on cost effectiveness, that an employee may authorize to be deducted for each approved charitable federation;

(c) The format of the brochure, pledge card, or other promotional materials for the annual campaign;

(d) The dates and duration of the campaign;

(e) The annual campaign budget submitted by the campaign administrator; and

(f) The costs of the campaign, which shall be:

1. Detailed in the budget; and

2. Borne by each recipient organization proportionally.

(7) Charitable federations to apply for statewide campaign.

(a) A federation desiring inclusion shall apply by February 15 of each year.

(b) A federation that has previously participated in the campaign shall update its application with a letter and a copy of the most recent year's audit.

(c) A charitable organization that has previously participated in the campaign shall be eligible if it fulfills all conditions of eligibility.

(8) The campaign administrator. The campaign administrator shall:

(a) Provide staffing to manage and administer the annual campaign, which includes preparing drafts of campaign materials for consideration by the Secretary of Personnel;

(b) Serve as the central accounting point for both campaign cash and for payroll deductions received from the Personnel Cabinet including:

1. The preparation and submission of an annual campaign budget. Costs of the campaign shall be divided among recipient organizations; and

2. A separate account maintained for managing the income and expenses of the campaign;

(c) Distribute campaign funds received from the Personnel Cabinet to participating organizations in accordance with agreed upon time periods. This shall include distribution of funds to designated nonprofit agencies;

(d) Provide an end-of-campaign report to the Secretary of Personnel and to participating organizations; and

(e) Annually furnish a financial statement prepared by a certified public accountant.

Section 3. Attendance; Hours of Work. (1) The number of hours a full-time employee shall be required to work shall be thirty-seven and one-half (37 1/2) hours per week or forty (40) hours per week, unless specified otherwise by the appointing authority or the statutes.

(2) The normal work day shall be from:

(a) 8 a.m. to 4:30 p.m., local time, Monday through Friday, for a thirty-seven and one-half (37 1/2) hour work schedule; or

(b) 8 a.m. to 5 p.m., local time, Monday through Friday, for a forty (40) hour work schedule.

(3) An appointing authority may require an employee to work hours and days other than regular days and hours, including an overtime or inclement weather schedule if it is in the best interest of the agency.

(4) An employee who works for an agency that requires more than one (1) shift or seven (7) days a week operation may be reassigned from one (1) shift to another or from one (1) post to another or alternate days off by the agency to meet staffing requirements or to maintain security or provide essential services of the agency.

(5) An employee shall give reasonable notice in advance of absence from an official [a] work station or alternate work station.

Section 4. Official Work Station, Alternate Work Station, and

Temporary Assignment. (1) Each employee shall be assigned an official [a] work station and may be assigned one or more additional alternate work stations by the appointing authority.

(2) An official [A] work station or alternate work station may be changed to better meet the needs of the agency.

(3) An employee may be temporarily assigned to a different official work station or alternate work station in a different county. The assignment shall be to the same job classification.

(a) If an employee is temporarily assigned to a different official work station or alternate work station in a different county, the assignment shall not last more than sixty (60) calendar days.

(b) Temporary assignment may be renewed with prior approval of the Secretary of Personnel.

(c) A temporarily reassigned employee shall be reimbursed for travel expenses in accordance with 200 KAR 2:006, and the appointing authority shall notify the employee in writing prior to the effective date of the action.

(4) An appointing authority may assign an employee to work in a different site within the county of employment within the same job classification.

Section 5. Dual Employment. An employee holding a full-time position covered under KRS Chapter 18A shall not hold another KRS Chapter 18A position except upon recommendation of the appointing authority and the written approval of the secretary.

Section 6. Notice of Resignation and Retirement. (1) An employee who decides to terminate his or her service shall submit a written resignation or notice of retirement to the appointing authority.

(2) A resignation or notice of retirement shall be submitted at least fourteen (14) calendar days before the final working day. A copy of an employee's notice shall be attached to the separation personnel action and placed in the personnel files maintained by the agency and the Personnel Cabinet.

(3) Failure of an employee to give fourteen (14) calendar days' notice may result in forfeiture of accrued annual leave, based on:

(a) If the fourteen (14) day deadline was:

1. Practicable under the circumstances;

2. Appropriate for the situation; and

3. Complied with; or

(b) If the appointing authority and the employee have agreed that the employee shall retain the leave.

(4) The effective date of a separation shall be the next calendar day following the last work day unless the employee has been approved for the use of annual, compensatory, or sick leave prior to termination.

Section 7. Records and Reports. (1) An appointing authority shall provide a request to the Personnel Cabinet for a personnel action or status change.

(a) The Secretary of the Personnel Cabinet shall determine which personnel actions warrant a Personnel Action Notification to the employee, in accordance with KRS 18A.020 and 18A.095.

(b) The secretary shall provide a Personnel Action Notification to the appointing authority.

(c) The appointing authority shall provide a copy of a Personnel Action Notification to the employee affected by the action.

(2) The secretary shall maintain a leave record showing for each employee:

(a) Annual leave earned, used and unused;

(b) Sick leave earned, used and unused;

(c) Compensatory leave earned, used and unused; and

(d) Special leave or other leave with or without pay.

Section 8. Telecommuting. (1) Telecommuting shall be a work arrangement in which a selected state employee is allowed to perform the normal duties and responsibilities of his or her position through the use of computer or telecommunications at home or another place apart from the employee's usual official work station or alternate work station.

(2) An appointing authority may establish a telecommuting program for all or any part of the agency.

(3) Eligibility and selection for participation in a telecommuting program shall be the decision of the agency, with no implied or

specific right to participation being granted to an employee.

(4) The telecommuter's conditions of employment shall remain the same as for a nontelecommuting employee.

(a) Employee salary, benefits, and employer-sponsored insurance coverage shall not change as a result of telecommuting.

(b) The telecommuter shall be responsible for the security and confidentiality of data, as well as the protection of state-provided equipment, used and accessed during telecommuting.

(c) The telecommuter shall agree to maintain a clean, safe workplace.

(d) An on-site visit by the employer for monitoring of safety issues shall not require advance notice by the employer.

Section 9. Workplace Violence Policy. (1) Workplace violence shall be prohibited and shall include:

(a) The attempted, threatened, or actual conduct of a person who endangers or is likely to endanger the health and safety of state employees or the general public; or

(b) A threatening statement, harassment, or behavior that gives a state employee or member of the general public reasonable cause to believe that his or her health or safety is at risk.

(2) Examples of prohibited workplace violence shall include:

(a) Threats of harm;

(b) Brandishing or displaying a weapon or an object that looks like a weapon in a manner that would present a safety risk to a state employee or a member of the general public or threatens or intimidates them;

(c) Intimidating, threatening, or directing abusive language toward another person, either verbally, in writing or by gesture;

(d) Stalking;

(e) Striking, slapping, or otherwise physically attacking another person; or

(f) Disobeying or failing to follow the reasonable directive of a supervisor to take action or cease actions that create a risk to the health or safety of a state employee or the public or threatens or intimidates them.

(3) Violation of this section shall constitute grounds for disciplinary action and referral for criminal prosecution.

Section 10. Issuance of Pay to State Employees. (1) Pay shall be issued to state employees on the 15th and 30th day of each month.

(2) If the regularly scheduled pay date falls on a weekend, state employees shall be issued pay on the preceding Friday.

(3) If the regularly scheduled pay date falls on a state holiday as defined in KRS 18A.190, pay shall be issued on the workday preceding the holiday.

Section 11. Incorporation by Reference. (1) "Personnel Action Notification", PAN, August 2011, 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.

GERINA D. WHETHERS, Secretary

APPROVED BY AGENCY: January 8, 2021

FILED WITH LRC: January 29, 2021 at 8:38 a.m.

CONTACT PERSON: Rosemary Holbrook, Assistant General Counsel, 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 administrative regulation sets forth the requirements governing employee records, the maintenance and handling of these records, and other conditions of employment.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the oversight and

maintenance of the state employment system pursuant to KRS Chapter 18A.

(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.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to satisfy the statutory requirement of establishing for the state a system of personnel administration based on merit principles. This regulation sets forth general terms and conditions of employment, to assist in the consistent application and treatment of KRS Chapter 18 employees.

(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 formally implements the concept of alternate work stations, such as those already informally recognized and used in telecommuting. The amendment enhances work location flexibility for employees and their employing agencies.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify that assignment to a different duty location does not always mean such assignment is a permanent change to an employee's official work station. Further, the amendment is necessary to dovetail with concurrent amendments to 200 KAR 2:006, Employees' reimbursement for travel.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is consistent with the authority provided in KRS 18A.030 and 18A.110.

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates language to assist with the continued consistent application and handling of employment activities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All KRS Chapter 18A employees and other individuals subject to the provisions of 101 KAR 2:095 are affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: 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, though employees may have better flexibility to work from locations other than their official work stations.

(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) and 18A.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? 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:

**STATEMENT OF EMERGENCY
200 KAR 2:006E**

This emergency administrative regulation is necessary to clarify reimbursement eligibility for official travel and commuting between an employee's residence, official work station, and alternate work stations. This administrative regulation is being promulgated pursuant to KRS 13A.190(1)(a)2. to prevent a loss of state funds that will result from travel reimbursement claims for travel between an employee's residence, official work station, and alternate work stations. An ordinary administrative regulation is not sufficient because the effective date of the ordinary regulation would leave a multi-month gap between the work station assignment policy implemented pursuant to Executive Order 2020-215 and cessation of that authority. During the COVID-19 pandemic, state employees demonstrated the ability to work effectively from locations other than their official work stations. That flexibility for the employees and their employing agencies needs to continue uninterrupted. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
HOLLY M. JOHNSON, Secretary

**FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(Emergency Amendment)**

200 KAR 2:006E. Employees' reimbursement for travel.

EFFECTIVE: January 29, 2021
RELATES TO: KRS 44.060, 45.101

STATUTORY AUTHORITY: KRS 44.060, 45.101

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45.101 authorizes the Finance and Administration Cabinet to promulgate an administrative regulation that establishes requirements and reimbursement rates for the travel expenses of state employees. KRS 44.060 requires the secretary to promulgate administrative regulations fixing the amount allowed for the expense of traveling in a motor vehicle in the discharge of official state duties. This administrative regulation establishes the eligibility requirements relating to rates and forms for reimbursement of travel expense and other official expenses out of the State Treasury.

Section 1. Definitions. (1) "Agency" means a budget unit.

(2) "Agency head" means the elected or appointed head of a budget unit.

(3) "Approval" means approval granted in either written or electronic format.

(4) "Budget unit" is defined by KRS 48.010(9).

(5) "Cabinet" means the Finance and Administration Cabinet.

(6) "High rate area" means a city, state, or metropolitan area in which it has been recognized that higher meal costs and lodging rates have historically prevailed, and that has been designated by the Secretary of the Finance and Administration Cabinet as a high rate area listed on the Office of the Controller's Web site at <http://finance.ky.gov/services/statewideacct/Pages/travel.aspx>.

(7) "Incidental expense" means unexpected minor expenses arising from travel situations, or minor expenses authorized by an agency head to be reimbursed to an employee as a matter of efficiency or convenience.

(8) "Lodging receipt" means any preprinted invoice, from a hotel or motel or type of lodging, showing the date of service, the amount charged for the service, the location where the service was performed, and a description of the expenditure.

(9) "Office" means the Office of the Controller, Finance and Administration Cabinet.

(10) "Others in the official service of the commonwealth" means individuals who:

(a) Are not state employees as defined in KRS Chapter 18A;

(b) 1. Are traveling on official business for the commonwealth; or

2. Officially represent a state agency, at the direction or request of a state official authorized to give the direction or make the request; and

(c) Are not contractors who are entitled to reimbursement for travel and related expenses only as provided in their contracts with the commonwealth.

(11) "Receipt" means any preprinted invoice, from a hotel, motel, restaurant or other establishment, showing the date of service, the amount charged for the service, the location where the service was performed and a description of the expenditure.

(12) "Residence" means address of the employee designated in the official records of the Personnel Cabinet.

(13) "Secretary" means the Secretary of the Finance and Administration Cabinet.

(14) "Subsistence" means amounts expended by a state officer, agent, employee, or other person authorized to receive reimbursement out of the State Treasury for meals, such as tax and tips, while traveling on official state business, except for any meals which may be included in charges for lodging or in registration fees paid by or on behalf of a state officer or employee.

(15) "Travel software" means the software used by the commonwealth to process travel authorizations and travel reimbursement documents.

(16) "Work station" means an employee's duty station and shall include:

(a) The official work station assigned by the appointing authority; and

(b) One or more alternate work stations optionally assigned by the appointing authority.

Section 2. General. (1) Affected agencies. Except as otherwise provided by law, this administrative regulation shall apply to all departments, agencies, boards, and commissions, and institutions

of the executive branch of state government, except state-supported universities. It shall not apply to the legislative and judicial branches and their employees.

(2) Enforcement.

(a) Each agency head shall be responsible for ensuring that travel reimbursement conforms to the provisions of this administrative regulation and that all travel expense from that agency is as economical as is feasible.

(b) A person who travels on official state business shall:

1. Identify if reimbursement is being requested based on Section 7 or 8 of this administrative regulation;

2. Prior to trip, submit, if applicable, a:

a. Request for Authorization of Out-of-State Travel document; or

b. Request for Authorization of Out-of-Country Travel document;

3. After travel, submit a Travel Voucher document for reimbursement of official state business related expenses;

4. If expenses requested to be paid or reimbursed under the provisions of this administrative regulation are attributable to multiple funding sources or projects, attach a Travel Voucher Prepaid Registration Fees: Multiple Cost Distribution document to any Travel Voucher submitted;

5. Maintain records and receipts to support the claim; and

6. Take sufficient personal funds to defray the travel expense.

(c) The secretary or designee may:

1. Disallow or reduce the amount of a claim that violates the provisions of this administrative regulation; or

2. Require written justification for amounts claimed by an agency for its employee.

(d) The secretary or his designee may authorize reimbursement for an employee's actual and necessary expenses for authorized travel if the head of the agency, or designee, submits a written determination that establishes the reimbursement is:

1. Required to avoid an undue economic hardship on the employee; or

2. Economically advantageous for the commonwealth.

(3) Eligibility. Except as provided by state law or by this administrative regulation, reimbursement shall not be claimed for expenses of any person other than state officers, members of boards and commissions, employees, bona fide wards, or other persons in the official service of the commonwealth. Only necessary expenses of official travel authorized by an agency head or designee shall be reimbursed.

(4) Interpretation. All final interpretations of this administrative regulation shall be made by the secretary. These determinations shall be the final and conclusive interpretation adopted by the agency.

Section 3. Work Station. (1) The official work station or alternate work station of an employee shall be established by the employee's appointing authority [assigned to an office shall be the street address where the office is located].

(2) The official work station or alternate work station may be changed by the appointing authority to better meet the needs of the agency [of field employees shall be established by the agency head, based solely on the best interests of the commonwealth].

~~(3) If an employee is permanently reassigned or is stationed at a new location two (2) months, the new location shall become that employee's official work station].~~

Section 4. Authorizations. (1) For travel within Kentucky, the person requesting reimbursement shall obtain authorization from the agency head or a designated representative.

(2) Travel to a bordering state that does not require airfare or an overnight stay shall be authorized in the same manner as travel in Kentucky.

(3) For travel outside of Kentucky, but within the United States, possessions of the United States, or Canada, the person requesting reimbursement shall obtain authorization from:

(a) The agency head or a designated representative; and

(b) The secretary or a designated representative.

(4) For travel outside the United States, possessions of the United States, or Canada, the person requesting reimbursement shall have obtained authorization from:

(a) The agency head or a designated representative;

(b) The secretary or a designated representative; and

(c) The governor or a designated representative.

(5) Travel expenses shall be reimbursed if travel was authorized in advance as provided by subsections (6), (7), or (8) of this section.

(6) For travel inside Kentucky, authorization shall be requested in the manner prescribed by the agency head or a designated representative.

(7) For travel outside Kentucky, but within the United States, possessions of the United States, or Canada, authorizations shall be requested by submitting a Request for Authorization of Out-of-State Travel document.

(8) For travel outside the United States, possessions of the United States, or Canada, authorization shall be requested by submitting a Request for Authorization of Out-of-Country Travel document.

(9) If direct billing is to be utilized for state park expenses, a State Park Travel Authorization document shall be submitted.

(10) A travel request for travel specified in subsections (7), (8), or (9) of this section shall be received by the agency or cabinet at least five (5) working days before the start of travel, except if a shorter prior submission period is necessitated by an emergency.

Section 5. Transportation. (1) Economy shall be required.

(a) State officers, agents, employees, and others in the official service of the commonwealth shall use the most economical, standard transportation available and the most direct and usually-traveled routes. Expenses added by use of other transportation or routes shall be assumed by the individual.

(b) 1. Round-trip, excursion or other negotiated reduced-rate rail or plane fares shall be obtained if practical.

2.a. Tickets prepaid by the commonwealth shall be purchased through agency business

travel accounts provided by a major charge card company or commercial travel agencies.

b. Tickets purchased through the Internet shall be paid by the traveler and reimbursed on a Travel Voucher, Other Expenses document.

3. Exceptions may be made with the approval of the agency head if other arrangements will be in the best interest of the commonwealth.

4. Agencies shall be billed monthly by the charge card company.

5. Related payments shall be processed via a Travel Voucher, Other Expenses document.

(2) State vehicles. State-owned vehicles with their credit cards shall be used for state business travel if available and feasible. Mileage payment shall not be claimed if state-owned vehicles are used.

(3) Privately-owned vehicles. Mileage claims for use of privately-owned vehicles shall be allowed if a state vehicle was not available or feasible.

(4) Buses, subways. For city travel, employees shall be encouraged to use buses and subways. Taxi fare shall be allowed if more economical transportation is not feasible.

(5) Airline travel. Commercial airline travel shall be the lowest negotiated coach or tourist class. Additional expense for first-class travel shall not be reimbursed by the state. Payment shall be made in accordance with subsection (1)(b) of this section.

(6) Special transportation.

(a) The cost of hiring cars or other special conveyances in lieu of ordinary transportation shall be allowed if written justification from the employee is submitted and approved by the agency head or his designated representative.

(b) Privately-owned aircraft may be used if it is determined to be to the advantage of the state, measured both by travel costs and travel time.

(c) An employee may submit a written request for approval from the state controller for an increased reimbursement rate

greater than that calculated in Section 7, if the employee drives a personal vehicle modified to:

1. Facilitate operation by altering controls for the brakes, accelerator, or steering wheel; or
2. Allow a driver to enter the vehicle by installing a wheelchair lift, hoist, or ramp.

Section 6. Accommodations. (1) Lodging shall be the most economical, as determined by considering location of the lodging.

(2) Facilities providing special government rates or commercial rates shall be used if feasible.

(3) State-owned facilities shall be used for meetings and lodging if available, practicable and economical.

(4) Location. Cost for lodging within forty (40) miles of the claimant's official work station, alternate work station, or home shall be reimbursed if:

(a) In attendance at a conference; and

(b) The lodging is a necessary expense of official travel, in accordance with Section 2(2)(d) of this administrative regulation.

(5) Group lodging, by contract.

(a) State agencies and institutions may contract with hotels, motels and other establishments for four (4) or more employees to use a room or rooms on official business. Group rates shall be requested.

(b) The contract may also apply to meals and gratuities. The contract rates and the costs of rooms and meals per person shall not exceed limits set in Section 7 of this administrative regulation.

(c) The traveler shall not claim reimbursement or subsistence for room and meals paid direct to an establishment providing these services.

(d) A request for payment shall be made on a Travel Voucher document and shall not include personal charges of employees or others in the official service of the commonwealth.

(e) Payment shall be made to the hotel, motel, or other establishment.

(f) Contracted group meeting rooms and lodging and meal charges shall be exempt from Kentucky sales tax and the agency sales-use tax number assigned by the Department of Revenue shall be specified on the payment document.

(g) Tax exempt numbers shall not be used by individual employees to avoid point of sale payment of Kentucky sales tax connected with lodging costs. Sales tax payments shall be reimbursed on a Travel Voucher document.

(6) State parks. A state agency or institution using state park facilities may pay for rooms and meals by an Internal Exchange Transaction (IET) process in the eMars program to transfer funds, within the limits of this administrative regulation.

Section 7. Reimbursement Rates. (1) The following persons shall be exempted from the provisions of this section:

(a) Governor;

(b) Governor's staff;

(c) Lieutenant governor;

(d) State employees traveling on assignment with the governor, lieutenant governor, elected constitutional officers, or cabinet secretaries;

(e) Elected constitutional officers;

(f) Cabinet secretaries;

(g) State officers and employees authorized to travel outside the United States;

(h) Members of statutory boards and commissions; and

(i) Others in the official service of the commonwealth.

(2) Lodging.

(a) Except as provided in paragraph (b) of this subsection, a state officer or employee shall be reimbursed for the actual cost of lodging if the:

1. Lodging is determined to be the most economical; and

2. State officer or employee has provided the hotel, motel, or other establishment's receipt to be reimbursed for the travel expenses.

(b) Reimbursement for lodging shall not exceed the cost of a single room rate, except that if employees share lodging, each employee shall be reimbursed the lesser of single rate or one-half

(1/2) the double rate.

(3) Subsistence and incidentals.

(a) Breakfast and lunch. A state officer or employee shall be eligible for reimbursement for subsistence for breakfast and lunch expenses while traveling in Kentucky, if authorized work requires an overnight stay and absence during the mealtime hours established by paragraph (e) of this subsection. An employee shall be in travel status during the entire mealtime. For example, to be eligible for breakfast reimbursement, an employee shall leave at or before 6:30 a.m. and return at or after 9 a.m. This requirement shall apply to all meals.

(b) Dinner expenses. A state officer or employee shall be eligible for reimbursement for dinner expenses while traveling in Kentucky, if authorized work requires an absence:

1. At a destination more than forty (40) miles from the individual's official work station, alternate work station, and home; and

2. During the mealtime hours established by paragraph (e) of this subsection.

(c) A state officer or employee shall be eligible for reimbursement for meals while on authorized travel outside Kentucky, but within the United States, its possessions or Canada, at the reimbursement rates established in paragraph (d) of this subsection.

(d) The secretary shall specify the meal reimbursement rates via secretary order as appropriate in the following manner:

1. The order shall be posted on the Web site of the Office of the Controller;

2. The order shall specify the reimbursement rate for high rate areas and non-high rate areas; and

3. The order shall designate reimbursement rates for breakfast, lunch, and dinner.

(e) To be eligible for meal reimbursement, an employee shall be in travel status for the entire duration of the following time periods:

1. Breakfast: authorized travel is 6:30 a.m. through 9 a.m.;

2. Lunch: authorized travel is 11 a.m. through 2 p.m.; or

3. Dinner: authorized travel is 5 p.m. through 9 p.m.

(f) A state officer or employee authorized to travel outside the United States, its possessions, or Canada shall be reimbursed for their actual and necessary expenses for subsistence.

(g) A state officer or an employee may, with prior approval of the agency head or designee, be reimbursed for the actual cost charged for meals, if the individual is assigned to attend meetings and training sessions.

(h) Gratuities may be reimbursed if:

1. The total payment of the meal and gratuity do not exceed the limits established in paragraph (d) of this subsection; and

2. The gratuity does not exceed twenty (20) percent of the cost of the meal.

(i) Lodging receipts, or other credible evidence, shall be attached to the Travel Voucher.

(4) Transportation expenses.

(a) Reimbursement for authorized use of a privately-owned vehicle shall be:

1. At a rate designated on the Office of the Controller's Web site;

2. Set and adjusted based on the American Automobile Association (AAA) Daily Fuel Gauge Report for Kentucky for regular grade gasoline. The rate shall be adjusted on January 1, April 1, July 1, and October 1 each calendar year based on the average retail price of regular grade gasoline for the week beginning on the second Sunday of the prior month as follows:

a. If the fuel cost is between one (1) cent and one dollar forty-nine and nine-tenths cents (\$1.499), the employee shall be reimbursed thirty-six (36) cents per mile;

b. If the fuel cost is between one dollar fifty cents (\$1.50) and one dollar sixty-nine and nine-tenths cents (\$1.699), the employee shall be reimbursed thirty-seven (37) cents per mile;

c. If the fuel cost is between one dollar seventy cents (\$1.70) and one dollar eighty-nine and nine-tenths cents (\$1.899), the employee shall be reimbursed thirty-eight (38) cents per mile;

d. If the fuel cost is between one dollar ninety cents (\$1.90)

and two dollars nine and nine-tenths cents (\$2.099), the employee shall be reimbursed thirty-nine (39) cents per mile;

e. If the fuel cost is between two dollars ten cents (\$2.10) and two dollars twenty-nine and nine-tenths cents (\$2.299), the employee shall be reimbursed forty (40) cents per mile; or

f. If the fuel cost is greater than two dollars twenty-nine and nine-tenths cents (\$2.299), the amount the employee is reimbursed shall increase one (1) cent for every twenty (20) cent increase in the rate; and

3. Not exceed the cost of commercial coach round-trip airfare.

(b) Mileage for in-state travel shall be based on the Kentucky Official Highway Map, MapQuest Web site, Google Maps Web site, or similar web mapping service. Out-of-state mileage shall be based on the most recent edition of the Rand McNally Road Atlas, MapQuest Web site, Google Maps Web site, or similar web mapping service.

(c) Reimbursement for the actual cost of commercial transportation shall be made upon submission of receipts with the Travel Voucher.

(d) Reimbursement for use of privately-owned aircraft shall be made if, prior to use, written justification was submitted to and approved by the agency head, or a designated representative.

(e)1. Actual parking, bridge and highway toll charges shall be reimbursed.

2. A toll receipt for authorized in-state travel by two (2) axle vehicles shall not be required.

(f) Reimbursement shall be made for reasonable incidental expenses for:

1. Baggage handling;

2. Delivery of baggage to or from a common carrier, lodging or storage; and

3. Overweight baggage charges, if the charges relate to official business.

(5)(a) Registration fees required for admittance to meetings shall be reimbursed.

(b) If a registration fee entitles the registrant to meals, claims for those meals shall be reduced accordingly.

(6) Telephone costs for necessary official business shall be reimbursed.

(7) Other incidental expenses may be allowed by the agency head or designee if they are determined to be necessary expenses of official travel.

Section 8. Actual and Necessary Expenses. (1) The following persons shall be eligible for actual and necessary expenses:

(a) Governor;

(b) Governor's staff;

(c) Lieutenant governor;

(d) Elected constitutional officers;

(e) Cabinet secretaries;

(f) State employees traveling on assignment with the governor, lieutenant governor, elected constitutional officers, or cabinet secretaries;

(g) State officers and employees authorized to travel outside the United States, its possessions or Canada;

(h) Members of statutory boards and commissions; and

(i) Others in the official service of the commonwealth.

(2)(a) Actual and necessary expenses of official business travel shall be reimbursed upon submission of receipts for items over ten (10) dollars. The secretary may reduce the amount of any actual expense to be reimbursed if the secretary determines that the expense is unreasonably excessive.

(b) Actual and necessary expenses for official business travel shall include:

1. Lodging;

2. Meals;

3. Commercial transportation;

4. Taxes related to actual and necessary expenses; and

5. Reasonable gratuities.

(c) A credit card receipt shall be accepted for a meal if the receipt prepared by the establishment clearly shows that it is a receipt for a meal.

(d) Reimbursement for official use of a privately-owned vehicle

shall be:

1. At the rate designated on the Office of the Controller's Web site listed in Section 1(6) of this administrative regulation;

2. Adjusted based on the American Automobile Association (AAA) Daily Fuel Gauge Report for Kentucky for regular grade gasoline. The rate shall be adjusted on January 1, April 1, July 1, and October 1 each calendar year based on the average retail price of regular grade gasoline for the week beginning on the second Sunday of the prior month as follows:

a. If the fuel cost is between one (1) cent and one dollar forty-nine and nine-tenths cents (\$1.499), the employee shall be reimbursed thirty-six (36) cents per mile;

b. If the fuel cost is between one dollar fifty cents (\$1.50) and one dollar sixty-nine and nine-tenths cents (\$1.699), the employee shall be reimbursed thirty-seven (37) cents per mile;

c. If the fuel cost is between one dollar seventy cents (\$1.70) and one dollar eighty-nine and nine-tenths cents (\$1.899), the employee shall be reimbursed thirty-eight (38) cents per mile;

d. If the fuel cost is between one dollar ninety cents (\$1.90) and two dollars nine and nine-tenths cents (\$2.099), the employee shall be reimbursed thirty-nine (39) cents per mile;

e. If the fuel cost is between two dollars ten cents (\$2.10) and two dollars twenty-nine and nine-tenths cents (\$2.299), the employee shall be reimbursed forty (40) cents per mile; or

f. If the fuel cost is greater than two dollars twenty-nine and nine-tenths cents (\$2.299), the amount the employee is reimbursed shall increase one (1) cent for every twenty (20) cent increase in the rate; and

3. Not exceed the cost of commercial coach round-trip airfare.

(e)1. The governor and cabinet secretaries may be reimbursed for actual and necessary costs of entertaining official business guests, upon certification of these expenses to the secretary or designee.

2. The secretary or the secretary's designee may:

a. Question a claim for reimbursement; and

b. Reduce the amount to be reimbursed, if the secretary determines that it is unreasonably excessive.

(f) An employee of the Cabinet for Economic Development or the Tourism, Arts and Heritage Cabinet shall be reimbursed for actual and necessary costs of entertaining official business guests of the commonwealth if the costs were:

1. Related to the promotion of industry, travel, or economic development;

2. Substantiated by receipts; and

3. Certified by the head of the cabinet.

Section 9. Mileage. (1) Mileage commuting between residence, and official work station, or alternate work station(s) shall not be paid. If an employee's residence is the employee's official or alternate work station, the employee's work station shall also include the location where the employee obtains a state vehicle or supplies for use during the workday.

(2)(a) If an employee's point of origin for travel is the employee's residence, mileage shall be paid for the shorter of mileage between:

1. Residence and travel destination; or

2. Official work station or alternate work station and travel destination.

(b) If an employee's point of origin for travel is the employee's official work station or an alternate work station, and after proceeding to a travel destination, the employee's final destination is the employee's residence, mileage shall be paid for the shorter of mileage between:

1. Residence and travel destination; or

2. Official work station or alternate work station and travel destination.

(3) Vicinity travel, and authorized travel within a claimant's official work station or alternate work station shall be listed on separate lines on the Travel Voucher document.

Section 10. Travel Documents. (1) A person shall use the following forms to request prior authorization or reimbursement for travel:

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(a) For in-state travel, any forms required by the person's agency head or designee;

(b) For out-of-state travel, a Request for Authorization of Out-of-State Travel document; and

(c) For out-of-country travel, a Request for Authorization of Out-of-Country Travel document.

(2) If applicable, a traveler shall attach the following to a Travel Voucher document:

(a) If a state park facility will be used, a State Park Travel Authorization document.

(b) If a rental vehicle, registration fee, or similar expense requires advance payment: a Prepaid Registration document;

(c) If reimbursement relates to out-of-state or out-of-country travel: the appropriate completed authorization form required by subsection (1) of this section; and

(d) For any expense that cannot be listed on a Travel Voucher document: a Travel Voucher, Other Expenses document.

(3) A contract for group accommodations shall be made on the standard form used by the establishment providing the services.

(4) Authorization for reimbursement of others in the official service of the commonwealth shall be requested on a Travel Voucher document.

(5) The Travel Voucher document shall be limited to the expenses made by one (1) person for the:

(a) Traveler; and

(b) If applicable, another person:

1. Who is a ward of the commonwealth; or

2. For whom the traveler is officially responsible.

(6) A Travel Voucher document for expenses made for a person specified in subsection

(5)(b) of this section shall include the person's:

(a) Name; and

(b) Status or official relationship to the claimant's agency.

(7)(a) A Travel Voucher document shall be submitted:

1. For one (1) major trip; or

2. Every two (2) weeks for employees that are in travel status for an extended period.

(b) A Travel Voucher document shall include:

1. Employee ID Number (KHRIS) of the claimant; and

2. Purpose of each trip.

(c) A Travel Voucher document shall be signed and dated, or entered electronically and approved by the:

1. Claimant; and

2. Agency head or authorized representative.

(d) If monthly expenses total less than ten (10) dollars, a Travel Voucher may include expenses for six (6) months of a fiscal year.

(e) A Travel Voucher document shall be:

1. Legibly printed in ink or typed; or

2. Processed electronically through travel software.

(f) A receipt shall provide the following information for each expense:

1. Amount;

2. Date;

3. Location; and

4. Type.

(g) Receipts shall be maintained at the agency if documents are processed electronically.

(h) If leave interrupts official travel, the dates of leave shall be stated on the Travel Voucher.

(i) Lodging receipts, or other credible evidence, shall be attached to the Travel Voucher.

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

(a) "Pre-paid Registration" document, Form eMARS-37, 06/19/06;

(b) "Request for Authorization of Out-of-State Travel" document, Form DOA-28, 1/2003;

(c) "Request for Authorization of Out-of-Country Travel" document, Form DOA-28A, 1/2003;

(d) "State Park Travel Authorization" document, 1/13/15;

(e) "Travel Voucher" document, Form eMARS-34, 10/27/06;

(f) "Travel Voucher Prepaid Registration Fees: Multiple Cost

Distribution" document, Form eMARS-36, 06/19/06;

(g) "Travel Voucher, Other Expenses" document, Form eMARS-34B, 04/17/06;

(h) "Kentucky Official Highway Map", 2016; and

(i) "Rand McNally Road Atlas", 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Controller, Finance and Administration Cabinet, Capitol Annex Building, Room 484, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and online at the Office of the Controller's Web site at <http://finance.ky.gov/services/statewideacct/Pages/travel.aspx>.

HOLLY M. JOHNSON, Secretary

APPROVED BY AGENCY: January 28, 2021

FILED WITH LRC: January 29, 2021 at 12:40 p.m.

CONTACT PERSON: Cary B. Bishop, Assistant General Counsel, Office of General Counsel, 702 Capital Ave., Suite 392, Frankfort, Kentucky 40601. phone (502) 564-8627, fax (502) 564-9875. email cary.bishop@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Cary B. Bishop

(1) Provide a brief summary of:

(a) What this administrative regulation does: Communicates requirements and rates for reimbursement of state employees' travel expenses.

(b) The necessity of this administrative regulation: KRS 45.101 authorizes the Finance and Administration Cabinet to promulgate an administrative regulation that establishes requirements and reimbursement rates for the travel expenses of state employees. KRS 44.060 requires the secretary to promulgate administrative regulations fixing the amount allowed for the expense of traveling in a motor vehicle in the discharge of official state duties.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifies the eligibility requirements relating to rates and forms for reimbursement of travel expense and other official expenses out of the State Treasury.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation specifies the eligibility requirements relating to rates and forms for reimbursement of travel expense and other official expenses out of the State Treasury.

(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 formally implements the concept of alternate work stations. The amendment enhances work location flexibility for employees and their employing agencies by removing the requirement to re-designate an employee's official work station after two months of assignment.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify reimbursement eligibility for official travel and commuting between an employee's residence, official work station, and alternate work station(s).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is consistent with the authority provided in KRS 45.101 and 44.060.

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates provisions to assist with the continued consistent and economical application of travel reimbursement practices.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Except as otherwise provided by law, this administrative regulation shall apply to all departments, agencies, boards, and commissions, and institutions of the executive branch of state government, except state-supported universities. It shall not apply to the legislative and judicial branches and their 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? Except as otherwise provided by law, this administrative regulation shall apply to all departments, agencies, boards, and commissions, and institutions of the executive branch of state government, except state-supported universities. It shall not apply to the legislative and judicial branches and their employees.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 45.101 and 44.060.

(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.

(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:

STATEMENT OF EMERGENCY 201 KAR 8:505E

This emergency administrative regulation is necessary given that the COVID-19 pandemic has created a state of emergency in the Commonwealth and poses a risk to the health and wellbeing of Kentucky citizens. See Governor's Executive Orders 2020-215 and 2020-296. This emergency administrative regulation will allow dentists licensed through the Kentucky Board of Dentistry to administer COVID-19 vaccines authorized by the U.S. Food and Drug Administration to patients in accordance with U.S. Centers for Disease Control and Prevention and Kentucky Cabinet for Health and Family Services guidelines. Pursuant to KRS 13A.190(1)(b)(1), this emergency administrative regulation is temporary in nature and will expire as provided in this section. This emergency administrative regulation shall not be replaced by an ordinary administrative regulation because the need to administer COVID-19 vaccinations is predicated by a public health emergency, and the ongoing requirements for COVID-19 inoculation are currently unknown.

JEFF ALLEN, Executive Director

ANDY BESHEAR, Governor of Kentucky

BOARDS AND COMMISSIONS Kentucky Board of Dentistry (New Emergency Administrative Regulation)

201 KAR 8:505E. Administration of COVID-19 immunizations.

EFFECTIVE: January 27, 2021

RELATES TO: KRS 313.060(1)

STATUTORY AUTHORITY: KRS 313.035, 313.060(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.035(1) authorizes the board to promulgate administrative regulations in accordance with KRS Chapter 13A relating to dentists. KRS 313.060(1) authorizes the board to promulgate administrative regulations in accordance with KRS Chapter 13A relating to dental practices, which shall include the minimal requirements for documentation and Centers for Disease Control compliance.

Section 1. Definitions. (1) "Dental hygienist" is defined by KRS 313.010(6).

(2) "Dentist" is defined by KRS 313.010(10).

Section 2. Administration of COVID-19 Immunizations. (1) A Kentucky licensed dentist or registered dental hygienist pursuant to subsection (5) of this section may administer COVID-19 immunizations. The administration of COVID-19 immunizations shall be deemed the practice of dentistry.

(2) This administrative regulation shall not be construed to alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting, or in a manner, not authorized by law. Licensees administering COVID-19 immunizations shall comply with all rules of professional conduct and state and federal statutes relevant to dentistry.

(3) Licensees shall comply with guidelines established by the U.S. Centers for Disease Control and Prevention and the Kentucky Cabinet for Health and Family Services for the administration of COVID-19 immunizations, as well as guidelines established by the federal Advisory Committee on Immunization Practices.

(4) Following the administration of a COVID-19 immunization, a licensee shall report the administration of the patient's primary care physician if applicable.

(5) Only a dental hygienist who has been granted the authority to practice local anesthesia pursuant to 201 KAR 8:562, Section 11(1) may administer a COVID-19 immunization.

Section 3. Immunization Training Course. Prior to administering COVID-19 immunizations, a licensee shall complete an immunization training program approved by the board. The

course shall include, at a minimum:

- (1) Educational material on the disease of COVID-19 and immunization as prevention of the disease;
- (2) Contraindications and precautions for administration of the COVID-19 immunization;
- (3) Intramuscular administration;
- (4) Communication of the risks and benefits of the COVID-19 immunization and the legal requirements involved;
- (5) Reporting of adverse events;
- (6) Documentation required by federal law and the U.S. Centers for Disease Control and Prevention; and
- (7) Storage and handling of COVID-19 immunizations.

Section 4. Facilities and Infrastructure. A licensee administering COVID-19 immunizations shall have immediate access to emergency response equipment, including:

- (1) Oxygen administration equipment; and
- (2) Epinephrine.

Section 5. Reporting Requirements. (1) The administration of a COVID-19 immunization and any adverse event following the immunization shall be reported to the Vaccine Adverse Events Reporting System (VAERS), the Kentucky Department for Public Health, and the patient's primary care physician if applicable.

(2) The licensee shall include in the patient's record:

- (a) The date of administration and site of injection of the immunization;
- (b) The dose, manufacturer, lot number, and beyond use date of the immunization;
- (c) The name and address of the patient's primary health care provider named by the patient;
- (d) A notation that the patient was presented with appropriate vaccine information prior to the administration of each vaccine; and
- (e) Any adverse event that followed the immunization.

JEFF ALLEN, Executive Director

APPROVED BY AGENCY: January 27, 2021

FILED WITH LRC: January 27, 2021 at 3:46 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 21, 2021 at 10:30 a.m. Eastern Time via electronic hearing. 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 April 30, 2021. 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: Jeff Allen, Executive Director, Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, email jeffrey.allen@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeff Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for the administration of COVID-19 immunizations.

(b) The necessity of this administrative regulation: KRS 313.035(1) authorizes the board to promulgate administrative regulations in accordance with KRS Chapter 13A relating to dentists. KRS 313.060(1) authorizes the board to promulgate administrative regulations in accordance with KRS Chapter 13A relating to dental practices, which shall include the minimal

requirements for documentation and Centers for Disease Control compliance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes requirements for the administration of COVID-19 immunizations by licensed dentists and registered dental hygienists.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements for the administration of COVID-19 immunizations by licensed dentists and registered dental hygienists.

(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: This regulation will primarily affect the approximately three thousand prescribing dentists licensed in Kentucky and patients receiving COVID-19 immunizations by licensed dentists and registered dental hygienists.

(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 an amendment, including:

(a) List the actions that each of the related entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each licensee, if providing immunization services, will be required to provide such services in accordance with applicable law and administrative regulations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs will be accrued as a result of the new administrative regulation, other than set-up costs for the administration of immunizations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation will result in a healthier patient population.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Not applicable.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No.

(9) TIERING: Is tiering applied? No; this administrative regulation impacts all similarly situated practitioners 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? None.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 313.035; KRS 313.060(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? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No cost.

(d) How much will it cost to administer this program for subsequent years? No cost.

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

Revenues (+/-): None.

Expenditures (+/-): None.

Other explanation: Not applicable.

STATEMENT OF EMERGENCY 922 KAR 1:490E

This emergency administrative regulation is necessary in order to immediately waive the fingerprint-based criminal record check required for applicants specified in this administrative regulation, as permitted by federal guidance issued pursuant to 42 U.S.C. 5141. Due to the public health emergency and declaration of national emergency caused by the outbreak of the Novel Coronavirus Disease (COVID-19), it has been deemed unsafe to conduct in-person fingerprint-based checks. Name-based criminal background checks shall be required at this time and fingerprint-based checks shall resume at a later date.

This amendment is deemed to be an emergency pursuant to KRS 13A.190(1)(a)1., 2., and 3., as requiring fingerprint-based criminal record checks is an imminent threat to public health and safety during this pandemic; Kentucky is at risk of losing Title IV-E federal financial reimbursement of payments made for the provision of out of home care services for children who have been abused, neglected, or made dependent if this waiver is not in place immediately; and this amendment is necessary to meet an imminent deadline as the previous emergency version of this administrative regulation expired on February 6, 2021, and this temporary waiver is necessary to have in place in order to approve out-of-home-care placements for children in the custody of the state.

This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is not identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
ERIC C. FRIEDLANDER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (Emergency Amendment)

922 KAR 1:490E. Background checks for foster and adoptive parents and relative and fictive kin, caretaker relatives, kinship caregivers, fictive kin, and reporting requirements.

RELATES TO: KRS 17.500-17.580, 194A.005(1), 199.011(6), (9), (14), 199.462(1), 211.684, 600.020(7), (28), (40), (61), (62), 605.090(1)(b), (6), 605.120, 605.130, 620.050(5), Chapter 625, 45 C.F.R. 1356.30, 42 U.S.C. 247d, 671(a)(20), 5106a, 5141

STATUTORY AUTHORITY: KRS 194A.050(1), 199.462(5) [199.462(4)], 199.640(5), 605.120(5), (6), 605.130(4), 605.150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal

law, qualify for the receipt of federal funds, and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.462(5) [199.462(4)] requires the cabinet to promulgate an administrative regulation for the purpose of requiring a criminal background investigation on behalf of a foster or adoptive parent applicant, an adult member of the applicant's household, a caretaker relative, and fictive kin. KRS 605.150 authorizes the cabinet to promulgate administrative regulations to implement the provisions of [KRS Chapter 605, including: (1) KRS 605.120(5) and (6) by which the cabinet is authorized to establish a program for kinship care; and (2)] KRS 605.130(4), by which the cabinet shall perform such other services as may be deemed necessary for the protection of children. KRS 199.640(5) authorizes the cabinet to promulgate administrative regulations establishing basic standards of care and service for child-placing agencies relating to the health and safety of all children in the care of the agency. This administrative regulation establishes background check requirements for caretaker relatives, [kinship caregivers,] fictive kin, or applicants seeking to provide foster or adoptive services. Additionally, this administrative regulation imposes a stricter requirement than the federal mandate because the cabinet requires the denial of an applicant if: (1) a criminal record check conducted on behalf of an adult household member reveals physical abuse, battery, or a drug or alcohol-related felony within the previous five (5) year period or a felony involving a spouse, a child, sexual violence, or death; or (2) a child abuse or neglect check conducted by the cabinet reveals that a household member, twelve (12) years of age or older, committed sexual abuse or sexual exploitation of a child, has been responsible for a child fatality related to abuse or neglect, or has had parental rights terminated involuntarily. Pursuant to 42 U.S.C. 5141, a federal agency charged with the administration of a federal assistance program may modify or waive an administrative condition because of a major disaster. The Secretary of Health and Human Services declared a public health emergency on January 31, 2020, pursuant to 42 U.S.C. 247d, and a national emergency was declared by the President of the United States on March 13, 2020, due to the Novel Coronavirus Disease (COVID-19) outbreak. The Children's Bureau identified the requirement of fingerprint-based checks of national crime information databases as an administrative condition that may be modified pursuant to federal authority given that a state conduct all available name-based criminal background checks for applicants during the emergency and conduct fingerprint-based checks as soon as it is safe to do so.

Section 1. Definitions. (1) "Address check" means a search of the Sex Offender Registry to determine if an address is a known address of a registered sex offender.

(2) "Administrative review" means that the status of the individual subject to the child abuse and neglect check is pending the outcome of an:

(a) Investigation or assessment in accordance with 922 KAR 1:330; or

(b) Appeal concerning a cabinet substantiated finding of child abuse or neglect.

(3) "Adolescent member of the household" means a youth who:

(a) Resides in the home of:
1. An individual who applies for approval or has been approved to provide foster or adoptive services; or

2. A caretaker relative or [.] fictive kin[.] caregiver;

(b) Is age twelve (12) through age seventeen (17); and

(c) Is not placed in the home by a state agency.

(4) "Adult member of the household" means an adult who:

(a) Resides in the home of:

1. An individual who applies for approval or has been approved to provide foster or adoptive services; or

2. A caretaker relative or [.] fictive kin[.] caregiver; and

(b) Is eighteen (18) years of age or older.

(5) "Applicant" means an individual who applies for approval as a foster or adoptive parent of a child in the custody of the state

under:

(a) 922 KAR 1:350, Requirements for public child welfare agency foster parents, adoptive parents, and respite care providers [Family Preparation]; or

(b) 922 KAR 1:310, Standards for child-placing agencies [Child-Placing Agencies].

(6) "Cabinet" is defined by KRS 194A.005(1) and 600.020(7).

(7) "Caretaker relative" means a relative with whom the child is, or shall be, placed by the cabinet.

(8)[(7)] "Child fatality" is defined by KRS 211.684.

(9)[(8)] "Child-placing agency" is defined by KRS 199.011(6).

(10)[(9)] "Fictive kin" is defined by KRS 199.011(9) and 600.020(28).

(11) "KARES system" means the cabinet's secure, web-based application used to access abuse and neglect registries and facilitate fingerprint-supported state and national criminal background checks for authorized users of the system.

(12) "Kentucky National Background Check Program" or "NBCP" means a background screening program administered by the cabinet in accordance with 906 KAR 1:190.

(13)[(10)] "Kinship caregiver" means the 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 4:130.

(14)[(11)] "Near fatality" is defined by KRS 600.020(40) and 42 U.S.C. 5106a(b)(4)(A).

(14) "Rap back system" is defined by KRS 199.011(14).

(15)[(12)] "Sex Offender Registry" means the registration system for adults who have committed sex crimes or crimes against minors established in accordance with KRS 17.500 through 17.580.

(16)[(13)] "Sexual abuse" is defined by KRS 600.020(61) [600.020(60)].

(17)[(14)] "Sexual exploitation" is defined by KRS 600.020(62) [600.020(61)].

Section 2. Background Checks Required for Foster or Adoptive Parent Applicants. (1) An applicant, and each adult member of the household, shall ~~[complete a DPP-157, Background Checks for Applicants or Foster/Adoptive Parents, and]~~ submit to a background check in accordance with Section 4 of this administrative regulation, which shall include:

(a) An in-state criminal records check, conducted pursuant to KRS 199.462(1), by the:

1. Kentucky Justice and Public Safety Cabinet; or
2. Administrative Office of the Courts;

(b) A child abuse or neglect check conducted by the cabinet for each state of residence during the past five (5) years;

(c) A criminal records check conducted by means of a fingerprint check of the Criminal History Record Information administered by the Federal Bureau of Investigation; and

(d) An address check of the Sex Offender Registry.

(2) Prior to approval of an applicant, each adolescent member of the household shall complete a DPP-157, Background Check Request for Foster or Adoptive Applicants and Household Members, and submit to a child abuse or neglect check conducted by the cabinet.

Section 3. Background Checks for Foster or Adoptive Applicants Who Will Accept Placement of a Child Not in the Custody of the Cabinet. (1) An individual applying to accept placement of a child not in the custody of or otherwise made the legal responsibility of the cabinet or the Department of Juvenile Justice, pursuant to 922 KAR 1:310, shall be exempt from enrollment in KARES and subject to the requirements established in Section 8(4) of this administrative regulation.

(2) An applicant pursuant to 922 KAR 1:310 and each adult and adolescent member of the household shall complete a separate DPP-157 and submit to:

(a) An in-state criminal records check, conducted pursuant to KRS 199.462(1), by the:

1. Kentucky Justice and Public Safety Cabinet; or
2. Administrative Office of the Courts;

(b) A child abuse or neglect check conducted by the cabinet

pursuant to 922 KAR 1:470;

(c) A criminal records check conducted by means of a fingerprint check of the Criminal History Record Information administered by the Federal Bureau of Investigation; and

(d) An address check of the Sex Offender Registry.

(3) A Kentucky child abuse or neglect check conducted by the cabinet shall identify the name of each applicant, adolescent member of the household, or adult member of the household who has:

(a) Been found by the cabinet to have:

1. Committed sexual abuse or sexual exploitation of a child;
2. Been responsible for a child fatality or near fatality related to abuse or neglect;
3. Abused or neglected a child within the seven (7) year period immediately prior to the application; or
4. Had parental rights terminated; or

(b) A matter pending administrative review.

(4) An applicant shall not be approved if:

(a) A criminal records check reveals that the applicant, or adult member of the household, has a:

1. Felony conviction involving:

- a. A spouse, a child, sexual violence, or death as described by 42 U.S.C. 671(a)(20); or
- b. Physical abuse, battery, a drug, or alcohol within the five (5) year period prior to application;

2. Criminal conviction relating to child abuse or neglect; or

3. Civil judicial determination related to child abuse or neglect;

(b) A child abuse or neglect check reveals that the applicant, adolescent member of the household, or adult member of the household, has been found to have:

1. Committed sexual abuse or sexual exploitation of a child;

2. Been responsible for a child fatality or near fatality related to abuse or neglect; or

3. Had parental rights terminated involuntarily in accordance with KRS 625.050 through 625.120 or another state's laws; or

(c) An address check of the Sex Offender Registry and supporting documentation confirm that a sex offender resides at the applicant's home address.

(5) An individual identified in accordance with subsection (3) of this section may submit an open records request in accordance with 922 KAR 1:510.

Section 4. Fingerprint-Based Background Checks. (1) Beginning July 1, 2021, fingerprint-based background checks shall be conducted for the following individuals through the Kentucky National Background Check Program pursuant to 906 KAR 1:190, using the KARES system:

(a) An applicant and each adult member of the household;

(b) A caretaker relative or fictive kin caregiver who has lived outside of the state of Kentucky within the last five (5) years; and

(c) An applicant who was approved under the waiver for fingerprint-based background checks during the declared national emergency caused by the COVID-19 pandemic, with only a name-based criminal background check.

(2) An individual meeting the criteria of subsection (1) of this section shall provide to the cabinet or child-placing agency:

(a) A copy of his or her driver's license or other government-issued photo identification for verification that the photograph and name clearly match the individual submitting to the check; and

(b) A completed and signed:

1. DPP-162, Applicant Waiver Agreement and Statement; and

2. DPP-163, Disclosures to be Provided to and Signed by the Applicant and Adult Household Members.

(3) Cabinet or child-placing agency staff shall log on to the NBCP portal and enter the individual's information for a check of the:

(a) Child abuse and neglect central registry pursuant to 922 KAR 1:470;

(b) National Crime Information Center's National Sex Offender Registry in accordance with 34 U.S.C. 20921; and

(c) Sex Offender Registry in accordance with KRS 17.500 through 17.580.

(4)(a) In accordance with KRS 199.462(2) and 42 U.S.C.

671(a)(20), the cabinet or child-placing agency shall submit payment via credit or debit card for a state and national fingerprint-supported criminal history background check performed by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI), including the rap back system. If an applicant's rap back has not expired, a new fingerprint check shall not be required.

(b) A child-placing agency enrolled in the NBCP shall pay a fee not to exceed twenty-five (25) dollars in addition to any fees charged in accordance with paragraph (a) of this subsection for the actual cost of processing a fingerprint-supported state and national criminal background check and for providing rap back services for each applicant.

(5)(a) Upon submission of payment in accordance with subsection (4) of this section, cabinet or child-placing agency staff shall print a copy of the DPP-164, Applicant Live Scan Fingerprinting Form, from the NBCP portal and provide the form to the applicant.

(b) Cabinet or child-placing agency staff shall:

1. Have no more than ninety (90) calendar days from the date of payment pursuant to subsection (4) of this section to submit the applicant's fingerprints at an authorized collection site for NBCP; and

2. Present the completed DPP-164 and copy of driver's license or other government-issued photo identification to the designated agent at an authorized collection site prior to fingerprint submission.

(6) Upon completion of the background check required by this section or Section 6 of this administrative regulation, the cabinet shall provide notice that the applicant is:

(a) Approved; or

(b) Not approved due to a disqualifying background check result pursuant to subsection (7) of this section.

(7) An applicant shall not be approved if the results of the background check indicate a:

(a) Felony conviction involving:

1. A spouse, a child, sexual violence, or death as established in 42 U.S.C. 671(a)(20); or

2. Physical abuse, battery, drugs, or alcohol within the five (5) year period prior to application;

(b) Criminal conviction relating to child abuse or neglect;

(c) Civil judicial determination related to child abuse or neglect;

(d) Result of a child abuse or neglect check in which the applicant, adolescent member of the household, or adult member of the household, has been found to have:

1. Committed sexual abuse or sexual exploitation of a child;

2. Been responsible for a child fatality or near fatality related to abuse or neglect; or

3. Had parental rights terminated involuntarily pursuant to KRS 625.050 through 625.120 or another state's laws; or

(e) Result of an address check in the Sex Offender Registry and supporting documentation that a sex offender resides at the applicant's home address.

(8) An individual meeting the requirement of subsection (1) of this section may submit an open records request in accordance with 922 KAR 1:510[3. Procedure for Requesting a Cabinet Child Abuse or Neglect Check, a Criminal Record Check, and an Address Check of the Sex Offender Registry. Prior to approval of an applicant, a child-placing agency shall request a child abuse or neglect check, a criminal records check, and an address check of the Sex Offender Registry by submitting to the cabinet:

— (1) A completed form, DPP-157, including the fee for a criminal background check; and

(2) Documentation required to request a child abuse or neglect check from the child welfare agency in each previous state of residence, if the applicant or adult household member has resided outside of the state of Kentucky in the previous five (5) years.

(3) To the extent resources are available, the department shall post information about other states' child abuse and neglect checks on the department's Web site].

Section 5[4]. Request for a Child Abuse or Neglect Check from Another State. (1) The cabinet shall conduct a child abuse or

neglect check as required by 42 U.S.C. 671(a)(20) if a:

(a) Completed DPP-157 or DPP-159, Background Check Request for Caretaker Relatives, Fictive Kin, or Adolescent and Adult Household Members [Checks for Caretaker Relatives, Fictive Kin, or Kinship Caregivers], is submitted to the cabinet; or

(b) Request is received on agency letterhead and includes two (2) numeric identifiers.

(2) The cabinet shall:

(a) Protect the confidentiality of the information transmitted by the cabinet to a child welfare agency; and

(b) Waive the fee specified in 922 KAR 1:470.

Section 6[5]. Background Checks Required for a Caretaker Relative or [and] Fictive Kin Caregiver. (1) A caretaker relative or[,] fictive kin caregiver, and each adult member of the household, shall complete a DPP-159 and submit to:

(a) An in-state criminal records check, conducted pursuant to KRS 199.462(1) by the:

1. Kentucky Justice and Public Safety Cabinet; or

2. Administrative Office of the Courts;

(b) A child abuse or neglect check conducted by the cabinet;

(c) An address check of the Sex Offender Registry; and

(d) A fingerprint-based background check conducted through the NBCP, beginning July 1, 2021, [criminal records check conducted by means of a fingerprint check of the Criminal History Record Information administered by the Federal Bureau of Investigation] if the caretaker relative, fictive kin caregiver, or adult household member has lived outside the state of Kentucky during the past five (5) years.

(2) An adolescent member of a caretaker relative's or fictive kin caregiver's [kin's] household shall complete a DPP-159 and submit to a child abuse or neglect check conducted by the cabinet.

(3) A child abuse or [and] neglect check conducted by the cabinet shall identify the name of each applicant and adolescent and adult member of the household and [in accordance with subsection (1)(b) or (2) of this section shall] include any finding consistent with Section 4(7) [2(3)] of this administrative regulation.

(4) A caretaker relative or fictive kin caregiver shall not be approved if a criminal records check, a child abuse and neglect check, or an address check of the Sex Offender Registry reveals a finding consistent with Section 4(7) [2(4)] of this administrative regulation.

(5) An individual meeting the requirement of subsection (1) of this section may submit an open records request in accordance with 922 KAR 1:510.

Section 7[6]. Approval. (1) Except for the provisions of Section 4(7) or 6(4) [2(4) or 5(4)] of this administrative regulation, approval of an applicant, fictive kin, or caretaker relative who has been convicted of a nonviolent felony or misdemeanor, has been found by the cabinet or another child welfare agency to have abused or neglected a child, or whose parental rights have been terminated voluntarily, shall be handled on a case-by-case basis with consideration given to the:

(a) Nature of the offense;

(b) Length of time that has elapsed since the event; and

(c) Applicant's life experiences during the ensuing period of time.

(2) Except for the provisions of Section 4(7) or 6(4) [2(4) or 5(4)] of this administrative regulation, an applicant, fictive kin, or caretaker relative may be approved on a case-by-case basis in accordance with the criteria described by subsection (1)(a) through (c) of this section if:

(a) An adolescent member of the household has:

1. Been found by the cabinet to have abused or neglected a child; or

2. Had parental rights terminated voluntarily in accordance with KRS 625.040 through 625.046 or another state's laws; or

(b) An adult member of the household has:

1. Been convicted of a nonviolent felony or misdemeanor;

2. Been found to have abused or neglected a child; or

3. Had parental rights terminated voluntarily in accordance with KRS 625.040 through 625.046 or another state's laws.

Section 8[7]. Reevaluation. (1) Beginning July 1, 2021, an [An] approved foster or adoptive parent and each adult member of the household shall maintain enrollment in KARES, except for individuals specified in Section 3 of this administrative regulation.

(2) An applicant enrolled in KARES shall submit a criminal records check as required by Section 2(1)(a) of this administrative regulation during the month of their initial approval every three (3) years.

(3) An approved foster or adoptive parent and each adult member of the household not already enrolled in KARES, with the exception of individuals specified in Section 3 of this administrative regulation, shall submit to a fingerprint-based background check required by Section 4 of this administrative regulation prior to or during the anniversary month of initial approval.

(4) An applicant specified in Section 3 of this administrative regulation and not enrolled in KARES shall submit annually, prior to or during the anniversary month of initial approval, to:

(a) A criminal records check as described in Section 2(1)(a) of this administrative regulation;

(b) A child abuse or neglect check conducted by the cabinet; and

(c) An address check of the Sex Offender Registry.

(5)(2)(a) If an adult becomes a new member of an approved foster or adoptive parent's household, the new adult member of the household shall submit to background checks within thirty (30) calendar days of residence within the household in accordance with Section 4 [2(1)(a) through (d)] of this administrative regulation.

(b) If an adult becomes a new member of a caretaker relative or fictive kin's [kinship-caregiver's] household, the new adult member of the household shall submit to background checks within thirty (30) calendar days of residence within the household in accordance with Section 6 [5(4)] of this administrative regulation.

(6)(3) If an adolescent becomes a new member of an approved foster or adoptive parent or a caretaker relative or fictive kin's [kinship-caregiver's] household, the new adolescent member of the household shall submit to a child abuse and neglect check conducted by the cabinet within thirty (30) calendar days of residence within the household in accordance with Section 2(2) or 6(5)(2) of this administrative regulation, respectively.

(4) If the cabinet has custody of a child placed with a caretaker relative or fictive kin:

(a) A new adult household member of a caretaker relative or fictive kin shall submit to background checks within thirty (30) calendar days of residence in the household in accordance with Section 45(1) of this administrative regulation; and

(b) A new adolescent household member of a caretaker relative or fictive kin shall submit to a child abuse and neglect check conducted by the cabinet within thirty (30) calendar days of residence within the household in accordance with Section 5(2) of this administrative regulation.

(5) An annual address check of the Sex Offender Registry shall be completed for a kinship-caregiver's eligibility redetermination in accordance with 922 KAR 4:130, Section 13(2).

(6) If an annual address check indicates a match with the Sex Offender Registry, a report of abuse, neglect, or dependency shall be made in accordance with 922 KAR 4:330.]

Section 9[8]. Maintenance of Records. (1) A child-placing agency shall maintain the eligibility status of each foster and adoptive applicant who has submitted to a fingerprint-based criminal background check by reporting the status in the NBCP Web-based system [completed copy of each criminal records check conducted pursuant to Section 2 or 7 of this administrative regulation and the DPP-157 shall be maintained on behalf of each:

(a) Applicant;

(b) Foster or adoptive parent; and

(c) Adult member of an applicant or foster or adoptive parent's household].

(2) A completed copy of each DPP-157 submitted pursuant to Section 2(2), 3(2), or 5 [7(3)] of this administrative regulation shall be maintained[on behalf of each adolescent member of:

(a) An applicant's household; or

(b) A foster or adoptive parent's household].

(3) A completed copy of each [the] DPP-159 submitted and criminal records check conducted pursuant to Section 5 or 6[7] of this administrative regulation shall be maintained[for each:

(a) Caretaker relative;

(b) Kinship caregiver;

(c) Fictive kin; and

(d) Adult member of a caretaker relative, fictive kin, or kinship caregiver's household.

(4) A completed copy of the DPP-159 submitted pursuant to Section 5(2) or 7(3) of this administrative regulation shall be maintained on behalf of each adolescent household member of a:

(a) Caretaker relative;

(b) Kinship caregiver; or

(c) Fictive kin].

Section 10[9]. Communications. This administrative regulation shall not limit the cabinet's ability to discuss the qualifications or fitness of an applicant or an existing foster or adoptive parent with a child-placing agency in accordance with:

(1) KRS 620.050(5); or

(2) The terms and conditions of:

(a) A release of information signed by the applicant or foster or adoptive parent; or

(b) The agreement between the cabinet and the child-placing agency.

Section 11[40]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DPP-157, Background Check Request for Foster or Adoptive Applicants and Household Members[Checks for Applicants or Foster/Adoptive Parents]", 02/21 [1/18]; [and]

(b) "DPP-159, Background Check Request for Caretaker Relatives, Fictive Kin, or Adolescent and Adult Household Members[Checks for Caretaker Relatives, Fictive Kin, or Kinship Caregivers]", 02/21;

(c) "DPP-162, Applicant Waiver Agreement and Statement", 02/21;

(d) "DPP-163, Disclosures to Be Provided to and Signed by the Applicant and Adult Household Members", 02/21; and

(e) "DPP-164, Applicant Live Scan Fingerprinting Form", 02/21 [1/18].

(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. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dchs/Pages/default.aspx>.

MARTA MIRANDA-STRAUB, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: February 5, 2021

FILED WITH LRC: February 8, 2021 at 8:53 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this emergency administrative regulation shall, if requested, be held on March 22, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by March 15, 2021, 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 virtually will be given an opportunity to comment on the proposed emergency 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 March 31, 2021. 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 emergency administrative regulation shall be made available upon request.

CONTACT PERSON: Donna Little, Deputy Executive Director, 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: Laura Begin and Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes background check requirements for caretaker relatives, fictive kin, or applicants seeking to provide foster or adoptive services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements for background checks of out-of-home or foster care providers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of background check requirements for caretaker relatives, fictive kin, prospective foster or adoptive parents, and other household members.

(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 background check requirements for out-of-home caregivers.

(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 emergency amendment to this administrative regulation reflects federal guidance that pursuant to 42 U.S.C. 5141, the Stafford Act, federal agencies administering federal assistance programs may modify or waive, for a major disaster, such administrative conditions for assistance as would otherwise prevent the giving of assistance under such programs if the inability to meet such conditions is a result of the major disaster. The Secretary of Health and Human Services declared a public health emergency on January 31, 2020, pursuant to 42 U.S.C. 247d, and a national emergency was declared by the President of the United States on March 13, 2020, due to the Novel Coronavirus Disease (COVID-19) outbreak. The Children's Bureau identified the requirement of fingerprint-based checks of national crime information databases as an administrative condition that may be modified under the Stafford Act authority given that the state conducts all available name-based criminal background checks for applicants during the outbreak and conducts fingerprint-based checks as soon as it is safe to do so. An emergency amendment to this administrative regulation was filed on May 12, 2020, first implementing the waiver for the background checks required by this administrative regulation, but that emergency expired pursuant to KRS 13A.190(3)(a). Because the national emergency declaration is still in place, an emergency administrative regulation is being filed again to continue the waiver in this administrative regulation and continue conducting name-based criminal background checks for these applicants so that they can be approved and the state can receive federal reimbursement although a fingerprint-based check has not been conducted. This emergency administrative regulation also contains requirements and material incorporated by reference for completing checks using the Kentucky National Background Check Program, which is expected to be implemented later this year. Language referring to kinship caregivers pursuant to 922 KAR 1:130 is also being deleted as there are no new applicants for this program due to the moratorium placed on the program in 2013.

(b) The necessity of the amendment to this administrative regulation: The emergency amendment to this administrative regulation is necessary for consistency with federal Administration for Children, Youth and Families guidance allowing a temporary waiver for required fingerprint-based background checks under the

national emergency declaration due to the COVID-19 pandemic. Name-based checks will continue to be conducted during this time.

(c) How the amendment conforms to the content of the authorizing statutes: The emergency amendment conforms to the content of the authorizing statutes through its alignment of regulatory provisions with statutory authorities, FBI requirements, requests of impacted private agencies, and additional considerations to improve child safety in out-of-home or foster care. The amendment provides for a waiver of the requirement of fingerprint-based background checks during the COVID-19 pandemic.

(d) How the amendment will assist in the effective administration of the statutes: The emergency amendment will assist in the effective administration of the statutes through its necessary waiver conditions during the national emergency to ensure the state is in compliance with federal requirements and does not jeopardize federal financial reimbursement of out-of-home-care services.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects prospective and existing foster and adoptive parents and relative and fictive kin caregivers seeking background check results in order to become approved and accept placement of a child in their care. Child-placing agencies are impacted in their recruitment and approval of foster or adoptive parents. All of these entities are affected by the temporary waiver of fingerprint-based background checks due to the national emergency caused by the COVID-19 pandemic and will be affected by the use of the Kentucky National Background Check Program to conduct checks in the future. As of November 2020, approximately 1,500 caregivers had been approved during the waiver of the fingerprint-based background checks after completing name-based background checks.

As of January 3, 2021, there were 9,193 children in the custody of the state who were in placements outside of their home of origin. This includes children in foster or adoptive placements and children being cared for by relative and fictive kin caregivers. This amendment requires many of these caregivers to undergo a background check through the Kentucky National Background Check Program prior to being approved to accept placement of these children once this program is implemented later this year. The cabinet and private child-placing agencies are also affected by this amendment as they are the entities who will process these checks for 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: The amendment allows a temporary waiver of fingerprint-based background checks for foster or adoptive parent applicants and relative or fictive kin caregivers. Effective July 1, 2021, applicants specified in this administrative regulation will obtain fingerprint-based background check results using the Kentucky National Background Check Program. This amendment outlines the steps and requirements and incorporates the forms required in order to use this program. There is very little action required on the part of an applicant, but the protection of children in the custody of the state will be ensured through conducting these comprehensive national checks.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Individuals subject to these background check requirements have their background check costs borne by the cabinet or through a child-placing agency in the course of the agency's business practices. There is a fee for obtaining background checks (a fee for the check and rap-back feature and administrative fee that does not exceed actual costs), but it is not paid directly by the individual.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment temporarily waives fingerprint-based background checks because of the

national state of emergency and allows name-based background checks to be conducted during this time. If not for this waiver, initially implemented in May 2020, no new foster or adoptive parents would have been approved due to fingerprint-based background check sites being closed. The waiver allowed these applicants to be approved with name-based background checks temporarily, with fingerprint-based background checks being performed once safe to do so. The cabinet and private agencies benefitted from being able to continue the approval processes and maintain compliance with federal funding mandates. Fingerprint-based background checks obtained through the Kentucky National Background Check Program will be required later this year and will ensure that children removed from their homes of origin will have enhanced safety afforded through this thorough check of a national system.

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

(a) Initially: There is no new or additional cost associated with the temporary waiver of the fingerprint-based background checks. The waiver for fingerprint-based background checks during the pandemic allows Kentucky to continue approving foster and adoptive parents and maintain compliance with federal funding mandates, necessary for the reimbursement of out-of-home-care costs. There is a cost to move foster and adoptive parent applicants to the Kentucky National Background Check Program, but that cost will be borne by the cabinet and child-placing agencies to ensure the protection of children in the custody of the state.

(b) On a continuing basis: There is a cost to move foster and adoptive parent applicants to the Kentucky National Background Check Program, but that cost will be borne by the cabinet and child-placing agencies to ensure the protection of children in the custody of the state. The cost will be greater at the time of initial application and check, but will be less than current checks over a period of time due to the decreased cost of the rap back feature compared to needing new checks.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Title IV-E (of the Social Security Act), Temporary Assistance for Needy Families Block Grant funds, and State General Funds are the sources of funding 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: There is an increase in costs to the cabinet and child-placing agencies initially, but that cost evens out and decreases over time due to the lower cost of the rap back feature compared to repeat checks.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does initially increase the fee for background checks paid for by the cabinet and child-placing agencies, but overtime the fee is decreased due to the lower cost of the rap back feature compared to requiring new checks.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

45 C.F.R. 1356.30, 42 U.S.C. 671(a)(20), 5106a

2. State compliance standards. KRS 194A.050(1), 199.462(4), 199.640(5), 605.120(5), (6), 605.130(4), 605.150

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 1356.30, 42 U.S.C. 671(a)(20), 5106a

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment to the administrative regulation is consistent with federal requirements, as the Children's Bureau identified the requirement of fingerprint-based checks of national crime

information databases as an administrative condition that may be modified during the state of emergency caused by the Novel Coronavirus Disease (COVID-19) pandemic. Pursuant to 42 U.S.C. 5141, a federal agency charged with the administration of a federal assistance program may modify or waive an administrative condition because of a major disaster. Name-based checks will continue to be conducted and fingerprint-based checks will resume when safe.

Existing standards do impose stricter requirements than the federal mandate because the cabinet requires the denial of an applicant if: (1) a criminal record check conducted on behalf of an adult household member reveals physical abuse, battery, or a drug or alcohol-related felony within the previous five (5) year period or a felony involving a spouse, a child, sexual violence, or death; or (2) a child abuse or neglect check conducted by the cabinet reveals that a household member, twelve (12) years of age or older, committed sexual abuse or sexual exploitation of a child, has been responsible for a child fatality related to abuse or neglect, or has had parental rights terminated involuntarily. These standards remain in place.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The additional restrictions noted in this analysis were added as additional safeguards for children in out-of-home care. The federal law does not prohibit the addition of these restrictions.

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, the Kentucky State Police, and the Administrative Office of the Courts 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), 199.462(4), 199.640(5), 605.120(5), (6), 605.130(4), 605.150, 45 C.F.R. 1356.30, 42 U.S.C. 671(a)(20), 5141

(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 emergency amendment will not generate revenue for state or local government. Fees charged by law enforcement or judicial agencies for criminal background checks cannot exceed the actual costs of conducting the checks.

(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 emergency amendment will not generate any revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There are news costs to the cabinet associated with the Kentucky National Background Check Program, but these costs are expected to level out over time due to the lesser cost of the rap back feature rather than requiring new checks.

(d) How much will it cost to administer this program for subsequent years? There will be a greater initial cost to conduct checks through the Kentucky National Background Check Program, but that cost will lessen over time due to the decreased need to require new checks.

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:

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**ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE**

**ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee**

NONE

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

BOARDS AND COMMISSIONS
Board of Social Work
(Amended After Comments)

201 KAR 23:070. Qualifying education and clinical practice experience under supervision~~for a certified social worker and a licensed clinical social worker and qualifying experience under supervision~~.

RELATES TO: KRS 335.010, 335.080(1)(c), (3), 335.100(1)(a), (b), (3)

STATUTORY AUTHORITY: KRS 335.070(3), 335.080(1)(c), (3), 335.100(1)(a), (b), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.080(1)(c) and 335.100(1)(a) require an applicant for a certified social worker license or a licensed clinical social worker license to have a master's degree or a doctoral degree in social work from an educational institution approved by the board. KRS 335.080(3) authorizes~~allows~~ a certified social worker to engage in the practice of clinical social work under the supervision of a licensed clinical social worker as directed by the board by promulgation of an administrative regulation. KRS 335.100(1)(b) requires an applicant for a licensed clinical social worker license to have acquired post-master's experience under approved supervision as established by the board by promulgation of an administrative regulation. KRS 335.100(3) requires a licensed clinical social worker (LCSW) to assume responsibility for and supervise the certified social worker's (CSW) practice of clinical social work as directed by the board by promulgation of an administrative regulation. This administrative regulation establishes the educational institutions approved by the board, ~~[the definitions relating to supervision,]~~ the content of a Clinical Social Work Supervision Contract, the content of a Request to Provide Supervision Form, and the requirements for qualifying experience under supervision ~~for in state and out-of-state applicants.~~

Section 1. Definitions. (1) "Additional supervisor" means the supervisor who holds a licensed clinical social worker [work] license issued by this board, and who assumes responsibility for the practice of a certified social worker pursuant to KRS 335.080(3), [and] 335.100(3), and this administrative regulation.

(2) "Educational institution approved by the board" means a graduate school of social work accredited by the Council on Social Work Education.

(3) [(2)] "Electronic supervision" means the use of computers and other electronic means by which the supervisor and supervisee use interactive video technology, in real-time, with video and audio interaction for individual and group supervision.

(4) [(3)] "Practice of clinical social work" means the practice of social work that focuses on the evaluation, diagnosis, and treatment of a mental disorder ~~[an emotional disorder or mental illness]~~ as related to the total health of the individual and that meets the requirements of Section 3 of this administrative regulation.

(5) [(4)] "Supervision" means the educational process of utilizing a partnership between an LCSW [a] supervisor and a CSW supervisee aimed at enhancing the professional development of the supervisee in providing clinical social work services.

(6) [(5)] "Supervisor of record" means the supervisor who holds a licensed clinical social worker [work] license issued by this board, and who assumes responsibility for the practice of a certified social worker pursuant to KRS 335.080(3), [and] 335.100(3), and this administrative regulation.

Section 2. Education Requirements. An applicant for a certified social worker license or a licensed clinical social worker license shall have a Master of Social Work degree or Doctorate of Social Work degree from an educational institution approved by the board.

Section 3. Practice of Clinical Social Work. (1) The practice of clinical social work shall be based on knowledge of psychodynamics, human relations, crisis intervention, psychopathology, and group dynamics.

(2) A practitioner of clinical social work shall:

(a) Possess competencies including skills necessary for:

1. Individual, marital, family, and group psychotherapy; and

2. Other recognized treatment modalities; and

(b) Establish a therapeutic relationship with his or her client that includes:[]

1. ~~Leads to correction of the dysfunction;~~

2. ~~Includes:[]~~

1. ~~[a.] Assessment and diagnosis of mental disorders using professionally recognized clinical nomenclature;~~

2. ~~[b.] Safe and appropriate treatment planning that includes development, implementation, [and] modification of the plan, and coordination of treatment with other clinicians who may be involved in the client's care;[]~~

3. ~~[c.] Evaluation of progress; [and]~~

4. ~~[d.] Termination of the treatment process; and~~

5. ~~[3. Is characterized by] Face-to-face contact with the client throughout the treatment process, and which may include telehealth in accordance with KRS 335.158 and 201 KAR Chapter 23[Administrative regulations of the board].~~

Section 4. Supervision. (1) A supervisor shall be a licensed clinical social worker who:

(a) Provides supervision to a certified social worker pursuant to KRS 335.080(3) and 335.100(3);

(b) Does not have:

1. An unresolved citation filed against him or her by the board;

2. A suspended or probated license; or

3. A previous or existing personal relationship with a supervisee; and

(c) Has:

1. Been engaged in the practice of clinical social work for two (2)[three (3)] years following licensure in Kentucky or another jurisdiction as an independent licensed clinical social worker; or [and]

2. Been engaged in the practice of clinical social work in another jurisdiction pursuant to Section 9 of this administrative regulation; and

3. [2.] Completed an initial six (6) [a board-approved three (3)] hour training course on supervisory practices and methods for licensed clinical social workers relating to the requirements in KRS Chapter 335.010 to 335.160 and 335.990, and 201 KAR Chapter 23; and [and this administrative regulation.]

4. The initial supervisory training course on supervisory practice and methods for licensed clinical social workers shall be completed no later than January 1, 2022 for supervisors currently approved as of the effective date of this regulation.

5. [3.] In addition to the initial six (6) hour training course established in subparagraph 2. of this paragraph, each supervisor shall complete a three (3) hour refresher supervisory training course each licensure renewal period thereafter to maintain supervisory status with the board.

(2) Supervisory experience obtained in Kentucky with a supervisor who has not completed the courses~~[course]~~ required by subsection (1)(c)2. and 3. of this section shall not be approved by the board.[]

(3) ~~The supervisory training course shall be completed every licensure period to maintain supervisory status with the board.~~

(3) [(4)] A licensed clinical social worker shall not serve as a supervisor of record for more than six (6) certified social workers with whom he or she has a contract to be held accountable to the board at the same time.[]

(5) ~~An applicant receiving supervision outside of Kentucky shall demonstrate that his or her supervisor has been in the practice of clinical social work for a period of three (3) years following licensure as a clinical social worker or its equivalent effective at the~~

time of the supervision.]

(4)[(6)] To be approved as a supervisor, a licensed clinical social worker who meets the requirements of this section shall submit a **Request to Provide Supervision Form [written request]** to become a supervisor in Kentucky along with a copy of the **initial** supervisory training **course** certificate.

Section 5. Clinical Social Work Supervision Contract. The Clinical Social Work Supervision Contract required by KRS 335.080(3) and 335.100(3) shall be submitted to the board for approval before the certified social worker begins supervision and **shall** contain:

(1) The name and license number of the **certified social worker** supervisee;

(2) The name and license number of the supervisor of record;

(3) The name and license number of additional supervisors;

(4) The agency, institution, or organization where the experience will be received;

(5) A detailed description of the nature of the practice including the type of:

(a) Clients who will be seen;

(b) Therapies and treatment modalities **that [which]** will be used including the prospective length of treatment; and

(c) Mental disorders **that [Problems which]** will be treated;

(6) The nature, duration, and frequency of the supervision, including the:

(a) Number of hours of supervision per week;

(b) Amount of ~~[group and]~~ individual **and group** supervision; and

(c) Methodology for transmission of case information.

(7) The conditions or procedures for termination of the supervision **including a provision that the terminating party shall provide at least thirty (30) days' written notice of termination to the certified social worker, supervisor of record, additional supervisor, and certified social worker's employer by the terminating party;**

(8) **The conditions and procedures for [self-] evaluation of the supervision process every six (6) months in which both the certified social worker and the supervisor of record evaluate areas of strength, areas of improvement, [punctuality,] and overall satisfaction with the supervision process by the supervisor and the supervisee;**

(9) A statement that:

(a) The supervisor of record understands **and agrees** that he or she shall be held accountable to the board for the care given to the supervisee's clients;

(b) The certified social worker is an employee of an agency, institution, or organization, **[who receives regular wages for a payroll period either at a regular hourly rate or in a predetermined fixed amount,]** and has Social Security and income tax deducted from his or her salary;

(c) The supervisor of record and additional supervisors meet the criteria established in Section 4 (1) through (4) of this administrative regulation; **and]**

(d) The certified social worker supervisee has completed the training course described in Section 12 of this administrative regulation; **and**

(e) **The [A] supervisor and supervisee [may] agree to use electronic supervision, in accordance with KRS 335.158 and 201 KAR Chapter 23;**

(10) [(9)] An individualized job description attached to the Clinical Social Work Supervision Contract that:

(a) **Describes the nature of the clinical social work services the certified social worker supervisee shall provide to a client including assessment, evaluation, diagnosis, and treatment of a mental disorder;**

(b) Describes in detail how the requirements of Sections 6 and 7 [7-and-8] of this administrative regulation shall **[will]** be met; and

(c)[(b)] Is on office or agency letterhead and is signed by the executive director, the agency director, or the individual who heads the office; **[-and]**

(11) Each supervisor of record and additional supervisor shall record and submit to the board documentation of the hours of individual or group supervision completed during the period of

supervised clinical practice experience or upon termination of the Clinical Social Work Supervision Contract [contract], whichever occurs first.

(10) A copy of each supervisor's supervisory training certificate attached to the Clinical Social Work Supervision Contract.]

Section 6. Notice to Client. If an employee is practicing **clinical social work** under the supervision of a licensed clinical social worker, the employee shall notify in writing each client **at the start of treatment** during the period of the supervision. The notification shall contain:

(1) The name, office address, telephone number, **email address,** and license number of the supervisor of record; and

(2) A statement that the employee is licensed by the board.

Section 7. Experience under Supervision. Experience under supervision shall consist of:

(1) At least sixty (60) percent of the required experience in a direct client-professional relationship;

(2) Direct responsibility for **providing clinical social work services** to a specific individual or group of clients; and

(3) Broad exposure and opportunity for skill development with a variety of **mental disorders** [dysfunctions], diagnoses, acuity levels, and population groups.

Section 8. Supervision Requirements. (1) Supervision shall relate specifically to the qualifying **supervised clinical practice** experience and shall focus on:

(a) The accurate **assessment and** diagnosis of a **client's mental disorder** [client problem] leading to proficiency in applying professionally recognized clinical nomenclature;

(b) The development and modification of the treatment plan;

(c) The development of treatment skills suitable to each phase of the therapeutic process;

(d) Ethical problems in the practice of clinical social work **and application of the Code of Ethical conduct established in 201 KAR 23:080;** and

(e) The development and use of the professional self in the therapeutic process.

(2)(a) Supervision shall total a minimum of **150** [200] hours, which shall include individual supervision of **at least** not less than two (2) hours during every two (2) weeks of **supervised clinical social work practice, over the two (2) year minimum time period of supervised practice experience under supervision described in KRS 335.100(3).**

(b)[-] **Virtual supervision may be utilized for supervision hours, so long as the supervisor and supervisee can see one another, face-to-face, via electronic means. [Electronic supervision may be used for no more than two (2) hours of individual supervision per month, but only after the first ten (10)] [twenty-five (25)] [hours of individual supervision hours have been obtained in face-to-face, in-person meetings where the supervisor and supervisee are physically present in the same room. A certified social worker supervisee who completes the first ten (10)] [twenty-five (25) hours] [of face-to-face individual supervision hours shall not have to repeat the face-to-face individual supervision hours if a new contract or supervisor of record is approved by the board unless agreed to by the certified social worker supervisee, supervisor of record, and additional supervisor.] [No][More than fifty (50) percent of the individual supervision hours shall not] [may] [be obtained by electronic supervision.]**

(c) Electronic supervision shall conform to state and federal laws governing electronic practice or telehealth to ensure that confidentiality of client records and personal health information shall be maintained as required by KRS 335.158, the Code of Ethical Conduct established in 201 KAR 23:080, and other applicable state and federal laws.

(d) A supervisee shall obtain a minimum of 100 hours [not obtain more than 100 hours] of the required supervision by individual [group] supervision.

(e) A supervisee may obtain up to fifty (50) hours of group supervision.]

(d) No more than fifty (50) percent of the group supervision hours may be obtained by electronic supervision.

(e) Electronic supervision shall conform to all state and federal laws governing electronic practice to ensure the confidentiality of the client's medical information is maintained as required by KRS Chapter 335 and 201 KAR Chapter 23 and by all applicable state and federal law.]

(f) Group supervision shall [not] be in groups of not more than six (6) supervisees[;] and shall not include supervisees from other behavioral health professions who are attaining supervised clinical practice experience.

Section 9. **A licensed clinical social worker from another jurisdiction requesting approval to provide clinical supervision. [An applicant for licensure as a licensed clinical social worker from another jurisdiction.]** (1) An applicant who holds or has held a license to practice clinical social work or an equivalent license in another jurisdiction and has been engaged in the active practice of clinical social work **[in that jurisdiction]** for at least two (2) years prior to the filing of a **Request to Provide Supervision Form [an application]** with the board **shall meet [meets]** the requirements for supervision established~~[set forth]~~ in this administrative regulation unless the license, certificate, registration, or other authorization issued by the other jurisdiction:

(a) Has been expired for more than two (2) years;

(b) Is not in good standing; or

(c) Has been suspended or revoked for disciplinary reasons.

(2) An applicant who receives clinical practice experience under supervision in another jurisdiction shall demonstrate that:

(a) His or her clinical practice experience under supervision met the legal requirements of that jurisdiction; and

(b) The board shall give credit for supervision hours obtained in accordance with the legal requirements of the other jurisdiction.

(3) An applicant from another jurisdiction shall submit proof of issuance of a valid license, permit, certificate, registration, or other authorization issued by another jurisdiction that is **in good standing**;

(a) Active or has been expired for less than two (2) years; and

(b) Is in good standing or was in good standing upon the date of expiration.]

(3) Documentation that establishes that an individual has been licensed in another jurisdiction at the clinical level and has been engaged in the active practice of clinical social work in that jurisdiction for at least five (5) years prior to the filing of an application with the board meets the requirement for supervision set forth in this administrative regulation.]

Section 10.[9]. Evaluation by the Board. (1) The [period of] supervised experience required by KRS 335.100(1)(b) shall be evaluated by the board according to one (1) of the methods established in this subsection.

(a) Post experience evaluation. An applicant who obtained his or her supervised experience [whose experience was obtained] while licensed in another jurisdiction [state] shall submit his or her application along with documentation of supervision and **qualifications of his or her supervisor[supervisor(s)]**.

(b) Transitional evaluation. An applicant who has accumulated an amount less than the full amount of qualifying experience while licensed in another jurisdiction [state] or while working in a clinical social work setting that does not meet the requirements under Section 7(3) of this administrative regulation shall submit his or her application along with documentation of supervision completed prior to the date of his or her application. The applicant shall also submit with his or her application a Clinical Social Work Supervision Contract under paragraph (c) of this subsection for the remainder of the supervised experience.

(c) Preapproved evaluation. Prior to beginning supervised practice experience [supervision], an applicant shall submit a Clinical Social Work Supervision Contract for the supervised experience [which will be taking place over the required time period] and the shall have the contract approved by the board. This contract shall be evaluated by the board **to determine whether or**

not it is compliant with Section 4 and Section 5 of this administrative regulation and shall be approved or ~~denied[disapproved]~~ within ninety (90) days of its submission.

(2) A certified social worker who desires to practice clinical social work that does not qualify as supervised experience pursuant to KRS 335.100(1)(b)[;] shall submit a Clinical Social Work Supervision Contract pursuant to KRS 335.080(3). This contract shall be evaluated by the board **to determine whether or not it is compliant with Section 4 and Section 5 of this administrative regulation** and shall be approved or ~~denied[disapproved]~~ within ninety (90) days of its submission.

(3) A certified social worker who desires to practice clinical social work that meets all the other supervised experience requirements, other than the requirement ~~established~~[listed] in Section 7(3) of this administrative regulation, shall submit a Clinical Social Work Supervision Contract pursuant to KRS 335.080(3). The supervision hours obtained in this clinical setting may be considered by the board.

Section 11. **Modification of Existing Contract.** [10.] (1) Changes to Section A of the Plan of Clinical Social Work Activities of the Clinical Social Work Supervision Contract that describes the clinical setting and nature of the practice and experience that the supervisee is to obtain, as required by Section 5(5) of this administrative regulation, shall be submitted to the board for approval, **and approved, prior to implementation.**

(2) A new Clinical Social Work Supervision Contract shall be submitted to the board **immediately** for approval if the supervisee changes his or her:

(a) Supervisor of record; or

(b) Place of employment. [If the supervisee changes his or her supervisor of record, a new Contract for Clinical Social Work Supervision shall be submitted to the board for approval.]

(3) A supervisee shall notify the board in writing [by letter] of changes of additional supervisors who are not the supervisor of record, but who are identified in the Clinical Social Work Supervision Contract pursuant to Section 5(3) of this administrative regulation[;] and attach a copy of the supervisor's supervisory training certificate.

Section 12. Supervision Training Course for a Certified Social Worker Under Supervision.

(1) Prior to beginning supervised clinical social work practice, a **certified social worker supervisee shall complete a one (1) hour training course on supervised clinical practice experience, provided at no cost by the board, and relating to the requirements in KRS 335.010 to 335.160 and 335.990, and 201 KAR Chapter 23; and.**

(2) Submit a copy of the certificate of completion with **his or her [their]** Clinical Social Work Supervision Contract.

Section 13. [14.] Incorporation by Reference. (1) "Clinical Social Work Supervision Contract," **3/2021[11/2020][04/2016]**, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Social Work, 125 Holmes Street, Suite 310[44 Fountain Place], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JUSTIN "JAY" MILLER, Ph.D., CSW, Chair

APPROVED BY AGENCY: February 9, 2021

FILED WITH LRC: February 15, 10:44 a.m.

CONTACT PERSON: Nicole S. Bearse, Board Attorney, Kentucky Board of Social Work, 125 Holmes Street, Suite 310, Frankfort, Kentucky 40601; phone (502) 564-2350 or (502) 782-2856; or email nbearse@goldbergsimpson.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nicole S. Bearse

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the educational and supervision requirements for individuals who wish to provide clinical social work services in

Kentucky. Clinical social work involves the assessment, diagnosis, safe and appropriate treatment planning, and therapy to an individual with a mental or emotional disorder. To provide these services, one must hold a Masters or Doctorate in Social Work from an accredited academic institution, and be licensed as an licensed clinical social worker (LCSW) or as a certified social worker (CSW) who has been approved by for post-master's clinical social work experience under the supervision of a qualified LCSW clinical supervisor. Due consideration was given to quality of the supervision experience, the quality and breadth of supervisor's training, and how to improve the outcomes from the overall clinical practice experience. This regulation establishes the education, licensing, qualifying experience, supervision, and training requirements for: An LCSW supervisor; a CSW to provide clinical social work services; and an out-of-state applicant's qualifications for licensure as an LCSW.

(b) The necessity of this administrative regulation: In the U.S., two years of supervised clinical social work practice experience is the uniform standard to qualify for the licensure as a licensed clinical social worker and to sit for the national standardized clinical practice exam. However, the number of hours of supervision required under supervision with an LCSW supervisor varies widely across the U.S. The lack of uniformity and Kentucky's current requirements present a significant barrier to licensure including the cost of supervision and the vast differential in the number of required supervision hours. The board filed an amendment to this regulation in the spring of 2020. The board went to extensive efforts to solicit wide participation from the social work community: a public hearing was held virtually by Zoom on May 27, 2020, the public comment time was extended to June 30, 2020; and two listening sessions held virtually by Zoom after the public comment time closed. After receiving hundreds of comments, and after much public debate and consideration, the board decided to withdraw the amendment and refile the current version submitted herein. The board holds fast to the conclusion that a reduction in the number of supervision hours is necessary. However, overwhelming opinion led the board to reconsider its initial amendments, and to move in an incremental approach to reducing the supervision hours and improving the outcome of supervision experience. Before this amendment, Kentucky was discordant with social work boards in neighboring states on the hours of supervision. For example, Tennessee and Indiana require 100 hours or less of clinical practice supervision to qualify for a clinical license, compared to the 200 hours mandated in Kentucky. If a duly qualified LCSW from Tennessee has not practiced clinical social work for five years and does not have the requisite 200 hours of supervision, this individual cannot qualify for a clinical social work license in Kentucky. Their recourse is to wait until the five years of practice are completed or ask the board to issue a CSW license and go back under supervision to accumulate the balance of the required supervision hours. This process is costly, time-consuming, and frustrating to otherwise qualified clinical social workers who want to work in Kentucky. The board also considered the cost issue as a potential barrier: Clinical supervision costs an average of \$75 per hour and can be as much as \$100 per hour depending upon area of the state in which the social worker lives. Another consideration is that the additional hours of supervision required in Kentucky makes the practice experience take longer than two years. In addition, license mobility and portability have become increasingly important. It is evident from the COVID-19 pandemic, the proliferation of telehealth and the expanding use of technology has transformed the nature of social work practice and greatly expanded social workers' ability to assist people in need, particularly in rural areas. With due consideration to informed consent and confidentiality of clients' protected health information, contemporary social workers' use of technology has created new ways to interact and communicate with clients, raising fundamentally new questions about the differences in regulation of social work practice.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.070(3) authorizes the board to promulgate administrative regulations to carry out of the provisions of KRS 335.101 to 335.160 and KRS 335.990.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs an applicant how he or she qualifies

for licensure as a licensed clinical social worker, restates the requirements for a Clinical Social Work Contract during the period of supervised clinical practice experience, reduces the number of supervision hours over the two-year supervised clinical practice period, and describes the conditions for clinical supervision established by the board. In addition, this administrative regulation informs an applicant or licensee about the reduced supervision hours for the clinical social work license, an increase in continuing education hours required for board-approved clinical supervisors, addition of continuing education for the supervisee, and evaluation of the supervision experience.

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

(a) How the amendment will change this existing administrative regulation: This amendment increases the hours of the training course for LCSW supervisors on supervisory practice and methods, adds a self-evaluation of the supervision process for both the LCSW CSW supervisee. It adds new requirements that the CSW supervisee must complete a one-hour training course; reduces the supervision hours from 200 to 150 hours over the two-year supervised clinical practice with a minimum of 100 hours of the required supervision by individual supervision, and adds a new section for applicants for licensure as a licensed clinical social worker from another jurisdiction.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implement the board's desire to increase the quality of the supervision experience and to bring the supervision requirements in closer conformity to the clinical supervision requirements of other U.S. jurisdictions and neighboring states.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 335.070 (3) permits the board to establish the requirements for licensure as a clinical social worker.

(d) How the amendment will assist in the effective administration of the statutes: This amendment removes potential time and cost barriers to clinical social work licensure, increases the hours of the LCSW supervision course, adds a one-time course to inform the supervisee, and includes an evaluation of the supervision process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 6,000 licensed social workers in Kentucky, undetermined numbers of out-of-state applicants, community mental health centers, public and private agencies and businesses that employ social workers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The changes in this amendment will increase the continuing education hours for LCSW supervisors and may increase the cost of the initial six-hour supervision course. Correspondingly, the numbers of licensed clinical social workers in this state will increase because both in-state and out-of-state applicants will more easily and quickly meet the licensure requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The board anticipates that any cost increase will be the expense of the supervision training course for licensed clinical social workers who wish to become board-approved supervisors.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The board estimates that the number of licensed clinical social workers in this state will increase because in state and out-of-state applicants will meet the criteria for licensure more quickly because of the reduced supervision hours. By removing the barriers, the amendment also will increase lawful provision of clinical services by and through telehealth providers from outside the boundaries of Kentucky.

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

(a) Initially: The board estimates that it will incur additional costs

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of less than \$5,000 to implement this amendment because it will provide the CSW training course at no cost to the applicant.

(b) On a continuing basis: The board estimates that it will incur nominal additional costs to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are wholly self-funded by fees paid by licensees, applicants, and continuing education providers and sponsors.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, this amendment does not.

(9) TIERING: Is tiering applied? No, tiering was not applied. This administrative regulation is applied uniformly to each licensee and applicant regardless of his or her state of residence and each will be required to meet the same qualifications for clinical social work practice.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Board of Social Work and entities that employ social workers to provide clinical social work services will be impacted by this regulation. These entities include public school districts, community mental health centers, and other public and private businesses.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.070(3), 335.080(1)(c) and (3), 335.100(1)(a), (b), and (3).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Payment for the overall cost of supervision will decrease because the number of supervision hours will be reduced.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amended After Comments)

501 KAR 6:080. Department of Corrections manuals.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 197.065, 197.110, 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.

This administrative regulation incorporates by reference the manuals that are referenced in policies and procedures for the Department of Corrections.

Section 1. Incorporation by Reference. (1) "Department of Corrections Manuals," [March 10, 2008] are incorporated by reference. Department of Corrections Manuals includes:

(a) Classification Manual (Amended 2/12/21[11/2/2020][4/15/02]); and

(b) Kentucky Department of Corrections Religion Reference Manual (Added 3/10/08).

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

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: February 12, 2021

FILED WITH LRC: February 12, 2021 at 2:14 p.m.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.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 manuals that are referenced in the department's policies and procedures, the Classification Manual and the Religion Reference manual.

(b) The necessity of this administrative regulation: This administrative regulation establishes the manual for the classification process for inmates within the Department of Corrections (DOC) in compliance with the requirements of KRS 197.065 and 197.110 and gives guidance to DOC staff for religious issues involving inmates.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 197.065 requires the classification of prisoners and KRS 197.110 requires an administrative regulation concerning classification of prisoners. KRS 196.035 authorizes the secretary of the cabinet or the secretary's delegate to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet.

(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 DOC employees and to inmates concerning classification and religious practice.

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

(a) How the amendment will change this existing administrative regulation: The amendment substantially rewrites the Classification Manual for the department.

(b) The necessity of the amendment to this administrative regulation: The manual has been totally rewritten to update the classification of prisoners for the department and the inmates committed to it.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 197.065 requires the classification of prisoners and KRS 197.110 requires an administrative regulation concerning classification of prisoners. The Classification Manual complies with the requirements of these statutes.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and prisoners information concerning the classification of prisoners within the department.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Kentucky Department of

Corrections, approximately 3,746 employees, approximately 20,076 prisoners, and the private prison company for the Kentucky inmates that it incarcerates.

(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 manual gives guidance to staff and prisoners concerning classification within the department.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost is unknown, but it is not anticipated that the amendment to this administrative regulation will increase current costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An updated classification system will better protect staff, inmates, and the public. The validation of the system identified risk factors that were no longer predictive of future behavior and they were updated or replaced. The new classification system is also gender-responsive.

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

(a) Initially: No increase in funding is anticipated. Printing costs for the manual are expected to be approximately \$960.

(b) On a continuing basis: No increase in funding is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Department of Corrections budgeted funds for the biennium.

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

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendments to this regulation impact the operation of the Kentucky Department of Corrections and each state correctional institution.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020, 197.065, 197.110 and to meet American Correctional Association (ACA) standards requirements.

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

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

(c) How much will it cost to administer this program for the first year? The amendment to this regulation impacts how the Kentucky Department of Corrections classifies prisoners. The costs are not anticipated to increase with this amendment. Printing costs for the Classification Manual are expected to be approximately \$960.

(d) How much will it cost to administer this program for subsequent years? The costs are not anticipated to increase with

this amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Health Care

(Amended After Comments)

902 KAR 20:160. Chemical dependency treatment services and facility specifications.

RELATES TO: KRS 198B.260, 202A.241, 210.005, 216B.010, 216B.015, 216B.105, 216B.990, 218A.202, 309.080, 309.0831, 309.130, 310.021, 311.560, 311.571, 311.840 – 311.862, 314.011(8), 314.042, 319.050, 319.056, 319.064, 319C.010, 320.210(2), 335.080, 335.100, 335.300, 335.500, 42 C.F.R. Part 2, 45 C.F.R. 160, 164, 20 U.S.C. 1400, 29 U.S.C. 701, 42 U.S.C. 290ee-3, 1320d-2 – 1320d-8

STATUTORY AUTHORITY: KRS [216B.040,] 216B.042(1), 216B.105

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 and 216B.105 require the Cabinet for Health and Family Services to regulate health facilities and health services. This administrative regulation establishes licensure requirements for the operation, services, and facility specifications of chemical dependency treatment programs, including programs that [which] elect to provide outpatient behavioral health services for individuals with a substance use disorder or co-occurring disorder in which substance use disorder is the primary diagnosis.

Section 1. Definitions. (1) "Aftercare" means the process of providing continued services following primary chemical dependency treatment to support and increase gains made during treatment. (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 as defined by KRS 311.840(3)[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(2);

(i) A licensed professional clinical counselor as defined by [licensed and practicing in accordance with] KRS 335.500(3); or

(j) A licensed professional art therapist as defined by KRS 309.130(2).

(3) "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 therapy[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).

(4) "Certified alcohol and drug counselor" is defined by KRS 309.080(2).

(5) "Governing authority" means the individual, agency, partnership, or corporation that directs and establishes policy concerning the management and operation of a chemical dependency treatment program.

(6) "Interdisciplinary team" means a group of at least four (4) professionals, including a physician, registered nurse, certified chemical dependency counselor, and a person with a master's degree in psychology, social work, or counseling.

(7) "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(4).

(8) "Licensed clinical alcohol and drug counselor associate" is defined by KRS 309.080(5).

(9) "Peer support specialist" means a paraprofessional who:

(a) Is a registered alcohol and drug peer support specialist in accordance with KRS 309.0831; or

(b)1. Meets the application, training, examination, and supervision requirements of 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240; and

2. Works under the supervision of one (1) of the following:

a. Physician;

b. Psychiatrist;

c. Licensed psychologist;

d. Licensed psychological practitioner;

e. Licensed psychological associate;

f. Licensed clinical social worker;

g. Licensed marriage and family therapist;

h. Licensed professional clinical counselor;

i. Certified social worker;

j. Licensed marriage and family therapy associate;

k. Licensed professional counselor associate;

l. Licensed professional art therapist;

m. Licensed professional art therapist associate;

n. Advanced practice registered nurse;

o. Physician assistant;

p. Certified alcohol and drug counselor; or

q. Licensed clinical alcohol and drug counselor.

(10) "Restraint" means a physical or mechanical device used to restrict the movement of the patient or a portion of the patient's body.

(11) "Substance use disorder" is defined by KRS 222.005(12) ~~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].

(12) "Targeted case manager" means an individual who meets the requirements for a targeted case manager established by 908 KAR 2:260.

Section 2. Scope of Operation and Services. (1) A chemical dependency treatment service shall have a structured inpatient program to provide medical, social, diagnostic, and treatment services to individuals with substance use disorder.

(2) Chemical dependency treatment services shall:

(a) Have a duration of less than thirty (30) days;

(b) Be hospital based or freestanding;

(c) Have eight (8) or more patient beds;

(d) Be under the medical direction of a physician; and

(e) Provide continuous nursing services.

(3) If a chemical dependency treatment program provides outpatient behavioral health services, as ~~established~~[described] in Section 5 of this administrative regulation, for individuals with a substance use disorder or co-occurring disorder in which

substance use disorder is the primary diagnosis:

(a) The outpatient behavioral health services shall be provided:

1. On a separate floor, in a separate wing, or in a separate building on the campus of the chemical dependency treatment program's inpatient facility; or

2. At an extension off the campus of the chemical dependency treatment program's inpatient facility;

(b) The chemical dependency treatment program shall pay a fee in the amount of \$250 per off-campus extension providing outpatient behavioral health services, submitted to the Office of Inspector General at the time of:

1. Initial licensure, if applicable;

2. The addition of a new extension to the chemical dependency treatment program's license; and

3. Renewal;

(c) Each off-campus extension or on-campus program of outpatient behavioral health services shall be listed on the chemical dependency treatment program's license;

(d) An off-campus extension or a separate building on the campus of the chemical dependency treatment program's inpatient facility where outpatient behavioral health services are provided shall comply with the physical environment requirements of Section 8 of this administrative regulation and be approved by the State Fire Marshal's office prior to:

1. Initial licensure;

2. The addition of the extension or on-campus program of outpatient behavioral health services in a separate building; or

3. A change of location;

(e) The program shall employ directly or by contract a sufficient number of personnel to provide outpatient behavioral health services;

(f) The outpatient behavioral health services program shall have a program director who:

1. May also serve as the chemical dependency treatment program's treatment director described in Section 3(10) of this administrative regulation; and

2. Shall be a:

a. Psychiatrist;

b. Physician;

c. ~~Certified or~~ Licensed psychologist or certified psychologist with autonomous functioning;

d. Licensed psychological practitioner;

e. Psychiatric nurse;

f. Advanced practice registered nurse;

g. Licensed professional clinical counselor;

h. Licensed marriage and family therapist;

i. Licensed professional art therapist;

j. Licensed ~~board-certified~~ behavioral analyst; or

k. Licensed clinical social worker; and

(g) Unless an extension of time is granted pursuant to subsection (4) of this section, the outpatient program shall become accredited by one (1) of the following within one (1) year of adding outpatient behavioral health services to the chemical dependency treatment program's license:

1. ~~The~~ Joint Commission;

2. ~~The~~ Commission on Accreditation of Rehabilitation Facilities;

3. ~~The~~ Council on Accreditation; or

4. A nationally recognized accreditation organization.

(4)(a) If a chemical dependency treatment services outpatient program has not obtained accreditation within the one (1) year timeframe required by subsection (3)(g) of this section, the program 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 expiration of the one (1) year deadline described in subsection (3)(g) of this section;

2. Include evidence that the program initiated the process of becoming accredited within sixty (60) days of adding outpatient behavioral health services to the program's license and is continuing its efforts to obtain accreditation; and

3. Include an estimated timeframe by which approval of accreditation is anticipated.

(5) A program shall cease providing outpatient behavioral health services if the program fails to:

(a) Become accredited in accordance with subsection (3)(g) of this section;

(b) Request an extension in accordance with subsection (4) of this section, if accreditation has not been obtained; or

(c) Maintain accreditation.

(6) Proof of accreditation shall be provided to the Office of Inspector General upon receiving accreditation and at the time of annual renewal.

Section 3. Administration and Operation. (1) The licensee shall be responsible for compliance with federal, state, and local laws and administrative regulations pertaining to the operation of chemical dependency treatment programs.

(2)(a) The governing authority shall appoint a program administrator who shall have a:

1. Bachelor's degree in a health or human services field;

2. Bachelor's degree in another field supplemented with one (1) year of work experience in the field of chemical dependency; or

3. High school diploma and four (4) years of experience in the field of chemical dependency.

(b) The governing authority shall establish, in writing:

1. Program goals and objectives; and

2. An evaluation plan for annual assessment of the attainment of the goals and objectives.

(3) Program administrator.

(a) The program administrator shall:

1. Be responsible for the daily management of the facility; and

2. Serve as the liaison between the governing authority and staff members.

(b) The program administrator shall keep the governing authority informed of the operations of the facility through reports and attendance at meetings of the governing authority.

(4) Administrative records and reports.

(a) A medication error, drug reaction, accident, or other incident involving a patient, visitor, or staff member[,] shall be documented in writing, signed by the program administrator and any witness to the event, and placed in an incident file.

(b) Licensure inspection reports, plans of correction, and program evaluations shall be available to the public, upon request, at the facility.

(5) Policies.

(a) Administrative policies. The program shall have a written administrative policy to cover each aspect of the facility's operation, including[as follows]:

1. A description of the organizational structure, staffing, and allocation of responsibility and accountability;

2. A description of referral linkages with other facilities and providers;

3. A description of the services included in the program, including outpatient behavioral health services if provided;

4. An expense and revenue accounting system following generally accepted accounting procedures;

5. A volunteer program; and

6. Program evaluation and quality assurance review.

(b) Patient care policy. A written patient care policy shall be developed and shall include a description of:

1. Actions to be taken ~~if[when]~~ a patient is lost, unaccounted for, or otherwise absent without authorization;

2. Provisions for patient visitation and use of telephones;

3. Provision of emergency medical services; and

4. Patient admission and discharge criteria, including the categories of individuals accepted and not accepted by the program.

(c) Patient rights policy. A written policy shall be developed and maintained to enhance patient dignity and to protect human rights. The policy shall assure that each patient or client receiving outpatient behavioral health services ~~shall be[is]~~:

1. Informed of rules and regulations governing patient conduct and responsibilities, including the procedure for handling grievances;

2. Informed, prior to admission for rehabilitation or receipt of

outpatient behavioral health services, of services available and charges for treatment, including charges not covered under Medicare, Medicaid, or other third-party payor;

3. Encouraged and assisted to:

a. Understand and exercise patient rights;

b. Voice grievances; and

c. Recommend changes in policies and services. Upon request by a patient, a grievance or recommendation shall be conveyed to that body within the organization with authority to take corrective action;

4. Presented with the opportunity to participate in the planning of his or her treatment;

5. Informed of the right to refuse to participate in experimental research;

6. Assured confidential treatment of records and presented with the opportunity to approve or refuse release of records to any individual not involved in his or her care, except as required by Kentucky law or third party payment contract; and

7. Treated with consideration, respect, and recognition of personal dignity and individuality, including privacy in treatment and personal health needs.

(6) Personnel.

(a) The governing authority shall:

1. Establish a personnel policy; and

2. Review the personnel policy at least one (1) time annually and update the policy as needed.

(b) There shall be a personnel record for each person employed by the chemical dependency treatment inpatient facility and, if applicable, the outpatient behavioral health services program, which shall include evidence~~[the following]~~:

1. [Evidence] Of the results of a tuberculosis test, performed either prior to or within the first week of employment and annually thereafter;

2. [Evidence] Of education, training, and experience, and a copy of current license or certification credentials, if applicable;

3. [Evidence] That the employee received orientation to the facility's written policies within the first week of employment; and

4. [Evidence] Of regular in-service training ~~that[which]~~ corresponds with job duties and includes a list of training and dates completed.

(7) Staffing requirements.

(a) The chemical dependency treatment program shall have personnel sufficient to meet patient needs at the inpatient facility on a twenty-four (24) hour basis.

(b) The number and classification of personnel required shall be based on the number of patients and the individual treatment plans.

(8) Medical director. The chemical dependency treatment program's inpatient facility shall have a medical director who shall:

(a) Be a physician licensed in accordance with KRS 311.571.[:];

(b) Be responsible for the medical aspect of the program; and

(c) Have duties ~~that[which]~~ shall include:

1. Patient admission;

2. Approval of patient treatment plans;

3. Participation in the quality assurance review; and

4. Provision of medical services, personally or by a designated physician, either in-house or on-call, on a twenty-four (24) hour basis.

(9) Interdisciplinary team. The chemical dependency treatment program shall have an interdisciplinary team responsible for:

(a) Developing individual treatment plans;

(b) Developing aftercare plans; and

(c) Conducting quality assurance reviews.

(10) Treatment director. The chemical dependency treatment program shall have a full time treatment director responsible for:

(a) Coordinating the interdisciplinary team in developing individual treatment plans;

(b) Initiating a periodic review of each patient's treatment plan;

(c) Supervising the maintenance of patient records; and

(d) Coordinating the interdisciplinary team in developing an aftercare plan for each patient to provide continuity of care.

(11) Nursing services within the chemical dependency treatment program's inpatient facility.

(a) Nursing services shall be available on a twenty-four (24) hour basis.

(b) The program shall have at least one (1) full-time registered nurse.

(c) If a registered nurse is not on duty, a licensed practical nurse shall be responsible for the nursing care of patients and a registered nurse shall be on call.

(12) Medical supervision. A physician, or registered nurse under the direction of a physician, shall supervise:

(a) Implementation of the medical aspects of the treatment plan; and

(b) All staff directly involved in patient medical care.

(13) In-service training.

(a) All personnel of the chemical dependency treatment program's inpatient facility or, if applicable, the outpatient behavioral health services program[,] shall participate in ongoing in-service training specific to the employee's job activities.

(b) Training shall include:

1. Thorough job orientation for new personnel; and

2. Regular in-service training emphasizing professional competence and the human relationship necessary for effective health care.

(14) Patient records of the chemical dependency treatment program's inpatient facility.

(a)1. An individual record shall be maintained for each patient.

2. Each entry shall be signed and dated by the person making the entry.

(b) At the time of admission, the following information shall be entered into the patient's record:

1. Name, date of admission, birth date and place, marital status, and Social Security number;

2. Person to contact in case of emergency;

3. Next of kin; and

4. Type and place of employment.

(c) The record shall contain documentation of medical services provided during detoxification and rehabilitation, including the results of physical examinations.

(d)1. The record shall contain the patient's treatment plan establishing~~outlining~~ goals and objectives for the individual during treatment.

2. The record shall also contain documentation of how the plan was implemented and of patient progress in meeting the goals and objectives established~~outlined~~ in the treatment plan.

(e) The record shall contain notation of medication administered, stating the date, time, dosage, and frequency of administration and the name of the person administering each dose.

(f) The record shall contain a discharge summary and a plan for aftercare.

(g) The discharge summary shall be entered in the patient's record within seven (7) days after discharge and shall include:

1. The course and progress of the patient with regard to the individual treatment plan;

2. General observations of the patient's condition initially, during treatment, and at discharge; and

3. The recommendations and arrangements for further treatment, including prescribed medications and aftercare.

(h) If the patient is referred to another service provider after discharge, and if the patient executes a written release, a copy of the discharge summary shall be ~~[with the patient's permission]~~ sent to the provider with the patient's permission.

(i) After a patient's death or discharge, the completed record shall be placed in an inactive file and be retained for at least the longer of:

1. ~~[Retained for]~~ Six (6) years; or

2. If a minor, three (3) years after the patient reaches the age of majority pursuant to KRS 2.015~~[under state law, whichever is longest].~~

(15) Confidentiality and Security: Use and Disclosure.

(a) The chemical dependency treatment program shall maintain the confidentiality and security of medical records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 through~~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, Subparts A and C, or as provided by applicable federal or state law, including 42 U.S.C. 290ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

(b) The chemical dependency treatment program may use and disclose medical records. Use and disclosure shall be as established or required by:

1. HIPAA, 42 U.S.C. 1320d-2 through~~to~~ 1320d-8, and 45 C.F.R. Parts 160 and 164; or

2. 42 U.S.C. 290ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

(c) This administrative regulation shall not be construed to ~~prohibit~~~~forbid~~ the chemical dependency treatment program from establishing higher levels of confidentiality and security than required by HIPAA, 42 U.S.C. 1320d-2 through~~to~~ 1320d-8, and 45 C.F.R. Parts 160 and 164, or 42 U.S.C. 290ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

(16) Linkage agreements.

(a) The program shall have linkages through written agreements with providers of other levels of care ~~that could~~~~which may~~ be medically indicated to supplement the services available in the program.

(b) Linkages shall include a hospital and an emergency medical transportation service in the area.

(17) Quality assurance. The program shall have a quality assurance program that includes an effective mechanism for reviewing and evaluating patient care on a regular basis by the interdisciplinary team.

(18) Medications.

(a) A prescription or nonprescription medication administered to a patient shall be noted in the patient's records with the date, time, and dosage, and signed by the person administering the medication.

(b) Each prescription medication shall be plainly labeled with the:

1. Patient's name;

2. Name of the drug;

3. Strength;

4. Name of pharmacy;

5. Date;

6. Physician name;

7. Caution statement; and

8. Directions for use.

(c)1. A prescription or nonprescription medication shall not be administered to a patient except on the written order of a physician or other practitioner acting within his or her statutory scope of practice.

2. A medication shall be administered by licensed personnel.

(d)1. Medication shall be kept in a locked storage area, which shall be well lighted and of sufficient size to permit storage without crowding.

2. Medication requiring refrigeration shall be kept in a separate locked box in a refrigerator.

3. Medication for external use shall be stored separately from medication administered by mouth or injection.

(e) A medication error or drug reaction shall be reported immediately to the medical director and treatment coordinator and an entry shall be made in the patient's record.

(f) An emergency medical kit, with contents approved by a physician, shall be:

1. Maintained at the facility; and

2. Inspected after use or at least monthly to remove deteriorated and outdated drugs and to ensure completeness of content.

(19) Restraints. Requirements for the use of restraints shall be met pursuant to KRS 202A.241 and 908 KAR 3:010, Section 9.

(20) Activities schedule. A daily schedule of program activities shall be posted in the chemical dependency treatment program's inpatient facility.

Section 4. Provision of Services. (1) Withdrawal management

services [Detoxification]. A chemical dependency treatment program's inpatient facility shall:

(a) Provide medically monitored intensive inpatient withdrawal [medical detoxification] services pursuant to the requirements of 902 KAR 20:111 and the service criteria in the most recent version of The American Society of Addiction Medicine (ASAM) Criteria relating to the appropriate level of care for the patient. Services shall be provided directly or through another licensed provider for a patient who meets the:

1. ~~(a)~~ Diagnostic criteria for substance intoxication or withdrawal 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

2. ~~(b)~~ Dimensional criteria for medically monitored intensive inpatient services or medically managed intensive inpatient services in accordance with the most recent version of The ASAM [American Society of Addiction Medicine (ASAM)] Criteria;

(b) Meet the service criteria established by the most recent version of The ASAM Criteria for ASAM level of care 3.7, medically monitored withdrawal management services, if providing that level of care, including:

1. A planned and structured regimen of twenty-four (24) hour professionally directed evaluation, observation, medical monitoring, and addiction treatment;

2. Twenty-four (24) hour nursing care;

3. Twenty-four (24) hour access to a physician; and

4. Twenty-four (24) hour access to a psychiatrist; and

(c) Meet the service criteria established by the most recent version of The ASAM Criteria for ASAM level of care 4.0, medically managed withdrawal management services, if providing that level of care, including:

1. A planned and structured regimen of twenty-four (24) hour professionally directed evaluation, observation, medical monitoring, and addiction treatment;

2. Twenty-four (24) hour nursing care;

3. Twenty-four (24) hour physician care; and

4. Twenty-four (24) hour access to a psychiatrist [requires detoxification].

(2) High intensity residential services. A chemical treatment dependency program may provide clinically managed high intensity residential services. If a chemical dependency treatment program provides this level of care, it shall comply with the requirements of 908 KAR 1:372, Section 2, in addition to the requirements of this administrative regulation.

(3) Rehabilitation. A chemical dependency treatment program's inpatient facility shall provide:

(a) Medical services as needed, under the supervision of a physician;

(b) Scheduled individual, group, and family counseling;

(c) Psychological testing and evaluation as needed;

(d) Education of the patient on the subject of chemical dependency and related lifestyle issues, including nutrition and communication skills;

(e) Recreational activities with facilities and equipment, consistent with the patient's needs and the therapeutic program;

(f) Referral to other rehabilitative or community service agencies providing services not available through the program; and

(g) Aftercare services provided directly or through arrangement with another agency.

(4)(3) Physical examinations. Within ten (10) days prior to, or three (3) days after, admission to the chemical dependency treatment program's inpatient facility for rehabilitation, a patient shall have a physical examination with tests ordered by a physician.

(5)(4) Psychosocial history.

(a) A patient in a chemical dependency treatment program's inpatient facility shall have a psychosocial history and assessment interview within seventy-two (72) hours after admission for rehabilitation.

(b) The following data shall be collected and recorded in the patient record:

1. History of alcohol and drug use;
2. A determination of current emotional state;
3. Vocational history;
4. Familial relationships; and
5. Educational background.

(6)(5) Treatment plan.

(a) The interdisciplinary team, with the participation of the patient, shall develop an individual treatment plan within four (4) days after admission to the chemical dependency treatment program's inpatient facility for rehabilitation, based on the patient's medical evaluation and psychosocial history and assessment.

(b) The treatment plan shall:

1. Specify the services required for meeting the patient's needs;

2. Identify goals necessary for the patient to achieve, maintain, or reestablish physical health and adaptive capabilities;

3. Establish goals with both long-term and short-term objectives and the anticipated time expected to meet these goals; and

4. Identify the location and frequency of treatment procedures, including referrals for a required service not provided by the program.

(7)(6) The treatment plan shall be reviewed and updated at least weekly for the duration of the inpatient treatment.

(8)(7)(a) The patient's family or significant others shall be involved in the treatment process, if approved by the patient.

(b) An attempt to involve family members or significant others shall be reported in the patient's medical record.

(9)(8) Aftercare plan.

(a)1. A written aftercare plan shall be developed prior to completion of treatment in the chemical dependency treatment program's inpatient facility by the:

a. Interdisciplinary team;

b. Patient; and

c. With the patient's permission, [the] patient's family or significant others.

2. The aftercare plan shall be designed to establish continued contact for the support of the patient.

(b) The aftercare plan shall include methods and procedures to meet patient needs through direct contact or with assistance from other community human services organizations.

(c) If aftercare services are provided directly, review and update of the aftercare plan shall be conducted with the frequency of review determined by the:

1. Interdisciplinary team;

2. Patient; and

3. With the patient's permission, [the] patient's family or significant others.

(d) If the patient is referred to another agency for aftercare services, follow-up shall be conducted to determine if services are being provided.

Section 5. Provision of Outpatient Behavioral Health Services, Plan of Care, and Client Records. (1) Pursuant to Section 2(3) of this administrative regulation, a chemical dependency treatment program may provide one (1) or more of the following outpatient behavioral health services for individuals with a substance use disorder or co-occurring disorder in which substance use disorder is the primary diagnosis:

(a) Screening, which shall be provided face-to-face or via telehealth by a behavioral health professional, behavioral health professional under clinical supervision, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate to determine the:

1. Likelihood that an individual has a substance use disorder or co-occurring disorder in which substance use disorder is the primary diagnosis; and

2. Need for an assessment;

(b) Assessment, which shall:

1. Be provided face-to-face or via telehealth by a behavioral health professional, behavioral health professional under clinical supervision, a certified alcohol and drug counselor, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug

counselor associate who gathers information and engages in a process with the client, thereby enabling the professional to:

a. Establish the presence or absence of a substance use disorder or co-occurring disorder in which substance use disorder is the primary diagnosis;

b. Determine the client's readiness for change;

c. Identify the client's strengths or problem areas that could[which may] affect the treatment and recovery processes; and

d. Engage the client in developing an appropriate treatment relationship;

2. Establish or rule out the existence of a clinical disorder or service need;

3. Include working with the client to develop a plan of care if a clinical disorder or service need is assessed; and

4. Not include psychological or psychiatric evaluations or assessments;

(c) Psychological testing, which shall:

1. Be performed face-to-face or via telehealth by a licensed psychologist, licensed psychological associate, or licensed psychological practitioner; and

2. Include a psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities, and interpretation and written report of testing results;

(d) Crisis intervention, which:

1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to the client or another individual;

2. Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities;

3. Shall be provided:

a. ~~[On-site at the chemical dependency treatment program's facility;~~

b.] As an immediate relief to the presenting problem or threat; and

b.[c.] In a face-to-face, one (1) on one (1) encounter or as a comparable service provided via telehealth;

4. ~~[May include verbal de-escalation, risk assessment, or cognitive therapy;~~

5.] Shall be provided by a:

a. Behavioral health professional;

b. Behavioral health professional under clinical supervision;

c. Certified alcohol and drug counselor;

d. Licensed clinical alcohol and drug counselor; or

e. Licensed clinical alcohol and drug counselor associate;

5.~~[6.]~~ Shall be followed by a referral to noncrisis services, if applicable; and

6.~~[7.]~~ May include:

a. Further service prevention planning, including:

(i) Lethal means reduction for suicide risk; or

(ii) Substance use disorder relapse prevention; or

b. Verbal de-escalation, risk assessment, or cognitive therapy;

(e) Mobile crisis services, which shall:

1. Be available twenty-four (24) hours a day, seven (7) days a week, every day of the year;

2. Be provided for a duration of less than twenty-four (24) hours;

3. Not be an overnight service;

4. Be a multi-disciplinary team based intervention performed face-to-face or via telehealth that ensures access to acute substance use services and supports to:

a. Reduce symptoms or harm; or

b. Safely transition an individual in an acute crisis to appropriate, least restrictive level of care;

5. Involve all services and supports necessary to provide:

a. Integrated crisis prevention;

b. Assessment and disposition;

c. Intervention;

d. Continuity of care recommendations; and

e. Follow-up services;

6. Be provided in a home or community setting by a:

a. Behavioral health professional;

b. Behavioral health professional under clinical supervision;

c. Certified alcohol and drug counselor;

d. Licensed clinical alcohol and drug counselor; or

e. Licensed clinical alcohol and drug counselor associate; and

7. Ensure access to a board certified or board-eligible psychiatrist twenty-four (24) hours a day, seven (7) days a week, every day of the year;

(f) Day treatment, which shall:

1. Be a nonresidential, intensive treatment program designed for children who:

a. Have a substance use disorder or co-occurring disorder in which substance use disorder is the primary diagnosis;

b. Are under twenty-one (21) years of age; and

c. Are at high risk of out-of-home placement due to a behavioral health issue;

2. Consist of an organized, behavioral health program of treatment and rehabilitative services for substance use disorder or co-occurring disorder in which substance use disorder is the primary diagnosis;

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;

4. Include ~~[the following]:~~

a. Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;

b. Behavior management and social skill training;

c. Independent living skills that correlate to the age and development stage of the client; and

d. Services designed to explore and link with community resources before discharge and to assist the client and family with transition to community services after discharge;

5. Be provided ~~[as follows]:~~

a. Face-to-face or via telehealth;

b. 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);

c.~~[b.]~~ On school days and during scheduled breaks;

d.~~[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;

e.~~[d.]~~ By personnel that includes a behavioral health professional, a behavioral health professional under clinical supervision, a certified alcohol and drug counselor, a licensed clinical alcohol and drug counselor, a licensed clinical alcohol and drug counselor associate, or a peer support specialist; and

f.~~[e.]~~ According to a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider; and

6. Not include a therapeutic clinical service that is included in a child's individualized education plan;

(g) Peer support, which shall:

1. Be provided by a peer support specialist;

2. Be structured and scheduled nonclinical therapeutic activity with a client or group of clients;

3. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills; **[and]**

4. Be identified in the client's plan of care developed through a person-centered planning process; and

5. Be provided face-to-face or via telehealth;

(h) Intensive outpatient program services, which shall:

1. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;

2. Be provided at least:

a. Three (3) hours per day at least three (3) days per week for adults; or

b. Six (6) hours per week for adolescents;

3. Include ~~[the following]:~~

a. Individual outpatient therapy;

b. Group outpatient therapy;

c. Family outpatient therapy unless contraindicated;

d. Crisis intervention; or

e. Psycho-education during which the client or client's family member shall be:

(i) Provided with knowledge regarding the client's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and

(ii) Taught how to cope with the client's diagnosis or condition in a successful manner;

4. Include a treatment plan, which shall:

a. Be individualized; and

b. Focus on stabilization and transition to a lower level of care;

5. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate;

6. Include access to a board-certified or board-eligible psychiatrist for consultation;

7. Include access to a psychiatrist, other physician, or advanced practice registered nurse for medication prescribing and monitoring; **[and]**

8. Be provided in a setting with a minimum client-to-staff ratio of ten (10) clients to one (1) staff person; **and**

9. Be provided face-to-face or via telehealth;

(i) Individual outpatient therapy, which shall:

1. Be provided to promote the:

a. Health and wellbeing of the client; or

b. Recovery from a substance related disorder;

2. Consist of:

a. A face-to-face encounter or telehealth consultation with the client; and

b. A behavioral health therapeutic intervention provided in accordance with the client's plan of care;

3. Be aimed at:

a. Reducing adverse symptoms;

b. Reducing or eliminating the presenting problem of the client; and

c. Improving functioning;

4. Not exceed three (3) hours per day 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

5. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate;

(j) Group outpatient therapy, which shall:

1. Be provided to promote the:

a. Health and wellbeing of the client; or

b. Recovery from a substance related disorder;

2. Consist of a face-to-face behavioral health therapeutic intervention or telehealth consultation provided in accordance with the client's plan of care;

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;

4. Focus on the psychological needs of the client as evidenced in the client's plan of care;

5. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;

6. Not include physical exercise, a recreational activity, an educational activity, or a social activity;

7. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy [per-client] unless additional time is medically necessary in accordance with 907 KAR 3:130;

8. Ensure that the group has a deliberate focus and defined course of treatment;

9. Ensure that the subject of group outpatient therapy shall be related to each client participating in the group; and

10. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate who shall maintain individual notes regarding each client within the group in the client's record;

(k) Family outpatient therapy, which shall:

1. Consist of a ~~[face-to-face]~~ behavioral health therapeutic intervention provided face-to-face or via telehealth through scheduled therapeutic visits between the therapist, at least one (1) member of the client's family, and the client unless the client's presence is not required in his or her plan of care;

2. Address issues interfering with the relational functioning of the family;

3. Seek to improve interpersonal relationships within the client's home environment;

4. Be provided to promote the health and wellbeing of the client or recovery from a substance use disorder;

5. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy [per-client] unless additional time is medically necessary in accordance with 907 KAR 3:130; and

6. Be provided by a behavioral health professional, a behavioral health professional under clinical supervision, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate;

(l) Collateral outpatient therapy, which shall consist of a face-to-face or telehealth behavioral health consultation:

1. 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;

2. Provided by a behavioral health professional, behavioral health professional under clinical supervision, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate; and

3. Provided upon the written consent of a parent, caregiver, or person who has custodial control of a client under the age of twenty-one (21). Documentation of written consent shall be signed and maintained in the client's record;

(m) Screening, brief intervention, and referral to treatment for substance use disorders, which shall:

1. Be provided face-to-face or via telehealth;

2. 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;

3. ~~[2.]~~ Consist of:

a. Using a standardized screening tool to assess the individual for risky substance use behavior;

b. Engaging a client who demonstrates risky substance use behavior in a short conversation, providing feedback and advice; **and**

c. Referring the client to therapy or other services that address substance use if the client is determined to need additional services; and

4. ~~[3.]~~ Be provided by a behavioral health professional, behavioral health professional under clinical supervision, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate; ~~[or]~~

(n) Targeted case management services, which shall:

1. Include services to an:

a. Adult or a child with substance use disorder; or

b. Adult or child with co-occurring mental health or substance use disorder and chronic or complex physical health issues;

2. Be provided by a targeted case manager ~~[as described in subsection (2) or (3) of this section];~~ and

3. Include the following assistance:

a. Comprehensive assessment and reassessment of client needs to determine the need for medical, educational, social, or other services. The reassessment shall be conducted annually or more often if needed based on changes in the client's condition;

b. Development of a specific care plan that[which] shall be

based on information collected during the assessment and revised if needed upon reassessment;

c. Referral and related activities, which may include:

(i) Scheduling appointments for the client to help the individual obtain needed services; or

(ii) Activities that help link the client with medical, social, educational providers, or other programs and services ~~that~~[which] address identified needs and achieve goals specified in the care plan;

d. Monitoring, which shall be face-to-face or via telehealth and occur no less than once every three (3) months to determine that:

(i) Services are furnished according to the client's care plan;

(ii) Services in the care plan are adequate; and

(iii) Changes in the needs or status of the client are reflected in the care plan; and

e. Contacts with the client, family members, service providers, or others are conducted as frequently as needed to help the client:

(i) Access services;

(ii) Identify needs and supports to assist the client in obtaining services; and

(iii) Identify changes in the client's needs;

(o) Service planning, which shall be provided face-to-face or via telehealth by a behavioral health professional, behavioral health professional under clinical supervision, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate, any of which shall be of the client's choosing to:

1. Assist the client 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 disorder;

2. Restore the client's functional level to the client's best possible functional level; and

3. Develop a service plan, which:

a. Shall be directed and signed by the client; and

b. May include:

(i) A mental health advance directive being filed with a local hospital;

(ii) A crisis plan; or

(iii) A relapse prevention strategy or plan; ~~or~~

(p) Medication assisted treatment with behavioral health therapy, which shall:

1. Exclude methadone-based treatment restricted to licensure in accordance with 908 KAR 1:370 and 908 KAR 1:374;

2. Require an advanced practice registered nurse, a physician, or a physician assistant who prescribes FDA-approved drugs for the treatment of opioid addiction in adult patients to:

a. Document in the patient's record whether or not the patient is compliant with prescribed dosing as evidenced by the results of:

(i) A KASPER report released to the practitioner pursuant to KRS 218A.202(7)(e); and

(ii) Drug testing; and

b. Comply with the prescribing and dispensing standards in 201 KAR 9:270 or 201 KAR 20:065 for FDA-approved drugs used for the treatment of opioid addiction; ~~and~~

3. Be co-located within the same practicing site as the prescribing provider or conducted via telehealth; and

4. Include individual and group outpatient therapy as a service and document monitoring of compliance with recommended non-medication therapies; or

(g) Ambulatory withdrawal management services, which shall be:

1. Provided face-to-face to patients who meet the:

a. Diagnostic criteria for substance intoxication or withdrawal disorder as established by the most recent version of the Diagnostic and Statistical Manual of Mental Disorders (DSM); and

b. Dimensional criteria for outpatient withdrawal management as established in the most recent version of The ASAM Criteria;

2. Provided in regularly scheduled sessions; and

3. Delivered in accordance with clinical protocols

established for ambulatory withdrawal management in the most recent version of The ASAM Criteria.

(2) [A case manager who provides targeted case management services to clients with a substance use disorder shall:

(a) ~~Be a certified alcohol and drug counselor, meet the grandfather requirements of 907 KAR 15:040, Section 4(1)(a)3, or 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;~~

~~8. Behavioral analysis;~~

~~9. Public health;~~

~~10. Special education;~~

~~11. Gerontology;~~

~~12. Recreational therapy;~~

~~13. Education;~~

~~14. Occupational therapy;~~

~~15. Physical therapy;~~

~~16. Speech-language pathology;~~

~~17. Rehabilitation counseling; or~~

~~18. Faith-based education;~~

~~(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 the requirements 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 in accordance with 908 KAR 2:260; and~~

~~2. Successfully complete continuing education requirements in accordance with 908 KAR 2:260; and~~

~~(d) Be supervised by a behavioral health professional who:~~

~~1. Has completed case management training 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.~~

~~(3) A case manager who provides targeted case management services to clients with a mental health or substance use disorder and chronic or complex physical health issues shall:~~

~~(a) Meet the requirements of subsection (2)(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 a human services field as described in subsection (2)(a) of this section, 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 in accordance with 908 KAR 2:260; and~~

~~2. Successfully complete continuing education requirements in accordance with 908 KAR 2:260; and~~

~~(d) For a bachelor's level case manager, be supervised by a behavioral health professional who:~~

~~1. Has completed case management training 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.~~

~~(4) Plan of care.~~

~~(a) Each client receiving outpatient behavioral health services from a chemical dependency treatment program shall have an individual plan of care signed by a behavioral health professional.~~

~~(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. Establish~~[Specify]~~ criteria to be met for termination of treatment;

7. Include any referrals necessary for services not provided directly by the chemical dependency treatment program; and

8. State the date scheduled for review of the plan.

(c) 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.

(d)1. The initial plan of care shall be developed through multidisciplinary team conferences at least thirty (30) days following the first ten (10) days of treatment.

2. The plan of care for individuals receiving intensive outpatient program services shall be reviewed every thirty (30) days thereafter and updated every sixty (60) days or earlier if clinically indicated.

3. Except for intensive outpatient program services, the plan of care for individuals receiving any other outpatient behavioral health service established~~[described]~~ in subsection (1) of this section shall be reviewed and updated every six (6) months or earlier if clinically indicated.

4. The plan of care and each review and update shall be signed by the participants in the multidisciplinary team conference that developed it.

(3)~~[(5)]~~ Client Records.

(a) A client record shall be maintained for each individual receiving outpatient behavioral health services.

(b) Each entry shall be current, dated, signed, and indexed according to the service received.

(c) Each client record shall contain:

1. An identification sheet, including the client's name, address, age, gender, marital status, expected source of payment, and referral source;

2. Information on the purpose for seeking a service;

3. If applicable, consent of appropriate family members or guardians for admission, evaluation, and treatment;

4. Screening information pertaining to the mental health or substance use disorder;

5. If applicable, a psychosocial history;

6. If applicable, staff notes on services provided;

7. If applicable, the client's plan of care;

8. If applicable, disposition;

9. If applicable, assigned status;

10. If applicable, assigned therapists; and

11. If applicable, a termination study restating~~[recapitulating]~~ findings and events during treatment, clinical impressions, and condition on termination.

Section 6. Compliance with Building Codes, Ordinances, and Regulations; Chemical Dependency Treatment Program's Inpatient Facility. (1) The provisions of this administrative regulation shall not relieve the licensee from compliance with building codes, ordinances, and administrative regulations that~~[which]~~ are enforced by city, county, or state jurisdictions.

(2) The following shall apply:

(a) Requirements for safety pursuant to the National Fire Protection Association 101, Life Safety Code adopted by the Kentucky Department of Housing, Buildings and Construction;

(b) Requirements for plumbing pursuant to 815 KAR 20:010 through 815 KAR 20:195~~[20:494]~~; and

(c) Requirements for making buildings and facilities accessible to and usable by persons with disabilities.

(3) The facility shall be approved by the Fire Marshal's Office before a license or license renewal is granted.

(4) The facility shall receive necessary approval from

appropriate agencies prior to occupancy and licensure.

(5) Physical and sanitary environment.

(a) The physical plant and overall facility environment shall be maintained to protect the safety and well-being of patients, personnel, and visitors.

(b) A person shall be designated responsible for services and for the establishment of practices and procedures for~~[in each of the following areas]~~:

1. Plant maintenance;

2. Laundry operations either on site or off site; and

3. Housekeeping.

(c) The facility buildings, equipment, and surroundings shall be kept in good repair, neat, clean, free from accumulation of dirt and rubbish, and free from foul, stale, or musty odors.

1. An adequate number of housekeeping and maintenance personnel shall be provided.

2. Written housekeeping procedures shall be established for each area, and copies shall be available to personnel.

3. Equipment and supplies shall be provided for cleaning surfaces. The equipment shall be maintained in a safe, sanitary condition.

4. A hazardous cleaning solution, compound, or substance shall be labeled, stored in an approved container, and kept separate from nonhazardous cleaning materials.

5. The facility shall be free from insects, rodents, and their harborage.

6. Garbage and trash shall be stored in closed containers in an area separate from an area used for the preparation or storage of food.

7. The garbage and trash area shall be cleaned regularly and shall be in good repair.

(d) The facility shall have available at all times a quantity of linen essential to the proper care and comfort of residents.

1. Clean linen and clothing shall be stored in clean, dry, dust-free areas designated exclusively for this purpose.

2. Soiled linen and clothing shall be placed in suitable bags or closed containers and stored in a separate area ventilated to the exterior of the building.

Section 7. Chemical Dependency Treatment Program's Inpatient Facility Requirements and Special Conditions. (1) Patient rooms. Each patient room shall meet the [following] requirements established in this subsection.~~[-]~~

(a) The maximum room capacity shall be six (6) patients.

(b) The minimum room area, exclusive of toilet room, closet, locker, wardrobe, or vestibule, shall be:

1. 100 square feet for a one (1) bed room; and

2. Eighty (80) square feet per bed for multibed rooms.

(c)1. Partitions, cubicle curtains, or placement of furniture shall be used to provide privacy in a multiperson room.

2. Ample closet and drawer space shall be provided for the storage of each patient's personal property.

(d) The placement of a patient in a multibed room shall be appropriate to the age and program needs of the patient.

(2) Lavatory.

(a) In a single or multibed room with a private toilet room, the lavatory may be located in the toilet room.

(b) If two (2) or more patients share a common toilet, a lavatory shall be provided in each patient room.

(3) Centralized toilet area.

(a) If a centralized toilet area is used, the facility shall provide, for each gender on each floor, at least one (1) toilet for each eight (8) residents or a major fraction thereof.

(b) Toilets shall be separated by a permanent partition and at least one (1) toilet for each gender shall be designed for wheelchair use.

(4) Patient baths.

(a) There shall be at least one (1) shower stall or one (1) bathtub for each fifteen (15) patients not individually served.

(b) Each bathtub or shower shall provide space for the private use of the fixture and for dressing.

(5) The patient shall be encouraged to take responsibility for maintaining his or her own living quarters and for other day-to-day

housekeeping activities of the program, as appropriate to his or her clinical status.

(6) Dietary service.

(a) The facility shall have a dietary department, organized, directed, and staffed to provide quality food service and optimal nutritional care.

1. The dietary service shall be directed on a full-time basis by an individual who, by education or specialized training and experience, is knowledgeable in food service management.

2. The dietary service shall have at least one (1) dietician licensed pursuant to KRS 310.021 to supervise the nutritional aspects of patient care and to approve menus on at least a consultative basis.

3. If food service personnel are assigned a duty outside the dietary department, the duty shall not interfere with the sanitation, safety, or time required for regular dietary assignments.

(b)1. A menu shall be planned, written, and rotated to avoid repetition.

2. Nutritional needs shall be met in accordance with:

a. Recommended dietary allowances of the Food and Nutrition Board of the National Research Council of the National Academy of Sciences; and

b. Physician orders, if applicable.

(c)1. A meal served shall correspond with the posted menu.

2. If a change in the menu is necessary;

a. Substitution shall provide equal nutritive value; and

b. The change shall be recorded on the menu.

3. A menu shall be kept on file for at least thirty (30) days.

(d) Food shall be:

1. Prepared by methods that conserve nutritive value, flavor, and appearance; and

2. Served at the proper temperature.

(e)1. At least three (3) meals shall be served daily with not more than a fifteen (15) hour span between a substantial evening meal and breakfast.

2. Each meal shall be served at a regular time and a nourishing between-meal or bedtime snack shall be offered.

(f) Food services shall be provided in accordance with 902 KAR 45:005.

Section 8. Physical environment of an off-campus extension or separate building on the campus of the chemical dependency treatment program's inpatient facility where outpatient behavioral health services are provided. (1) Accessibility. The off-campus extension or separate building on the campus of the chemical dependency treatment program's inpatient facility 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) Physical location and overall environment.

(a) The program 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 a manner that assures the safety and well-being of clients, personnel, and visitors.

(3) Prior to occupancy, the facility shall have final approval from appropriate agencies.

ADAM D. MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: February 11, 2021

FILED WITH LRC: February 11, 2021 at 4:16 p.m.

CONTACT PERSON: Donna Little, Deputy Executive Director,

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Kara L. Daniel and Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes minimum licensure requirements for the operation of chemical dependency treatment programs, including programs that elect to provide outpatient behavioral health services for individuals with a substance use disorder (SUD) or co-occurring disorder in which SUD is the primary diagnosis.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.042(1), which requires the Cabinet for Health and Family Services to 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. Additionally, this administrative regulation is necessary to comply with KRS 216B.105, which, unless otherwise exempt, prohibits the operation of a health facility without a Cabinet-issued license.

(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 minimum licensure requirements for the operation of chemical dependency treatment programs.

(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 chemical dependency treatment programs.

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

(a) How the amendment will change this existing administrative regulation: This amendment is being filed concurrently with the Department for Medicaid Services administrative regulation, 907 KAR 15:080, Coverage provisions and requirements regarding chemical dependency treatment center services. Key changes to this administrative regulation, 902 KAR 20:160, are as follows: Amends Section 1(1)(a) to clarify that a psychiatrist, as included under the definition of "behavioral health professional", may be certified or eligible to apply for certification by the American Osteopathic Board of Neurology; Updates the definition of "peer support specialist" to include a registered alcohol and drug peer support specialist, and adds clarifying language related to the supervision of peer support specialists; Adds "targeted case manager" to Section 1, Definitions, and amends Section 5(2) and (3) 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; Replaces the "detoxification" with "medically monitored intensive inpatient services" and requires the patient to meet the diagnostic criteria for substance intoxication or withdrawal 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 also meet the dimensional criteria for medically monitored intensive inpatient services in accordance with the most recent version of The American Society of Addiction Medicine (ASAM) Criteria; Allows for screening, assessment, psychological testing, crisis intervention, individual outpatient therapy, family outpatient therapy, collateral outpatient therapy, and screening, brief intervention, and referral to treatment for SUD to be provided via telehealth; Removes the requirement for crisis intervention to be provided on-site at the program's facility; Clarifies the number of hours per week that intensive outpatient services may be provided to adolescents; and Adds service planning and medication assisted treatment as services that may be provided by a chemical dependency treatment program. The Amended After Comments version clarifies that a CDTF can provide ASAM levels

of care 3.7 and 4.0 services consistent with their license, if appropriate, and that they are required to comply with the ASAM service criteria for those levels of care. It also adds language to clarify that a CDTF may provide clinically managed high intensity residential services. This version also adds telehealth as an available method of service delivery consistent with the requirements in the Medicaid CDTF regulation, 907 KAR 15:080, and it adds ambulatory withdrawal management services as an outpatient service that CDTFs may provide.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to align with the proposed changes to 907 KAR 15:080 and otherwise address necessary housekeeping changes.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216B.042 because it establishes minimum licensure requirements for the operation of chemical dependency treatment centers.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by establishing standards for licensed chemical dependency treatment centers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects the three (3) currently licensed chemical dependency treatment centers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities licensed in accordance with this administrative regulation are required to comply with the standards established by this administrative regulation, including the following: Must operate a structured inpatient program to provide medical, social, diagnostic, and treatment services to individuals with SUD; Must ensure that inpatient services are provided under the medical direction of a physician; Must provide continuous nursing services; May provide 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 services, individual outpatient therapy, group outpatient therapy, family outpatient therapy, collateral outpatient therapy, screening, brief intervention, and referral to treatment for SUD, targeted case management, service planning, or medication assisted treatment; Must be in compliance with federal, state, and local laws and administrative regulations pertaining to the operation of the chemical dependency treatment program; Must have a governing authority; Must have a program administrator, interdisciplinary team, and treatment director; Must maintain administrative policies, including patient care, patient rights, and personnel policies; Must have a program for in-service training; Must maintain client records in accordance with federal privacy and confidentiality rules; Must have a process for quality assurance; Must comply with requirements for administration and storage of medications; Must post a daily schedule of activities; Must comply with the requirements for providing medically monitored intensive inpatient services, rehabilitation services, physical examination of the patient, psychosocial history, and development of that patient's treatment plan and aftercare plan; Must maintain compliance with applicable state and local laws relating to construction, plumbing, safety, and sanitation; and Must maintain compliance with basic facility requirements for patient rooms, bathrooms, meal service, and overall physical environment.

(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 chemical dependency treatment centers to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensed chemical dependency

treatment centers may enroll in the Kentucky Medicaid Program for reimbursement of covered services provided to Medicaid recipients in need of medically monitored intensive inpatient services, or outpatient services for the treatment of substance use disorder (SUD) or co-occurring disorder in which SUD is the primary diagnosis.

(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 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 who elect to be regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Cabinet for Health and Family Services, Office of Inspector General, and licensed chemical dependency treatment centers.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042 and 216B.105

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? In accordance with 902 KAR 20:008, Section 3(2), the Cabinet collects a fee of \$1,000 + \$25 per bed from each chemical dependency treatment program. In accordance with this administrative regulation, the Cabinet collects \$250 for each outpatient extension site. These fees are existing provisions and have not been amended in this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? In accordance with 902 KAR 20:008, Section 3(2), the Cabinet collects a fee of \$1,000 + \$25 per bed from each chemical dependency treatment program. In accordance with this administrative regulation, the Cabinet collects \$250 for each outpatient extension site. These fees are existing provisions and have not been amended in this amendment.

(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 (+/-): See response above.

Expenditures (+/-): This administrative regulation is anticipated to have minimal fiscal impact to the cabinet.

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 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. 209ee-3, 20 U.S.C. 1400, 29 U.S.C. 701

2. State compliance standards. KRS 216B.042, 216B.105

3. Minimum or uniform standards contained in the federal mandate. 42 C.F.R. Part 2 prohibits programs from disclosing any information that would identify a person as having or having had substance use disorder, unless that person provides written consent. 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. 42 U.S.C. 209ee-3 pertains to the confidentiality of patient records. 20 U.S.C. 1400 is the Individuals with Disabilities Education Act. 29 U.S.C. 701 is Section 504 of the Rehabilitation Act.

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

Office of Inspector General

Division of Health Care

(Amended After Comments)

902 KAR 20:440. Facilities specifications, operation and services; residential crisis stabilization units.

RELATES TO: KRS 17.500, 200.503(2), 210.005, 216B.050, 216B.105(2), 309.080(4), 309.0831, 309.130(2), 311.571, 311.840 – 311.862, 314.042, 319.050, 319.056, 319.064, 319C.010, 335.080, 335.100, 335.300, 335.500, 439.3401, 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320d-2 – 1320d-8, 42 U.S.C. 209ee-3, 42 C.F.R. Part 2

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 residential crisis stabilization units that[which] serve at-risk children or children with severe emotional disabilities, at-risk adults or adults with severe mental illness, or individuals with substance use disorder or co-occurring disorders.

Section 1. Definitions. (1) "Behavioral health professional" means:

(a) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc. or the American Osteopathic Board of Neurology and Psychiatry;

(b) A physician licensed in Kentucky to practice medicine or osteopathy in accordance with KRS 311.571;

(c) A psychologist licensed and practicing in accordance with KRS 319.050;

(d) A certified psychologist with autonomous functioning or licensed psychological practitioner practicing in accordance with KRS 319.056;

(e) A clinical social worker licensed and practicing in accordance with KRS 335.100;

(f) An advanced practice registered nurse licensed and practicing in accordance with KRS 314.042;

(g) A physician assistant as defined by KRS 311.840(3)[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(2);

(i) A licensed professional clinical counselor as defined by [licensed and practicing in accordance with] KRS 335.500(3); or

(j) A licensed professional art therapist as defined by KRS 309.130(2).

(2) "Behavioral health professional under clinical supervision" means a:

(a) Psychologist certified and practicing in accordance with KRS 319.056;

(b) Licensed psychological associate licensed and practicing in accordance with KRS 319.064;

(c) Marriage and family therapy[therapist] associate as defined by KRS 335.300(3);

(d) Social worker certified and practicing in accordance with KRS 335.080;

(e) Licensed professional counselor associate as defined by KRS 335.500(4); or

(f) Licensed professional art therapist associate as defined by KRS 309.130(3).

(3) "Cabinet" means the Cabinet for Health and Family Services.

(4) "Certified alcohol and drug counselor" is defined by KRS 309.080(2).

(5) "Chemical restraint" means the use of a drug that:

(a) Is administered to manage a resident's behavior in a way that reduces the [safety] risk to the resident or others;

(b) Has the temporary effect of restricting the resident's freedom of movement; and

(c) Is not a standard treatment for the resident's medical or psychiatric condition.

(6) "Child with a severe emotional disability" is defined by KRS 200.503(3).

(7) "Crisis stabilization unit" means a community-based facility that is not part of an inpatient unit and that[which] provides crisis services to no more than sixteen (16) [twelve-(12)] clients who require overnight stays.

(8) "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(4);

(9) "Mechanical restraint" means any device attached or adjacent to a resident's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body.

(10) [(9)] "Peer support specialist" means a paraprofessional who:

(a) Is a registered alcohol and drug peer support specialist in accordance with KRS 309.0831; or

(b)1. Meets the application, training, examination, and supervision requirements of 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240; and

2.[(b)] Works under the supervision of one (1) of the following:

a.[1.] Physician;

b.[2.] Psychiatrist;

c.[3.] Licensed psychologist;

d.[4.] Licensed psychological practitioner;

e.[5.] Licensed psychological associate;

f.[6.] Licensed clinical social worker;

g.[7.] Licensed marriage and family therapist;

h.[8.] Licensed professional clinical counselor;

i.[9.] Certified social worker;

j.[10.] Licensed marriage and family therapy[therapist] associate;

k.[11.] Licensed professional counselor associate;

l.[12.] Licensed professional art therapist;

m.[13.] Licensed professional art therapist associate;

n.[14.] Advanced practice registered nurse;

o.[15.] Physician assistant; [or]

p.[46:] Certified alcohol and drug counselor; or
q. Licensed clinical alcohol and drug counselor.

(11) [(40)] "Personal restraint" means the application of physical force without the use of any device for the purpose of restraining the free movement of a resident's body and does not include briefly holding without undue force a resident in order to calm or comfort him or her or holding a resident's hand to safely escort him or her from one (1) area to another.

(12) [(44)] "Seclusion" means the involuntary confinement of a resident alone in a room or in an area from which the resident is physically prevented from leaving.

(13) [(42)] (12) "Serious mental illness", "severe mental illness", or "SMI" means a diagnosis of a major mental disorder as included in the current edition of the Diagnostic and Statistical Manual of Mental Disorders under:

(a) Schizophrenia spectrum and other psychotic disorders;

(b) Bipolar and related disorders;

(c) Depressive disorders; or

(d) Post-traumatic stress disorders (under trauma and stressor related disorders) ["Severe mental illness" means the conditions defined by KRS 210.005(2) and (3)].

(14) [(43)] "Substance use disorder" is defined by KRS 222.005(12)[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].

(15) [(44)] "Time out" means the restriction of a resident for a period of time to a designated area from which the resident is not physically prevented from leaving, for the purpose of providing the resident an opportunity to regain self-control.

Section 2. Licensure Application and Fees. (1) An applicant for initial licensure as a residential crisis stabilization unit shall submit to the Office of Inspector General:

(a) A completed Application for License to Operate a Residential Crisis Stabilization Unit; 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 residential crisis stabilization unit shall submit to the Office of Inspector General:

(a) A completed Application for License to Operate a Residential Crisis Stabilization Unit; and

(b) An annual renewal fee of \$500, made payable to the Kentucky State Treasurer.

(3)(a) Name change. A residential crisis stabilization unit shall:

1. Notify the Office of Inspector General in writing within ten (10) calendar days of the effective date of a change in the unit's name; and

2. Submit a processing fee of twenty-five (25) dollars.

(b) Change of location. A residential crisis stabilization unit shall not change the location where the unit is operating [operated] until an Application for License to Operate a Residential Crisis Stabilization Unit accompanied by a fee of \$100 is filed with the Office of Inspector General.

(c) Change of ownership.

1. The new owner of a residential crisis stabilization unit shall submit to the Office of Inspector General an Application for License to Operate a Residential Crisis Stabilization Unit 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 in accordance with the criteria of 902 KAR 20:008, Section 2(16)[if more than twenty-five (25) percent of an existing residential crisis stabilization unit or capital stock or voting rights of a corporation is purchased, leased, or otherwise acquired by one (1) person from another].

(4) To obtain approval of initial licensure or renew a license to operate a residential crisis stabilization unit, the applicant or licensee shall be in compliance with this administrative regulation

and federal, state, and local laws and administrative regulations pertaining to the operation of the unit.

~~Section 3. [Location. If an alcohol and other drug abuse treatment program licensed pursuant to 908 KAR 1:370 obtains separate licensure under this administrative regulation to operate a residential crisis stabilization unit, the unit shall be located off the campus of any residential treatment program licensed pursuant to 908 KAR 1:370.~~

~~Section 4.] Accreditation. (1) Unless an extension is granted pursuant to subsection (2) of this section, an entity licensed under this administrative regulation to operate a residential crisis stabilization unit shall become accredited within one (1) year of initial licensure by [one (1) of the following]:~~

~~(a) The Joint Commission;~~

~~(b) The Commission on Accreditation of Rehabilitation Facilities;~~

~~(c) The Council on Accreditation; or~~

~~(d) A nationally recognized accreditation organization.~~

~~(2)(a) If a residential crisis stabilization unit has not obtained accreditation in accordance with subsection (1) of this section within one (1) year of initial licensure, the facility 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 facility 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 the license if the residential crisis stabilization unit fails to [meet one (1) of the following requirements]:~~

~~(a)1. Become accredited in accordance with subsection (1) of this section; or~~

~~2.a.[(b)] Request an extension in accordance with subsection (2) of this section if accreditation will not be[has not been] obtained within one (1) year of initial licensure; and~~

~~b. Become accredited during the extension granted in accordance with subsection (2) of this section; or~~

~~(b) [(e)] Maintain accreditation.~~

~~(4) Proof of accreditation shall be provided to the Office of Inspector General upon receiving accreditation within one (1) year of initial licensure and at the time of annual renewal established[described] in Section 2(2) of this administrative regulation.~~

Section 4.[5.] Administration and Operation. (1) The licensee shall be legally responsible for:

(a) The residential crisis stabilization unit;

(b) The establishment of administrative policy; and

(c) Ensuring compliance with federal, state, and local laws and administrative regulations pertaining to the operation of the residential crisis stabilization unit.

(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 residential crisis stabilization unit's program director established[described] in subsection (5) of this section;

(b) May serve in a dual role as the executive director of a behavioral health services organization (BHSO) or alcohol and other drug treatment entity (AODE) if:

1. The residential crisis stabilization unit and the BHSO or AODE are owned by the same entity; and

2. The residential crisis stabilization unit has a linkage with the BHSO or AODE to assist with continuity of care if needed after discharge from the residential crisis stabilization unit;

(c) Shall be responsible for the administrative management of the residential crisis stabilization unit, including:

1. The total program of the unit in accordance with the unit's written policies; and

2. Evaluation of the unit as it relates to the needs of each

resident; and

(d) 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 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) A residential crisis stabilization unit shall have a program director who:

(a) May serve in a dual role as the program director of a BHSO or AODE if:

1. The residential crisis stabilization unit and the BHSO or AODE are owned by the same entity; and
2. The residential crisis stabilization unit has a linkage with the BHSO or AODE to assist with continuity of care if needed after discharge from the residential crisis stabilization unit; and
- (b) Shall be a:
 1. Psychiatrist;
 2. Physician;
 3. [Certified or] Licensed psychologist or certified psychologist with autonomous functioning;
 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.

Section 5.[6.] License Procedures. An entity licensed under this administrative regulation to operate a residential crisis stabilization unit shall be subject to the provisions of 902 KAR 20:008, Sections 1, 2, 5, 6, and 7.

Section 6.[7.] Background Checks and Personnel Records. (1) All personnel of a residential crisis stabilization unit shall:

- (a) Have a criminal record check performed upon initial hire and every two (2) years through the Administrative Office of the Courts or the Kentucky State Police;
- (b) Not have a criminal conviction, or plea of guilty, to a:
 1. Sex crime as defined by[specified in] KRS 17.500(8);
 2. Violent crime as established[specified] in KRS 439.3401;
 3. Criminal offense against a minor as established[specified] in KRS 17.500; or
 4. Class A felony; and
- (c) Not be listed on the [following]:
 1. Central registry established by 922 KAR 1:470;
 2. Nurse aide or home health aide abuse registry established by 906 KAR 1:100; or
 3. Caregiver misconduct registry established by [922 KAR 5:120E and] 922 KAR 5:120.

(2)[(a)] Prior to initial hire, an out-of-state criminal background information check shall be obtained for any applicant recommended for employment in a residential crisis stabilization unit who has resided or resides outside of the Commonwealth.

[(b)] A residential crisis stabilization unit may use Kentucky's national background check system established by 906 KAR 1:190 to satisfy the background check requirements of subsections (1) and (2)(a) of this section.]

(3) A residential crisis stabilization unit shall perform annual criminal record and registry checks as established[described] in subsection (1) of this section on a random sample of at least twenty-five (25) percent of all personnel.

(4) 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 subsections (1), (2), and (3) of this section;
- (d) Performance appraisals conducted no less than annually; and
- (e) Employee incident reports.

Section 7.[8.] Quality Assurance and Utilization Review. (1) The residential crisis stabilization unit 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 each client.

(2) 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:

- (a) Discharge;
- (b) Transfer; or
- (c) Referral to another service provider, if appropriate.

Section 8.[9.] Client Grievance Policy. The residential crisis stabilization unit shall have written policies and procedures governing client grievances, which shall include [the following]:

- (1) A process for filing a written client grievance;
- (2) An appeals process with time frames for filing and responding to a grievance in writing;
- (3) Protection for a client from interference, coercion, discrimination, or reprisal; and
- (4) Conspicuous posting of the grievance procedures in a public area to inform a client of:
 - (a) His or her right to file a grievance;
 - (b) The process for filing a grievance; and
 - (c) The address and telephone number of the cabinet's ombudsman.

Section 9.[10.] Services and Staffing. (1) An entity licensed under this administrative regulation to operate a residential crisis stabilization unit shall provide [the following services]:

- (a) Screening as established by 907 KAR 15:070, Section 3(2)(a);
- (b) Assessment as established by 907 KAR 15:070, Section 3(2)(b);
- (c) Service [Treatment] planning as established by 907 KAR 15:070, Section 3(2)(e);
- (d) Individual [outpatient] therapy as established by 907 KAR 15:070, Section 3(2)(c);
- (e) Group [outpatient] therapy as established by 907 KAR 15:070, Section 3(2)(d); and
- (f) Psychiatric services.
- (2) An entity licensed under this administrative regulation to operate a residential crisis stabilization unit may provide:
 - (a) Family therapy as established by 907 KAR 15:070, Section 3(2)(f); [or]
 - (b) Peer support by a peer support specialist as established by

907 KAR 15:070, Section 3(2)(g); or

(c) Medication assisted treatment, excluding methadone-based treatment, as established by 907 KAR 15:070, Section 3(2)(i).

(3)(a) Except as provided by paragraph (b) of this subsection, the services identified in subsection (1) and (2)(a) of this section shall be delivered by a behavioral health professional or a behavioral health professional under clinical supervision.

(b) In addition to the professionals identified in paragraph (a) of this subsection, the services identified in subsection (1)(a), (b), (d), and (e) and subsection (2)(a) of this section may be provided by a certified alcohol and drug counselor or licensed clinical alcohol and drug counselor.

(c)1. A residential crisis stabilization unit shall have access to a board-certified or board-eligible psychiatrist twenty-four (24) hours per day, seven (7) days per week.

2. The psychiatrist may serve more than one (1) residential crisis stabilization unit and be available through telehealth consultation.

(d) The psychiatrist shall be available to evaluate, provide treatment, and participate in treatment planning.

(4) If a crisis stabilization program serves adults with a severe mental illness or substance use disorder and children with severe emotional disabilities:

(a) The programs shall not be located on the same campus; and

(b) The children's program shall serve clients:

1. Under the age of eighteen (18); or

2. Up to the age of twenty-one (21) if developmentally appropriate for the client.

(5) A residential crisis stabilization unit shall:

(a) Provide treatment for acute withdrawal as established by 907 KAR 15:070, Section 3(2)(h), if appropriate;

(b) Complete a mental status evaluation and physical health questionnaire of the client upon admission;

(c) Have written policies and procedures for:

1. Crisis intervention; and

2. Discharge planning, which shall begin at the time of admission and aftercare planning processes;

(d) Make referrals for physical health services to include diagnosis, treatment, and consultation for acute or chronic illnesses occurring during the client's stay in the residential crisis stabilization unit or identified during the admission assessment;

(e) Have a description of linkages with behavioral health services organizations licensed under 902 KAR 20:430 or other programs, including entities licensed as an AODE, that [which]:

1. Address identified needs and achieve goals specified in the treatment plan; and

2. Help promote continuity of care after discharge;

(f) Have at least one (1) direct-care staff member assigned direct-care responsibility for:

1. Every four (4) clients during normal waking hours; and

2. Every six (6) clients during normal sleeping hours;

(g) Ensure that administrative management of the unit is provided by the unit's executive director;

(h) Provide a training program for direct-care staff pertaining to:

1. The care of clients in a residential crisis stabilization unit;

2. Detection and reporting of abuse, neglect, or exploitation;

3. Emergency and safety procedures;

4. Behavior management, including de-escalation training;

5. Physical management procedures and techniques;

6. Suicide prevention and care; and

7. Trauma informed care; and

(i) Assure that each client shall be:

1. In need of short-term behavior management and at risk of placement in a higher level of care;

2. Able to take care of his or her own personal needs, if an adult;

3. Medically able to participate in services; and

4. Served in the least restrictive environment available in the community.

(6) If providing treatment for acute withdrawal in accordance with subsection (5) of this section, a residential

crisis stabilization unit shall:

(a) Meet the requirements established by 907 KAR 15:070, Section 2(1)(r); and

(b) Possess an appropriate level of care certification as established by 907 KAR 15:070, Section 3(6).

Section ~~10~~[14-] 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, date of birth, gender, marital status, expected source of payment, and referral source;

(b) Information on the purpose for seeking a service;

(c) If applicable, consent via signature of an appropriate family member or guardian~~[members or guardians]~~ for admission, evaluation, and treatment;

(d) Mental status evaluation and physical health questionnaire of the client taken upon admission;

(e) Staff notes for all services provided;

(f) Documentation of treatment planning, including diagnosis and all services to be provided; and

(g) Documentation of medication prescribing and monitoring used in treatment.

(4) Ownership.

(a) Client records shall be the property of the residential crisis stabilization unit.

(b) The original client record shall not be removed from the unit 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 be retained for at least the longer of:

(a) ~~[Retained for]~~ Six (6) years; or

(b) If a minor, three (3) years after the client reaches the age of majority pursuant to KRS 2.015~~[under state law, whichever is the longest]~~.

(6) Confidentiality and Security: Use and Disclosure.

(a) The residential crisis stabilization unit 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 through~~[te]~~ 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, Subparts A and C, or as provided by applicable federal or state law, including 42 U.S.C. 290ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

(b) The residential crisis stabilization unit may use and disclose client records. Use and disclosure shall be as established or required by:

1. HIPAA, 42 U.S.C. 1320d-2 through~~[te]~~ 1320d-8, and 45 C.F.R. Parts 160 and 164; or

2. 42 U.S.C. 290ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

(c) A residential crisis stabilization unit may establish higher levels of confidentiality and security than required by HIPAA, 42 U.S.C. 1320d-2 through~~[te]~~ 1320d-8, and 45 C.F.R. Parts 160 and 164, or 42 U.S.C. 290ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

Section ~~11~~[12-] Client Rights. (1) A residential crisis stabilization unit shall have written policies and procedures to ensure that the rights of a client are protected, including a statement of rights and responsibilities, which shall be:

(a) Provided at the time of admission:

1. To the client; or

2. If the client is a minor or incapacitated, to the client, client's parent, guardian, or other legal representative;

(b) Read to the client or client's parent, guardian, or other legal representative if requested or if either cannot read;

- (c) Written in language that is understandable to the client;
- (d) Conspicuously posted in a public area of the facility; and
- (e) Cover the [following]:
- 1. [The] Right to treatment, regardless of race, religion, or ethnicity;
- 2. [The] Right to recognition and respect of personal dignity in the provision of all treatment and care;
- 3. [The] Right to be provided treatment and care in the least restrictive environment possible;
- 4. [The] Right to an individualized plan of care;
- 5. [The] Right of the client, including the client's parent, guardian, or other legal representative~~[parents or guardian]~~ if the client is a minor or incapacitated, to participate in treatment planning;
- 6. [The] Nature of care, procedures, and treatment provided;
- 7. [The] Right to an explanation of risks, side effects, and benefits of all medications and treatment procedures used;
- 8. [The] Right to be free from verbal, sexual, physical, or mental abuse; and
- 9. [The] Right, to the extent permitted by law, to refuse the specific medications or treatment procedures and the responsibility of the facility if the client refuses treatment, to seek appropriate legal alternatives or orders of involuntary treatment, or in accordance with professional standards, to terminate the relationship with the client upon reasonable notice.
- (2) A residential crisis stabilization unit's written policies and procedures concerning client rights shall assure and protect the client's personal privacy within the constraints of his or her plan of care, including:
 - (a) Visitation by family or significant others in a suitable area of the facility; and
 - (b) Telephone communications with family or significant others at a reasonable frequency.
- (3)(a) If a privacy right is limited, a full explanation shall be given to the client or the client's parent, ~~[or] guardian, or other legal representative~~ if the client is a minor or incapacitated.
- (b) Documentation shall be included in the client's record of any privacy limitation.
- (4) Information shall be provided to the client, or the client's parent, ~~[or] guardian, or other legal representative~~ if the client is a minor or incapacitated, regarding the use and disposition of special observation and audio visual techniques, which may include [the following]:
 - (a) One (1) way vision mirror;
 - (b) Audio recording;
 - (c) Video tape recording;
 - (d) Television;
 - (e) Movie; or
 - (f) Photographs.
- (5)(a) If the residential crisis stabilization unit serves children as established~~[described]~~ in Section 9[40](4)(b) of this administrative regulation, written policy and procedures shall be developed in consultation with professional and direct-care staff to provide for behavior management of residents, including the use of a time-out room.
 - (b)1. Behavior management techniques:
 - a. Shall be explained fully to each client and, if the client is a minor or incapacitated, the client's parent, guardian, or other legal representative; and
 - b. May include time out or personal restraint.
 - 2. Prone holds, chemical restraint, and mechanical restraint shall be prohibited in a residential crisis stabilization unit.
 - (c) The unit shall prohibit cruel and unusual disciplinary measures including [the following]:
 - 1. Corporal punishment;
 - 2. Forced physical exercise;
 - 3. Forced fixed body positions;
 - 4. Group punishment for individual actions;
 - 5. Verbal abuse, ridicule, or humiliation;
 - 6. Denial of three (3) balanced nutritional meals per day;
 - 7. Denial of clothing, shelter, bedding, or personal hygiene needs;
 - 8. Denial of access to educational services;

- 9. Denial of visitation, mail, or phone privileges for punishment;
- 10. Exclusion of the resident from entry to his or her assigned living unit; and
- 11. Personal restraint or seclusion as a punishment or employed for the convenience of staff.
- (d) Written policy shall prohibit residents from administering disciplinary measures upon one another and shall prohibit persons other than professional or direct-care staff from administering disciplinary measures to residents.
- (6) If personal restraint is used as a safe behavioral management technique, the residential crisis stabilization unit shall have a policy that~~[which]~~ shall:
 - (a) Establish~~[Describe]~~ criteria for appropriate use of personal restraint;
 - (b) Establish~~[Describe]~~ documentation requirements; and
 - (c) Ensure that staff who implement the use of personal restraint shall:
 - 1. Have documented training in the proper use of the procedure used;
 - 2. Be certified in physical management by a nationally-recognized training program in which certification is obtained through skilled-out testing; and
 - 3. Receive annual training and recertification in crisis intervention and behavior management.

Section 12~~[13]~~ Reports of Abuse, Neglect, or Exploitation. (1) A residential crisis stabilization unit shall have written policies that~~[which]~~ assure:

- (a) The reporting of cases of abuse, neglect, or exploitation of adults and children to the cabinet pursuant to KRS Chapters 209 and 620; and
- (b) That a resident may file a complaint with the cabinet concerning resident abuse, neglect, or exploitation.
- (2) The unit shall have evidence that all allegations of abuse, neglect, or exploitation are thoroughly investigated internally~~[,]~~ and shall prevent further potential abuse while the investigation is in progress.

Section 13~~[14]~~ Medication Prescribing and Monitoring in a Residential Crisis Stabilization Unit. (1) Medication prescribing and monitoring shall be under the direction of a licensed psychiatrist, a licensed physician supervised by a psychiatrist, or an APRN certified in psychiatric-mental health nursing practice who meets the requirements established in 201 KAR 20:057.

- (2) Prescriptions concerning medication shall not exceed an order for more than five (5) refills.
- (3) Medication prescribing and monitoring used in treatment shall be recorded in the staff notes and on a special medications chart in the client record.
- (4) A copy of the prescription shall be kept in the client record.
- (5) A blood or other laboratory test or examination shall be performed in accordance with accepted medical practice on each client receiving medication prescribed or administered by the residential crisis stabilization unit staff.
- (6) Drug supplies shall be stored under proper sanitary, temperature, light, and moisture conditions.
- (7) Medication kept by the unit shall be properly labeled.
- (8) A medication shall be stored in the originally received container unless transferred to another container by a pharmacist or another person licensed to transfer the medication.
- (9) Medication kept in the unit shall be kept in a locked cabinet.
- (10) A controlled substance shall be kept under double lock (for example, in a locked box in a locked cabinet).
- (11) There shall be a controlled substances record, in which is recorded:
 - (a) The name of the client;
 - (b) The date, time, dosage, balance remaining, and method of administration of each controlled substance;
 - (c) The name of the prescribing physician or other ordering practitioner acting within the scope of his or her license to practice; and
 - (d) The name of the nurse who administered it~~[,]~~ or staff who supervised the self-administration.

(12) Access to the locked cabinet shall be restricted to a designated medication nurse or other authorized personnel.

(13) Medication to be self-administered shall be made available to the client at the time of administration.

Section 14.[45-] Facility Requirements. (1) Living Unit. A living unit shall be located within a single building in which there is at least 120 square feet of space for each resident in the facility.

(2) Bedrooms.

(a) More than four (4) clients shall not sleep in the same[a] bedroom.

(b) A bedroom shall be equipped with a bed for each client.

(c) A bed shall:

1. Be at least thirty-six (36) inches wide and at least five (5) feet in length;

2. Be long and wide enough to accommodate the client's size;

3. Have a mattress cover, two (2) sheets, a pillow, and bed covering to keep the client comfortable;

4. Be equipped with a support mechanism and a clean mattress; and

5. Be placed so that a client shall not experience discomfort because of proximity to a radiator or heat outlet, or exposure to a draft.

(d) There shall be separate sleeping quarters for males and females.

(e) A client shall not be housed in a room, a detached building, or other enclosure that has not previously been inspected and approved for residential use by the Office of Inspector General and the Department of Housing, Buildings and Construction.

(3) Bathrooms.

(a) For every eight (8) residents, each residential crisis stabilization unit shall have at least one (1):

1. Wash basin with hot and cold water;

2. Bath or shower with hot and cold water; and

3. Flush toilet.

(b) If separate toilet and bathing facilities are not provided, males and females shall not be permitted to use those facilities at the same time.

(4) Living area.

(a) The living area shall provide comfortable seating for all clients housed within the residential crisis stabilization unit.

(b) Each living unit shall be equipped with a:

1. Working sink; and

2. Stove and refrigerator, unless a kitchen is directly available within the same building as the living unit.

(5) There shall be adequate lighting, heating, heated water, and ventilation.

(6) There shall be space for a client to store personal belongings, including a receptacle where personal property may be stored and locked.

(7) The residential crisis stabilization unit shall be kept in good repair, neat, clean, free from accumulations of dirt and rubbish, and free from foul, stale, and musty odors.

(8) The residential crisis stabilization unit shall be kept free from insects and rodents with their harborages eliminated.

(9) The residential crisis stabilization unit shall establish an infection control system that[which] includes training personnel on proper hygiene related to infections prevalent among alcohol and other drug abusers.

(10) Services shall be provided in an area where clients are ensured privacy and confidentiality.

Section 15.[46-] Facility Specifications. (1) A residential crisis stabilization unit shall:

(a) Be of safe and substantial construction;

(b) Be in compliance with applicable state and local laws relating to zoning, construction, plumbing, safety, and sanitation;

(c) Be approved by the State Fire Marshal's office prior to initial licensure or if the unit changes location; and

(d) 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) A residential crisis stabilization unit shall:

(a) Have a written emergency plan and procedures for meeting potential disasters such as fires or severe weather;

(b) Post the emergency plan conspicuously in a public area of the unit and provide a copy to all personnel;

(c) Provide training for all personnel on how to report a fire, extinguish a small fire, and evacuate a building; and

(d) Practice fire drills monthly, with a written record kept of all practiced fire drills, detailing the date, time, and residents who participated.

Section 16.[47-] Denial and Revocation. (1) The cabinet shall deny an Application for License to Operate a Residential Crisis Stabilization Unit if:

(a) Any person with ownership interest in the residential crisis stabilization unit 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 residential crisis stabilization unit 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 residential crisis stabilization unit to comply with the provisions of this administrative regulation;

(b) The residential crisis stabilization unit 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 residential crisis stabilization unit is terminated from participation in the Medicaid Program pursuant to 907 KAR 1:671.

(3) The denial or revocation of a residential crisis stabilization unit'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 state[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 residential crisis stabilization unit's license if the cabinet has probable cause to believe that the continued operation of the unit would constitute an immediate danger to the health, welfare, or safety of its residents.

(b)1. The residential crisis stabilization unit 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 state[set forth] the particular reasons for the action.

(6) Notice of a hearing on an urgent suspension shall be served on the residential crisis stabilization unit 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 health, safety, or welfare of the residents.

(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 residential crisis stabilization unit's license pursuant to subsection (3) of this section if:

(a) The facility 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 health, safety, or welfare of the residents.

(10) Pursuant to KRS 216B.050, the cabinet may compel obedience to its lawful orders.

Section 17.[148-] Incorporation by Reference. (1) The OIG 20:440, "Application for License to Operate a Residential Crisis Stabilization Unit", 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.

ADAM D. MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: February 11, 2021

FILED WITH LRC: February 11, 2021 at 4:16 p.m.

CONTACT PERSON: Donna Little, Deputy Executive Director, 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: Kara L. Daniel and Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes minimum licensure requirements for the operation of residential crisis stabilization units that serve at-risk children or children with severe emotional disabilities, at-risk adults or adults with severe mental illness, or individuals with substance use disorder or co-occurring disorders.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.042(1), which requires the Cabinet for Health and Family Services to 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 minimum licensure requirements for the operation of residential crisis stabilization units.

(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 residential crisis stabilization units.

(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 administrative regulation, 907 KAR 15:070, Coverage provisions and requirements regarding services provided by residential crisis stabilization units. Key changes to this administrative regulation, 902 KAR 20:440, are as follows: Amends Section 1(1)(a) to clarify that a psychiatrist, as included under the definition of "behavioral health professional", may be certified or eligible to apply for certification by the American Osteopathic Board of Neurology; Amends Section 1(7) to allow a crisis stabilization unit to serve sixteen (16) clients rather than twelve (12) clients who require overnight stays; Adds a definition for "licensed clinical alcohol and drug counselor"; Updates the definition of "peer support specialist" to include a registered alcohol and drug peer support specialist, and allow for peer support specialists to work under the supervision of a licensed clinical alcohol and drug counselor; Deletes the prohibition against co-locating a residential alcohol and other drug treatment entity (AODE) and a residential crisis stabilization program on the same campus; Adds language to allow the executive director to serve in a dual role as the executive director of a residential crisis stabilization unit and an AODE if both facilities are owned by the same entity and meet other criteria; Adds

language to allow the program director to serve in a dual role as the program director of a residential crisis stabilization unit and an AODE if both facilities are owned by the same entity and meet other criteria; Removes language allowing residential crisis stabilization units 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 (ACA), for the submission of fingerprints to the FBI for direct patient access employees in voluntarily participating long-term care settings. Because residential crisis stabilization units are not included in the statutory definition of a "long-term care facility" or otherwise covered under Section 6201 of the ACA, residential crisis stabilization units cannot voluntarily participate in the Kentucky NBCP; Adds a cross-reference to applicable sections in 907 KAR 15:070 as it relates to the following services provided by residential crisis stabilization units: screening, assessment, treatment planning, individual therapy, group therapy, family therapy, and peer support;

Allows a licensed clinical alcohol and drug counselor to provide screening, assessment, treatment planning, individual therapy, group therapy, and family therapy; Adds a cross-reference to 907 KAR 15:070, Section 3, if a residential crisis stabilization unit provides treatment for acute withdrawal; and Adds licensed AODE programs as one of the programs with which residential crisis stabilization units may have a linkage to help promote continuity of care after discharge. The Amended After Comments version retains the reference to 907 KAR 15:070, which has been amended after comments to clarify that an RCSU is to provide ASAM Level 3.7, medically monitored withdrawal management, but not Level 4.0, medically managed withdrawal management. This version also changes "treatment planning" to "service planning" to remain consistent with Medicaid terminology; adds medication assisted treatment as a service an RCSU may provide and cross-references 907 KAR 15:070, Section 3; and adds the requirement that an RCSU meet Medicaid staffing requirements and possess the appropriate ASAM level of care certification to provide withdrawal management services, consistent with the requirements in 907 KAR 15:070, Sections 2 and 3.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to align with the proposed changes to 907 KAR 15:070.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216B.042 because it establishes minimum licensure requirements for the operation of residential crisis stabilization units.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by establishing standards for licensed residential crisis stabilization units.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects the four (4) currently licensed residential crisis stabilization units.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities licensed in accordance with this administrative regulation are required to comply with the standards established by this administrative regulation, including: State Fire Marshal 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; Compliance with federal, state, and local laws and administrative regulations pertaining to the operation of the residential crisis stabilization unit; Designation of an executive director who may also serve as the residential crisis stabilization unit's program director if the individual is a

behavioral health professional as defined by Section 1 of this administrative regulation; Compliance with abuse registry and criminal background check requirements; Implementation of a process for quality assurance and utilization review; Implementation of a process for responding to client grievances; Mandatory delivery of screening, assessment, treatment planning, individual therapy, group therapy, and psychiatric services; Optional delivery of family therapy and peer support services; Treatment for acute withdrawal, if appropriate; Retention of client records; Implementation of administrative and personnel policies as well as policies that ensure that the rights of clients are protected; Medication prescribing and monitoring; Compliance with basic facility requirements for bedrooms, bathrooms, living areas, infection control, and cleanliness; and Compliance with applicable state and local laws relating to zoning, construction, plumbing, safety, and sanitation as well as emergency plans in the effect of a disaster or severe weather.

(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 residential crisis stabilization units to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensed residential crisis stabilization units may enroll in the Kentucky Medicaid Program for reimbursement of covered services provided to Medicaid recipients in need of short-term crisis services.

(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 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 who elect to be regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Cabinet for Health and Family Services, Office of Inspector General, and licensed residential crisis stabilization units.

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? The Cabinet collects an initial fee of \$750 and annual renewal fee of \$500 from each licensed residential crisis stabilization unit. These fees are existing requirements and are not being amended by this amendment.

(b) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate an initial licensure fee of \$750 and annual licensing fee of \$500 for each entity licensed as a residential crisis stabilization unit. These fees are existing requirements and are not being amended by this amendment.

(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 (+/-): See response above.

Expenditures (+/-): This administrative regulation is anticipated to have minimal fiscal impact to the cabinet.

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, 42 U.S.C. 209ee-3, 42 C.F.R. Part 2

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. 42 U.S.C. 209ee-3 pertains to the confidentiality of patient records. 42 C.F.R. Part 2 prohibits programs from disclosing any information that would identify a person as having or having had substance use disorder, unless that person provides written consent.

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 45:190. Hemp-derived cannabinoid[cannabidiol] products and labeling requirements.

RELATES TO: KRS 217.015, 217.037, 217.025, 217.035, 217.155, 260.850

STATUTORY AUTHORITY: KRS 217.125, 217.127, 217.135

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.125(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations for the efficient administration and enforcement of the Kentucky Food, Drug and Cosmetic Act, KRS 217.005 to 217.215. KRS 217.125(2) requires the secretary to provide by administrative regulation a schedule of fees for permits to operate and for inspection activities carried out by the cabinet pursuant to KRS 217.025 through 217.390. KRS 217.135 authorizes the secretary to establish food standards by administrative regulation including a reasonable definition, standard of identity, and designation of optional ingredients that shall be named on the label. This administrative regulation establishes the registration process to utilize hemp-derived cannabinoid[cannabidiol] products in foods and cosmetics, the labeling requirements for products containing hemp-derived cannabinoid[cannabidiol], and methods for use of hemp-

derived cannabinoid~~[cannabidiol]~~ as an additive to food products.

Section 1. Definitions. (1) “Approved source” means a Kentucky hemp grower, processor, or handler licensed by the Kentucky Department of Agriculture, or an out of state hemp grower, processor, or handler who is duly authorized to produce hemp under the laws of their jurisdiction.

(2) “Cabinet” is defined by KRS 217.015(3).

(3) “Cannabinoid”~~[(1) “Cannabidiol” or “CBD”]~~ means a non-intoxicating compound~~[cannabinoid]~~ found in the hemp plant *Cannabis sativa*.

(4)~~[(2)]~~ “Cosmetic” is defined by KRS 217.015(7).

(5)~~[(3)]~~ “Department” means the Kentucky Department for Public Health.

(6)~~[(4)]~~ “Food service establishment” is defined by KRS 217.015(21).

(7) “Hemp” is defined by KRS 260.850(5).

(8)~~[(5)]~~ “Home-based processor” is defined by KRS 217.015(56).

(9)~~[(6)]~~ “Person” is defined by KRS 217.015(32).

Section 2. Permits. (1) A person located in Kentucky seeking to manufacture, market, sell, or distribute a hemp-derived [CBD] ingestible or cosmetic cannabinoid product shall submit an Application for Permit to Operate a Food Plant or Cosmetic Manufacturing Plant, incorporated by reference in 902 KAR 45:160, to the department.

(2) The permit shall be:

(a) Nontransferable in regards to person or address; and

(b) Renewed annually.

(3) The fee shall be paid in accordance with:

(a) 902 KAR 45:180, for a food processing establishment;

(b) 902 KAR 45:180, for a cosmetic manufacturer; and

(c) 902 KAR 45:110, Section 1(3), (4), and (5), for a food service establishment.

(4) Ingestible hemp-derived cannabinoid products shall not be manufactured, marketed, sold, or distributed by a home-based processor.

Section 3. Product labeling. (1) Each hemp-derived cannabinoid~~[CBD]~~ product manufactured, marketed, sold, or distributed in the Commonwealth shall be labeled in accordance with KRS 217.037 and this administrative regulation.

(2) An ingestible or cosmetic product label shall include, in a print no less than six (6) point font, the following information:

(a) A statement of identity or common product name that shall be stated upon the principal display panel of the label;

(b) The net quantity of contents expressed in both standard English and metric units of measurement located in the lower thirty percent (30%) of the principal display panel of the label parallel to the base of the container;

(c) The ingredients of the hemp-derived cannabinoid~~[CBD]~~ product, in descending order of predominance by weight;

(d) The name of the manufacturer or distributor;

(e) A statement that the hemp-derived cannabinoid~~[CBD]~~ product is within the federal legal limit of three-tenths of one percent (0.3%) delta-9 tetrahydrocannabinol;

(f) The total amount of cannabinoid~~[cannabidiol]~~ per serving for ingestible products, or the total amount per container for cosmetic products;

(g) Suggested use instructions or directions, including serving sizes;

(h) The statement, or a similar statement, “Consult your physician or healthcare professional before use”; and

(i) An expiration date, if any; and

~~(j) The Kentucky Hemp or Kentucky Proud logo or a similar marking that denotes the product was produced in Kentucky].~~

(3) An ingestible or cosmetic product that has a total area of twelve (12) square inches or less available to bear labeling shall be labeled in accordance with subsection (2) of this section except the print may be smaller than six (6) point font

but shall not measure less than 1/32 of an inch in height.

(4) The labeling requirements of subsection (2) of this section shall not be printed unduly small in relation to the total area available to bear labeling in order to accommodate unrequired information such as logos, photographic representation of the product, or additional marketing copy.

(5) Each container of ingestible or cosmetic hemp-derived cannabinoid~~[CBD]~~ product shall have a tamper evident seal~~[bear either a foil seal on the inside or a plastic sealant on the outside].~~

(6)~~[(4)]~~ Product labeling or advertising material for any hemp-derived cannabinoid~~[CBD]~~ product shall not bear any implicit or explicit health claims stating that the product can diagnose, treat, cure, or prevent any disease.

Section 4. Hemp-derived ingestible cannabinoid ~~products~~~~[CBD product as a food additive]~~. (1) Hemp-derived cannabinoid~~[CBD]~~ may be added to an ingestible product during the manufacturing process or prior to retail sale at a food service establishment.

(2) The hemp-derived cannabinoid shall be obtained from an approved source.

(3) The food processor or food service establishment shall obtain a valid certificate of analysis from the approved source and provide a copy upon inspection.

(4) Food or ingestible product shall not contain a total delta-9 tetrahydrocannabinol concentration of more than three-tenths of one percent (0.3%) on a dry weight basis or contain tetrahydrocannabinol as the primary cannabinoid.

(5) A food service establishment offering hemp-derived cannabinoid~~[CBD]~~ products in a finished food product shall provide the following information to consumers upon request:

(a) The common name of the product;

(b) The manufacturer or distributor of the product; and

(c) A statement that the hemp-derived cannabinoid~~[CBD]~~ product is within the federal legal limit of three-tenths to one percent (0.3%) delta-9 tetrahydrocannabinol.

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: February 3, 2021

FILED WITH LRC: February 4, 2021 at 1:50 p.m.

CONTACT PERSON: Donna Little, Deputy Executive Director, 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: Julie Brooks or Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the registration process to utilize hemp-derived cannabidiol (CBD) products in foods and cosmetics, the labeling requirements for products containing hemp-derived cannabidiol, and methods for use of hemp-derived cannabidiol as an additive to food products.

The Amended After Comments version of this administrative regulation expands hemp-derived extracts to include all cannabinoids by replacing “cannabidiol” with “cannabinoid” throughout the administrative regulation, adds the requirement that the hemp-derived cannabinoid be from an approved source, adds definitions for “approved source”, “cannabinoid”, and “hemp”, and updates the labeling requirements.

(b) The necessity of this administrative regulation: With the passage of the federal Agriculture Improvement Act of 2018, hemp-derived cannabinoid products are one of the fastest growing manufactured food or cosmetic product markets. This administrative regulation is necessary to ensure the safety of food and cosmetic products containing hemp-derived cannabinoids.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 217.037 requires that all foods and cosmetics shall conform to the Fair Packaging and Labeling Act,

and the administrative regulations promulgated thereto. KRS 217.125(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations for the efficient administration and enforcement of the Kentucky Food, Drug and Cosmetic Act.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements for using hemp-derived cannabinoids in food and cosmetics, and ensures these products are properly labeled.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The number of businesses affected by this administrative regulation is unknown. A web search yielded a list of twenty (20) businesses producing hemp-derived CBD or offering hemp-derived CBD products for sale.

(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 interested in marketing, manufacturing, selling, or distributing hemp-derived cannabinoid ingestible and cosmetic products will need to be aware of the additional application and permitting requirements, and will need to ensure all products comply with the labeling requirements of 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): Those persons seeking to manufacture ingestible hemp-derived cannabinoid products will pay the fee established in 902 KAR 45:180. Those persons seeking to manufacture a hemp-derived cannabinoid cosmetic product will pay the \$125 fee as established in 902 KAR 45:180. A retail food service establishment offering hemp-derived cannabinoid as an additive to prepared food will pay the fee established in 902 KAR 45:110.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those offering hemp-derived food or cosmetic products will be able to provide a safe product to the consumer.

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

(a) Initially: What is the costs associated with this new regulation? The department will need to hire additional staff to oversee the permitting and inspection process related to this administrative regulation. The salary for this staff could range between \$38,770 to \$62,033 per year.

(b) On a continuing basis: The ongoing costs associated with this administrative regulation could be between \$38,770 to \$62,033.

(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 revenue received from the permitting 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: An increase in funding is necessary to implement this administrative regulation. The department will incur costs associated with hiring staff to perform the permitting and inspection processes required by this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. The fee required to manufacture, market, sell, or distribute hemp-derived cannabinoid food or cosmetic products will be paid in accordance with the application fee regulation. A separate fee is not required.

(9) TIERING: Is tiering applied? Tiering is not applied. The permitting and labeling requirement will impact those seeking to produce ingestible and cosmetic hemp-derived cannabinoid products 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? This administrative regulation will impact the Food Safety Branch in the Division of Public Health Protection and Safety within the Department for Public Health, Cabinet for Health and Family Services.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 217.037, 217.125, 217.127, 217.135, and 217.145.

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? It will cost between \$38,770 to \$62,033 to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? It will cost between \$38,770 to \$62,033 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:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(Amended After Comments)

907 KAR 15:070. Coverage provisions and requirements regarding services provided by residential crisis stabilization units.

RELATES TO: KRS 205.520, 21 U.S.C. 823(g)(2), 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

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 residential crisis stabilization units.

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 residential crisis stabilization unit 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.
- (b) A service that does not meet the requirement in paragraph (a) of this subsection shall not be covered.
- (3) 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.
- (4) A residential crisis stabilization unit shall establish a plan of care for each recipient receiving services.

Section 2. Provider Participation. (1) To be eligible to provide services under this administrative regulation, a residential crisis stabilization unit shall:

- (a) Be currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;
- (b) Except as established in subsection (3) of this section, be currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;
- (c) Be licensed as a residential crisis stabilization unit in accordance with 902 KAR 20:440;
- (d) Comply with the requirements established in 902 KAR 20:440;
- (e) Have:
 - 1. For each service it provides, the capacity to provide the full range of the service as established in this administrative regulation;
 - 2. 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;
- (f) Be a community-based, residential program that offers an array of services including:
 - 1. Screening;
 - 2. Assessment;
 - 3. Treatment planning;
 - 4. Individual [outpatient] therapy;
 - 5. Group [outpatient] therapy;
 - 6. Psychiatric services;
 - 7. Family [outpatient] therapy at the option of the residential crisis stabilization unit; [or]
 - 8. Peer support at the option of the residential crisis stabilization unit;
- 9. Medically monitored withdrawal management if treating substance use disorders; or
- 10. Medication assisted treatment if treating substance use disorders;
- (g) Provide services in order to:
 - 1. Stabilize a crisis and divert an individual from a higher level of care;
 - 2. Stabilize an individual and provide treatment for acute withdrawal, if applicable; and
 - 3. Re-integrate an individual into the individual's community or other appropriate setting in a timely fashion;
- (h) Not be part of a hospital;
- (i) Be used when an individual:
 - 1. Is experiencing a behavioral health crisis that cannot be safely accommodated within the individual's community; and
 - 2. Needs overnight care that is not hospitalization;
- (j) Except as established in subsection (2)(a) of this section, not contain more than sixteen (16) beds;
- (k) Except as established in subsection (2)(b) of this section, not be part of multiple units comprising one (1) facility with more

than sixteen (16) beds in aggregate;

- (l) Agree to provide services in compliance with federal and state laws regardless of age, sex, race, creed, religion, national origin, handicap, or disability;
- (m) Comply with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments to the Act;
- (n) Have the capacity to employ staff authorized to provide treatment services in accordance with this section and to coordinate the provision of services among team members;
- (o) Have the capacity to provide the full range of residential crisis stabilization services as stated in Section 3(2) of this administrative regulation and on a twenty-four (24) hour a day, seven (7) day a week, every day of the year basis;
- (p) Have 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]
- (q) Have knowledgeable staff regarding mental health, substance use, or co-occurring disorders based on the population being served; and
- (r) For the treatment or stabilization of withdrawal management symptoms for substance use disorder or co-occurring disorders:
 - 1. Meet all requirements established by the most recent version of the American Society for Addiction Medicine (ASAM) relating to level of care certification for medically monitored intensive inpatient services for adults and medically monitored high-intensity inpatient services for adolescents, currently described by ASAM as a 3.7 level of care; and
 - 2.[.] Have:
 - a. A planned and structured regimen of twenty-four (24) hour professionally directed evaluation, observation, medical monitoring, and addiction treatment;
 - b. Twenty-four (24) hour nursing care, including a comprehensive assessment at admission by a registered nurse;
 - c. Twenty-four (24) hour access to a psychiatrist, including availability within eight (8) hours by telephone and within twenty-four (24) hours in person;
 - d. Twenty-four (24) hour access to a physician, advanced practice registered nurse, or a physician assistant, to include:
 - (i) An assessment and physical examination in person within twenty-four (24) hours of admission, and after admission as medically necessary; and
 - (ii) Responsibility for overseeing the treatment of each recipient; and
 - e. Clinical staff:
 - (i) Knowledgeable about the biological and psychosocial dimensions of addiction and other behavioral health disorders with training in behavior management techniques and evidence-based practices; and
 - (ii) Able to provide twenty-four (24) hour professionally directed evaluation, care, and treatment services[disorders].
- (2) If every recipient receiving services in the:
 - (a) Single unit 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 subsection (1)(j) of this section shall not apply; or
 - (b) Multiple units 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 subsection (1)(k) of this section shall not apply.
- (3) In accordance with 907 KAR 17:015, Section 3(3), a residential crisis stabilization unit that[which] provides a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

Section 3. Covered Services. (1)(a) Except as specified in the requirements stated for a given service, the services covered may be provided for:

- 1. A mental health disorder;
- 2. A substance use disorder; or
- 3. Co-occurring ~~[mental health and substance use]~~ disorders.
- (b) Residential crisis stabilization services shall be provided in a residential crisis stabilization unit.

(2) Residential crisis stabilization services shall include the services established in this subsection.:

(a) A screening 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) Individual outpatient therapy or group 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;

(d) Treatment 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;

(e) Psychiatric services provided by:

1. A psychiatrist; or
2. An APRN; or

(f) At the option of the residential crisis stabilization unit:

1. Family outpatient therapy provided by:

- a. A licensed psychologist;
- b. A licensed psychological practitioner;
- c. A licensed clinical social worker;
- d. A licensed professional clinical counselor;
- e. A licensed professional art therapist;
- f. A licensed marriage and family therapist;
- g. A physician;
- h. A psychiatrist;
- i. An advanced practice registered nurse; or
- j. A behavioral health practitioner under supervision except for

a licensed assistant behavior analyst; or

2. Peer support provided by a peer support specialist working under the supervision of:

- a. An approved behavioral health service provider; or
- b. A certified alcohol and drug counselor.

(3)(a) A screening shall:

1. Establish the need for a level of care evaluation to determine the most appropriate and least restrictive service to maintain the safety of the individual who may have 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 of the number and duration of risk factors including:

a. Imminent danger and availability of lethal weapons;

b. Verbalization of suicidal or homicidal risk;

c. Need of immediate medical attention, including medically monitored withdrawal management needs;

d. Positive and negative coping strategies;

e. Lack of family or social supports;

f. Active psychiatric diagnosis; or

g. Current drug and alcohol use;

4. Be provided 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, 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 treatment and service plan; [and]

4. Not include psychological or psychiatric evaluations or assessments;

5. If being made for the treatment of a substance use disorder, utilize a multi-dimensional assessment that complies with The ASAM Criteria, and shall address at a minimum:

a. Acute intoxication or withdrawal potential;

b. Biomedical conditions and complications;

c. Emotional, behavioral, or cognitive conditions and complications;

d. Readiness to change;

e. Relapse;

f. Continued use or continued problem potential; and

g. Recovery and living environment; and

6. Be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(c) Individual [outpatient] therapy shall:

1. Be provided to promote the:

a. Health and wellbeing of the individual; or

b. Restoration of a recipient to their best possible functional level[Recovery] from a substance use disorder, a mental health disorder, or co-occurring disorders;

2. Consist of:

a. A face-to-face, or via telehealth as appropriate pursuant to the most recent version of The ASAM Criteria and 907 KAR 3:170, 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 crisis treatment plan;

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 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.

(d)1. Group [outpatient] therapy shall:

a. Be a behavioral health therapeutic intervention provided in accordance with a recipient's identified crisis treatment plan;

b. Be provided to promote the:

(i) Health and wellbeing of the individual; or

(ii) Restoration of a recipient to their best possible functional level[Recovery] from a substance use disorder, a mental health disorder, or co-occurring disorders;

c. Consist of a face-to-face, or via telehealth as appropriate pursuant to the most recent version of The ASAM Criteria and 907 KAR 3:170, behavioral health therapeutic intervention provided in accordance with the recipient's identified crisis treatment plan;

d. Be provided to a recipient in a group setting:

(i) Of nonrelated individuals; 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 crisis treatment plan;

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 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. The group shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(e)1. Service[Treatment] planning shall:

a. Involve assisting a recipient in creating an individualized plan for services needed;

b. Involve restoring a recipient's functional level to the recipient's best possible functional level; and

c. Be performed using a person-centered planning process.

2. A service plan:

a. Shall be directed by the recipient;

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. A service plan shall be completed by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(f)[4.] Family [outpatient] therapy shall:

1. Consist of a face-to-face, or via telehealth as appropriate pursuant to the most recent version of The ASAM Criteria and 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. [Family outpatient therapy shall:]

a. Be provided to promote:

(i) The health and wellbeing of the individual; or

(ii) Restoration of a recipient to their best possible functional level[Recovery] from a substance use disorder, a mental health

disorder, or co-occurring disorders; and

b. Not exceed three (3) hours per day per individual unless additional time is medically necessary; and

3. Be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(g)1. Peer support services provided by a peer support specialist working under the supervision of an approved behavioral health practitioner shall:

a. Be social and emotional support that is provided by an individual who is experiencing a mental health disorder, a 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;

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 by a self-identified consumer, parent, or family member:

(i) Of a child consumer of mental health disorder services, substance use disorder services, or co-occurring mental health disorder services and substance use disorder services; and

(ii) Who has been trained and certified in accordance with 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240;

e. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient;

f. Be coordinated within the context of a comprehensive, individualized treatment plan developed through a person-centered planning process;

g. Be identified in each recipient's treatment plan; and

h. Be designed to directly contribute to the recipient's individualized goals as specified in the recipient's treatment plan.

2. To provide peer support services, a residential crisis stabilization unit shall:

a. Employ peer support specialists who are qualified to provide peer support services in accordance with 908 KAR 2:220, 908 2:230, or 908 2:240;

~~b. [Use an approved behavioral health services provider or certified alcohol and drug counselor to supervise peer support specialists;~~

~~c.] Have the capacity to coordinate the provision of services among team members; [and]~~

~~c.[d.] Have the capacity to provide on-going continuing education and technical assistance to peer support specialists;~~

d. Require individuals providing peer support services to recipients to provide no more than thirty (30) hours per week of direct recipient contact; and

e. Require peer support services provided to recipients in a group setting to not exceed eight (8) individuals within any group at one (1) time.

(h)1. Medically monitored withdrawal management services for substance use disorder shall:

a. Meet the service criteria for medically monitored [intensive] inpatient services [for adults and medically monitored high-intensity inpatient services for adolescents] in accordance with the most current version of The ASAM Criteria; and

b. Comply with services pursuant to the requirements of 902 KAR 20:440[20:111].

2. A recipient who is receiving withdrawal management services shall:

a. Meet the current dimensional admissions criteria for medically monitored inpatient withdrawal management [level of care] as found in the most current version of The ASAM Criteria; and

b. Not require the full resources of an acute care hospital or a medically managed inpatient treatment program.

3. Medically monitored withdrawal management services shall be provided by:

a. A physician or psychiatrist;

b. A physician assistant;
c. An advanced practice registered nurse; or
d. Any other approved behavioral health practitioner or nurse
with oversight by a physician, advanced practice registered nurse,
or a physician assistant.

(i) 1. Medication assisted treatment shall be available per
patient choice for the treatment of a substance use disorder or co-
occurring disorders.

2. Medication assisted treatment shall be provided by a
provider who:

a. Is:

(i) A physician licensed to practice medicine under KRS
Chapter 311;

(ii) An advanced practice registered nurse (APRN); or

(iii) A physician assistant **licensed to practice medicine**
under KRS Chapter 311[who has appropriately updated
department provider enrollment information].

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, **including any waiving or**
expansion of buprenorphine prescribing authority by the
federal government; and

d. Has experience and knowledge in addiction medicine.

(3) For those recipients being treated for a substance use
disorder, care coordination shall include at minimum:

(a) Referring the recipient to appropriate community services;

(b) Facilitating medical and behavioral health follow-ups;

(c) Linking to appropriate levels of substance use treatment
within the continuum in order to provide on-going support; and

(d) Facilitating medication assisted treatment as necessary,
per patient choice[, **if the medication is not offered on-site.**

(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) **After July 1, 2022[2021], if treating substance use**
disorders, the facility shall possess an appropriate ASAM level of
care certification **for medically monitored intensive inpatient**
service in accordance with the most current version of The
ASAM Criteria.

(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 Non-covered 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 residential crisis stabilization unit;

(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";

(e) Travel time;

(f) A field trip;

(g) A recreational activity;

(h) A social activity; or

(i) A physical exercise activity group.

(2) Residential crisis stabilization services 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 state plan.

(3)(a) A consultation by one (1) provider or professional with
another shall not be covered under this administrative regulation.

(b) A third party contract shall not be covered under this
administrative regulation.

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 residential crisis
stabilization service from a community mental health center, the
department shall not reimburse for the same service provided to
the same recipient during the same time period by a residential
crisis stabilization unit.

Section 6. Records Maintenance, Documentation, Protection,
and Security. A residential crisis stabilization unit shall maintain a
current health record for each recipient in accordance with 902
KAR 20:440.

Section 7. Medicaid Program Participation Compliance. (1) A
residential crisis stabilization unit 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 residential crisis stabilization unit receives any
duplicate payment or overpayment from the department,
regardless of reason, the residential crisis stabilization unit 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 residential crisis stabilization unit 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 residential crisis stabilization unit.

(b) 1. A residential crisis stabilization unit 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. Residential crisis stabilization unit 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. Residential crisis stabilization unit 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 residential crisis stabilization unit
regarding the service.

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(4)(a) The signature of the residential crisis stabilization unit's staff or representative shall indicate that the residential crisis stabilization unit attests 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 residential crisis stabilization unit receives a request from the department or its designee to provide a claim, related information, related documentation, or record for auditing purposes, the residential crisis stabilization unit 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 fraud or abuse; and compliance with this administrative regulation and state and federal law.

2. Willful abuse by a residential crisis stabilization unit shall result in the suspension or termination of the residential crisis stabilization unit from Medicaid Program participation.

Section 8. Third Party Liability. A residential crisis stabilization unit 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 residential crisis stabilization unit 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 residential crisis stabilization unit'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 residential crisis stabilization unit'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.

LISA LEE, Commissioner

ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: February 11, 2021

FILED BY LRC: February 11, 2021 at 4:18 p.m.

CONTACT PERSON: Donna Little, Deputy Executive Director, 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 and Donna Little

(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 residential crisis stabilization units (RCSUs).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with federal mandates. 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" 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.

(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 this administrative regulation combine a previously separate description of who may perform a service and a description of the service itself. In addition, the amendments implement additional requirements relating to withdrawal management and medication assisted treatment, including a requirement that the services be conducted in accordance with the ASAM Criteria. The Amended After Comments version makes changes to further clarify that an RCSU is to provide ASAM Level 3.7 medically monitored intensive inpatient services. The administrative regulation is further amended to more clearly and specifically include the ASAM 3.7 level of care requirements. In addition, the availability of telehealth has been further clarified and made potentially allowable for three (3) services, as long as ASAM requirements are met. The medication assisted treatment authority of physician assistants has been clarified, and the potential for a federal waiver for certain buprenorphine prescribing by physicians has been accommodated. Finally, due to the COVID-19 pandemic, the date by which any RCSU providing SUD withdrawal services must have an ASAM certification has been extended to July 1, 2022.

(b) The necessity of the amendment to this administrative

regulation: These amendments are necessary to comply with existing OIG administrative regulations, implement an SUD 1115 waiver, provide additional formatting improvements, and respond to comments received during the public comment process.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to the content of the authorizing statutes by implementing an SUD 1115 waiver.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist in the effective administration of the statutes by providing additional clarity and requirements relating to residential crisis stabilization units.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are currently fifteen (15) entities that are providing residential crisis stabilization unit (RCSU) services under this administrative regulation. Medicaid recipients who qualify for behavioral health services provided by an RCSU 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. Facilities and providers may need to comply with the ASAM Criteria in order to provide certain services.

(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, and the benefit of providing additional services. Behavioral health professionals authorized to provide services in a residential crisis stabilization unit 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: DMS does not anticipate additional costs in implementing this administrative regulation.

(b) On a continuing basis: DMS does not anticipate additional costs in implementing 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. 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
(Amended After Comments)

907 KAR 15:080. Coverage provisions and requirements regarding ~~outpatient~~ chemical dependency treatment center services.

RELATES TO: KRS 205.520, 205.622, 309.0831, 21 U.S.C. 823(g)(2), 42 U.S.C. 1396a(a)(10)(B), 1396a(a)(23), 42 C.F.R. 435.1010

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 outpatient and inpatient chemical dependency treatment center services.

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 chemical dependency treatment center that meets the provider participation requirements established in Section 2 of this administrative regulation.

(2)(a) Direct~~[Face-to-face]~~ contact between a practitioner and a recipient shall be required for each service except for:

1. Collateral outpatient therapy for a recipient under the age of twenty-one (21) years if the collateral outpatient therapy is in the recipient'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; or

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.

(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 chemical dependency treatment center shall establish a plan of care for each recipient receiving services from a chemical dependency treatment center.

(b) A plan of care shall meet the treatment plan requirements established in 902 KAR 20:160.

Section 2. Provider Participation. (1)(a) To be eligible to provide services under this administrative regulation, a chemical dependency treatment center shall:

1. Be currently enrolled as a provider in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

2. Except as established in subsection (2) of this section, be currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;

3. Be licensed as a chemical dependency treatment center to provide outpatient and inpatient behavioral health services in accordance with 902 KAR 20:160; and

4. Have:

a. For each service it provides, the capacity to provide the full

range of the service as established in this administrative regulation;
b. Documented experience in serving individuals with mental health, substance use, or co-occurring~~[behavioral health]~~ disorders;

c. The administrative capacity to ensure quality of services;

d. A financial management system that provides documentation of services and costs; and

e. The capacity to document and maintain individual health records.

(b) The documentation referenced in paragraph (a)4.b. of this subsection shall be subject to audit by:

1. The department or its designee;

2. The Cabinet for Health and Family Services, Office of Inspector General;

3. A managed care organization, if the chemical dependency treatment center is enrolled in its network;

4. The Centers for Medicare and Medicaid Services;

5. The Kentucky Office of the Auditor of Public Accounts; or

6. The United States Department of Health and Human Services, Office of the Inspector General.

(2) In accordance with 907 KAR 17:015, Section 3(3), a chemical dependency treatment center that~~[which]~~ provides a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

(3) A chemical dependency treatment center 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.

(4)(a) Except as provided by paragraph (b) of this subsection, a chemical dependency treatment center shall 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.

(b) The department shall grant a one (1) time extension to a chemical dependency treatment center that requests a one (1) time extension to complete the accreditation process, if the request is submitted at least ninety (90) days prior to expiration of provider enrollment.

Section 3. Covered Services.

(1) Reimbursement shall not be available for services performed within a chemical dependency treatment program by a:

(a) Licensed behavior analyst;

(b) Licensed assistant behavior analyst;

(c) Registered behavior technician; or

(d) Community support associate.

(2) The services covered may be provided for a substance use disorder or co-occurring disorders.

(3)[(2)] The [following] services listed in this subsection shall be covered under this administrative regulation in accordance with the requirements established in this subsection.;

(a) A screening, crisis intervention, or intensive outpatient program service provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner;

3. A certified psychologist with autonomous functioning;

4. A licensed clinical social worker;

5. A licensed professional clinical counselor;

6. A licensed professional art therapist;

7. A licensed marriage and family therapist;

8. A physician;

9. A psychiatrist;

10. An advanced practice registered nurse;

11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;

12. A certified psychologist working under the supervision of a board-approved licensed psychologist;

13. A licensed clinical alcohol and drug counselor in

accordance with Section 11 of this administrative regulation; or

14. 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 certified psychologist with autonomous functioning;
4. A licensed clinical social worker;
5. A licensed professional clinical counselor;
6. A licensed professional art therapist;
7. A licensed marriage and family therapist;
8. A physician;
9. A psychiatrist;

10. An advanced practice registered nurse;

11. A licensed behavior analyst;

12. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;

13. A certified psychologist working under the supervision of a board-approved licensed psychologist;

14. A licensed clinical alcohol and drug counselor in accordance with Section 11 of this administrative regulation; or

15. A behavioral health practitioner under supervision;

(c) Psychological testing provided by:

1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A certified psychologist with autonomous functioning;
4. A licensed psychological associate working under the supervision of a board-approved licensed psychologist; or

5. A certified psychologist working under the supervision of a board-approved licensed psychologist;

(d) Day treatment or mobile crisis services provided by:

1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A certified psychologist with autonomous functioning;
4. A licensed clinical social worker;
5. A licensed professional clinical counselor;
6. A licensed professional art therapist;
7. A licensed marriage and family therapist;
8. A physician;
9. A psychiatrist;

10. An advanced practice registered nurse;

11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;

12. A certified psychologist working under the supervision of a board-approved licensed psychologist;

13. A licensed clinical alcohol and drug counselor in accordance with Section 11 of this administrative regulation;

14. A behavioral health practitioner under supervision, except for a licensed assistant behavior analyst; or

15. A peer support specialist working under the supervision of an approved behavioral health services provider;

(e) Peer support provided by a peer support specialist working under the supervision of an approved behavioral health services provider;

(f) Individual outpatient therapy, group outpatient therapy, or collateral outpatient therapy provided by:

1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A certified psychologist with autonomous functioning;
4. A licensed clinical social worker;
5. A licensed professional clinical counselor;
6. A licensed professional art therapist;
7. A licensed marriage and family therapist;
8. A physician;
9. A psychiatrist;
10. An advanced practice registered nurse;
11. A licensed behavior analyst;
12. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
13. A certified psychologist working under the supervision of a board-approved licensed psychologist;
14. A licensed clinical alcohol and drug counselor in accordance with Section 11 of this administrative regulation; or

15. A behavioral health practitioner under supervision;

(g) Family outpatient therapy provided by:

1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A certified psychologist with autonomous functioning;
4. A licensed clinical social worker;
5. A licensed professional clinical counselor;
6. A licensed professional art therapist;
7. A licensed marriage and family therapist;
8. A physician;
9. A psychiatrist;
10. An advanced practice registered nurse;
11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
12. A certified psychologist working under the supervision of a board-approved licensed psychologist;
13. A licensed clinical alcohol and drug counselor in accordance with Section 11 of this administrative regulation; or
14. A behavioral health practitioner under supervision, except for a licensed assistant behavior analyst; or

(h) 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 certified psychologist with autonomous functioning;
4. A licensed clinical social worker;
5. A licensed professional clinical counselor;
6. A licensed professional art therapist;
7. A licensed marriage and family therapist;
8. A physician;
9. A psychiatrist;
10. An advanced practice registered nurse;
11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
12. A certified psychologist working under the supervision of a board-approved licensed psychologist;
13. A licensed clinical alcohol and drug counselor in accordance with Section 11 of this administrative regulation; or
14. A behavioral health practitioner under supervision, except for a licensed assistant behavior analyst.

(3)(a) A screening shall:

1. Determine the likelihood that an individual has a substance use disorder;
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; and
5. Be provided by:

a. An approved behavioral health practitioner, as limited by subsection (1) of this section; or

b. An approved behavioral health practitioner under supervision, as limited by subsection (1) 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;
- 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 [the development of] 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. Utilize a multidimensional assessment that complies with the most current version[edition] of The ASAM Criteria to determine the most appropriate level of care;

6. Be provided 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 subsection (1) of this section; or
b. An approved behavioral health practitioner under supervision, as limited by subsection (1) of this section.
 (c) Psychological testing shall:
 1. Include:
 a.] a psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities;
 2. Include ~~an[and b.]~~ 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[and
 2. Be performed by an individual who has met the requirements of KRS Chapter 319 related to the necessary credentials to perform psychological testing].
 (d) Crisis intervention:
 1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to:
 a. The recipient; or
 b. Another individual;
 2. Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities for individuals;
 3. Shall be provided:
 a. [On-site in the facility where the outpatient behavioral health services are provided;
 b.]As an immediate relief to the presenting problem or threat; and
 b.[e.] In a one (1) on one (1)[face-to-face, one-on-one] encounter between the provider and the recipient, which is delivered either face-to-face or via telehealth if 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[that includes]:
 (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 subsection (1) of this section; or
 b. An approved behavioral health practitioner under supervision, as limited by subsection (1) of this section.
 (e) Mobile crisis services shall:
 1. Be available twenty-four (24) hours per day, seven (7) days per 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.[Ensure access to a board-certified or board-eligible psychiatrist twenty-four (24) hours per day, seven (7) days per week, every day of the year;
 3. Be provided for a duration of less than twenty-four (24) hours;
 4. Not be an overnight service;
 5.] Be a face-to-face, or via telehealth as appropriate pursuant to the most current version of The ASAM Criteria and 907 KAR 3:170, multi-disciplinary team-based intervention in a home or community setting that ensures access to substance use 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.[6.]~~ 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 subsection (1) of this section;
 b. An approved behavioral health practitioner under supervision, as limited by subsection (1) of this section; or
 c. A peer support specialist who:
 (i) Is under the supervision of an approved behavioral health practitioner, as limited by subsection (1) of this section; and
 (ii) Provides support services for a mobile crisis service[face-to-face in a home or community setting].
 (f)1. Day treatment shall be a non-residential, intensive treatment program for an individual under the age of twenty-one (21) years who has:
 a. A substance use disorder; 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, or via telehealth as appropriate pursuant to the most current version of The ASAM Criteria and 907 KAR 3:170;
 b. Consist of an organized, behavioral health program of treatment and rehabilitative services;
 c.[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
 d.[e.] 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 [on non-instructional weekdays during the school year including]scheduled school breaks;
 (iii) In coordination with the recipient's individualized educational plan or Section 504 plan if the recipient has an individualized educational plan or Section 504 plan; and
 (iv) [Under the supervision of a licensed or certified approved behavioral health services provider or 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.
 3. To provide day treatment services, a chemical dependency treatment center 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 subsection (1) of this section;
 b. An approved behavioral health practitioner under supervision, as limited by subsection (1) of this section; or
 c. A peer support specialist who:
 (i) Is under the supervision of an approved behavioral health

practitioner, as limited by subsection (1) of this section; and

(ii) Provides support services for a day treatment service.

(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 ~~[or 907 KAR 2:240]~~ and 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;

(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 disorder to a parent or family member of a child sharing a similar substance use disorder in order to bring about a desired social or personal change;~~or~~

(iii) An individual who has been trained and certified in accordance with 908 KAR 2:240 and identified as experiencing a substance use disorder [A family member who has been trained and certified in accordance with 908 KAR 2:230 of a child having or who has had a substance use disorder to a parent or family member of a child sharing a similar substance use disorder in order to bring about a desired social or personal change]; 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 disorder 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, or via telehealth as appropriate pursuant to the most current version of The ASAM Criteria and 907 KAR 3:170;

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,[e.] be coordinated within the context of a comprehensive, individualized plan of care developed through a person-centered planning process;

g.[f.] Be identified in each recipient's plan of care; and

h.[g.] Be designed to contribute directly to the recipient's individualized goals as specified in the recipient's plan of care.

2. To provide peer support services, a chemical dependency treatment center 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, or KRS 309.0831;

c. Use an approved behavioral health practitioner~~[services provider]~~ 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 thirty (30) hours per week of direct recipient contact; and

g. Require peer support services provided to recipients in a group setting to 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~~[inpatient hospitalization or partial hospitalization for a substance use disorder];~~

b. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is significantly more intensive than

individual outpatient therapy, group outpatient therapy, or family outpatient therapy;

c. Meet the service criteria, including the components for support systems, staffing, and therapies outlined in the most current version[edition] of The ASAM Criteria for intensive outpatient level of care services;

d. Be provided face-to-face, or via telehealth as appropriate pursuant to the most current version of The ASAM Criteria and 907 KAR 3:170;

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, 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 chemical dependency treatment center shall have:

a. Access to a board-certified or board-eligible psychiatrist for consultation;

b. Access to a psychiatrist, physician, or advanced practice 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 subsection (1) of this section; or

b. An approved behavioral health practitioner under supervision, as limited by subsection (1) of this section.

(i) Individual outpatient therapy shall:

1. Be provided to promote the:

a. Health and wellbeing of the recipient; and

b. Restoration of a recipient to their best possible functional level from substance use disorder or co-occurring disorders~~[Recipient's recovery from a substance use disorder];~~

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~~one-on-one 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; ~~[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, as limited by subsection (1) of this section; or

b. An approved behavioral health practitioner under supervision, as limited by subsection (1) 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[recipient]; and

(ii) Restoration of a recipient to their best possible functional level from a substance use disorder or co-occurring disorders[Recipient's recovery from a substance use disorder];

c. Consist of a face-to-face, or via telehealth as appropriate pursuant to the most current version of The ASAM Criteria and 907 KAR 3:170, 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[of] 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 subsection (1) of this section; or

b. An approved behavioral health practitioner under supervision, as limited by subsection (1) 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 well-being of the individual[recipient]; or

(ii) Restoration of a recipient to their best possible functional level from a substance use disorder or co-occurring disorder[Recipient's recovery from a substance use disorder]; 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, as limited by subsection (1) of this section; or

b. An approved behavioral health practitioner under supervision, as limited by subsection (1) of this section.

(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[recipient's representative], school personnel[staff—person], 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 alone or in combination with any other outpatient therapy per recipient 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[Consent given to discuss a recipient's treatment with any person other than a parent or legal guardian shall be signed by the recipient or recipient's representative 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 subsection (1) of this section; or

b. An approved behavioral health practitioner under supervision, as limited by subsection (1) of this section.

(m)1. Screening, brief intervention, and referral to treatment for a substance use disorder shall:

a. Be provided face-to-face or via telehealth as appropriate according to 907 KAR 3:170;

b.[1-] Be an evidence-based early-intervention approach for an individual with non-dependent substance use [in-order] to provide an effective strategy for intervention prior to the need for more extensive or specialized treatment; and

c.[2-] Consist of:

(i)[a-] Using a standardized screening tool to assess an individual for risky substance use behavior;

(ii)[b-] Engaging a recipient, who demonstrates risky substance use behavior, in a short conversation and providing feedback and advice[to the recipient]; and

(iii)[c-] Referring a recipient to additional substance use disorder services if the recipient is determined to need additional services to address [the recipient's] 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 subsection (1) of this section; or

b. An approved behavioral health practitioner under supervision, as limited by subsection (1) of this section.

(n)1. Service planning shall:

a. Be provided face-to-face, or via telehealth as appropriate pursuant to the most current version of The ASAM Criteria and 907 KAR 3:170;

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 subsection (1) of this section; or

b. An approved behavioral health practitioner under supervision, as limited by subsection (1) of this section.

(o)1. Ambulatory 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; and

c. Be in accordance with the most current version of The ASAM Criteria for ambulatory withdrawal management levels in an outpatient setting.

2. A recipient who is receiving ambulatory withdrawal management services shall:

a. Meet the most current ~~version~~**[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 most current version of The ASAM Criteria.**

3. Ambulatory 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 subsection (1) of this section.

(p)1. Medication assisted treatment shall be provided by an authorized prescribing provider who:

a. Is:

(i) A physician licensed to practice medicine under KRS Chapter 311;

(ii) An advanced practice registered nurse (APRN); or

(iii) A physician assistant **licensed to practice medicine under KRS Chapter 311[who has appropriately updated department provider enrollment information];**

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, **including any waiving or expansion of buprenorphine prescribing authority by the federal government; 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 as the practitioner with a waiver pursuant to subparagraph 1.b. of this paragraph or be conducted via telehealth as appropriate according to 907 KAR 3:170; 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 subsection (1) of this section; or

(ii) A multi-specialty group or behavioral health provider group pursuant to 907 KAR 15:010.

3. 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. Medication assisted treatment shall be provided by:

a. A physician;

b. A psychiatrist;

c. An advanced practice registered nurse; or

d. An approved behavioral health practitioner, as limited pursuant to subsection (1) of this section, or approved behavioral health practitioner under supervision, as limited pursuant to subsection (1) of this section, to provide counseling, behavioral therapies, and other support components with experience and knowledge in addiction medicine.

(q)1. An inpatient chemical dependency treatment program shall:

a. Be a structured inpatient program to provide medical, social, diagnostic, and treatment services to individuals with substance use disorder or co-occurring disorders;

b.(i) If being provided as an ASAM 3.7 level of care medically monitored intensive inpatient service, be provided face-to-face, twenty-four (24) hours per day, seven (7) days per week, 365 days a year with continuous nursing services and under the medical direction of a physician; or

(ii) If being provided as an ASAM 3.5 level of care clinically managed high intensity residential service, be provided face-to-face, or via telehealth as appropriate pursuant to the most current version of The ASAM Criteria and 907 KAR 3:170, twenty-four (24) hours per day, seven (7) days per week, and 365 days a year; and

c. Meet the service criteria for medically monitored intensive inpatient services using **the most current version of The ASAM Criteria, currently described by ASAM as a 3.7 level of care; and**

d. Include the following services:

(i) Screening;

(ii) Assessment;

(iii) Service planning;

(iv) Psychiatric services;

(v) Individual therapy;

(vi) Family therapy;

(vii) Group therapy;

(viii) Peer support;

(ix) Medication assisted treatment; **[or]**

(x) Clinically managed high intensity residential services, as established pursuant to subparagraph 2. of this paragraph; or

(xi) Medically monitored inpatient withdrawal management, as established pursuant to subparagraph 3.[2.] of this paragraph.

2. Clinically managed high intensity residential services provided in an inpatient chemical dependency treatment center shall:

a. Meet the service criteria for clinically managed high intensity residential services using the current version of The ASAM Criteria, currently described by ASAM as a 3.5 level of care;

b. Have:

(i) A planned and structured regimen of twenty-four (24) hour professionally directed evaluation, observation, clinical management, and addiction treatment;

(ii) Twenty-four (24) hour access to nursing care;

(iii) Twenty-four (24) hour access to a psychiatrist; and

(iv) Twenty-four (24) hour access to a physician; and

c. Comply with services pursuant to the requirements of 902 KAR 20:160, 908 KAR 1:370, and 908 KAR 1:372, as applicable to the current version of the ASAM 3.5 level of care.

3. Medically monitored inpatient withdrawal management services provided in an inpatient chemical dependency treatment center shall:

a. Meet the service criteria for medically monitored inpatient withdrawal management services using the **current version[edition]** of The ASAM Criteria, **currently described by ASAM as a 3.7 level of care; and**

b. Have:

(i) A planned and structured regimen of twenty-four (24) hour professionally directed evaluation, observation, medical monitoring, and addiction treatment;

(ii) Twenty-four (24) hour nursing care;

(iii) Twenty-four (24) hour access to a psychiatrist; and

(iv) Twenty-four (24) hour access to a physician; and

c.[b.] Comply with services pursuant to the requirements of 902 KAR 20:160.

4. An inpatient chemical dependency treatment program providing both ASAM 3.5 and ASAM 3.7 level of care services in the same facility shall:

a. Provide the ASAM 3.7 services within a separate unit from the ASAM 3.5 level of care unit; and

b. Meet the requirements of subparagraph 3. of this paragraph for all ASAM 3.7 level of care services[20:111].

5.[3.] For a recipient in an inpatient chemical dependency treatment program, care coordination shall include at minimum:

a. Facilitating medication assisted treatment for recipients as necessary, per recipient choice;

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.

6.[4.] Inpatient chemical dependency treatment services shall be provided in accordance with 902 KAR 20:160, Sections 4 and 7.

7.[5.] Length-of-stay for chemical dependency treatment services 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.

8.[6.]a. Except as established in clause b. or c. of this subparagraph, the physical structure in which inpatient chemical dependency treatment services 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, except as allowed pursuant to subparagraphs 2., 3., and 4. of this paragraph and by 902 KAR 20:160, as applicable.

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.

c. The limit of sixteen (16) beds established in clause a. of this subparagraph shall not apply if the facility possesses the appropriate inpatient, or residential, as applicable, ASAM certification to provide chemical dependency treatment center services, with the exception that:

(i) Each currently enrolled chemical dependency treatment center shall be granted a one (1) time provisional certification that expires July 1, 2022[2021], unless extended by the department; or

(ii) A federal waiver, or other change to controlling federal law that allows for the availability of federal financial participation, shall be available for this clause to be operational.

9.[7.] Inpatient chemical dependency treatment services 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.

10.[8.] To provide inpatient chemical dependency treatment services, the program 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;

b. Be licensed as a chemical dependency treatment services and facility in accordance with 902 KAR 20:160; and

c. After July 1, 2022[2021], possess an appropriate ASAM Level of Care Certification for medically monitored intensive inpatient services in accordance with the most current version of The ASAM Criteria, and possess an appropriate ASAM Level of

Care Certification for clinically managed high intensity residential services pursuant to the most current version of The ASAM Criteria if providing that level of care.

11.[9.]a. Inpatient chemical dependency treatment shall be provided by:

(i) An approved behavioral health practitioner, except as provided pursuant to subsection (1) of this section; or

(ii) An approved behavioral health practitioner under supervision, except as provided pursuant to subsection (1) of this section.

b. Support services for inpatient chemical dependency shall be provided by a peer support specialist under the supervision of an approved behavioral health practitioner.

(4)[The extent and type of a screening shall depend upon the nature of 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 health 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) The department shall not reimburse for both a screening and a screening, brief intervention and referral to treatment (SBIRT)[an SBIRT] provided to a recipient on the same date of service.

(3) 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) A consultation or educational service provided to a recipient or to others;

(c) 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 that is not reimbursable under 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[(14)];

(d) Travel time;

(e) A field trip;

(f) A recreational activity;

(g) A social activity; or

(h) A physical exercise activity group.

(4)(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(3)(l)1₂ of this administrative regulation.

(b) A third-party contract shall not be covered under this administrative regulation.

(5) A billing supervisor arrangement between a billing supervisor and an approved[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 approved 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 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 same 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 chemical dependency treatment center.

Section 6. Records Maintenance, Documentation, Protection, and Security. (1) A chemical dependency treatment center 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 participation 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 chemical dependency treatment center in order to comply with the requirements of:
- (i) This administrative regulation;
- (ii) The chemical dependency treatment center'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 upon request:
 - a. To the Cabinet for Health and Family Services; or
 - b. For an enrollee, to the 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 chemical dependency treatment center'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 for outpatient services; 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 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 ~~that[which]~~ reflects 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 has been 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 chemical dependency treatment center shall, within ten (10) business days of awareness 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.

(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, a Level I psychiatric residential treatment facility, a Level II psychiatric residential treatment facility, or an acute care hospital for care or treatment, the transferring chemical dependency treatment center 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 a chemical dependency treatment center'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 chemical dependency treatment center shall:

1. Remain the property of the chemical dependency treatment center; and
2. Be subject to the retention requirements established in subsection (13) of this section.

(b) A chemical dependency treatment center 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 chemical dependency treatment center shall maintain a health record regarding a recipient for at least six (6) years from the last 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 chemical dependency treatment center 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;
- b. Federal government; or

c. For an enrollee, the managed care organization in which the enrollee is enrolled.

(c)1. Upon request, a chemical dependency treatment center 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) A chemical dependency treatment center 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 chemical dependency treatment center receives any duplicate payment or overpayment from the department or a managed care organization, regardless of reason, the chemical dependency treatment center shall return the payment to the department or managed care organization in accordance with 907 KAR 1:671.

(b) Failure to return a payment to the department or managed care organization 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 chemical dependency treatment center 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 chemical dependency treatment center.

(b)1. A chemical dependency treatment center 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. Chemical dependency treatment center makes the recipient aware in writing 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. Chemical dependency treatment center 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 chemical dependency treatment center regarding the service.

(4)(a) A chemical dependency treatment center shall attest by the chemical dependency treatment center'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;
5. United States General Accounting Office or its designee; or
6. For an enrollee, managed care organization in which the enrollee is enrolled.

(c)1. If a chemical dependency treatment center receives a request from the:

- a. Department to provide a claim, related information, related documentation, or record for auditing purposes, the chemical dependency treatment center shall provide the requested information to the department within the timeframe requested by the department; or

b. Managed care organization in which an enrollee is enrolled to provide a claim, related information, related documentation, or record for auditing purposes, the chemical dependency treatment center shall provide the requested information to the managed care organization within the timeframe requested by the managed care organization.

2.a. The timeframe requested by the department or managed care organization for a chemical dependency treatment center to provide requested information shall be:

- (i) A reasonable amount of time given the nature of the request and the circumstances surrounding the request; and
- (ii) A minimum of one (1) business day.

b. A chemical dependency treatment center may request a longer timeframe to provide information to the department or a managed care organization if the chemical dependency treatment center justifies the need for a longer timeframe.

(d)1. All services provided shall be subject to review for recipient or provider fraud or abuse, and compliance with this administrative regulation and state and federal law.

2. Willful abuse by a chemical dependency treatment center shall result in the suspension or termination of the chemical dependency treatment center from Medicaid Program participation in accordance with 907 KAR 1:671.

Section 8. Third Party Liability. A chemical dependency treatment center 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 chemical dependency treatment center 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 chemical dependency treatment center'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 chemical dependency treatment center's electronic signature policy;
2. The signed consent form; and
3. The original filed signature.

Section 10. Auditing Authority. The department or managed care organization in which an enrollee is enrolled shall have the authority to audit any:

- (1) Claim;
- (2) Health record; or
- (3) Documentation associated with any claim or health record.

Section 11. Federal Approval and Federal Financial Participation. (1) The department's reimbursement of services pursuant to this administrative regulation shall be contingent upon:

(a) Receipt of federal financial participation for the coverage; and

(b) Centers for Medicare and Medicaid Services' approval for the coverage.

(2) The reimbursement of services provided by a licensed clinical alcohol and drug counselor or licensed clinical alcohol and drug counselor associate shall be contingent and effective upon approval by the Centers for Medicare and Medicaid Services.

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 17:010.907 KAR 15:080

LISA LEE, Commissioner

ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: February 11, 2021

FILED WITH LRC: February 11, 2021 at 4:18 p.m.

CONTACT PERSON: Donna Little, Deputy Executive Director, 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 and Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program outpatient and inpatient chemical dependency treatment center (CDTC) services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with federal mandates. 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" for all recipients.

(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 this administrative regulation combine a previously separate description of who may perform a service and a description of the service itself. This series of amendments also includes a reference to the defined terms "approved behavioral health practitioner" and "approved behavioral health practitioner under supervision" from 907 KAR 15:005 instead of a listing of each provider in each service. This provides for more transparency and compactness in the administrative regulation. The administrative regulation has also clarified the use of telehealth in several places. Additional requirements relating to mobile crisis services include requiring access to a board-certified or board eligible psychiatrist at all times, and allowing for the use of peer support specialists. Day treatment services include additional requirements relating to staff qualifications. Peer support specialist services are amended to further allow and enhance the use of emergency department bridge clinics. In addition, peer support specialist services are now required to only be 30 hours per week of direct recipient contact and group peer support services are not allowed to exceed 8 individuals within any group at one time. Intensive outpatient program services are required to comply with the most current service criteria of the ASAM Criteria, and additional clarification is given about how the services are to be provided to adults and adolescents. The amendments also include new services and requirements relating to "service planning", "ambulatory withdrawal management", "medication assisted treatment", and "inpatient chemical dependency treatment". The Amended After Comments version of this administrative regulation is amended to potentially allow additional services to utilize telehealth, if acceptable pursuant to the ASAM Criteria, and 907 KAR 3:170. The

administrative regulation additionally clarifies how collateral therapy is to be utilized on days that other outpatient therapies are provided. The administrative regulation also updates references to physician assistants, and allows for the potential for expanded prescribing authority of buprenorphine products. Finally, the administrative regulation also allows for an ASAM 3.5 level of care to be provided within a CDTC that provides SUD withdrawal, if the CDTC has an ASAM 3.5 certification.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to comply with existing OIG administrative regulations, implement an SUD 1115 waiver, require compliance with the ASAM Criteria, and provide additional formatting improvements.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to the content of the authorizing statutes by implementing an SUD 1115 waiver.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist in the effective administration of the statutes by providing additional clarity and requirements relating to chemical dependency treatment centers.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Entities licensed as chemical dependency treatment centers (CDTCs), behavioral health professionals authorized to provide services in CDTCs, and Medicaid recipients who receive services in CDTCs will be affected by the administrative regulation. Currently there are 3 CDTC licenses issued by 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. Entities that qualify as chemical dependency treatment centers 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 for providing behavioral health services to Medicaid recipients. Behavioral health professionals authorized to provide services in a chemical dependency treatment center 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: DMS anticipates potential savings of more than \$4.6 million due to the availability of a level of care that is less expensive than hospitalization via the introduction of inpatient chemical dependency treatment centers.

(b) On a continuing basis: DMS anticipates potential savings of more than \$4.6 million due to the availability of a level of care that is less expensive than hospitalization via the introduction of inpatient chemical dependency treatment centers.

(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. 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 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 anticipates potential savings of more than \$4.6 million due to the availability of a level of care that is less expensive than hospitalization via the introduction of inpatient chemical dependency treatment centers.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates potential savings of more than \$4.6 million due to the availability of a level of care that is less expensive than hospitalization via the introduction of inpatient chemical dependency treatment centers.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(Amended After Comments)

922 KAR 2:120. Child-care center health and safety standards.

RELATES TO: KRS Chapter 151, 158.030, Chapter 186, 189.125, 199.011(3), 199.894(1), 199.895(1), 199.896(2), (18), (19), 199.896(2), 199.898, 211.350-211.380, Chapter 217, [227.220.] 311.646, 314.011(5), Chapter 318, 527.070(1), 620.030, 7 C.F.R. 226.20, 16 C.F.R. 1219, 1220, 1221, 45 C.F.R. 98.2, 49 C.F.R. 571.213, 20 U.S.C. 6081-6084, 42 U.S.C. 9857-9858q

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2), 199.896(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.896(2) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations and standards for child-care centers. KRS 199.896(2) requires the Cabinet for Health and Family Services to promulgate administrative regulations to establish the requirements and procedures for the implementation of standards contained therein. This administrative regulation establishes health and safety standards for child-care centers.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 199.011(3) and 199.894(1).

(2) "Corporal physical discipline" is defined by KRS 199.896(18).

(3) "Developmentally appropriate" means suitable for the specific age range and abilities of a child.

(4) "Director" means an individual:

(a) Who meets the education and training requirements as specified in 922 KAR 2:090, Section 10;

(b) Whose primary full-time job responsibilities are to ensure compliance with 922 KAR 2:090, 922 KAR 2:280, and this administrative regulation; and

(c) Who is responsible for directing the program and managing

the staff at the child-care center.

(5) "Health professional" means a person currently licensed as a:

(a) Physician;

(b) Physician assistant;

(c) Advanced practice registered nurse; or

(d) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician or advanced practice registered nurse.

(6) "Infant" means a child who is less than twelve (12) months of age.

(7) "Licensee" means the owner or operator of a child-care center to include:

(a) Sole proprietor;

(b) Corporation;

(c) Limited liability company;

(d) Partnership;

(e) Association; or

(f) Organization, such as:

1. Board of education;

2. Private school;

3. Faith-based organization;

4. Government agency; or

5. Institution.

(8) "Nontraditional hours" means the hours of:

(a) 7 p.m. through 5 a.m. Monday through Friday; or

(b) 7 p.m. on Friday until 5 a.m. on Monday.

(9) "Parent" is defined by 45 C.F.R. 98.2.

(10) "Premises" means the building and contiguous property in which child care is licensed.

(11) "Preschool-age" means a child who is older than a toddler and younger than school-age.

(12) "Protective surface" means loose surfacing material not installed over concrete, which includes:

(a) Wood mulch;

(b) Double shredded bark mulch;

(c) Uniform wood chips;

(d) Fine sand;

(e) Coarse sand;

(f) Pea gravel, except for areas used by children under three (3) years of age;

(g) Certified shock absorbing resilient material; or

(h) Other material approved by the cabinet or designee, based on recommendation from a nationally recognized source.

(13) "Related" means having one (1) of the following relationships with the operator of the child-care center:

(a) Child;

(b) Grandchild;

(c) Niece;

(d) Nephew;

(e) Sibling;

(f) Stepchild; or

(g) Child in legal custody of the operator.

(14) "School-age" means a child who meets the age requirements of KRS 158.030 or who attends kindergarten, elementary, or secondary education.

(15) "Toddler" means a child between the age of twelve (12) months and thirty-six (36) months.

(16) "Transition" means the changing from one (1) child care arrangement to another.

(17) "Transition plan" means a document outlining the process to be used in moving a child from one (1) child care arrangement to another.

(18) "Type I child-care center" means a child-care center licensed to regularly provide child care services for:

(a) Four (4) or more children in a nonresidential setting; or

(b) Thirteen (13) or more children in a residential setting with designated space separate from the primary residence of a licensee.

(19) "Type II child-care center" means the primary residence of the licensee in which child care is regularly provided for at least seven (7), but not more than twelve (12), children including children related to the licensee.

Section 2. Child Care Services. (1) Services established in this administrative regulation shall be maintained during all hours of operation that child care is provided.

(2) For an operating child-care center, minimum staff-to-child ratios and group size shall be maintained as established in the table established in this subsection.

Age of Children	Ratio	Maximum Group Size*
Infant	1 staff for 5 children	10
Toddler 12 to 24 months	1 staff for 6 children	12
Toddler 24 to 36 months	1 staff for 10 children	20
Preschool-age 3 to 4 years	1 staff for 12 children	24
Preschool-age 4 to 5 years	1 staff for 14 children	28
School-age 5 to 7 years	1 staff for 15 children	30
School-age 7 and older	1 staff for 25 children (for before and after school)	30
	1 staff for 20 children (full day of care)	30

*Maximum Group Size shall be applicable only to Type I child-care centers.

(a) In a Type I child-care center, a group size shall:

1. Be separately maintained in a defined area unique to the group; and
2. Have specific staff assigned to, and responsible for, the group.

(b) The age of the youngest child in the group shall determine the:

1. Staff-to-child ratio; and
2. Maximum group size.

(c) This subsection and subsection ~~(10)~~(9) of this section shall not apply during traditional school hours to a center:

1. Providing early childhood education to mixed-age groups of children whose ages range from thirty (30) months to six (6) years; and

2. Accredited by or affiliated with a nationally-recognized education association that has criteria for group size and staff-to-child ratios contrary to the requirements of this subsection.

(d) If a child related to the director, employee, or person under the supervision of the licensee is receiving care in the center, the child shall be included in the staff-to-child ratio.

(3)(a) Each center shall maintain a child-care program that assures each child shall [will] be:

1. Provided with adequate supervision at all times by a qualified staff person who ensures the child is:
 - a. Within scope of vision and range of voice; or
 - b. For a school-age child, within scope of vision or range of voice; and
2. Protected from abuse and [or] neglect.

(b) The program shall include:

1. A procedure to ensure compliance with and inform child care staff of the laws of the Commonwealth pertaining to child abuse or neglect set forth in KRS 620.030; and
2. Written policy that states that the procedures that were taught at the orientation training shall be implemented by each child-care center staff member.

(4) The child-care center shall provide a daily planned program:

- (a) Posted in writing in a conspicuous location with each age group and followed;
- (b) Of activities that are individualized and developmentally appropriate for each child served;
- (c) That provides experience to promote the individual child's physical, emotional, social, and intellectual growth and well-being; and

(d) Unless the child-care center is a before- or after-school program that operates part day or less, that offers a variety of creative activities including:

1. Art or music;

2. Math or numbers;
3. Dramatic play;
4. Stories and books;
5. Science or nature;
6. Block building or stacking;
7. Tactile or sensory activity;
8. Multi-cultural exposure;
9. Indoor [or] and outdoor play in which a child makes use of both small and large muscles;
10. A balance of active and quiet play, including group and individual activity;
11. An opportunity for a child to:
 - a. Have some free choice of activities;
 - b. If desired, play apart from the group at times; and
 - c. Practice developmentally appropriate self-help procedures in respect to:
 - (i) Clothing;
 - (ii) Toileting;
 - (iii) Hand-washing; and
 - (iv) Eating; and
12. The use [Use] of screen time, electronic viewing, and listening devices if the:
 - a. Material is developmentally appropriate to the child using the equipment;
 - b. Material is not a replacement for active play or a substitute for engagement and interaction with other children and adults;
 - c. Material does not include any violence, adult content viewing, or inappropriate language;
 - d. Child is over twenty-four (24) months of age;
 - e. [c.] Viewing or individual listening is limited to two (2) hours per day;
 - f. [d.] Viewing or listening is discussed with parents beforehand [prior to viewing or listening]; and
 - f. [e.] Viewing or listening is designed as an educational tool used to help children explore, create, problem solve, interact, and learn with and from one another.
- (5) Screen time shall be:
 - (a) Utilized for:
 1. A maximum of thirty (30) minutes per day in a half-day program;
 2. A maximum of sixty (60) minutes per day in a full-day program; or
 3. The time needed for school-age children to complete assigned non-traditional instruction; and
 - (b) Prohibited for a child under twenty-four (24) months of age.
- (6) A child who does not wish to use an [the] electronic device [devices] during the planned program shall be offered other appropriate activities.
- (7)[(6)] Regularity of routines shall be implemented to afford the child familiarity with the daily schedule of activity.
- (8)[(7)] Sufficient time shall be allowed for an activity so that a child may progress at his or her own developmental rate.
- (9)[(8)] A child shall not be required to stand or sit for a prolonged period of time:
 - (a) During an activity;
 - (b) While waiting for an activity to start; or
 - (c) As discipline.
- (10)[(9)] If school-age care is provided:
 - (a) A separate area or room shall be provided in a Type I child-care center; and
 - (b) Each child shall be provided a snack after school.
- (11)[(40)] A child shall not be subjected to:
 - (a) Corporal physical discipline pursuant to KRS 199.896(18);
 - (b) Loud, profane, threatening, frightening, humiliating, or abusive language; or
 - (c) Discipline that is associated with:
 1. Rest;
 2. Toileting; [or]
 3. Play time; or
 4. Food.
- (12)[(44)] If nontraditional hours of care are provided:
 - (a) Including time spent in school, a child shall not be permitted to spend more than sixteen (16) hours in the child-care center

during one (1) twenty-four (24) hour period;

(b) At least one (1) staff member shall be assigned responsibility for each sleeping room;

(c) A child present for an extended period of time during waking hours shall receive a program of well-balanced and constructive activity that is developmentally appropriate for the child;

(d) A child sleeping three (3) hours or more shall sleep in:

1. Pajamas; or
2. A nightgown;

(e) A ~~[[If-a]]~~ child who attends school from the child-care center~~], the child]~~ shall be offered breakfast prior to leaving for school; and

(f) Staff shall:

1. If employed by a Type I child-care center, remain awake while on duty; or
2. If employed by or is the operator of a Type II child-care center, remain awake until every child in care is asleep.

~~(13)[(42)]~~(a) Care for a child with a special need shall be consistent with the nature of the need as documented by the child's health professional.

(b) A child may include a person eighteen (18) years of age if the person has a special need for which child care is required.

Section 3. General Requirements. (1) Screen time, electronic ~~[Electronic]~~ viewing, and listening devices shall only be used in the center as a part of the child's planned program of activity as established in Section 2(4) and (5) of this administrative regulation.

(2) Activity areas, equipment, and materials shall be arranged so that the child's activity is adequately supervised by staff.

(3) Computer equipment shall be equipped with a monitoring device that limits access by a child to items inappropriate for a child to view or hear.

(4) A child shall:

(a) Be helped with personal care and cleanliness based upon his or her developmental skills;

(b) Except as established in paragraph (c) of this subsection, wash his or her hands with liquid soap and warm running water:

1. a. Upon arrival at the center; or
- b. Within thirty (30) minutes of arrival for school-age children;
2. Before and after eating or handling food;
3. After toileting or diaper change;
4. After handling animals;
5. After touching an item or an area of the body soiled with body fluids or wastes; and
6. After outdoor or indoor play time; and

(c) Use hand sanitizer or hand-sanitizing wipes if liquid soap and warm running water are not available in accordance with paragraph (b) of this subsection. The child shall wash the child's hands as soon as practicable once liquid soap and warm running water are available.

(5) Staff shall:

- (a) Maintain personal cleanliness;
- (b) Conform to hygienic practices while on duty;
- (c) Except as established in paragraph (d) of this subsection, wash their hands with liquid soap and running water:

1. Upon arrival at the center;
2. After toileting or assisting a child in toileting;
3. Before and after diapering each child;
4. After wiping or blowing a child's or own nose;
5. After handling animals;
6. After caring for a sick child;
7. Before and after feeding a child or eating;
8. Before dispensing medication;
9. After smoking or vaping; and
10. If possible, before administering first aid; and

(d) Use hand sanitizer or hand-sanitizing wipes if liquid soap and warm running water are not available in accordance with paragraph (c) of this subsection. The staff shall wash the staff's hands as soon as practicable once liquid soap and warm running water are available.

(6) A staff person suspected of being infected with a communicable disease shall:

- (a) Not perform duties that could allow for the transmission of

the disease until the infectious condition can no longer be transmitted; and

(b) Provide a statement of fitness to return to work from a health professional, if requested.

(7) The following shall be inaccessible to a child in care:

- (a) Toxic cleaning supplies, poisons, and insecticides;
- (b) Matches, cigarettes, lighters, and flammable liquids; and
- (c) Personal belongings and medications of staff.

(8) The following shall be inaccessible to a child in care unless under direct supervision and part of planned program of instruction:

- (a) Knives and sharp objects;
- (b) Litter and rubbish;
- (c) Bar soap; and
- (d) Plastic bags not used for personal belongings.

(9) In accordance with KRS 527.070(1), firearms and ammunition shall be stored separately from each other in a locked area outside of the designated child care area.

(10) Smoking or vaping shall:

- (a) Be permitted in accordance with local ordinances;
- (b) Be allowed only in outside designated areas; and
- (c) Not be permitted in the presence of a child.

(11) While bottle feeding a child, the:

- (a) Child shall be held; and
- (b) Bottle or beverage container shall not be:
 1. Propped;
 2. Left in the mouth of a sleeping child; or
 3. Heated in a microwave.

(12) A fire drill shall be:

- (a) Conducted during hours of operation at least monthly; and
- (b) Documented.

(13) An earthquake drill, shelter-in-place or lockdown drill, and [a] tornado drill shall be:

- (a) Conducted during hours of operation at least quarterly; and
- (b) Documented.

Section 4. Premises Requirements. (1) The premises shall be:

- (a) Suitable for the purpose intended;
- (b) Kept clean and in good repair; and
- (c) Equipped with:

1. A working telephone accessible to a room used by a child; and

2. A list of emergency numbers posted by the telephone or maintained in the telephone's contact, including numbers for the:

- a. Police department;
- b. Fire department ~~[station]~~;
- c. Emergency medical care and rescue squad; and
- d. Poison control center.

(2) A child-care center shall be in compliance with the codes administered by the Kentucky ~~[State]~~ Fire Marshal and the local zoning laws.

(3) Fire and emergency exits shall be kept clear of debris.

(4) A working carbon monoxide detector shall be required in a licensed child-care center that is in a home if the home:

- (a) Uses fuel burning appliances; or
- (b) Has an attached garage.

(5) The building shall be constructed to ensure the:

- (a) Building is:
 1. Dry;
 2. Ventilated; and
 3. Well lit, including clean light fixtures that are:
 - a. In good repair in all areas; and
 - b. Shielded or have shatter-proof bulbs installed; and
- (b) Following are protected:
 1. Windows;
 2. Doors;
 3. Stoves;
 4. Heaters;
 5. Furnaces;
 6. Pipes; and
 7. Stairs.

(6) Exclusive of the kitchen, bathroom, hallway, and storage area, there shall be a minimum of thirty-five (35) square feet of space per child.

(7) Measures shall be utilized to control the presence of:

- (a) Rodents;
- (b) Flies;
- (c) Roaches; and
- (d) Other vermin.

(8) An opening to the outside shall be effectively protected against the entrance of vermin by:

- (a) Self-closing doors;
- (b) Closed windows;
- (c) Screening;
- (d) Controlled air current; or
- (e) Other effective means.

(9) Floors, walls, and ceilings shall be smooth, in good repair, and constructed to be easily cleaned.

(10) The water supply shall be:

- (a) Potable;
- (b) Protected from contamination;
- (c) Adequate in quality and volume;
- (d) Under sufficient pressure to permit unrestricted use; and
- (e) Obtained from an approved public water supply or a source approved by the local health department.

(11) Groundwater supplies for a child-care center caring for:

- (a) More than twenty-five (25) children shall comply with requirements of the Energy and Environment Cabinet, Division of Water, established in KRS Chapter 151 and 401 KAR Chapter 8, as applicable; or
- (b) Twenty-five (25) children or less shall secure approval from the:
 - 1. Energy and Environment Cabinet; or
 - 2. Local health department.

(12) Sewage shall be properly disposed by a method approved by the:

- (a) Energy and Environment Cabinet; or
- (b) Cabinet.

(13) All plumbing shall comply with the State Plumbing Code established in KRS Chapter 318.

(14) Solid waste shall be kept in a suitable receptacle in accordance with local, county, and state law, as governed by KRS 211.350 to 211.380.

(15) If a portion of the building is used for a purpose other than child care:

- (a) Necessary provisions shall be made to avoid interference with the child-care program; and
- (b) A separate restroom shall be provided for use only by those using the building for its child care purpose.

(16) The temperature of the indoor [inside] area of the premises shall be sixty-five (65) to eighty-two (82) degrees Fahrenheit.

(17) Outdoor activity shall be restricted based upon:

- (a) Temperature;
- (b) Weather conditions; [or]
- (c) Weather alerts, advisories, and warnings issued by the National Weather Service; or
- (d) Age or temperament of the child.

(18) A kitchen shall not be required if:

- (a) The only food served is an afternoon snack to school-age children; and
- (b) Adequate refrigeration is maintained.

(19) The Department of Housing, Buildings and Construction, the Kentucky [State] Fire Marshal's Office, and cabinet shall be contacted concerning a planned new building, addition, or major renovation prior to construction.

(20) An outdoor play area shall be:

- (a) Except for an after-school child-care program, located on the premises of a public or state-accredited nonpublic school, fenced for the safety of the children;
- (b) A minimum of sixty (60) square feet per child, separate from and in addition to the thirty-five (35) square feet minimum pursuant to subsection (6) of this section;
- (c) Free from:
 - 1. Litter;
 - 2. Glass;
 - 3. Rubbish; and

- 4. Flammable materials;
- (d) Safe from foreseeable hazard;
- (e) Well drained;
- (f) Well maintained;
- (g) In good repair; and
- (h) Visible to staff at all times.

(21) A protective surface shall:

- (a) Be provided for outdoor play equipment used to:
 - 1. Climb;
 - 2. Swing; and
 - 3. Slide; and
- (b) Have a fall zone equal to the height of the equipment.

(22) If a child-care center does not have access to an outdoor play area, an indoor space shall:

- (a) Be used as a play area;
- (b) Have a minimum of sixty (60) square feet per child, separate from and in addition to the thirty-five (35) square feet minimum pursuant to subsection (6) of this section;
- (c) Include equipment for gross motor skills; and
- (d) Have a protective surface of at least two (2) inches thick around equipment intended for climbing.

(23) While attending, a child shall:

- (a) Have moderate to vigorous activity each day, including active play that:
 - 1. Includes outdoor play unless unavailable pursuant to subsections (17) or (22) of this section;
 - 2. Shall occur for a minimum of:
 - a. Thirty (30) minutes per day in a half-day program; or
 - b. Sixty (60) minutes per day in a full-day program; and
 - 3. May be broken into smaller increments of time throughout a day; and
 - (b) Not be punished or rewarded in regards to play time.

(24) Fences shall be:

- (a) Constructed of safe material;
- (b) Stable; and
- (c) In good condition.

(25) [(24)] Supports for climbing apparatus and large equipment shall be securely fastened to the ground.

(26) [(25)] Crawl spaces, such as tunnels, shall be short and wide enough to permit access by adults.

(27) [(26)] A sandbox shall be:

- (a) Constructed to allow for drainage;
- (b) Covered while not in use;
- (c) Kept clean; and
- (d) Checked for vermin prior to use.

(28) [(27)] Bodies of water that shall not be utilized include:

- (a) Portable wading pools;
- (b) Natural bodies of water; and
- (c) Unfiltered, nondisinfected containers.

(29) [(28)] A child-care center shall have enough toys, play apparatus, and developmentally appropriate materials to provide each child with a variety of activities during the day, as specified in Section 2 of this administrative regulation.

(30) [(29)] Storage space shall be provided:

- (a) In the form of:
 - 1. Shelves; or
 - 2. Other storage device accessible to the children; and
 - (b) In sufficient quantity for each child's personal belongings.
- (31) [(30)] Supplies shall be stored so that the adult can reach them without leaving a child unattended.

Section 5. Infant and Toddler Play Requirements. (1) Indoor [inside] areas for infants and toddlers under twenty-four (24) months of age shall:

- (a) Be separate from an area used by an older child;
- (b) Not be an exit or entrance; and
- (c) Have adequate crawling space for an infant or toddler away from general traffic patterns of the center.

(2) While awake, an infant shall have short periods of supervised tummy time throughout each day.

(3) Except in accordance with subsection (4) [(3)] of this section or Section 2(2)(c) of this administrative regulation, an infant or toddler under twenty-four (24) months of age shall not participate in

an activity with an older child for more than one (1) hour per day.

(4)(3) If a toddler is developmentally appropriate for a transition to a preschool age group, a toddler may participate in an activity with an older child for more than one (1) hour per day if:

(a) Space for the toddler is available in the preschool-age group;

(b) The staff-to-child ratios and group sizes are maintained based on the age of the youngest child;

(c) The center has a procedure for listing a transitioning toddler on attendance records, including a specific day and time the toddler is with either age group; and

(d) The child care center has obtained the signature and approval of the toddler's parent on the toddler's transition plan.

(5)(4) If a child-care center provides an outdoor play area for an infant or toddler under twenty-four (24) months of age, the outdoor area shall be:

(a) Shaded; and

(b) In a [A] separate area or scheduled at a different time than an older child.

(6)(5) Playpens and play yards shall:

(a) Meet federal standards as issued by the Consumer Product Safety Commission, including 16 C.F.R. 1221;

(b) Be manufactured for commercial use; and

(c) Not be used for sleeping or napping.

Section 6. Sleeping and Napping Requirements. (1) An infant shall sleep or nap on the infant's back unless the infant's health professional signs a waiver that states the infant requires an alternate sleeping position.

(2) Rest time shall be provided for each child who is not school-age and who is in care for more than four (4) hours.

(3) Rest time shall occur in an [include] adequate space according to [specified by] the child's age as follows:

(a) For an infant:

1. An individual non-tiered crib that meets Consumer Product Safety Commission standards established in 16 C.F.R. 1219-1220;

2. A firm crib mattress in good repair with a clean tight-fitted sheet that shall be changed:

a. Weekly; or

b. Immediately if it is soiled or wet;

3. No [loose] bedding other than a clean tight-fitted sheet[, such as a bumper or a blanket]; and

4. No toys or other items except the infant's pacifier; or

(b) For a toddler or preschool-age child:

1. An individual bed, a two (2) inch thick waterproof mat, or cot in good repair; and

2. Bedding that is in good repair and is changed:

a. Weekly; or

b. Immediately if it is soiled or wet.

(4) Rest time shall not exceed two (2) hours for a preschool-age child unless the child is attending the child-care center during nontraditional hours.

(5) A child who does not sleep shall be permitted to play quietly and shall be visually supervised.

(6) Cots, equipment, and furnishings used for sleeping and napping shall be spaced twelve (12) inches apart to allow free and safe movement by a person.

(7) If cots or mats are used, floors shall be free from:

(a) Drafts;

(b) Liquid substances;

(c) Dirt; and

(d) Dampness.

(8)(a) Cots or mats not labeled for individual use by a child shall be cleaned after each use.

(b) Cots or mats labeled for individual use by a child shall be:

1. Cleaned at least weekly; and

2. Disinfected immediately if it is soiled or wet.

(9) Individual bedding shall be stored in a sanitary manner.

Section 7. First Aid and Medicine. (1) First aid supplies shall:

(a) Be available to provide prompt and proper first aid treatment;

(b) Be stored out of reach of a child;

(c) Be periodically inventoried to ensure the supplies have not expired;

(d) If reusable, be:

1. Sanitized; and

2. Maintained in a sanitary manner; and

(e) Include:

1. Liquid soap;

2. Adhesive bandages;

3. Sterile gauze;

4. Medical tape;

5. Scissors;

6. A thermometer;

7. Flashlight;

8. Cold pack;

9. First aid book;

10. Disposable gloves; and

11. A cardiopulmonary resuscitation mouthpiece protector.

(2) A child showing signs of an illness or condition that could be communicable shall not be admitted to the regular child-care program.

(3) If a child becomes ill while at the child-care center:

(a) The child shall be placed in a supervised area isolated from the rest of the children;

(b) The parent shall be contacted immediately; and

(c) Arrangements shall be made to remove the child from the child-care center as soon as practicable.

(4) Prescription and nonprescription medication shall be administered to a child in care:

(a)1. With a written request of the child's parent or the child's prescribing health professional; and

2. According to the directions or instructions on the medication's label; or

(b) For epinephrine, in accordance with KRS 199.8951 and 311.646.

(5) The child-care center shall keep a written record of the administration of medication, including:

(a) Time of each dosage;

(b) Date;

(c) Amount;

(d) Name of staff person giving the medication;

(e) Name of the child; and

(f) Name of the medication.

(6) Medication, including refrigerated medication, shall be:

(a) Stored in a separate and locked place, out of the reach of a child unless the medication is:

1. A first aid supply and is maintained in accordance with subsection (1) of this section;

2. Diaper cream, sunscreen, or toothpaste. Diaper cream, sunscreen, or toothpaste shall be inaccessible to a child;

3. An epinephrine auto-injector. A licensed child-care center shall comply with KRS 199.8951 and 311.646, including:

a. An epinephrine auto-injector shall be inaccessible to a child;

b. A child-care center shall have at least one (1) person onsite who has received training on the administration of an epinephrine auto-injector if the child-care center maintains an epinephrine auto-injector;

c. A child-care center shall seek emergency medical care for a child if an auto-injector is administered to the child; and

d. A child-care center shall report to the child's parent and the cabinet in accordance with 922 KAR 2:090, Section 13(1)(b), [42(4)(b)] if an epinephrine auto-injector is administered to a child; or

4. An emergency or rescue medication for a child in care, such as medication to respond to diabetic or asthmatic condition, as prescribed by the child's physician. Emergency or rescue medication shall be inaccessible to a child in care;

(b) Kept in the original bottle; and

(c) Properly labeled.

(7) Medication shall not be given to a child if the medication's expiration date has passed.

(8) Each center shall ensure that every staff member has received training on first aid and cardiopulmonary resuscitation (CPR).

Section 8. Kitchen Requirements. (1) The kitchen shall:

- (a) Be clean;
 - (b) Be equipped for proper food:
 - 1. Preservation;
 - 2. Storage;
 - 3. Preparation; and
 - 4. Service;
 - (c) Be adequately ventilated to the outside air; and
 - (d) Except in a Type II child-care center when a meal is not being prepared, not be used for the activity of a child.
- (2) A child-care center required to have a food service permit shall be in compliance with 902 KAR 45:005 and this administrative regulation.
- (3) Convenient and suitable sanitized utensils shall be:
- (a) Provided; and
 - (b) Used to minimize handling of food during preparation.
- (4) A cold-storage facility used for storage of perishable food in a nonfrozen state shall:
- (a) Have an indicating thermometer or other appropriate temperature measuring device;
 - (b) Be in a safe environment for preservation; and
 - (c) Be forty (40) degrees Fahrenheit or below.
- (5) Frozen food shall be:
- (a) Kept at a temperature of zero degrees Fahrenheit or below; and
 - (b) Thawed:
 - 1. At refrigerator temperatures;
 - 2. Under cool, potable running water;
 - 3. As part of the cooking process; or
 - 4. By another method in accordance with the Department for [ef] Public Health's food safety standards and permits, established in KRS Chapter 217.
 - (6) Equipment, utensils, and surfaces contacting food shall be:
 - (a) Smooth;
 - (b) Free of breaks, open seams, cracks, and chips;
 - (c) Accessible for cleaning; and
 - (d) Nontoxic.
 - (7) The following shall be clean and sanitary:
 - (a) Eating and drinking utensils;
 - (b) Kitchenware;
 - (c) Food contact surfaces of equipment;
 - (d) Food storage utensils;
 - (e) Food storage containers;
 - (f) Cooking surfaces of equipment; and
 - (g) Nonfood contact surfaces of equipment.
 - (8) A single-service item shall be:
 - (a) Stored;
 - (b) Handled and dispensed in a sanitary manner; and
 - (c) Used only once.
 - (9) Bottles shall be:
 - (a) Individually labeled;
 - (b) Promptly refrigerated;
 - (c) Covered while not in use; and
 - (d) Consumed within one (1) hour of being heated or removed from the refrigerator.

Section 9. Food and Drink [Meal] Requirements for All Child-Care Centers. (1) Food shall be:

- (a) Clean;
- (b) Free from:
 - 1. Spoilage;
 - 2. Adulteration; and
 - 3. Misbranding;
- (c) Safe for human consumption;
- (d) Withheld from service or discarded if the food is hermetically sealed, nonacidic, or low-acidic food that has been processed in a place other than a commercial food-processing establishment;
- (e) Obtained from a source that is in compliance with the Department for [ef] Public Health's food safety standards and permits, established in KRS Chapter 217;
- (f) Acceptable if from an established commercial food store;

(g) Served in a quantity that is developmentally appropriate for the child with additional portions provided upon request of the child; and

- (h) Protected against contamination from:
 - 1. Dust;
 - 2. Flies;
 - 3. Rodents and other vermin;
 - 4. Unclean utensils and work surfaces;
 - 5. Unnecessary handling;
 - 6. Coughs and sneezes;
 - 7. Cuts in skin;
 - 8. Communicable disease;
 - 9. Flooding;
 - 10. Drainage; and
 - 11. Overhead leakage.
- (2) Food shall not be:
 - (a) Used for reward;
 - (b) Used for discipline;
 - (c) Withheld until all other foods are consumed; or
 - (d) Served while viewing electronic devices.
- (3) A serving of milk shall consist of:
 - (a) Breast milk or iron-fortified formula for a child:
 - 1. Age birth to twelve (12) months; or
 - 2. Beyond twelve (12) months of age as documented by the parent or the child's physician;
 - (b) Pasteurized unflavored whole milk for children ages twelve (12) months to twenty-four (24) months; or
 - (c) Pasteurized unflavored low fat one (1) percent or fat-free skim milk for children ages twenty-four (24) months to school-age.
- (4) Formula or breast milk provided by the parent shall be prepared and labeled.
- (5) A child-care center may participate in the Child and Adult Care Food Program (CACFP).
- (6) A serving of bread shall only consist of whole or enriched grain.
- (7) Drinking water shall be freely available to a child throughout the day.
- (8) Food shall be stored on:
 - (a) Clean racks;
 - (b) Clean shelves;
 - (c) Other clean surfaces; or
 - (d) If maintained in a sanitary condition, in nonabsorbent labeled containers a minimum of six (6) inches off the floor.
- (9) Fruits and vegetables shall be washed before cooking or serving.
- (10) Children shall not be served food that has been deep-fried on-site.
- (11) Meat salads, poultry salads, and cream-filled pastries shall be:
 - (a) Prepared with utensils that are clean; and
 - (b) Refrigerated unless served immediately.
- (12)[(14)] An individual portion of food served to a child or adult shall not be served again.
- (13)[(12)] Wrapped food that is still wholesome and has not been unwrapped may be reserved.
- (14)[(13)] Meals shall be:
 - (a) Served every two (2) to three (3) hours; and
 - (b) Served to a child:
 - 1. Seated with sufficient room to manage food and tableware; and
 - 2. Supplied with individual eating utensils designed for use by a child.
- (15) Drinks served to children shall not have added sugar. Children shall drink water, milk, or 100% juice with meals.
- (16) Juice shall:
 - (a) Not include added sugar;
 - (b) Not be served more than once per day;
 - (c) Not be served to children under the age of twelve (12) months; and
 - (d) Serve as a fruit or vegetable meal component replacement.
- (17) A meat alternative shall include:
 - (a) Tofu;
 - (b) Soy products;

(c) Cheese, including cottage or ricotta cheese;

(d) Eggs;

(e) Cooked dry beans;

(f) Peanut butter or soy nut butter;

(g) Yogurt, plain or flavored; or

(h) Peanuts, soy nuts, tree nuts, or seeds.

(18) Cheese shall be natural and pasteurized processed cheese. Children shall not be served cheese product, imitation cheese, cheese food, or cheese spread as a meat alternative.

(19)(15) For food provided by the center, all [All] children in the center shall be offered the same food items unless;

(a) A parent provides written authorization to substitute the food with an alternative that meets the same component requirement; or

(b) A physician provides written authorization to substitute the food or the food component and includes the food that the child shall not have and the food substitution that the child shall have [the child's parent or health professional documents a dietary restriction that necessitates an alternative food item for the child].

(20) Children shall be served all daily food components required by Section 10 or 11 of this administrative regulation.

Section 10. Meal Planning Requirements for a Center that Provides Meals. (1) [(15)] A child-care center shall serve:

(a)1. Breakfast; or

2. A mid-morning snack;

(b)1. Lunch; or

2. A mid-afternoon snack; and

(c) If appropriate, dinner.

(16) A weekly menu shall be:

(a) Prepared;

(b) Dated;

(c) Posted in advance in a conspicuous place;

(d) Kept on file for thirty (30) days; and

(e) Amended in writing with any substitutions on the day the meal is served.] Breakfast shall include the following three (3) components:

(a) Milk;

(b) Bread or grain, which may:

1. Be exchanged for a meat or meat alternative up to three (3) times per week; and

2. Include ready-to-eat cereal with six (6) grams of sugar or less per dry ounce; and

(c)1. Fruit;

2. Vegetable; or

3. 100 percent juice.

(2)(14) A snack shall include two (2) of the following components:

(a) Milk;

(b) Meat or meat alternative[Protein];

(c) Bread or grain; or

(d)1. Fruit;

2. Vegetable; or

3. 100 percent juice.

(3)(19) Lunch, and dinner if served, shall include the following components:

(a) Milk;

(b) Meat or meat alternative[Protein];

(c) Bread or grain; and

(d)1. Two (2) different vegetables; or

2. [Two (2) fruits; or

3.] One (1) fruit and one (1) vegetable.

(4) A grain-based dessert shall not replace the bread or grain component of a meal.

(5) Yogurt served to children shall have twenty-three (23) grams of sugar or less per six (6) ounces.

(6) The serving size for milk shall be:

(a) Four (4) ounces for one (1) or two (2) year old children;

(b) Six (6) ounces for three (3) to five (5) year old children; or

(c) Eight (8) ounces for school-age children.

(7) At least one (1) whole grain bread or grain shall be served daily.

(8) A component shall be considered "whole grain" if:

(a) The product is listed by any state agency's Special Supplemental Nutrition Program for Women, Infants[Infant], and Children as whole grain;

(b) The product is labeled as "whole wheat" and has a Standard of Identity issued by the U.S. Food and Drug Administration (FDA);

(c) The product includes one of the FDA-approved whole grain health claims on its packaging, exactly as written;

(d) The product meets the whole grain-rich criteria under the National School Lunch Program (NSLP);

(e) The product is identified on the package as "whole grain," "whole wheat," or "whole grain-rich"; or

(f) Proper documentation from a manufacturer or standardized recipe demonstrates that whole grains are the primary grain ingredient by weight.

(9) A weekly menu shall be:

(a) Prepared;

(b) Dated;

(c) Posted in advance in a conspicuous place;

(d) Kept on file for thirty (30) days; and

(e) Amended in writing with any substitutions on the day the meal is served.

Section 11. Meal Planning Requirements for a Center that Does Not Provide Meals. (1) A child-care center that does not provide meals shall serve:

(a)1. Breakfast; or

2. A mid-morning snack;

(b)1. Lunch; or

2. A mid-afternoon snack; and

(c) Dinner, if appropriate.

(2) Breakfast shall include three (3) of the following components:

(a) Milk;

(b) Bread or grain;

(c) Meat or meat alternative; or

(d)1. Fruit;

2. Vegetable; or

3. 100 percent juice.

(3) A snack shall include two (2) of the following components:

(a) Milk;

(b) Bread or grain;

(c) Meat or meat alternative; or

(d)1. Fruit;

2. Vegetable; or

3. 100 percent juice.

(4) Lunch, and dinner if served, shall include:

(a) Milk;

(b) Bread or grain;

(c) Meat or meat alternative; and

(d)1. Two (2) different vegetables; or

2. One (1) fruit and one (1) vegetable.]

(20) A child-care center shall meet requirements of subsections (3), (15), and (17) through (19) of this section if the child-care center participates in the Child and Adult Food Care Program and meets meal requirements specified in 7 C.F.R. 226.20.]

Section (12)[40]. Toilet, Diapering, and Toiletry Requirements.

(1) A child-care center shall have a minimum of one (1) toilet and one (1) lavatory for each twenty (20) children. Urinals may be substituted for up to one-half (1/2) of the number of toilets required for a male toilet room.

(2) A toilet room shall:

(a)1. Be provided for each gender; or

2. A plan shall be implemented to use the same toilet room at separate times;

(b) Have a supply of toilet paper; and

(c) Be cleaned and disinfected daily.

(3) A sink shall be:

(a) Located in or immediately adjacent to toilet rooms;

(b) Equipped with hot and cold running water that allows for hand washing;

(c) Equipped with hot water at a minimum temperature of ninety (90) degrees Fahrenheit and a maximum of 120 degrees Fahrenheit;

(d) Equipped with liquid soap;

(e) Equipped with hand-drying blower or single use disposable hand drying material;

(f) Equipped with an easily cleanable waste receptacle; and

(g) Immediately adjacent to a changing area used for infants and toddlers.

(4) Each toilet shall:

(a) Be kept in clean condition;

(b) Be kept in good repair;

(c) Be in a lighted room; and

(d) Have ventilation to outside air.

(5) Toilet training shall be coordinated with the child's parent.

(6) An adequate quantity of freshly laundered or disposable diapers and clean clothing shall be available.

(7) If a toilet training chair is used, the chair shall be:

(a) Used over a surface that is impervious to moisture;

(b) Out of reach of other toilets or toilet training chairs;

(c) Emptied promptly; and

(d) Disinfected after each use.

(8) Diapers or clothing shall be:

(a) Changed when soiled or wet;

(b) Stored in a covered container temporarily; and

(c) Washed or disposed of at least once a day.

(9) The proper methods of diapering and hand-washing shall be posted at each diaper changing area.

(10) When a child is diapered, the child shall:

(a) Not be left unattended; and

(b) Be placed on a surface that is:

1. Clean;

2. Padded;

3. Free of holes, rips, tears, or other damage;

4. Nonabsorbent;

5. Easily cleaned; and

6. Free of any items not used for diaper changing.

(11) Unless the child is allergic, individual disposable washcloths shall be used to thoroughly clean the affected area of the child.

(12) Staff shall disinfect the diapering surface after each child is diapered.

(13) If staff wears disposable gloves, the gloves shall be changed and disposed after each child is diapered.

(14) Combs, towels or washcloths, brushes, and toothbrushes used by a child shall be:

(a) Individually stored in separate containers; and

(b) Plainly labeled with the child's name.

(15) Toothbrushes shall be:

(a) Individually identified;

(b) Allowed to air dry; and

(c) Protected from contamination.

(16) Toothpaste used by multiple children shall be dispensed onto an intermediate surface, such as waxed paper, to avoid cross contamination.

Section 13[44]. Toys and Furnishings. (1) All toys and furniture contacted by a child shall be:

(a) Kept clean and in good repair; and

(b) Free of peeling, flaking, or chalking paint.

(2) Indoor and outdoor equipment shall:

(a) Be clean, safe, and in good repair;

(b) Meet the physical, developmental needs, and interests of children of different age groups;

(c) Be free from sharp points or corners, splinters, protruding nails or bolts, loose or rusty parts, hazardous small parts, lead-based paint, poisonous material, and flaking or chalking paint; and

(d) Be designed to guard against entrapment or situations that may cause strangulation.

(3) Toys shall be:

(a) Used according to the manufacturer's safety specifications;

(b) Durable; and

(c) Without sharp points or edges.

(4) A toy or another item that is considered a mouth contact surface by a child not toilet trained shall be sanitized daily by:

(a) 1. Scrubbing in warm, soapy water using a brush to reach into crevices;

2. Rinsing in clean water;

3. Submerging in a sanitizing solution for at least two (2) minutes; and

4. Air dried; or

(b) Cleaning in a dishwasher if the toy or other item is dishwasher safe.

(5) Tables and chairs shall be of suitable size for children.

(6) Chairs appropriate for staff shall be provided to use while feeding, holding, or playing with a child.

Section 14[42]. Transportation. (1) A center shall document compliance with KRS Chapter 186 and 603 KAR 5:072 pertaining to:

(a) Vehicles;

(b) Drivers; and

(c) Insurance.

(2) A center providing or arranging transportation service shall:

(a) Be licensed and approved by the cabinet or its designee prior to transporting a child;

(b) Have a written plan that details the type of transportation, staff schedule, transportation schedule, and transportation route; and

(c) Have written policies and procedures, including emergency procedures practiced monthly by staff who transports children.

(3) Prior to transporting a child, a center providing transportation services of a child shall notify the cabinet or its designee in writing of the:

(a) Type of transportation offered;

(b) Type of vehicle used for transportation;

(c) Plan for ensuring staff perform duties relating to transportation properly;

(d) Full insurance coverage for each vehicle;

(e) Agency policy and procedures relating to an emergency plan for evacuating the vehicle;

(f) Contracts, agreements, or documents detailing arrangements with any third party for services; and

(g) Safety procedures for:

1. Transporting a child;

2. Loading and unloading a child; and

3. Providing adequate supervision of a child.

(4) A vehicle used to transport children shall be equipped with:

(a) A fire extinguisher;

(b) First aid supplies as established in Section 7 of this administrative regulation;

(c) Emergency reflective triangles; and

(d) A device to cut the restraint system, if necessary.

(5) Transportation provided by licensed public transportation or a school bus shall comply with subsections (1) and (2) of this section.

(6) A vehicle used to transport children shall comply with the requirements established in paragraphs (a) through (d) of this subsection.

(a) For a twelve (12) or more passenger vehicle, the child-care center shall maintain a current certification of inspection from the Transportation Cabinet.

(b) A vehicle that requires traffic to stop while loading and unloading a child shall be equipped with a system of:

1. Signal lamps;

2. Identifying colors; and

3. Cautionary words.

(c) A vehicle shall be equipped with seat belts for each occupant to be individually secured.

(d) A vehicle shall not transport children and hazardous materials at the same time.

(7) The appropriate car safety seat meeting federal and state motor vehicle safety standards in 49 C.F.R. 571.213 and KRS 189.125 shall be used for each child.

(8) A daily inspection of the vehicle shall be performed prior to the vehicle's use and documented for:

- (a) Tire inflation consistent with tire manufacturer's recommended air pressure;
- (b) Working lights, signals, mirrors, gauges, and wiper blades;
- (c) Working safety restraints;
- (d) Adequate fuel level; and
- (e) Cleanliness and good repair.
- (9)(a) The staff-to-child ratios set forth in Section 2(2) of this administrative regulation shall apply to vehicle transport, if not inconsistent with special requirements or exceptions in this section.
- (b) An individual who is driving with a child in the vehicle shall supervise no more than four (4) children under the age of five (5).
- (10) Each child shall:
 - (a) Have a seat;
 - (b) Be individually belted or harnessed in the seat; and
 - (c) Remain seated while the vehicle is in motion.
- (11) A child shall not be left unattended:
 - (a) At the site of aftercare delivery; or
 - (b) In a vehicle.
- (12) If the parent or designee is unavailable, a prearranged written plan shall be completed to designate where the child can be picked up.
- (13) A child shall not be picked up or delivered to a location that requires crossing the street or highway unless accompanied by an adult.
- (14) A vehicle transporting a child shall have the headlamps on.
- (15) If a vehicle needs to be refueled, it shall be refueled only while not being used to transport a child. If emergency refueling or repair is necessary during transporting, all children shall be removed and supervised by an adequate number of adults while refueling or repair is occurring.
- (16) If the driver is not in the driver's seat, the:
 - (a) Engine shall be turned off;
 - (b) Keys shall be removed; and
 - (c) Emergency brake shall be set.
- (17) Transportation services provided shall:
 - (a) Be recorded in writing and include:
 - 1. The first and last name of the child transported; and
 - 2. The time each child gets on and the time each child gets off;
 - (b) Be completed by a staff member other than the driver; and
 - (c) Be kept for five (5) years.
- (18) A driver of a vehicle transporting a child for a center shall:
 - (a) Be at least twenty-one (21) years old;
 - (b) Complete:
 - 1. The background checks as described in 922 KAR 2:280; and
 - 2. An annual check of the:
 - a. Kentucky driver history records in accordance with KRS 186.018; or
 - b. Driver history records through the state transportation agency that issued the driver's license;
 - (c) Hold a current driver's license that has not been suspended or revoked during the last five (5) years; and
 - (d) Not caused an accident that resulted in the death of a person.
 - (19) Firearms, ammunition, alcohol, or illegal substances shall not be transported in a vehicle transporting children.
 - (20)(a) Based on the harm, threat, or danger to a child's health, safety, and welfare, the cabinet shall revoke a center's privilege to transport a child or pursue an adverse action in accordance with Section [44,] 15, 16, [or] 17, or 18 of 922 KAR 2:090:
 - 1. For a violation of this section; or
 - 2. If the center:
 - a. Fails to report an accident in accordance with 922 KAR 2:090, Section 13[42]; or
 - b. Transports more passengers than the vehicle's seating capacity and safety restraints can accommodate.
 - (b) Revocation of a center's privilege to provide transportation services in accordance with paragraph (a) of this subsection shall:
 - 1. Apply to each site listed under the licensee; and
 - 2. Remain effective for no less than a twelve (12) month period.
 - (21) A parent may use the parent's vehicle to transport the

parent's child during a field trip.

Section 15[43]. Animals. (1) An animal shall not be allowed in the presence of a child in care:

- (a) Unless:
 - 1. The animal is under the supervision and control of an adult;
 - 2. Written parental consent has been obtained; and
 - 3. The animal is certified as vaccinated against rabies; or
- (b) Except in accordance with subsection (3) of this section.
- (2) A parent shall be notified in writing if a child has been bitten or scratched by an animal.
- (3) An animal that is considered undomesticated, wild, or exotic shall not be allowed at a child-care center unless the animal is:
 - (a) A part of a planned program activity led by an animal specialist affiliated with a zoo or nature conservatory; and
 - (b) In accordance with 301 KAR 2:081 and 301 KAR 2:082.
- (4) This section shall not apply to wild animals on the outer property of the child-care center that are expected to be found outdoors, such as squirrels and birds, if they are not:
 - (a) Disturbed; or
 - (b) Brought indoors.

MARTA MIRANDA-STRAUB, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: February 4, 2021

FILED WITH LRC: February 4, 2021 at 11:31 a.m.

CONTACT PERSON: Donna Little, Deputy Executive Director,
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7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Laura Begin and Donna Little

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes health and safety standards for child-care centers.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards regarding health and safety for child-care centers.
 - (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 minimum health and safety standards for child-care centers as condition of their licensure.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the health and safety standards for child-care centers.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: Senate Bill 45 (Regular Session 2020, Acts ch. 8) required child-care centers licensed pursuant to KRS 199.896 to have standards relating to nutrition, physical activity, screen time, and sugary drinks. Centers that provide food were required to have nutrition standards consistent with the meal and snack patterns of the most recent version of the United States Department of Agriculture's Food and Nutrition Service standards for the Child and Adult Care Food Program. Subsection (2) of the Act required the cabinet to promulgate administrative regulations, in consultation with the Kentucky Early Childhood Advisory Council, the Kentucky Child Care Advisory Council, and state and national organizations, to establish these requirements and procedures for implementation of these standards within ninety (90) days of the effective date of the Act. This bill was passed and codified as KRS 199.896.2. This amendment includes the required standards relating to nutrition, physical activity, screen time, and sugary drinks, as recommended by the Kentucky Early Childhood Advisory Council, the Kentucky Child Care Advisory Council, the Kentucky Department of Education

Child and Adult Care Food Program, Caring for Our Children National Standards, and others.

The administrative regulation was further amended in response to written comments received during the public comment period. These amendments relate to first aid and cardiopulmonary resuscitation (CPR) training required in order to receive federal block grant funding, clarification on meal requirements, and minor technical corrections.

(b) The necessity of the amendment to this administrative regulation: The passage of Senate Bill 45 (Regular Session 2020, Acts ch. 8) requires this amendment. The cabinet consulted with the required councils and organizations to establish standards relating to nutrition, physical activity, screen time, and sugary drinks, as required by the bill codified into statute. Pursuant to KRS 199.8962(2), promulgation is required by October 13, 2020.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 199.8962(2) requires the cabinet to promulgate administrative regulations to establish the requirements and procedures for the implementation of standards relating to nutrition, physical activity, screen time, and sugary drinks, which is included in this amendment.

(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 provision of enhanced health and safety standards for licensed child care providers consistent with recently passed legislation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of August 2020, there were 1,835 licensed child care programs in Kentucky subject to this administrative regulation. The Department for Community Based Services, Division of Child Care, and the Office of the Inspector General, Division of Regulated Child Care, will be impacted as the child care regulating and monitoring agencies, respectively.

(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: Given the impact that the COVID-19 pandemic has had on child care providers, the cabinet has attempted to minimize any detrimental impact on regulated entities, but must implement recently enacted legislation as required by law. Licensed child care centers will be required to implement the new standards relating to nutrition, physical activity, screen time, and sugary drinks once this amendment becomes effective.

(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 the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensed child-care centers will be providing a higher standard of care for children regarding nutrition, physical activity, screen time, and sugary drinks. This action is required by KRS 199.8962, passed as Senate Bill 45 in Regular Session 2020.

(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 any new initial costs to the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation will not result in any ongoing costs 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 Child Care and Development Fund Block Grant, state match and maintenance of effort for the block grant, and limited agency funds support 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: There is no increase in fees or funding required as a result of this amendment.

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

(9) TIERING: Is tiering applied? Tiering is not applied as all licensed child care centers are regulated by this administrative regulation. The only difference in standards in this amendment is between centers that provide food to children and centers that serve food to children, but do not provide it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 226.20, 16 C.F.R. 1219, 1220, 1221, 45 C.F.R. 98.2, 49 C.F.R. 571.213, 20 U.S.C. 6081-6084, 42 U.S.C. 9857-9858q

2. State compliance standards. KRS 194A.050(1), 199.896(2), 199.8962(2)

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter, additional or different responsibilities or requirements than those required by the federal mandate. The federal rules give states flexibility in setting standards specific to state needs.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal rules give states flexibility in setting standards specific to state needs and this amendment is necessary for compliance with recently passed state law.

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. A local government or a school district operating a licensed child-care center, in whole or in part, will be impacted.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.896(2), 199.8962(2), 7 C.F.R. 226.20, 16 C.F.R. 1219, 1220, 1221, 45 C.F.R. 98.2, 49 C.F.R. 571.213, 20 U.S.C. 6081-6084, 42 U.S.C. 9857-9858q

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to this administrative regulation will generate no 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 amendment to this administrative regulation will generate no revenue in the subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional costs to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? There are no additional costs to administer this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PROPOSED AMENDMENTS

Public comment periods are at least two months long. For other regulations with open comment periods, please also see last month's [Administrative Register of Kentucky](#).

**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 164.020(38), 164.947(1), (2) 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 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;

(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 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 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 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 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 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 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 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 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 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 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.

- (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 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 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 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;

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 college is not accredited by an accrediting agency, a statement indicating its intention to receive accreditation and its timeline for attainment.

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 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 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 all of the standards for licensure when 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.

(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", February 2021 [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", February 2021 [June 2013];

(c) "Supplementary Application for Change of Name of

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Institution Pursuant to 13 KAR 1:020", February 2021 [~~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", February 2021 [~~June 2013~~];

(e) "Supplementary Application for Change of Ownership or Governance Pursuant to 13 KAR 1:020", February 2021 [~~June 2013~~];

(f) "Supplementary Application to Operate as an Out-of-State Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", February 2021 [~~June 2013~~];

(g) "Supplementary Application to Operate as an In-State Nonpublic Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", February 2021 [~~July 2019~~];

(h) "Supplementary Application for Administrative Site, Recruitment Office, or Advising Center Pursuant to 13 KAR 1:020", February 2021 [~~June 2013~~];

(i) "Supplementary Application for Notification of Change in Accreditation or Licensure Status Pursuant to 13 KAR 1:020", February 2021 [~~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", February 2021 [~~June 2013~~]; and

(m) "Application for Religious In-State College Letter of Exemption per KRS 164.947(2)", February 2021 [~~September 2012~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Council on Postsecondary Education, 100 Airport Road, 2nd Floor, [4024 Capital Center Drive, Suite 320,] Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

BEN BRANDSTETTER, Chair

TRAVIS POWELL, Vice President and General Counsel

APPROVED BY AGENCY: February 5, 2021

FILED WITH LRC: February 5, 2021 at 4:23 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 22, 2021 at 10:00 a.m. at the Council on Postsecondary Education, 100 Airport Road, 2nd Floor, 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 April 30, 2021. 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, 100 Airport Road, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 892-3034, 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: This amendment increases initial licensure fees for new in-state colleges from \$1,000 to \$10,000 and new out-of-state colleges from \$5,000 to \$15,000. The amendment also increases annual licensure fees by 50% of the current rate starting in 2022, 75% in 2023, and 100%, or double the current rate, beginning in 2024 and then forward. Other technical changes related to certificate and diploma programs reporting are also being made in the necessary application form.

(b) The necessity of the amendment to this administrative regulation: Fees have remained constant for over 10 years ago and since then, the cost of administration has increased due to the greater federal focus on state authorization as a requirement for access to federal Title IV student financial aid. Also during that time, substantive changes have been made to the regulation that have increased consumer protection and quality assurance, such as the adoption of heightened faculty standards and other requirements that better protect student records and unearned tuition. These modifications require more oversight and interaction with licensees. In addition, the cost of staff has increased in the last 10 years with the rising employer contribution rates in the Kentucky Employees Retirement System. And finally, in accordance with the 2020-2021 Executive Branch Budget, all reserve licensure funds were directed to be used for general Council operations. Annual fee revenue has never covered the cost of administering the private college licensure program. And even after these changes, the total cost of administration will not be covered by fee revenue when considering all supports provided to the licensure program by Council staff. However, these fee increases will assist in providing annual support for 3 total full time positions dedicated to private college licensure. Data reporting technical changes are being made to conform to federal IPEDS reporting requirements.

(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 the Council can adequately staff the oversight of licensed institutions in Kentucky for the benefit of Kentucky students and the state at large.

(d) How the amendment will assist in the effective administration of the statutes: The amendment helps to ensure that the Council can adequately staff the oversight of licensed institutions in Kentucky for the benefit of Kentucky students and the state at large.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Council currently licenses 86 institutions with multiple licensed instructional sites and we have received inquiries from potential applicants in 2021.

(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: Each college will be required to pay the new fee in order to being or continue licensure in Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Base initial licensure fees for new in-state colleges

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will be \$10,000 and new out-of-state colleges must pay \$15,000. Annual licensure fees will be increased in the following manner:

For a college with a license from CPE for five (5) years or more, the fee shall be as follows:

Enrollment	April 1, 2022	April 1, 2023	April 1, 2024+
1,000 or less	\$750	\$875	\$1,000
1,001-2,000	\$1,500	\$1,750	\$2,000
2,001-3,000	\$3,000	\$3,500	\$4,000
3,001-4,000	\$4,500	\$5,250	\$6,000
4,001-5,000	\$6,000	\$7,000	\$8,000
5,001-6,000	\$7,500	\$8,750	\$10,000
6,001-7,000	\$9,000	\$10,500	\$12,000
7,001-8,000	\$10,500	\$12,250	\$14,000
8,001-9,000	\$12,000	\$14,000	\$16,000
9,001-10,000	\$13,500	\$15,750	\$18,000
10,001 or more	\$15,000	\$17,500	\$20,000

For a college that has had a license from CPE for less than five (5) years, the fee shall be:

Enrollment	April 1, 2022	April 1, 2023	April 1, 2024+
100 or less	\$1,500	\$1,750	\$2,000
101-500	\$3,000	\$3,500	\$4,000
501-1,000	\$4,500	\$5,250	\$6,000
1,001-2,000	\$6,750	\$7,875	\$9,000
2,001-3,000	\$9,000	\$10,500	\$12,000
3,001-4,000	\$12,000	\$14,000	\$16,000
4,001-5,000	\$15,000	\$17,500	\$20,000
5,001 or more	\$18,000	\$21,000	\$24,000

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Assuming the requirements for licensure are met, compliance will result in new or continued licensure.

(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. The changes are in increase in fees, but the changes in this amendment will not result in the need for increased funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes. This regulation assesses fees and those fees are proposed to be increased as a result of this amendment.

(9) TIERING: Is tiering applied? Yes, the annual fee structure is tiered based on the number of total enrolled students and how long an institution has been licensed by the Council. Initial fees are tiered by in-state versus out-of-state institutions.

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? With the proposed increase, we estimate revenue from licensee renewals at \$135,000 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? In the second year of the new graduated fee schedule, we estimate revenues from renewals to be \$156,625. In the third year and in subsequent years, we estimate \$179,000 in revenues.

(c) How much will it cost to administer this program for the first year? Approximately \$425,000 budgeted for 3 FTE staff dedicated to licensure and state authorization for postsecondary education functions. This amount does not include the cost of oversight and leadership at the vice presidential and presidential levels, data and IT administration and development costs, and traditional agency administrative costs (procurement, HR, etc.).

(d) How much will it cost to administer this program for subsequent years? Same as 3.(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: N/A

COUNCIL ON POSTSECONDARY EDUCATION (Amendment)

13 KAR 4:010. State Authorization Reciprocity Agreement.

RELATES TO: KRS 164.020(23), 164.945, 164.946, 164.947, 164.992, 165A.320-165A.450

STATUTORY AUTHORITY: KRS 164.540(3)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.540(3) authorizes the Council on Postsecondary Education to promulgate an administrative regulation to enter into the State Authorization Reciprocity Agreement, which establishes uniform national standards for interstate offerings of postsecondary distance education and authorizes postsecondary educational institutions meeting those standards located in member states or territories to provide distance education to residents of other member states. KRS 164.540(3) also authorizes the council to serve as the lead or portal agency on behalf of the Commonwealth's public and private postsecondary institutions seeking to offer distance education in member states. This administrative regulation establishes the mechanism by which Kentucky institutions may join the State Authorization Reciprocity Agreement and sets forth the process by which non-resident students can file complaints against Kentucky member institutions.

Section 1. Definitions. (1) "Commission" means the Kentucky Commission on Proprietary Education.

(2) "Council" means the Kentucky Council on Postsecondary Education.

(3) "Degree" means an award conferred at the associate level or higher by an institution as official recognition for the successful completion of a program of studies.

(4) "Institution" means a Kentucky degree-granting postsecondary entity.

(5) "NC-SARA" means the National Council for State Authorization Reciprocity Agreements.

(6) "President" means the President of the Kentucky Council on Postsecondary Education.

(7) "State Authorization Reciprocity Agreement," or "SARA," means the agreement among member states, districts, and U.S. territories that establishes comparable national standards for interstate offering of degrees through distance education and

authorizes institutions meeting those standards located in member states or territories to provide distance education to residents of other member states.

Section 2. Initial Application Procedures. (1) In order to participate in SARA, an institution shall submit the following items to the president for review and action:

(a) The current NC-SARA Application and Approval Form for Institutional Participation in SARA, in electronic format; and

(b) The fees due to the Council, in accordance with Section 6 of this administrative regulation.

(2) The application referenced in subsection (1)(a) of this section may be found online at www.nc-sara.org.

Section 3. Renewal Application Procedures. (1) In order to continue participating in SARA, an institution shall submit the following items to the president for review and action at least sixty (60) days before the anniversary date of the institution's initial approval:

(a) The current NC-SARA Application for Institutional Renewal to Participate in SARA, in electronic format; and

(b) The fees due to the council, in accordance with Section 6 of this administrative regulation.

(2) The application referenced in subsection (1)(a) of this section may be found online at www.nc-sara.org.

Section 4. Standards for Approval. In order to participate in SARA, an institution shall comply with the following:

(1) Maintain authorization to operate in Kentucky through one (1) of the following:

(a) Creation by Kentucky Revised Statutes;

(b) Licensure by the council; or

(c) Licensure by the commission; and

(2) Meet the current minimum requirements to participate in SARA.

Section 5. Consumer Complaints. (1) After first exhausting the institution's internal procedure for complaint resolution, a non-resident student may file a complaint against the institution for failure to comply with any SARA standard within two (2) years of the incident about which the complaint is made.

(2) In order to be considered, a complaint shall be submitted by the student in writing and include the following information:

(a) Name, address, email address, and phone number of student;

(b) Name of institution;

(c) Location of institution;

(d) Dates of attendance;

(e) An explanation of the steps taken to exhaust the institution's grievance process;

(f) A full description of the issue and any relevant documentation supporting the complaint; and

(g) The desired resolution of the complaint.

(3) Complaints regarding student grades or student conduct violations shall not be considered.

(4) The president shall forward the complaint by email to the institution and require a written response no later than thirty (30) days from the date of transmittal.

(5) After review of information and materials provided by the student and the institution, the president may request additional information from either party.

(6) After review of all relevant information and materials, the president shall facilitate a resolution of the complaint. The relief provided the student, if any, shall be commensurate with the circumstances.

(7) Resolution of a complaint by the president shall be final, except in instances where the subject matter of the complaint may violate any other applicable laws.

(8) The president shall provide to the executive director of the

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Sarah Levy

commission, for reference purposes, a copy of:

(a) Any complaint initiated against an institution licensed by the commission;

(b) The resolution; and

(c) Any related materials.

Section 6. Fees. The council shall charge an initial and annual renewal fee to institutions based on all enrolled full-time equivalent students, which shall be due at time of application. Applications shall not be reviewed without receipt of fee payment. Failure to pay a fee on or before the date of application shall be sufficient grounds for denial of an application. Fees shall be in addition to any fees charged by NC-SARA and shall be in accordance with the following schedule:

(1) Under 2,500 [~~—\$3,000~~] full-time equivalent students = \$4,500;

(2) 2,500 [~~—9,999~~ — \$5,000] full-time equivalent students = 9,999 — \$7,500; or

(3) 10,000 [~~—\$7,000~~] or more full-time equivalent students = \$10,500.

Section 7. Appeals. (1) An institution denied approval for an initial or renewal application may request an appeal of that decision in accordance with the terms of this subsection.

(a) The institution shall notify the president of the intent to appeal the decision within seven (7) days of the receipt of the notice of denial.

(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 thirty (30) days following the receipt of notification of intent to appeal.

(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 institution and to the president.

(f) Within thirty (30) working days of receiving the report of the appeals officer, the president shall either uphold the decision or approve the application.

BEN BRANDSTETTER, Chair

TRAVIS POWELL, Vice President and General Counsel

APPROVED BY AGENCY: February 5, 2021

FILED WITH LRC: February 5, 2021 at 4:23 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 22, 2021 at 10:00 a.m. EST at the Council on Postsecondary Education, 100 Airport Road, Second Floor, 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 April 30, 2021. 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, 100 Airport Road, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 892-3034, email sarah.levy@ky.gov.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for participation by Kentucky postsecondary institutions in the State

Authorization Reciprocity Agreement (SARA), which establishes uniform national standards for interstate offerings of postsecondary distance education and authorizes postsecondary educational institutions meeting those standards located in member states or territories to provide distance education to residents of other member states.

(b) The necessity of this administrative regulation: KRS 164.540(3) provides the Council with the authority to enter into SARA on behalf of the Commonwealth and promulgate regulations to establish procedures for Kentucky postsecondary institutions to participate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation sets out the procedures for Kentucky postsecondary institutions to participate in SARA as required by KRS 164.540(3)(c).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The procedures set forth in this regulation are in conformance with SARA requirements which must be met in order for Kentucky to be a member as authorized by KRS 164.540(3).

(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 increase fees for SARA participation by half the current rate for each tier.

(b) The necessity of the amendment to this administrative regulation: The capacity required to keep pace with institutional approvals and the constant modification of the participation requirements by NC-SARA has increased since the state's initial participation in 2016. In addition, KERS contribution rates have increased since that time, requiring additional annual receipts to cover a large portion of related staff expenses.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes give the Council the authority to adopt provisions via regulation to meet the SARA participation requirements.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow the Council to better cover its expenses to effectively administered Kentucky's participation in SARA.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public and private colleges and universities offering Associate's degrees or higher. Currently there are 45 Kentucky institutions approved for SARA participation.

(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: Each regulated entity must pay the increased fee in order to continue participation in SARA.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The additional cost is outlined in the changes to the fees. There will be no other additional costs and compliance will otherwise remain the same.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Institutions will be able to continue participation in SARA.

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

(a) Initially: The amendment will not result in any additional cost of implementation initially.

(b) On a continuing basis: The amendment will not result in any additional cost of implementation on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SARA 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. The

amendment is an increase in fees that will assist in providing more non-General Fund financial support for administering the program as it currently exists.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes. This regulation assesses fees.

(9) TIERING: Is tiering applied? Yes, tiering is applied based on the number of full time students served by the institution.

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 Council is responsible for implementation, and this regulation applies to Kentucky public institutions and private colleges and universities that seek to become members of SARA.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.540(3)(c).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? If the proposed amendment is adopted, revenue from SARA fees will be approximately \$261,000 annually.

(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 \$376,000 budgeted for 3 FTE staff dedicated to licensure and state authorization for postsecondary education functions. This amount does not include the cost of oversight and leadership at the vice presidential and presidential levels, data and IT administration and development costs, and traditional agency administrative costs (procurement, HR, etc.).

(d) How much will it cost to administer this program for subsequent years? Same as 3.(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: N/A

PERSONNEL CABINET (Amendment)

101 KAR 2:095. Classified service general requirements.

RELATES TO: KRS 18A.030(2), 18A.110, 26 U.S.C. 501(c)(3)

STATUTORY AUTHORITY: KRS 18A.030, 18A.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110

requires the Secretary of Personnel to promulgate comprehensive administrative regulations for the classified service. This administrative regulation establishes requirements for the classified service and governs the maintenance of employee and other records and reports in the cabinet and other conditions of employment.

Section 1. Definitions. (1) "Charitable federation" means a legally constituted grouping, made up of or supporting at least ten (10) health and human welfare organizations, all of which:

(a) Qualify as exempt voluntary charitable organizations pursuant to 26 U.S.C. 501(c)(3); and

(b) Have a substantial Kentucky presence.

(2) "Designated nonprofit agency" means an organization with proof of tax-exempt status pursuant to 26 U.S.C. 501(c)(3) written

in on a pledge card by a state employee as a choice to receive contributions.

(3) "State employee" means a person, including an elected public official, who is employed by a department, board, agency, or branch of state government, except one (1) relating to a state college or university.

(4) "Substantial Kentucky presence" means a facility, staffed by professionals or volunteers, available to provide its services and open at least fifteen (15) hours a week and with a regional or statewide presence that meets the requirements of Section 2(2) of this administrative regulation.

Section 2. Requirements for the Kentucky Employees Charitable Campaign. (1) General Purpose. The purpose of the Kentucky Employees Charitable Campaign shall be to:

(a) Provide an opportunity for employees to contribute to eligible Kentucky organizations through the state's payroll deduction process;

(b) Ensure accountability for participants in regard to the funds raised;

(c) Encourage the involvement of state employees as responsible citizens;

(d) Give recognition to state employee volunteers; and

(e) Minimize workplace disruption and administrative costs to Kentucky taxpayers by allowing only one (1) statewide payroll deduction charitable solicitation per year.

(2) An organization shall be considered to have a substantial Kentucky presence if the requirements established in this subsection are met.

(a) Services shall be available to state employees in the local community.

(b) Services shall directly benefit human beings whether children, youth, adults, the aged, the ill and infirm, or the mentally or physically disabled.

(c) Services shall consist of:

1. Care, research, education, or prevention in the fields of human health or social adjustment and rehabilitation;

2. Relief for victims of natural disasters and other emergencies; or

3. Assistance to those who are impoverished and in need of food, shelter, clothing, and basic human welfare services.

(3) The secretary shall approve a charitable organization for participation in the campaign if the charitable organization demonstrates:

(a) Proof of tax exempt status pursuant to 26 U.S.C. 501(c)(3);

(b) Proof of current registration and compliance with the reporting requirements of the Secretary of State and the Office of the Attorney General;

(c) Proof of financial responsibility, including:

1. Adoption of a detailed annual budget;

2. Use of generally accepted accounting principles and procedures;

3. The board of directors' approval for deviations from the approved budget; and

4. An annual financial audit;

(d) Proof of direction by an active volunteer board of directors, which shall meet regularly and whose members shall serve without compensation;

(e) A written nondiscrimination policy;

(f) Public disclosure of fundraising administrative costs with a statement demonstrating that, if fund and administrative expenses are in excess of twenty-five (25) percent of total support and revenue, actual expenses for those purposes are reasonable under all the circumstances in its case; and

(g) Publication of an annual report available to the general public, which includes a full description of the organization's Kentucky activities including fundraising activities.

(4) A charitable federation may apply on behalf of all their member organizations if both the federation and all federation members meet the criteria established in subsection (3) of this section.

(5) Authority of the Secretary of Personnel.

(a) The Secretary of Personnel shall have the full authority

over the procedures and policies relating to the operation of the Kentucky Employees Charitable Campaign.

(b) The secretary shall designate a group of state employees to compose the Kentucky Employees Charitable Campaign Committee to make recommendations on related matters.

(c) The committee shall be composed of a cross-section of state employees, involving the large cabinets and small agencies.

(d) The chair of the committee shall be appointed by the secretary.

(6) Functions of the committee. The committee shall make recommendations on the following:

(a) Designation of a campaign administrator.

1. The campaign administrator shall serve for a minimum period of two (2) years.

2. The campaign administrator shall be charged to manage and administer the charitable fund campaign for the Commonwealth, subject to the direction and control of the Secretary of Personnel. The campaign administrator shall have statewide workplace campaign experience and have the necessary staff and volunteer support to administer the Kentucky Employees Charitable Campaign;

(b) Establishment of minimum amount, based on cost effectiveness, that an employee may authorize to be deducted for each approved charitable federation;

(c) The format of the brochure, pledge card, or other promotional materials for the annual campaign;

(d) The dates and duration of the campaign;

(e) The annual campaign budget submitted by the campaign administrator; and

(f) The costs of the campaign, which shall be:

1. Detailed in the budget; and

2. Borne by each recipient organization proportionally.

(7) Charitable federations to apply for statewide campaign.

(a) A federation desiring inclusion shall apply by February 15 of each year.

(b) A federation that has previously participated in the campaign shall update its application with a letter and a copy of the most recent year's audit.

(c) A charitable organization that has previously participated in the campaign shall be eligible if it fulfills all conditions of eligibility.

(8) The campaign administrator. The campaign administrator shall:

(a) Provide staffing to manage and administer the annual campaign, which includes preparing drafts of campaign materials for consideration by the Secretary of Personnel;

(b) Serve as the central accounting point for both campaign cash and for payroll deductions received from the Personnel Cabinet including:

1. The preparation and submission of an annual campaign budget. Costs of the campaign shall be divided among recipient organizations; and

2. A separate account maintained for managing the income and expenses of the campaign;

(c) Distribute campaign funds received from the Personnel Cabinet to participating organizations in accordance with agreed upon time periods. This shall include distribution of funds to designated nonprofit agencies;

(d) Provide an end-of-campaign report to the Secretary of Personnel and to participating organizations; and

(e) Annually furnish a financial statement prepared by a certified public accountant.

Section 3. Attendance; Hours of Work. (1) The number of hours a full-time employee shall be required to work shall be thirty-seven and one-half (37 1/2) hours per week or forty (40) hours per week, unless specified otherwise by the appointing authority or the statutes.

(2) The normal work day shall be from:

(a) 8 a.m. to 4:30 p.m., local time, Monday through Friday, for a thirty-seven and one-half (37 1/2) hour work schedule; or

(b) 8 a.m. to 5 p.m., local time, Monday through Friday, for a forty (40) hour work schedule.

(3) An appointing authority may require an employee to work

hours and days other than regular days and hours, including an overtime or inclement weather schedule if it is in the best interest of the agency.

(4) An employee who works for an agency that requires more than one (1) shift or seven (7) days a week operation may be reassigned from one (1) shift to another or from one (1) post to another or alternate days off by the agency to meet staffing requirements or to maintain security or provide essential services of the agency.

(5) An employee shall give reasonable notice in advance of absence from an official [a] work station or alternate work station.

Section 4. Official Work Station, Alternate Work Station, and Temporary Assignment. (1) Each employee shall be assigned an official [a] work station and may be assigned one or more additional alternate work stations by the appointing authority.

(2) An official [A] work station or alternate work station may be changed to better meet the needs of the agency.

(3) An employee may be temporarily assigned to a different official work station or alternate work station in a different county. The assignment shall be to the same job classification.

(a) If an employee is temporarily assigned to a different official work station or alternate work station in a different county, the assignment shall not last more than sixty (60) calendar days.

(b) Temporary assignment may be renewed with prior approval of the Secretary of Personnel.

(c) A temporarily reassigned employee shall be reimbursed for travel expenses in accordance with 200 KAR 2:006, and the appointing authority shall notify the employee in writing prior to the effective date of the action.

(4) An appointing authority may assign an employee to work in a different site within the county of employment within the same job classification.

Section 5. Dual Employment. An employee holding a full-time position covered under KRS Chapter 18A shall not hold another KRS Chapter 18A position except upon recommendation of the appointing authority and the written approval of the secretary.

Section 6. Notice of Resignation and Retirement. (1) An employee who decides to terminate his or her service shall submit a written resignation or notice of retirement to the appointing authority.

(2) A resignation or notice of retirement shall be submitted at least fourteen (14) calendar days before the final working day. A copy of an employee's notice shall be attached to the separation personnel action and placed in the personnel files maintained by the agency and the Personnel Cabinet.

(3) Failure of an employee to give fourteen (14) calendar days' notice may result in forfeiture of accrued annual leave, based on:

(a) If the fourteen (14) day deadline was:

1. Practicable under the circumstances;
2. Appropriate for the situation; and
3. Complied with; or

(b) If the appointing authority and the employee have agreed that the employee shall retain the leave.

(4) The effective date of a separation shall be the next calendar day following the last work day unless the employee has been approved for the use of annual, compensatory, or sick leave prior to termination.

Section 7. Records and Reports. (1) An appointing authority shall provide a request to the Personnel Cabinet for a personnel action or status change.

(a) The Secretary of the Personnel Cabinet shall determine which personnel actions warrant a Personnel Action Notification to the employee, in accordance with KRS 18A.020 and 18A.095.

(b) The secretary shall provide a Personnel Action Notification to the appointing authority.

(c) The appointing authority shall provide a copy of a Personnel Action Notification to the employee affected by the action.

(2) The secretary shall maintain a leave record showing for

each employee:

- (a) Annual leave earned, used and unused;
- (b) Sick leave earned, used and unused;
- (c) Compensatory leave earned, used and unused; and
- (d) Special leave or other leave with or without pay.

Section 8. Telecommuting. (1) Telecommuting shall be a work arrangement in which a selected state employee is allowed to perform the normal duties and responsibilities of his or her position through the use of computer or telecommunications at home or another place apart from the employee's usual official work station or alternate work station.

(2) An appointing authority may establish a telecommuting program for all or any part of the agency.

(3) Eligibility and selection for participation in a telecommuting program shall be the decision of the agency, with no implied or specific right to participation being granted to an employee.

(4) The telecommuter's conditions of employment shall remain the same as for a nontelecommuting employee.

(a) Employee salary, benefits, and employer-sponsored insurance coverage shall not change as a result of telecommuting.

(b) The telecommuter shall be responsible for the security and confidentiality of data, as well as the protection of state-provided equipment, used and accessed during telecommuting.

(c) The telecommuter shall agree to maintain a clean, safe workplace.

(d) An on-site visit by the employer for monitoring of safety issues shall not require advance notice by the employer.

Section 9. Workplace Violence Policy. (1) Workplace violence shall be prohibited and shall include:

(a) The attempted, threatened, or actual conduct of a person who endangers or is likely to endanger the health and safety of state employees or the general public; or

(b) A threatening statement, harassment, or behavior that gives a state employee or member of the general public reasonable cause to believe that his or her health or safety is at risk.

(2) Examples of prohibited workplace violence shall include:

(a) Threats of harm;

(b) Brandishing or displaying a weapon or an object that looks like a weapon in a manner that would present a safety risk to a state employee or a member of the general public or threatens or intimidates them;

(c) Intimidating, threatening, or directing abusive language toward another person, either verbally, in writing or by gesture;

(d) Stalking;

(e) Striking, slapping, or otherwise physically attacking another person; or

(f) Disobeying or failing to follow the reasonable directive of a supervisor to take action or cease actions that create a risk to the health or safety of a state employee or the public or threatens or intimidates them.

(3) Violation of this section shall constitute grounds for disciplinary action and referral for criminal prosecution.

Section 10. Issuance of Pay to State Employees. (1) Pay shall be issued to state employees on the 15th and 30th day of each month.

(2) If the regularly scheduled pay date falls on a weekend, state employees shall be issued pay on the preceding Friday.

(3) If the regularly scheduled pay date falls on a state holiday as defined in KRS 18A.190, pay shall be issued on the workday preceding the holiday.

Section 11. Incorporation by Reference. (1) "Personnel Action Notification", PAN, August 2011, 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.

GERINA D. WHETHERS, Secretary

APPROVED BY AGENCY: January 8, 2021

FILED WITH LRC: January 29, 2021 at 8:38 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 21, 2021 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. on April 30, 2021. 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, Assistant General Counsel, 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 administrative regulation sets forth the requirements governing employee records, the maintenance and handling of these records, and other conditions of employment.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the oversight and maintenance of the state employment system pursuant to KRS Chapter 18A.

(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.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to satisfy the statutory requirement of establishing for the state a system of personnel administration based on merit principles. This regulation sets forth general terms and conditions of employment, to assist in the consistent application and treatment of KRS Chapter 18 employees.

(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 formally implements the concept of alternate work stations, such as those already informally recognized and used in telecommuting. The amendment enhances work location flexibility for employees and their employing agencies.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify that assignment to a different duty location does not always mean such assignment is a permanent change to an employee's official work station. Further, the amendment is necessary to dovetail with concurrent amendments to 200 KAR 2:006, Employees' reimbursement for travel.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is consistent with the authority provided in KRS 18A.030 and 18A.110.

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates language to assist with the continued consistent application and handling of employment activities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this

administrative regulation: All KRS Chapter 18A employees and other individuals subject to the provisions of 101 KAR 2:095 are affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: 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, though employees may have better flexibility to work from locations other than their official work stations.

(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) and 18A.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? 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
Office of the Secretary
(Amendment)**

200 KAR 2:006. Employees' reimbursement for travel.

RELATES TO: KRS 44.060, 45.101

STATUTORY AUTHORITY: KRS 44.060, 45.101

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45.101 authorizes the Finance and Administration Cabinet to promulgate an administrative regulation that establishes requirements and reimbursement rates for the travel expenses of state employees. KRS 44.060 requires the secretary to promulgate administrative regulations fixing the amount allowed for the expense of traveling in a motor vehicle in the discharge of official state duties. This administrative regulation establishes the eligibility requirements relating to rates and forms for reimbursement of travel expense and other official expenses out of the State Treasury.

Section 1. Definitions. (1) "Agency" means a budget unit.

(2) "Agency head" means the elected or appointed head of a budget unit.

(3) "Approval" means approval granted in either written or electronic format.

(4) "Budget unit" is defined by KRS 48.010(9).

(5) "Cabinet" means the Finance and Administration Cabinet.

(6) "High rate area" means a city, state, or metropolitan area in which it has been recognized that higher meal costs and lodging rates have historically prevailed, and that has been designated by the Secretary of the Finance and Administration Cabinet as a high rate area listed on the Office of the Controller's Web site at <http://finance.ky.gov/services/statewideacct/Pages/travel.aspx>.

(7) "Incidental expense" means unexpected minor expenses arising from travel situations, or minor expenses authorized by an agency head to be reimbursed to an employee as a matter of efficiency or convenience.

(8) "Lodging receipt" means any preprinted invoice, from a hotel or motel or type of lodging, showing the date of service, the amount charged for the service, the location where the service was performed, and a description of the expenditure.

(9) "Office" means the Office of the Controller, Finance and Administration Cabinet.

(10) "Others in the official service of the commonwealth" means individuals who:

(a) Are not state employees as defined in KRS Chapter 18A;

(b) 1. Are traveling on official business for the commonwealth; or

2. Officially represent a state agency, at the direction or request of a state official authorized to give the direction or make the request; and

(c) Are not contractors who are entitled to reimbursement for travel and related expenses only as provided in their contracts with the commonwealth.

(11) "Receipt" means any preprinted invoice, from a hotel, motel, restaurant or other establishment, showing the date of service, the amount charged for the service, the location where the service was performed and a description of the expenditure.

(12) "Residence" means address of the employee designated in the official records of the Personnel Cabinet.

(13) "Secretary" means the Secretary of the Finance and Administration Cabinet.

(14) "Subsistence" means amounts expended by a state officer, agent, employee, or other person authorized to receive reimbursement out of the State Treasury for meals, such as tax and tips, while traveling on official state business, except for any meals which may be included in charges for lodging or in registration fees paid by or on behalf of a state officer or employee.

(15) "Travel software" means the software used by the commonwealth to process travel authorizations and travel reimbursement documents.

(16) "Work station" means an employee's duty station and shall include:

(a) The official work station assigned by the appointing

authority; and

(b) One or more alternate work stations optionally assigned by the appointing authority.

Section 2. General. (1) Affected agencies. Except as otherwise provided by law, this administrative regulation shall apply to all departments, agencies, boards, and commissions, and institutions of the executive branch of state government, except state-supported universities. It shall not apply to the legislative and judicial branches and their employees.

(2) Enforcement.

(a) Each agency head shall be responsible for ensuring that travel reimbursement conforms to the provisions of this administrative regulation and that all travel expense from that agency is as economical as is feasible.

(b) A person who travels on official state business shall:

1. Identify if reimbursement is being requested based on Section 7 or 8 of this administrative regulation;

2. Prior to trip, submit, if applicable, a:

a. Request for Authorization of Out-of-State Travel document; or

b. Request for Authorization of Out-of-Country Travel document;

3. After travel, submit a Travel Voucher document for reimbursement of official state business related expenses;

4. If expenses requested to be paid or reimbursed under the provisions of this administrative regulation are attributable to multiple funding sources or projects, attach a Travel Voucher Prepaid Registration Fees: Multiple Cost Distribution document to any Travel Voucher submitted;

5. Maintain records and receipts to support the claim; and

6. Take sufficient personal funds to defray the travel expense.

(c) The secretary or designee may:

1. Disallow or reduce the amount of a claim that violates the provisions of this administrative regulation; or

2. Require written justification for amounts claimed by an agency for its employee.

(d) The secretary or his designee may authorize reimbursement for an employee's actual and necessary expenses for authorized travel if the head of the agency, or designee, submits a written determination that establishes the reimbursement is:

1. Required to avoid an undue economic hardship on the employee; or

2. Economically advantageous for the commonwealth.

(3) Eligibility. Except as provided by state law or by this administrative regulation, reimbursement shall not be claimed for expenses of any person other than state officers, members of boards and commissions, employees, bona fide wards, or other persons in the official service of the commonwealth. Only necessary expenses of official travel authorized by an agency head or designee shall be reimbursed.

(4) Interpretation. All final interpretations of this administrative regulation shall be made by the secretary. These determinations shall be the final and conclusive interpretation adopted by the agency.

Section 3. Work Station. (1) The official work station or alternate work station of an employee shall be established by the employee's appointing authority [assigned to an office shall be the street address where the office is located].

(2) The official work station or alternate work station may be changed by the appointing authority to better meet the needs of the agency [of field employees shall be established by the agency head, based solely on the best interests of the commonwealth].

(3) If an employee is permanently reassigned or is stationed at a new location two (2) months, the new location shall become that employee's official work station].

Section 4. Authorizations. (1) For travel within Kentucky, the person requesting reimbursement shall obtain authorization from the agency head or a designated representative.

(2) Travel to a bordering state that does not require airfare or

an overnight stay shall be authorized in the same manner as travel in Kentucky.

(3) For travel outside of Kentucky, but within the United States, possessions of the United States, or Canada, the person requesting reimbursement shall obtain authorization from:

- (a) The agency head or a designated representative; and
- (b) The secretary or a designated representative.

(4) For travel outside the United States, possessions of the United States, or Canada, the person requesting reimbursement shall have obtained authorization from:

- (a) The agency head or a designated representative;
- (b) The secretary or a designated representative; and
- (c) The governor or a designated representative.

(5) Travel expenses shall be reimbursed if travel was authorized in advance as provided by subsections (6), (7), or (8) of this section.

(6) For travel inside Kentucky, authorization shall be requested in the manner prescribed by the agency head or a designated representative.

(7) For travel outside Kentucky, but within the United States, possessions of the United States, or Canada, authorizations shall be requested by submitting a Request for Authorization of Out-of-State Travel document.

(8) For travel outside the United States, possessions of the United States, or Canada, authorization shall be requested by submitting a Request for Authorization of Out-of-Country Travel document.

(9) If direct billing is to be utilized for state park expenses, a State Park Travel Authorization document shall be submitted.

(10) A travel request for travel specified in subsections (7), (8), or (9) of this section shall be received by the agency or cabinet at least five (5) working days before the start of travel, except if a shorter prior submission period is necessitated by an emergency.

Section 5. Transportation. (1) Economy shall be required.

(a) State officers, agents, employees, and others in the official service of the commonwealth shall use the most economical, standard transportation available and the most direct and usually-traveled routes. Expenses added by use of other transportation or routes shall be assumed by the individual.

(b) 1. Round-trip, excursion or other negotiated reduced-rate rail or plane fares shall be obtained if practical.

2.a. Tickets prepaid by the commonwealth shall be purchased through agency business travel accounts provided by a major charge card company or commercial travel agencies.

b. Tickets purchased through the Internet shall be paid by the traveler and reimbursed on a Travel Voucher, Other Expenses document.

3. Exceptions may be made with the approval of the agency head if other arrangements will be in the best interest of the commonwealth.

4. Agencies shall be billed monthly by the charge card company.

5. Related payments shall be processed via a Travel Voucher, Other Expenses document.

(2) State vehicles. State-owned vehicles with their credit cards shall be used for state business travel if available and feasible. Mileage payment shall not be claimed if state-owned vehicles are used.

(3) Privately-owned vehicles. Mileage claims for use of privately-owned vehicles shall be allowed if a state vehicle was not available or feasible.

(4) Buses, subways. For city travel, employees shall be encouraged to use buses and subways. Taxi fare shall be allowed if more economical transportation is not feasible.

(5) Airline travel. Commercial airline travel shall be the lowest negotiated coach or tourist class. Additional expense for first-class travel shall not be reimbursed by the state. Payment shall be made in accordance with subsection (1)(b) of this section.

(6) Special transportation.

(a) The cost of hiring cars or other special conveyances in lieu of ordinary transportation shall be allowed if written justification

from the employee is submitted and approved by the agency head or his designated representative.

(b) Privately-owned aircraft may be used if it is determined to be to the advantage of the state, measured both by travel costs and travel time.

(c) An employee may submit a written request for approval from the state controller for an increased reimbursement rate greater than that calculated in Section 7, if the employee drives a personal vehicle modified to:

- 1. Facilitate operation by altering controls for the brakes, accelerator, or steering wheel; or
- 2. Allow a driver to enter the vehicle by installing a wheelchair lift, hoist, or ramp.

Section 6. Accommodations. (1) Lodging shall be the most economical, as determined by considering location of the lodging.

(2) Facilities providing special government rates or commercial rates shall be used if feasible.

(3) State-owned facilities shall be used for meetings and lodging if available, practicable and economical.

(4) Location. Cost for lodging within forty (40) miles of the claimant's official work station, alternate work station, or home shall be reimbursed if:

- (a) In attendance at a conference; and
- (b) The lodging is a necessary expense of official travel, in accordance with Section 2(2)(d) of this administrative regulation.

(5) Group lodging, by contract.

(a) State agencies and institutions may contract with hotels, motels and other establishments for four (4) or more employees to use a room or rooms on official business. Group rates shall be requested.

(b) The contract may also apply to meals and gratuities. The contract rates and the costs of rooms and meals per person shall not exceed limits set in Section 7 of this administrative regulation.

(c) The traveler shall not claim reimbursement or subsistence for room and meals paid direct to an establishment providing these services.

(d) A request for payment shall be made on a Travel Voucher document and shall not include personal charges of employees or others in the official service of the commonwealth.

(e) Payment shall be made to the hotel, motel, or other establishment.

(f) Contracted group meeting rooms and lodging and meal charges shall be exempt from Kentucky sales tax and the agency sales-use tax number assigned by the Department of Revenue shall be specified on the payment document.

(g) Tax exempt numbers shall not be used by individual employees to avoid point of sale payment of Kentucky sales tax connected with lodging costs. Sales tax payments shall be reimbursed on a Travel Voucher document.

(6) State parks. A state agency or institution using state park facilities may pay for rooms and meals by an Internal Exchange Transaction (IET) process in the eMars program to transfer funds, within the limits of this administrative regulation.

Section 7. Reimbursement Rates. (1) The following persons shall be exempted from the provisions of this section:

- (a) Governor;
 - (b) Governor's staff;
 - (c) Lieutenant governor;
 - (d) State employees traveling on assignment with the governor, lieutenant governor, elected constitutional officers, or cabinet secretaries;
 - (e) Elected constitutional officers;
 - (f) Cabinet secretaries;
 - (g) State officers and employees authorized to travel outside the United States;
 - (h) Members of statutory boards and commissions; and
 - (i) Others in the official service of the commonwealth.
- (2) Lodging.

(a) Except as provided in paragraph (b) of this subsection, a state officer or employee shall be reimbursed for the actual cost of lodging if the:

1. Lodging is determined to be the most economical; and
 2. State officer or employee has provided the hotel, motel, or other establishment's receipt to be reimbursed for the travel expenses.

(b) Reimbursement for lodging shall not exceed the cost of a single room rate, except that if employees share lodging, each employee shall be reimbursed the lesser of single rate or one-half (1/2) the double rate.

(3) Subsistence and incidentals.

(a) Breakfast and lunch. A state officer or employee shall be eligible for reimbursement for subsistence for breakfast and lunch expenses while traveling in Kentucky, if authorized work requires an overnight stay and absence during the mealtime hours established by paragraph (e) of this subsection. An employee shall be in travel status during the entire mealtime. For example, to be eligible for breakfast reimbursement, an employee shall leave at or before 6:30 a.m. and return at or after 9 a.m. This requirement shall apply to all meals.

(b) Dinner expenses. A state officer or employee shall be eligible for reimbursement for dinner expenses while traveling in Kentucky, if authorized work requires an absence:

1. At a destination more than forty (40) miles from the individual's official work station, alternate work station, and home; and

2. During the mealtime hours established by paragraph (e) of this subsection.

(c) A state officer or employee shall be eligible for reimbursement for meals while on authorized travel outside Kentucky, but within the United States, its possessions or Canada, at the reimbursement rates established in paragraph (d) of this subsection.

(d) The secretary shall specify the meal reimbursement rates via secretary order as appropriate in the following manner:

1. The order shall be posted on the Web site of the Office of the Controller;

2. The order shall specify the reimbursement rate for high rate areas and non-high rate areas; and

3. The order shall designate reimbursement rates for breakfast, lunch, and dinner.

(e) To be eligible for meal reimbursement, an employee shall be in travel status for the entire duration of the following time periods:

1. Breakfast: authorized travel is 6:30 a.m. through 9 a.m.;

2. Lunch: authorized travel is 11 a.m. through 2 p.m.; or

3. Dinner: authorized travel is 5 p.m. through 9 p.m.

(f) A state officer or employee authorized to travel outside the United States, its possessions, or Canada shall be reimbursed for their actual and necessary expenses for subsistence.

(g) A state officer or an employee may, with prior approval of the agency head or designee, be reimbursed for the actual cost charged for meals, if the individual is assigned to attend meetings and training sessions.

(h) Gratuities may be reimbursed if:

1. The total payment of the grant and gratuity do not exceed the limits established in paragraph (d) of this subsection; and

2. The gratuity does not exceed twenty (20) percent of the cost of the meal.

(i) Lodging receipts, or other credible evidence, shall be attached to the Travel Voucher.

(4) Transportation expenses.

(a) Reimbursement for authorized use of a privately-owned vehicle shall be:

1. At a rate designated on the Office of the Controller's Web site;

2. Set and adjusted based on the American Automobile Association (AAA) Daily Fuel

Gauge Report for Kentucky for regular grade gasoline. The rate shall be adjusted on January 1, April 1, July 1, and October 1 each calendar year based on the average retail price of regular grade gasoline for the week beginning on the second Sunday of the prior month as follows:

a. If the fuel cost is between one (1) cent and one dollar forty-nine and nine-tenths cents (\$1.499), the employee shall be

reimbursed thirty-six (36) cents per mile;

b. If the fuel cost is between one dollar fifty cents (\$1.50) and one dollar sixty-nine and nine-tenths cents (\$1.699), the employee shall be reimbursed thirty-seven (37) cents per mile;

c. If the fuel cost is between one dollar seventy cents (\$1.70) and one dollar eighty-nine and nine-tenths cents (\$1.899), the employee shall be reimbursed thirty-eight (38) cents per mile;

d. If the fuel cost is between one dollar ninety cents (\$1.90) and two dollars nine and nine-tenths cents (\$2.099), the employee shall be reimbursed thirty-nine (39) cents per mile;

e. If the fuel cost is between two dollars ten cents (\$2.10) and two dollars twenty-nine and nine-tenths cents (\$2.299), the employee shall be reimbursed forty (40) cents per mile; or

f. If the fuel cost is greater than two dollars twenty-nine and nine-tenths cents (\$2.299), the amount the employee is reimbursed shall increase one (1) cent for every twenty (20) cent increase in the rate; and

3. Not exceed the cost of commercial coach round-trip airfare.

(b) Mileage for in-state travel shall be based on the Kentucky Official Highway Map, MapQuest Web site, Google Maps Web site, or similar web mapping service. Out-of-state mileage shall be based on the most recent edition of the Rand McNally Road Atlas, MapQuest Web site, Google Maps Web site, or similar web mapping service.

(c) Reimbursement for the actual cost of commercial transportation shall be made upon submission of receipts with the Travel Voucher.

(d) Reimbursement for use of privately-owned aircraft shall be made if, prior to use, written justification was submitted to and approved by the agency head, or a designated representative.

(e) 1. Actual parking, bridge and highway toll charges shall be reimbursed.

2. A toll receipt for authorized in-state travel by two (2) axle vehicles shall not be required.

(f) Reimbursement shall be made for reasonable incidental expenses for:

1. Baggage handling;

2. Delivery of baggage to or from a common carrier, lodging or storage; and

3. Overweight baggage charges, if the charges relate to official business.

(5)(a) Registration fees required for admittance to meetings shall be reimbursed.

(b) If a registration fee entitles the registrant to meals, claims for those meals shall be reduced accordingly.

(6) Telephone costs for necessary official business shall be reimbursed.

(7) Other incidental expenses may be allowed by the agency head or designee if they are determined to be necessary expenses of official travel.

Section 8. Actual and Necessary Expenses. (1) The following persons shall be eligible for actual and necessary expenses:

(a) Governor;

(b) Governor's staff;

(c) Lieutenant governor;

(d) Elected constitutional officers;

(e) Cabinet secretaries;

(f) State employees traveling on assignment with the governor, lieutenant governor, elected constitutional officers, or cabinet secretaries;

(g) State officers and employees authorized to travel outside the United States, its possessions or Canada;

(h) Members of statutory boards and commissions; and

(i) Others in the official service of the commonwealth.

(2)(a) Actual and necessary expenses of official business travel shall be reimbursed upon submission of receipts for items over ten (10) dollars. The secretary may reduce the amount of any actual expense to be reimbursed if the secretary determines that the expense is unreasonably excessive.

(b) Actual and necessary expenses for official business travel shall include:

1. Lodging;

2. Meals;
3. Commercial transportation;
4. Taxes related to actual and necessary expenses; and
5. Reasonable gratuities.

(c) A credit card receipt shall be accepted for a meal if the receipt prepared by the establishment clearly shows that it is a receipt for a meal.

(d) Reimbursement for official use of a privately-owned vehicle shall be:

1. At the rate designated on the Office of the Controller's Web site listed in Section 1(6) of this administrative regulation;

2. Adjusted based on the American Automobile Association (AAA) Daily Fuel Gauge Report for Kentucky for regular grade gasoline. The rate shall be adjusted on January 1, April 1, July 1, and October 1 each calendar year based on the average retail price of regular grade gasoline for the week beginning on the second Sunday of the prior month as follows:

a. If the fuel cost is between one (1) cent and one dollar forty-nine and nine-tenths cents (\$1.499), the employee shall be reimbursed thirty-six (36) cents per mile;

b. If the fuel cost is between one dollar fifty cents (\$1.50) and one dollar sixty-nine and nine-tenths cents (\$1.699), the employee shall be reimbursed thirty-seven (37) cents per mile;

c. If the fuel cost is between one dollar seventy cents (\$1.70) and one dollar eighty-nine and nine-tenths cents (\$1.899), the employee shall be reimbursed thirty-eight (38) cents per mile;

d. If the fuel cost is between one dollar ninety cents (\$1.90) and two dollars nine and nine-tenths cents (\$2.099), the employee shall be reimbursed thirty-nine (39) cents per mile;

e. If the fuel cost is between two dollars ten cents (\$2.10) and two dollars twenty-nine and nine-tenths cents (\$2.299), the employee shall be reimbursed forty (40) cents per mile; or

f. If the fuel cost is greater than two dollars twenty-nine and nine-tenths cents (\$2.299), the amount the employee is reimbursed shall increase one (1) cent for every twenty (20) cent increase in the rate; and

3. Not exceed the cost of commercial coach round-trip airfare.

(e)1. The governor and cabinet secretaries may be reimbursed for actual and necessary costs of entertaining official business guests, upon certification of these expenses to the secretary or designee.

2. The secretary or the secretary's designee may:

a. Question a claim for reimbursement; and

b. Reduce the amount to be reimbursed, if the secretary determines that it is unreasonably excessive.

(f) An employee of the Cabinet for Economic Development or the Tourism, Arts and Heritage Cabinet shall be reimbursed for actual and necessary costs of entertaining official business guests of the commonwealth if the costs were:

1. Related to the promotion of industry, travel, or economic development;

2. Substantiated by receipts; and

3. Certified by the head of the cabinet.

Section 9. Mileage. (1) Mileage commuting between residence, and official work station, or alternate work station(s) shall not be paid. If an employee's residence is the employee's official or alternate work station, the employee's work station shall also include the location where the employee obtains a state vehicle or supplies for use during the workday.

(2)(a) If an employee's point of origin for travel is the employee's residence, mileage shall be paid for the shorter of mileage between:

1. Residence and travel destination; or

2. Official work station or alternate work station and travel destination.

(b) If an employee's point of origin for travel is the employee's official work station or an alternate work station, and after proceeding to a travel destination, the employee's final destination is the employee's residence, mileage shall be paid for the shorter of mileage between:

1. Residence and travel destination; or

2. Official work station or alternate work station and travel

destination.

(3) Vicinity travel, and authorized travel within a claimant's official work station or alternate work station shall be listed on separate lines on the Travel Voucher document.

Section 10. Travel Documents. (1) A person shall use the following forms to request prior authorization or reimbursement for travel:

(a) For in-state travel, any forms required by the person's agency head or designee;

(b) For out-of-state travel, a Request for Authorization of Out-of-State Travel document; and

(c) For out-of-country travel, a Request for Authorization of Out-of-Country Travel document.

(2) If applicable, a traveler shall attach the following to a Travel Voucher document:

(a) If a state park facility will be used, a State Park Travel Authorization document.

(b) If a rental vehicle, registration fee, or similar expense requires advance payment: a Prepaid Registration document;

(c) If reimbursement relates to out-of-state or out-of-country travel: the appropriate completed authorization form required by subsection (1) of this section; and

(d) For any expense that cannot be listed on a Travel Voucher document: a Travel Voucher, Other Expenses document.

(3) A contract for group accommodations shall be made on the standard form used by the establishment providing the services.

(4) Authorization for reimbursement of others in the official service of the commonwealth shall be requested on a Travel Voucher document.

(5) The Travel Voucher document shall be limited to the expenses made by one (1) person for the:

(a) Traveler; and

(b) If applicable, another person:

1. Who is a ward of the commonwealth; or

2. For whom the traveler is officially responsible.

(6) A Travel Voucher document for expenses made for a person specified in subsection

(5)(b) of this section shall include the person's:

(a) Name; and

(b) Status or official relationship to the claimant's agency.

(7)(a) A Travel Voucher document shall be submitted:

1. For one (1) major trip; or

2. Every two (2) weeks for employees that are in travel status for an extended period.

(b) A Travel Voucher document shall include:

1. Employee ID Number (KHRIS) of the claimant; and

2. Purpose of each trip.

(c) A Travel Voucher document shall be signed and dated, or entered electronically and approved by the:

1. Claimant; and

2. Agency head or authorized representative.

(d) If monthly expenses total less than ten (10) dollars, a Travel Voucher may include expenses for six (6) months of a fiscal year.

(e) A Travel Voucher document shall be:

1. Legibly printed in ink or typed; or

2. Processed electronically through travel software.

(f) A receipt shall provide the following information for each expense:

1. Amount;

2. Date;

3. Location; and

4. Type.

(g) Receipts shall be maintained at the agency if documents are processed electronically.

(h) If leave interrupts official travel, the dates of leave shall be stated on the Travel Voucher.

(i) Lodging receipts, or other credible evidence, shall be attached to the Travel Voucher.

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

(a) "Pre-paid Registration" document, Form eMARS-37,

06/19/06;

(b) "Request for Authorization of Out-of-State Travel" document, Form DOA-28, 1/2003;

(c) "Request for Authorization of Out-of-Country Travel" document, Form DOA-28A, 1/2003;

(d) "State Park Travel Authorization" document, 1/13/15;

(e) "Travel Voucher" document, Form eMARS-34, 10/27/06;

(f) "Travel Voucher Prepaid Registration Fees: Multiple Cost Distribution" document, Form eMARS-36, 06/19/06;

(g) "Travel Voucher, Other Expenses" document, Form eMARS-34B, 04/17/06;

(h) "Kentucky Official Highway Map", 2016; and

(i) "Rand McNally Road Atlas", 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Controller, Finance and Administration Cabinet, Capitol Annex Building, Room 484, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and online at the Office of the Controller's Web site at <http://finance.ky.gov/services/statewideacct/Pages/travel.aspx>.

HOLLY M. JOHNSON, Secretary

APPROVED BY AGENCY: January 28, 2021

FILED WITH LRC: January 29, 2021 at 12:40 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 21, 2021 at 10:00 a.m. at Kentucky Finance and Administration Cabinet Office of General Counsel, 702 Capital Ave., Suite 392, 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. on April 30, 2021. 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: Cary B. Bishop, Assistant General Counsel, Office of General Counsel, 702 Capital Ave., Suite 392, Frankfort, Kentucky 40601, phone (502) 564-8627, fax (502) 564-9875. email cary.bishop@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Cary B. Bishop

(1) Provide a brief summary of:

(a) What this administrative regulation does: Communicates requirements and rates for reimbursement of state employees' travel expenses.

(b) The necessity of this administrative regulation: KRS 45.101 authorizes the Finance and Administration Cabinet to promulgate an administrative regulation that establishes requirements and reimbursement rates for the travel expenses of state employees. KRS 44.060 requires the secretary to promulgate administrative regulations fixing the amount allowed for the expense of traveling in a motor vehicle in the discharge of official state duties.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifies the eligibility requirements relating to rates and forms for reimbursement of travel expense and other official expenses out of the State Treasury.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation specifies the eligibility requirements relating to rates and forms for reimbursement of travel expense and other official expenses out of the State Treasury.

(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 formally implements the concept of alternate work stations. The amendment enhances work location flexibility for employees and their employing agencies by removing the requirement to re-designate an employee's official work station after two months of assignment.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify reimbursement eligibility for official travel and commuting between an employee's residence, official work station, and alternate work station(s).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is consistent with the authority provided in KRS 45.101 and 44.060.

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates provisions to assist with the continued consistent and economical application of travel reimbursement practices.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Except as otherwise provided by law, this administrative regulation shall apply to all departments, agencies, boards, and commissions, and institutions of the executive branch of state government, except state-supported universities. It shall not apply to the legislative and judicial branches and their 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? Except as otherwise provided by law, this administrative regulation shall apply to all departments, agencies, boards, and commissions, and institutions of the executive branch of state government, except state-supported universities. It shall not apply to the legislative and judicial branches and their employees.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 45.101 and 44.060.

(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.

(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:

BOARDS AND COMMISSIONS
Kentucky State Board of Accountancy
(Amendment)

201 KAR 1:100. Continuing professional education requirements.

RELATES TO: KRS 325.330

STATUTORY AUTHORITY: KRS 325.240(2), 325.330(4)(a), (7)(b)1.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.240(2) authorizes the Kentucky State Board of Accountancy to promulgate administrative regulations for the administration of KRS Chapter 325. KRS 325.330(4) and (7)(b)1 require the board to promulgate administrative regulations to establish the continuing professional education requirements for certified public accountants. This administrative regulation establishes the continuing professional education requirements a certified public accountant shall satisfy to renew a license.

Section 1. Definitions. (1) "Continuing professional education hour" or "CPE hour" means a fifty (50) minute period excluding meals, breaks, and business sessions.

(2) "Technical standards courses" means continuing education courses if the subject matter area of the courses are accounting, auditing, business law, economics, finance, information technology, management services, professional ethics, statistics, securities, tax, and specialized areas of industry, all of which shall contribute directly to the professional competence of a licensee.

(3) "Worked" means hours devoted by a licensee that are documented as billable and nonbillable hours to a public accounting firm or client.

Section 2. Requirements for Continuing Professional Education Credit. (1) Each licensee who worked 3,000 hours or more in a public accounting firm licensed with the board during the two (2) calendar years prior to the renewal date of his or her license shall complete eighty (80) CPE hours. The eighty (80) hours shall be completed during the preceding two (2) calendar years. All other licensees shall complete sixty (60) CPE hours.

(a) Beginning January 1, 2021, fifty (50) percent of the eighty (80) hours and sixty (60) hours shall include technical standards courses.

(b) Beginning January 1, 2021, licensees who worked in a public accounting firm licensed with the board during the two (2) calendar years prior to the renewal date of his or her license and who perform:

1. Attest services, as defined in KRS 325.220; or

2. Compilation or preparation of financial statement engagements subject to the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Accounting and Review Services (SSARS) [prepare audits, reviews, compilations, or the preparation of financial statements] shall complete eight (8) hours of CPE in the subject matter area of auditing or accounting each calendar year for a total of sixteen (16) hours per reporting period.

(c) Beginning January 1, 2021, licensees required to obtain eighty (80) hours of CPE may include eight (8) hours of personal development courses toward the required hours, and licensees required to obtain sixty (60) hours of CPE may include up to twelve (12) hours of personal development courses in the required hours. An acceptable personal development course shall be limited to a course intended to improve the time management, leadership, team building, goal setting, and similar soft skills related to working in an office or professional setting.

(2) Each licensee shall complete two (2) CPE hours in professional ethics. These two (2) hours shall be included as part of the eighty (80) or sixty (60) CPE hours a licensee is required to complete to renew his or her license.

(3)(a) A certified public accountant who, for the two (2) calendar years prior to renewal of his or her license, did not operate or work in an office in this state shall satisfy the requirements of this section by complying with the continuing professional education requirements for renewal of his or her license:

1. In the state in which the licensee's principal office is located; or

2. In the state in which the office is located where the licensee worked a majority of the time.

(b) If the state designated by paragraph (a) of this subsection does not have continuing professional education requirements for renewal of a license, the licensee shall comply with all continuing professional education requirements for renewal of a license in this state.

Section 3. Each licensee who held a license for less than a full two (2) calendar year period shall obtain two (2) CPE hours for each full month a license was held not to exceed the total number of required hours for the reporting period. The two (2) hours in professional ethics shall not be required to be part of the CPE hours completed in this time period.

Section 4. Waivers from Continuing Professional Education. (1) A reduction or waiver may be granted by the board if the licensee:

(a) Establishes that he or she is temporarily physically or psychologically unable to complete the continuing professional education requirements. The licensee shall submit an Initial Request for Waiver of CPE Requirements form with each request and a written statement:

1. From a licensed physician or other appropriate licensed health care provider that substantiates the physical or psychological claim of the licensee; and

2. That describes the licensee's working status during the time the licensee was unable to complete the continuing education, the licensee's current working status, and if the licensee plans to return to work;

(b) Has encountered a temporary extreme hardship, which was so severe that it was extremely difficult or impossible to meet the continuing professional education requirements. The licensee shall submit an Initial Request for Waiver of CPE Requirements form and a written statement with each request:

1. That describes in detail the facts associated with the extreme hardship; and

2. Documentation to substantiate the extreme hardship; or

(c) Is completely retired from practice and is fifty-five (55) years of age or older. To be considered completely retired, the licensee shall not perform accounting services in the practice of public accounting (which includes the preparation of tax returns), education, government or industry except for management of personal assets or investments.

(2) The board shall advise a licensee in writing whether the

request is approved or denied.

(3) A licensee granted a waiver shall reaffirm the basis of the waiver when the license is next renewed by completing the:

(a) License Renewal - CPE Waiver Due to Medical or Extreme Personal Hardship form; or

(b) License Renewal - CPE Retirement Waiver form.

(4) A licensee completing the License Renewal - CPE Waiver Due to Medical or Extreme Personal Hardship form shall submit with the form updated medical documentation to support that the basis of the waiver continues to limit the licensee's ability to meet the CPE requirements.

(5) If the circumstances which form the basis of the waiver change, the licensee shall notify the board within thirty (30) days from the date of the change and resume compliance with the continuing professional education requirements from the date of the change.

(6) If the waiver request is granted, the licensee shall pay the license renewal fee listed in 201 KAR 1:065 on or before August 1.

Section 5. Courses that Qualify. (1) The overriding consideration in determining whether a specific course qualifies as acceptable continuing professional education shall be whether it is a formal program of learning which contributes directly to the professional competence of an individual licensed to practice as a certified public accountant in this state.

(2) Continuing professional education courses may qualify only if:

(a) An outline of the course is prepared in advance and preserved;

(b) The course is at least one (1) CPE hour in length. Credit shall be awarded for a course less than fifty (50) minutes in length if it is part of a continuing professional education program where at least one (1) fifty (50) minute course is also being offered;

(c) The course is conducted by a qualified instructor. A qualified instructor or discussion leader shall be anyone whose background training, education or experience makes it appropriate for him or her to lead a discussion on the subject matter of the particular course;

(d) A record of registration or attendance is maintained;

(e) A course completion document is given to each attendee; and

(f) The course topic is an acceptable field of study.

(3) Acceptable fields of study.

(a) The following fields of study shall be considered acceptable if the courses satisfy all of the criteria established in subsections (1), (2), and (5) of this section:

1. Any of the courses defined in Section 1(2) of this administrative regulation;

2. Business communications; and

3. Marketing.

(b) The responsibility for substantiating that a particular course is acceptable and meets the requirements of this administrative regulation shall be the obligation of the licensee.

(4) Acceptable programs. The following programs qualify for credit if they meet the standards specified in subsections (1), (2), (3), and (6) of this section:

(a) Professional education and development programs of national, state, and local accounting organizations;

(b) University or college courses.

1. Credit and not for credit courses completed at or through a university or college that is accredited by one (1) of the (6) six regional accrediting associations listed in 201 KAR 1:190, Section 5;

2. Documentation to verify completion of a course shall be issued by the appropriate representative of the university or college.

3. Each unit of credit for a university or college course shall be equal to the following CPE hours:

a. One (1) semester hour equals fifteen (15) CPE hours; and

b. One (1) quarter hour equals ten (10) CPE hours; and

(c) Formal in-firm education programs. Portions of a program devoted to firm administrative, financial, and operating matters shall not qualify.

(5) Formal individual study courses, Web casts, and online learning courses.

(a) The amount of credit allowed for any individual study course shall be recommended by the course sponsor.

(b) A licensee claiming credit for an individual study course shall obtain evidence of satisfactory completion of the course from the course sponsor.

(c) Credit shall be assigned to the reporting period in which the provider indicates the course was completed.

(6) Service as lecturer, discussion leader, or speaker.

(a) Instructors, discussion leaders, and speakers may claim continuing professional education credit for both preparation and presentation time.

(b) Credit may be claimed for actual preparation time up to two (2) times the class contact hours. (c) Credit as an instructor, discussion leader, or speaker may be claimed if the presentation is one which would meet the requirements of this section.

(d) Credit shall not be granted for repetitious presentations of courses unless it can be demonstrated that the course content was substantially changed and the change required significant additional study or research.

(e) Maximum credit for preparation and teaching shall not exceed sixty (60) percent of the renewal period requirement.

(7) Published articles and books.

(a) A licensee may be awarded credit for articles or books the licensee writes if:

1. The subject matter of the article or book contributes directly to the professional competence of the licensee; and

2. Prior to publication, the licensee submits a final draft of the article or book to the board to review and determine the amount of credit to be awarded.

(b) Credit for preparation of the article or book shall not exceed twenty-five (25) percent of the total CPE hours required.

(c) The board shall make the final determination of the amount of credit to be granted.

(8) Certifications and licenses. Licensees who receive a certification or license from a nationally organized business organization or a federal governmental entity following successful completion of an exam in one (1) of the fields of study listed in subsection (3) of this section shall receive credit only for the length of time assigned by the organization or governmental entity to complete the examination.

Section 6. Programs that deal with the following subject areas shall not be considered acceptable continuing education:

(1) Self-realization;

(2) Spirituality;

(3) Personal health or fitness;

(4) Sports and recreation;

(5) Foreign languages or cultures; and

(6) Any other subjects that do not contribute directly to the professional competence of the licensee.

Section 7. Reporting and Controls. (1) Each licensee shall obtain the appropriate documentation to establish that he or she completed the continuing professional education requirements.

(2) This documentation shall be retained by each licensee for a period of five (5) years.

(3) The board shall conduct annually a random audit to verify a certain percentage of licensees completed the amount of continuing professional education hours required to renew his or her license. A licensee who misrepresented that he or she completed the sixty (60) or eighty (80) CPE hours at the time the licensee renewed his or her license shall not be eligible for a retirement, medical, or extreme personal hardship waiver after being selected to participate in an audit.

(4) Course completion evidence shall consist of a document prepared by the course sponsor indicating the licensee completed a formal program of learning. A document shall include the: (a) Names of the licensee and program sponsor;

(b) Title and field of study;

(c) Dates attended; and

(d) Number of CPE hours awarded.

(5) A licensee who completed continuing professional education courses that complied with the requirements of this administrative regulation and were presented by or on behalf of his or her employer may submit to the board a list of the courses completed if the list contains the:

- (a) Information described in subsection (4) of this section; and
- (b) Signature of the person at the licensee's place of employment who verifies the accuracy of the information for a third party.

Section 8. Continuing Professional Education Sponsors. (1) Sponsors shall not be required to be preapproved by the board.

(2) Detailed records of each program shall be kept by the sponsor and shall include:

- (a) The date of the program presentation;
- (b) The name of each instructor or discussion leader;
- (c) A listing of licensees attending each program presentation; and
- (d) A written agenda of the program presentation.

(3) Records shall be kept by the sponsor for a period of five (5) years following the date each program is presented.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference: (a) "Initial Request for Waiver of CPE Requirements", September 2016;

(b) "License Renewal-CPE Waiver Due to Medical or Extreme Personal Hardship", September 2016; and

(c) "License Renewal-CPE Retirement Waiver", September 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Monday through Friday, 8 a.m. to 4:30 p.m.

MIMI KELLY, Chair

APPROVED BY AGENCY: February 4, 2021

FILED WITH LRC: February 4, 2021 at 1:24 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 22, 2021 at 1:00 p.m., EST at the office of the Board located at 332 W. Broadway, Suite 310 Louisville, Kentucky 40202. 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 the 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 the end of the day (11:59 p.m.) April 30, 2021. 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: Joseph P. Donohue, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 595-3037, fax (502) 595-4281, email joep.donohue@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: Describes the standards of continuing professional education ("CPE") required of certified public accountants ("CPAs").

(b) The necessity of this administrative regulation: To insure that CPAs are aware of their CPE requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 325.330(7)(b)(1) authorizes the Board to establish regulations regarding continuing education.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: Notifies CPAs of the CPE 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: While making no actual substantive change to the CPE requirements, this amendment will clarify and remove existing ambiguity in the current language of the regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment more specifically and clearly defines the applicability of section ___ of the regulation in response to questions and apparent confusion from licensees.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 325.330(7)(b)(1) authorizes the Board to establish standards related to licensees' CPE requirements, and it is in the best interest of the public, the Board and CPAs that such standards be set forth as clearly as possible.

(d) How the amendment will assist in the effective administration of the statutes: It will clarify language making it easier for licensees to understand their CPE obligations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The CPE requirements of approximately 7800 licensed CPAs are set forth in this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions will be required. The amendment just clarifies existing language and makes no substantive change to any current requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing in addition to what they already have been paying to complete CPE.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Existing CPE requirements will be more clearly set forth.

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

(a) Initially: No increase in current expenses.

(b) On a continuing basis: No increase in expenses.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Board operates solely on the funds contained in its trust and agency account.

(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 will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There is no additional fee imposed by this proposed amendment.

(9) TIERING: Is tiering applied? Tiering is not applied since the standards set forth in this regulation govern the CPE requirements of all CPAs.

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 State Board of Accountancy.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 325.240(2); KRS 325.330(7)(b)(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? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No increase in current costs is expected.

(d) How much will it cost to administer this program for subsequent years? No increase in expenses for future years is anticipated.

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:

BOARDS AND COMMISSIONS

Board of Nursing (Amendment)

201 KAR 20:065. Professional standards for prescribing Buprenorphine-MonoProduct or Buprenorphine-Combined-with-Naloxone by APRNs for medication assisted treatment for opioid use disorder.

RELATES TO: KRS 314.011, 314.042, 218A.010, 218A.170, 21 U.S.C. 823

STATUTORY AUTHORITY: KRS 314.131

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131 authorizes the board to promulgate administrative regulations to regulate the conduct of its licensees. This administrative regulation establishes the professional standards for APRNs practicing in Kentucky who prescribe Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone.

Section 1. Definitions.

(1) "Advanced Practice Registered Nurse" or "APRN" is defined by KRS 314.011(7).

(2) "Buprenorphine" means the controlled substances Buprenorphine-Mono-Product and Buprenorphine-Combined-with-Naloxone.

(3) "Consultation" means the process by which an APRN directs the patient to a physician, APRN, or other specialist, as required by Section 3(3)(a), Section 3(4)(b)(2), or Section 3(4)(g)(2) of this administrative regulation to render an opinion with regard to the prescribing of Buprenorphine to the patient. Consultation does not require an in-person visit. It may include a discussion by the APRN and the consultant by telephone or other appropriate electronic communication. The consultant may recommend further evaluation which may be either in-person, by telehealth, or a records review. It is the responsibility of the APRN to initiate a consultation and to communicate clearly to the consultant that the APRN is seeking a consultation. A consultation may involve the consultant providing advice and information to the APRN or patient. It is the responsibility of the APRN to provide all relevant client records to the consultant, including a written summary of the client's history and presenting problem, as deemed appropriate by the consultant. Consultation shall be fully documented by the APRN in the patient's record, including the consultant's name, date of service, and the consultant's findings, opinions, and recommendations. The APRN shall discuss the consultant's recommendations with the patient. ["Mental health counseling" means the provision of guidance, by a qualified health professional as defined at KRS 202A.011(12), to the individual through the utilization of methodologies such as the collection of case history data, valid and reliable screening tools, and psychological techniques such as the personal interview.]

Section 2. Minimum Qualifications for Prescribing Buprenorphine. An advanced practice registered nurse (APRN) shall not prescribe Buprenorphine for Opioid Use Disorder unless

that APRN possesses the minimum qualifications established in this section.

(1) The APRN shall obtain and maintain in good standing a DATA 2000 waiver and registration as issued by the United States Drug Enforcement Administration (DEA) to prescribe Buprenorphine for the treatment of Opioid Use Disorder.

(2) The APRN shall:

(a) Be a DEA-registered prescriber of Buprenorphine; and

(b) Have obtained medication assisted treatment education through completion of a Substance

Abuse and Mental Health Services Administration (SAMHSA) sponsored course.

(3) The APRN shall provide to the board a copy of the DEA Controlled Substance Registration Certificate as required by 201 KAR 20:057, Section 6(4), via the APRN Update online portal.

(4) The APRN shall comply with all federal statutes and regulations pertaining to the prescribing of Buprenorphine. This shall include the maximum number of patients, which may be seen by the APRN each year, and the inclusion of the special DEA identification number in addition to the regular DEA registration number on all prescriptions for opioid dependency treatment.

(5) It is not within the scope of practice for an APRN who does not hold a DATA 2000 waiver to conduct a focused examination required to prescribe Buprenorphine for the treatment of substance use disorders.

(6) The APRN shall comply with all federal statutes and regulations pertaining to the prescribing of controlled substances via telehealth for medication assisted treatment for opioid use disorder.

(7) The APRN who is at a remote location from the patient and is communicating with the patient, or health care professional who is treating the patient, using a telecommunications system referred to in section 1395m(m) of Title 42, shall comply will applicable federal and state laws.

Section 3. Professional Standards for Prescribing Buprenorphine for Supervised Withdrawal or the Treatment of Opioid Use Disorder.

(1) Buprenorphine may be prescribed for supervised withdrawal or as a maintenance treatment for a patient diagnosed with opioid use disorder in accordance with the standards established by this administrative regulation.

(2) Buprenorphine-Mono-Product shall not be prescribed for supervised withdrawal or as a maintenance treatment for a patient diagnosed with opioid use disorder, except:

(a) To a pregnant patient, as established in subsection (4)(b) of this section;

(b) To a patient with demonstrated hypersensitivity to naloxone; or

(c) As administered under supervision in an APRN's office or other healthcare facility, including hospitals, urgent care settings, surgical care centers, residential treatment facilities, and correctional facilities; or

(d) To a patient transitioning from methadone to buprenorphine, limited to a period of no longer than one (1) week.

(3)(a) Except as provided in paragraph (b) of this subsection, buprenorphine shall not be prescribed to a patient who is also being prescribed benzodiazepines, other sedative hypnotics, stimulants, or other opioids, without consultation of:

1. A physician certified in addiction medicine or psychiatry as required by 201 KAR 9:270;

2. An APRN who is certified in addiction therapy by the:

a. Addictions Nursing Certification Board;

b. American Academy of Health Care Providers in the Addictive Disorders; or

c. National Certification Commission for Addiction Professionals; or

3. A psychiatric-mental health nurse practitioner.

(b) An APRN may prescribe buprenorphine to a patient who is also being prescribed benzodiazepines, other sedative hypnotics, stimulants, or other opioids, without consultation in order to address a documented extraordinary and acute medical need not to exceed a combined period of thirty (30) days.

(4) Each APRN who prescribes buprenorphine for supervised withdrawal or for the treatment of opioid use disorder shall comply with the professional standards established in this subsection.

(a) Prior to initiating treatment, the APRN shall:

1. Obtain, review, and record a complete and appropriate evaluation of the patient, [and] which shall include:

- a. The patient's history of present illness;
- b. The patient's history of drug use;
- c. The patient's social and family history;
- d. The patient's medical and psychiatric histories;
- e. A focused physical examination of the patient; and
- f. Appropriate laboratory tests, which may[shall] include a complete blood count (CBC), a comprehensive quantitative drug screen, liver function tests, a complete metabolic panel (CMP), HIV screening, and hepatitis serology[;]. If an appropriate justification for initiation of treatment in advance of the review of laboratory tests is documented by the APRN, this subsection shall be satisfied though the documentation of a plan for obtaining and reviewing the laboratory tests required by this subsection within thirty (30) days of initiating treatment.

2. Document a plan to obtain [Obtain] the patient's consent and authorizations in order to obtain and discuss the patient's prior medical records within thirty (30) days of initiating treatment, which shall require:

a. Upon receipt of the medical records, the APRN shall review and incorporate the information from the records into the evaluation and treatment of the patient; or

b. If the APRN is unable, despite best efforts, to obtain the patient's prior medical records, the APRN shall document those efforts in the patient's chart.

3. Obtain and review a KASPER or other prescription drug monitoring program (PDMP) report for that patient for the twelve (12) month period immediately preceding the initial patient encounter and appropriately utilize that information in the evaluation and treatment of the patient;

4. Explain treatment alternatives, the risks, and the benefits of treatment with buprenorphine to the patient;

5. Obtain written informed consent from the patient for treatment;

6. Discuss and document the patient's treatment with the patient's other providers;

7. If the patient is a female of childbearing potential and age, meet the requirements of paragraph (b) of this subsection; and

8. Develop a treatment plan that incorporates the patient's participation in a behavioral modification program, which may include counseling or a twelve (12) step facilitation[an evaluation by a qualified mental health professional as defined at KRS 202A.011(12), with expertise in addiction, and compliance with the recommendations of the evaluator with ninety (90) days initiating treatment, and objective behavior modification including mental health counseling or a twelve (12) step program for the duration of the treatment].

(b) 1. Prior to initiating treatment, the APRN shall recommend [require] that female patients of child bearing age and ability [the patient] submit to a pregnancy test and, if pregnant, the APRN shall provide counseling as to the risk of neonatal abstinence syndrome which shall be consistent with current SAMHSA guidance. The APRN shall document a patient's decision to decline to take a pregnancy test and the stated rationale for the patient's decision.

2. Prior to prescribing buprenorphine to a patient who is pregnant or breastfeeding, an APRN who is not an obstetrical care provider shall have a plan to obtain and document consultation with an obstetrical care provider to co-manage the patient's care. The APRN shall document a patient's decision to decline consultation referenced in this subsection, and the stated rationale for the patient's decision[obstetrician or a maternal fetal medicine specialist who holds a DATA 2000 waiver that determines the potential benefit of Buprenorphine use outweighs the potential risk of use].

(c) Except as provided by paragraph (d) of this subsection, while initiating treatment with buprenorphine, the APRN shall comply with the following requirements:

1. The APRN shall recommend to the patient an in-office observed induction protocol.

a. Except as provided in clause b. of this subparagraph, the APRN shall conduct or supervise the in-office observed induction protocol.

b. If an in-office observed induction does not occur, the APRN shall appropriately document the circumstances in the patient record and shall implement a SAMHSA-recognized or ASAM recognized home-based induction protocol.

2. The APRN shall document the presence ~~[or absence]~~ of any opioid withdrawal symptoms before the first dose is given by using a standardized instrument, such as the clinic opioid withdrawal scale (COWS) or other similarly recognized instrument.

3. The APRN shall initiate treatment with a dose not to exceed the dose equivalency of four (4) milligrams buprenorphine generic tablet, which:

a. May be followed by subsequent doses if withdrawal persists; and

b. Shall not exceed the dose equivalency of sixteen (16) milligrams buprenorphine generic tablet on the first day of treatment.

(d) If the patient is transferred from another treatment provider and has previously experienced withdrawal without a relapse and has not had a lapse in treatment, the APRN shall:

1. Document the previous history of withdrawal;

2. Educate the patient about the potential for precipitated withdrawal;

3. Continue maintenance treatment of the patient on the same or less dosage as established by the previous treatment provider and then as provided in paragraph (e) of this subsection; and

4. Schedule visits at the same frequency as the previous treatment provider would have been required to or more frequently if deemed necessary by the APRN.

(e) After initial induction of buprenorphine, the APRN shall prescribe to the patient an amount of buprenorphine that:

1. Is necessary to minimize craving and opiate withdrawal;

2. Does not produce opiate sedation;

3. Is able only to supply the patient until the next visit, which shall be scheduled as required by this section; and

4. Does not exceed the FDA-approved dosage limit.

(f) The patient's visits shall be scheduled as follows:

1. The APRN shall ensure that the patient is seen no later than ten (10) days after induction and then at intervals of no more than ten (10) days for the first month after induction and at intervals of no more than fourteen (14) days for the second month after induction.

2. If the patient demonstrates objective signs of positive treatment progress after the first two (2) months, the patient shall be seen at least once monthly thereafter for up to two (2) years.

3. If after two (2) years after initiation of treatment, the patient has demonstrated objective signs of positive treatment progress, including documented evidence that the patient has been compliant with the treatment plan and all treatment directives, then the APRN may require that the patient be seen at least once every three (3) months. The APRN shall:

a. Evaluate the patient to determine whether the patient's dosage should be continued or modified; and

b. Appropriately document that evaluation and clinical judgment in the patient's chart.

4. The APRN shall see the patient in shorter intervals if the patient demonstrates any noncompliance with the treatment plan.

5. If extenuating circumstances arise that require a patient to unexpectedly reschedule a visit, the APRN shall make best efforts to see the patient as soon as possible and document the circumstances in the patient chart.

(g) After initial induction of Buprenorphine, the APRN shall review compliance with the recommendations of the treatment plan and drug screen results at each visit to help guide the treatment plan. Current [, including review of] KASPER and [or] other relevant PDMP reports shall be obtained no less frequently than once every three (3) months, [and drug screens] to help guide the treatment plan[at each visit].

1. The APRN shall:

a. Incorporate those findings into the treatment plan to support the continuation or modification of treatment; and

b. Accurately document the same in the patient record.

2. Appropriate evaluation of continued Buprenorphine prescribing shall include documented consideration of initial laboratory test results as specified in subsection (4)(a)(1)f. of this section, subsequent laboratory test results, and the patient's prior medical records, appropriate evaluation of continued Buprenorphine prescribing shall also include, if appropriate and relevant, [may include] adjustment of dose strength or frequency of visits, increased screening, a consultation with or referral to a specialist, or an alternative treatment, including consideration of weaning, if weaning is clinically appropriate.

3. The APRN shall obtain a minimum of eight (8) drug screens from the patient within each

twelve (12) month period of treatment in order to help guide the treatment plan.

a. At least two (2) of the drug screens shall be random and coupled with a pill count. At least one (1) of those two (2) drug screens shall be confirmed by gas chromatography/mass spectrometry (GC/MS) or liquid chromatography/mass spectrometry (LC/MS).

b. Each drug screen shall screen for buprenorphine, methadone, opioids, THC, benzodiazepines, amphetamines, [alcohol, gabapentin,] and cocaine.

c. The two (2) drug screens confirmed by gas chromatography/mass spectrometry (GC/MS) or liquid chromatography/mass spectrometry (LC/MS) shall screen for buprenorphine, methadone, opioids, THC, benzodiazepines, amphetamines, alcohol, gabapentin, and cocaine.

d. If a drug screen indicates the presence of any of the drugs screened, the APRN shall:

(i) Incorporate those findings into appropriate clinical evaluation to support the continuation or modification of treatment; and

(ii) Document in the patient record.

(h) Every twelve (12) months following initiation of treatment, if a patient's prescribed daily therapeutic dosage exceeds the dose equivalency of sixteen (16) milligrams buprenorphine generic tablet per day, then the APRN who is not certified in addiction therapy shall:

1. Refer the patient for an evaluation by a physician or an APRN as established in subsection (3)(a) of this section for an opinion as to whether continued treatment and dosage is appropriate; and

2. Document the results of that evaluation in the patient chart.

(i) For patients who have demonstrated objective signs of positive treatment progress for at least two (2) years from the date of initiation of treatment, including documented evidence that the patient has been compliant with the treatment plan and all treatment directives, the APRN shall evaluate for and document every twelve (12) months the medical necessity for continued treatment at the established dose.

(j) The APRN shall document a plan for dealing with any lost or stolen medication, which shall not provide for the automatic replacement of medication prior to the specified interval date. Replacement medication shall not be authorized by the APRN in the absence of an individual assessment, specific consideration of all prior instances of lost or stolen medication, and documented discussion [consultation] with the patient.

(k) After initial induction, the APRN shall:

1. Implement a treatment plan that requires objective behavioral modification by the patient. The behavioral modification plan shall include the patient's participation in a behavioral modification program that shall include counseling or a twelve (12) step facilitation. [shall include the patient's participation in a behavioral modification program that shall include mental health counseling or a twelve (12) step facilitation; and

2. ~~Require the patient to obtain an evaluation by a qualified mental health professional as defined in KRS 202A.011(12), with expertise in addiction, within ninety (90) days of initiating treatment, and to comply with the evaluator's recommendations.]~~

Section 4. Continuing Education. An APRN who has obtained a waiver and registration as issued by the DEA to prescribe buprenorphine for the treatment of Opioid Use Disorder shall complete a total of four (4) hours annually in addiction disorders, including the one and one-half (1.5) contact hours in pharmacology as defined by 201 KAR 20:215, Section 5(1)(c). The pharmacology hours must be on the dual subjects of addiction disorders and pharmacology.

Section 5. Use of Transmucosal Buprenorphine for Treatment of Opioid Use Disorder in an Emergency Situation or Inpatient Setting.

(1) In an emergency, including in a hospital emergency department or similar outpatient urgent care setting, or in an inpatient setting, an APRN may offer and initiate buprenorphine treatment to patients who present with opioid use disorder, without meeting the requirements established in Sections 2 and 3 of this administrative regulation and to the extent permitted by federal law, if:

(a) The APRN has determined that the use of buprenorphine will not result in a harmful interaction with other medications or substances in the patient's system, including benzodiazepines, sedative hypnotics, carisoprodol, or tramadol;

(b) The APRN obtains and documents written informed consent from the patient specific to risks and benefits of Buprenorphine treatment; and

(c) The APRN provides the patient with written instructions and contact information for appropriate follow up care, including bridge-provider services, residential treatment providers, and outpatient treatment providers.

(2) The APRN shall initiate Buprenorphine treatment under an observed induction protocol with an initial dose not to exceed the dose equivalency of four (4) milligrams buprenorphine generic tablet, which may be followed by subsequent doses, up to a maximum of twenty-four (24) milligrams buprenorphine generic tablet, if withdrawal persists and is not improving.

Section 6. Telehealth. Nothing in this administrative regulation shall be construed to prohibit prescribing buprenorphine via telehealth. The prescribing APRN shall follow the standards set by 201 KAR 20:520.

Section 7. Documented Deviation from Professional Standards for Prescribing Buprenorphine. If an APRN is unable to conform to professional standards for prescribing Buprenorphine as set forth in this administrative regulation due to circumstances beyond the APRN's control, or the APRN makes a professional determination that it is not appropriate to comply with a specific standard, based upon the individual facts applicable to a specific patient's diagnosis and treatment, the APRN shall document those circumstances in the patient's record and only prescribe Buprenorphine to the patient if the patient record appropriately justifies the prescribing under the circumstances and in accordance with SAMHSA guidelines.

JESSICA WILSON, President

APPROVED BY AGENCY: December 17, 2020

FILED WITH LRC: February 2, 2021 at 3:33 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, April 21, 2021 at 10:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until end of day (11:59 p.m.) Friday,

April 30, 2021. 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: Morgan Ransdell, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 415-3964, email Morgan.Ransdell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Morgan Ransdell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets standards for advanced practice registered nurses (APRN) who are authorized by federal law to prescribe buprenorphine for treatment of opioid use disorder.

(b) The necessity of this administrative regulation: It is necessary to promulgate this regulation to establish standards for APRN prescribing of Buprenorphine for the treatment of opioid use disorder in the Commonwealth of Kentucky.

(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 setting standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting standards for APRN prescribing of Buprenorphine for the treatment of opioid use disorder in the Commonwealth of Kentucky.

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

(a) How the amendment will change this existing administrative regulation: The amendment makes several changes to update the standards: abolishes the mental health evaluation requirement, which brings the regulation into greater harmony with 201 KAR 9:270, thus facilitating collaboration between physicians and APRNs in the treatment of opioid use disorder; relaxes the regulation requirement as to who may serve as a mental health counselor for an APRN's opioid use disorder patients, which will bring the regulation into greater harmony with 201 KAR 9:270, and which will allow other licensed professionals such as LCADCs and CADCs to participate in the implementation of objective behavioral modification; provides a definition of consultation which clarifies the APRNs regulatory obligations when prescribing Buprenorphine in three (3) contexts: (i) in conjunction with other sedative hypnotics, stimulants or other opioids; (ii) when prescribing Buprenorphine to pregnant/breastfeeding patients; (iii) when prescribing a daily dose of greater than sixteen (16) mg daily dose of buprenorphine Buprenorphine on an ongoing basis; requires that laboratory test results be completed and reviewed within thirty (30) days of induction, instead of prior to induction; requires patient consent for the release of prior medical records to be obtained within thirty (30) days of induction; requires a pregnancy test only as to female patients of child bearing age and ability, which brings the regulation into greater harmony with 201 KAR 9:270, thus facilitating collaboration between physicians and APRNs in the treatment of opioid use disorder; relaxes the obstetrical consult requirement for pregnant or breastfeeding patients by, among other things, allowing the patient to decline the consult; reduces the number of drug/alcohol screens that specifically test for gabapentin and alcohol from eight (8) each year to two (2) each year; brings the regulation into conformity with 201 KAR 20:057 §9(5) by requiring a review of patient KASPER data every 90 days, instead of at every visit; modifies the objective behavioral modification requirement to bring the regulation into greater harmony with 201 KAR 9:270, thus facilitating collaboration between physicians and APRNs in the treatment of opioid use disorder; and provides instructions on what a buprenorphine prescriber should do when the prescriber determines that is necessary and appropriate to deviate from the requirements of the regulation in the treatment of an opioid use disorder patient.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to keep the standards current and to bring the regulation into greater harmony with 201

KAR 9:270, thus facilitating collaboration between physicians and APRNs in the treatment of opioid use disorder.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to set standards governing APRN prescribing of Buprenorphine.

(d) How the amendment will assist in the effective administration of the statutes: By having current and appropriate standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Board of Nursing currently licenses 571 APRNs who are authorized to prescribe of controlled substances in the treatment of substance use disorder.

(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: Kentucky APRNs who prescribe Buprenorphine in the treatment of opioid use disorder will be required to comply with the new standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): For APRNs who prescribe Buprenorphine in the treatment of opioid use disorder, these amendments do not impose any new or additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the new standards.

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

(a) Initially: The upfront programming costs already incurred in the creation of the APRN Update portal, which allows electronic submission of documents, was \$2,850.00. No additional costs will result from the proposed amendments to the regulation.

(b) On a continuing basis: No additional ongoing costs are directly attributable to the amendments to this regulation; however, enforcement of this regulation are anticipated to necessitate audits, investigations, administrative hearing processes; and judicial appeals. These enforcement costs are necessary, and are impossible to predict with any degree of specificity.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds derived primarily from licensure fees, and also, but to a lesser extent, from civil penalties assessed against licensees and applicants who have been found to have violated Kentucky nursing laws.

(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 licensure fees is anticipated at this time.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? The upfront programming costs already incurred in the creation of the APRN Update portal, which allows electronic submission of documents, was \$2,850.00. This cost was not entirely attributable to 201 KAR 20:065, as the APRN Update portal also facilitates APRN compliance with 201 KAR 20:057. No additional costs will result from the proposed amendments to the regulation.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS

Board of Nursing (Amendment)

201 KAR 20:370. Applications for licensure.

RELATES TO: KRS 314.041, 314.042, 314.051, 314.071, 314.091, 314.103, 314.475

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 [nursing] licensure.

Section 1. To be eligible for licensure by examination, endorsement, renewal, reinstatement, retired licensure status, or for advanced practice registered nurse licensure, renewal, or reinstatement, an applicant shall:

(1) Submit the completed application form to the board office, for:

(a) RN or LPN licensure by examination, endorsement, or reinstatement, Application for Licensure;

(b) RN or LPN Renewal, Annual Licensure Renewal Application: RN or LPN;

(c) Licensure or reinstatement as an advanced practice registered nurse, Application for Licensure as an Advanced Practice Registered Nurse;

(d) Renewal as an RN and an APRN, Annual Licensure Renewal Application: RN and APRN;

(e) Licensure as an RN and as an APRN, Application for RN and APRN Licensure;

(f) Retired licensure status, Application for Retired Status;

(g) APRN renewal with an RN Compact license, Annual Licensure Renewal Application: APRN with RN Compact License (not Kentucky);

(h) APRN renewal with a Kentucky RN License, Annual Licensure Renewal Application, APRN with Kentucky RN License; or

(i) 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. An application shall lapse and the fee shall be forfeited if the application is not completed:

(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 3. 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", 02/2021 [2/2020], 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", 02/2021 [2/2020], 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)", 02/2021 [2/2020], Kentucky Board of Nursing;

(h) "Annual Licensure Renewal Application, APRN with Kentucky RN License", 02/2021 [2/2020], Kentucky Board of Nursing; and

(i) "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.

JESSICA WILSON, President

APPROVED BY AGENCY: February 15, 2021

FILED WITH LRC: February 15, 2021 at 11:58 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on

Wednesday, April 21, 2021 at 10:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until end of day (11:59 p.m.) Friday, April 30, 2021. 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: Morgan Ransdell, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 415-3964, email Morgan.Ransdell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Morgan Ransdell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates the various application forms and sets some requirements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of the licensure provisions for KRS Chapter 314.

(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 incorporating the various forms and setting requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by providing for the appropriate application forms.

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

(a) How the amendment will change this existing administrative regulation: The only changes are to license renewal application forms. These changes: (1) Add text stating: "Verification of primary state of residence may be required" where the "primary state of residence" question is asked; (2) Add text stating: "Traffic misdemeanors, other DUI, should not be reported," which is consistent with §1(3) of the regulation; (3) Remove KHEAA sentence from attestation, per passage of HB118 (2019); (4) Add question regarding "branch of active duty service" where military questions is present; (5) require entry of current mailing address each year; and (6) change date to 2/2021.

(b) The necessity of the amendment to this administrative regulation: Amendment is needed to comply with changes in the law referenced in the preceding response, and to reduce the error rate within renewal applications.

(c) How the amendment conforms to the content of the authorizing statutes: By removing unnecessary language, and by ensuring the regulations conform to applicable law.

(d) How the amendment will assist in the effective administration of the statutes: By reducing the error rate and conforming applications provisions to applicable law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensed nurses, approximately 90,000.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is necessary.

(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): N/A.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS

Board of Nursing (Amendment)

201 KAR 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements.

RELATES TO: KRS 216B.400(2), (4), 314.011(14), 314.103, 314.142, 314.475, 403.707, 421.500-421.575, 431.600-431.660

STATUTORY AUTHORITY: KRS 314.131(1), 314.142(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.142(1) requires the board to promulgate administrative regulations to create a Sexual Assault Nurse Examiner Program. This administrative regulation establishes the requirements relating to a sexual assault nurse examiner course and the credentials of a sexual assault nurse examiner.

Section 1. Definitions. (1) "Adolescent" means a child who has reached the onset of physiologically normal puberty.

(2) "Pediatric" means a child who has not reached the age of

eighteen (18).

(3) "SANE-A/A course" means a formal, organized course of instruction that is designed to prepare a registered nurse to perform forensic evaluation of an adult or adolescent sexual assault victim and to promote and preserve the victim's biological, psychological, and social health.

(4) "SANE course" means the SANE-A/A course and the SANE-P/A course.

(5) "SANE-P/A course" means a formal, organized course of instruction that is designed to prepare a registered nurse to perform forensic evaluation of a pediatric or adolescent sexual assault victim and to promote and preserve the victim's biological, psychological, and social health.

Section 2. SANE Course Approval Application.

(1) On the form Application for Initial or Continued SANE Course Approval, the applicant for approval of a SANE-A/A course or a SANE-P/A course shall submit evidence to the board of completion of the requirements for course approval that consists of the following documentation:

(a) Position description and qualifications of the nurse administrator of the SANE course;

(b) Qualifications and description of the faculty;

(c) Course syllabus;

(d) Course completion requirements;

(e) Tentative course presentation dates;

(f) Records maintenance policy; and

(g) Copy of certificate of course completion form.

(2) Nurse administrator of SANE course. A registered nurse, with current, active Kentucky licensure or a multistate licensure privilege pursuant to KRS 314.475, a baccalaureate or higher degree in nursing, and experience in adult and nursing education shall be administratively responsible for assessment, planning, development, implementation, and evaluation of the SANE course.

(3) Faculty qualifications. Faculty qualifications shall be consistent with the instructor qualifications set out in Sexual Assault Nurse Examiner (SANE) Education Guidelines. The name, title, and credentials identifying the educational and professional qualifications for each instructor shall be provided as part of the application.

(4) Course syllabus. The syllabus shall include:

(a) Course prerequisites, requirements, and fees;

(b) Course outcomes, which shall provide statements of observable competencies, which if taken as a whole, present a clear description of the entry level behaviors to be achieved by the learner;

(c) Unit objectives for an individual, which shall be stated in operational or behavioral terms with supportive content identified;

(d) Content as specified in subsection (6) of this section, which shall be described in detailed outline format with corresponding lesson plans and time frame, and which shall be related to, and consistent with, the unit objectives, and support achievement of expected course outcomes;

(e) Teaching methods with the activities of both instructor and learner specified in relation to the content outline, and which shall be congruent with stated course objectives and content, and reflect the application of adult learning principles;

(f) Evaluation methods, which shall be clearly defined for evaluating the learner's achievement of course outcomes, and which shall include a process for annual course evaluation by students, providers, faculty, and administration; and

(g) Instructional or reference materials required, which shall be identified.

(5) Completion requirements. Requirements for successful completion of the SANE course shall be clearly specified and shall include demonstration of clinical competency. A statement of policy regarding a candidate who fails to successfully complete the course shall be included.

(6) The SANE-A/A course and the SANE-P/A course content shall be consistent with Sexual Assault Nurse Examiner (SANE) Education Guidelines.

(a) In addition to that content, the SANE-A/A course and the SANE-P/A course shall include:

1. Observing live or previously recorded criminal trials and meeting with the Commonwealth Attorney or a representative from the Commonwealth Attorney's office in order to gain an understanding of the trial process including testifying;

2. Meeting with the local rape crisis center and a rape crisis center victim advocate in order to gain an understanding of the services provided to victims by rape crisis centers and the role of an advocate;

3. Meeting with local law enforcement officers or investigators responsible for investigating reports of rape or sexual assault in order to gain an understanding of the investigative process; and

4. Application of the Kentucky statewide medical protocol relating to the forensic and medical examination of an individual reporting sexual assault pursuant to KRS 216B.400(2) and (4), and (5). The victim's bill of rights, KRS 421.500 through 421.575.

(b) In addition to the requirements of paragraph (a) of this subsection, the SANE-P/A course shall include:

1. Principles of child development;

2. Techniques for acute evaluations;

3. An overview of Kentucky Child Advocacy Centers; and

4. An overview of KRS 431.600 through 431.660 which shall include information about multidisciplinary teams and their functions, model protocols approved by the Kentucky Multidisciplinary Commission on Child Sexual Abuse, and the role of peer review in child sexual abuse cases.

Section 3. Contact hour credit for continuing education. (1) The SANE course shall be approved for contact hour credit which may be applied to licensure requirements.

(2) Approval period. Board approval for a SANE course shall be granted for a four (4) year period.

(3) Records shall be maintained for a period of five (5) years, including the following:

(a) Provider name, date, and site of the course; and

(b) Participant roster, containing at a minimum the name, Social Security number, and license number for each participant.

(4) A participant shall receive a certificate of completion that documents the following:

(a) Name of participant;

(b) Title of course, date, and location;

(c) Provider's name; and

(d) Name and signature of authorized provider representative.

Section 4. Continued Board Approval of a SANE Course.

(1) An application for continued approval of a SANE course shall be submitted on the Application for Initial or Continued SANE Course Approval at least three (3) months prior to the end of the current approval period.

(2) A SANE course syllabus shall be submitted with the Application for Initial or Continued SANE Course Approval.

(3) Continued approval shall be based on the past approval period performance and compliance with the board standards described in this administrative regulation.

Section 5. The board may deny, revoke, or suspend the approval status of a SANE course for violation of this administrative regulation.

Section 6. Appeal. If a SANE course administrator is dissatisfied with a board decision concerning approval and wishes a review of the decision, the procedure established in this section shall be followed.

(1) A written request for the review shall be filed with the board within thirty (30) days after the date of notification of the board action which the SANE course administrator contests.

(2) The board, or its designee, shall conduct a review in which the SANE course administrator may appear in person and with counsel to present reasons why the board's decision should be set aside or modified.

Section 7. Requirements for Sexual Assault Nurse Examiner (SANE) Credential.

(1) The applicant for the SANE-A/A or SANE-P/A credential

shall:

(a) Hold a current, active registered nurse license in Kentucky or a multistate licensure privilege pursuant to KRS 314.475;

(b) Have completed a board approved SANE educational course or a comparable course, which the board or its designee shall:

1. Evaluate to determine its course comparability; and

2. Advise an applicant if the course is not comparable and specify what additional components shall be completed to allow the applicant to be credentialed.

(c) Complete the Sexual Assault Nurse Examiner Application for Credential;

(d) Pay the fee established in 201 KAR 20:240;

(e) Provide a criminal record check by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI);

(f) Use the FBI Applicant Fingerprint Card;

(g) Pay any required fee to the KSP and the FBI;

(h) Complete the criminal record check within six (6) months of the date of the application;

(i) Provide a certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

(j) Provide a letter of explanation that addresses each conviction, if applicable.

(2) Upon completion of the application process, the board shall issue the appropriate SANE credential for a period ending October 31.

(3) An applicant shall not be credentialed until a report is received from the FBI pursuant to the request submitted under subsection (1)(e) of this section and any conviction is addressed by the board.

Section 8. Renewal. (1) To renew the SANE-P/A or the SANE-A/A credential for the next period, each sexual assault nurse examiner shall complete at least five (5) contact hours of continuing education related to the role of the sexual assault nurse examiner or forensic nursing within each continuing education earning period. A provider of a board approved SANE course may offer continuing education related to the role of the sexual assault nurse examiner.

(2) Upon completion of the required continuing education, completion of the Annual Credential Renewal Application: SANE Credential with RN in Kentucky or Annual Credential Renewal Application: SANE with RN Compact License (Not Kentucky), as applicable, and payment of the fee established in 201 KAR 20:240, the appropriate SANE credential shall be renewed at the same time the registered nurse license is renewed.

(3) The five (5) contact hours may count toward the required contact hours of continuing education for renewal of the registered nurse license.

(4) Failure to meet the five (5) contact hour continuing education requirement shall cause the SANE credential to lapse.

Section 9. Reinstatement. (1) If the SANE credential has lapsed for a period of less than four (4) consecutive registered nurse licensure periods, and the individual wants the credential reinstated, the individual shall apply to reinstate the credential by:

(a) Submitting the Sexual Assault Nurse Examiner Application for Credential;

(b) Paying the fee established in 201 KAR 20:240;

(c) Submitting evidence of earning the continuing education requirement referenced in Section 8(1) of this administrative regulation for the number of registered nurse licensure periods since the SANE credential lapsed;

(d) Providing a criminal record check by the KSP and FBI;

(e) Using the FBI Applicant Fingerprint Card;

(f) Paying any required fee to the KSP and the FBI;

(g) Completing the criminal record check within six (6) months of the date of the application;

(h) Providing a certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

(i) Providing a letter of explanation that addresses each conviction, if applicable.

(2) An applicant shall not be credentialed until a report is received from the FBI pursuant to the request submitted under subsection (1)(d) of this section and any conviction is addressed by the board.

(3) If the SANE credential has lapsed for more than four (4) consecutive licensure periods, the nurse shall complete a SANE course prior to reinstatement.

Section 10. The board shall obtain input from the Sexual Assault Response Team Advisory Committee concerning any proposed amendment to this administrative regulation as follows:

(1) The board shall send a draft copy of any proposed amendment to the co-chairs of the Sexual Assault Response Team Advisory Committee prior to approval by the board;

(2) The board shall request that comments on the proposed amendment be forwarded to the board's designated staff person within ninety (90) days; and

(3) At the conclusion of that time period or upon receipt of comments, whichever is sooner, the board, at its next regularly scheduled meeting, shall consider the comments.

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

(a) "Application for Initial or Continued SANE Course Approval", 10/2018;

(b) "Sexual Assault Nurse Examiner Application for Credential", 10/2018;

(c) "Annual Credential Renewal Application: SANE Credential with RN in Kentucky", 02/2021 [2/2020];

(d) "Annual Credential Renewal Application: SANE with RN Compact License (Not Kentucky)", 02/2021 [2/2020]; and

(e) "Sexual Assault Nurse Examiner (SANE) Education Guidelines", 2018, International Association of Forensic Nurses.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222-5172, Monday through Friday, 8:00 a.m. to 4:30 p.m. Amended Administrative Regulation, 201 KAR 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements.

JESSICA WILSON, President

APPROVED BY AGENCY: February 15, 2021

FILED WITH LRC: February 15, 2021 at 11:58 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, April 21, 2021 at 10:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until end of day (11:59 p.m.) Friday, April 30, 2021. 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: Morgan Ransdell, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 415-3964, email Morgan.Ransdell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Morgan Ransdell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets standards for Sexual Assault Nurse Examiner programs and credential.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.142.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing standards.

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

(a) How the amendment will change this existing administrative regulation: Two application forms have been updated. The changes:

(1) Add text stating: "Verification of primary state of residence may be required" where the "primary state of residence" question is asked; (2) Add text stating: "Traffic misdemeanors, other DUI, should not be reported"; (3) Remove KHEAA sentence from attestation, per passage of HB118 (2019);

(b) The necessity of the amendment to this administrative regulation: Amendment is needed to comply with changes in the law referenced in the preceding response.

(c) How the amendment conforms to the content of the authorizing statutes: By updating the forms.

(d) How the amendment will assist in the effective administration of the statutes: By updating the forms.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for renewal of SANE credential. Currently, there are 313 RNs who hold an active Kentucky SANE credential.

(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 will use the updated form.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost other than the application fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Their application will be processed.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative

regulation. KRS 314.131.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS

Board of Nursing
(Amendment)

201 KAR 20:660. Licensed certified professional midwives duty to report.

RELATES TO: KRS 213.046, Chapter 209A, 314.400 – 314.414, 61.871(1)(i), 45 C.F.R. Part 164

STATUTORY AUTHORITY: KRS 314.131(1), 314.404

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 314.404(10) authorizes[requires] the board to promulgate an administrative regulation to require licensed certified professional midwives to report to the board annually as specified by the board information regarding cases in which the licensed certified professional midwife provided services when the intended place of birth at the onset of care was in an out-of-hospital setting. KRS 314.404(11) authorizes[requires] the board to promulgate an administrative regulation to require licensed certified professional midwives to report to the board, within thirty (30) days of the occurrence, a case of newborn or maternal death attended by a licensed certified professional midwife at the discovery of death. ~~[This administrative regulation establishes reporting requirements for licensed certified professional midwives and for the review of those reports.]~~

Section 1. Pursuant to KRS 314.404(11), within thirty (30) days ~~[of the occurrence]~~ of a case of newborn or maternal death, the attending LCPM shall report the occurrence to the Board of Nursing on LCPM Incident Form.

Section 2. Pursuant to KRS 314.404(10), an LCPM shall report the following information to the Board of Nursing on or before September 1 of each year for the period July 1 through June 30 preceding:

(1) The total number of clients served;

(2) The number of live births;

(3) The number of cases of fetal demise, newborn deaths, and maternal deaths;

(4) The number, reason for, and outcome of each ~~[referral,]~~ transfer, or transport of a client in the antepartum, intrapartum, or immediate postpartum periods;

(5) The number and reason for each referral of a client in the antepartum, intrapartum, or immediate postpartum periods;

(6) A brief description of any complications resulting in the morbidity or mortality of a mother or a newborn for the first six (6) weeks; and

(7) ~~[(6)]~~ The planned location of the delivery and the actual

location of the delivery if it is different.

Section 3. The LCPM Advisory Council shall review all reports.

Section 4. (1) The LCPM shall comply with the requirements of KRS 213.046 regarding the reporting of birth.

(2) The LCPM shall comply with the requirements of KRS Chapter 209A regarding reporting of suspected domestic violence.

Section 5. (1) LCPM incident forms and LCPM annual report forms submitted for LCPM Advisory Council review in accordance with Sections 1-3 of this administrative regulation shall be regarded as correspondence with private individuals, not notice of the final action of a public agency, and shall not be disclosed to the public.

(2) The Kentucky Board of Nursing shall make public aggregate incident and annual report data that does not identify individual licensees or information that would violate the confidentiality of information or knowledge concerning any patient, except as authorized or required by law such as pursuant to the Health Insurance Portability and Accountability Act (HIPAA) of 1996, Pub. L. No. 104-191, 110 Stat. 1936.

Section 6. Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) "LCPM Incident Form", 1/2020[~~is incorporated by reference.~~]; and

(b) "LCPM Annual Report Form", 12/2020.

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

JESSICA WILSON, President

APPROVED BY AGENCY: December 17, 2020

FILED WITH LRC: February 2, 2021 at 3:33 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, April 21, 2021 at 10:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until end of day (11:59 p.m.) Friday, April 30, 2021. 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: Morgan Ransdell, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 415-3964, email Morgan.Ransdell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Morgan Ransdell

(1) Provide a brief summary of:

(a) What this administrative regulation does: Senate Bill 84 (2019 Session) enacted KRS 314.400-416 which recognized licensed certified professional midwives (CPM) and placed their regulation with the Board of Nursing. This administrative regulation sets the requirements for reporting maternal or fetal mortality or morbidity for CPMs in Kentucky.

(b) The necessity of this administrative regulation: It is required by KRS 314.404(10) and KRS 314.404(11).

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting reporting requirements for CPMs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting

reporting requirements for CPMs.

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

(a) How the amendment will change the existing administrative regulation: for reporting regarding all referrals within a year, removes outcome from reporting requirement and focuses on referral types, consistent with KRS 314.404(10); specifies that individual annual reports are confidential and exempt from public disclosure requirements [See, KRS 61.878(1)(i) ("Preliminary drafts, notes, correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency" are excluded from public disclosure requirements)]; states that aggregate incident and annual report data shall be made public; and incorporates by reference the annual reporting form.

(b) The necessity of the amendment to the administrative regulation: KRS 314.404 expressly calls for promulgation of mandatory annual reporting regulation, and the promulgation of an annual reporting form facilitates aggregation and analysis of the data.

(c) How the amendment conforms to the content of the authorizing statutes: by designating the information to be reported annually by Kentucky CPMs.

(d) How the amendment to the administrative regulation will assist in the effective administration of the statutes: Shielding individual annual reports from public disclosure will facilitate reporting, will prevent disclosures that compromise patient confidentiality or inadvertent HIPAA violations (45 C.F.R. Part 164), Public disclosure of aggregate CPM annual report data will allow for study and policy development regarding CPM practice and outcomes within the Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It will affect licensed CPMs in Kentucky, number unknown. Currently, there are 20 CPMs who have been licensed by KBN since this regulation and the other CPM regulations became effective on July 29, 2020.

(4) Provide an analysis of how the entities referenced 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) A detailed explanation of the actions the entities referenced in question (3) will be required to undertake in order to comply with this proposed administrative regulation: They will have to submit the required reports, and the adoption of a standardize reporting format will allow for aggregation and analysis of reported data, which will benefit CPMs and their patients.

(b) An estimate of the costs imposed on entities referenced in question (3) in order to comply with this proposed administrative regulation: The costs should be minimal.

(c) The benefits that may accrue to the entities referenced in question (3) as a result of compliance: They will be in compliance with the statute and regulations.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation, both initially and on a continuing basis: The Board of Nursing estimates that to implement this and the other CPM regulations will initially cost \$150,000 and approximately \$50,000 per year thereafter. The Board expects to spend \$2,850.00 in programming costs to create an online web-based portal for submission of annual reporting data and other information that CPMs are required to provide to the Board.

(6) Provide the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds, which are derived primarily through licensure fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation or amendment: An increase in funding may be necessary in the future.

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

(9) TIERING: Is tiering applied? Tiering is not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131, KRS 314.404

(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 are not sure how many certified professional midwives there will be, but we estimate not more than 20. This will generate \$20,000 in revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The same amount.

(c) How much will it cost to administer this program for the first year? We estimate \$150,000.

(d) How much will it cost to administer this program for subsequent years? We estimate \$50,000.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amendment)

703 KAR 5:270. Kentucky's Accountability System.

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455, 20 U.S.C. 6311

STATUTORY AUTHORITY: KRS 158.6453, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6453 requires the Kentucky Board of Education to create and implement a balanced statewide assessment program that measures the achievement of students, schools, and districts; complies with the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq., or its successor; and ensures accountability. KRS 158.6455 requires the Kentucky Board of Education to create an accountability system to classify schools and districts, including a process for annual summative performance evaluations and goals for improvement. This administrative regulation establishes the statewide system of accountability, and meets requirements set forth in the federal Every Student Succeeds Act of 2015 at 20 U.S.C. 6311.

Section 1. Definitions. (1) ~~["Achievement gap" means a measure of the performance difference between student demographic groups to each other for reading and mathematics.~~

(2) ~~"Comparison group" means the student demographic group being contrasted to the reference group.~~

(3) ~~"English learners" in the indicators of growth and transition readiness means students currently identified on an English language proficiency exam. For all other areas, it means students currently identified and those who continue to be monitored.]~~

"English learner progress indicator" means the combination of individual student growth for status and the difference in school performance for change of English learners toward English language proficiency. For all other indicators, it means students currently identified and those who continue to be monitored.

(2) [(4)] "Federal student group designation" means targeted

support and improvement, and additional targeted [comprehensive] support and improvement as provided in KRS 160.346.[

~~(5) "Federally defined student demographic groups" include White, African American, Hispanic, Asian, Native Hawaiian or other Pacific Islander, American Indian or Alaska Native, two (2) or more races, free/reduced-price meal eligible, students with disabilities who have an IEP, and English learners.]~~

(3) [(6)] "Full academic year" means 100 or more instructional days of student enrollment within the school year.

(4) [(7)] "Grade twelve (12) non-graduates" means all students enrolled in grade twelve (12) at the end of the school year who do not graduate.

(5) [(8)] "Graduation rate" means the percentage of students who enter high school and receive a diploma based on their cohort in four (4) and five (5) years, adjusting for transfers in and out, émigrés, and deceased students.[

~~(9) "Growth" means a student's continuous improvement toward proficiency or above.~~

~~(10) "Indicator" means a component of the accountability system that provides specific information on the school or district.]~~

(6) "Indicator performance rating" means one of five colored-coded performance levels on each state indicator that is determined by combining status and change.

(7) [(11)] "Individual education program" or "IEP" means an individual education program as defined in 707 KAR 1:002.

(8) [(12)] "Local education agency" or "LEA" for the purposes of this administrative regulation shall mean a local school district as provided in KRS 161.010 and KRS 161.020 or a charter school board of directors as provided in KRS 161.1590.[

~~(13) "Practical significance" means a measure of the differences between student groups has real meaning.~~

~~(14) "Proficiency indicator" means the measure of academic status or performance for reading and mathematics on state assessments.]~~

(9) "Overall performance rating" means one (1) of five (5) color-coded performance levels that aggregates all available state indicator data that is determined by combining status and change.

(10) "Postsecondary readiness" means the attainment of the necessary knowledge, skills, and dispositions to successfully transition to the next level.

(11) [(15)] "Proficient" or "proficiency" means reaching the desired level of knowledge and skills as measured on academic assessments.

~~(12) [(16)] "Quality of school climate and safety indicator" means the measures of school environment.]~~

~~(17) "Rating" means the process of inclusion of an indicator in the formal overall rating of the school or district.~~

~~(18) "Reference group" means a student demographic group to which another group is contrasted to provide a benchmark for performance.~~

~~(19) "Separate academic indicator for science, social studies, and writing" means the measure of academic status or performance for science, social studies, and writing on state assessments.]~~

(13) "State assessment results for reading and mathematics indicator" means the measure of academic status or performance for reading and mathematics on state assessments.

(14) "State assessment results for science, social studies, and writing indicator" means the measure of academic status or performance for science, social studies, and writing on state assessments.

(15) "State indicator" means a component of the accountability system as defined in KRS 158.6455.]

~~(20) "Transition readiness" means the attainment of the necessary knowledge, skills, and dispositions to successfully transition to the next level.]~~

(16) [(21)] "Value table" means a set of numbers that are used to attribute scores to different performance levels.

(17) [(22)] "Writing" means the content area that includes on-demand writing, and editing and mechanics.

Section 2. Kentucky's accountability system that is used to classify schools and LEAs shall include the state indicators of:

state assessment results for reading and mathematics [proficiency]; state assessment results [separate academic indicator] for science, social studies, and writing; English learner progress [growth]; postsecondary [transition] readiness; quality of school climate and safety; and graduation rate.

(1) The state assessment results for reading and mathematics [proficiency] indicator shall be measured by student performance on state tests in reading and mathematics.

(2) The state assessment results for science, social studies, and writing [A separate academic] indicator shall be measured by student performance on state tests in science, social studies, and writing.

(3) The English learner progress indicator shall be measured by student performance on an English proficiency test. The English learner progress indicator shall be measured based on a growth value table. Additional tables shall incorporate the federal flexibilities of age upon entry to U.S. schools, initial English language proficiency level, and degree of interrupted schooling. [The growth indicator shall be calculated at the elementary and middle school levels. The growth indicator shall be measured:

(a) Based on a growth value table in reading and mathematics; and

(b) Progress toward achieving English proficiency by English learners.]

(4) The quality of school climate and safety indicator shall include perception data from surveys that measure insight to the school environment.

(5) The postsecondary [transition] readiness indicator shall be measured at high school for students meeting the following criteria:

(a) Earn a regular or alternative high school diploma plus grade twelve (12) non-graduates; and

(b) Achieve academic readiness or career readiness.

1. A school shall receive credit for each student demonstrating academic readiness by:

a. Scoring at or above the benchmark score as determined by the Council on Postsecondary Education (CPE) on the college admissions examination or college placement examination; or

b. Completing two (2) [six (6) hours of] Kentucky Department of Education approved dual credit courses and receiving a grade of C or higher in each course; or

c. Completing two (2) advanced placement (AP) courses and receiving a score of three (3) or higher on each AP assessment; or

d. Receiving a score of five (5) or higher on two (2) examinations for international baccalaureate courses; or

e. Scoring at or above the benchmark on two (2) Cambridge Advanced International examinations; or

f. Completing a combination of academic readiness indicators listed above.

g. Demonstration of academic readiness listed in paragraph 5 (b)1 of this section shall include one (1) quantitative reasoning or natural sciences and one (1) written or oral communication; or visual and performing arts; or humanities; or social and behavioral sciences learning outcomes.

2. A school shall receive credit for each student demonstrating career readiness by:

a. Scoring at or above the benchmark on industry certifications as approved by the Kentucky Workforce Innovation Board on an annual basis; or

b. Scoring at or above the benchmark on the career and technical education end-of program assessment for articulated credit; or

c. Completing two (2) [six (6) hours of] Kentucky Department of Education approved CTE dual credit courses, and receiving a grade of C or higher in each course; or

d. Completing a Kentucky Department of Education approved or labor cabinet-approved apprenticeship; [-or e. Completing a Kentucky Department of Education approved alternate process to verify exceptional work experience.

3. For students who qualify as English learners in high school: Meeting criteria for English language proficiency to be English language ready.]

3[4]. Students participating in the alternate assessment program shall meet criteria based on academic or career alternate

assessment requirements.

(6) The graduation rate indicator shall be measured for each high school using the four (4)-year and extended five (5)-year cohort rate. The graduation rate shall be reported for all students and student groups.

Section 3. Classification of Schools and LEAs in the State Accountability System. (1) Data shall be included in the overall performance rating for schools and LEAs for the following state indicators:

(a) State Assessment Results [Proficiency] (reading and mathematics);

(b) State Assessment Results [Separate academic indicator] (science, social studies, and writing);

(c) English learner progress [Growth (elementary and middle school)];

(d) Postsecondary [Transition] readiness (high school);

(e) Quality of school climate and safety; and

(f) Graduation rate (high school).

(2) Data from individual student performance on state assessments administered as required in KRS 158.6451 and KRS 158.6453 shall be included in the overall performance rating of each school and LEA. This data shall include students with disabilities with IEPs who participate in the alternate assessment program.

(3) Data in the overall performance rating shall be attributed to grade level spans for schools and LEA as established in this subsection.

(a) Elementary schools shall include data from: state assessment results for reading and mathematics [proficiency]; state assessment results [separate academic indicator] for science, social studies, and writing; English learner progress [growth]; quality of school climate and safety; and federal student group designation.

(b) Middle schools shall include data from: state assessment results for reading and mathematics [proficiency]; state assessment results [separate academic indicator] for science, social studies, and writing; English learner progress [growth]; quality of school climate and safety; and federal student group designation.

(c) High schools shall include data from: state assessment results for reading and mathematics [proficiency]; state assessment results [separate academic indicator] for science, social studies, and writing; English learner progress; postsecondary [transition] readiness; graduation rate; quality of school climate and safety; and federal student group designation.

(d) LEAs shall include data from: school state assessment results for reading and mathematics [proficiency]; state assessment results [separate academic indicator] for science, social studies, and writing, English learner progress [growth]; postsecondary [transition] readiness; graduation rate; and quality of school climate and safety.

Section 4. Calculations for Reporting Categories. (1) State assessment results [Proficiency] for reading and mathematics shall be rated equally in elementary, middle and high schools and LEAs by awarding points as described in paragraph 2(b) of this section.

(2) State assessment results [The separate academic indicator] for science, social studies, and writing shall be rated in elementary, middle and high schools, and in LEAs by awarding points as described in paragraph 2(b) of this section. [The highest proportion shall be attributed to science and social studies.]

(a) For any content area (reading, mathematics, science, social studies, and writing) where data are not available, the data of the remaining content areas shall be redistributed proportionally across state assessment results state [proficiency and separate academic] indicators.

(b) The following chart shall be used to calculate the points for state assessment results in reading and mathematics and state assessment results in science, social studies, and writing [proficiency and the separate academic indicator]:

Proficiency Levels	Points Awarded for Each Percent of Students
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Novice	0
Apprentice	.5
Proficient	1
Distinguished	1.25

(3) [Growth shall be rated for elementary and middle schools as established in this subsection.

(a) Novice and apprentice performance levels for growth calculations shall be subdivided into novice high, novice low, and apprentice high, apprentice low.

(b) The school calculation for mathematics shall be the sum of the total points from the growth value table for all students divided by the total number of scores.

(c) The values in the growth value table below shall be used in calculating growth in this subsection.

Growth Value Table (Points for student performance in Year 2, given Performance in Year 1)						
	Novice		Apprentice		Proficient	Distinguished
Year 1 Student Performance	Low	High	Low	High		
Distinguished	0	0	0	0	0	50
Proficient	0	0	0	0	50	100
Apprentice High	0	0	0	50	100	150
Apprentice Low	0	0	50	100	150	200
Novice High	0	50	100	150	200	250
Novice Low	0	100	150	200	250	300

(d) The school calculation for reading shall be the sum of the total points for all students from the growth value table plus growth for English language proficiency as described in Section 4(3)(e) of this administrative regulation divided by the total number of scores.

(e) Progress toward achieving English proficiency by English learners shall be calculated as follows:

(a) [1-] Individual growth shall be compared to prior year performance on an English proficiency exam.

(b) [2-] The exit benchmark and English learner growth value tables created involving Kentucky educators and advised by technical experts shall be utilized.

(c) [3-] Points for each English learner based on the English learner growth value table shall be averaged [summed].

(d) The value tables shall be included in the Every Student Succeeds Act Consolidated State Plan and negotiated with the United States Department of Education.

(e) [a- Depending on further analysis,] Kentucky shall [may] modify the value table and its use to reflect factors that may impact English learners' progress toward language proficiency, including age upon entry to U.S. schools, initial English language proficiency level, and degree of interrupted schooling.

b. The values in the growth value table below shall be used in calculating growth in this subsection.

WIDA ACCESS score previous year	WIDA ACCESS score current year							
	1	1.5	2.0	2.5	3.0	3.5	4.0	4.5
4.0	0	0	0	0	0	0	50	100
3.5	0	0	0	0	0	50	100	150
3.0	0	0	0	0	50	100	150	200
2.5	0	0	0	50	100	150	200	250
2.0	0	0	50	100	150	200	250	300
1.5	0	50	100	150	200	250	300	300
1.0	0	100	150	200	250	300	300	300

4. Total points for English learners shall be added to the sum of the reading growth points for all students in reading as described in Section 4(3)(e) of this administrative regulation.

(f) For an overall school growth score, an average of reading scores that includes growth for English learners on an English proficiency exam and mathematics growth scores shall be

calculated.]

(4) The quality of school climate and safety indicator shall be rated for elementary, middle, high schools, and LEAs as established in this subsection. The Kentucky Board of Education shall approve the measures of quality of school climate and safety.

(5) Postsecondary [Transition] readiness shall be calculated by dividing the number of high school graduates plus grade twelve (12) non-graduates who have met measures of postsecondary [transition] readiness [plus the number of English learners who have achieved English language proficiency] by the total number of graduates plus grade twelve (12) non-graduates [plus the number of graduates who have received English language services during high school]. Credit for students obtaining an industry-recognized certification, licensure, or credential in specialized career pathways in state and regional high demand sectors as approved by Kentucky's Workforce Innovation Board is one and one-quarter (1.25) points. Credit for students obtaining all other readiness indicators is one (1.0) point.

(6) Graduation rate is the percentage of students completing the requirements for a Kentucky high school diploma compared to the cohort of students beginning in grade nine. The accountability system shall include a four (4) year cohort rate and an extended five (5) year cohort rate. Each rate shall be weighted equally.

(7) The indicator performance rating shall be assigned as follows:

(a) Indicators identified in Section 3 shall have a rating of very low, low, medium, high, or very high by school and LEA for status.

(b) Indicators identified in Section 3 shall have a rating of declined significantly, declined, maintained, increased, or increased significantly by school and LEA for change.

(c) Each state indicator combines status and change and reports an indicator performance level using a color-coded table.

(8) [(7)] The [overall rating shall be assigned as follows:

(a) The indicators for each school and LEA as identified in Section 3 of this administrative regulation shall contribute to the overall performance rating of schools and LEAs.]

(b) Indicators identified in Section 3 shall have a rating of very low, low, medium, high, or very high by school and LEA level.]

(9) [(e)] A standard setting process shall be conducted involving Kentucky educators and advised by technical experts to recommend [determine] very low to very high performance levels for status and declined significantly to increased significantly for change on each indicator including state assessment results for reading and mathematics [proficiency], state assessment results for science, social studies, and writing [separate academic indicator], English learner progress [growth], postsecondary [transition] readiness, graduation rate, and quality of school climate and safety.

(10) [(8)] An overall performance [star] rating for elementary, middle, and high schools shall be reported using a color [five (5) star] rating system to communicate performance of schools, with red [one (1) star] being the lowest rating and blue [five (5) stars] being the highest rating. Color ratings shall include five performance levels from highest to lowest: Blue, Green, Yellow, Orange, and Red. Performance of schools, LEAs, and state will be reported by level (elementary, middle, and high) as applicable. The School Report Card shall display the color [star] ratings earned for each school, LEA, and state (by level) [and the total five (5) stars available].

Overall Accountability Weights						
State Assessment Results [Proficiency] (Reading and Mathematics)	State Assessment Results [Separate Academic Indicator] (Science, Social Studies, and	English learner progress [Growth] (including English Language	Quality of School Climate and Safety	Postsecondary [Transition] Readiness [(High school includes English language learners)]	Graduation Rate (4 and 5 year cohort)	

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		Writing)	uage Lear ners)			
Eleme ntary[/ Middle] School s	<u>51</u> [35]	<u>40</u> [26]	<u>5</u> [35]	4	--	---
Middle School s	<u>46</u>	<u>45</u>	<u>5</u>	<u>4</u>		
High School s	45	<u>20</u> [15]	<u>5</u> [---]	4	<u>20</u> [30]	6

(b) The performance on state indicators is combined [that contribute to the overall star ratings] using the amounts in the Overall Accountability Weights table to generate an overall performance [shall be determined by a standards-setting process involving Kentucky educators].

(c) Indicator and overall performance color ratings shall be recommended during standards setting. The recommendation from the standards setting committee shall be approved as defined in KRS 158.6455. [If achievement gaps are found in schools and LEAs earning a four (4) or five (5) star rating, the star rating will be reduced by one (1) star.

1. Achievement gap shall be calculated between student demographic comparison groups and reference groups for reading and mathematics combined by:

a. Determining the student demographic groups to be included in this subsection, which shall include the following student demographic groups that have at least ten (10) students: African American, Hispanic, Asian, Native Hawaiian or other Pacific Islander, American Indian or Alaska Native, two (2) or more races, and White.

(i) Comparing African American, Hispanic, Asian, Native Hawaiian or other Pacific Islander, American Indian or Alaska Native, two (2) or more races, and White to a reference group. The reference group shall be the highest performing racial and ethnic student group that has at least ten (10) students and constitutes at least ten (10) percent of the students enrolled in the school; (ii) Free and reduced price meal eligible students compared to non-free and reduced price meal eligible students;

(iii) Students with disabilities who have an IEP compared to students without IEPs; and

(iv) English learners compared to non-English learner students.

b. Using a statistical analysis for each pair of comparison and reference groups, the department shall determine if a gap between the comparison group and reference group is both statistically and practically significant.]

(d) Kentucky will identify schools to determine required federal designations [bottom five (5) percent and ten (10) percent] based on the overall performance [indicators] of the accountability [(five) 5-star] system.

(e) If data cannot be calculated for an indicator, the weights shall be redistributed proportionally to remaining state indicators that shall be reported for the school or LEA.

(11) [(9)] School accountability indicators shall be assigned as follows:

(a) Students enrolled for a full academic year shall be included in the calculations for state assessment results for reading and mathematics [proficiency], state assessment results [a separate academic indicator] for science, social studies, and writing, English learner progress [growth], quality of school climate and safety, and postsecondary [transition] readiness for a school and LEA.

(b) Graduation rate calculations shall be based on the students' final enrollment.

(c) Student demographic groups shall have a minimum of thirty [30] [ten (10)] students to be included in school rating calculations.

(d) In accordance with KRS 158.6455, schools and districts shall be placed into one (1) of five (5) color [(5)-star] ratings established by a standards-setting process utilizing results from the

first operational administration of assessments [in 2018-19]. The process shall:

1. Be advised by the National Technical Advisory Panel on Assessment and Accountability; the School Curriculum, Assessment and Accountability Council; Local Superintendent Advisory Council, and the Office of Education Accountability; and

2. Use accepted technical procedures and involve Kentucky school and district administrators and teachers.

Section 5. Additional Public Reporting Requirements. (1) The Kentucky Department of Education shall report disaggregated data for each state indicator of the state assessment and accountability system.

(2) Progress on long-term and interim goals shall be reported publicly as required by the federal Every Student Succeeds Act and submitted in Kentucky's Consolidated State Plan. Goals shall be developed for every student group, including all students, for academic achievement in each content area of reading, mathematics, science, social studies, and writing[, and the content areas combined]; graduation rate based on four (4) year and five (5) year adjusted cohorts; and progress on English proficiency for English learners.

(3) The goal for academic achievement operationalizes both the improvement of proficient and distinguished performance for all students and each student group and the reduction of achievement gaps as defined in KRS 158.649 [in student group performance by fifty (50) percent by 2030]. Each student group of ten (10) or more students shall be reported on the School Report Card. The data will be suppressed as necessary for reporting to meet the Family Educational Rights and Privacy Act (FERPA). [Each student group of ten (10) or more students shall be compared to the reference group of the highest performing student group that is at least ten (10) percent of the student population.

(4) Goals for graduation rate shall be generated for a four (4) year adjusted cohort to ninety-five (95) percent for all students and an extended five (5) year cohort to ninety-six (96) percent for all students. The goal for progress on English language proficiency shall be based on the percent of students making progress toward attainment of the English language.

(5) Performance levels of each indicator (proficiency for reading and mathematics, a separate academic indicator for science, social studies, and writing, growth, transition readiness, quality of school climate and safety, and graduation rate) from very low to very high on each indicator will be determined by Kentucky educators with a standards setting process.

(6) Federal designations and statistically and practically significant achievement gaps will be reported for each school, LEA, and state.]

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

JASON E. GLASS, Commissioner

LU YOUNG, Chairperson

APPROVED BY AGENCY: February 10, 2021

FILED WITH LRC: February 12, 2021 at 2:47 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on April 22, 2021 at 10:00 a.m. in the State Board Room, 5th Floor, Kentucky Department of Education, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing 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 until April 30,

2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Todd Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes state accountability requirements for Kentucky's public local education agencies (LEAs) and schools.

(b) The necessity of this administrative regulation: KRS 158.6453 requires the Kentucky Board of Education to create and implement a balanced statewide assessment program that measures the achievement of students, schools and districts, complies with the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq., or its successor, and ensures accountability. KRS 158.6455 requires the Kentucky Board of Education (KBE) to create an accountability system to classify schools and districts, including a process for annual summative performance evaluations and goals for improvement.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specific details for establishing the indicators and measures of the state-required accountability system for Kentucky public LEAs and schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specific details for establishing the statewide accountability program that rates LEAs and schools based on performance of multiple indicators: state assessment results (reading and mathematics), state assessment results (science, social studies and writing), English learner progress, graduation rate (high school only), postsecondary readiness (high school only) and quality of school climate and safety. The multiple indicators incorporate the student test results and school quality measures. The regulation complies with state statute and the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq., or its successor, and ensures accountability.

(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 state accountability requirements for Kentucky's public local education agencies (LEAs) and schools. The amendments to this regulation will change certain accountability indicators and measures in the system due to recently passed legislation, Senate Bill (SB) 158 (2020). SB 158 (2020) amends KRS 158.6455 to create an accountability system that shall include an annual meaningful differentiation of all public schools in the state using multiple measures that describe the overall performance of each district, school and student subgroup. Performance shall be based on a combination of academic and school quality indicators and measures known as "state indicators." Those indicators shall exclusively include student assessment results, progress toward achieving English proficiency by limited English proficiency students, quality of school climate and safety, high school graduation rates, and postsecondary readiness. In addition, the accountability system performance for each district, school and student subgroup determined by the state indicators shall be based on a combination of annual performance, hereinafter called "Status," and improvement over time, hereinafter called "Change." In addition, SB 158 (2020) changes the definition for achievement gap.

(b) The necessity of the amendment to this administrative regulation: After recently passed legislation, Senate 158 (2020), it is necessary to amend the accountability regulation to align with state statute.

(c) How the amendment conforms to the content of the authorizing statute: This administrative regulation provides specific

details for establishing the indicators and measures of the state-required accountability system for Kentucky public LEAs and schools.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides specific details for establishing the statewide accountability program that rates LEAs and schools based on performance of multiple indicators: state assessment results (reading and mathematics), state assessment results (science, social studies and writing), English learner progress, graduation rate (high school only), postsecondary readiness (high school only) and quality of school climate and safety. The multiple indicators incorporate the student test results and school quality measures. The regulations amendments complies with state statute and the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq., or its successor, and ensures accountability.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public LEAs and schools in Kentucky with schools grade 3 or higher and supporting staff in the Kentucky Department of Education (KDE).

(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: KDE, LEAs and schools shall implement the specific details of the assessment and accountability system. The regulation defines the indicators and measures to be included in the accountability system used to evaluate and rate the performance of Kentucky's public LEAs and schools. The system is a multi-dimensional model that uses student- and school-based data to differentiate performance. The KDE implements and manages the accountability system, as established and promulgated in regulation by the KBE. LEAs and schools implement the required assessments and processes that generate data reported annually in the accountability system. The data reported help schools and districts improve student achievement, ensure students are ready to transition to the next step of education or life, and provide quality school climate and safety for students.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The accountability system requires no additional direct costs to the LEAs and schools. LEA's and schools may choose to implement new programs or services in response to the new accountability system that may result in additional costs for LEA's and schools, however, this would be a locally determined decision. KDE anticipates additional indirect cost to implement new accountability system. Additional costs are expected to implement new accountability and reporting requirements codified in SB 158 (2020).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The accountability system has several key goals: promote higher levels of student learning and achievement, include quality of school climate and safety, build a culture of high expectation and continuous improvement, and communicate a clear and honest understanding of strengths and opportunities for improvement in LEAs and schools. In addition, achievement gaps will be reported outside of accountability.

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

(a) Initially: The transition to the new accountability system will require KDE to implement activities such as standard setting, additional staff time, and the support of experts, each with associated costs. The accountability system requires no additional cost to the LEAs and schools. KDE anticipates additional costs to implement new assessments and reporting requirements codified in Senate Bill 1 (2017 Kentucky General Assembly). The results of these assessments are used to rate schools in the accountability system established by this regulation.

(b) On a continuing basis: Senate Bill 1 requires continual reviews of standards and assessments. There will be ongoing costs to implement new assessments and meet reporting requirements,

particularly the release of some assessment items annually. These activities directly support the accountability system established in this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general and federal 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 increased fees or funding are anticipated as a result of this regulation, however activities related to this regulation as required by SB 1 (2017) may require additional funding as described above.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and LEAs.

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? Public Local Education Agencies (LEAs) and schools.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.6453; KRS 158.6455; 20 U.S.C. secs. 6301 et seq.

(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? The transition to the new accountability system will require the Kentucky Department of Education (KDE) to implement activities such as standard setting, additional staff time, and the support of experts, each with associated costs. The accountability system requires no additional cost to the LEAs and schools. KDE anticipates additional costs to implement new assessments and reporting requirements codified in Senate Bill 1 (2017 Kentucky General Assembly). The results of these assessments are used to rate schools in the accountability system established by this regulation.

(d) How much will it cost to administer this program for subsequent years? Senate Bill 1 requires continual reviews of standards and assessments. There will be ongoing costs to implement new assessments and meet reporting requirements, particularly the release of some assessment items annually. These activities directly support the accountability system established in this regulation.

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 (+/-): The transition to the new accountability system will require KDE to implement activities such as standard setting, additional staff time, and the support of experts, each with associated costs. The accountability system requires no additional cost to the LEAs and schools. KDE anticipates additional costs to implement new assessments and reporting requirements codified in Senate Bill 1 (2017 Kentucky General Assembly). The results of these assessments are used to rate schools in the accountability system. Senate Bill 1 requires continual reviews of standards and assessments. There will be ongoing costs to implement new assessments and meet reporting requirements, particularly the

release of some assessment items annually. These activities directly support the accountability system established in this regulation.

Other Explanation: N/A

CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Policy and Operations (Amendment)

907 KAR 3:005. Coverage of physicians' services.

RELATES TO: KRS 205.510, 205.520, 205.560, 205.622, 205.8451, 311.840-311.862, 314.011, 369.101-369.120, 42 C.F.R. 400.203, 413.75(b), 415.174, 415.184, 431.17, 438.2, 440.40(b), 440.50, 441.20, 441.200-441.208, 441.250-441.259, 447.26, 455.410, Part 493, 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320 - 1320d-8, 1396a(a)(19), (30), 1396r-8(a)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Medicaid Program coverage provisions and requirements relating to physicians' services.

Section 1. Definitions. (1) "Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7).

(2) "Behavioral health practitioner under supervision" means an individual who is:

- (a)1. A licensed psychological associate;
2. A licensed professional counselor associate;
3. A certified social worker;
4. A marriage and family therapy associate;
5. A licensed professional art therapist associate;
6. A licensed assistant behavior analyst;
7. A licensed clinical alcohol and drug counselor associate;
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.

(3) "Common practice" means an arrangement through which a physician assistant administers health care services under the supervision of a physician via a supervisory relationship that has been approved by the Kentucky Board of Medical Licensure.

(4) "CPT code" means a code used for reporting procedures and services performed by medical practitioners and published annually by the American Medical Association in Current Procedural Terminology.

(5) "Department" means the Department for Medicaid Services or its designee.

(6) "Designated controlled substance provider" means the provider designated as a lock-in recipient's controlled substance prescriber:

(a) Pursuant to 907 KAR 1:677, if the recipient is not an enrollee; or

(b) As established by the managed care organization in which the lock-in recipient is enrolled, if the lock-in recipient is an enrollee.

(7) "Designated primary care provider" means the provider designated as a lock-in recipient's primary care provider:

(a) Pursuant to 907 KAR 1:677, if the recipient is not an enrollee; or

(b) As established by the managed care organization in which the lock-in recipient is enrolled, if the lock-in recipient is an enrollee.

(8) "Direct physician contact" means that the billing physician is physically present with and evaluates, examines, treats, or

diagnoses the recipient.

(9) "Early and periodic screening and diagnosis and treatment" or "EPSDT" is defined by 42 C.F.R. 440.40(b).

(10) "Emergency care" means:

(a) Covered inpatient or outpatient services furnished by a qualified provider that are needed to evaluate or stabilize an emergency medical condition that is found to exist using the prudent layperson standard; or

(b) Emergency ambulance transport.

(11) "Enrollee" means a recipient who is enrolled with a managed care organization.

(12) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(13) "Global period" means the period of time in which related preoperative, intraoperative, and postoperative services and follow-up care for a surgical procedure are customarily provided.

(14) "Graduate medical education program" or "GME program" means:

(a) A residency program approved by:

1. The Accreditation Council for Graduate Medical Education of the American Medical Association;

2. The Committee on Hospitals of the Bureau of Professional Education of the American Osteopathic Association;

3. The Commission on Dental Accreditation of the American Dental Association; or

4. The Council on Podiatric Medicine Education of the American Podiatric Medical Association; or

(b) An approved medical residency program as defined by 42 C.F.R. 413.75(b).

(15) "Incidental" means that a medical procedure:

(a) Is performed at the same time as a primary procedure; and

(b) Requires little additional resources; or

2. Is clinically integral to the performance of the primary procedure.

(16) "Integral" means that a medical procedure represents a component of a more complex procedure performed at the same time.

(17) "Lock-in recipient" means:

(a) A recipient enrolled in the lock-in program in accordance with 907 KAR 1:677; or

(b) An enrollee enrolled in a managed care organization's lock-in program pursuant to 907 KAR 17:020, Section 6[8].

(18) "Locum tenens APRN" means an APRN:

(a) Who temporarily assumes responsibility for the professional practice of a physician participating in the Kentucky Medicaid Program; and

(b) Whose services are billed under the APRN's provider number.

(19) "Locum tenens physician" means a substitute physician:

(a) Who temporarily assumes responsibility for the professional practice of a physician participating in the Kentucky Medicaid Program; and

(b) Whose services are paid under the participating physician's provider number.

(20) "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.

(21) "Medicaid basis" means a scenario in which:

(a) A provider provides a service to a recipient as a Medicaid-participating provider in accordance with:

1. 907 KAR 1:671; and

2. 907 KAR 1:672;

(b) The Medicaid Program is the payer for the service; and

(c) The recipient is not liable for payment to the provider for the service other than any cost sharing obligation owed by the recipient to the provider.

(22) "Medical necessity" or "medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(23) "Medical resident" means:

(a) An individual who participates in an approved graduate medical education (GME) program in medicine or osteopathy; or

(b) A physician who is not in an approved GME program, but

who is authorized to practice only in a hospital, including:

1. An individual with a:

a. Temporary license;

b. Resident training license; or

c. Restricted license; or

2. An unlicensed graduate of a foreign medical school.

(24) "Mutually exclusive" means that two (2) procedures:

(a) Are not reasonably performed in conjunction with each other during the same patient encounter on the same date of service;

(b) Represent two (2) methods of performing the same procedure;

(c) Represent medically impossible or improbable use of CPT codes; or

(d) Are described in Current Procedural Terminology as inappropriate coding of procedure combinations.

(25) "Non-Medicaid basis" means a scenario in which:

(a) A provider provides a service to a recipient;

(b) The Medicaid Program is not the payer for the service; and

(c) The recipient is liable for payment to the provider for the service.

(26) "Other licensed medical professional" means a health care provider:

(a) Other than a physician, physician assistant, advanced practice registered nurse, certified registered nurse anesthetist, nurse midwife, or registered nurse; and

(b) Who has been approved to practice a medical specialty by the appropriate licensure board.

(27) "Other provider preventable condition" is defined by 42 C.F.R. 447.26(b).

(28) "Physician administered drug" or "PAD" means any rebateable covered outpatient drug that is:

(a) Provided or administered to a Medicaid recipient;

(b) Billed by a provider other than a pharmacy provider through the medical benefit, including a provider that is a physician office or another outpatient clinical setting; and

(c) An injectable or non-injectable drug furnished incident to provider services that are billed separately to Medicaid.

(29) "Physician assistant" is defined by KRS 311.840(3).

(30) "Podiatrist" is defined by KRS 205.510(12).

(31) "Provider group" means a group of at least two (2) individually licensed physicians who:

(a) Are enrolled with the Medicaid Program individually and as a group; and

(b) Share the same Medicaid group provider number.

(32) "Rebateable" means a drug for which the drug manufacturer has entered into and has in effect a rebate agreement in accordance with 42 U.S.C. 1396r-8(a).

(33) "Recipient" is defined by KRS 205.8451(9).

(34) "Screening" means the evaluation of a recipient by a physician to determine:

(a) If a disease or medical condition is present; and

(b) If further evaluation, diagnostic testing, or treatment is needed.

(35) "Supervising physician" is defined by KRS 311.840(4).

(36) "Supervision" is defined by KRS 311.840(6).

(37) "Timely filing" means receipt of a Medicaid claim by the department:

(a) Within twelve (12) months of the date the service was provided;

(b) Within twelve (12) months of the date retroactive eligibility was established; or

(c) Within six (6) months of the Medicare adjudication date if the service was billed to Medicare.

(38) "Unlisted procedure or service" means a procedure or service:

(a) For which there is not a specific CPT code; and

(b) That is billed using a CPT code designated for reporting unlisted procedures or services.

Section 2. Conditions of Participation. (1)(a) A participating physician shall:

1. Be licensed as a physician in the state in which the medical

practice is located;

2. Comply with the:

a. Terms and conditions established in 907 KAR 1:005, 907 KAR 1:671, and 907 KAR 1:672; and

b. Requirements regarding the confidentiality of personal records pursuant to 42 U.S.C. 1320d to 1320d-8 and 45 C.F.R. Parts 160 and 164;

3. Have the freedom to choose whether to provide services to a recipient; and

4. Notify the recipient referenced in paragraph (b) of this subsection of the provider's decision to accept or not accept the recipient on a Medicaid basis prior to providing any service to the recipient.

(b) A provider may provide a service to a recipient on a non-Medicaid basis:

1. If the recipient agrees to receive the service on a non-Medicaid basis before the service begins; and

2. The service is not a Medicaid-covered service.

(c)1. If a provider renders a Medicaid-covered service to a recipient, regardless of if the service is billed through the provider's Medicaid provider number or any other entity including a non-Medicaid provider, the recipient shall not be billed for the service.

2. The department shall terminate from Medicaid Program participation a provider who participates in an arrangement in which an entity bills a recipient for a Medicaid-covered service rendered by the provider.

(2) If a provider agrees to provide services to a recipient, the provider:

(a) Shall bill the department rather than the recipient for a covered service;

(b) May bill the recipient for a service not covered by Medicaid if the physician informed the recipient of noncoverage prior to providing the service; and

(c) Shall not bill the recipient for a service that is denied by the department on the basis of:

1. The service being incidental, integral, or mutually exclusive to a covered service or within the global period for a covered service;

2. Incorrect billing procedures, including incorrect bundling of services;

3. Failure to obtain prior authorization for the service; or

4. Failure to meet timely filing requirements.

(3)(a) If a provider receives any duplicate payment or overpayment from the department, regardless of reason, the provider 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.

(4)(a) A provider shall maintain a current health record for each recipient.

(b)1. 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.

2. The individual who provided the service shall date and sign the health record within seventy-two (72) hours from the date that the individual provided the service.

(5)(a) Except as established in paragraph (b) of this subsection, a provider shall maintain a health record regarding a recipient for at least five (5) years from the date of the service or until any audit dispute or issue is resolved beyond five (5) years.

(b) If the secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this subsection, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(6) A provider shall comply with 45 C.F.R. Part 164.

Section 3. Covered Services. (1) To be covered by the department, a service shall be:

(a) Medically necessary;

(b) Clinically appropriate pursuant to the criteria established in

907 KAR 3:130;

(c) Except as provided in subsection (2) of this section, furnished to a recipient through direct physician contact; and

(d) Eligible for reimbursement as a physician service.

(2) Direct physician contact between the billing physician and recipient shall not be required for:

(a) A service provided by a:

1. Medical resident if provided under the direction of a program participating teaching physician in accordance with 42 C.F.R. 415.174 and 415.184;

2. Locum tenens physician who provides direct physician contact;

3. Physician assistant in accordance with Section 7 of this administrative regulation; or

4. Locum tenens APRN who provides direct APRN contact;

(b) A radiology service, imaging service, in office lab, pathology service, ultrasound study, echographic study, electrocardiogram, electromyogram, electroencephalogram, vascular study, or other service that is usually and customarily performed without direct physician contact;

(c) The telephone analysis of emergency medical systems or a cardiac pacemaker if provided under physician direction;

(d) A sleep disorder service; or

(e) A telehealth consultation provided in accordance with 907 KAR 3:170.

(3) A service provided by another licensed medical professional shall be covered if the other licensed medical professional is:

(a) Employed by the supervising physician; and

(b) Licensed in the state of practice.

(4) A sleep disorder service shall be covered if performed in:

(a) A hospital; or

(b) A sleep laboratory if the sleep laboratory has documentation demonstrating that it complies with criteria approved by the:

1. American Sleep Disorders Association; or

2. American Academy of Sleep Medicine.

Section 4. Service Limitations. (1) A covered service provided to a lock-in recipient shall be limited to a service provided by the lock-in recipient's designated primary care provider or designated controlled substance provider unless:

(a) The service represents emergency care; or

(b) The lock-in recipient has been referred to the provider by the lock-in recipient's designated primary care provider.

(2) An EPSDT screening service shall be covered in accordance with 907 KAR 11:034.

(3) A laboratory procedure performed in a physician's office shall be limited to a procedure for which the physician has been certified in accordance with 42 C.F.R. Part 493.

(4) A drug listed on the Physician Administered Drug List shall be covered in accordance with 907 KAR 23:010.

(5) A service allowed in accordance with 42 C.F.R. 441, Subpart E (441.200 to 441.208) or Subpart F (441.250 to 441.259 and the Appendix to Subpart F), shall be covered within the scope and limitations of 42 C.F.R. 441, Subpart E and Subpart F.

(6)(a) Except as provided in paragraph (b) of this subsection, coverage for a service designated as a psychiatry service CPT code and provided by a physician shall be limited to four (4) services, per physician, per recipient, per twelve (12) months.

(b) Coverage for a service designated as a psychiatry service CPT code that is provided by a board certified or board eligible psychiatrist or by an advanced practice registered nurse with a specialty in psychiatry shall not be subject to the limits established in paragraph (a) of this subsection.

(7) Coverage for an evaluation and management service shall be limited to one (1) per physician, per recipient, per date of service.

(8) Coverage for a fetal diagnostic ultrasound procedure shall be limited to two (2) per nine (9) month period per recipient unless the diagnosis code justifies the medical necessity of an additional procedure.

(9) An anesthesia service shall be covered if:

- (a) Administered by:
1. An anesthesiologist who remains in attendance throughout the procedure; or
 2. An individual who:
 - a. Is licensed in Kentucky to practice anesthesia;
 - b. Is licensed in Kentucky within his or her scope of practice; and
 - c. Remains in attendance throughout the procedure;
 - (b) Medically necessary; and
 - (c) Not provided as part of an all-inclusive CPT code.
- (10) The following shall not be covered:
- (a) An acupuncture service;
 - (b) An autopsy;
 - (c) A cast or splint application in excess of the limits established in 907 KAR 3:010;
 - (d) Except for therapeutic bandage lenses, contact lenses;
 - (e) A hysterectomy performed for the purpose of sterilization;
 - (f) Lasik surgery;
 - (g) Paternity testing;
 - (h) A procedure performed for cosmetic purposes only;
 - (i) A procedure performed to promote or improve fertility;
 - (j) Radial keratotomy;
 - (k) A thermogram;
 - (l) An experimental service that is not in accordance with current standards of medical practice;
 - (m) A service that does not meet the requirements established in Section 3(1) of this administrative regulation; ~~or~~
 - (n) ~~[Medical direction of an anesthesia service; or~~
 - ~~{e}] Medical assistance for another provider preventable condition in accordance with 907 KAR 14:005.~~
- (11)(a) In accordance with 42 C.F.R. 455.410, to prescribe medication, order a service for a recipient, or refer a recipient for a service, a provider shall be currently enrolled and participating in the Medicaid program.
- (b) The department shall not reimburse for a:
1. Prescription prescribed by a provider that is not currently:
 - a. Participating in the Medicaid program pursuant to 907 KAR 1:671; and
 - b. Enrolled in the Medicaid program pursuant to 907 KAR 1:672;
- or
2. Service:
- a. Ordered by a provider that is not currently:
 - (i) Participating in the Medicaid program pursuant to 907 KAR 1:671; and
 - (ii) Enrolled in the Medicaid program pursuant to 907 KAR 1:672;
- or
- b. Referred by a provider that is not currently:
 - (i) Participating in the Medicaid program pursuant to 907 KAR 1:671; and
 - (ii) Enrolled in the Medicaid program pursuant to 907 KAR 1:672.

Section 5. Prior Authorization Requirements for Recipients Who are Not Enrolled with a Managed Care Organization. (1) Except as provided by subsection (3) of this section, the following procedures for a recipient who is not enrolled with a managed care organization shall require prior authorization by the department:

- (a) Magnetic resonance imaging;
- (b) Magnetic resonance angiogram;
- (c) Magnetic resonance spectroscopy;
- (d) Positron emission tomography;
- (e) Cineradiography or videoradiography;
- (f) Xeroradiography;
- (g) Ultrasound subsequent to second obstetric ultrasound;
- (h) Myocardial imaging;
- (i) Cardiac blood pool imaging;
- (j) Radiopharmaceutical procedures;
- (k) Gastric restrictive surgery or gastric bypass surgery;
- (l) A procedure that is commonly performed for cosmetic purposes;
- (m) A surgical procedure that requires completion of a federal consent form;
- (n) An organ transplant in accordance with 907 KAR 1:350; or
- (o) A covered unlisted procedure or service.

(2)(a) Prior authorization by the department shall not be a guarantee of recipient eligibility.

(b) Eligibility verification shall be the responsibility of the provider.

(3) The prior authorization requirements established in subsection (1) of this section shall not apply to:

- (a) An emergency service;
 - (b) A radiology procedure if the recipient has a cancer or transplant diagnosis code; or
 - (c) A service provided to a recipient in an observation bed.
- (4) A referring physician, a physician who wishes to provide a given service, a podiatrist, a chiropractor, or an advanced practice registered nurse:

- (a) May request prior authorization from the department; and
- (b) If requesting prior authorization, shall request prior authorization by:

1. Mailing or faxing:
 - a. A written request to the department with information sufficient to demonstrate that the service meets the requirements established in Section 3(1) of this administrative regulation; and
 - b. If applicable, any required federal consent forms; or
2. Submitting a request via the department's web-based portal with information sufficient to demonstrate that the service meets the requirements established in Section 3(1) of this administrative regulation.

Section 6. Therapy Service Limits. (1) Speech-language pathology services shall be limited to twenty (20) service visits per recipient per calendar year, except as established in subsection (4) of this section.

(2) Physical therapy services shall be limited to twenty (20) service visits per recipient per calendar year, except as established in subsection (4) of this section.

(3) Occupational therapy services shall be limited to twenty (20) service visits per recipient per calendar year, except as established in subsection (4) of this section.

(4) A service in excess of the limits established in subsection (1), (2), or (3) of this section shall be:

(a) Prior authorized in accordance with subsection (5) of this section if the recipient is not enrolled with a managed care organization; and

(b) Approved if the additional service is determined to be medically necessary by:

1. The department, if the recipient is not enrolled with a managed care organization; or
2. The managed care organization in which the enrollee is enrolled, if the recipient is an enrollee.

(5) Prior authorization by the department shall be required for each service visit that exceeds the limit established in subsection (1), (2), or (3) of this section for a recipient who is not enrolled with a managed care organization.

Section 7. Physician Assistant Services. (1) Except for a service limitation specified in subsection (2) or (3) of this section, a service provided by a physician assistant in common practice with a Medicaid-enrolled physician shall be covered if:

(a) The service meets the requirements established in Section 3(1) of this administrative regulation;

(b) The service is within the legal scope of certification of the physician assistant;

(c) The service is approved in the contractual supervisory relationship between the physician assistant, their supervising physician, and the Kentucky Board of Medical Licensure; and

(d) The physician assistant complies with:

1. KRS 311.840 to 311.862; and
 2. If applicable, Section 2(1)(b) of this administrative regulation.
- (2) A same service performed by a physician and either a physician assistant or an APRN on the same day within a common practice shall be considered as one (1) covered service.

(3) The following physician assistant services shall not be covered:

(a) A physician noncovered service specified in Section 4(10) of this administrative regulation;

- (b) An anesthesia service;
- (c) An obstetrical delivery service; or
- (d) A service provided in assistance of surgery.

Section 8. Behavioral Health Services Covered Pursuant to 907 KAR 15:010. The requirements and provisions established in 907 KAR 15:010 for a service covered pursuant to this administrative regulation and 907 KAR 15:010 shall apply if the service is provided by:

- (1) A physician who is the billing provider;
- (2) A provider group that is the billing provider; or
- (3) A behavioral health practitioner under supervision who works for a:
 - (a) Physician who is the billing provider; or
 - (b) Provider group that is the billing provider.

Section 9. 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 speech-language pathology service from a speech-language pathologist enrolled with the Medicaid Program, the department shall not reimburse for the same service provided to the same recipient during the same time period via the physicians' services program.

Section 10. Third Party Liability. A provider shall comply with KRS 205.622.

Section 11. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

- (2) A provider that chooses to use electronic signatures shall:
 - (a) Develop and implement a written security policy that shall:
 - 1. Be adhered to by each of the provider's employees, officers, agents, or contractors;
 - 2. Identify each electronic signature for which an individual has access; and
 - 3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;
 - (b) Develop a consent form that shall:
 - 1. Be completed and executed by each individual using an electronic signature;
 - 2. Attest to the signature's authenticity; and
 - 3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and
 - (c) Provide the department, immediately upon request, with:
 - 1. A copy of the provider's electronic signature policy;
 - 2. The signed consent form; and
 - 3. The original filed signature.

Section 12. Auditing Authority. The department shall have the authority to audit any claim, medical record, or documentation associated with the claim or medical record.

Section 13. 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 14. Appeal Rights. An appeal of a department decision regarding:

- (1) A Medicaid recipient who is not enrolled with a managed care organization based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563; or
- (2) An enrollee based upon an application of this administrative regulation shall be in accordance with 907 KAR 17:010.

LISA D. LEE, Commissioner
ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: February 8, 2021

FILED WITH LRC: February 11, 2021 at 4:17 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on April 26, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by April 19, 2021, 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 virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until April 30, 2021. 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: Donna Little, Deputy Executive Director, 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 and Donna Little

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes the Medicaid Program coverage provisions and requirements relating to physicians' services.
 - (b) The necessity of this administrative regulation: 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.
 - (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 Medicaid Program coverage provisions and requirements relating to physicians' 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 authorizing statutes by establishing the Medicaid Program coverage provisions and requirements relating to physicians' 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 change this administrative regulation by incorporating changes made to 907 KAR 3:010 to allow for broader practice of anesthesia under medical direction.
 - (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to incorporate changes made to 907 KAR 3:010 relating to broader practice of anesthesia under medical direction. These changes are necessary in order to ensure Medicaid coverage of services to all recipients accessing anesthesia services.
 - (c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by establishing standards for all Medicaid recipients receiving anesthesia services.
 - (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 clearly establishing coverage of anesthesia services.
- (3) List the type and number of individuals, businesses,

organizations, or state and local government affected by this administrative regulation: Any provider of anesthesia services that wants to provide anesthesia under medical direction. Currently there are 1,237 physicians with an anesthesiology specialty enrolled as providers, and 2,350 Nurse Anesthetists enrolled as providers.

(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 will need to take no additional actions to comply with this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Certain providers will be able to provide anesthesia under medical direction.

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

(a) Initially: There are no costs to implement this administrative regulation.

(b) On a continuing basis: There are no ongoing costs 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: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration regulation applies equally to all individuals and entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(10)(B)

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope as available to other individuals (non-Medicaid).

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 or different responsibilities than the 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 or different responsibilities than the 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

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(1); 42 U.S.C. 1396a(a)(10)(B)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? There are no costs to administer this program.

(d) How much will it cost to administer this program for subsequent years? There are no costs to administer 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 Medicaid Services

Division of Policy and Operations

(Amendment)

907 KAR 3:010. Reimbursement for physicians' services.

RELATES TO: KRS 205.560, 205.565, 210.370-210.485, 311.840, 42 C.F.R. 400.203, Part 414, 438.2, 440.50, 447.10, 447.200-447.205, 447.325, 42 U.S.C. 1395m, 1395w-4, 1395x(t)(1), 1396a, 1396b, 1396c, 1396d, 1396s

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the method of reimbursement for physicians' services by the Medicaid Program.

Section 1. Definitions. (1) "Add-on code" or "add-on service" means a service designated by a specific CPT code that may be used in conjunction with another CPT code to denote that an adjunctive service has been performed.

(2) "Anesthesia under medical direction" means a service that is:

(a) Directed by an anesthesiologist;
(b) Delivered by an appropriate and qualified anesthesia provider, including a certified registered nurse anesthetist; and
(c) Provided concurrently to no more than four (4) patients by the anesthesiologist.

(3) "Assistant surgeon" means a physician who attends and acts as an auxiliary to a physician performing a surgical procedure.

(4) [(3)] "Community mental health center" means a facility that meets the community mental health center requirements established in 902 KAR 20:091.

(5) [(4)] "CPT code" means a code used for reporting procedures and services performed by physicians and published

annually by the American Medical Association in Current Procedural Terminology.

(6)[(5)] "Department" means the Department for Medicaid Services or its designee.

(7)[(6)] "Direct physician contact" means that the billing physician is physically present with and evaluates, examines, treats, or diagnoses the recipient.

(8)[(7)] "Drug" means the definition of "drugs" pursuant to 42 U.S.C. 1395x(t)(1).

(9)[(8)] "Federal financial participation" is defined by 42 C.F.R. 400.203.

(10)[(9)] "Global period" means the period of time in which related preoperative, intraoperative, and postoperative services and follow-up care for a surgical procedure are customarily provided.

(11)[(10)] "Healthcare common procedure coding system" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services (CMS) that represents procedures or items.

(12)[(11)] "Incidental" means that a medical procedure:

(a) Is performed at the same time as a primary procedure; and

(b) 1. Requires little additional resources; or

2. Is clinically integral to the performance of the primary procedure.

(13)[(12)] "Integral" means that a medical procedure represents a component of a more complex procedure performed at the same time.

(14)[(13)] "Locum tenens physician" means a substitute physician:

(a) Who temporarily assumes responsibility for the professional practice of a physician participating in the Kentucky Medicaid Program; and

(b) Whose services are paid under the participating physician's provider number.

(15)[(14)] "Major surgery" means a surgical procedure assigned a ninety (90) day global period.

(16)[(15)] "Managed care organization" means an entity for which the department has contracted to serve as a managed care organization as defined by 42 C.F.R. 438.2.

(17)[(16)] "Medicaid Physician Fee Schedule" means a list, located at <https://chfs.ky.gov/agencies/dms/Pages/feesrates.aspx> [http://chfs.ky.gov/dms], that:

(a) Contains the current reimbursement rates for physician services established by the department in accordance with this administrative regulation; and

(b) Is updated at least quarterly to coincide with the quarterly updates made by the Centers for Medicare and Medicaid Services as required by 42 U.S.C. 1395m and 1395w-4 and 42 C.F.R. Part 414.

(17) "Medical direction" means a service provided:

(a) Under direct orders from a physician who is:

1. Not physically present with the recipient during the provision of the service; and

2. Communicating with the service provider during the provision of the service; or

(b) Based on a set of written instructions from a physician who is not physically present with the recipient during the provision of the service.]

(18) "Minor surgery" means a surgical procedure assigned a ten (10) day global period.

(19) "Modifier" means a reporting indicator used in conjunction with a CPT code to denote that a medical service or procedure that has been performed has been altered by a specific circumstance while remaining unchanged in its definition or CPT code.

(20) "Mutually exclusive" means that two (2) procedures:

(a) Are not reasonably performed in conjunction with each other during the same patient encounter on the same date of service;

(b) Represent two (2) methods of performing the same procedure;

(c) Represent medically impossible or improbable use of CPT codes; or

(d) Are described in Current Procedural Terminology as inappropriate coding of procedure combinations.

(21) "Pediatric teaching hospital" is defined by KRS 205.565(1).

(22) "Physician administered drug" or "PAD" means any rebateable covered outpatient[out-patient] drug that is:

(a) Provided or administered to a Medicaid recipient;

(b) Billed by a provider other than a pharmacy provider through the medical benefit, including a provider that is a physician office or another outpatient clinical setting; and

(c) An injectable or non-injectable drug furnished incident to provider services that are billed separately to Medicaid.

(23) "Physician assistant" is defined by KRS 311.840(3).

(24) "Professional component" means the physician service component of a service or procedure that has both a physician service component and a technical component.

(25) "Provider group" means a group of at least two (2) individually licensed physicians who:

(a) Are enrolled with the Medicaid Program individually and as a group; and

(b) Share the same Medicaid provider number.

(26) "Relative value unit" or "RVU" means the Medicare-established value assigned to a CPT code that takes into consideration the physician's work, practice expense, and liability insurance.

(27) "Resource-based relative value scale" or "RBRVS" means the product of the relative value unit (RVU) and a resource-based dollar conversion factor.

(28) "State university teaching hospital" means:

(a) A hospital that is owned or operated by a Kentucky state-supported university 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 that 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.

(29) "Technical component" means the part of a medical procedure performed by a technician, inclusive of all equipment, supplies, and drugs used to perform the procedure.

(30) "Usual and customary charge" means the uniform amount that a physician charges the general public in the majority of cases for a specific medical procedure or service.

Section 2. Standard Reimbursement. (1) Reimbursement for a covered service shall be made to:

(a) The individual participating physician who provided the covered service; or

(b) The physician:

1. In a provider group enrolled in the Kentucky Medicaid Program; and

2. Who provided the covered service.

(2) Except as provided in subsection (3) of this section and Sections 3 through 11[10] of this administrative regulation, reimbursement for a covered service shall be the lesser of:

(a) The physician's usual and customary charge; or

(b) The amount specified in the Medicaid Physician Fee Schedule established in accordance with this administrative regulation.

(3) If there is not an established fee for a listed service in the Medicaid Physician Fee Schedule, the reimbursement shall be forty-five (45) percent of the usual and customary billed charge.

Section 3. Rates Established Using a Relative Value Unit and a Dollar Conversion Factor.

(1) Except for a service specified in Sections 4 through 10[9] of this administrative regulation:

(a) The rate for a non-anesthesia related covered service shall be established by multiplying RVU by a dollar conversion factor to obtain the RBRVS maximum amount specified in the Medicaid

Physician Fee Schedule; and

(b) The rate for a covered anesthesia service shall be established by multiplying the dollar conversion factor (designated as X) by the sum of each specific procedure code RVU (designated as Y) plus the number of units spent on that specific procedure (designated as Z). A unit shall equal a fifteen (15) minute increment of time.

(2) The dollar conversion factor shall be:

(a) Fifteen (15) dollars and twenty (20) cents for a nondelivery related anesthesia service; or

(b) Twenty-nine (29) dollars and sixty-seven (67) cents for all non-anesthesia related services.

Section 4. Medicare Part B Covered Services. Reimbursement for a service covered under Medicare Part B shall be made in accordance with 907 KAR 1:006, Section 3.

Section 5. Services with a Modifier. Reimbursement for a service denoted by a modifier used in conjunction with a CPT code shall be as established in this section.

(1) A service reported with a two (2) digit modifier of "51" shall be reimbursed at fifty (50) percent of the fee listed on the Medicaid Physician Fee Schedule for the service.

(2) A professional component of a service reported by the addition of the two (2) digit modifier "26" shall be reimbursed at the product of:

(a) The Medicare value assigned to the physician's work; and

(b) The dollar conversion factor specified in Section 3(2) of this administrative regulation.

(3) A technical component of a service reported by the addition of the two (2) letter modifier "TC" shall be reimbursed at the product of:

(a) The Medicare value assigned to the practice expense involved in the performance of the procedure; and

(b) The dollar conversion factor specified in Section 3(2) of this administrative regulation.

(4) A bilateral procedure reported by the addition of the two (2) digit modifier "50" shall be reimbursed at 150 percent of the amount assigned to the CPT code.

(5) An assistant surgeon procedure reported by the addition of the two (2) digit modifier "80" shall be reimbursed at sixteen (16) percent of the allowable fee for the primary surgeon.

(6) A procedure performed by a physician acting as a locum tenens physician for a Medicaid-participating physician reported by the addition of the two (2) character modifier "Q6" shall be reimbursed at the Medicaid Physician Fee Schedule amount for the applicable CPT code.

(7) An evaluation and management telehealth consultation service provided by a telehealth provider or telehealth practitioner in accordance with 907 KAR 3:170 and reported by the appropriate two (2) letter modifier, as applicable, ["GT"] shall be reimbursed at the Medicaid Physician Fee Schedule amount for the applicable evaluation and management CPT code.

(8) A level II national healthcare common procedure coding system modifier designating a location on the body shall be reimbursed at the Medicaid Physician Fee Schedule amount for the applicable code.

Section 6. Laboratory, Venipuncture, and Catheter. (1) Except for a service specified in paragraph (a) or (b) of this subsection, a physician laboratory service shall be reimbursed in accordance with 907 KAR 1:028.

(a) Charges for a laboratory test performed by dipstick or reagent strip or tablet in a physician's office shall be included in the office visit charge.

(b) A routine venipuncture procedure shall not be separately reimbursed if submitted with a charge for an office, hospital, or emergency room visit or in addition to a laboratory test.

(2) Reimbursement for placement of a central venous, arterial, or subclavian catheter shall be:

(a) Included in the fee for the anesthesia if performed by the anesthesiologist;

(b) Included in the fee for the surgery if performed by the

surgeon; or

(c) Included in the fee for an office, hospital, or emergency room visit if performed by the same provider.

(3) A laboratory test performed with microscopy shall be reimbursed separately from an evaluation and management CPT code.

Section 7. Delivery-Related Anesthesia, Anesthesia Add-On Services, and Oral Surgery-Related Anesthesia[~~and Anesthesia Under Medical Direction~~]. (1) The department shall reimburse as follows for the following delivery-related anesthesia services:

(a) For a vaginal delivery, the lesser of:

1. \$215; or

2. The actual billed charge;

(b) For a cesarean section, the lesser of:

1. \$335; or

2. The actual billed charge;

(c) For neuroxial labor anesthesia for a vaginal delivery or cesarean section, the lesser of:

1. \$350; or

2. The actual billed charge;

(d) For an additional anesthesia for cesarean delivery following neuroxial labor anesthesia for vaginal delivery, the lesser of:

1. Twenty-five (25) dollars; or

2. The actual billed charge; or

(e) For an additional anesthesia for cesarean hysterectomy following neuroxial labor anesthesia, the lesser of:

1. Twenty-five (25) dollars; or

2. The actual billed charge.

(2) For an anesthesia add-on service provided to a recipient under the age of one (1) year or over the age of seventy (70) years, the department shall reimburse the lesser of:

(a) Twenty-five (25) dollars; or

(b) The actual billed charge.

(3) For deep sedation or general anesthesia relating to oral surgery performed by an oral surgeon, the department shall reimburse the lesser of:

(a) \$150; or

(b) The actual billed charge.[

~~(4) The department shall not reimburse for an anesthesia service if the claim for the service is submitted with a modifier indicating that a service of medical direction was performed.]~~

Section 8. Anesthesia Under Medical Direction. (1) An anesthesia under medical direction service that complies with this section shall be eligible for reimbursement.

(2) An anesthesiologist performing anesthesia under medical direction, regardless of the type of anesthesia provided, shall personally document performing each element described in subsection (3) of this section.

(3) An anesthesia under medical direction service shall meet the requirements established in paragraphs (a) through (i) of this subsection.

(a) The anesthesiologist shall perform a face-to-face examination and evaluation, by telehealth if appropriate pursuant to 907 KAR 3:170, prior to the anesthetic session. The examination and evaluation shall indicate the body system or area examined and the anesthesiologist's findings.

(b) The anesthesiologist shall personally decide on the appropriate anesthetic for the procedure and shall document that decision.

(c) The anesthesiologist shall personally participate in person for the most demanding procedures in the treatment plan developed pursuant to this section. This personal participation shall include that the anesthesiologist be in the room and participating in the service if induction and emergence are part of the anesthesia service provided.

(d) Any services not provided by the anesthesiologist shall be conducted by a qualified individual.

(e) A qualified individual providing services pursuant to this section shall document and sign their delivery of the service. Any signature shall also include the qualified individual's licensure or certification.

(f) The anesthesiologist shall monitor the course of anesthesia administration at frequent intervals during the course of treatment.

(g) The anesthesiologist shall:

1. Remain physically present for all key and critical portions of the procedure; and

2. Be immediately available for immediate diagnosis and treatment of an emergency.

(h)1. The following services may be performed on another patient or case by an anesthesiologist while complying with paragraph (g) of this subsection:

a. Addressing an emergency of short duration in the immediate area;

b. Administering an epidural or caudal anesthetic to ease labor pain;

c. Periodically, but not continuously, monitoring an obstetrical patient;

d. Receiving patients entering an operating suite for surgery;

e. Assessing or discharging patients in the recovery room; or

f. Managing scheduling matters.

2. A service performed in subparagraph 1. of this paragraph shall not be anesthesia under medical direction if:

a. The anesthesiologist leaves the immediate area of the operating suite for longer than a short amount of time;

b. The anesthesiologist is not available to respond to the immediate needs of surgical patients, for example, if the anesthesiologist devotes extensive time to an emergency case; or

c. The anesthesiologist's services to the anesthesia patients are supervisory in nature.

(i) The anesthesiologist shall perform and document all appropriate and necessary post-anesthesia care as indicated. Compliance with this paragraph shall include documentation that transfer was done safely to another level of care.

Section 9. Vaccines. (1) The department shall reimburse administration of a:

(a) Pediatric vaccine to a recipient under the age of nineteen (19) years; or

(b) Flu vaccine to a recipient of any age.

(2)(a) The department shall reimburse for the cost of a vaccine administered to a recipient under nineteen (19) years of age, in addition to administration of the vaccine, for a vaccine that is:

1. Administered to the recipient by a physician; and

2. Not available free through the Vaccines for Children Program in accordance with 42 U.S.C. 1396s.

(b) The department shall not reimburse for the cost of a vaccine if the vaccine is available free through the Vaccines for Children Program in accordance with 42 U.S.C. 1396s.

Section 10[9]. Physician Assistant. Reimbursement for a service provided by a physician assistant shall be seventy-five (75) percent of the amount reimbursable to a physician in accordance with this administrative regulation.

Section 11[40]. Reimbursement Limits and Related Requirements. (1)(a) Except for chemotherapy administration to a recipient under the age of nineteen (19) years, reimbursement for an evaluation and management service with a corresponding CPT code of 99214 or 99215 shall be limited to two (2) per recipient per provider per calendar year.

(b) A claim for an evaluation and management service with a corresponding CPT code of 99214 or 99215 submitted in excess of the limit established in paragraph (a) of this subsection shall be reimbursed as an evaluation and management service with a corresponding CPT code of 99213.

(c) A claim for an evaluation and management service of moderate or high complexity in excess of the limit established in paragraph (a) of this subsection shall be reimbursed at the Medicaid rate for the evaluation and management service representing medical decision making of low complexity.

(2) Reimbursement for an anesthesia service shall include:

(a) Preoperative and postoperative visits;

(b) Administration of the anesthetic;

(c) Administration of fluids and blood incidental to the

anesthesia or surgery;

(d) Postoperative pain management until discharge from the recovery area;

(e) Preoperative, intraoperative, and postoperative monitoring services; and

(f) Insertion of arterial and venous catheters.

(3) With the exception of an anesthetic, contrast, or neurolytic solution, administration of a substance to a recipient by epidural or spinal injection for the control of chronic pain shall be limited to three (3):

(a) Injections per date of service; and

(b) Dates of service per six (6) month period.

(4) If related to the surgery and provided by the physician who performs the surgery, reimbursement for a surgical procedure shall include the following:

(a) A preoperative service;

(b) An intraoperative service; and

(c) A postoperative service and follow-up care within:

1. Ninety (90) calendar days following the date of major surgery; or

2. Ten (10) calendar days following the date of minor surgery.

(5) Reimbursement for the application of a cast or splint shall be in accordance with 907 KAR 1:104, Section 3(4).

(6) Multiple surgical procedures performed by a physician during the same operative session shall be reimbursed as follows:

(a) The major procedure, an add-on code, and other CPT codes approved by the department for billing with units shall be reimbursed in accordance with Section 3(1)(a) or (2)(b) of this administrative regulation; and

(b) The additional surgical procedure shall be reimbursed at fifty (50) percent of the amount determined in accordance with Section 3(1)(a) or (2)(b) of this administrative regulation.

(7) If[When] performed concurrently, separate reimbursement shall not be made for a procedure that has been determined by the department to be incidental, integral, or mutually exclusive to another procedure.

(8) The department shall not reimburse for an evaluation and management CPT code unless:

(a) Direct physician contact occurred during the visit; or

(b) Direct physician contact is not required in accordance with 907 KAR 3:005, Section 3(2).

Section 12[44]. Other Provider Preventable Conditions. In accordance with 907 KAR 14:005, the department shall not reimburse for other provider preventable conditions.

Section 13[42]. Supplemental Payments. (1) In addition to a reimbursement made pursuant to Sections 2 through 11[40] of this administrative regulation, the department shall make a supplemental payment to a medical school faculty physician:

(a) Who:

1. Is licensed to practice medicine or osteopathy in Kentucky;

2. Is enrolled in the Kentucky Medicaid program in accordance with 907 KAR 1:672;

3. Is participating in the Kentucky Medicaid program in accordance with 907 KAR 1:671;

4. Is employed by a state university teaching hospital, a pediatric teaching hospital, or a state university school of medicine that is part of a university health care system; and

5. Agrees to assign his or her Medicaid reimbursement, in accordance with 42 C.F.R. 447.10, to the state university entity with whom the physician is employed; and

(b) For services provided:

1. Directly by the medical school faculty physician; or

2. By a resident working under the supervision of the medical school faculty physician.

(2) A supplemental payment plus other reimbursements made in accordance with this administrative regulation shall:

(a) Not exceed the physician's charge for the service provided; and

(b) Be paid directly or indirectly to the medical school.

(3) A supplemental payment made in accordance with this section shall be:

- (a) Based on the funding made available through an intergovernmental transfer of funds for this purpose by a state-supported school of medicine meeting the criteria established in subsection (1) of this section;
- (b) Consistent with the requirements of 42 C.F.R. 447.325; and
- (c) Made on a quarterly basis.

Section 14[13]. The department shall reimburse for physician administered drugs in accordance with 907 KAR 23:020.

Section 15[14]. Not Applicable to Managed Care Organizations. (1) A managed care organization may elect to reimburse the same amount for physician services as the department does.

(2) A managed care organization shall not be required to reimburse the same amount as established in this administrative regulation for a physician service reimbursed by the department via this administrative regulation.

Section 16[15]. 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 17[16]. Appeal Rights. (1) An appeal of a department decision regarding a Medicaid recipient based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

(2) An appeal of a department decision regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a department decision regarding a Medicaid provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

LISA D. LEE, Commissioner
ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: February 8, 2021

FILED BY LRC: February 11, 2021 at 4:17 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on April 26, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by April 19, 2021, 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 virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until April 30, 2021. 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: Donna Little, Deputy Executive Director, 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: Jonathan Scott

- (1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes reimbursement requirements for physician services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the department's reimbursement for physician 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 reimbursement policies for physician services provided within Kentucky Medicaid.

(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 reimbursement policies for physician 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 this administrative regulation allow for anesthesia to be reimbursed when provided under medical direction in certain circumstances. A new section describes elements that must be present and documented in each anesthesia under medical direction case. These requirements include that the anesthesiologist perform a face-to-face examination, personally decide on the appropriate anesthetic, and personally participate in-person for the most demanding procedures in the treatment plan. The amendments also require that anesthesia under medical direction services not conducted by the anesthesiologist be conducted by a qualified individual who shall also sign and document their participation. Finally the anesthesiologist is required to frequently monitor the medical direction services in-person, and provide appropriate post-anesthesia care.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to allow for anesthesia under medical direction care to become a reimbursable service in Kentucky Medicaid.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment allows for anesthesia under medical direction to become a reimbursable service.

(d) How the amendment will assist in the effective administration of the statutes: The amendment allows for a new service to be reimbursed and delivered in Kentucky Medicaid.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Anesthesia providers wishing to provide anesthesia under medical direction. Currently there are 1,237 physicians with an anesthesiology specialty enrolled as providers, and 2,350 Nurse Anesthetists enrolled as providers.

(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. Anesthesia providers will need to comply and document compliance with the new requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Providers should not experience any additional costs in complying with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Providers will be able to provide anesthesia under medical direction.

(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 to implement this administrative regulation.

(b) On a continuing basis: The Department for Medicaid Services (DMS) anticipates no additional costs to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and 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 amendments to this administrative regulation neither establish nor increase any fees.

(9) Tiering: Is tiering applied? No. Tiering was not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(10)(B)

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope as available to other individuals (non-Medicaid).

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 or different responsibilities than the 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 or different responsibilities than the 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 (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. KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(1); 42 U.S.C. 1396a(a)(10)(B)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS does not expect 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 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 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 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 Community Based Services Division of Protection and Permanency (Amendment)

922 KAR 1:490. Background checks for foster and adoptive parents and relative and fictive kin[~~caregivers~~, ~~relative and fictive kin~~, ~~caregivers~~, ~~relative and fictive kin~~, ~~and reporting requirements~~].

RELATES TO: KRS 17.500-17.580, 194A.005(1), 199.011(6), (9), (14), 199.462(1), 211.684, 600.020(7), (28), (40), (61), (62), 605.090(1)(b), (6), 605.120, 605.130, 620.050(5), Chapter 625, 45 C.F.R. 1356.30, 42 U.S.C. 247d, 671(a)(20), 5106a, 5141

STATUTORY AUTHORITY: KRS 194A.050(1), 199.462(5) [199.462(4)], 199.640(5), 605.120(5), (6), 605.130(4), 605.150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law, qualify for the receipt of federal funds, and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.462(5) [199.462(4)] requires the cabinet to promulgate an administrative regulation for the purpose of requiring a criminal background investigation on behalf of a foster or adoptive parent applicant, an adult member of the applicant's household, a caretaker relative, and fictive kin. KRS 605.150 authorizes the cabinet to promulgate administrative regulations to implement the provisions of [KRS Chapter 605, including: (1) KRS 605.120(5) and (6) by which the cabinet is authorized to establish a program for kinship care; and (2)] KRS 605.130(4), by which the cabinet shall perform such other services as may be deemed necessary for the protection of children. KRS 199.640(5) authorizes the cabinet to promulgate administrative regulations establishing basic standards of care and service for child-placing agencies relating to the health and safety of all children in the care of the agency. This administrative regulation establishes background check requirements for caretaker relatives, [kinship caregivers], fictive kin, or applicants seeking to provide foster or adoptive services. Additionally, this administrative regulation imposes a stricter requirement than the federal mandate because the cabinet requires the denial of an applicant if: (1) a criminal record check conducted on behalf of an adult household member reveals physical abuse, battery, or a drug or alcohol-related felony within the previous five (5) year period or a felony involving a spouse, a child, sexual violence, or death; or (2) a child abuse or neglect check conducted by the cabinet reveals that a household member, twelve (12) years of age or older, committed sexual abuse or sexual exploitation of a child, has been responsible for a child fatality related to abuse or neglect, or has had parental rights terminated involuntarily.

Section 1. Definitions. (1) "Address check" means a search of the Sex Offender Registry to determine if an address is a known address of a registered sex offender.

(2) "Administrative review" means that the status of the individual subject to the child abuse and neglect check is pending the outcome of an:

(a) Investigation or assessment in accordance with 922 KAR 1:330; or

(b) Appeal concerning a cabinet substantiated finding of child

abuse or neglect.

(3) "Adolescent member of the household" means a youth who:

(a) Resides in the home of:

1. An individual who applies for approval or has been approved to provide foster or adoptive services; or

2. A caretaker relative or [;] fictive kin[~~—~~or kinship] caregiver;

(b) Is age twelve (12) through age seventeen (17); and

(c) Is not placed in the home by a state agency.

(4) "Adult member of the household" means an adult who:

(a) Resides in the home of:

1. An individual who applies for approval or has been approved to provide foster or adoptive services; or

2. A caretaker relative or [;] fictive kin[~~—~~or kinship] caregiver; and

(b) Is eighteen (18) years of age or older.

(5) "Applicant" means an individual who applies for approval as a foster or adoptive parent of a child in the custody of the state under:

(a) 922 KAR 1:350, Requirements for public child welfare agency foster parents, adoptive parents, and respite care providers [Family Preparation]; or

(b) 922 KAR 1:310, Standards for child-placing agencies [Child-Placing Agencies].

(6) "Cabinet" is defined by KRS 194A.005(1) and 600.020(7).

(7) "Caretaker relative" means a relative with whom the child is, or shall be, placed by the cabinet.

(8)[(7)] "Child fatality" is defined by KRS 211.684.

(9)[(8)] "Child-placing agency" is defined by KRS 199.011(6).

(10)[(9)] "Fictive kin" is defined by KRS 199.011(9) and 600.020(28).

(11) "KARES system" means the cabinet's secure, web-based application used to access abuse and neglect registries and facilitate fingerprint-supported state and national criminal background checks for authorized users of the system.

(12) "Kentucky National Background Check Program" or "NBCP" means a background screening program administered by the cabinet in accordance with 906 KAR 1:190.

(13)[(10)] "Kinship caregiver" means the 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)[(11)] "Near fatality" is defined by KRS 600.020(40) and 42 U.S.C. 5106a(b)(4)(A).

(15)[(12)] "Rap back system" is defined by KRS 199.011(14).

(16)[(13)] "Sex Offender Registry" means the registration system for adults who have committed sex crimes or crimes against minors established in accordance with KRS 17.500 through 17.580.

(17)[(14)] "Sexual abuse" is defined by KRS 600.020(61) [600.020(60)].

(18)[(15)] "Sexual exploitation" is defined by KRS 600.020(62) [600.020(61)].

Section 2. Background Checks Required for Foster or Adoptive Parent Applicants. (1) An applicant, and each adult member of the household, shall ~~[complete a DPP-157, Background Checks for Applicants or Foster/Adoptive Parents, and]~~ submit to a background check in accordance with Section 4 of this administrative regulation, which shall include:

(a) An in-state criminal records check, conducted pursuant to KRS 199.462(1), by the:

1. Kentucky Justice and Public Safety Cabinet; or

2. Administrative Office of the Courts;

(b) A child abuse or neglect check conducted by the cabinet for each state of residence during the past five (5) years;

(c) A criminal records check conducted by means of a fingerprint check of the Criminal History Record Information administered by the Federal Bureau of Investigation; and

(d) An address check of the Sex Offender Registry.

(2) Prior to approval of an applicant, each adolescent member of the household shall complete a DPP-157, Background Check Request for Foster or Adoptive Applicants and Household Members, and submit to a child abuse or neglect check conducted

by the cabinet.

Section 3. Background Checks for Foster or Adoptive Applicants Who Will Accept Placement of a Child Not in the Custody of the Cabinet. (1) An individual applying to accept placement of a child not in the custody of or otherwise made the legal responsibility of the cabinet or the Department of Juvenile Justice, pursuant to 922 KAR 1:310, shall be exempt from enrollment in KARES and subject to the requirements established in Section 8(4) of this administrative regulation.

(2) An applicant pursuant to 922 KAR 1:310 and each adult and adolescent member of the household shall complete a separate DPP-157 and submit to:

(a) An in-state criminal records check, conducted pursuant to KRS 199.462(1), by the:

1. Kentucky Justice and Public Safety Cabinet; or

2. Administrative Office of the Courts;

(b) A child abuse or neglect check conducted by the cabinet pursuant to 922 KAR 1:470;

(c) A criminal records check conducted by means of a fingerprint check of the Criminal History Record Information administered by the Federal Bureau of Investigation; and

(d) An address check of the Sex Offender Registry.

(3) A Kentucky child abuse or neglect check conducted by the cabinet shall identify the name of each applicant, adolescent member of the household, or adult member of the household who has:

(a) Been found by the cabinet to have:

1. Committed sexual abuse or sexual exploitation of a child;

2. Been responsible for a child fatality or near fatality related to abuse or neglect;

3. Abused or neglected a child within the seven (7) year period immediately prior to the application; or

4. Had parental rights terminated; or

(b) A matter pending administrative review.

(4) An applicant shall not be approved if:

(a) A criminal records check reveals that the applicant, or adult member of the household, has a:

1. Felony conviction involving:

a. A spouse, a child, sexual violence, or death as described by 42 U.S.C. 671(a)(20); or

b. Physical abuse, battery, a drug, or alcohol within the five (5) year period prior to application;

2. Criminal conviction relating to child abuse or neglect; or

3. Civil judicial determination related to child abuse or neglect;

(b) A child abuse or neglect check reveals that the applicant, adolescent member of the household, or adult member of the household, has been found to have:

1. Committed sexual abuse or sexual exploitation of a child;

2. Been responsible for a child fatality or near fatality related to abuse or neglect; or

3. Had parental rights terminated involuntarily in accordance with KRS 625.050 through 625.120 or another state's laws; or

(c) An address check of the Sex Offender Registry and supporting documentation confirm that a sex offender resides at the applicant's home address.

(5) An individual identified in accordance with subsection (3) of this section may submit an open records request in accordance with 922 KAR 1:510.

Section 4. Fingerprint-Based Background Checks. (1) Fingerprint-based background checks shall be conducted for the following individuals through the Kentucky National Background Check Program pursuant to 906 KAR 1:190, using the KARES system:

(a) An applicant and each adult member of the household;

(b) A caretaker relative or fictive kin caregiver who has lived outside of the state of Kentucky within the last five (5) years; and

(c) An applicant who was approved under the waiver for fingerprint-based background checks during the declared national emergency caused by the COVID-19 pandemic, with only a name-based criminal background check.

(2) An individual meeting the criteria of subsection (1) of this

section shall provide to the cabinet or child-placing agency:

(a) A copy of his or her driver's license or other government-issued photo identification for verification that the photograph and name clearly match the individual submitting to the check; and

(b) A completed and signed:

1. DPP-162, Applicant Waiver Agreement and Statement; and

2. DPP-163, Disclosures to be Provided to and Signed by the Applicant and Adult Household Members.

(3) Cabinet or child-placing agency staff shall log on to the NBSP portal and enter the individual's information for a check of the:

(a) Child abuse and neglect central registry pursuant to 922 KAR 1:470;

(b) National Crime Information Center's National Sex Offender Registry in accordance with 34 U.S.C. 20921; and

(c) Sex Offender Registry in accordance with KRS 17.500 through 17.580.

(4)(a) In accordance with KRS 199.462(2) and 42 U.S.C. 671(a)(20), the cabinet or child-placing agency shall submit payment via credit or debit card for a state and national fingerprint-supported criminal history background check performed by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI), including the rap back system. If an applicant's rap back has not expired, a new fingerprint check shall not be required.

(b) A child-placing agency enrolled in the NBSP shall pay a fee not to exceed twenty-five (25) dollars in addition to any fees charged in accordance with paragraph (a) of this subsection for the actual cost of processing a fingerprint-supported state and national criminal background check and for providing rap back services for each applicant.

(5)(a) Upon submission of payment in accordance with subsection (4) of this section, cabinet or child-placing agency staff shall print a copy of the DPP-164, Applicant Live Scan Fingerprinting Form, from the NBSP portal and provide the form to the applicant.

(b) Cabinet or child-placing agency staff shall:

1. Have no more than ninety (90) calendar days from the date of payment pursuant to subsection (4) of this section to submit the applicant's fingerprints at an authorized collection site for NBSP; and

2. Present the completed DPP-164 and copy of driver's license or other government-issued photo identification to the designated agent at an authorized collection site prior to fingerprint submission.

(6) Upon completion of the background check required by this section or Section 6 of this administrative regulation, the cabinet shall provide notice that the applicant is:

(a) Approved; or

(b) Not approved due to a disqualifying background check result pursuant to subsection (7) of this section.

(7) An applicant shall not be approved if the results of the background check indicate a:

(a) Felony conviction involving:

1. A spouse, a child, sexual violence, or death as established in 42 U.S.C. 671(a)(20); or

2. Physical abuse, battery, drugs, or alcohol within the five (5) year period prior to application;

(b) Criminal conviction relating to child abuse or neglect;

(c) Civil judicial determination related to child abuse or neglect;

(d) Result of a child abuse or neglect check in which the applicant, adolescent member of the household, or adult member of the household, has been found to have:

1. Committed sexual abuse or sexual exploitation of a child;

2. Been responsible for a child fatality or near fatality related to abuse or neglect; or

3. Had parental rights terminated involuntarily pursuant to KRS 625.050 through 625.120 or another state's laws; or

(e) Result of an address check in the Sex Offender Registry and supporting documentation that a sex offender resides at the applicant's home address.

(8) An individual meeting the requirement of subsection (1) of this section may submit an open records request in accordance

with 922 KAR 1:510[3]. Procedure for Requesting a Cabinet Child Abuse or Neglect Check, a Criminal Record Check, and an Address Check of the Sex Offender Registry. Prior to approval of an applicant, a child-placing agency shall request a child abuse or neglect check, a criminal records check, and an address check of the Sex Offender Registry by submitting to the cabinet: (1) A completed form, DPP-157, including the fee for a criminal background check; and

(2) Documentation required to request a child abuse or neglect check from the child welfare agency in each previous state of residence, if the applicant or adult household member has resided outside of the state of Kentucky in the previous five (5) years.

(3) To the extent resources are available, the department shall post information about other states' child abuse and neglect checks on the department's Web site].

Section 5[4]. Request for a Child Abuse or Neglect Check from Another State. (1) The cabinet shall conduct a child abuse or neglect check as required by 42 U.S.C. 671(a)(20) if a:

(a) Completed DPP-157 or DPP-159, Background Check Request for Caretaker Relatives, Fictive Kin, or Adolescent and Adult Household Members [Checks for Caretaker Relatives, Fictive Kin, or Kinship Caregivers], is submitted to the cabinet; or

(b) Request is received on agency letterhead and includes two (2) numeric identifiers.

(2) The cabinet shall:

(a) Protect the confidentiality of the information transmitted by the cabinet to a child welfare agency; and

(b) Waive the fee specified in 922 KAR 1:470.

Section 6[5]. Background Checks Required for a Caretaker Relative or [and] Fictive Kin Caregiver. (1) A caretaker relative or[,] fictive kin caregiver, and each adult member of the household, shall complete a DPP-159 and submit to:

(a) An in-state criminal records check, conducted pursuant to KRS 199.462(1) by the:

1. Kentucky Justice and Public Safety Cabinet; or

2. Administrative Office of the Courts;

(b) A child abuse or neglect check conducted by the cabinet;

(c) An address check of the Sex Offender Registry; and

(d) A fingerprint-based background check conducted through the NBSP, beginning July 1, 2021, [criminal records check conducted by means of a fingerprint check of the Criminal History Record Information administered by the Federal Bureau of Investigation] if the caretaker relative, fictive kin caregiver, or adult household member has lived outside the state of Kentucky during the past five (5) years.

(2) An adolescent member of a caretaker relative's or fictive kin caregiver's [kin's] household shall complete a DPP-159 and submit to a child abuse or neglect check conducted by the cabinet.

(3) A child abuse or [and] neglect check conducted by the cabinet shall identify the name of each applicant and adolescent and adult member of the household and [in accordance with subsection (1)(b) or (2) of this section shall] include any finding consistent with Section 4(7) [2(3)] of this administrative regulation.

(4) A caretaker relative or fictive kin caregiver shall not be approved if a criminal records check, a child abuse and neglect check, or an address check of the Sex Offender Registry reveals a finding consistent with Section 4(7) [2(4)] of this administrative regulation.

(5) An individual meeting the requirement of subsection (1) of this section may submit an open records request in accordance with 922 KAR 1:510.

Section 7[6]. Approval. (1) Except for the provisions of Section 4(7) or 6(4) [2(4) or 5(4)] of this administrative regulation, approval of an applicant, fictive kin, or caretaker relative who has been convicted of a nonviolent felony or misdemeanor, has been found by the cabinet or another child welfare agency to have abused or neglected a child, or whose parental rights have been terminated voluntarily, shall be handled on a case-by-case basis with consideration given to the:

(a) Nature of the offense;

(b) Length of time that has elapsed since the event; and
(c) Applicant's life experiences during the ensuing period of time.

(2) Except for the provisions of Section 4(7) or 6(4) [2(4)–or 5(4)] of this administrative regulation, an applicant, fictive kin, or caretaker relative may be approved on a case-by-case basis in accordance with the criteria described by subsection (1)(a) through (c) of this section if:

- (a) An adolescent member of the household has:
 1. Been found by the cabinet to have abused or neglected a child; or
 2. Had parental rights terminated voluntarily in accordance with KRS 625.040 through 625.046 or another state's laws; or
- (b) An adult member of the household has:
 1. Been convicted of a nonviolent felony or misdemeanor;
 2. Been found to have abused or neglected a child; or
 3. Had parental rights terminated voluntarily in accordance with KRS 625.040 through 625.046 or another state's laws.

Section 8[7]. Reevaluation. (1) An approved foster or adoptive parent and each adult member of the household shall maintain enrollment in KARES, except for individuals specified in Section 3 of this administrative regulation.

(2) An applicant enrolled in KARES shall submit a criminal records check as required by Section 2(1)(a) of this administrative regulation during the month of their initial approval every three (3) years.

(3) An approved foster or adoptive parent and each adult member of the household not already enrolled in KARES, with the exception of individuals specified in Section 3 of this administrative regulation, shall submit to a fingerprint-based background check required by Section 4 of this administrative regulation prior to or during the anniversary month of initial approval.

(4) An applicant specified in Section 3 of this administrative regulation and not enrolled in KARES shall submit annually, prior to or during the anniversary month of initial approval, to:

- (a) A criminal records check as described in Section 2(1)(a) of this administrative regulation;
- (b) A child abuse or neglect check conducted by the cabinet; and

(c) An address check of the Sex Offender Registry.

(5)[(2)](a) If an adult becomes a new member of an approved foster or adoptive parent's household, the new adult member of the household shall submit to background checks within thirty (30) calendar days of residence within the household in accordance with Section 4 [2(1)(a) through (d)] of this administrative regulation.

(b) If an adult becomes a new member of a caretaker relative or fictive kin's [kinship caregiver's] household, the new adult member of the household shall submit to background checks within thirty (30) calendar days of residence within the household in accordance with Section 6 [5(1)] of this administrative regulation.

(6)[(3)] If an adolescent becomes a new member of an approved foster or adoptive parent or a caretaker relative or fictive kin's [kinship caregiver's] household, the new adolescent member of the household shall submit to a child abuse and neglect check conducted by the cabinet within thirty (30) calendar days of residence within the household in accordance with Section 2(2) or 6[5](2) of this administrative regulation, respectively.

(4) If the cabinet has custody of a child placed with a caretaker relative or fictive kin:

(a) A new adult household member of a caretaker relative or fictive kin shall submit to background checks within thirty (30) calendar days of residence in the household in accordance with Section 5(1) of this administrative regulation; and

(b) A new adolescent household member of a caretaker relative or fictive kin shall submit to a child abuse and neglect check conducted by the cabinet within thirty (30) calendar days of residence within the household in accordance with Section 5(2) of this administrative regulation.

—(5) An annual address check of the Sex Offender Registry shall be completed for a kinship caregiver's eligibility redetermination in accordance with 922 KAR 1:130, Section 13(2).

(6) If an annual address check indicates a match with the Sex

Offender Registry, a report of abuse, neglect, or dependency shall be made in accordance with 922 KAR 1:330.]

Section 9[8]. Maintenance of Records. (1) A child-placing agency shall maintain the eligibility status of each foster and adoptive applicant who has submitted to a fingerprint-based criminal background check by reporting the status in the NBCP Web-based system [completed copy of each criminal records check conducted pursuant to Section 2 or 7 of this administrative regulation and the DPP-157 shall be maintained on behalf of each:

- (a) Applicant;
- (b) Foster or adoptive parent; and
- (c) Adult member of an applicant or foster or adoptive parent's household].

(2) A completed copy of each DPP-157 submitted pursuant to Section 2(2), 3(2), or 5 [7(3)] of this administrative regulation shall be maintained[on behalf of each adolescent member of:

- (a) An applicant's household; or
- (b) A foster or adoptive parent's household].

(3) A completed copy of each [the] DPP-159 submitted and criminal records check conducted pursuant to Section 5 or 6[7] of this administrative regulation shall be maintained[for each:

- (a) Caretaker relative;
- (b) Kinship caregiver;
- (c) Fictive kin; and
- (d) Adult member of a caretaker relative, fictive kin, or kinship caregiver's household.

(4) A completed copy of the DPP-159 submitted pursuant to Section 5(2) or 7(3) of this administrative regulation shall be maintained on behalf of each adolescent household member of a:

- (a) Caretaker relative;
- (b) Kinship caregiver; or
- (c) Fictive kin].

Section 10[9]. Communications. This administrative regulation shall not limit the cabinet's ability to discuss the qualifications or fitness of an applicant or an existing foster or adoptive parent with a child-placing agency in accordance with:

- (1) KRS 620.050(5); or
- (2) The terms and conditions of:
 - (a) A release of information signed by the applicant or foster or adoptive parent; or
 - (b) The agreement between the cabinet and the child-placing agency.

Section 11[40]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DPP-157, Background Check Request for Foster or Adoptive Applicants and Household Members[Checks for Applicants or Foster/Adoptive Parents]", 02/21 [1/18]; [and]

(b) "DPP-159, Background Check Request for Caretaker Relatives, Fictive Kin, or Adolescent and Adult Household Members[Checks for Caretaker Relatives, Fictive Kin, or Kinship Caregivers]", 02/21;

(c) "DPP-162, Applicant Waiver Agreement and Statement", 02/21;

(d) "DPP-163, Disclosures to Be Provided to and Signed by the Applicant and Adult Household Members", 02/21; and

(e) "DPP-164, Applicant Live Scan Fingerprinting Form", 02/21 [1/18].

(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. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dchs/Pages/default.aspx>

MARTA MIRANDA-STRAUB, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: February 4, 2021
FILED WITH LRC: February 8, 2021 at 8:33 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested,

be held on April 26, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by April 19, 2021, 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 virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until April 30, 2021. 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: Donna Little, Deputy Executive Director, 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: Laura Begin and Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes background check requirements for caretaker relatives, fictive kin, or applicants seeking to provide foster or adoptive services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements for background checks of out-of-home or foster care providers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of background check requirements for caretaker relatives, fictive kin, prospective foster or adoptive parents, and other household members.

(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 background check requirements for out-of-home caregivers.

(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 contains requirements for completing fingerprint-based background checks using the Kentucky National Background Check Program, to be implemented later this year. This is a national background check process provided through the Federal Bureau of Investigation and has been used by Kentucky for years to conduct background checks of long-term care and daycare staff applicants. Language referring to kinship caregivers pursuant to 922 KAR 1:130 is also being deleted as there are no new applicants for this program due to the moratorium placed on the program in 2013. This amendment also incorporates forms required to complete this process.

(b) The necessity of the amendment to this administrative regulation: The Kentucky National Background Check Program is a comprehensive, national background check process provided by the Federal Bureau of Investigation. Fingerprint-based background checks are more reliable than name-based checks and because this check is national rather than only state-based, results will include offenses committed out of state. The utilization of the Kentucky National Background Check Program is consistent with federal recommendations and this program will further ensure the protection of children in the state's custody.

(c) How the amendment conforms to the content of the

authorizing statutes: The amendment conforms to the content of the authorizing statutes through its establishment of background check requirements for caretaker relatives, fictive kin, prospective foster or adoptive parents, and other household members.

(d) How the amendment will assist in the effective administration of the statutes:

The amendment further ensures the protection of children in the state's custody.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of January 3, 2021, there were 9,193 children in the custody of the state who were in placements outside of their home of origin. This includes children in foster or adoptive placements and children being cared for by relative and fictive kin caregivers. This amendment requires many of these caregivers to undergo a background check through the Kentucky National Background Check Program prior to being approved to accept placement of these children. The cabinet and private child-placing agencies are also affected by this amendment as they are the entities who will process these checks for 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: The cabinet or child-placing agency will use the KARES system to pay and set up an appointment for an applicant to obtain a fingerprint-based background check at a fingerprinting site. There is very little action required on the part of an applicant, but the protection of children in the custody of the state will be ensured through conducting these comprehensive national checks.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Applicants subject to these background check requirements have their background check costs borne by the cabinet or through a child-placing agency in the course of the agency's business practices. There is a fee for obtaining background checks, but it is not paid directly by the individual. Per state law, the cabinet cannot charge more than the actual cost of processing the background check.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The protection of children in the custody of the state will be ensured through conducting these comprehensive national background checks.

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

(a) Initially: There is a cost to move foster and adoptive parent applicants to the Kentucky National Background Check Program, but that cost will be borne by the cabinet and child-placing agencies to ensure the protection of children in the custody of the state.

(b) On a continuing basis: There is a cost to move foster and adoptive parent applicants to the Kentucky National Background Check Program, but that cost will be absorbed by the cabinet and child-placing agencies to ensure the protection of children in the custody of the state. The cost will be greater at the time of initial application and check, but will be less than current checks over a period of time due to the decreased cost of the rap back feature compared to needing new checks.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Title IV-E (of the Social Security Act), Temporary Assistance for Needy Families Block Grant funds, and State General Funds are the sources of funding 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: There is an increase in costs to the cabinet and child-placing agencies initially, but that cost evens out and decreases over time due to the lower cost of the rap back feature compared to re-doing checks.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does initially increase the fee for background checks paid for by the cabinet and child-placing agencies, but overtime the fee is decreased due to the lower cost of the rap back feature compared to requiring new checks.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 1356.30, 42 U.S.C. 671(a)(20), 5106a

2. State compliance standards. KRS 194A.050(1), 199.462(4), 199.640(5), 605.120(5), (6), 605.130(4), 605.150

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 1356.30, 42 U.S.C. 671(a)(20), 5106a

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Existing standards do impose stricter requirements than the federal mandate because the cabinet requires the denial of an applicant if: (1) a criminal record check conducted on behalf of an adult household member reveals physical abuse, battery, or a drug or alcohol-related felony within the previous five (5) year period or (2) a child abuse or neglect check conducted by the cabinet reveals that a household member, twelve (12) years of age or older, committed sexual abuse or sexual exploitation of a child, has been responsible for a child fatality related to abuse or neglect, or has had parental rights terminated involuntarily. These standards remain in place.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The additional restrictions noted in this analysis were added as additional safeguards for children in out-of-home care. The federal law does not prohibit the addition of these restrictions.

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, the Kentucky State Police, and the Administrative Office of the Courts 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), 199.462(4), 199.640(5), 605.120(5), (6), 605.130(4), 605.150, 45 C.F.R. 1356.30, 42 U.S.C. 671(a)(20), 5141

(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 is no effect on revenues. Fees charged by law enforcement, judicial agencies, or the state for criminal background checks cannot exceed the actual costs of conducting the checks.

(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 revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There are news costs to the cabinet associated with the Kentucky National Background Check Program, but these costs are expected to level out over time due to the lesser cost of the rap back feature rather than requiring new checks. The enhanced safety measures afforded through the more comprehensive

background checks will also ensure avoidance of costs that are associated with child maltreatment.

(d) How much will it cost to administer this program for subsequent years? There will be a greater initial cost to conduct checks through the Kentucky National Background Check Program, but that cost will lessen over time due to the decreased need to require new checks.

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 1:540. Registration of a foreign adoption.

RELATES TO: KRS 199.011(4), 199.470, 199.475, 199.585, 213.056(2), 8 U.S.C. 1201-1204, 1421-1458, 22 C.F.R. Part 42, 42 U.S.C. 14901-14954

STATUTORY AUTHORITY: KRS 194A.050(1), 199.472, 199.585(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires [authorizes] the cabinet to promulgate, administer, and enforce administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 199.585(1) and (2) require the cabinet to register, through a certified notice, an original decree, judgment, or final order of adoption of a child approved for United States citizenship issued by a court or another governmental authority with appropriate jurisdiction in a foreign country. KRS 199.472 mandates that the cabinet establish criteria for the adoption of children by administrative regulation. This administrative regulation establishes a certified notice registering a foreign adoption in Kentucky.

Section 1. Definitions. (1) "Child" is defined by KRS 199.011(4).

(2) "Foreign adoption" means a decree, judgment, or final order of adoption as established [specified] in KRS 199.585(1).

(3) "IH3" or "IR3" means an immigration visa classification that indicates that [classifies] the holder is [as] an immediate relative of a [an] United States citizen in accordance with 8 U.S.C. 1204 and 22 C.F.R. 42.11.

Section 2. Requirements for Certified Notice. (1) In accordance with KRS 199.585, the cabinet shall issue a certified notice registering a foreign adoption in Kentucky[;] if the adoptive parent presents the following items in hardcopy:

(a) The adopted child's:

1. Certificate of citizenship in accordance with 8 U.S.C. 1431; [or]

2. Proof of the child's IR3; or

3. Proof of the child's IH3;

(b)1. A copy of the original decree, judgment, or final order of the child's adoption; or

2. A translated copy of the original decree, judgment, or final order of the child's adoption, if the copy of the original decree, judgment, or final order of the child's adoption is not in English; and

(c) The "DPP-188, Application for Registration of Foreign Adoption".

(2)(a) The adoptive parent shall submit the items required by [in] subsection (1) of this section by mail to the Department for Community Based Services[:]

1. By certified or registered mail; and

2. To the secretary in care of the Commissioner of the Department for Community Based Services; and

(b) The return receipt of certified or registered mail shall be

~~proof of the filing of the items required in subsection (1) of this section for a certified notice registering a foreign adoption in Kentucky].~~

~~(3) The cabinet shall not issue a "DPP 188A, Foreign Adoption Certificate of Registration" until all items required by subsection (1) of this section are received [return to the sender an application if:~~

~~(a) The sender's return address is provided; and~~

~~(b) The application for a certified notice registering a foreign adoption in Kentucky:~~

~~1. Does not contain the items required in subsection (1) of this section; and~~

~~2. Was not submitted in the manner specified in subsection (2) of this section].~~

Section 3. Limitations and Restrictions. (1) In accordance with KRS 199.585(3), a petition for adoption shall be:

(a) Required for a foreign adoption without an item included in Section 2(1) of this administrative regulation; and

(b) Filed in the circuit court with the appropriate jurisdiction in accordance with KRS 199.470 or 199.475.

(2)(a) The certified notice registering a foreign adoption in Kentucky shall be distinguished from a record of foreign birth; and

(b) An individual may apply for a record of foreign birth in accordance with KRS 213.056(2) through the Office of Vital Statistics.

Section 4. Record of Registered Foreign Adoptions. (1) The cabinet shall issue the "DPP-188A, Foreign Adoption Certificate of Registration" as the certified notice registering a foreign adoption in Kentucky.

(2) The DPP-188A shall have the same force and effect as a legal adoption finalized in a circuit court of the Commonwealth of Kentucky.

(3) The cabinet shall maintain a copy of each certified notice registering a foreign adoption in Kentucky and supporting documentation in accordance with KRS 199.585(2).

(4) Within existing appropriations, the cabinet shall make up to three (3) additional copies of the DPP-188A available to an adoptive parent who:

(a) Made an application in accordance with Section 2 of this administrative regulation; and

(b) Resubmits the DPP-188 to request an additional copy of the DPP-188A.

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

(a) "DPP-188, Application for Registration of Foreign Adoption", 02/21 [~~edition date 12/05~~]; and

(b) "DPP-188A, Foreign Adoption Certificate of Registration", 02/21 [~~edition date 12/05~~].

(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.

MARTA MIRANDA-STRAUB, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: February 1, 2021

FILED WITH LRC: February 2, 2021 at 11:06 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on April 26, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by April 19, 2021, 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 virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a

transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until April 30, 2021. 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: Donna Little, Deputy Executive Director, 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: Laura Begin and Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements and process by which a certified notice registering a foreign adoption in Kentucky is requested and provided.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order for the cabinet to fulfill statutory requirements to establish the criteria for the international adoption of children in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by providing the requirements and process by which an adoptive parent can certify an adoption that was finalized in a foreign country.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes through its establishment of the procedures to certify a foreign adoption in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation includes the IH3 visa issued for a child adopted in a county that is a member of the Hague Convention and is an accepted visa by United States Customs and Immigration Services. The amendment simplifies the process through which the adoptive parent submits the required documents, makes technical changes necessary for compliance with KRS Chapter 13A, and makes conforming amendments in the material incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the regulatory requirements to ensure compliance with federal requirements and to keep the administrative regulation from expiring pursuant to KRS 13A.3102 and 3104.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by providing the requirements and process by which an adoptive parent can certify an adoption that was finalized in a foreign country and updating regulatory requirements in alignment with federal requirements.

(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 providing the requirements and process by which an adoptive parent can certify an adoption that was finalized in a foreign country.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There have been sixty four (64) certificates of foreign adoptions issued since January 1, 2018.

(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: The amendment to this administrative regulation will affect adoptive parents of children born in and whose adoption is finalized in a foreign country that

reside in Kentucky. The amendment simplifies the process through which the adoptive parent submits the required documents.

(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: Adoptive parents will not have to take any additional actions to comply with this administrative regulation amendment.

(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 will create no new or additional costs to adoptive parents.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit from the inclusion of the additional visa type and the simplified process of submitting the required documents.

(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 any new costs to the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation will not result in any new ongoing costs 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 source of funding to be used for the implementation and enforcement of this administrative regulation is 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 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 does not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation is applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

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

2. State compliance standards. KRS 194A.050(1), 199.472, 199.585(1), (2).

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

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements as there is no federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. The Cabinet for Health and Family Services, Department for Community Based Services, will be impacted by this administrative regulation as the administrative body.

3. 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, 199.585(1), (2).

4. 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.

(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.

(c) How much will it cost to administer this program for the first year? The implementation of this administrative regulation is projected to fall within available state appropriations. There are no new costs.

(d) How much will it cost to administer this program for subsequent years? The implementation of this administrative regulation is projected to fall within available state appropriations. There are no new 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 (Amendment)

922 KAR 1:580. Standards for children's advocacy centers.

RELATES TO: KRS Chapter 13B, 17.165, 202A.011(12), 309.130-1399, 314.011(14), 314.142, Chapter 319, Chapter 335, 431.600, 620.020, 620.045, 620.050

STATUTORY AUTHORITY: KRS 194A.050(1), 620.045(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of [for] the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health [welfare], personal dignity, integrity, and sufficiency of the citizens of the Commonwealth and to operate the programs and fulfill the responsibilities of the cabinet. In order to [To] be eligible for grants from state government entities, KRS 620.045(2) requires children's advocacy centers to comply with the statutory definition established in KRS 620.020(4) and administrative regulations promulgated by the cabinet. This administrative regulation establishes staff qualifications and program standards for children's advocacy centers.

Section 1. Definitions. (1) "Governing board" or "board" means the board of directors vested with the legal responsibility for management of the children's advocacy center.

(2) "Mental health discipline" means:

(a) Art therapy in accordance with KRS 309.130 to 309.1399;

(b) Marriage and family therapy in accordance with KRS 335.300 to 335.399;

(c) Professional counseling in accordance with KRS 335.500 to 335.599;

(d) Psychiatric nursing in accordance with KRS 202A.011(12)(d);

(e) Psychiatry in accordance with KRS 202A.011(12)(b);

(f) Psychology in accordance with KRS Chapter 319; or

(g) Social work in accordance with KRS 335.010 to 335.160 [335.170].

(3) "Referral agreement" means a written protocol or process:

(a) Defined within the operating policies of the center; and

(b) That details how services required by Section 4 of this administrative regulation are established for the center's clients if the center does not have the capacity to provide these services.

(4) "Regional children's advocacy center" or "center" means an agency defined by KRS 620.020(4) and designated by the cabinet to serve as the regional children's advocacy center in accordance with KRS 620.045(1).

Section 2. Governing Board of Directors. (1) A center shall be managed by a governing board in order to allow community

involvement in the planning, development, and evaluation of services.

(2) A governing board shall adopt written bylaws. The bylaws shall include the:

- (a) Purpose of the agency;
 - (b) Minimum and maximum number of board member positions;
 - (c) Qualifications for board members;
 - (d) Method of selecting board members;
 - (e) Terms of board members;
 - (f) Officers and duties;
 - (g) Method of election of officers and chairpersons;
 - (h) Quorum requirements for meetings of the board; and
 - (i) Method for removal of directors.
- (3) The duties of the board shall be to:
- (a) Schedule meetings of the board to be held at least six (6) times per state fiscal year;
 - (b) Maintain minutes of each meeting of the board containing:
 - 1. The date and place of the meeting;
 - 2. Names of board members present;
 - 3. The subject matter discussed and actions taken; and
 - 4. The name of the reporter;
 - (c) Establish standing committees of the board to include executive, nominating, finance, and personnel committees;
 - (d) Establish restrictions on reimbursement of board members, including the prohibition against a member contracting with the board to perform personal or professional services;
 - (e) Ensure that the facility housing the center is properly clean, maintained, private, and child-friendly; and
 - (f) Recruit and maintain board members who provide broad regional representation of the area development district [Area Development District] where the center is located.

Section 3. Personnel Management. (1) A personnel file shall be maintained by the center for each employee.

(2) The minimum contents of the personnel file shall include:

- (a) Current professional credentials to reflect training and experience adequate for qualification for the position to which the employee is hired;
- (b) Conditions or terms of employment that shall include a confidentiality statement signed by the employee;
- (c) A personnel action document reflecting a change in status of an employee, such as salary change, promotion, resignation, or termination;
- (d) A position description document including title of the position, description of duties, and requirements of training and experience necessary to qualify for the position; and
- (e) Results from a criminal records background and central registry check conducted in accordance with KRS 17.165 and 922 KAR 1:470 on the employee during the application process and every two (2) years thereafter while employed by the center.

(3) Written personnel policies shall be established by the center and shall include:

- (a) Attendance and leave policies;
- (b) A compensation [Compensation] plan;
- (c) Hiring, disciplinary, and firing practices;
- (d) Staff development and continuing education provisions;
- (e) Employee grievance procedures;
- (f) Employee performance evaluations;
- (g) Equal opportunity employment statements;
- (h) Staff screening; and
- (i) Staff training and orientation.

(4) The governing board shall employ one (1) staff person as executive director of the children's advocacy center. The executive director shall:

- (a) Be responsible for financial management of the center, including budgets and grant writing;
- (b) Supervise the duties and activities of center staff and volunteers;
- (c) Coordinate the design and delivery of services;
- (d) Fulfill duties as required by the governing board;
- (e) Report directly to the board on all center activities;
- (f) Have a master's degree from an accredited college or

university and three (3) years of experience in:

- 1. Human services;
 - 2. Management; or
 - 3. A criminal justice field; and
- (g) Affirm a commitment to the welfare and protection of children.

(5)(a) A governing board may establish the staff positions specified in subparagraphs 1 through 5 of this paragraph.

1. Child advocate. A child advocate shall have a bachelor's degree from an accredited college or university and two (2) years of experience in a human services or criminal justice field.

2. Therapist. A therapist shall:

- a. Have a doctorate or master's [master] degree from an accredited college or university in a mental health discipline and two (2) years post-degree counseling or clinical experience; and
- b. Possess a certificate or license to practice under the laws of the Commonwealth of Kentucky in a mental health discipline.

3. Forensic interviewer. A forensic interviewer, if employed by the center, shall have:

- a. A doctorate or master's [master] degree from an accredited college or university in a mental health discipline;
- b. Two (2) years of post-degree counseling or clinical experience; and
- c. Three (3) years of experience interviewing children.

4. Multidisciplinary team facilitator. A multidisciplinary team facilitator shall have a bachelor's degree from an accredited college or university and two (2) years of experience in a human services or criminal justice field.

5. Other staff necessary to support the administration or service delivery of the agency.

(b) The qualifications established in paragraph (a)1 through [-] 4 of this subsection shall not apply to center staff hired prior to December 17, 2007.

(c) Within three (3) months of employment, staff providing direct services to a child shall have received twenty-four (24) hours of training on issues related to child abuse.

(d) Within three (3) months of beginning service, a center volunteer who has access to or contact with a child shall have received twenty-four (24) hours of training on issues related to child abuse.

(e) An employee of a center shall receive at least eight (8) hours of the training required by paragraph (c) of this subsection before providing services to a child.

(f) A center volunteer who has access to or contact with a child shall receive at least eight (8) hours of training required by paragraph (d) of this subsection before providing services at the center.

(g)1. A center contracting for direct services to a child by a professional not on the staff of the center shall document that the professional meets the qualifications established [outlined] in this section.

2. An agreement for provision of service shall:

- a. Be on file at the center; and
- b. Specify the qualifications of the staff.

(h) An employee of a children's advocacy center shall be at least twenty-one (21) years of age.

(i) An applicant for employment shall submit to a criminal records check in accordance with KRS 17.165 and 922 KAR 1:470 during the application process and every two (2) years thereafter while employed by the center.

(j) A center volunteer who has access to or contact with a child shall submit to a criminal records check in accordance with KRS 17.165 and 922 KAR 1:470 prior to beginning service to the center and every two (2) year thereafter while service is being provided to the center.

(k) An employee of a center under indictment or legally charged with a violent or sex crime as defined in KRS 17.165 shall be immediately removed from contact with children in the center until the employee is cleared of the charge.

(l) A center volunteer under indictment or legally charged with a violent or sex crime as defined in KRS 17.165 shall be immediately removed from contact with children in the center until the center volunteer is cleared of the charge.

(m) An employee or designated agent shall have immunity from civil liability and shall be provided a defense in civil actions pursuant to KRS 620.050(2).

Section 4. Center Services and Responsibilities. (1) A center shall:

(a) Provide:

1. Advocacy services;
2. Counseling services;
3. Clinical services;
4. Forensic interviewing;
5. Multidisciplinary team facilitation;
6. Medical examination services; and
7. Consultation and education services; or

(b) Develop a referral agreement to refer clients to a provider of the services listed in paragraph (a)1 through 7 of this subsection.

(2) Advocacy services assist child victims and their non-offending caregivers and may include:

- (a) Accompaniment to court or court-related meetings;
 - (b) Case management services; or
 - (c) Information and referral services.
- (3) Counseling services may include:
- (a) A crisis telephone line;
 - (b) Crisis counseling services; and
 - (c) Support group services.

(4)(a) Clinical services may include:

1. A mental health evaluation;
2. Individual therapy services for a child and non-offending caretaker and family; or
3. Group therapy services for a child and non-offending caretaker.

(b) Clinical services shall be provided by a professional who meets the requirements of Section 3(5)(a)2 of this administrative regulation.

(5) Forensic interviewing shall include structured interviews with a child for the purpose of facilitating a criminal investigation and may be provided on site at the center by:

(a) The center staff forensic interviewer meeting the requirements established in [accordance with] Section 3(5)(a)(3) of this administrative regulation;

- (b) A law enforcement officer; or
- (c) A worker who is employed by the cabinet.

(6) A child's recorded interview shall not be duplicated except in accordance with KRS 620.050(10).

(7) Multidisciplinary team facilitation may include:

- (a) Scheduling of meetings;
- (b) Case tracking;
- (c) Case review; or
- (d) Data collection.

(8)(a) Medical examination services shall be:

1. Reimbursed by the Department for Medicaid Services in accordance with 907 KAR 3:160; and

2. Provided by:

a. A licensed physician with pediatric experience and expertise in the evaluation and treatment of child abuse;

b. A licensed advanced practice registered nurse with pediatric experience and expertise in evaluation and treatment of child abuse; or

c. A sexual assault nurse examiner certified in accordance with KRS 314.011(14) and 314.142 ~~[if the child is fourteen (14) years of age or older]~~.

(b) If a medical exam is conducted by the center staff or a contractor, a mental health evaluation shall be provided:

1. Within twenty-four (24) hours of the medical exam; or
2. If the medical exam will be billed to Medicaid, the same day and at the same location as the medical exam, in accordance with Section 907 KAR 3:160, Section 1(2)(~~4~~)(d).

(9)(a) Consultation and education services may include:

1. School-based prevention programs;
2. Community education programs;
3. Media presentations;
4. In-service training; or

5. Case consultation services.

(b) A center shall provide a minimum of one (1) training session per year for community partners or the community at large.

(10) In addition to providing services to children in the county in which the center is located, regional center staff shall serve:

(a) Children in other counties in the area development district, including those who need medical examinations or forensic interviewing services; and

(b) As a technical assistant and consultation resource to criminal justice and human service professionals in the area development district in which the center is located.

(11) Services provided by a center shall be coordinated with multidisciplinary teams as defined in KRS 431.600 and 620.020.

(12) A center shall provide written policies and procedures for clients and volunteers that include:

- (a) Volunteer screening;
- (b) Volunteer training and orientation;
- (c) Grievance procedures for clients and volunteers;
- (d) Safety;
- (e) Clients of the center;
- (f) Client records;
- (g) Intake;
- (h) Comprehensive child sexual abuse examinations;
- (i) Therapy;
- (j) Forensic interviews; and
- (k) Mandatory reporting of child and adult abuse.

(13) A center shall provide to the non-offending caregiver written instructions that include:

- (a) The name and contact information for the center;
- (b) The name of the cabinet staff member involved in the case;
- (c) The names of law enforcement personnel handling the case;

(d) The name and contact information for the County or Commonwealth's [Commonwealth] Attorney involved in the case;

(e) The name and contact information for the receiving medical provider if a referral for additional assessment or treatment is made;

(f) The name and contact information for the receiving mental health provider if a referral for additional assessment or treatment is made; and

(g) Any known information regarding follow-up appointment times and recommended after-care referrals.

(14) A center shall develop and maintain written confidentiality policies and procedures to ensure client privacy as provided in Kentucky Rules of Evidence 506 and 507.

(15) A center shall develop and maintain written policies to limit disclosure of confidential information pursuant to KRS 620.050(5).

(16) A center shall maintain good standing as a private, nonprofit agency within the Commonwealth of Kentucky.

(17)(a) A center shall obtain the following insurance coverage:

1. Malpractice insurance for the center staff, Board of Directors, and volunteers;
2. Liability insurance for the center staff, Board of Directors, and volunteers;
3. Fidelity bonding;
4. Facility insurance; and
5. Workers compensation insurance.

(b) If contracted professionals provide their own insurance and are not covered by the center, the center shall maintain documentation that shows an active and appropriate policy.

(c) The center shall submit documentation showing proof of insurance to the cabinet.

Section 5. Client Files and Documentation. (1) A center shall open a client file for a child who is provided a service, excluding service that is limited to a telephone conversation.

(2) A client file shall include information sufficient to document the services provided or referral made by the center and shall include:

- (a) The names of the client and primary caregiver;
- (b) The name of the recipient of service;
- (c) The client's address;
- (d) The client's date of birth;

- (e) Each date of service provided by the center;
- (f) The name and title of each service provider of the center;
- (g) A description of any services provided by the center;
- (h) The referral sources used;
- (i) A description of any follow-up services provided; and
- (j) Descriptions of contacts with, report to, and referrals from the cabinet and law enforcement agency.

(3)(a) A center shall maintain a system for tracking:

1. Services rendered by region, except that comprehensive medical services and forensic interviewing shall be tracked by county of the client's residence;
 2. Clients seen by county of client's residence;
 3. Referrals made; and
 4. Contacts with other community agencies on behalf of clients.
- (b) Documentation shall be sufficient to support statistics reported to the cabinet.

Section 6. Funding. (1)(a) The cabinet shall designate one (1) regional children's advocacy center in each area development district.

(b) A children's advocacy center designated on or after July 1, 2007, shall retain the designation unless it has been rescinded by the cabinet based on:

1. Periodic review of the center's performance; or
2. The annual plan and budget submitted by the center to the cabinet for funding for the next fiscal year.

(c) The cabinet shall notify the Office of the Attorney General, the Department for Medicaid Services, and the Justice and Public Safety Cabinet of any designation of a regional children's advocacy center made pursuant to this administrative regulation.

(2) The requirements of this administrative regulation shall not prohibit the center from applying for nongovernmental grants or fundraising to support efforts consistent with the mission of the center.

(3)(a) In addition to the provisions of subsection 1(b) of this Section, the Commissioner of the Department for Community Based Services may rescind the designation of a center if a determination is made that the center failed to:

1. Submit a budget and plan for services, which shall substantiate the capacity to provide services specified in KRS 620.020(4) and in accordance with this administrative regulation;
2. Operate in accordance with a budget and plan for services approved by the cabinet; or
3. Operate in accordance with the requirements of this administrative regulation.

(b) Any notice of rescission of a designation shall:

1. Be in writing;
2. Be mailed to the center's last known mailing address;
3. State the basis for the rescission;
4. State the effective date of the rescission; and
5. State any appeal rights.

(c) The cabinet shall notify the Office of the Attorney General, the Department for Medicaid Services, and the Justice and Public Safety Cabinet of any notice of rescission of a designation of a regional children's advocacy center issued pursuant to this administrative regulation. Failure by the cabinet to provide such notice shall not serve as grounds for the affected center to invalidate the notice of rescission.

(4) Cabinet funding for a center shall be contracted through the regional center or the centers' state association.

(5) A center may contract or establish referral agreements with other agencies or professionals to provide services established in [as defined within] Section 4 of this administrative regulation.

(6)(a) Except in cases where designation has terminated, as established [set forth] in subsection 1(b) of this Section, a center that has received written notice that its designation has been rescinded may appeal the determination of the Commissioner of the Department for Community Based Services by requesting an administrative hearing.

(b) Any request for an administrative hearing shall be in writing and shall be received by the Department for Community Based Services within thirty (30) days of the date of receipt of the notice of rescission. This type of request shall be sent to the Office of the

Commissioner, Department for Community Based Services, Cabinet for Health and Family Services, 275 East Main Street, 3E-A [3rd Floor], Frankfort, Kentucky 40621.

(c) Any administrative hearing held pursuant to this administrative regulation shall be conducted in accordance with KRS Chapter 13B by a hearing officer employed by the cabinet.

(d) A request for an administrative appeal shall stay the rescission of the designation until the administrative appeal process is final.

(e) The stay on the rescission of the designation granted by paragraph (d) of this subsection [Section 6(6)(d) in this administrative regulation] shall not extend to judicial review, unless a stay is granted pursuant to KRS 13B.140(4).

Section 7. Audit and Monitoring. (1) The cabinet or its agent shall randomly, or upon receipt of a complaint, audit, monitor, or conduct program reviews of a center.

(2) A center shall allow the cabinet or its agent access to its property and records as required by subsection (1) of this section.

Section 8. Grievance and Appeals Process. Client grievances. A center shall establish a written grievance procedure that shall:

- (1) Be given to the parent or guardian of each child who comes to the center for services; and
- (2) Contain a description of the services provided by the center and the procedure for filing a client grievance in accordance with 922 KAR 1:320, Section 10.

MARTA MIRANDA-STRAUB, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: February 1, 2021

FILED WITH LRC: February 2, 2021 at 10:36 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on April 26, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by April 19, 2021, 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 virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until April 30, 2021. 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: Donna Little, Deputy Executive Director, 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: Laura Begin and Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for children's advocacy centers designated by the cabinet.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to execute the statutory requirements for the cabinet to establish and designate children's advocacy centers from each area development district. This administrative regulation is necessary to establish staff qualifications and program standards for children's advocacy centers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law 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 620.045(1) authorizes the cabinet to make state grants and other funding allocations to assist nonprofit corporations in the establishment and operation of regional children's advocacy centers. KRS 620.045(2) requires that a children's advocacy center operate in accordance with administrative regulations promulgated by the Cabinet for Health and Family Services to be eligible to receive state funds and other allocations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of children's advocacy center services in a manner that is consistent with federal and state requirements, including receiving available funding and establishing requirements in the interests of the clients to be served, children's advocacy center providers, and stakeholders.

(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 is necessary to ensure qualified providers are eligible to perform required services to clients at children's advocacy centers. This amendment allows certified sexual assault nurse examiners to examine all clients, not just those over the age of fourteen. Other technical amendments are being made for compliance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to provide clarification for the qualifications of service providers of children's advocacy centers.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by establishing the designation and requirements for children's advocacy centers and necessary qualifications of services providers and personnel.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statute through its clarification of requirements and refinement of qualifications of service providers at children's advocacy centers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are fifteen regional children's advocacy centers (CACs), each serving five to seventeen counties. There was a total of 5,550 children and 3,735 caregivers served by children's advocacy centers during SFY 2020 in Kentucky. Children's advocacy centers perform forensic interviews and medical exams, and provide mental health and case management services at no cost to a child or their family.

(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 to this administrative regulation will not require new action 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): The amendment to this administrative regulation will create no new or additional costs to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment provides clarification for the credential and qualifications of service providers of child sexual abuse medical exams. There is no benefit for compliance.

(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 be implemented within current funding to children's advocacy centers.

(b) On a continuing basis: The administrative regulation will be implemented within available appropriations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The services and programs contained in this administrative regulation are paid for by federal and state general funds. Federal funding is received through the Victims of Crime Act (VOCA) grant and state funds are received from the Child Victim's Trust Fund through the Attorney General's Office and other state general funds. Eligible medical and mental health services are paid for through Medicaid.

(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 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: The amendment to this administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied as children's advocacy standards are consistent statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate for this administrative regulation.

2. State compliance standards. KRS 194A.050(1) and 620.045(2) contain the statutory requirements for these regulated entities.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate for this administrative regulation.

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 this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

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 children's advocacy centers 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) and 620.045(2).

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

(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.

(c) How much will it cost to administer this program for the first year? The services and programs contained in this administrative regulation are paid for by existing federal and state general funds, as well as private donations.

(d) How much will it cost to administer this program for

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subsequent years? The amendment incurs no additional cost for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

NEW ADMINISTRATIVE REGULATIONS

Public comment periods are at least two months long. For other regulations with open comment periods, please also see last month's [Administrative Register of Kentucky](#).

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(New Administrative Regulation)

103 KAR 26:131. Landscaping services.

RELATES TO: KRS 139.010, 139.200, 139.260, 139.270, 139.470, 139.480

STATUTORY AUTHORITY: KRS 131.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of Kentucky tax laws. This administrative regulation interprets the sales and use tax law as it applies to landscaping services.

Section 1. Definitions. (1) "Construction contract" is defined by 103 KAR 26:070, Sec. 1;

(2) "Contractor" is defined in 103 KAR 26:070 Sec. 1(2) (a).

(3) "Department" means the Department of Revenue.

(4) "De minimis threshold exemption" is defined in KRS 139.470(23).

(5) "Farm machinery" is defined in KRS 139.480(11).

(6) "Landscaping services" includes those services listed in KRS 139.200(2)(g);

(7) "Person" is defined in KRS 139.010(26).

(8) "Practice of landscape architecture" is defined in KRS 323A.010(3).

(9) "Professional services" is defined in KRS 323A.010(4).

(10) "Resale certificate" means Resale Certificate Form 51A105, Streamlined Sales and Use Tax Agreement – Certificate of Exemption, Form 51A260, or Multistate Tax Commission's Uniform Sales and Use Tax Exemption/Resale Certificate – Multi-jurisdiction.

(11) "Retailer" is defined in KRS 139.010(35).

(12) "Seller" is defined in KRS 139.010(39).

(13) "Subcontractor" is defined in 103 KAR 26:070 Sec. 1(2)(a).

Section 2. Landscaping Services. (1) The furnishing of landscaping services is subject to sales tax pursuant to KRS 139.200(2)(g). Sales tax shall apply to the sales price received from the furnishing of landscaping services.

(2) Persons engaged in the business of providing landscaping services are retailers of the landscaping services furnished. Landscaping service providers shall register for, collect, and remit sales tax.

(3) The list provided in this subsection shall serve as examples of the furnishing of landscaping services:

(a) Aerating;

(b) Applying chemicals to lakes or ponds to control the growth of algae or plant life;

(c) Bush hogging;

(d) Dethatching;

(e) Diagnosing lawn conditions for the purpose of providing landscaping services;

(f) Fertilizing;

(g) Hydro seeding;

(h) Installation of decorative bricks, blocks, and timbers such as those installed for a flower bed;

(i) Installation of lawn edging, decorative rock, and weed control fabric;

(j) Installation of free-standing planter boxes;

(k) Landscape design and installation services;

(l) Lawn care and maintenance services;

(m) Lawn fungus treatments;

(n) Leaf removal;

(o) Mowing and trimming;

(p) Mulching;

(q) Planting, pruning, bracing, removal, surgery, and trimming of plants, trees, and shrubs;

(r) Raking, including power raking;

(s) Seeding or reseeding;

(t) Services for the removal of gophers, moles, voles and other lawn pests;

(u) Snow plowing or removal services;

(v) Sod laying;

(w) Soil moving, grading, removal, or installation as part of a landscaping service (such as removing a top layer of soil to install sod);

(x) Spraying or other applications of chemicals and fertilizer within the landscape. Examples include:

1. Granular and liquid lawn fertilizers;

2. Lime applications;

3. Seed and fertilizer combination applications;

4. Herbicides; or

5. Insecticides, including those to eliminate grubs, ants, fleas, and ticks.

(y) Stump removal;

(z) Tilling and soil preparation;

(aa) Turf installation; or

(bb) Watering, including the installation of soak hoses.

Section 3. Non-landscaping Services. The list provided in this section shall serve as examples of activities not considered the furnishing of landscaping services:

(1) Vegetative management of highway rights-of-way including mowing, line trimming, and tree trimming;

(2) Vegetative management of utility rights-of-way including mowing, line trimming, and tree trimming;

(3) Perpetual care of gravesites at a cemetery;

(4) Government-mandated land reclamation at a mining site;

(5) Mosquito spraying services;

(6) Professional services authorized as part of the licensed practice of professional landscape architecture provided under separate contract from landscape design and installation services;

(7) Mowing, spraying, tree trimming, and fence clearing, provided to a person regularly engaged in the business of farming and provided on land that is:

(a) Being cultivated for the production of crops as a business;

(b) Being directly used in the occupation of raising and feeding livestock or poultry for sale;

(c) Being directly used in the occupation of producing milk for sale;

(d) Being directly used in the occupation of egg production;

(e) Being directly used in the occupation of breeding or producing:

1. Aquatic organisms;

2. Buffalos;

3. Cervids;

4. Llamas or alpacas; or

5. Ratites; and

(8) Mowing, spraying, tree trimming, and fence clearing, provided to a person engaged in the raising of equine as a business; provided however, that the landscaping services are performed on the portion of land directly used in the raising of equine.

Section 4. Property Purchased for Resale by Persons Furnishing Landscaping Services. (1) Persons furnishing landscaping services may issue a fully completed resale certificate for the purchase of property to be resold to a customer when furnishing the landscaping services where the property remains with the customer after the furnishing of landscaping services. The purchaser of the property to be resold to a customer when

furnishing the landscaping services shall collect sales tax from the customer on the sales price of the property.

(2) The list provided in this subsection shall serve as examples of property purchased for resale that demonstrate the types of property that generally are received by, or remain with, the customer after landscaping services are performed:

- (a) Bulbs;
- (b) Bushes;
- (c) Chemicals;
- (d) Dirt;
- (e) Fertilizer;
- (f) Insecticides;
- (g) Landscaping materials;
- (h) Lawn care chemicals;
- (i) Mulch;
- (j) Rock;
- (k) Shrubs;
- (l) Sod;
- (m) Trees; or
- (n) Weed barriers.

Section 5. Property Used or Consumed by Persons Furnishing Landscaping Services. (1) Persons furnishing landscaping services shall not issue a resale certificate for property used or consumed in the performance of the landscaping services. Property sold to landscaping service providers and used or consumed by the landscaping service providers when furnishing landscaping services shall be subject to sales tax at the time of purchase by the landscaping service provider.

(2) The list provided in this subsection shall serve as examples of property consumed in the performance of landscaping services:

- (a) Chemical applicators;
- (b) Equipment rentals;
- (c) Gasoline;
- (d) Gloves;
- (e) Lawnmowers;
- (f) Oil;
- (g) String trimmers, string trimmer lines and spools;
- (h) Tools; or
- (i) Wheelbarrows.

Section 6. Resale of Landscaping Services. (1) A person furnishing landscaping services may issue a fully completed resale certificate to another person furnishing landscaping services for the purchase of the landscaping services that will be resold to the end consumer. The purchaser of the landscaping services to be resold shall collect sales tax from the end consumer on the sales price for the furnished landscaping services.

(2) Example. Landscaping services provider A may issue a fully completed resale certificate to landscaping services provider B for the purchase of lawn mowing services to fulfill his obligations to the end consumer. Landscaping services provider A shall collect the sales tax from the end consumer on the sales price of the landscaping services.

(3) A contractor or subcontractor shall not issue a resale certificate for the purchase of landscaping services.

Section 7. De Minimis Threshold Exemption. (1) Transactions are exempt from tax for the furnishing of landscaping services or the furnishing of landscaping services combined with other services listed in KRS 139.200(h) through (q) when a service provider's receipts have never exceeded the de minimis threshold exemption in a calendar year. Gross receipts from the furnishing of landscaping services that exceed the de minimis threshold exemption amount in a calendar year shall be subject to sales tax. All subsequent receipts in the calendar year and all gross receipts for each calendar year thereafter are subject to sales tax.

(2) The de minimis threshold exemption described in subsection 1 of this section does not apply if the landscaping services provider is also engaged in the business of selling tangible personal property or digital property, or furnishing other services listed under KRS 139.200(2)(a) to (f). For example, if a landscaping services provider also sells grass seed, weed and

feed, lawn equipment, or other similar products at retail, then all of the sales (both landscaping services and sales of tangible personal property) shall be subject to sales tax.

Section 8. Non-taxable Services and Exemptions for Purchases Applicable to Landscaping Services Providers Engaged in Dual Businesses. (1) This section applies to persons engaged in furnishing landscaping services that are also engaged in a dual business.

(2) Contractors and subcontractors are subject to Regulation 103 KAR 26:070.

(3) When a person furnishing landscaping services also operates as a contractor or subcontractor, the following list shall serve as examples of services not considered to be landscaping services when performed by a contractor or subcontractor to fulfill the terms on a construction contract.

(a) Installation, repair, or removal of the following:

- 1. Berm walls;
 - 2. Driveways, sidewalks, parking areas, and patios, including those constructed of asphalt, brick, concrete, crushed stone, or gravel;
 - 3. Decks;
 - 4. Fences;
 - 5. Fountains or other water works installed as plumbing fixtures;
 - 6. Gazebos;
 - 7. In-ground sprinkler and irrigation systems;
 - 8. Masonry, stone setting, terrazzo, tile marble, or mosaic work;
 - 9. Ponds, excluding decorative or ornamental ponds; or
 - 10. Retaining Walls, including those constructed of block, stone, or brick;
- (b) Land clearing, excavation, erosion control, and finish grading for the construction of a permanent structure.
- (4) Purchases of tangible personal property such as building materials, fixtures, and supplies that are to be incorporated or fabricated into any structure or any improvement to real estate are subject to sales and use tax at the time of the sale to the contractor or subcontractor furnishing landscaping services in conjunction with his business as a contractor or subcontractor.
- (5) When a person furnishing landscaping services is also acting as a retailer of tangible personal property, and sells tangible personal property to a person who is claiming an exemption, the retailer shall not be relieved of the burden of collecting the tax until the purchaser provides the retailer with a fully completed certificate of exemption or a direct pay authorization.

Section 9. Forms. The forms incorporated by reference into this administrative regulation may be inspected, copied, or obtained, subject to applicable copyright law, at:

(1) The Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601;

(2) A Kentucky Taxpayer Service Center, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or

(3) The Department of Revenue Web site at <http://revenue.ky.gov>.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: January 13, 2021

FILED WITH LRC: January 29, 2021 at 9:44 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 22, 2021, at 10:00 a.m. in Room 11A, State Office Building, 501 High Street, Frankfort, Kentucky 40601. In the event the declaration of a State of Emergency in Executive Order 2020-215 is not rescinded by this time, this hearing will be conducted by video teleconference. 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 April 30, 2021. 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 administrative regulation interprets the sales and use tax law as it applies to landscaping services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide up to date guidance regarding landscaping services due to the 2018 statutory changes in KRS 139.200 which made these services taxable.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed regulatory language conforms with the provisions of KRS 13A that require an agency to maintain the most up to date guidance and statutory references in its regulations to avoid deficiency.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed regulatory language provides guidance on the taxability of landscaping 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: Not applicable. This is a new 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 landscaping service providers as well as their customers.

(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 actions are necessary to comply. This administrative regulation does not add any requirements, it is only intended to provide clarification of the law and guidance to landscapers on what services are taxable.

(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. This administrative regulation does not add any additional fees or costs to be incurred by landscapers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anyone who accesses the administrative regulation will benefit from the information contained therein.

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

(a) Initially: It is not anticipated that there will be any additional costs to implement this administrative regulation. Additional costs that may have been created by the statutory changes (for example, taxpayer outreach efforts to inform the general public of the changes in KRS 139.200) have already been, and will continue to be, absorbed through current staff and budgeted funding. Current staff are already answering questions to provide guidance on landscaping

services.

(b) On a continuing basis: There is no additional 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 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 proposed regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed 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(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? No expenditures or revenues are expected to be generated for state or local agencies by this administrative regulation. This administrative regulation only provides clarification of the current statute that has been in effect since July 1, 2018.

(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 that is known.

(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:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Community Alternatives

(New Administrative Regulation)

907 KAR 7:020. 1915(c) Home and community based services waiting list and waiting list placement appeal processes.

RELATES TO: KRS 205.520, 205.5605, 205.5606, 205.5607, 42 C.F.R. 441 Subpart G, 42 C.F.R. 431 Subpart E, 42 U.S.C. 1396a, 1396b, 1396d, 1396n

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.5606(1), 205.6317

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services,

has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the policies governing 1915(c) waiver waiting lists, and governs the circumstances under which an appeal will be granted if emergency status is not granted for a waiting list for the Supports for Community Living waiver.

Section 1. Definitions.

(1) "1915(c) waiver program" means a Kentucky Medicaid program established pursuant to, and in accordance with, 42 U.S.C. 1396n(c).

(2) "Department" means the Department for Medicaid Services.

(3) "Emergency category of need" means an order of waiting list placement, including the placement described in 907 KAR 12:010, Section 12(3)(b), for the Supports for Community Living (SCL) waiver.

(4) "Good cause" means a circumstance that:

(a) Is beyond the control of an individual and affects the individual's ability to access funding or services; and

(b) Includes:

1. An illness or hospitalization of the individual that is expected to last sixty (60) days or less;

2. The required paperwork and documentation for processing in accordance with Section 2 of this administrative regulation has not been completed but is expected to be completed in two (2) weeks or less; or

3. The individual or his or her guardian has made diligent contact with a potential provider to secure placement or access services but has not been accepted within the sixty (60) day time period.

(5) "MWMA" means the Kentucky Medicaid Waiver Management Application internet portal administered by the department.

(6) "Slot" means an allocation of funding available for placing an individual in a 1915(c) waiver program.

Section 2. Waiting Lists. (1) Notwithstanding other provisions established in KAR Title 907, the provisions of this section and Section 3 of this administrative regulation shall control in relation to the department's policy relating to 1915(c) waiting lists and appeals relating to waiting list placement.

(2) As appropriate, each 1915(c) waiver program shall maintain a statewide waiting list.

(3) If an applicant for a 1915(c) waiver program meets that waiver's criteria for waiting list placement and there are no available slots at the time, the applicant shall be placed on the waiting list for that waiver.

(4) The department shall send a written notification of placement on the waiting list to the applicant, the applicant's legal guardian, or authorized representative.

(5) At least annually, the department shall contact each individual, the individual's legal guardian, or authorized representative, on any 1915(c) waiver waiting list program to verify:

(a) The accuracy of the individual's information; and

(b) Whether the individual wishes to continue to pursue enrollment in the applicable waiver program.

(6) The department shall remove an individual from a waiting list if:

(a) The individual is deceased;

(b) A review of documentation reveals that the individual does not have a diagnosis that qualifies for the applicable 1915(c) waiver;

(c) The individual has relocated to a primary residence outside of the Commonwealth of Kentucky; or

(d) The department notifies the individual, the individual's legal guardian, or authorized representative of potential funding approved to enroll the individual in the applicable waiver program and the individual, individual's legal guardian, or authorized representative:

1. Within sixty (60) calendar days of the potential funding notice, declines the potential funding for enrollment in the program:

a. Expressly;

b. By not completing the enrollment process, or

c. By not asking for a good cause extension to complete the enrollment process within sixty (60) calendar days of the potential funding notice date; and

2. Does not request to remain on the waiting list.

(7) After being notified by the department of potential funding approved to enroll the individual in the waiver program, the individual shall maintain his or her current position on the waiting list if the individual and, if applicable, the individual's legal guardian or authorized representative:

(a) Declines the potential funding; and

(b) Requests to remain on the waiver waiting list.

(8) If the department denies a request for emergency category of need, the department shall send written notice of the denial, including a notice of appeal rights, in accordance with 42 C.F.R. Part 431 Subpart E and 907 KAR 1:563, to:

(a) The individual and, if applicable, the individual's legal guardian or authorized representative; and

(b) The individual's case manager, waiver case manager, or participant directed services case manager if the individual has a waiver case manager or participant directed services case manager.

(9) The removal of an individual from a 1915(c) waiting list shall not preclude the individual from applying for participation with any 1915(c) waivers in the future.

(10) If the department removes an individual from a 1915(c) waiver program waiting list, the department shall send written notice of the removal, including a notice of appeal rights in accordance with 42 C.F.R. Part 431 Subpart E and 907 KAR 1:563, to:

(a) The individual, and, if applicable, the individual's legal guardian or authorized representative; and

(b) The individual's waiver case manager or participant directed services case manager if the individual has a waiver case manager or participant directed services case manager.

(11)(a) If requested the department shall grant an appeal regarding an application of this administrative regulation.

(b) All appeals shall, as appropriate, be in accordance with 907 KAR 1:563.

(12) The hearing shall be conducted in accordance with 907 KAR 1:563.

Section 3. Waiting List Emergency Category Within the Supports for Community Living Waiver. An individual shall be placed on the waiting list for the Supports for Community Living waiver in the order of receipt of application in the MWMA. An individual on a waiting list shall be categorized as established in this section.

(1)(a) Notwithstanding the emergency criteria established in 907 KAR 12:010, Section 12(3)(b), an individual's category of need shall be in the emergency category if the supporting documentation requirements and request for emergency category of need in the 1915(c) waiver program submitted to the department, indicate that an immediate service is needed due to any of the following, if all other applicable and appropriate service options have been exhausted or deemed inappropriate:

1. Abuse, neglect, or exploitation of the individual as substantiated by the Department of Community Based Services;

2. The death of the individual's primary caregiver and lack of an alternative primary caregiver;

3. The lack of appropriate living arrangement placement due to:

a. Loss of housing;

b. Loss of funding sources including 1915(c) waiver funding sources; or

c. Imminent discharge from a temporary placement;

4. Jeopardy to the health and safety of the individual due to the primary caregiver's inability to provide all care needed due to the primary caregiver's:

a. Physical health status; or

b. Mental health status;

5. Imminent or threat of imminent institutionalization if 1915(c)

home and community based waiver program services are not provided; or

6. Present institutionalization and the applicant is not opposed to community placement in the most integrated setting appropriate to the applicant's needs; and

(b) The individual:

1. Does not have a combination of care needs beyond the capability of the supports for community living waiver program; or

2. Does not pose a serious potential danger to the health, safety, and welfare of the individual, other participants, or staff.

(2) An individual on the waiting list who does not meet the requirements for the emergency category of need pursuant to subsection (1) of this section shall be placed in the future planning or urgent category of the Supports for Community Living waiting list, in accordance with 907 KAR 12:010.

(3) Priority on a waiting list shall first be given to those on the emergency category, then to others on the waiting list. However, within each category, the order shall remain the same, based on when the recipient applied for Supports for Community Living waiver services.

Section 4. Federal Approval and Federal Financial Participation. The department's coverage of any 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.

LISA D. LEE, Commissioner

ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: February 8, 2021

FILED WITH LRC: February 11, 2021 at 4:17 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on April 26, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by April 19, 2021, 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 virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until April 30, 2021. 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: Donna Little, Deputy Executive Director, 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 and Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes waiting list policies for all 1915(c) waiver programs within the Kentucky Medicaid program. This administrative regulation also establishes and expands appeal rights if there is a denial of a request for a placement on the emergency category waitlist of the Supports for Community Living Waiver.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid program provisions and requirements regarding waiting list placement and appeals within the 1915(c) waiver programs.

(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 clarifying appeal rights and processes relating to waiting lists within the 1915(c) waiver programs, including emergency category waitlist placement for the Supports for Community Living Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by helping individuals, stakeholders, and providers to more easily navigate and understand the provisions relevant to 1915(c) waiver waiting list appeal rights.

(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: Applicants of 1915(c) waiver programs that have an emergency category within their waiting lists. Over the last calendar year, DMS received 7,575 applications for 1915(c) waiver applications. Each application is sent to each waiver for which the applicant may meet target criteria.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: An applicant that is denied for the emergency category of a waiting list will need to comply with existing administrative regulations that address appeals in order to appeal a denial of emergency category placement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Neither participants nor providers will incur additional costs as a result of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will benefit by being able to appeal a denial of emergency placement on a waiting list.

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

(a) Initially: The Department for Medicaid Services anticipates that this administrative regulation will be budget neutral on an initial basis.

(b) On a continuing basis: DMS anticipates that this administrative regulation will be budget neutral 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 was applied in that the action of denying a placement on the emergency category of the SCL waiting list is being granted appeal rights. The emergency category appeal rights are being applied equally to all those individuals who may be eligible for emergency status within the SCL waiver.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(3)
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. 42 U.S.C. 1396a(a)(3) requires the state plan to "provide for granting an opportunity for a fair hearing before the state agency to any individual whose claim for medical assistance under the plan is denied or is not acted upon with reasonable promptness."
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter, additional or different requirements than those required by the federal mandate.
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? This administrative regulation will affect the Department for Medicaid Services.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3); and 42 U.S.C. 1396a(a)(3).
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
 - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any additional revenue for state or local governments during the first year 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? This administrative regulation will not generate any additional revenue for state or local governments during subsequent years of implementation.
 - (c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates that this administrative regulation will be budget neutral for the first year.
 - (d) How much will it cost to administer this program for subsequent years? DMS anticipates that this administrative regulation will be budget neutral 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:

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**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of February 10, 2021**

Call to Order and Roll Call

Meeting was cancelled; no minutes to report.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(10), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

SENATE STANDING COMMITTEE ON HEALTH AND WELFARE
Meeting of February 3, 2021

The following administrative regulations were available for consideration and placed on the agenda of the Senate Standing Committee on Health and Welfare for its meeting of February 3, 2021 having been referred to the Interim Joint Committee on Health, Welfare, and Family Services on December 2, 2020 and referred to the Senate Standing Committee on Health and Welfare on January 6, 2021, pursuant to KRS 13A.290(6):

December 2, 2020

902 KAR 010:036 Proposed

January 6, 2021

201 KAR 002:050 Proposed
201 KAR 002:105 Proposed
201 KAR 002:106 Proposed
201 KAR 002:225 Proposed
201 KAR 002:240 Proposed
201 KAR 002:320 Proposed
201 KAR 020:320 Proposed
201 KAR 020:390 Proposed
201 KAR 021:001 Proposed
201 KAR 021:015 Proposed
201 KAR 021:025 Proposed
201 KAR 021:045 Proposed
201 KAR 021:051 Proposed
201 KAR 021:052 Proposed
201 KAR 021:053 Proposed
201 KAR 021:055 Proposed
201 KAR 021:061 Proposed
201 KAR 021:065 Proposed
201 KAR 021:075 Proposed
201 KAR 021:085 Proposed
201 KAR 038:070 Proposed
901 KAR 005:120 Proposed
902 KAR 002:220 Proposed
902 KAR 002:220 Emergency
902 KAR 008:160 Proposed
902 KAR 008:160 Emergency
902 KAR 008:170 Emergency
902 KAR 008:170 Proposed
902 KAR 010:030 Proposed
902 KAR 010:036 Proposed
902 KAR 050:040 Proposed
908 KAR 001:381 Proposed
908 KAR 001:400 Proposed
922 KAR 001:450 Proposed
922 KAR 001:450 Emergency
922 KAR 001:520 Emergency
922 KAR 001:520 Proposed

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 3, 2021 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

HOUSE STANDING COMMITTEE ON AGRICULTURE
Meeting of February 3, 2021

The following administrative regulations were available for consideration and placed on the agenda of the House Committee on Agriculture for its meeting of February 3, 2021, having been referred to the Committees on January 6, 2021, pursuant to KRS 13A.290(6):

012 KAR 005:010
012 KAR 005:020
012 KAR 005:030
012 KAR 005:040
012 KAR 005:050
012 KAR 005:060
012 KAR 005:070

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 3, 2021 meeting of the House Standing Committee on Agriculture which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

HOUSE STANDING COMMITTEE ON HEALTH AND FAMILY SERVICES
Meeting of February 4, 2021

The following administrative regulations were available for consideration and placed on the agenda of the House Standing Committee on Health and Family for its meeting of February 4, 2021 having been referred to the Interim Joint Committee on Health, Welfare, and Family Services on December 2, 2020 and referred to the House Standing Committee on Health and Family Services on January 6, 2021, pursuant to KRS 13A.290(6):

December 2, 2020

902 KAR 010:036 Proposed

January 6, 2021

201 KAR 002:050 Proposed
201 KAR 002:105 Proposed
201 KAR 002:106 Proposed
201 KAR 002:225 Proposed
201 KAR 002:240 Proposed
201 KAR 002:320 Proposed
201 KAR 020:320 Proposed
201 KAR 020:390 Proposed
201 KAR 021:001 Proposed
201 KAR 021:015 Proposed
201 KAR 021:025 Proposed
201 KAR 021:045 Proposed
201 KAR 021:051 Proposed
201 KAR 021:052 Proposed
201 KAR 021:053 Proposed
201 KAR 021:055 Proposed
201 KAR 021:061 Proposed
201 KAR 021:065 Proposed
201 KAR 021:075 Proposed

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201 KAR 021:085 Proposed
201 KAR 038:070 Proposed
901 KAR 005:120 Proposed
902 KAR 002:220 Proposed
902 KAR 002:220 Emergency
902 KAR 008:160 Proposed
902 KAR 008:160 Emergency
902 KAR 008:170 Emergency
902 KAR 008:170 Proposed
902 KAR 010:030 Proposed
902 KAR 010:036 Proposed
902 KAR 050:040 Proposed
908 KAR 001:381 Proposed
908 KAR 001:400 Proposed
922 KAR 001:450 Proposed
922 KAR 001:450 Emergency
922 KAR 001:520 Emergency
922 KAR 001:520 Proposed

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 4, 2021 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

SENATE STANDING COMMITTEE ON AGRICULTURE Meeting of February 9, 2021

The following administrative regulations were available for consideration and placed on the agenda of the Senate Committee on Agriculture for its meeting of February 9, 2021, having been referred to the Committees on January 6, 2021, pursuant to KRS 13A.290(6):

012 KAR 005:010
012 KAR 005:020
012 KAR 005:030
012 KAR 005:040
012 KAR 005:050
012 KAR 005:060
012 KAR 005:070

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 9, 2021 meeting of the Senate Standing Committee on Agriculture, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

SENATE STANDING COMMITTEE ON HEALTH AND WELFARE Meeting of February 10, 2021

The following administrative regulations were available for consideration and placed on the agenda of the Senate Standing Committee on Health and Welfare for its meeting of February 10, 2021 having been referred to the committee on February 3, 2021, pursuant to KRS 13A.290(6):

February 3, 2021

201 KAR 009:081 Proposed
902 KAR 045:180 Proposed
907 KAR 003:250 Proposed
910 KAR 001:151 Proposed
910 KAR 002:060 Proposed
921 KAR 003:020 Proposed
921 KAR 003:030 Proposed

921 KAR 003:042 Proposed
922 KAR 001:500 Proposed

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 10, 2021 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

HOUSE STANDING COMMITTEE ON HEALTH AND FAMILY SERVICES Meeting of February 11, 2021

The following administrative regulations were available for consideration and placed on the agenda of the House Standing Committee on Health and Family Services for its meeting of February 11, 2021 having been referred to the committee on February 3, 2021, pursuant to KRS 13A.290(6):

February 3, 2021

201 KAR 009:081 Proposed
902 KAR 045:180 Proposed
907 KAR 003:250 Proposed
910 KAR 001:151 Proposed
910 KAR 002:060 Proposed
921 KAR 003:020 Proposed
921 KAR 003:030 Proposed
921 KAR 003:042 Proposed
922 KAR 001:500 Proposed

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 11, 2021 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

SENATE STANDING COMMITTEE ON HEALTH AND WELFARE Meeting of February 22, 2021

The following administrative regulation was available for consideration and placed on the agenda of the Senate Standing Committee on Health and Welfare for its meeting of February 22, 2021, pursuant to KRS 13A.290(6):

201 KAR 002:410 Emergency

The following administrative regulation was approved as amended at the Committee meeting pursuant to KRS 13A.320:

201 KAR 002:410 Emergency

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 22, 2021 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

HOUSE STANDING COMMITTEE ON HEALTH AND FAMILY SERVICES Meeting of February 22, 2021

The following administrative regulation was available for consideration and placed on the agenda of the House Standing Committee on Health and Family Services for its meeting of February 22, 2021, pursuant to KRS 13A.290(6):

201 KAR 002:410 Emergency

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The following administrative regulation was approved as amended at the Committee meeting pursuant to KRS 13A.320:

201 KAR 002:410 Emergency

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 22, 2021 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 47th year of the *Administrative Register of Kentucky*, from July 2020 through June 2021.

Locator Index - Effective Dates

I - 2

Lists all administrative regulations published or continuing through the KRS Chapter 13A review process 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 with a “45 Ky.R.” or “46 Ky.R.” notation are regulations that were originally published in previous years’ issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the last Register year ended.

KRS Index

I - 14

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

I - 26

A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this *Register* year.

Technical Amendment Index

I - 27

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

I - 28

A general index of administrative regulations published during this *Register* year, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	Ky.R. & Page No.	Effective Date	Regulation Number	Ky.R. & Page No.	Effective Date
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Administrative regulations published in previous Register years may appear in this index if a regulation had not completed the KRS Chapter 13A review process by the beginning of *Register* year 47. The "Register number" or "Ky.R. number" is listed the first time a regulation is published during that Register year. Once the regulation has been published in another *Register* year, the new Ky.R. number will appear next to the page number entry. To view versions of regulations published in 45 Ky.R. or 46 Ky.R., please visit our online [Administrative Registers of Kentucky](#).

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.

EMERGENCY ADMINISTRATIVE REGULATIONS

NOTE: Pursuant to KRS 13A.190, emergency regulations are scheduled to expire 270 days after the date filed; however, the 270 days may be extended by one month, if comments were received. Emergency regulations expire after 270 days (or 270 days plus the number of days an accompanying ordinary is extended) or upon replacement by an ordinary regulation, whichever occurs first. This index reflects the KRS Chapter 13A-established expiration dates; however, expiration dates may be impacted by KRS Chapter 39A, as amended by [Senate Bill 1](#) during the 2021 Regular Session, and by KRS Chapters 13A and 214, as amended by [Senate Bill 2](#) during the 2021 Regular Session.

009 KAR 001:040E	47 Ky.R. 8	6-9-2020	702 KAR 003:270E	47 Ky.R. 254	7-14-2020
Replaced	91	1-5-2021	702 KAR 007:125E	47 Ky.R. 258	7-14-2020
010 KAR 001:011E	46 Ky.R. 2863	4-22-2020	702 KAR 007:140E	47 Ky.R. 505	8-12-2020
Replaced	47 Ky.R. 517	12-1-2020	787 KAR 001:350E	46 Ky.R. 2867	5-1-2020
030 KAR 008:005E	46 Ky.R. 2206	1-3-2020	Withdrawn		7-22-2020
Replaced	47 Ky.R. 35	8-20-2020	800 KAR 001:010E	46 Ky.R. 2872	5-12-2020
031 KAR 004:190E	46 Ky.R. 2865	5-5-2020	Expired		2-6-2021
Withdrawn		6-22-2020	802 KAR 001:010E	47 Ky.R. 684	9-2-2020
031 KAR 004:191E	47 Ky.R. ***	6-22-2020	802 KAR 002:010E	47 Ky.R. 687	9-2-2020
Withdrawn		7-13-2020	802 KAR 003:010E	47 Ky.R. 691	9-2-2020
031 KAR 004:192E	47 Ky.R. 678	8-28-2020	803 KAR 002:320E	47 Ky.R. 1527	1-13-2021
Withdrawn		10-2-2020	803 KAR 025:089E	47 Ky.R. 264	7-1-2020
031 KAR 004:193E	47 Ky.R. 893	10-2-2020	810 KAR 002:090E	46 Ky.R. 2779	3-20-2020
Withdrawn		11-2-2020	Replaced	47 Ky.R. 319	8-25-2020
031 KAR 004:194E	47 Ky.R. 1180	11-2-2020	820 KAR 001:050E	47 Ky.R. 10	5-22-2020
Withdrawn		1-15-2021	895 KAR 001:002E	46 Ky.R. 2211	12-27-2019
101 KAR 002:095E	47 Ky.R. 172	1-29-2021	Expired		9-22-2020
101 KAR 002:120E	46 Ky.R. 1771	10-22-2019	900 KAR 006:075E	46 Ky.R. 2213	1-2-2020
Replaced	2686	6-2-2020	Replaced	2332	7-29-2020
101 KAR 002:210E	47 Ky.R. 682	9-15-2020	902 KAR 002:020E	47 Ky.R. 12	6-15-2020
101 KAR 006:010E	47 Ky.R. 246	7-15-2020	Replaced	1039	12-15-2020
105 KAR 001:149E	46 Ky.R. 1775	11-15-2019	902 KAR 002:190E	47 Ky.R. 266	7-10-2020
Replaced	2391	6-2-2020	Withdrawn		8-10-2020
200 KAR 002:006	47 Ky.R. 1730	1-29-2021	902 KAR 002:210E	47 Ky.R. 508	8-10-2020
201 KAR 002:410E	47 Ky.R. 1343	11-23-2020	Withdrawn		1-5-2021
200 KAR 008:505E	47 Ky.R. 1735	1-27-2021	902 KAR 002:211E	47 Ky.R. 1533	1-5-2021
201 KAR 020:225E	46 Ky.R. 2769	3-31-2020	902 KAR 002:220E	47 Ky.R. 693	9-14-2020
Withdrawn		8-31-2020	Replaced	878	2-4-2021
201 KAR 020:470E	46 Ky.R. 2771	3-31-2020	902 KAR 004:140E	47 Ky.R. 21	5-19-2020
Withdrawn		8-31-2020	Expired		2-13-2021
201 KAR 032:110E	46 Ky.R. 2776	3-30-2020	902 KAR 008:160E	47 Ky.R. 268	7-10-2020
Replaced	707	10-28-2020	Replaced	421	2-4-2021
301 KAR 002:221E	47 Ky.R. 1184	10-30-2020	902 KAR 008:170E	47 Ky.R. 272	7-10-2020
501 KAR 001:040E	46 Ky.R. 1780	10-21-2019	Replaced	1394	2-4-2021
Replaced	2663	8-4-2020	902 KAR 020:160E	47 Ky.R. 897	10-13-2020
501 KAR 001:071E	46 Ky.R. 1786	10-21-2019	902 KAR 020:440E	47 Ky.R. 908	10-13-2020
Expired		7-17-2020	902 KAR 030:010E	46 Ky.R. 2780	3-23-2020
501 KAR 006:080E	47 Ky.R. 1186	11-2-2020	Expired		12-16-2020
601 KAR 002:232E	47 Ky.R. 247	6-30-2020	907 KAR 001:604E	46 Ky.R. 2593	3-13-2020
702 KAR 001:190E	47 Ky.R. 503	8-12-2020	Withdrawn		11-19-2020
			907 KAR 003:300E	46 Ky.R. 2782	3-19-2020
			Replaced	47 Ky.R. 546	12-1-2020
			907 KAR 010:840E	46 Ky.R. 1787	10-30-2019
			Replaced	2456	6-2-2020
			907 KAR 015:070E	47 Ky.R. 915	10-13-2020
			907 KAR 015:080E	47 Ky.R. 922	10-13-2020
			921 KAR 002:015E	46 Ky.R. 2216	12-27-2019
			Replaced	47 Ky.R. 84	7-29-2020
			921 KAR 003:025E	46 Ky.R. 2784	4-15-2020
			Replaced	47 Ky.R. 977	10-12-2020
			Resubmitted	1535	1-15-2021
			921 KAR 003:035E	47 Ky.R. 510	7-29-2020
			Withdrawn		2-1-2021
			921 KAR 004:116E	47 Ky.R. 22	5-28-2020
			Replaced	215	10-22-2020
			922 KAR 001:450E	47 Ky.R. 279	7-10-2020
			Replaced	466	2-4-2021
			922 KAR 001:490E	47 Ky.R. 1737	2-8-2021
			922 KAR 001:520E	47 Ky.R. 281	7-1-2020
			Replaced	468	2-4-2021
			922 KAR 001:490E	46 Ky.R. 2875	5-12-2020
			922 KAR 002:400E	47 Ky.R. 27	6-8-2020
			Withdrawn		9-1-2020
			922 KAR 002:405E	47 Ky.R. 695	9-1-2020

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	Ky.R. Page No.	Effective Date	Regulation Number	Ky.R. Page No.	Effective Date
Withdrawn		12-10-2020	Amended	47 Ky.R. 745	
922 KAR 002:410E	47 Ky.R. 1345	12-10-2020	As Amended	1353	2-9-2021
922 KAR 006:010E	47 Ky.R. 30	5-21-2020	012 KAR 005:050		
Replaced	219	10-28-2020	Amended	47 Ky.R. 747	
-----			As Amended	1355	2-9-2021
ORDINARY ADMINISTRATIVE REGULATIONS			012 KAR 005:060		
009 KAR 001:010			Amended	47 Ky.R. 749	
Amended	47 Ky.R. 90	1-5-2021	As Amended	1356	2-9-2021
009 KAR 001:040			012 KAR 005:070		
Amended	47 Ky.R. 91	1-5-2021	Amended	47 Ky.R. 750	
010 KAR 001:011	46 Ky.R. 3059		As Amended	1356	2-9-2021
As Amended	47 Ky.R. 514		013 KAR 001:020		
012 KAR 001:116			Amended	47 Ky.R. 1797	
Amended	47 Ky.R. 94	11-18-2020	013 KAR 001:050		
012 KAR 001:120			Amended	46 Ky.R. 2977	
Amended	47 Ky.R. 95		As Amended	47 Ky.R. 515	12-1-2020
As Amended	700	11-18-2020	013 KAR 004:010		
012 KAR 001:125			Amended	46 Ky.R. 1913	
Amended	47 Ky.R. 96		Am Comments	2458	
As Amended	700	11-18-2020	As Amended	2597	6-30-2020
012 KAR 001:130			Amended	47 Ky.R. 1805	
Amended	47 Ky.R. 97		016 KAR 003:090		
As Amended	700	11-18-2020	Amended	47 Ky.R. 355	
012 KAR 001:140			As Amended	937	2-2-2021
Amended	47 Ky.R. 98		016 KAR 005:020		
As Amended	701	11-18-2020	Amended	46 Ky.R. 2487	
012 KAR 001:155			As Amended	2880	9-1-2020
Amended	47 Ky.R. 100		016 KAR 009:010		
As Amended	701	11-18-2020	Amended	47 Ky.R. 359	
012 KAR 001:160			As Amended	940	2-2-2021
Amended	47 Ky.R. 102		016 KAR 009:060		
As Amended	702	11-18-2020	Amended	46 Ky.R. 2100	
012 KAR 001:170			As Amended	2598	6-30-2020
Amended	47 Ky.R. 103		016 KAR 009:071 (r)	46 Ky.R. 2160	6-30-2020
As Amended	702	11-18-2020	017 KAR 001:030	46 Ky.R. 3061	
012 KAR 001:175			As Amended	47 Ky.R. 521	11-19-2020
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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.

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	902 KAR 010:110		900 KAR 006:065
	902 KAR 010:140		900 KAR 006:090
	902 KAR 010:150	216B.065	900 KAR 006:110
	902 KAR 010:160	216B.066	900 KAR 006:110
	902 KAR 010:170	216B.085	900 KAR 006:065
211.972	902 KAR 010:160	216B.095	900 KAR 006:060
	902 KAR 010:170		900 KAR 006:065
211.974	902 KAR 010:150		900 KAR 006:090
	902 KAR 010:160	216B.105	803 KAR 025:091
	902 KAR 010:170		902 KAR 020:160
211.976	902 KAR 010:110		902 KAR 020:440
	902 KAR 010:150	216B.332	900 KAR 006:115
	902 KAR 010:160	216B.400	201 KAR 020:411
211.981	902 KAR 010:150		802 KAR 003:010
	902 KAR 010:160	216B.990	900 KAR 006:080
	902 KAR 010:170		900 KAR 006:090
211.990	902 KAR 010:010		900 KAR 006:095
	902 KAR 010:110		900 KAR 006:105
	902 KAR 010:140		900 KAR 006:110
	902 KAR 100:012		900 KAR 006:115
211.995	902 KAR 010:170		902 KAR 020:160
212.025	902 KAR 008:170	217	922 KAR 002:120
212.120	902 KAR 008:170	217.005-217.205	902 KAR 045:160
212.230	902 KAR 008:160	217.005-217.215	902 KAR 050:032
212.240	902 KAR 008:160	217.015	201 KAR 002:225
212.245	902 KAR 008:160		201 KAR 005:140
	902 KAR 008:170		902 KAR 045:110
212.890	902 KAR 008:160		902 KAR 045:180
	902 KAR 008:170		902 KAR 045:190
213.046	201 KAR 020:660		902 KAR 050:010
213.056	922 KAR 001:540		902 KAR 050:031
213.101	901 KAR 005:120	217.025	902 KAR 045:110
213.106	901 KAR 005:120		902 KAR 045:180
214.010	902 KAR 002:020		902 KAR 045:190
	902 KAR 002:211E		902 KAR 050:010

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	902 KAR 050:033		401 KAR 061:036
	902 KAR 050:090		401 KAR 063:002
217.035	902 KAR 045:110	224.20-100	401 KAR 060:005
	902 KAR 045:180		401 KAR 061:036
	902 KAR 045:190		401 KAR 063:002
	902 KAR 050:010	224.20-110	401 KAR 060:005
	902 KAR 050:080		401 KAR 061:036
217.037	902 KAR 045:110		401 KAR 063:002
	902 KAR 045:180	224.20-120	401 KAR 060:005
	902 KAR 045:190		401 KAR 061:036
	902 KAR 050:080		401 KAR 063:002
217.045	902 KAR 050:033	224.50-868	103 KAR 001:160
217.085	902 KAR 045:110	224.60-145	103 KAR 001:160
	902 KAR 045:180	224A.011	200 KAR 017:100
217.095	902 KAR 045:110	224A.112	200 KAR 017:100
	902 KAR 045:180	224A.11121	200 KAR 017:100
217.125	902 KAR 045:110	227.450	815 KAR 035:015
217.155	902 KAR 045:110	227.480	815 KAR 035:015
	902 KAR 045:180	227.489	815 KAR 035:015
	902 KAR 045:190	227.491	815 KAR 035:015
217.182	201 KAR 005:140	227.492	815 KAR 035:015
217.215	902 KAR 045:160	227.495	815 KAR 035:015
217.290-217.390	902 KAR 045:160	230	810 KAR 001:001
217.811	902 KAR 045:110	230.215	810 KAR 002:020
217.990-217.992	902 KAR 045:160		810 KAR 003:020
217B	302 KAR 050:021		810 KAR 004:010
	302 KAR 050:045		810 KAR 004:030
	302 KAR 050:056		810 KAR 008:060
217C	902 KAR 050:120		811 KAR 001:005
217C.010-217C.990	902 KAR 050:032		811 KAR 001:125
	902 KAR 050:033		811 KAR 002:010
	902 KAR 050:040	230.225	811 KAR 002:120
217C.010	902 KAR 050:031	230.240	810 KAR 002:020
	902 KAR 050:050		810 KAR 004:030
217C.020	902 KAR 050:031		810 KAR 008:060
217C.030	902 KAR 050:010	230.260	810 KAR 002:260
	902 KAR 050:080		810 KAR 003:020
217C.050	902 KAR 050:071		810 KAR 004:030
217C.060	902 KAR 050:031		810 KAR 008:060
	902 KAR 050:071	230.265	810 KAR 008:060
	902 KAR 050:080	230.280	810 KAR 003:020
	902 KAR 050:090	230.290	810 KAR 003:020
217C.070	902 KAR 050:050		810 KAR 004:030
217C.100	902 KAR 050:031		810 KAR 008:060
	902 KAR 050:090	230.300	810 KAR 001:011
217C.990	902 KAR 050:031		810 KAR 001:120
	902 KAR 050:050		810 KAR 003:020
	902 KAR 050:080		811 KAR 001:125
218A.010	201 KAR 020:065		811 KAR 001:250
218A.170	201 KAR 020:065		811 KAR 002:060
218A.172	201 KAR 009:260		811 KAR 002:160
218A.202	201 KAR 009:230	230.310	810 KAR 003:020
	902 KAR 020:160		810 KAR 004:030
218A.205	201 KAR 009:081	230.320	810 KAR 003:020
	201 KAR 009:200		810 KAR 004:030
	201 KAR 009:210		810 KAR 008:060
	201 KAR 009:240	230.330	810 KAR 003:020
	201 KAR 009:260		811 KAR 002:120
	201 KAR 009:360	230.361	810 KAR 001:011
	201 KAR 020:161		810 KAR 001:120
	201 KAR 025:011		811 KAR 001:005
	201 KAR 025:021		811 KAR 001:125
	201 KAR 025:031		811 KAR 001:250
222.005	908 KAR 001:400		811 KAR 002:010
222.211	908 KAR 001:381		811 KAR 002:060
222.221	908 KAR 001:400		811 KAR 002:160
223.010	902 KAR 010:030	230.3615	810 KAR 001:011
223.020	902 KAR 010:030		810 KAR 001:120
223.030	902 KAR 010:030		811 KAR 001:125
	902 KAR 010:036		811 KAR 002:060
223.060	902 KAR 010:030	230.370	810 KAR 001:011
223.080	902 KAR 010:030		810 KAR 001:120
223.990	902 KAR 010:030		811 KAR 001:125
224.10-100	401 KAR 060:005		811 KAR 001:250

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	811 KAR 002:060	257.080	302 KAR 022:150
	811 KAR 002:160	257.990	302 KAR 022:150
230.398	810 KAR 001:011	258.005	902 KAR 008:160
	810 KAR 001:120	258.065	902 KAR 002:020
	811 KAR 001:125	258.990	902 KAR 002:020
	811 KAR 001:250	260	302 KAR 050:013
	811 KAR 002:060		302 KAR 060:010
	811 KAR 002:160	260.775-260.845	012 KAR 005:010
230.750	810 KAR 001:011		012 KAR 005:020
	810 KAR 001:120		012 KAR 005:030
	811 KAR 001:125		012 KAR 005:040
	811 KAR 001:250		012 KAR 005:050
	811 KAR 002:060		012 KAR 005:060
	811 KAR 002:160		012 KAR 005:070
230.804	811 KAR 002:120	260.813	902 KAR 050:050
234.320	103 KAR 001:160	260.850-260.869	302 KAR 050:021
238.545	820 KAR 001:050		302 KAR 050:031
238.550	820 KAR 001:050		302 KAR 050:045
243.027	804 KAR 004:415		302 KAR 050:056
243.028	804 KAR 004:415		302 KAR 050:080
243.029	804 KAR 004:415	260.992	012 KAR 005:010
243.030	804 KAR 004:415		012 KAR 005:020
244.050	804 KAR 004:415		012 KAR 005:030
244.440	804 KAR 004:415		012 KAR 005:040
244.585	804 KAR 004:415		012 KAR 005:050
246	302 KAR 004:010		012 KAR 005:060
246.030	302 KAR 022:150		012 KAR 005:070
247.4453	902 KAR 050:010	273.401	739 KAR 002:050
247.453	902 KAR 050:010	273.405-273.453	922 KAR 006:010
250.021	012 KAR 001:116	278	807 KAR 005:056
	012 KAR 001:140	281.010	601 KAR 001:113
	012 KAR 001:155	281.600	601 KAR 001:113
250.031	012 KAR 001:116	281.630	601 KAR 001:113
	012 KAR 001:140	281.6301	601 KAR 001:113
250.041	012 KAR 001:116	281.631	601 KAR 001:113
	012 KAR 001:140	281.640	601 KAR 001:113
250.051	012 KAR 001:116	281.650	601 KAR 001:113
	012 KAR 001:140	281.655	601 KAR 001:113
250.061	012 KAR 001:116	281.656	601 KAR 001:113
	012 KAR 001:140	281.990	601 KAR 001:113
250.071	012 KAR 001:116	281A.170-281A.175	702 KAR 005:080
	012 KAR 001:140	286.3-030	806 KAR 009:190
250.081	012 KAR 001:116	304.1-010	806 KAR 012:010
	012 KAR 001:120		806 KAR 012:020
	012 KAR 001:125		806 KAR 013:020
	012 KAR 001:130		806 KAR 014:007
	012 KAR 001:140	304.1-040	806 KAR 012:120
	012 KAR 001:160		806 KAR 012:180
	012 KAR 001:170	304.1-050	806 KAR 003:170
	012 KAR 001:175		806 KAR 009:360
250.091	012 KAR 001:116		806 KAR 012:020
	012 KAR 001:140		806 KAR 014:007
250.101	012 KAR 001:116		806 KAR 046:040
	012 KAR 001:140	304.1-070	806 KAR 010:030
250.111	012 KAR 001:116	304.2-065	806 KAR 003:170
	012 KAR 001:140	304.2-205	806 KAR 007:035
	012 KAR 001:155	304.2-140	806 KAR 047:010
250.366	012 KAR 004:075	304.2-150	806 KAR 038:100
	012 KAR 004:080	304.2-160	806 KAR 002:060
	012 KAR 004:091	304.2-210-304.2-290	806 KAR 003:170
	012 KAR 004:100	304.2-250	806 KAR 038:100
	012 KAR 004:130	304.2-260	806 KAR 038:100
	012 KAR 004:170	304.2-270	806 KAR 038:100
250.371-250.451	012 KAR 004:080	304.2-290	806 KAR 006:010
	012 KAR 004:091	304.2-310	806 KAR 009:360
250.371-250.461	012 KAR 004:075		806 KAR 012:020
250.391	012 KAR 004:130	304.3-050	806 KAR 014:110
250.396	012 KAR 004:130	304.3-070	601 KAR 001:113
	012 KAR 004:140	304.3-120	806 KAR 003:170
250.401	012 KAR 004:130	304.3-125	806 KAR 003:170
250.406	012 KAR 004:110	304.3-240	806 KAR 003:170
250.411	012 KAR 004:170		806 KAR 006:100
257.020	302 KAR 022:150		806 KAR 012:010
257.030	302 KAR 022:150	304.3-241	806 KAR 003:170

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304.4-010	806 KAR 002:095	304.12-080	806 KAR 014:090
	806 KAR 009:025		806 KAR 014:110
	806 KAR 009:370	304.12-110	806 KAR 012:020
	806 KAR 014:005		806 KAR 014:110
	806 KAR 014:007	304.12-120	806 KAR 012:010
304.5-020	806 KAR 012:180	304.12-130	806 KAR 012:010
304.5-030	806 KAR 012:120		806 KAR 012:020
	806 KAR 012:180	304.12-230	803 KAR 025:240
304.6-070	806 KAR 006:080		806 KAR 012:150
	806 KAR 006:100		806 KAR 012:170
304.6-120	806 KAR 015:060	304.12-240	806 KAR 009:370
304.6-130-304.6-180	806 KAR 006:010	304.13-010	806 KAR 014:110
304.6-140	806 KAR 015:060	304.13-051	806 KAR 013:020
304.6-145	806 KAR 015:060		806 KAR 014:090
304.6-150	806 KAR 006:100	304.13-100	806 KAR 013:020
	806 KAR 015:060	304.13-390	806 KAR 014:110
304.6-155	806 KAR 006:100	304.14-120	806 KAR 012:020
304.6-171	806 KAR 006:100		806 KAR 014:005
304.6-180	806 KAR 006:100		806 KAR 014:007
304.7-360	806 KAR 007:090		806 KAR 014:090
304.7-361	806 KAR 007:035		806 KAR 014:110
304.8-030	806 KAR 039:050		806 KAR 015:050
304.8-040	806 KAR 008:010		806 KAR 015:060
304.8-120	806 KAR 008:010		806 KAR 015:070
304.9-020	806 KAR 009:030	304.14-130	806 KAR 014:121
	806 KAR 009:370	304.14-180	806 KAR 012:020
	806 KAR 012:120	304.14-190	806 KAR 014:005
	806 KAR 012:180		806 KAR 014:007
304.9-040	806 KAR 012:120	304.14-420	806 KAR 014:121
304.9-053	806 KAR 009:360	304.14-450	806 KAR 014:121
304.9-054	806 KAR 009:360		806 KAR 015:050
304.9-105	806 KAR 009:025	304.14-642	806 KAR 009:025
304.9-130	806 KAR 009:025	304.15-020	806 KAR 014:005
304.9-133	806 KAR 009:360		806 KAR 015:050
304.9-135	806 KAR 009:190	304.15-035	806 KAR 015:050
304.9-150	806 KAR 009:025	304.15-040	806 KAR 015:060
304.9-160	806 KAR 009:025	304.15-300	806 KAR 015:060
304.9-230	806 KAR 009:025	304.15-310	806 KAR 012:180
	806 KAR 009:370		806 KAR 015:060
304.9-260	806 KAR 009:025	304.15-340	806 KAR 015:060
	806 KAR 009:370	304.15-342	806 KAR 015:060
304.9-270	806 KAR 009:025	304.15-365	806 KAR 015:070
304.9-295	806 KAR 009:025	304.15-700	806 KAR 014:005
304.9-320	806 KAR 009:025		806 KAR 015:050
304.9-390	806 KAR 012:120	304.15-725	806 KAR 015:050
304.9-430	806 KAR 009:025	304.17-380	806 KAR 014:007
	806 KAR 009:030	304.17A-005	806 KAR 014:007
304.9-440	806 KAR 012:020	304.17A-095	806 KAR 014:007
304.9-432	806 KAR 009:030	304.17A-096	806 KAR 014:007
304.9-440	806 KAR 009:030	304.17A-165	806 KAR 009:360
304.10-010	601 KAR 001:113	304.17A-607	806 KAR 009:360
304.10-030	806 KAR 010:030	304.17A-820	806 KAR 003:170
304.10-040	806 KAR 009:360	304.17C-010	806 KAR 014:007
	806 KAR 010:030	304.19-020	806 KAR 019:060
304.10-050	806 KAR 010:030	304.19-080	806 KAR 019:050
304.10-070	601 KAR 001:113		806 KAR 019:060
304.10-170	806 KAR 010:030	304.19-120	806 KAR 019:050
304.10-180	806 KAR 010:030	304.20-020	601 KAR 001:113
304.12-010	806 KAR 012:010	304.24-250	806 KAR 014:110
	806 KAR 012:020	304.24-310	806 KAR 014:110
	806 KAR 012:120	304.24-320	806 KAR 014:110
	806 KAR 012:150	304.24-330	806 KAR 014:110
	806 KAR 012:170	304.30-030	806 KAR 030:010
	806 KAR 012:180	304.30-060	806 KAR 030:070
	806 KAR 014:110	304.32-140	806 KAR 038:100
304.12-020	806 KAR 012:010	304.32-210	806 KAR 003:170
	806 KAR 012:020	304.35-040	806 KAR 003:170
	806 KAR 012:150	304.36-140	806 KAR 003:170
	806 KAR 012:170	304.37-010	806 KAR 003:170
	806 KAR 015:050	304.37-020	806 KAR 003:170
304.12-030	806 KAR 012:120	304.38-070	806 KAR 038:100
	806 KAR 012:180	304.38A-080	806 KAR 038:100
304.12-040	806 KAR 012:020	304.38A-110	806 KAR 038:100

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	806 KAR 039:050		201 KAR 009:230
304.39-040	601 KAR 001:113		201 KAR 009:240
304.39-080	806 KAR 039:050		901 KAR 005:120
304.39-170	806 KAR 039:050	311.597	201 KAR 009:016
304.39-290	806 KAR 039:050		201 KAR 009:230
304.39-320	601 KAR 001:113	311.601	201 KAR 009:360
304.40-075	806 KAR 040:020	311.646	922 KAR 002:120
304.42-150	806 KAR 003:170	311.720	901 KAR 005:120
304.45-030	806 KAR 003:170		902 KAR 004:110
304.45-040	806 KAR 003:170	311.725	902 KAR 004:110
304.47-010	806 KAR 047:010	311.774	901 KAR 005:120
304.47-020	806 KAR 047:010	311.781	901 KAR 005:120
304.47-040	806 KAR 047:010	311.782	901 KAR 005:120
304.47-050	806 KAR 047:010	311.783	901 KAR 005:120
304.47-055	806 KAR 047:010	311.840	907 KAR 003:010
304.47-080	806 KAR 047:010	311.840-311.862	201 KAR 009:081
304.48-020	806 KAR 046:040		201 KAR 009:260
304.48-050	806 KAR 046:040		902 KAR 020:160
304.48-070	806 KAR 046:040	311.842	201 KAR 009:016
304.48-110	806 KAR 003:170		201 KAR 009:200
304.48-170	806 KAR 046:040		201 KAR 009:230
304.48-230	806 KAR 046:040		201 KAR 009:360
304.49	806 KAR 049:020	311.844	201 KAR 009:360
	806 KAR 049:030	311.850	201 KAR 009:016
304.49-070	806 KAR 003:170		201 KAR 009:200
304.49-080	806 KAR 003:170		201 KAR 009:210
304.49-090	806 KAR 003:170		201 KAR 009:230
304.50	806 KAR 052:010		201 KAR 009:360
304.50-060	806 KAR 003:170	311.852	201 KAR 009:230
304.50-075	806 KAR 003:170		201 KAR 009:240
304.99-020	806 KAR 012:120		201 KAR 009:360
	806 KAR 015:050	311.990	201 KAR 009:081
304.99-085	806 KAR 010:030		201 KAR 009:260
309.080	902 KAR 020:160	312.015	201 KAR 021:001
	902 KAR 020:440	312.019	201 KAR 021:015
309.0831	902 KAR 020:160		201 KAR 021:025
	902 KAR 020:440		201 KAR 021:045
	907 KAR 015:080		201 KAR 021:055
309.085	201 KAR 035:040		201 KAR 021:061
309.130	902 KAR 020:160		201 KAR 021:065
	902 KAR 020:440		201 KAR 021:085
309.130-1399	922 KAR 001:580	312.021	201 KAR 021:045
309.337	201 KAR 045:130		201 KAR 021:065
309.339	201 KAR 045:130	312.055	201 KAR 021:025
310.021	902 KAR 020:160	312.085	201 KAR 021:041
311.571	902 KAR 020:440		201 KAR 021:042
311.840-311.862	902 KAR 020:440		201 KAR 021:055
	907 KAR 003:005		201 KAR 021:085
311.282	902 KAR 002:020	312.095	201 KAR 021:041
311.420	201 KAR 025:011		201 KAR 021:042
311.450	201 KAR 025:021	312.145	201 KAR 021:041
	201 KAR 025:031		201 KAR 021:042
311.480	201 KAR 025:011	312.150	201 KAR 021:051
	201 KAR 025:021		201 KAR 021:052
311.530-311.620	201 KAR 009:081		201 KAR 021:053
	201 KAR 009:260	312.160	201 KAR 021:051
311.550	201 KAR 009:016	312.163	201 KAR 021:051
311.560	902 KAR 020:160		201 KAR 021:053
311.565	201 KAR 009:200	312.175	201 KAR 021:041
	201 KAR 009:210		201 KAR 021:042
	201 KAR 009:230		201 KAR 021:095
	201 KAR 009:240	312.200	201 KAR 021:075
	201 KAR 009:360		201 KAR 021:095
311.571	201 KAR 009:200	312.991	201 KAR 021:065
	201 KAR 009:210	312.200	201 KAR 021:001
	902 KAR 002:020	313.060	201 KAR 008:505E
	902 KAR 020:160	314.011	201 KAR 020:065
311.591	201 KAR 009:240		201 KAR 020:161
311.592	201 KAR 009:230		201 KAR 020:320
	201 KAR 009:240		201 KAR 020:411
311.593	201 KAR 009:240		201 KAR 020:390
311.595	201 KAR 009:016		902 KAR 020:160
	201 KAR 009:200		907 KAR 003:005

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	922 KAR 002:120		201 KAR 014:100
314.021	201 KAR 020:320		201 KAR 014:105
314.025	201 KAR 020:390		201 KAR 014:130
314.026	201 KAR 020:390		201 KAR 014:135
314.027	201 KAR 020:390		201 KAR 014:140
314.031	201 KAR 020:161	317.450	201 KAR 014:035
314.041	201 KAR 020:085		201 KAR 014:070
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	201 KAR 020:370		201 KAR 014:105
314.042	201 KAR 020:065		201 KAR 014:135
	201 KAR 020:370		201 KAR 014:140
	902 KAR 020:160	317.540	201 KAR 014:135
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314.051	201 KAR 020:085	318	922 KAR 002:120
	201 KAR 020:370	318.090	815 KAR 020:150
314.071	201 KAR 020:085	318.130	815 KAR 020:150
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314.073	201 KAR 020:085	318.140	815 KAR 020:150
314.091	201 KAR 020:161	318.160	815 KAR 020:150
	201 KAR 020:370	318.170	815 KAR 020:150
314.103	201 KAR 020:370	319	922 KAR 001:580
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314.107	201 KAR 020:161		902 KAR 020:440
314.111	201 KAR 020:320	319.056	902 KAR 020:160
314.131	201 KAR 020:320		902 KAR 020:440
314.142	201 KAR 020:411	319.064	902 KAR 020:160
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314.475	201 KAR 020:161	319C.010	902 KAR 020:160
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314.991	201 KAR 020:161		902 KAR 020:160
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315.035	201 KAR 002:106	323.080	201 KAR 019:255
	201 KAR 002:225	323.090	201 KAR 019:230
	201 KAR 002:240	323.095	201 KAR 019:260
315.036	201 KAR 002:106		201 KAR 019:265
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315.050	201 KAR 002:410E	323.110	201 KAR 019:255
315.065	201 KAR 002:410E	323.120	201 KAR 019:260
315.135	201 KAR 002:410E	323.210	201 KAR 019:230
315.191	201 KAR 002:225		201 KAR 019:235
	201 KAR 002:311		201 KAR 019:245
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315.205	201 KAR 002:410E	323.230	201 KAR 019:275
315.500	201 KAR 002:410E	323.400-323.416	201 KAR 019:440
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315.342	201 KAR 002:106	323.400	201 KAR 019:415
315.350	201 KAR 002:105		201 KAR 019:420
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315.351	201 KAR 002:106		201 KAR 019:430
315.400	201 KAR 002:320		201 KAR 019:435
315.402	201 KAR 002:105	323.402	201 KAR 019:430
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315.404	201 KAR 002:320	323.406	201 KAR 019:410
315.406	201 KAR 002:105		201 KAR 019:420
315.4102	201 KAR 002:106		201 KAR 019:435
317.400	201 KAR 014:035		201 KAR 019:450
317.410	201 KAR 014:035	323.408	201 KAR 019:410
	201 KAR 014:100		201 KAR 019:415
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317.440	201 KAR 014:035		201 KAR 019:450

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	201 KAR 019:410		803 KAR 002:405
	201 KAR 019:415		803 KAR 002:410
	201 KAR 019:420		803 KAR 002:414
	201 KAR 019:425		803 KAR 002:415
	201 KAR 019:430		803 KAR 002:416
323.412	201 KAR 019:455		803 KAR 002:420
323.414	201 KAR 019:450		803 KAR 002:424
323.416	201 KAR 019:435		803 KAR 002:600
324A.010	201 KAR 030:190	338.061	803 KAR 002:019
324A.030	201 KAR 030:190		803 KAR 002:309
324A.035	201 KAR 030:040		803 KAR 002:401
	201 KAR 030:190		803 KAR 002:405
324A.040	201 KAR 030:190		803 KAR 002:410
324A.045	201 KAR 030:190		803 KAR 002:414
324A.047	201 KAR 030:190		803 KAR 002:415
324A.050	201 KAR 030:040		803 KAR 002:416
324A.052	201 KAR 030:190		803 KAR 002:420
324A.065	201 KAR 030:190		803 KAR 002:424
324A.075	201 KAR 030:190		803 KAR 002:600
324.330	201 KAR 001:100	338.121	803 KAR 002:090
327.010	907 KAR 001:604		803 KAR 002:240
327.300	201 KAR 022:170	338.131	803 KAR 002:100
333.020	902 KAR 002:020	338.141	803 KAR 002:115
333.130	902 KAR 002:020	338.991	803 KAR 002:080
	902 KAR 002:190E		803 KAR 002:115
	902 KAR 002:211E	342	803 KAR 025:092
334A.020	907 KAR 001:604		803 KAR 025:300
335	922 KAR 001:580	342.0011	803 KAR 025:089
335.010	201 KAR 023:070		803 KAR 025:175
335.030	201 KAR 023:150		803 KAR 025:185
335.070	201 KAR 023:150	342.019	803 KAR 025:089
335.080	201 KAR 023:070	342.020	803 KAR 025:089
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335.100	201 KAR 023:070		803 KAR 025:091
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	902 KAR 020:440	342.039	803 KAR 025:170
335.300	201 KAR 032:035	342.260	803 KAR 025:185
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	902 KAR 020:160	342.315	803 KAR 025:091
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335.305	201 KAR 032:110		803 KAR 025:185
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335.320	201 KAR 032:035		302 KAR 079:012
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335.325	201 KAR 032:110	365.390	103 KAR 001:160
335.330	201 KAR 032:030	369.101-369.120	907 KAR 003:005
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335.332	201 KAR 032:035	387.010	910 KAR 002:060
335.340	201 KAR 032:030	387.510	910 KAR 002:060
	201 KAR 032:060	387.760	910 KAR 002:060
335.342	201 KAR 032:030	400.203	907 KAR 003:005
335.380	201 KAR 032:110		907 KAR 003:010
335.399	201 KAR 032:110	403.707	201 KAR 020:411
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335.625	201 KAR 038:070	415.184	907 KAR 003:005
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335.650	201 KAR 038:070	424.110-424.150	902 KAR 008:170
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	803 KAR 002:413		907 KAR 003:010
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	803 KAR 002:320		501 KAR 006:080
	803 KAR 002:417		501 KAR 006:120
338.021	803 KAR 002:050	439.3401	902 KAR 020:440
338.031	803 KAR 002:320	440.40	907 KAR 003:005
338.051	803 KAR 002:010	440.50	907 KAR 003:005
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441.250-441.259	907 KAR 003:005		803 KAR 002:320
446.010	103 KAR 001:160		803 KAR 002:401
447.10	907 KAR 003:010		803 KAR 002:405
447.200-447.205	907 KAR 003:010		803 KAR 002:408
447.26	907 KAR 003:005		803 KAR 002:409
447.325	907 KAR 003:010		803 KAR 002:410
455.410	907 KAR 003:005		803 KAR 002:413
503.110	922 KAR 001:330		803 KAR 002:414
508.125	922 KAR 001:330		803 KAR 002:415
523.100	902 KAR 100:012		803 KAR 002:416
527.070	922 KAR 002:120		803 KAR 002:417
529.010	922 KAR 001:330		803 KAR 002:420
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600.020	922 KAR 001:330		302 KAR 079:012
	922 KAR 001:490		401 KAR 060:005
	922 KAR 001:520		401 KAR 061:036
605.090	922 KAR 001:330	42 C.F.R.	401 KAR 063:002
	922 KAR 001:490		900 KAR 006:115
605.120	922 KAR 001:490		902 KAR 020:160
	922 KAR 001:520		902 KAR 020:440
605.130	922 KAR 001:330		907 KAR 001:604
	922 KAR 001:490		907 KAR 003:005
605.150	922 KAR 001:330		907 KAR 003:010
610.010	922 KAR 001:330		907 KAR 007:020
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	922 KAR 001:500		902 KAR 020:160
	922 KAR 001:520		902 KAR 020:440
	922 KAR 001:580		907 KAR 003:005
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620.140	922 KAR 001:500		922 KAR 006:010
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7 C.F.R.	902 KAR 050:010		302 KAR 050:056
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	902 KAR 050:050		921 KAR 003:020
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	921 KAR 003:020		921 KAR 003:030
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	806 KAR 012:180		806 KAR 012:180
16 C.F.R.	302 KAR 079:011	15 U.S.C.	811 KAR 002:120
	302 KAR 079:012	18 U.S.C.	601 KAR 002:232
	922 KAR 002:120		806 KAR 003:170
21 C.F.R.	302 KAR 060:010	20 U.S.C.	013 KAR 001:020
	902 KAR 045:160		702 KAR 007:065
	902 KAR 050:010		703 KAR 005:270
	902 KAR 050:080		703 KAR 005:280
22 C.F.R.	922 KAR 001:540		902 KAR 020:160
29 C.F.R.	803 KAR 002:021		921 KAR 003:025
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26 U.S.C.	101 KAR 002:095 105 KAR 001:149 806 KAR 012:120 806 KAR 012:150 806 KAR 012:180		
29 U.S.C.	806 KAR 012:120 806 KAR 012:150 806 KAR 012:180 902 KAR 020:160 921 KAR 003:020		
31 U.S.C.	045 KAR 001:050		
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45 U.S.C.	921 KAR 003:010		
52 U.S.C.	921 KAR 003:030		
45.237 - 45.241	922 KAR 001:565		
45A	601 KAR 002:030E 702 KAR 003:130		
44 C.F.R.	201 KAR 011:121		
31 U.S.C.	045 KAR 001:050		
Pub.L. 104-191	902 KAR 030:010E 920 KAR 001:070		
EO 2020-253	800 KAR 001:010		

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" or "eff." means that an administrative regulation has completed the legislative review process established by KRS 13A.290, 13A.330, and 13A.331.

Regulation Number	Letter Filed Date	Action
016 KAR 003:080	12-04-2020	To be amended, filing deadline 06-06-22
017 KAR 003:020	08-07-2020	Remain As Is
201 KAR 039:040	02-01-2021	Remain As Is
201 KAR 037:010	08-07-2020	Remain As Is
201 KAR 045:140	10-27-2020	Remain As Is
201 KAR 045:150	10-27-2020	Remain As Is
201 KAR 045:160	10-27-2020	Remain As Is
302 KAR 021:001	02-11-2021	Remain As Is
302 KAR 021:020	02-11-2021	Remain As Is
302 KAR 021:030	02-11-2021	Remain As Is
302 KAR 040:010	02-11-2021	Remain As Is
302 KAR 021:050	02-11-2021	Remain As Is
302 KAR 021:060	02-11-2021	Remain As Is
302 KAR 021:070	02-11-2021	Remain As Is
302 KAR 021:080	02-11-2021	Remain As Is
703 KAR 005:080	10-23-2020	Remain As Is
803 KAR 002:411	10-01-2020	To be amended, filing deadline 04-01-22
803 KAR 002:419	10-01-2020	To be amended, filing deadline 04-01-22
806 KAR 030:020	02-11-2021	Remain As Is
806 KAR 037:010	02-11-2021	Remain As Is
806 KAR 039:070	02-11-2021	To be amended, filing deadline 08-11-22
910 KAR 001:190	12-11-2020	To be amended, filing deadline 06-11-22
922 KAR 001:130	09-04-2020	Remain As Is
922 KAR 001:450	10-02-2020	Remain As Is

TECHNICAL AMENDMENT INDEX

The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments made during the 47th year of the *Administrative Register of Kentucky*. 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 *Register*. NOTE: Technical amendments may be available online for a short period of time before finalized versions of the technically amended regulations are available. To view regulations on the Legislative Research Commission Web site go to <https://apps.legislature.ky.gov/law/kar/titles.htm>.

Regulation Number		Date Corrected	Regulation Number	Date Corrected
201 KAR 006:020		11-09-2020		
201 KAR 006:040		11-09-2020		
201 KAR 006:050		11-09-2020		
201 KAR 006:070		11-09-2020		
201 KAR 017:011		10-16-2020		
201 KAR 017:012		10-16-2020		
201 KAR 017:030		10-16-2020		
201 KAR 017:032		10-16-2020		
201 KAR 017:034		10-16-2020		
201 KAR 017:036		10-16-2020		
201 KAR 028:060		10-16-2020		
201 KAR 028:170		10-16-2020		
201 KAR 028:200		10-16-2020		
201 KAR 044:090		10-16-2020		
201 KAR 044:100		10-16-2020		
201 KAR 044:120		10-16-2020		
201 KAR 045:110		10-16-2020		
201 KAR 045:120		10-16-2020		
201 KAR 045:150		10-16-2020		
201 KAR 045:170		10-16-2020		
201 KAR 045:180		10-16-2020		
201 KAR 047:010		10-16-2000		
702 KAR 003:270E	‡	09-23-2020		
702 KAR 007:125E	‡	09-23-2020		
815 KAR 002:020		05-29-2020		
815 KAR 004:025		05-29-2020		
815 KAR 007:070		05-29-2020		
815 KAR 007:125		07-17-2020		
815 KAR 008:010		05-29-2020		
815 KAR 010:060		05-29-2020		
815 KAR 015:025		05-29-2020		
815 KAR 025:020		05-29-2020		
815 KAR 030:060		05-29-2020		
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KAR 001:151

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